S. HRG. 110–484

PREDATORY LENDING IN INDIAN COUNTRY

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

JUNE 5, 2008

Printed for the use of the Committee on Indian Affairs

U.S. GOVERNMENT PRINTING OFFICE

44–213 PDF WASHINGTON : 2008

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON INDIAN AFFAIRS

BYRON L. DORGAN, North Dakota, *Chairman*
LISA MURKOWSKI, Alaska, *Vice Chairman*

DANIEL K. INOUYE, Hawaii
KENT CONRAD, North Dakota
DANIEL K. AKAKA, Hawaii
TIM JOHNSON, South Dakota
MARIA CANTWELL, Washington
CLAIRE McCASKILL, Missouri
JON TESTER, Montana

JOHN McCAIN, Arizona
TOM COBURN, M.D., Oklahoma
JOHN BARRASSO, Wyoming
PETE V. DOMENICI, New Mexico
GORDON H. SMITH, Oregon
RICHARD BURR, North Carolina

ALLISON C. BINNEY, *Majority Staff Director and Chief Counsel*
DAVID A. MULLON JR., *Minority Staff Director and Chief Counsel*

CONTENTS

PREDATORY LENDING IN INDIAN COUNTRY

Thursday, June 5, 2008

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:30 a.m. in room 562, Dirksen Senate Office Building, Hon. Byron L. Dorgan, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

The CHAIRMAN. We will call the hearing to order.

This is a hearing of the Indian Affairs Committee. The hearing today is on the subject of predatory lending in Indian Country.

As I begin the hearing, I want to mention that my colleague, Senator Murkowski, the Vice Chairman, is at another hearing and I believe will be here later in the morning.

I wanted to mention as well that I will be contacting other members of the Indian Affairs Committee in the coming days. I spoke to Senator Murkowski last evening about a subject that this Committee has dealt with previously, and that is what is called the Indian Affairs Jails Report. In February of 2006, the Bureau of Indian Affairs contracted with Shubnum Strategic Management Applications to assess the conditions and the needs of tribal jails and to recommend improvements.

Now, I know from first-hand experience and others know that the jails and the detention facilities on Indian reservations are in desperate condition and in some cases shameful conditions. We are working, on this Committee, to produce a law enforcement bill to try to deal with law enforcement issues on Indian reservations. That includes the question of how do you deal with detention facilities.

I mentioned in February of 2006 the Bureau of Indian Affairs contracted with Shubnum Strategic Management Applications to do a review. In November of 2006, Shubnum Strategic Management Applications issued a first interim report. In March of 2007, that is a little over a year ago, the associate director of the BIA testified before the Federal Prison Rape Elimination Commission that the report "would be available in a month or two months at the most." That was March of last year.

In August of last year, the Director of the Office of Justice Services, Pat Ragsdale, met with our Committee staff, indicated the report would be released in December 2007. In September 2007, Mr.

Ragsdale again speaks to our staff and says the jails report will be issued January 2008.

In August and September 2007, the Shubnum Company issues a second and third interim reports, containing recommendations and evaluations. In December 2007, the consulting company issues the fourth interim report, containing enumerated costs associated with recommendations and plans for replacement of jails.

On March 1st, I sent a letter to the Secretary of Interior and to Assistant Secretary Artman. I also then telephoned Secretary Kempthorne asking for a copy of the jails report. The taxpayer has paid for it, after all. On March 3rd, the request for copies of the report is denied by the Interior Department. But the Assistant Secretary for Indian Affairs offers to brief our Committee staff.

The BIA informed us that the company gave Interior seven bound copies of the 1,000 plus page final report. On March 4th, the Interior officials gave us a response to my letter. They indicated the report will be released in early May, after the Secretary has been briefed and after the Office of Management and Budget reviews it.

In April, that is two months ago, Secretary Kempthorne is briefed on the final jails report. In May, the Interior Department informs our Committee staff that the Office of Management and Budget has recalled all copies of the final report, returned them to the company to be stamped draft and place them in binders. The Committee staff has been given no time frame for when a copy will be given to the Committee.

On May 23rd, the report was returned to the Office of Management and Budget, which then embargoes the report. We understand this embargo extends to all people outside the Office of Management and Budget, and the only copies of the report are at the Office of Management and Budget.

I tell you all of this because we are working on law enforcement issues, on a piece of legislation. We have worked long and hard on it. We have had meetings all around the Country. Part and parcel of developing an approach to law enforcement improvement on Indian reservations is dealing with detention facilities and jails. The American taxpayer has paid a fair amount of money now to a company through the Department of Interior and the Bureau of Indian Affairs to do a consulting report to tell us the condition of jails on Indian reservations. We are now told that report is not available to this Committee, after having been promised last year on four occasions that it would be made available to this Committee.

I indicated to Senator Murkowski last evening that it is my intention to present a subpoena to the Committee for a vote and issue a subpoena to the Department of Interior. I expect perhaps to do that at the next business meeting. But we will not allow this stuff to continue.

The fact is, the taxpayers have paid for this report. It is outrageous and arrogant of the BIA and the Interior Department to withhold it. The report is completed. If the Office of Management and Budget doesn't like it, that is tough luck, in my judgment. The American taxpayers paid the bill and this Committee is going to get the product. We will get it if we have to subpoena it, and I am perfectly happy to issue that subpoena and will do so at the earliest opportunity.

Let me, with that high note, indicate the purpose of this hearing, of course, is quite different. But I did want to state at the start what my intention is with respect to that report.

Today, the Committee will examine the problem of predatory lending in Indian Country. The problem of predatory lending is not just limited to Indian Country. It is not unique to Indian communities. But the lack of financial services available on Indian lands makes tribal communities particularly vulnerable to the practice of predatory lending. The majority of Indian reservations, the people who live on those reservations, in many cases, have to travel at least 30 miles to reach an ATM or a branch bank. In fact, only 14 percent of Indian communities have some type of bank located in the community. And only 7 percent have an open access to an ATM.

The issue of predatory lending in Indian Country was brought to this Committee's attention and a request was made that we do some investigating by Senator Domenici, some months ago. He was concerned about the unusually large number of payday lenders located in Gallup, New Mexico, a border town on the Navajo Nation reservation. In Gallup, there was one payday lender for every 500 residents, and 70 percent of the customers for these payday lenders were Native American.

We have heard many reports from constituents about the issue of payday lending. I don't attempt or would not want to tarnish all of those who are involved in this kind of lending. Some of it is very necessary, some are very responsible. I understand that.

I also understand that there are predators in this area. That is why I use the term predatory lending. One woman on the Chippewa Indian Reservation at Turtle Mountain said, "A lot of people are being terrorized and threatened by payday lenders located off the reservation." She told a story of her friend listing her as a reference when her friend took out the payday loan. When the friend was not able to pay back the payday loan, the lender began calling the woman and threatening her saying, "We're going to break some legs." Well, that is way outside the norm. But there are some bad actors here. We ought to find ways to get bad actors off the stage.

She said they are attaching personal identification numbers, debit cards, and food stamp cards of tribal members in order to pay off loans. Again, I realize not all payday lenders, in fact, most would not be this aggressive. But the alleged behavior of abusive lenders, it seems to me, suggests we ought to take a look at it.

Many people are unwilling to talk about the types of loans, because it causes stress and debt and embarrassment. We know there is a problem. The question is, what is the problem, how do we address it, what kinds of information can we develop to determine how this affects, in this case, Indian reservations. As you know, the Congress has already dealt with this in law with respect to military bases.

So the Committee will hear from a number of witnesses about solutions. There is a growing movement to provide traditional financial services on Indian reservations. I think that is good news.

Some initiatives are developing these institutions in coordination with increased financial education as well. That also is good news.

I want to thank the witnesses whom we have invited here today to come and tell us about these issues. Before I turn to the witnesses, I want to turn to my colleague, Senator Tester.

STATEMENT OF HON. JON TESTER, U.S. SENATOR FROM MONTANA

Senator Tester. Thank you, Chairman Dorgan. I apologize for being late. I thought there for a second maybe we changed the topic today.

[Laughter.]

Senator Tester. I am glad we are back on. And by the way, I support you in the endeavors that you talked about initially.

I also want to thank you for holding this meeting. It is a very, very important one, and I thank the panelists for being here today. I apologize, I am going to have to skip out on you, because I have a conflict with this meeting.

But make no mistake about it, money flowing into Indian Country and Indian communities is vital, whether it comes from the Government or whether it comes from individual Native Americans, or whether it comes from banking institutions. For economic development to work and to move forward, money is a necessary component.

One of the most important goals for work on this Committee should be helping our Native American friends achieve economic self-sufficiency. While providing vigilant oversight, the Federal Government should give American Indians the tools the need to succeed and then get out of the way. Unfortunately, predatory lending practices are working against that goal. Predatory lending is a nationwide problem. It is a critically important issue for American Indians. The very survival of tribes depends upon the development of a comprehensive strategy for economic development and self-sufficiency. Many Native American people are poor, and when their few assets are taken from them, the dream of home ownership, of building stronger communities, then their dream of self-sufficiency is beyond hope.

At a time when the economy is stagnant and the price of everything from food to gas to higher education is on the rise, predatory lending, sub-prime mortgages and the like can be a dagger in the heart of efforts to promote economic development in American Indian communities. As I have seen in Montana, predatory lending all too often traps Indians in a cycle of poverty that culminates in the loss of assets through bankruptcy and foreclosure. There is no magic bullet to solving this problem created by predatory lending. Individual tribes, the lending industry, States, the Federal Government, all have a role to play. And at every level, financial education is the first line of defense and should include basic instruction about money management, credit repair, savings and investment.

This tide is starting to turn. I know the State legislatures across this Country are considering bills aimed at curbing consumer abuses from sub-prime mortgages, title and payday loans and others. I appreciate the State of Montana for leading the way on these issues.

Many lenders are stepping up as well. The good ones have adopted best practices and are striving to operate by them. Tribes are also working with non-profit organizations and industry to educate and protect their members. That good work must continue.

Although the Federal Government does not currently regulate non-traditional lenders, that does not mean we don't have a role to play. It is critical that the Government maintain its trust responsibilities by holding Congressional oversight hearings, such as this one, encouraging agencies to conduct outreach and financial education, and partnering with stakeholders to ensure that we are accomplishing our joint goal: the goal of tribal self-sufficiency and prosperity.

Again, I want to thank the Chairman for holding this hearing, and again, I apologize for having to leave and not being able to ask some questions, because there are plenty of questions to ask. Thank you very much.

The CHAIRMAN. Senator Tester, thank you very much.

We have six witnesses today, and I would like to tell all of the witnesses that your entire statement will be made a part of the permanent record. We would like each of you to summarize your statements.

We will begin with Ms. Jerilyn DeCoteau, Director of Policy, First Nations Institute in Longmont, Colorado. Thank you very much for being here. Why don't you proceed?

STATEMENT OF JERILYN DECOTEAU, DIRECTOR OF POLICY, FIRST NATIONS DEVELOPMENT INSTITUTE

Ms. DECOTEAU. I will, thank you.

Thank you for inviting First Nations Development Institute to testify here today on this important issue of predatory lending practices and their effects on Indian people and Indian Country. First Nations is a 27 year old non-profit that works with tribes and Indian organizations across the Country to restore Native control of assets and to prevent the stripping of assets in Native communities.

For Indians, as you have noted yourself, predatory lending results in the bleeding away of crucial assets. These communities already lack the basic economic structures that other communities take for granted. They are struggling to meet the Federal and tribal goals of economic stability and self-sufficiency.

First Nations' study, Borrowing Trouble, takes the first close look at the effect of payday loans and refund anticipation loans and similar loan products. Our findings show that predatory lending is, in fact, a significant problem for Native Americans. While our report contains good data, perhaps the best way to illustrate the impact on Indians and Indian communities is through the personal stories that have been told to us.

I will tell a couple. I am actually from North Dakota, I am a member of the Turtle Mountain Chippewa Tribe. So I want to share a couple of personal stories, because they involve members of my family. For example, the first one I am going to tell you about is about a woman who uses refund anticipation loans against their tax refunds, known as RALs. She has been doing this for eight years. I called her and asked her about it, I said, okay, honey, you have to tell me about this. She said, well, I have been doing it for eight years, and it costs her $150 plus the tax preparation fee to do this. Her refunds are averaging about $1,800 to $2,000.

She said the tax preparer comes to the reservation two days a week during tax season and sets up an office there, and offers a RAL every time. Because that is what I said, how did you know about RALs? I said, did you ask or were you offered? She said, well, he offers it every time to everybody. So I think maybe he brought it up. She said RALs are really the norm in Indian communities, everybody does it, everybody thinks it is the way to get your taxes. Lots of times people don't pay their bills in December to have more money for Christmas, so they owe double in January and February and they take their pay stub from their last paycheck of the year and they can get a loan off of that as well. They do it as soon as they get their W–2s.

They don't understand, apparently, that if they use an e-filing, they can get their tax refund probably in less than a week. I understand that the IRS is working on getting them back even sooner than that.

Another story that I want to tell you which is not so much about payday or RALs, but just about high interest rates in general, and that is, well, I should tell you, that woman was my daughter. Both of my daughters, I have two daughters who live on the reservation, and they both got car loans recently, one at 14 percent, one at 18 percent. Both my daughters are professional people, they have had long-time jobs. One got behind on student loans and doesn't use banking services at all, so really has no other credit record except that. The other got into some credit card trouble and is paying her way out of that and has been very stable for the last couple of years. But these two loans that were made just in the last few months were the best that they could do.

And it is really not out of the norm. I have a cousin who is a lawyer with the Department of Justice in Michigan. He wanted to buy a car for his son on the reservation, and he went to the local bank when he was home, the off-reservation banks. He went to two of them. He was offered loans of 13 to 18 percent. When he said, gee, why? He said my credit score is very high. I have been employed for 20 years. They told him, well, that is just the way it is.

He said, do you offer a different rate for people off the reservation? They said yes. One of the banks explained that the reason they do that is that they might be subject to tribal court jurisdiction and tribal laws. So he reported that incident. And he said, you know, it would be a relatively simple thing to set up a study to find out whether or not people are being treated differently in those institutions.

So those are a couple of stories from Turtle Mountain. There are a couple more. One woman who earned minimum wage borrowed $400, ended up owing $1,400, and the lender took her to court. She had talked to the lender about some alternative repayment provisions and they didn't work with her. So she ended up owing $2,200, including court fees. So the woman I spoke to is the woman who bailed her out. This woman also bailed out her son, who is 21 years old. He was about $600 in debt and panicking and being threatened with court, she helped her son out. She thought that young people were being targeted because they were less savvy about these things. She said, it is not surprising to her that people don't want to share their stories, because they are embarrassed. They feel ashamed and they don't want to tell people their money problems.

A couple of others related to home purchase. Of course, homes are the basic building block of asset wealth in our society. One tribal member purchased a home with a loan from his housing authority, but then he took out another loan from a lender with high rates. He fell behind and he lost the home. Another tribal member, and these are not North Dakota folks, by the way, these are from our study, another tribal member who owned a home outright, after 30 years of payments, got a home improvement loan from an unscrupulous lender and eventually lost his home as well.

Trailer homes present a similar kind of problem. One woman got a trailer home with a 29 percent interest rate, even though she had good credit and a good job. Then she decided she wanted to sell the trailer and buy a house. She wasn't able to do that, because what she found was that she was upside down on a loan, as they put it. She owed $60,000 on a trailer that was worth a little more than $15,000.

The CHAIRMAN. You are saying that she had an interest rate of 29 percent on a loan to buy a trailer home?

Ms. DECOTEAU. Yes.

The CHAIRMAN. From what kind of lender?

Ms. DECOTEAU. You know, I don't remember that part. But I don't think those rates are uncommon.

The CHAIRMAN. Let me ask you to summarize.

Ms. DECOTEAU. Sure. So those stories are anecdotal, but we believe they illustrate the problems created by usurious lending in Native American communities. As one Indian man put it, when people like me go looking for a loan, our only friends are the predatory lenders, and that is because of lack of access and so forth.

RALs are a huge problem in Native communities. The use of RALs is disproportionately high. The four counties with the highest RAL usage are Native communities in South and North Dakota. In Shannon County, South Dakota, part of the Pine Ridge Reservation, for example, 52 percent of the taxpayers eligible for Federal tax refunds received a RAL in 2004.

So lending in an already under-capitalized Indian community can sabotage the Federal policy of self-sufficiency for tribes; and tribes lacking regulatory control and enforcement authority over these off-reservation institutions are left with few options for safeguarding the economic security of their members.

I would point out, you already mentioned, the United States Department of Justice has called loans with over 36 percent APR predatory when they are made to military personnel. It is not different with Indians. It applies equally. There is a Federal interest in protecting military personnel, but there is also a Federal interest in protecting Indian people and their assets and communities. Federal assistance in finding solutions is badly needed.

I won't go into all of our recommendations at this time, because I wanted to highlight the stories. I would be happy to do that later if the Committee wants to hear some of those stories.

Let me just finish this way. This is the first time Native Americans have been given a voice on how predatory lending affects them and their communities, and to show what works to prevent unfair lending practices. This is the first time anyone has collected data to tell their side of the story, and the first time that anyone has asked to hear those stories.

On behalf of First Nations, thank you for allowing us to share what we have learned. Thank you.

[The prepared statement of Ms. DeCoteau follows:]

PREPARED STATEMENT OF JERILYN DECOTEAU, DIRECTOR OF POLICY, FIRST NATIONS DEVELOPMENT INSTITUTE

Chairman Dorgan, thank you for inviting First Nations Development Institute to testify here today on a matter of great importance for Indian Country and for the nation as a whole—that of lenders who prey on vulnerable borrowers, resulting in loss of individual assets and economic security. For Indians, predatory lending results in the bleeding away of crucial assets from Native American communities. These communities already lack the basic economic structures that other communities take for granted and are struggling to meet the federal and tribal goal of economic stability and self-sufficiency.

First Nations Development Institute (FNDI) is a 27-year-old nonprofit headquartered in Longmont, Colorado with offices in Fredericksburg, Virginia, whose work is with tribes and Native communities across Indian Country.

FNDI's mission is to restore Native American control and culturally-compatible stewardship of the assets they own—be they land, human potential, cultural heritage, or natural resources—and to establish new assets to ensure the long-term vitality of Native communities. FNDI does its work using a three-pronged strategy of educating grassroots practitioners, advocating systematic change, and capitalizing Indian communities.

FNDI's core belief is that "when armed with appropriate resources, Native Americans have the capacity and ingenuity to ensure the sustainable economic, spiritual, and cultural well being of their communities."

Directly relevant to the topic of this hearing is FNDI's recent report, Borrowing Trouble: *Predatory Lending in Native American Communities.* The report is the outcome of a research study conducted by FNDI under a grant from the Annie E. Casey Foundation. Our report provides an analysis of survey data collected from attendees at the National American Indian Housing Council meeting in May 2007; survey data collected from Native users of selected Voluntary Income Tax Assistance sites; geo-coded data of payday lenders, bank branches, and Native community development finance institutions; and a national data set of home mortgage loans. The report also presents five case studies of promising practices and concludes by offering concrete suggestions about the steps Native nations can take to curb the impact of predatory lending on their citizens.

The purpose of the study was to produce original research on the extent of the problem of predatory lending in Native American communities and to document local solutions currently being practiced by tribal housing authorities and tribal governments. A predatory loan is commonly understood to be an unsuitable loan designed to exploit vulnerable and unsophisticated borrowers. Predatory loans may have inappropriately high interest rates or fees or terms and conditions that trap borrowers; often, these conditions are not well explained to borrowers. When borrowers fall prey to these practices, they often cannot afford to repay the loans, and end up in foreclosure, bankruptcy, or other financial hardships. We wanted to understand the effects of predatory lending on Native communities and collect data on payday loans, pawnshop transactions stores, car title loans, Refund Anticipation Loans, and mortgage loans with high interest rates and hidden fees.

Predatory lending is a nationwide problem, but for Indian tribes the bleeding of assets away from Native communities has consequences of a greater dimension. The very survival of tribes is linked to securing comprehensive strategies for economic improvement. Many Indian people are poor, and when even paychecks are taken from them, the dream of homeownership and building stronger communities is beyond hope.

We are pleased to share with you some of what we have learned about lending industry practices and the special problems they presents to members of Native communities. We are also pleased to share our policy recommendations, based largely on best practices in the case studies conducted on five Native programs. These best practices provide alternatives to predatory loans, help build individual assets, and in turn help tribal communities develop stronger, more secure economies.

Our written statement expands on our oral testimony addressing the issues of concern to the Committee:

I. *Identifying the problem:* We will discuss the findings of our study and provide examples of predatory lending through personal stories told to us.

II. *Addressing the problem:* We will describe tribal practices and programs that are having good results in combating the effects of predatory lending.

III. *Policy recommendations:* We will recommend policies and programs that will promote asset building and curb predatory lending practices that affect Native American communities.

I. Identifying the Problem: Predatory Lenders Make it Difficult for Individuals to Build Assets, to Become Mortgage Ready, and to Move Out of the Cycle of Debt.

History is replete with examples of predatory practices involving Indian assets, from theft of land to gross underpayment for the lease or sale of natural resources. Now predators are reaching directly into Indians' pockets for their paychecks and tax refunds. This is in large part because vulnerable Indians have no other assets to steal.

Payday Lenders

Many Indians who use payday lenders lack access to mainstream banking services, either because there are no such institutions nearby, or because borrowers lack collateral (for example, no home equity), have poor credit, or no credit history. To get over a financial crisis, such as a car repair, medical bills, a missed mortgage payment, or a heating bill in winter, many people have no alternative but to turn to lenders who can dictate the terms. This fairly describes the situation for too many in Indian communities, where wages are typically low. For example, the median household income for American Indians and Alaskan Natives is $33,132; the poverty rate is 23 percent. By comparison, the median income for whites is $46,971 and the overall poverty rate is 12.7 percent. Recent research by the Harvard Project on American Indian Economic Development suggests that this contrast is even more stark for reservation residents—in 2000, the per capita income for residents of Indian reservations was $7,942 as compared to $21,587 for the total United States.

The number of payday lenders has exploded in the last 20 years. In the early 1990s there were around 300 payday lending outlets in the United States; recently the count was higher than 22,000. For comparison purposes, there are 13,300 McDonald's restaurants and 7,087 company-operated Starbucks according to those chains' web sites. In New Mexico, a state that has relatively lax regulation of payday lenders, there are 4 payday lenders for every McDonald's.

The increase has been due to a number of factors, including deregulation of the lending industry in the 1980s and 1990s. Protective measures such as "truth in lending" have not been effective in curbing abusive lending practices. Data from the industry itself suggests that the average payday loan borrower is low-income and minority: a borrower is more likely to be Latino or African American, a renter, and have a median income lower than the U.S. average.

The Center for Responsible Lending reported in 2006 that most payday loans cost $15–$30 per $100 for a two week term, resulting in effective annual rates of 390 to 780 percent interest. The typical payday borrower rolls his loan over several times and eventually pays back *$793 for an initial $325 loan.* **Ninety percent of the revenue generated in the payday-lending industry comes from borrowers who are trapped in a cycle of payday loan debt, or those who take five or more loans a year.** Fees play a key role—the Center for Responsible lending estimated that the industry brings in $4.6 billion in fees per year. The total impact on the poor and effect on the economy has been quantified at more than $8 billion a year.

In their editorial "Beyond Payday Loans" in the *Wall Street Journal* (Jan. 24, 2008), President Clinton and California Governor Arnold Schwarzenegger said, "Imagine the economic and social benefits of putting more than $8 billion in the hands of low- and middle-income Americans. That is the amount millions of people now spend each year at check-chasing outlets, payday lenders and pawnshops on basic financial services that most Americans receive for free—or very little cost—

at their local bank or credit union." According to the Report of the Native American Lending Study, most Native communities do not have access to local banks and very few have access to credit unions. This makes them easy prey.

According to 101 survey respondents at the April 2008 National Indian Gaming Association Trade Show and Convention, predatory lending is a significant concern across Indian Country: 73 percent indicated that they "Strongly Agree" or "Agree" with the statement that predatory lending is a problem in their community (38 percent of respondents were elected tribal officials). This corroborates the results from 140 respondents to a survey at the annual National American Indian Housing Council (NAIHC) meeting held in May 2007. Seventy-three percent of the respondents to that survey also reported that predatory lending was either "a big problem" or "somewhat of a problem" in their communities.

Respondents to the NAIHC survey represented over 67 tribes in 28 states. Their insights are valuable because tribal housing professionals are uniquely placed to observe and understand the impact of predatory lending practices in their communities. They assess clients' eligibility for housing assistance, provide advice about mortgage access, and often offer financial education and credit repair services; their perceptions of predation are based on these interactions.

When asked about specific predatory practices, 67 percent of respondents to the NAIHC survey identified payday loans as either "somewhat of a problem" or "a big problem." Thirty-three percent of respondents stated these loans are a problem because a lot of people have them, and 63 percent stated that the interest rates on these loans are too high. Sixty-two percent responded that they feel that payday loans prey on vulnerable people. Significantly—and perhaps to be expected—the most common reasons respondents cited for clients falling prey to predatory lenders and products included a generic need to get access to cash and the more specific need for money to pay bills.

Drawing upon geo-coded data of payday lenders (provided by Dr. Stephen Graves at the California State University—Northridge who has identified a pattern of predatory lending in relation to military bases) we produced several maps of the location of payday lenders in relation to several Indian reservations (see maps of South Dakota and Gallup, New Mexico at the end of this testimony). The maps drive home the point that American Indians living on or near tribal lands have nearly as many payday lending choices (red dots) as bank branch choices (green dots). Our map of the Gallup, New Mexico area demonstrates that citizens in that community, 75 percent of whom are Native American, have nearly twice as many payday lenders than banks to do business with.

South Dakota provides an interesting example. On November 26, 2007, *The Rapid City Journal* observed, "Rapid City, with its proximity to Ellsworth AFB [Air Force Base] and its growing Native American population, is particularly vulnerable to the payday industry. Pennington County has just 12 percent of the state's population, but it contains almost one quarter of its payday lending operations." As many as one in five members of the armed forces took out a payday loan in 2005, a Pentagon report said last year, contributing to rising debt levels that interfere with troop deployment and service members' security clearances. South Dakota eliminated usury laws in 1980 as a means of attracting financial services businesses. As compared to other states, it now has the highest number of banks per capita and the second highest number of payday lenders.

Given the strong service orientation of payday lenders and their allied businesses as compared to that of banks, and given many reservation residents' limited experience with banks, ready access to payday lenders has translated to predation and escalating debt for numerous Native consumers. One participant in a breakout session on asset building at the National Congress of American Indians 2007 midyear conference in Anchorage, Alaska put this access and experience linkage succinctly: "When people like me go and look for a loan, our only friends are the predatory lenders."

Refund Anticipation Loans (RALs)

Loans against tax refunds are another common form of lending that is receiving increasing scrutiny. These loans are appropriately termed refund anticipation loans, or RALs, but they are perhaps best (but inaccurately) known as "rapid refunds." Those taking out RALs pay large fees to receive an immediate payment by taking a loan against their tax refund—in many cases receiving their money only a few weeks earlier than they would have otherwise. This can result in an effective annualized interest rate of anywhere from 70–700 percent, depending on the size of the tax refund. Research has shown that RALs are heavily marketed among low-income populations, especially those that qualify for the Earned Income Tax Credit (EITC). Our research suggests that many people in Native communities are not aware that they could have their taxes prepared free of charge, or that they could access the EITC without paying for tax preparation.

Sixty-eight percent of respondents to the survey administered at the National American Indian Housing Council (NAIHC) meeting identified loans against tax refunds as “somewhat of a problem” or “a big problem.” Forty-three percent of respondents stated that these loans are a problem because a lot of people have them, and 53 percent believe that the interest rate is too high. Fifty-five percent of respondents stated that they believe these loans are a problem because they prey on vulnerable people.

Data is available at the county level regarding the usage of Refund Anticipation Loans. An analysis of the top ten states with the largest American Indian/Alaska Native population indicates that among the counties with 50 percent or more American Indian/Alaska Native population (usually indicating a reservation), usage of Refund Anticipation Loans was nearly 4 four times more likely than among non-Native majority counties. Over 28,000 people in these Native-majority counties used a RAL in 2005, amounting to a total cost of approximately $6,888,000 paid for the RAL service.

In early 2007, the Gannett News Service analyzed data from the IRS (originally obtained by the National Consumer Law Center) and ranked the counties in which the take up of these loans was the greatest. The top four counties on the list are “Native counties” in South Dakota and North Dakota—counties where land is largely reservation land and at least 80 percent of the population identifies as Native.

In Shannon County, SD, part of the Pine Ridge Reservation, 62 percent of taxpayers eligible for federal tax refunds received a refund anticipation loan for the 2004 tax year. In Todd County, SD (where the Rosebud Reservation is located), Buffalo County, SD (where the Crow Creek Indian Reservation is located), and Sioux County, ND (where the Standing Rock Reservation is located), the percentages were 56 percent, 51 percent, and 49 percent respectively.

The cost of this activity is substantial. Looking at the 2005 tax year (taxes filed in 2006), the National Consumer Law Center estimated the annualized interest rate for a loan covering the average refund (about $2,150) at 178 percent—or a $100 cost in addition to the fee for tax preparation (which averaged $146).

The Kathryn M. Buder Center for American Indian Studies and the Center for Social Development at Washington University in St. Louis calculated comparable costs for the 2005 tax year among Native clients of Volunteer Income Tax Assistance (VITA) sites. Some 600 of the 2,300 Native clients who were surveyed during the 2007 tax season reported using a paid tax preparer in the previous tax year. Over half of those filers accepted a RAL. On average, those accepting a RAL paid $189 for tax preparation services, as compared to $121 for those who did not.

Volunteer Income Tax Assistance (VITA) sites in Native communities have been effective in reducing the use of paid tax preparers who often charge fees and offer clients Refund Anticipation Loans. The Menominee housing authority initiated a VITA site for the Menominee reservation when they found out that Menominee County, whose boundaries are the same as the reservation, had the highest usage of Refund Anticipation Loans in the state in 2002 (the top four cities were also on Wisconsin Indian reservations). The VITA site on the Menominee reservation processed over $560,000 of federal refunds in 2007, an increase of 23 percent from the previous year. A total of 439 returns were processed free of charge, potentially saving over $120,725 in preparer fees for the community that year.

Evidence of Other Predatory Lending Practices

In our research report *Borrowing Trouble: Predatory Lending in Native American Communities* we identified several other predatory lending practices that are affecting Native communities. Fifty percent of respondents to the survey administered at the National American Indian Housing Council (NAIHC) meeting identified car title loans as “somewhat of a problem” or “a big problem.” Fifty-four percent identified mortgage loans as a “somewhat of a problem” or “a big problem,” and fifty-eight percent identified pawn shop transactions as “somewhat of a problem” or “a big problem.”

Due to the presence of trust land on Indian reservations and the difficulty in getting private mortgages, abusive mortgage lending may be less of a problem on Indian reservations than in urban areas. However, data in our research report demonstrates that nationwide, between 2002 and 2005, American Indians borrowed from lenders engaged in the subprime mortgage market at a rate disproportionate to that of non-Indians. Comparing the percentages of loans made by high-cost lenders to American Indians and Whites, we found that Natives were engaged with the high-cost market more than twice as often as Whites (disparity ratios in the range

2.06:1 to 2.32:1). This suggests that nationwide, Native borrowers remain more at risk of the negative outcomes associated with subprime lending than non-Natives.

The Cost of Predatory Lending in Native Communities

The report *Borrowing Trouble: Predatory Lending in Native American Communities* provides case study data on the impact of abusive lending practices on Native communities (and therefore Native economies). Our case study research included interviews with several key informants who work in economic development organizations and coordinate asset-building programs. In all five of our case study sites, economic development practitioners identified predatory lending as a problem that strips economic resources from economically stressed families. One practitioner put it this way:

> First and foremost it affects the financial security of the family. Many of our families are just one minor emergency away from extreme financial hardship. This in turn affects family relations—stress, divorce, bankruptcy, child welfare. The extreme cost of predatory lending dramatically decreases living standards (eventually, if not immediately). The aggressive nature of predatory lenders encourages poor financial management practices, which make this a perpetuating cycle. Many of our clients come to us in extreme emergencies regarding foreclosure, utility cutoff, or repossession because nine out of ten times they have been making their predatory loan payments and foregoing essential payments—the predatory lenders are such aggressive collectors (and many times not ethical or legal) that families forgo making shelter, utility, and transportation payments just to satisfy the predatory lender. High fees lower the standard of living and drain money from the general economy, particularly with non-local predatory lenders. The financial stress involved for families borrowing from predatory lenders also negatively affects workplace productivity, which drains resources from the local economy.

Many of the economic development practitioners we interviewed work on repairing their clients' credit so that they may qualify for asset-building programs such as those focusing on small business development or homeownership. Nearly every practitioner we interviewed identified the need to repair credit or extract people from predatory loans as one of their highest priorities.

Several examples of the devastating outcome of predatory lending emerged from the study and our follow-up research:

- A middle aged man took out a payday loan to pay his electric bill. The high interest rate and hidden fees, the cost of which became a cyclical drain on his paychecks, eventually took his whole regular paycheck plus $200 to pay.
- A tribal member purchased a home with a loan from his housing authority but then took another loan from a predatory lender, with a high interest rate. The family fell behind on payments and lost their home.
- A tribal member who owned his home outright after 30 years of payments got a home improvement loan from an unscrupulous lender and eventually lost his home.
- A community practitioner on a reservation in Arizona stated that she has seen a lot of problems with trailer loans. She provided an example of one case in which an individual was given a loan on a trailer but it was not explained that a trailer is a depreciating asset. The loan had a 29 percent APR even though the borrower had good credit and a decent income. The trailer owner wanted to sell the trailer and buy a home, but was so far in debt (also called being "upside down on a loan") that she was not able to sell the trailer. The trailer owner owed $60,000 on a trailer that was worth about $15,000.
- A woman earning minimum wage borrowed $400 and ended up owing $1,400. The lender took her to court. She ended up owing $2,200 including court fees. The lender would not work with her on a repayment plan that she could afford.
- A 21 year old on a North Dakota reservation wrote two letters and went in person four or five times to a payday lender to try to work something out. When he was $600 in debt, the lender threatened to take him to court. His mother bailed him out. She said payday loans are common and she believes youth are targeted. She said she is not surprised that individual stories are hard to get because people are ashamed and will not talk about the trouble they are in.
- A couple on a North Dakota Reservation used RALs every year from 2000–2007. They paid $150 plus tax preparation fees of $70 on refunds of $1,800–$2,400. The tax preparer comes to the reservation 2 days a week during tax season. He offers people a RAL every time. The couple said RALs "are the norm, especially

if you get a return of around $4,000–5,000. You don't see it [the interest] and you don't feel it. People get RALs as soon as they get their W–2s. You can even take your last pay stub of the year and get a loan. After Christmas, people need the money—sometimes they skip a bill in December and they have a double payment in January."

- This same woman, when asked about payday loans, said yes people use them, but first you have to have a job and the unemployment rate here is 73 percent according to BIA statistics. The woman is the employment outreach coordinator at the tribal college.
- On the same North Dakota reservation, two women obtained car loans for 14 percent and 18 percent, respectively. Both have longtime professional jobs. One fell behind in student loan payments, but is nearly caught up. She does not keep a checking account or use a credit card, so besides the student loan, has no credit. The other fell behind on credit card payments and is paying off current debt, but no longer uses credit cards.
- A lawyer employed by the United States Department of Justice, with a credit rating of 780, wanted to help his son buy a car. Two banks just off a North Dakota reservation offered him 13 percent–18 percent rates. One bank explained that rates were higher for reservation borrowers because the lender might be subject to tribal laws and tribal court jurisdiction. The lawyer went home to Michigan and obtained a loan for 6½ percent. He reported the problem to the Civil Rights Division. He noted that a simple investigation using undercover borrowers would quickly document this type of discrimination.

While these stories are anecdotal, we believe that they illustrate the problems created by predatory lending in Native communities. Loans that charge high interest rates or fees are often made to people who do not understand the terms of the loans, are not qualified to receive them, and are not able to pay them back. The most notable outcome of these predatory loans is asset stripping, or the draining of economic resources away from Native families and communities. Given that many Native families and communities are already experiencing economic hardship, the outcome of predatory lending is especially problematic for them.

II. Addressing the Problem: Providing Financial Education, Alternatives to Predatory Lending Products, and Consumer Protections

The report *Borrowing Trouble: Predatory Lending in Native American Communities* presents case studies of five tribal programs whose innovations with financial education, alternative financial services and products, and other asset-building programs and strategies are helping to eliminate reliance on predatory lending, repair credit and build economic security.

In these five communities, economic development practitioners are developing innovative strategies to combat predatory lending. These strategies include providing financial counseling, credit repair, and financial education to encourage people to avoid using predatory lenders, and using community development financial institutions (CDFIs) to provide alternative credit products to borrowers. Additional research in the report demonstrates that tribes can also set interest rate caps that may reduce the incidence of predatory lending on reservations.

Our recommendations, based on the findings in our study, are that tribes and tribal organizations should:

1. Develop credit programs and borrowing opportunities that reduce the demand for predatory loans.
2. Develop consumer education programs that assist in financial planning, savings and credit repair.
3. Set interest rate caps.

Deserving special emphasis are Community Development Financial Institutions. Native CDFIs meet a market demand met by few others in the local community. They can provide affordable access to credit for borrowers with poor or no credit while at the same time providing financial education and helping the borrowers build assets. David Fleming, former director of the Lac Courte Oreilles Federal Credit Union (LCOFCU) provides an example of this approach:

> Our goal is not to make a lot of money, but to establish a healthy relationship with that borrower. Instead of going to pawn shop or payday lender, they come to us. We want to build relationships with borrowers. The goal of the credit union is to provide an alternative, getting people to come in the door. We hope they are learning to trust banks. Many have never been in a bank before.

Staff at LCOFCU work closely with borrowers when necessary. David Fleming stated,

> When someone lost their job at the tribe, or couldn't pay their loan, we wanted them to be comfortable coming to talk with us. We would work with them to refinance, or lower the payments on the loan until they got back on their feet. This made a difference and helped people learn to trust us.

Another lesson learned is that the "low stakes" loans are important stepping stones to becoming credit worthy. Smaller consumer loans, including one called the "Easy Money" loan, allows people to learn to use credit responsibly. Payroll deduction was used to ensure that people had a low default rate. David Fleming stated,

> Many people told us that the "Easy Money" loan made them credit worthy—gave them a credit history, or helped improve their credit score. We reported payment on those loans to the credit agency and it helped people establish or repair credit. People told us that it made them eligible for a home loan later on.

FNDI supports the 2008 policy recommendations made by the Native Financial Education Coalition, which were based in part on FNDI's research. We agree that there is a need to expand financial education opportunities, combat predatory lending, improve institutional infrastructure, increase access to EITC, and promote and expand IDA utilization.

III. Policy Recommendations

Our report *Borrowing Trouble: Predatory Lending in Native American Communities* focuses on what tribes can do to combat predatory lending, but there is also an important role for the federal government, as trustee with responsibility for implementing and overseeing the federal policy of tribal self-determination and protection of tribe sovereignty. Our first three recommendations focus on actions tribal governments may take, and our final recommendation provides suggestions for a federal role.

1. Recommendation One: Tribes Should Develop Credit Programs and Borrowing Opportunities That Reduce the Demand for Predatory Lending and Stem The Bleeding of Assets from Indian Communities

Tribes have the ability to develop their own financial institutions, and these financial institutions can offer alternative credit products to the citizens of Native nations. There are currently over 84 Native-owned banks, credit unions, and loan funds that are actively providing financial products and services to Native people, many of which have received support from the CDFI Fund as part of their Native American programming. As detailed in our report Borrowing Trouble: Predatory Lending in Native American Communities, several of these financial institutions currently offer short term consumer loans, which reduce the demand for high fee payday loans. Many of these financial institutions also provide financial education and credit repair in a variety of forms.

2. Recommendation Two: Native Nations Should Develop Consumer Education Programs that Assist in Financial Planning and Credit Repair

Consumers resort to payday, car title, pawn shop, and usurious consumer finance loans not only because they lack alternatives but because they lack experience in borrowing and investing. This is especially true in Native communities that are underserved by mainstream banking institutions. By providing financial education—from basic education on spending and saving to more complex education on credit repair and investment—Native nations arm their citizens against the practices of predatory lenders. Financial education can help tribal citizens avoid predatory loans in the first place and help those already in usurious situations extract themselves.

While our research shows that some financial education is already being provided in many Native communities through housing authorities, Native CDFIs, schools, and tribal colleges, research in other settings (among military service members) indicates that those most in need may be least likely to seek financial education—at least until there is no other alternative. These facts suggest that to be effective against predatory lending, financial education and remediation activities should be coupled with credit repair and preventive loan products, such as those described in the five case studies in our report.

The bottom line is that financial education is critical, but unlikely to be effective by itself, if there are no alternative lending services available.

3. Recommendation Three: Tribes Should Set Interest Rate Caps

Tribes should set caps on the interest rates offered by lenders under their jurisdiction, as a few tribes have done already, notably the Navajo Nation (21 percent APR); the Blackfeet Tribe (21 percent APR); and the Grand Traverse Band of Chippewa and Ottawa Indians (Homeownership Protection From Predatory Lending Ordinance).

This recommendation echoes the best policy advice from outside Indian Country. States such as New York and North Carolina have set effective interest rate caps and have made significant inroads against payday lending. Similarly, in late 2007, the U.S. Department of Defense issued regulations to implement the consumer protection provisions of Public Law 109–364 (The John Warner National Defense Authorization Act). These regulations set a 36 percent APR cap for loans to military borrowers. On January 7, 2008, the Department of the Treasury proposed a rule to limit the ability of tax return preparers to market RALs.

4. Recommendation Four: Effective Federal Policy Actions

The Federal Government, as trustee with responsibility for implementing and overseeing the federal policy of tribal self-determination and protection of tribe sovereignty, can act to limit predatory lending in Native communities. We recommend that the Federal Government: (a) assist in determining the economic and social impact of predatory lending practices on Indians and Native communities, (b) provide funding in support of increased financial education and alternative loan products; (c) develop a strategy to address the impacts of predatory lending and the flow of assets off of Indian reservations.

(a) Collect Data on Predatory Lending in Native Communities

The Federal Government should commission a detailed study of lending practices in Native communities, including all usurious and discriminatory practices, such as charging higher interest rates than are charged to off-reservation borrowers and refusal to make loans to people and businesses on reservations.

It is worth noting that discrimination in lending gave impetus to the founding of Turtle Mountain State Bank, which opened in December, 2007 on the Turtle Mountain Chippewa Reservation. One of the bank's owners, tribe member Ken Davis, stated in *News From Indian Country* that tribe members often had difficulty getting loans from banks off the reservation. "The other banks all the way around us don't necessarily want to lend money over here," he said. "If a new home is built, or new business does start, they want it to be built or started in their town."

(b) Continue to Provide Funding in Support of Increased Financial Education and Alternative Loan Products

The Federal Government currently supports several programs that help increase financial education, provide alternative financial products, and educate consumers. The CDFI Fund of the U.S. Department of the Treasury has several programs that help Native nations establish community development financial institutions (CDFIs) for their citizens which provide financial education and alternative financial products. The funding for the *Native Initiatives* program and the *Expanding Native Opportunities* program of the CDFI Fund, and the other Native specific programs within the CDFI Fund, should be continued. The Social and Economic Development Strategies (SEDS) program of the Administration for Native Americans provides funding for community groups to provide financial literacy training and educate consumers. Finally, consumer education regarding Volunteer Income Tax Assistance sites has been effective in keeping money in Native communities and reducing the use of paid tax preparers who charge high fees and offer refund anticipation loans.

(c) Develop a Strategy to Address the Impacts of Predatory Lending and the Flow of Assets Off of Indian Reservations

Federal assistance is needed to develop a strategy that will address legislation to regulate discriminatory lending practices, provide for tribal court jurisdiction where possible, and help tribes develop needed consumer protection codes and enforcement capabilities.

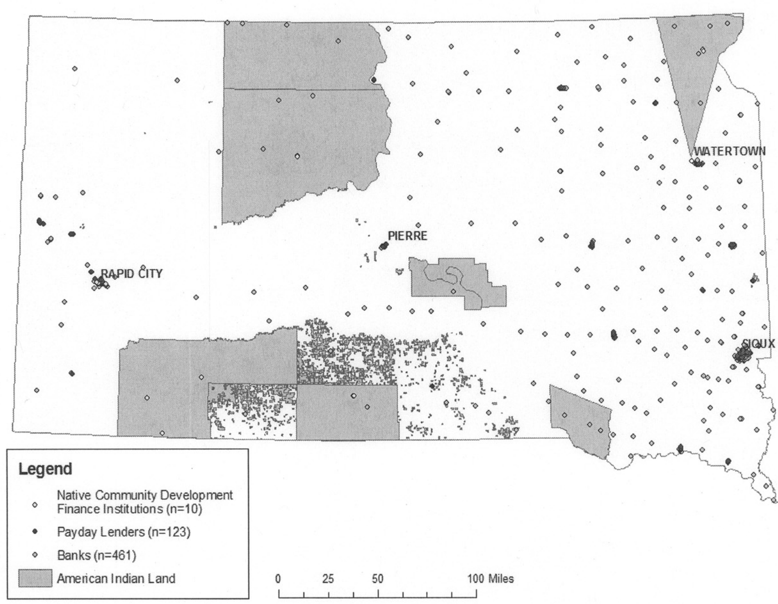
Conclusion

Predatory lending takes many forms, including payday loans, refund anticipation loans, and mortgage lending with high rates or fees. The cost of offering loans with high rates or fees is significant, especially to those who are not qualified to pay them back. Predatory lending can trap people in a cycle of debt, ruin credit, and cause stress that leads to divorce, bankruptcy, loss of self esteem, and hopelessness. For Native Americans the impact is even more devastating because it keeps the flow of money going away from the reservation, destroying the potential for asset building that is desperately needed to bring economic security to Indian families and their communities. Predatory lending in an already under-capitalized tribal community can sabotage the federal policy of self sufficiency for tribes. And tribes, lacking regulatory control or enforcement authority over these off-reservation lending institutions, are left with few options for safeguarding the economic security of their members. Federal assistance in finding solutions is badly needed.

Thank you for inviting FNDI to offer what we have learned from our study of predatory lending in Indian country and best practices to combat abusive lending and prevent the bleeding of assets from Indian communities. We appreciate the opportunity to talk with you about the challenge these practices present for vulnerable borrowers in Native communities and for tribes themselves in reaching the goal of economic self-sufficiency.

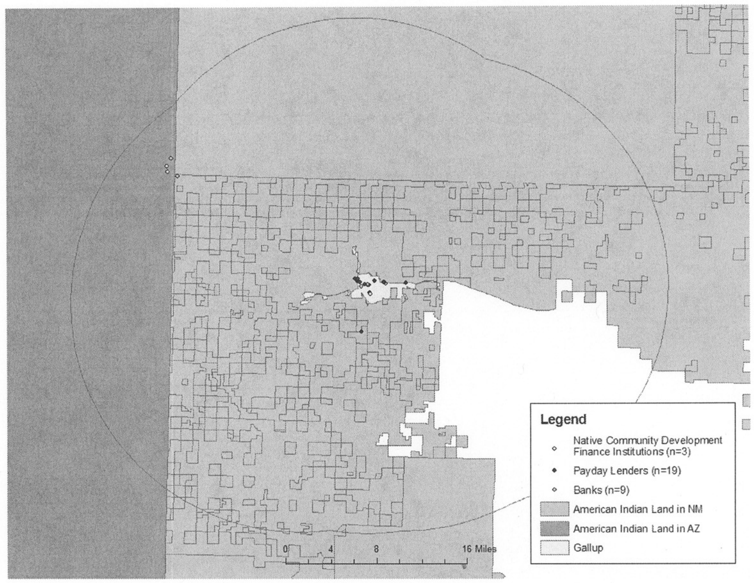
Appendix A- Maps

Figure 1: Distribution of Predatory Lenders & Banks: South Dakota



Sources: Payday lender data are from Steven Graves, compiled for Steven Graves and Christopher Peterson, "Usury Law and the Christian Right: Faith-Based Political Power and the Geography of American Payday Loan Regulation," *Catholic University Law Review* 57(3): forthcoming; bank branch data are from the Federal Deposit Insurance Corporation database on full-service bank branches, available at http://www2.fdic.gov/sod/index.asp, accessed 16 April 2007.

Figure 2: Distribution of Predatory Lenders & Banks: Gallup, NM



Sources: Payday lender data are from Steven Graves, compiled for Steven Graves and Christopher Peterson, "Usury Law and the Christian Right: Faith-Based Political Power and the Geography of American Payday Loan Regulation," *Catholic University Law Review* 57(3): forthcoming; bank branch data are from the Federal Deposit Insurance Corporation database on full-service bank branches, available at http://www2.fdic.gov/sod/index.asp, accessed 16 April 2007.
Notes: A buffer is a tool used in ArcGIS to specify an area within a set distance around a particular feature; here the feature is the city of Gallup. Counts (n values) are of payday lenders and banks within the buffers.

The CHAIRMAN. Ms. DeCoteau, thank you very much for your testimony. We appreciate your being here.

Next we will hear from the Honorable Ron Allen, Secretary of the National Congress of American Indians; also Chairman of the Jamestown S'Klallam Tribe in the State of Washington. Mr. Allen, Chairman Allen, thank you very much for being here, and you may proceed.

STATEMENT OF HON. W. RON ALLEN, SECRETARY, NATIONAL CONGRESS OF AMERICAN INDIANS; CHAIRMAN, JAMESTOWN S'KLALLAM TRIBE

Mr. ALLEN. Thank you, Mr. Chairman. It is always an honor to come before you and this Committee to testify on many issues that affect our tribal government and our communities.

I appreciate your accepting our testimony for the record. We have submitted to you some oral testimony, and I hope that it is okay that we can add some additional comments that will provide some recommendations that we would suggest to the Committee to address this issue that we are all concerned about.

Predatory lending, of course, is a nationwide concern. It is not just Indian Country; it is all over the Nation. We are here to talk about how it affects our Indian communities. Generally, and I am sure others will share some of their experiences with regard to the problem that we have in Indian Country, this is really a symptom of the fact that for mainstream Indian Country, we really are impoverished and are struggling just to have a median kind of income and any kind of stable lifestyle, because of our weak economies and our low employment opportunities on our reservations.

I want to share a quick little story to add to Jerilyn's examples. I know of an individual in eastern Washington who borrowed a pay loan, which is often the issue, the short-term pay loans that many of our tribal members will borrow, to take care of domestic expenses or other emergency kinds of expenses, pay for fuel, a car payment or whatever. Consequently, they fall into a spiral worsening situation. She did too. She ended up in a spiral where she couldn't pay her rent; she didn't meet the leasing obligations of her housing program on the reservation; she was given notice and one thing led to another. Eventually, she was summoned before the tribal court, she was behind in her fiscal commitment. This is a woman who lives on a fixed income.

Because she couldn't keep making these payments and missed loan payments, she ended up getting so far behind that she couldn't pay the rent. They eventually evicted her.

That just creates a new kind of problem for the tribe, if our housing program evicts somebody because they can't make the payments, because they are trying to deal with the day to day expenses. Now we have to deal with them because they are out on the street, homeless. So what do we do with them, and where do we put them? It is a problem that we are experiencing. It is crisscrossing all of Indian Country. It is the same for large tribes and small tribes. It doesn't matter the size of the tribe, we all have that problem in similar situations.

So we are here to talk about some solutions and a course of action to try to find some solutions in this matter. This problem is definitely persistent. The banking industry is very weak on the reservation, as you well know, at all levels. It wouldn't matter whether an individual is going for a home or car loan, or whether individuals or tribes are looking for loans for business, et cetera. The industry is just weak in terms of how it provides assistance for Indian Country. We really think this needs to be seriously looked at.

I think underlying this problem is the fact that for the most part, tribal citizens like mainstream America really lack the education and understanding on how to manage their finances responsibly, if they are going to go look for a short-term loan, what are they looking for? What should they be examining in terms of what they are signing and what kind of commitment they are making and is it working for them?

I would point out that these short-term kinds of loans are needed. We simply need some sort of controls around them, we need some sort of responsibility with regard to the industry practices.

But they are needed. We have a lot of Indian people out there who just basically operate check to check and emergencies happen. They are needing resources to deal with just the day to day operations that come up for them and they need some sort of recourse. So we don't want to create regulations that would chase those institutions away. What we do need is institutions or regulations and/or laws, if necessary, that would provide order and control to protect the interests of the tribe and our citizens.

That is our interest from the tribal government perspective. We want to protect our citizens. We don't want them to get into a spiral to make their personal financial situation worse. We definitely need that kind of a financial environment. We want them to be able to become better fiscal managers so that they can build up their assets, so that they can build up their equity, build up their wealth and become more stable personally or as a family financially. So we are very concerned about the situations where there may be entities out there who are predators and they go after our citizens and basically put them in a very precarious situation which causes us as tribal governments a serious problem.

We have three areas we want to quickly talk about and one of them is financial choice. Because we are unbanked communities, what are our options? You have the community development financial institutions that are getting out there. Well, what more can be done? How can we strengthen those opportunities, how can we strengthen the institutions who do provide those kinds of services throughout Indian Country? Are they actually predatory or not? We don't know. There is a need to investigate this situation. We would certainly offer our services to be a part of that solution in working with the Congress, the Federal Government, and the institutions with regard to finding those kinds of solutions. What is the problem? How bad is it?

With the law that was applied around the military institutions, what happened? What is the result of that new law? Did that cause a problem, cause a new problem? We don't want to go down a road that is not being successful. We want to make sure that our tribal members have an opportunity for this kind of an interest *i.e.,* the availability of short term loans.

Second issue is the education, the fiscal literacy. We need programs. I know there are programs out there. How good are they? How well are they reaching out to our community? How well are they collaborating with the tribal governments in terms of managing those kinds of affairs? There is a need to ratchet that relationship up.

The last item is jurisdiction. This is an area where, as we move forward, we want the financial institutions to come onto our reservations or around our communities. But we need some sort of controls over that industry.

So as we explore these issues, it really becomes an issue of, should there be some additional legislation that provides clarity about the tribes' authority over these institution, whether they are banking or non-banking lenders on the reservation.

So I will conclude with that, Mr. Chair, and say that we are here to find solutions. We are here to help our citizens. We want them to become more stable. There is a prevalent problem, as Jerilyn had described, and we want to work with you to help make that happen. NCAI is at your beck and call. Thank you, Mr Chair.

[The prepared statement of Mr. Allen follows:]

PREPARED STATEMENT OF HON. W. RON ALLEN, SECRETARY, NATIONAL CONGRESS OF AMERICAN INDIANS; CHAIRMAN, JAMESTOWN S'KLALLAM TRIBE

Good morning Chairman Dorgan and members of the Committee. I am honored to be here today on behalf of the National Congress of American Indians, the nation's oldest and largest national organization of tribal governments. We hope this hearing serves to bring to light the important role Congress has in ensuring tribes are empowered to protect their citizens and give them every opportunity to advance themselves and their families.

A tribal member on a rural eastern Washington reservation obtained a pay day loan from a border town to purchase household expenses during the winter. She lives on a fixed income and raises her grandchildren. The tribal member did not realize how the loan functioned and the high costs associated with the loan. The loan came due and the tribal member paid part of the loan but continued to have an outstanding balance owned. A few days after she paid the payday loan, her rent became due to the tribal housing authority. She did not have enough money to pay the rent in full so she paid a portion of the rent but was not sufficient under her lease. Within a few days she was provided with a notice that she had not paid her rent in full and she had a meeting with her case worker as required by the tribal housing code but there was no accommodation for her because she did not have enough money to pay her rent.

The month went on and she was unable to pay the rest of the rent and what she still owed on the pay day loan. When she received her public benefits the next month she paid a portion of the pay day loan but still could not pay it off. Again she did not make her rent payment. This time, there was no meeting with a case worker; she was given an eviction summons in tribal court. The impact of an eviction from a tribal housing authority is serious because the tribal citizen can no longer rent a tribal housing authority unit leaving her no other options in her home community. In the end this tribal member was evicted, still had a pay day her debt and had the same obligations to buy food, clothing and provide housing for her grandchildren.

Where was the due diligence? Where is the financial responsibility of the lender? And where are the regulations that used to protect our people that need it the most?

This Committee knows well that American Indian Tribes continue to occupy the bottom of key indicators of prosperity: employment, asset holdings, home ownership, educational attainment and economic progress.

Because of the persistent lack of economic opportunity, a sustainable financial services market and tribal jurisdictional issues, there have only been a handful of banks that serve tribal communities. As a result, tribal citizens continue to lack basic financial services or choices that most Americans have come to take for granted. Tribal members have limited access when financing a home, starting a business or purchasing necessary property like cars needed to make a living.

The vacuum created by the lack of responsive and regulated financial institutions offering competitive consumer financial products has been quickly filled by predatory lending firms that have proliferated after usury laws were lifted a few years ago—especially in transient and unbanked communities, like military bases and reservations.

The effect of having a tribal population unbanked and subject to predatory financial firms is that it strips an already vulnerable population of the opportunity to advance by preventing them from building assets, equity and wealth. And the result of individuals having limited and sometimes no viable options for responsive bank products means tribal citizens pay higher fees and much higher interest rates leaving tribal citizens that live check to check more vulnerable when one of life's predictable emergencies arises such as a death in the family or medical bill, forcing a cycle of debt.

There is real concern by tribal leaders to address personal property and income loans by non-banking lending firms that target a captive Native population. The complete lack of due diligence—required in every other aspect of the financial services industry—coupled with inadequate fee and interest-rate limitations make defaults predictable and payments from a fixed income very difficult. Especially considering the debtors expenses increase, compelling multiple loans from the same limited income.

This lack of industry accountability is why banking laws and limitations were imposed in the first place and a core reason that our tribal population will be prevented from building equity and wealth through property ownership.

While families with greater means or financial education turn to regulated financial institutions or are better able to negotiate terms; those with limited means and financial experience tend to get easily caught in a cycle of debt that is all but impossible to escape on a fixed income and exponentially increasing expenses.

While the problems run deep and will take a while to work through, we feel we can focus on a 3-pronged approach to moving toward a solution.

1. Financial Choice—Indian Country is unbanked. There is a lack of regulated banking options that are responsive to tribal community needs. This tends to be true regardless of a tribe's success in building a local economy. The Community Development Financial Institutions (CDFI's) have just started to meet the needs of some tribal communities and Indian country is appreciative of the support Congress has shown by increasing CDFI funding, however, this serves a very specific and limited role in tribal communities and falls short of providing viable and responsive banking to the Native population. Congress should work to provide an incentive for banks and credit unions to serve the tribal population and provide competitive products and services that meet the unique financial needs of the tribal community.

2. Financial Education—Tribal governments need to be able to incorporate culturally relevant financial literacy programs at a young age to; understand fundamental credit issues and alternatives, understand the value an types of savings programs available such as "individual development accounts (IDAs)" and learn to take advantage of available programs such as "Volunteer Income Tax Assistance (VITA)" to reduce the incidence of Refund Anticipation Loans. In addition there is a need to increase the presence of Intermediaries in tribal communities. Tribal citizens need help when buying a car, financing a mobile home or accessing a micro-loan to start a business. Intermediaries are under-represented in Indian country. These non-profits serve a key role in guiding consumers to make better financial and life decisions.

3. Jurisdiction—Non-bank lenders tend to cluster around reservations and military bases taking full advantage of financially unsophisticated consumers. To protect our soldiers and sailors on federal military bases from the irresponsible practices of payday lenders, car dealerships and tax preparers, Congress passed a bill that places a cap on non-bank loans to the military personnel. Congress should consider giving tribes the same capability to protect their citizens with the ability to opt into models such as the military fix. Congress should also consider promoting responsive community banking in tribal communities by giving tribes the authority to approve banks that do business on their reservations in a manner similar to state governments.

Because we have been unbanked and under-banked for so long, we may appreciate having a lender of any sort serve the need in tribal communities. But do we really need to settle for lenders that are not part of our community like every other bank? And do we need to settle for loan shark rates with no consideration for an individual's ability to pay?

We need to fix the underlying problems. We need jurisdiction, we need financial literacy and we need banks, credit unions, CDFI's and non-profits in Indian country. Our citizens deserve better.

The CHAIRMAN. Chairman Allen, thank you very much for being here and for your testimony.

Next we will hear from Donna Gambrell, Director of Community Development Financial Institutions Fund, the Department of the Treasury in Washington, D.C.

Ms. Gambrell, thank you very much for being with us and you may proceed.

STATEMENT OF DONNA J. GAMBRELL, DIRECTOR, COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND, U.S. DEPARTMENT OF THE TREASURY

Ms. GAMBRELL. Thank you. Good morning, Chairman Dorgan.

I am pleased to be here today to testify on the issue of predatory lending in Indian Country. Before I begin, though, I would like to share with you that just last Saturday, I spent the morning at a financial education workshop for Native American interns at American University. The CDFI Fund sponsored this one-day workshop for approximately 100 young Native Americans participating in the Washington internship for Native students and the Udall Native American Congressional Internship programs.

Financial education is one of the best ways to understand how to avoid predatory lending tactics. I hope that the students will use what they learned to make positive financial decisions in their lives, and will take the knowledge back to their communities.

There is no clear-cut definition of a predatory loan. But many experts, and I believe certainly that the witnesses here today will agree, that it is the result of a company misleading, tricking and sometimes coercing someone into taking out a loan, typically at excessive cost and without regard to the consumer's ability to repay.

What is clear-cut is the devastating impact that predatory lending can have in Indian Country. Several studies, including one recently conducted by First Nations Development Institute, in collaboration with the National American Indian Housing Council, highlight the extent of the problem. The report states that in Native communities, predatory lending has been a major concern for years. I concur with the report. Predatory lending is a serious issue in Indian Country, which makes this hearing today so very important.

Briefly, CDFIs are community-based institutions that are certified by the CDFI Fund and serve low-income people in economically distressed communities. CDFIs use the Fund's financial awards to engage in a wide range of economic development activities. These investments include small business lending, affordable home mortgage products, financial education, homeownership counseling and other innovative solutions to meet community needs.

The CDFI Fund's Native initiatives increase access to credit, capital and financial services through the creation and expansion of Native community development financial institutions, called Native CDFIs. The CDFI Fund provides financial assistance awards and technical assistance grants to these Native CDFIs through the Native American CDFI Assistance Program, or NACA program.

Since 2002, we have awarded 148 grants, totaling $23 million, to Native CDFIs serving 89 separate Native communities. In addition, the CDFI Fund has expanded the number of certified Native CDFIs by over 300 percent, from 14 in 2002 to 47 today. Another 50 Native CDFIs are in the emerging phase.

I would like to share a few examples of the efforts Native CDFIs and award recipients of the CDFI Fund are taking to respond to predatory lending and to promote financial education in their communities. Four Bands Community Fund serves the residents of the Cheyenne River Reservation in rural western South Dakota. With awards from the CDFI fund, Four Bands now offers micro-loans, small business loans and has recently started a credit enhancement loan of up to $2,500 to help residents repair their credit history.

In addition, Four Bands offers several financial education courses, and offers an individual development account program designed to help people learn positive saving habits and how to begin to build assets.

Another example can be found at the Lac Courte Oreilles Federal Credit Union in Hayward, Wisconsin. With awards from the CDFI Fund, they have developed the GOOD loan, which is an acronym for Get Out Of Debt. The credit union staff there reported in a Fund-sponsored study that will be completed later this year that the purpose of this product is to provide an alternative to payday loans that charge very high annual interest rates.

Many payday loans have annual percentage rates of up to 400 percent and sometimes more, while Native CDFIs are developing short-term consumer products with annual percentage rates between 15 and 18 percent. Our data from 2003 to 2006 demonstrates that 81 percent of award recipients serving Native communities offered financial education. Sixty-six percent offered credit counseling services. This demonstrates that supporting Native CDFIs is critical in order to expand the reach of financial education and credit counseling in Native communities.

The CDFI Fund recognizes the importance of training and technical assistance to Native CDFIs through its expanding Native Opportunities Initiative. This initiative focuses on increasing the number of Native CDFIs, strengthening the operational capacity, and guiding Native communities in the creation of important financial education and asset building programs. The CDFI Fund plans to continue supporting the nationwide growth of Native CDFIs through its funding program and through its training series. The success of the NACA program and training series makes out continued involvement critical to the institutional development and capacity building of Native CDFIs.

We have made great progress. But barriers to credit and capital still exist in Indian Country. The CDFI Fund is open to working with the Committee and Congress on what greater role, if any, we should play in further helping Native communities overcome these barriers.

Mr. Chairman, thank you for holding this important hearing and for allowing the Treasury Department to testify. I look forward to working with the Committee and its staff to further address the prevalence of predatory lending in Indian Country. I am happy to answer any of your questions. Thank you.

[The prepared statement of Ms. Gambrell follows:]

PREPARED STATEMENT OF DONNA J. GAMBRELL, DIRECTOR, COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND, U.S. DEPARTMENT OF THE TREASURY

Introduction

Good morning. Chairman Dorgan, Vice Chairwoman Murkowski and members of the Senate Committee on Indian Affairs, I am delighted be here today to testify on the issue of predatory lending in Indian Country. My name is Donna Gambrell and I am the Director of the U.S. Department of the Treasury's Community Development Financial Institutions (CDFI) Fund.

To begin, I would like to share with you that just last Saturday I spent the morning at a financial education workshop for Native American interns at American University. The CDFI Fund sponsored this one-day workshop for approximately 100 young Native Americans participating in the Washington Internship for Native Students (WINS) and Udall Native American Congressional Internship programs. The students were instructed on the dangers of predatory lending and how to identify such practices so that they can be avoided. I hope that the students will use what they learned to make positive financial decisions in their life and to take the knowledge back to their Native communities.

Created in 1994, the CDFI Fund has an important mission: to expand the capacity of financial institutions to provide credit, capital and financial services to underserved populations and communities throughout the United States. To meet its mission, the CDFI Fund provides monetary awards to Community Development Financial Institutions—or CDFIs. Our awards serve as investments to help CDFIs build their capacity to serve low-income people and communities that otherwise lack access to credit, capital, financial products and services. Currently, there are over 800 certified CDFIs.

CDFIs are specialized financial institutions operating in markets that have not been adequately served by traditional financial institutions. They comprise a variety of types of institutions, including loan funds, venture capital funds, and insured depository institutions, such as credit unions and banks. In addition to providing financial services and products, CDFIs provide services, such as financial literacy training, technical assistance, and credit counseling to help consumers use credit effectively.

CDFI Fund Native Initiatives

The CDFI Fund supports three types of applicants under the Native Initiatives: (1) certified Native CDFIs; (2) emerging Native CDFIs; and, (3) sponsoring entities. Currently, 47 Native CDFIs have been certified by the CDFI Fund and another 50 Native CDFIs are emerging or sponsoring entities. In FY 2007, 19 organizations received a total of $3.6 million though the Native American CDFI Award (NACA) Program. To date, 148 grants for approximately $23.5 million have been awarded to Native CDFIs serving 89 Native communities. In addition, the CDFI Fund has awarded over $7.5 million in contracts to organizations that provide capacity-building and financial services training programs.

The CDFI Fund has a longstanding commitment to Native communities. The Fund's publication in 2001 of the congressionally mandated Native American Lending Study identified 17 barriers to credit and capital, including the lack of financial institutions on or near Indian lands. Since that time, the CDFI Fund has awarded $23 million to Native communities.

The CDFI Fund's Native Initiatives are designed to increase the access to credit, capital and financial services through the creation and expansion of CDFIs that serve primarily Native communities. The CDFI Fund works to achieve these objectives through two principle strategies:

1. *Native American CDFI Assistance Program*—A monetary award program that provides support to Native CDFIs and entities proposing to become or create Native CDFIs and to build their capacity to better address the community development and capital access needs of Native communities. Through the NACA Program, the CDFI Fund provides financial assistance awards to certified Native CDFIs, and technical assistance grants to Native CDFIs and entities proposing to become or create Native CDFIs.

2. *Expanding Native Opportunities*—A training program that fosters the development of new Native CDFIs, strengthens the operational capacity of existing Native CDFIs, and guides Native communities in the creation of important financial education, asset building, and entrepreneurial programs.

Native CDFIs Respond to Predatory Lending

With that background, I would like to focus on the important purpose of today's hearing. There is no clear-cut definition of a predatory loan, but many experts agree that it is the result of a company misleading, tricking and sometimes coercing someone into taking out a loan, typically at excessive costs and without regard to the consumer's ability to repay. What is clear is the devastating impact that predatory lending can have in Indian Country. Several studies, including one recently conducted by First Nations Development Institute (FDNI), in collaboration with the National American Indian Housing Council (NAIHC), highlight the extent of the problem and demonstrates the negative impacts of predatory lending in Indian Country.

Through the NACA Program, the CDFI Fund supports Native CDFIs to ensure that they are stable, independent financial institutions that offer loan products and development services to meet the needs and demands of their Native communities. As alternatives to predatory lending practices, Native CDFIs generally make lower interest consumer loans available to community members so as to increase the consumer's experience with low cost lending products which, in turn, decreases the demand for short-term and unaffordable consumer credit. Native CDFIs also provide development services, such as credit counseling and financial education, offer personalized technical assistance to help borrowers avoid unsustainable credit practices, and provide credit repair and asset-building programs.

The CDFI Fund collects institutional data from CDFIs that receive its funding. Through our data collection system, known as the Community Investment Impact System (CIIS), we see evidence that CDFIs provide services as a preventive measure to predatory lending. For example, data from 2003 to 2006 demonstrates that 81 percent (76 of 94 responses) of the funding recipients serving Native communities offered financial education; 66 percent (62 of 94) offered credit counseling services. In total, 4,423 Native clients received either financial education or credit counseling services. This evidence clearly shows that Native CDFIs are offering services to prevent predatory lending in their communities.

Under our NACA Program, the CDFI Fund has a unique funding application consisting of a comprehensive business plan that requires detailed analysis of the market and business strategy for each applicant, including narratives of its financial products and services. Recent funding rounds of the NACA Program have demonstrated that many applicants seek funding to offer affordable financial products and services as an alternative to payday loan shops located in or near their communities that provide short-term consumer loans with high rates and fees. Many predatory loans have annual percentage rates of upwards to 400 percent, while Native CDFIs are developing short-term consumer products with rates between 15 percent and 18 percent.

Native CDFIs are also offering credit repair loan programs, payroll advance programs and low-cost credit programs. Recently, Native CDFIs have also started offering services in tax preparation and established Volunteer Income Tax Assistance (VITA) sites. VITA sites provide free tax preparation assistance to help low income consumers avoid costly Refund Anticipation Loans (RALs) and fees often associated with paid tax preparation services. The volunteer tax preparers also help qualified families capture the millions of unclaimed tax credits available under the Earned Income Tax Credit (EITC).

I would like to share with the Committee a few specific examples of how Native CDFIs are successfully developing innovative products and services that combat predatory lending and promote financial education.

1. Turtle Mountain CDFI, located in north central North Dakota, serves the Turtle Mountain Band of Chippewa. The community suffers from an unemployment rate of 65 percent among the 16,500 enrolled members living on or near the reservation. A diverse group of partners, including the Tribal Council, Pathways to Prosperity, the Tribal high school, and housing authority came together to create the Turtle Mountain CDFI in 21 short months. With only two full-time staff Turtle Mountain CDFI is providing financial counseling, homebuyer education, and loan packages to residents that otherwise could fall victim to predatory lenders. Turtle Mountain CDFI has received two NACA awards for a total of $268,000.

2. Four Bands Community Fund is a 501(c)(3) nonprofit corporation serving the residents of the Cheyenne River Reservation in rural western South Dakota. The Cheyenne River Reservation has a land area approximately the size of Connecticut with some of the highest poverty figures in the nation. Four Bands offers micro-loans and small business loans; in addition, the organization has recently started a credit enhancement loan of up to $2,500 to help a person repair his/her credit history. In addition, Four Bands offers several financial education courses every year, and offers an Individual Development Account program designed to help people learn the savings habit and build assets. Four Bands has received a significant amount of funding from the CDFI Fund—approximately $1.3 million in multiple awards.

3. The Northern Shores Loan Fund (NSLF) is an emerging Native CDFI located in Harbor Springs, Michigan. The NSLF serves Tribal members of the Little Traverse Bay Bands of Odawa Indians and provides loans in the three-county area surrounding the Tribal headquarters. NSLF offers a range of loan products and developmental services. NSLF provides three types of business loans: micro loans, small business loans, and Tribal corporation loans. Its target audience is

Tribal members within the traditional service area, but it is also interested in lending money to other Tribes and other Native American individuals nationwide. NSLF plans to work with the Tribe's housing and education departments to offer financial education and to develop a partnership with the local community college. It also has a relationship with a local non-Native CDFI and plans to partner with it to offer some services. NSLF has received $258,991 from the CDFI Fund—through the Little Traverse Bay Bands of Odawa Indians, its fiscal sponsor. It was awarded a NACA grant in 2005, and another in 2007.

4. The Lac Courte Oreilles Federal Credit Union (LCOFCU) in Hayward, Wisconsin has developed the "GOOD" loan, which is an acronym for "Get Out Of Debt." LCOFCU staff reported in a Fund-sponsored study (to be completed later this year) that the purpose of this product is to provide an alternative to payday loans, which charge very high annual interest rates. LCOFCU has received a single 2002 CDFI Fund technical assistance award which it used to hire a consultant to help develop loan policies and collection policies and in-house policies for working with low-income clients.

Expanding Native Opportunities

"Expanding Native Opportunities" is a training initiative that focuses on increasing the number of Native CDFIs, strengthening the operational capacity of existing Native CDFIs, and guiding Native CDFIs in the creation of important financial education and asset-building programs for their communities. These programs are fully funded by the CDFI Fund and administered by contractors that are selected through a competitive bidding process.

1. Native Communities Financing Initiative (NCFI): The CDFI Fund contracts for the provision of training and technical assistance to Tribes, Tribal programs, Native nonprofits and community development practitioners interested in developing Native CDFIs through the NCFI. NCFI is an intensive series of workshops and follow-up technical assistance conducted over a 12-month period to help Native Communities develop and expand Native CDFIs. Since 2003, nearly 235 Native Communities and organizations have participated in NCFI workshops. The CDFI Fund has expanded the training to provide technical assistance to existing Native CDFIs and launched a new Native Credit Union development program.

2. Native Financial Skills and Enterprise Initiatives (NFSEI): In 2007, the CDFI Fund awarded the NFSEI contract. The contractor provides training and technical assistance in two activity areas: financial education and entrepreneurship development. The financial education activity focuses the training of trainers in the Building Native Communities financial education curriculum and related tools such as the Earned Income Tax Credit, Individual Development Accounts, and integrated asset building programs. The entrepreneurship activity focuses on entrepreneurship development systems, curricula integration and program development at the local level.

3. Native Individual Development Account Initiative (NIDAI): Training and technical assistance is available to Native CDFIs and like organizations to create and administer Individual Development Account (IDA) programs. Preparation for IDA program practitioners is provided through three-day training sessions designed to help Native CDFIs, Tribes, or other Native organizations start, implement, and sustain IDA programs in their communities. During the training sessions, participants are guided toward developing plans customized to their communities; after participation in the training institute, they are offered technical assistance in local program start-up and implementation.

The Expanding Native Opportunities training series has seen a strong increase in demand within Native communities. Essentially, NCFI is a "nuts and bolts" development and implementation training on how to build a Native CDFI. The NFSEI effort also trains CDFIs on how to build a financial education program in a Native community. These training efforts offer technical assistance from professional community development practitioners with experience in Indian Country, which program evaluation has shown to be the most important aspect of the series. Since 2003, 75 different organizations have participated in the NCFI program and 30 have are emerging Native CDFIs. Twelve organizations have achieved the CDFI Fund's certification status. The NFSEI program has had 254 participants from 112 organizations; 40 financial education programs in Native communities are up and running today.

FY 2008 Award Round

Congress appropriated $8 million for the CDFI Fund's Native activities in FY 2008. For the FY 2008 award round, the CDFI Fund received 45 applications requesting over $17 million from certified Native CDFIs, emerging Native CDFIs, and Sponsoring Entities. Sponsoring Entities are organizations, typically Tribes or Tribal Housing Authorities, seeking to create a Native CDFI in their community. I am pleased to notify the Committee that we expect to announce the FY 2008 awardees by the end of the month.

The success of the NACA Program and training series makes our continued involvement critical to the institutional development and capacity building of Native CDFIs. The CDFI Fund plans to continue supporting the nationwide growth of Native CDFIs through its funding program and training series. While there has been much success in the CDFI Fund's Native Initiatives, we recognize that barriers to credit and capital still exist in Indian Country. As I mentioned earlier, the Native American Lending Study identified 17 barriers in 2001. We have made progress, but further efforts to address barriers still exist. The CDFI Fund is open to working with the Committee and Congress on what role, if any, we should play in helping Native communities overcome these barriers.

Conclusion

Mr. Chairman, thank you for holding this important hearing and for allowing the Treasury Department to testify. I look forward to working with the Committee and its staff to further address the prevalence of predatory lending in Indian Country. Thank you.

The CHAIRMAN. Director Gambrell, thank you very much for being here.

Darwin Brokke, you are President of a credit union in Devils Lake, North Dakota, Citizens Community Credit Union. You are here to give us your perspective on these issues. We appreciate your traveling to Washington, D.C. for that purpose.

You may proceed.

STATEMENT OF DARWIN BROKKE, PRESIDENT/CEO, CITIZENS COMMUNITY CREDIT UNION

Mr. BROKKE. Thank you, Chairman Dorgan. I appreciate being here today. Thank you for the opportunity to testify on behalf of the Credit Union National Association on predatory lending in Indian Country.

CUNA represents about 90 percent of the credit unions in the Country. Those credit unions serve about 90 million members.

My name is Darwin Brokke, and I am President and CEO of Citizens Community Credit Union in Devils Lake, North Dakota. We were founded in 1940, and my credit union currently serves about 10,700 members in areas around Devils Lake, Bisbee and Larrimore, North Dakota. Among our 10 branches, one is located on the Spirit Lake Reservation and one is in St. John, which is on the border of the Turtle Mountain Reservation.

The lack of access to financial institutions plays a key role in poverty in any community. Those without access to financial institutions don't have the opportunity to build assets and accumulate wealth. In many cases, they are forced to use informal lending structures, including borrowing from family and friends and turning to payday lenders.

Mr. Chairman, I see many of my members use payday lending services on somewhat of a regular basis. My staff and I can see this when we view a member's account information. We will see a deposit into an account from a payday lender. And when it comes time to clear the checks, we will often notice that a number of them have bounced. My credit union's daily overdraft list has a number of non-sufficient items payable to payday lenders.

We have seen how some members, by using payday lenders, have really mismanaged their finances. This has resulted in poor credit scores for many of them, making it difficult for them to get financial help anywhere, including sometimes the credit union. There have been occasions when we have had to turn down a member for a loan, because we see that they are already in debt to payday lenders, and we don't want to be adding to the problem. When we see this happening with one of our members, we try to educate them on the risks and the costs involved in payday lending, then we try to help them with finding a suitable solution.

Mr. Chairman, the problems associated with payday lending is a tough cycle to break. My credit union has two programs which we consider to be alternatives to payday lending. I think they help our members break out of this cycle. The first program is an open-end lending program, which we began back in 1983. Open-end lending essentially means that one can add to an existing loan under various circumstances, and it can work much like a revolving credit arrangement.

Once it is opened, open-end lending allows for multiple advances, except without the need for all the additional paperwork, such as applications and notes. Each advance request can be quickly underwritten and disbursed without the labor and the cost of other types of loans, like closed-end loans. Furthermore, open-end lending is convenient for the member. He or she doesn't even have to come into the office to sign papers when they need some funds, they simply pick up the phone and call.

One advantage with open-end lending is that it anticipates repeat usage. This helps both the credit union and the members. The credit union is able to handle additional loan volume without the extra staff, and the member has the opportunity to take an advance with very minimal effort.

Secondly, and most recently, Citizens Community Credit Union began offering a line of credit program called a reward line of credit. Because of my experience with loans that I made to people working for tribal businesses, I learned quickly that a lot of times there would be multiple requests for advances on a frequent basis. I also realized that many individuals were beginning to use payday loans as a means to get these advances.

I understood that this could turn out to be a real problem, so my credit union implemented this reward credit program. The program carries many of the same characteristics of open-end lending; however, it has a specific criteria one must meed in order to qualify. The main difference between the two programs is the size of the line of credit, but the advances are self-funded. The program is only available to individuals with lower credit scores. It requires payroll deduction for repayment. The minimum advance is only $25, with a minimum repayment of 5 percent of the balance. Plus, $20 goes into a savings account to help develop the savings habit. There are no fees at all associated with the program, and the interest rate is held at 16 percent.

Mr. Chairman, on a daily basis, we make loans to our members during challenging times for them, whether it is $30 to a member to pay their heating bill or a $50 loan to a member who can purchase their medication. To us, these types of situations are part of our typical work day. To pull one anecdote out of a thousand would be impossible, and it would be really an injustice to take such a narrow focus. We do what we do because we believe in the credit union philosophy of people helping people. We are lucky in that we understand the culture, we understand the people and we understand the risks. This helps us to manage our program and serve our community to the best that we can possibly.

This concludes my oral remarks. It is an honor to be here today and I look forward to any questions you may have.

[The prepared statement of Mr. Brokke follows:]

PREPARED STATEMENT OF DARWIN BROKKE, PRESIDENT/CEO, CITIZENS COMMUNITY CREDIT UNION

Good morning, Chairman Dorgan, Vice Chairwoman Murkowski, and Members of the Committee.

Thank you for inviting me to testify today on behalf of the Credit Union National Association (CUNA) regarding predatory lending in Indian Country. CUNA is the largest credit union trade association, representing approximately 90 percent of the nation's 8,400 state and federally chartered credit unions which serve approximately 90 million members. This testimony will address the following:

The Cycle of Payday Lending

The Credit Union Response to the Cycle of Payday Lending:

- Citizens Community Credit Union, Devils Lake, ND
- The Native American Credit Union Initiative

Examples of Credit Union Service to Native American Communities:

- Bear Paw Credit Union, Havre, MT
- Tongass Federal Credit Union, Metlakatla, AK

The Credit Union Record of Lending to Native Americans

Legislative Initiatives to Enhance Credit Union Service to Native American Communities

Introduction

My name is Darwin Brokke, and I am President and CEO of Citizens Community Credit Union in Devils Lake, North Dakota. Founded in 1940, my credit union serves 10,700 members in the area around Devils Lake, Bisbee and Larimore, North Dakota. Among our ten branches, one is located on the Spirit Lake Reservation and one is in St. John on the border of the Turtle Mountain Reservation.

Lack of access to financial institutions plays a key role in poverty in any community. The additional challenges associated with serving Native American communities make it even more the case in these areas. Those without access to financial institutions do not have the opportunity to build assets and accumulate wealth. And, in many cases, they are forced to use informal lending structures, including borrowing from family or friends, or turning to payday lenders.

Credit unions are a natural ally in the effort to reduce predatory lending in Indian Country. After all, the purpose of credit unions is to promote the economic well being of all people through a system which is cooperative, member-owned, volunteer directed, and not-for-profit; to provide a secure financial alternative for all consumers; and to provide financial and related products and services to members.

I would like to focus my testimony today first on my experience at Citizens Community Credit Union with respect to our members' use of payday lenders, refund anticipation loans and our open-end lending program. My written testimony describes some of the challenges credit unions throughout the country are facing with respect to service to Native American communities, and includes examples of how credit unions in other states are serving these communities, as well as a description of legislation which would permit credit unions to better serve all of their members, including Native Americans.

The Cycle of Payday Lending

Mr. Chairman, I see many of my members use payday lending services, some on a regular basis. My staff and I can see this when we view a member's account information, particularly their checking account. We will see a deposit on their account from a payday lender. When it comes time to clear their checks, we will often notice that a number of them have bounced checks. My credit union's daily overdraft list has a number of bounced checks made out to payday lenders.

We have seen how some members, by using payday lenders, have really mismanaged their finances. And this has resulted in very poor credit scores for these members, making it difficult for them to get financial help anywhere, including, sometimes, the credit union. There have been occasions when we have had to turn down a member for a loan because we see that they are already in debt to payday lenders—we do not want to add to the problem of insurmountable debt. When we see this with one of our members, we will try to educate him on the risks involved in payday lending, and we will try to help him them find products that could be part of the solution.

Mr. Chairman, I also see other lenders take advantage of my members through tax refund anticipation loans. At the time this product was first developed, my credit union was one of the first financial institutions to offer a refund anticipation loan. We would allow members to come in with their 1040 and electronically file it. We would then confirm the refund with the IRS and issue an advance.

Although we charged minimal fees to participate, we began to realize the program was more of a disservice to its members. Over a period of time, I realized it was a rip-off for my members. They would often be better off by waiting for the entire refund to come in and not pay any fees on any resulting loan. When we gave up the program, I noticed that some members began using other businesses to take out these refund loans.

By using a tax refund anticipation loan, members can end up owing money instead of receiving their tax refund. Considering the fees associated with the refund anticipation loan, the members are at a disadvantage. What members may not realize is that you pay the fee for the loan, in addition to fees for check cashing and tax preparation. When it is all said and done, some members can lose hundreds of dollars that they would have received had they waited a few more weeks. We now advise our members to stay away from refund anticipation loans.

The Credit Union Response to the Cycle of Payday Lending

Mr. Chairman, I believe that financial education is perhaps the best solution to combat payday lending. My credit union has worked hard to educate our members on the risks of payday loans, especially the high interest rate associated with them. It has been my observation that the payday loans are going to members with little money to pay it back. For the vast majority of my members, these payday loans are doing more harm than good.

But financial education alone is not the solution. Even with our financial literacy efforts, some members do not always understand that the high interest rates associated with these loans can get them stuck in a cycle of debt. They cannot see that payday loans are making it more difficult for them to realize a stable financial situation. And, the longer they have subjected themselves to abuse by payday lenders, the more difficult it is to offer products to help these members because their credit is completely shot. At Citizens Community Credit Union, our members have two programs serving as alternatives to payday lending products.

- Citizens Community Credit Union: Open-End Lending Program and Reward Line of Credit Program

In 1983, when I became President of Citizens Community Credit Union, I immediately recognized a need to develop a strong relationship with the tribe and the tribal members. This need was two-part: the need for financial education and also the need for greater access to financial services and products.

It seemed as though most financial institutions would not make loans to Native Americans back when I started. Perhaps things have changed some now that everything is credit score driven. However, back in the 1980s, that was not the case. The need for financial services was so great and the lending environment was so fragile that I didn't even pull credit bureau reports; instead, we went out into these communities and built relationships with the people. In addition to reviewing credit histories and credit scores, much of our lending continues to be relationship driven, based on a level of trust between the credit union and the members.

Citizens Community Credit Union instituted an Open-End Lending program in 1983. Open-End Lending essentially means that one can add to an existing loan, under certain circumstances. It can work much like a revolving line of credit. Once opened, Open-End Lending allows for multiple advances, except without the need for all the additional paperwork, such as applications and notes. Each advance request can be quickly underwritten and disbursed without the labor and costs of other loans. Furthermore, Open-End Lending is convenient for the member; he or she does not need to visit the office to sign papers each time they need funds, they can simply pick up the phone and call.

Traditional closed-end loans have a specific maturity day; because of this, refinancing required establishing a completely new loan. In offering an open-end solution, new loans made for autos and other types of collateral will require much less paperwork and offer additional options, such as subsequent loan advances.

One advantage of Open-End Lending is that it anticipates repeat usage; this helps both credit unions and their members. The credit union is able to handle additional loan volume without the extra staff, and the member has the opportunity to add an advance with minimal effort.

Generally, the interest rate on open-end loans is associated with the collateral offered for the overall Open-End Lending program. Also, factors to consider when determining the interest rate include the individual's credit score, as well as the length of the loan. Generally, we can offer open-end loans with interest rates from 12 percent, to as low as 5.9 percent.

Recently, Citizens Community Credit Union began offering a line of credit program, called Reward Line of Credit. Because of my immediate experience with loans I made to people working for tribal businesses, I learned quickly that the employees would request multiple advances on a frequent basis. Furthermore, I realized many individuals were beginning to use payday loans as a means to get these advances. I understood that this could turn out to be a real problem, so my credit union implemented the Reward Line of Credit program.

The Reward Line of Credit program carries many of the same characteristics of open-end lending; however it has specific criteria one must meet in order to qualify. The main difference between the two programs is that the line of credit is limited in size. This program is only available to those individuals who have lower credit scores, and requires payroll deduction for repayment. Furthermore, the minimum advance is $25, with a minimum repayment of 5 percent of the balance plus $20 that goes into a savings account. There are no fees associated with the program, and the interest rate is held at 16 percent.

Mr. Chairman, there is considerable default risk with this type of lending. In most cases, if the member were to lose their job, there are generally few assets to resolve the debt. It is well known that the tribal court systems are not always the easiest to work with, making any recovery efforts very difficult. With that said, we have made a commitment to our members to continue offering these loans—we have a relationship with the Reservations, and the people have one with us. We will work with our members as best as we can to find a solution to any financial problem they may have.

On a daily basis, we make loans to help our members during challenging times; whether it is a $30 loan to a member to pay his heat bill or a $50 loan so that a member can purchase her medication. To us, these types of situations are a part of a typical work day. To pull one anecdote out of a thousand would be impossible, and it would be an injustice to take such a narrow focus. We do what we do because we believe in the credit union philosophy of "people helping people." We are lucky in that we understand the culture, we understand the people, and we understand the risks. This helps us manage our programs and serve our community.

- The Native American Credit Union Initiative: Identifying Challenges; Identifying Solutions

While solid statistics regarding the number of credit unions serving Native American communities are difficult to come by, I know that my experience is not unique within the credit union movement. In 2006, the National Credit Union Foundation (NCUF) began implementing the Native American Credit Union Initiative, an effort to study credit union service to Native American communities.

NCUF found that credit unions were serving Native Americans but details of the level of service were anecdotal and piecemeal. So, they instituted an informal survey of credit unions serving Native American communities to determine the types of products and services they offer and the degree to which they were serving this population. They also sought to facilitate the discussion, on a national level, of best practices for and barriers to service of Native Americans by convening a conference in July 2006 for credit unions serving Native Americans. Twenty-one credit unions responded to the NCUF informal, voluntary survey and fourteen credit unions participated in the July 2006 conference.

The average asset size of the survey respondents was $95 million and half of the credit unions responding to the survey had a "low-income" designation by the National Credit Union Administration (NCUA). The "low-income" designation means the credit union is eligible for regulatory assistance in serving low-income fields of membership. Three of the credit unions responding to the survey were located on an Indian reservation.

The responses to the survey showed that nearly all credit unions adapt their products to reflect members' and market needs, including those of Native Americans. For instance, a consumer loan might be based on credit history rather than credit scores for some Native American borrowers. The respondents also indicated that they provide Individual Development Accounts (IDAs) and Volunteer Income Tax Assistance (VITA) with financial education.

Both the survey respondents and the conference participants identified understanding the tribal governing process and the tribal court system as one of the most difficult operational challenges to serving Native American communities. Each tribe has its own system, and special expertise is needed to understand Indian law.

Another challenge identified by credit unions was the lack of financial literacy. As is the case with many Americans, tribal members often do not understand the long-term impact of their financial decisions, making them vulnerable to payday lenders and the chronic cycle of poverty. Like many Americans, not all Native American credit union members have developed a habit of saving on a regular basis, which jeopardizes their families' financial security and stability.

The credit unions participating in the NCUF Initiative also indicated that mortgages on trust land are difficult to collateralize, making it risky to lend on trust land unless there is a government guarantee. The HUD Section 184 Indian Housing Guarantee Loan program can be bureaucratic and complex, according to the credit unions participating in the Initiative.

The credit unions participating in the Initiative identified several opportunities for credit unions to serve Native American communities, including:

Membership expansion: Native American credit union members are usually very loyal once a trusting relationship between the member and the credit union is developed. If someone shares their positive credit union experience with a friend or family member, the credit union has a very strong possibility of adding a new member. Member loyalty presents a good opportunity for membership expansion for credit unions serving Native American communities.

Financial education: As previously noted, credit unions want to work with Native Americans and view this as an opportunity to fulfill the movement's "People Helping People" mission. According to the credit unions serving Native American populations, the greatest financial education need involves budgeting and long-term planning assistance. There is a need for financial education not only in the tribal schools, but also for Native American adults.

Increased lending opportunities: The credit unions responding to the initiative agreed that consumer loans, auto loans, home mortgages—both on and off the reservation—construction lending, micro-financing, and business lending are all opportunities for credit unions serving Native American communities.

Accounts for tribal governments: Tribal governments can also be a significant source of deposits for credit unions serving these communities.

Minimal competition from other financial institutions: Finally, the credit unions serving Native American communities noted there is minimal competition for new branches or ATM services. Opening a new branch or providing ATM services on a reservation can generate income to cover costs while also meeting a community need. Some of the credit unions participating in the Initiative have opened a branch in the casino where their members work or in the high school their members attend.

Examples of Credit Union Service to Native American Communities

Using funding from the Community Development Revolving Loan Fund (CDRLF) and the National Credit Union Foundation, several credit unions have been able to enhance service to Native American communities. I would like to highlight the experience of two very successful credit unions:

Bear Paw Credit Union, Havre, Montana: Bear Paw Credit Union received both CDRLF assistance as well as a grant from the National Credit Union Foundation for software upgrades, staff training, and financial education for its members. The credit union's field of membership includes residents of the Fort Belknap Indian Reservation. Since 2004, credit union representatives travel weekly to the reservation (90 miles roundtrip) and assist tribal members with their financial needs. The National Credit Union Foundation grant helped the credit union place two ATMs on the reservation to accommodate cash needs. This has dramatically decreased tribal members' dependence on predatory lenders and check cashers.

Tongass Federal Credit Union (FCU), Metlakatla, Alaska: Tongass FCU initiated financial education and savings programs to schools in the communities they serve, helping promote the importance of savings at an early age. The National Credit Union Foundation made a $45,180 grant to Tongass FCU to enable the credit union to serve a Native American island community only reachable by ferry. In 2007, the credit union provided financial education to 50 Metlakatla Indian families through a personal financial advisor. The families learned about savings, credit, budgeting, and online financial tools.

The Credit Union Record of Lending to Native Americans

Home Mortgage Disclosure Act (HMDA) data from 2006 makes it clear that credit unions are more likely than other lenders to grant loans to Native Americans. The HMDA data also shows that credit unions generally lend to Native Americans on more favorable terms. That's not surprising—as member-owned, not-for-profit financial cooperatives, credit unions care deeply about their member-borrowers.

Specifically, the most recent HMDA data shows that credit unions approved 66 percent of the applications they received from Native Americans. In comparison, other lenders approved just 52 percent of applications they received from this group. In addition, credit union pricing is more consumer-friendly to Native Americans. Only 5 percent of single family mortgage loans originated by credit unions were high-rate loans while 28 percent of such loans originated by other lenders (i.e., non-credit union financial institutions) were high-rate loans. High-rate loans are defined as those with interest rates 3 percentage points or more above the rate on comparable-maturity Treasury securities.

Legislative Initiatives to Enhance Credit Union Service to Native American Communities

Mr. Chairman, there are challenges and opportunities for credit unions serving Native American communities. While not envisioned to exclusively encourage credit union service to Native American communities, two bills contain provisions that would assist credit unions in these efforts.

S. 2957, the Credit Union Regulatory Improvements Act: S. 2957, as introduced by Senator Lieberman, contains several provisions aimed at giving credit unions the flexibility to better serve their members. In particular, S. 2957 would clarify that all federally chartered credit unions are eligible to add areas which qualify under as a Community Development Financial Institution Investment Area or a New Markets Tax Credit Area to their field of membership. Current law restricts single-sponsor and community chartered credit unions from applying to serve underserved areas. The companion bill to S. 2957 in the House is H.R. 1537, introduced by Representatives Paul Kanjorski and Ed Royce, which has 148 cosponsors.

H.R. 5519, the Credit Union Regulatory Relief Act: H.R. 5519 also contains a similar provision addressing credit union service to underserved areas. It also contains a provision that would permit federally chartered credit unions to offer payday lending alternatives to non-members within their field of membership. This provision is modeled after a section in the Financial Services Regulatory Relief Act of 2006 enabling federally chartered credit unions to offer check cashing and remittances services to non-members within their field of membership.

Conclusion

Mr. Chairman, thank you again for the opportunity to testify on this important issue. We share your concern regarding the availability of mainstream financial services to Native American communities and we stand ready to serve.

The CHAIRMAN. Mr. Brokke, thank you very much for your testimony.

Next we will hear from John Barkley. He is the Vice Chairman of the Umatilla Tribal Water Commission and the former Chairman of the Umatilla Tribal General Council at the Confederated Tribes of the Umatilla Indian Reservation in Pendleton, Oregon.

Mr. Barkley, thank you for being with us. You may proceed.

STATEMENT OF JOHN BARKLEY, JR., VICE CHAIRMAN, UMATILLA TRIBAL WATER COMMISSION; ENROLLED CAYUSE TRIBAL MEMBER, CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION (CTUIR)

Mr. BARKLEY. Good morning, Mr. Chairman.

I am very pleased to represent my home and community. As a first time home buyer through the Wapayatat: Financial and Homeownership classes, which is orchestrated through our Umatilla Reservation Housing Authority, I will be providing testimony about my personal story and information about what my tribes are doing to combat predatory lending on the reservation.

As you know, Native American people suffer the highest rate of poverty, unemployment, alcohol and drug abuse, high school dropout rate, diabetes, heart disease. As such, they are more susceptible to financial woes and thereby vulnerable to predatory lending and the unethical enticements resulting in exorbitant interest rates, unrealistic terms and conditions, counterproductive to creating healthy communities and stable economies. At times, predatory lenders are the only hope for tribal members, because they have nowhere else to turn. This leaves little nothing for savings, they essentially survive payday to payday, rely on social services, or hedge their meager quarterly gaming dividend.

Payday loan venues, rent-to-own vendors, shady car dealers and credit card companies and financial institutions take advantage of people's lack of financial education. But through education and extensive counseling, offered through our six-week financial literacy program we call Wapayatat, which means "to learn," we were able to train nearly 400 tribal members about cleaning up their credit, improving their credit rating, assessing unnecessary spending habits and how to avoid the trappings of credit cards, late fees, interest rates exceeding 28 percent and taking years to pay off maxed-out credit cards.

Instead, they come to learn how to control their finances, to save, avoid frivolous spending, and how to buy a car or traverse the complex, overwhelming process of saving money for a down payment on a new home, selecting a home, finding a home site, seeking a competent contractor, working with the escrow agent, completing the paperwork and finally moving into a new home.

Wapayatat provides individuals the tools to understand the process and the fees attached to borrowing money from any lender. What once was minimal access to finance capital has been resolved by Wapayatat and the Individual Development Accounts. This is a savings-match program that serves as an incentive for tribal members to save and improve their credit. Our program, Umatilla Saves, offers a three-to-one matching Individual Development Account in which we save $1,500 in six months, and an additional $4,500 was matched in our savings accounts that enabled us to use that as a down payment on our new home. We continued to save beyond our obligation because of what we learned through this program. My wife and I worked on our tri-merge credit reports and also our personal budget and other savings for future needs.

Of course, the results of this diligent effort was a new manufactured three-bedroom, two-bath home, with a deck, two- car garage, one acre of trust land in the beautiful Blue Mountains at home in our reservation. It is a good sense home, energy-efficient, with energy-efficient appliances. It is an investment that we have made into ourselves and our community, and we continue to build and maintain and develop, because it is an asset that appreciates, and it is something that we have equity in.

The Umatilla Saves and Umatilla Builds program have received national awards from the Harvard Honoring Nations and the National Association of Realtors Award. I believe it is a model and through our experience, a microcosm of how we can help build Indian nations. Empowering tribal members through financial literacy has proved to be a valuable tool in which they sense hope for stability, security, investment and for improving their living conditions and livelihoods. This sets the stage for subsequent generations. Lessons can be learned, and learning about financial literacy is where it starts.

One alternative to predatory lending is to developing community development financial institutions that build on the success of Wapayatat and provides technical and educational resources to thwart predatory lenders. Building such capacity through collaborative partnership with Federal agencies and with legislative acumen, we can attend the plethora of intricate factors inhibiting full transition from financial literacy to stable family structure, healthy communities, viable economic well-being and self-sufficiency.

It has been a privilege to speak before you this morning. Thank you, Honorable Chairman, for this opportunity. Your interest in this subject is so critically important in Indian Country.

[The prepared statement of Mr. Barkley follows:]

PREPARED STATEMENT OF JOHN BARKLEY, JR., VICE CHAIRMAN, UMATILLA TRIBAL WATER COMMISSION; ENROLLED CAYUSE TRIBAL MEMBER, CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION (CTUIR)

Mr. Chairman, and members of the Committee, my name is John Barkley, Jr., former Chairman of the General Council and former member of the Board of Trustees for the Confederated Tribes of the Umatilla Indian Reservation. The Confederated Tribes consist of the Cayuse, Walla Walla and Umatilla in northeast Oregon. I am currently a Training Generalist with the Council for Tribal Employment Rights, a national, non-profit organization representing over 300 Indian Tribes and Alaskan Native Villages with Tribal Employment Rights Ordinances. I am pleased to represent my home and community. As a first-time homebuyer through the *Wapayatat: Financial and Homeownership* classes orchestrated through the Umatilla Reservation Housing Authority, I will be providing testimony about my personal story and information about what my tribes are doing to combat predatory lending on our reservation.

Native American people suffer the highest rate of poverty, unemployment, high school drop out, diabetes and heart disease, and, as such, are more susceptible to financial woes, and thereby vulnerable to predatory lending and unethical enticements resulting in exorbitant interest rates, unrealistic terms and conditions counterproductive in creating healthy communities and stable economies. At time predatory lenders are the only hope for tribal members because they have nowhere else to turn. This leaves little to nothing for savings—they essentially survive pay day to pay day, rely on social services, or hedge their meager quarterly gaming dividend.

Pay day loan venues, rent-to-own vendors, shady car dealers and credit card companies take advantage of people's lack of financial education, but through education and extensive counseling offered through the tribal financial literacy program called Wapayatat—which means "to learn"—we were able to train nearly 400 tribal members about cleaning up their credit, improving their credit rating, assess unnecessary spending habits, and how to avoid the trappings of credit cards, late fees, interest rates exceeding 28 percent, and taking years to pay off maxed out credit cards. Instead they come to learn how to control their finances, to save and avoid frivolous spending, and how to buy a car or traverse the complex, overwhelming process of saving money for a down payment on a new home, selecting a home, finding a home site, seeking a competent contractor, working with an escrow agent, completing the paperwork and finally moving in your new home.

Wapayatat provides individuals the tools to understand the process and the fees attached to borrowing money from any lender. What once was minimal access to finance capital has been resolved by Wapayatat and the Individual Development Account, or IDA's.

This savings-match account served as an incentive to establish a savings account, clean up your credit, seek lower interest rates, and provide a down payment for fulfilling part of every American's dream—to own your own home. The Umatilla Saves program offered a 3-to-1 matching IDA in which we saved $1,500 in six months and an additional $4,500 was matched in our savings account. This enabled $6,000 for down payment on a new home, and we continued to save beyond our obligation because of lessons learned. My wife and I worked on our tri-merge credit report and also on a personal budget and other savings for future needs.

The results of our diligent efforts was a new manufactured 3-bedroom, 2-bath home, a deck, 2 car garage, and fenced yard on one-acre of trust land on the reservation in the beautiful Blue Mountains. The good cents, energy efficient home came with energy efficient appliances. Now we continue to maintain, build and develop our place so that this investment appreciates in value. Home is where the heart is, and our new home has our heart.

Umatilla Saves, and the new Umatilla Builds program, which offers a 5-to-1 match, have been the recipient of the 2006 Harvard Honoring Nations Award and the 2007 National Association of Realtor's Award. In light of the recent mortgage crisis experienced nationwide, Wapayatat is a model and our experience a microcosm of how we can help build our Indian Nations. Empowering tribal members through financial literacy has proved to be a valuable tool in which they sense hope for stability, security, investment and for improving their living conditions and livelihoods. This sets the stage for subsequent generations. Lessons can be learned, and learning about financial literacy is where to start.

An alternative to predatory lending is to develop a Native community development financial institution that builds on the success of Wapayatat and provides additional technical, educational resources to thwart predatory lenders.

Building such capacity through collaborative partnership with federal agencies and with legislative acumen, we can attend the plethora of intricate factors inhibiting full transition from financial literacy to stable family structure, healthy communities and viable economic well-being.

It has been a privilege to speak before you this morning. Thank you Honorable Chairman, and committee members, for this opportunity and for your interest in this subject that is so critically important to many across Indian Country.

The CHAIRMAN. Mr. Barkley, thank you very much.

Finally, we will hear from Mr. Jamie Fulmer, who is the Director of Public Affairs for the Advance America Cash Advance Centers, Inc., and a representative for the Community Financial Services Association of America. My understanding is you represent about 60 percent of those institutions across the Country.

So Mr. Fulmer, thank you for being here, and you may proceed.

STATEMENT OF JAMIE FULMER, DIRECTOR OF PUBLIC AFFAIRS, ADVANCE AMERICA, CASH ADVANCE CENTERS, INC.; REPRESENTATIVE, COMMUNITY FINANCIAL SERVICES ASSOCIATION

Mr. FULMER. Thank you, Mr. Chairman. It is a pleasure to be with you.

As you said, I am here today representing the Community Financial Services Association, or CFSA, which does represent about 60 percent of the 25,000 payday lending storefronts that exist in this Country.

The payday loan provides consumers with access to small amounts of short-term credit when they find themselves between paychecks with some type of unbudgeted or unexpected expense.

The payday loan is not a predatory loan. We don't trick, mis-lead or coerce our customers. The payday loan is typically a two-week loan in the range of $300 to $400, collateralized with a personal check, for which customers pay a $15 per $100 borrowed fee. Customers are not unsophisticated or vulnerable. Our typical customer is the heart of the hard-working middle-income American class. They have a household income of about $43,000, they all have a job or a steady source of income, they all have an active, open bank account. About 90 percent of them are high school educated, about half of them are college educated. About half of them own their own homes and about half of them have a credit card.

These customers understand and choose the payday product because they understand it can be a more rational, cost-competitive alternative to many of the other options available to them. They are certainly very pleased with the product and very satisfied with the service. Out of 14 million transactions that our company issued last year, there were only 80 complaints to State agencies.

Mr. Chairman, gone are the days when a consumer can go down to their local bank and borrow a small, unsecured, short-term from their local banker, probably from someone who was a neighbor of theirs. Now, consumers are forced to turn to more expensive options and more fee-based options offered by banks and financial institutions. Consider the fact that a bounced check costs consumers over $55 in out of pocket costs, once you have paid the bank that you wrote the check on and the merchant that you wrote the check to. Also consider the fact that overdraft protection fees or credit card late fees are in the $35 to $40 range, as are paying your rent or your mortgage bills late or your utility bills late.

Customers choose the payday advance product not only because it can be a less expensive option, but there are no negative credit consequences, there is no revolving debt. It is a simple, straightforward transaction. There are a lot of research out there from independent analysis that suggests that consumers are better served when they have more access to financial options, not fewer.

There has been much discussed about where we locate our centers. Our centers are located in high traffic, often suburban retail locations near where middle-income consumers work, near where they live and near where they shop. The ideal location is in a strip center with a Wal-Mart, Home Depot or another nationally-known retailer or large regional grocery store chain. Our centers resemble a small bank branch and our employees are focused on providing exceptional customer service to the customers they serve.

Despite what the critics say, we don't target any specific demographic. I brought a map here to show an analysis of the licensed lenders in the State of North Dakota, that show where we locate. It clearly shows that we locate in the high traffic areas and the densely-populated areas within that State.

Also in that regard, I would like to acknowledge the presence of Dr. Pat Cirillo from Cyprus Research at today's hearing. Dr. Cirillo has conducted a detailed analysis disputing the contention that payday lenders target any particular demographic of customer. I ask that Dr. Cirillo's testimony and analysis be included in the record of today's hearings.

Mr. Chairman, there has been much discussion about the fees that we charge and the applicable annual percentage rate. It is important to note that we fully comply with all truth-in-lending laws of this Country and in the States we operate in. We disclose the rates and fees, and in our centers, we have large 18 by 22 posters that have examples of those fees. They are included in the customer agreements that customers sign. They are easily accessible on members' websites and the Association's websites.

Customers tell us, however, that the APR is not the appropriate value indicator for the payday lending product. First of all, a 391 percent APR that is so often quoted would only apply if a customer took out the same loan every two weeks for an entire year. That is not how customers use our product. Also, the APR is typically intended for a longer term credit product, such as a home loan or a car loan or any other type of loan that you would have outstanding for a long period of time. In fact, if you applied an APR calculation to the fee-based products that I mentioned earlier, offered by financial institutions, the bounced check fee, the credit card late fee, you would have a range of 800 to 1,300 percent.

The fact of the matter is that we offer a product that is competitively priced in the marketplace we serve. Much has been made about the 36 percent annual percentage rate cap that was placed on folks in the military and has been recently adopted in a couple of States. First of all, let me make no mistake about it: a 36 percent rate cap is a ban of the payday lending industry.

The CHAIRMAN. Is a what?

Mr. FULMER. It is a ban. An elimination. It would change the fee that we charge, which is typically now $15 per $100 to $1.38 per $100 borrowed. That would equate to 10 cents a day. We can't meet our payroll costs. We can't meet our other overhead costs, let alone assume the credit risk of basically an unsecured loan at 10 cents a day. Unfortunately, the consequence of a 36 percent rate cap results in the elimination of a valued option to consumers.

While overwhelmingly, the number of consumers who use our product do so responsibly, 97 percent of the customers who take out a payday advance from Advance America will pay us back within a day or two of their due date, like any other credit product out there, we understand that there are folks who do not use the product responsibly. As an association of responsible lenders, CFSA supports reasonable regulations in all States that we operate in, and are active participants in that process.

In addition, CFSA has adopted a comprehensive set of best practices designed to promote responsible use, prevent the cycle of debt, require full disclosure, ensure collection practices that are appropriate and proper, and ensures the transparency of the payday loan product. In addition, we have adopted an extended payment plan, which would give any borrower who feels like they have gotten in over their head with the use of payday loans the opportunity to pay off their obligation at no additional cost, at no additional fee, at no additional accruing interest over a longer period of time.

We strive to be good corporate citizens individually and as an association, partnering with organizations all across the Country to support financial literacy efforts and other worthwhile causes.

Mr. Chairman, I appreciate the opportunity to be with you today, and I ask that my written testimony, along with the attachments, be accepted into the record of this hearing. I am happy to answer any questions.

[The prepared statement of Mr. Fulmer follows:]

PREPARED STATEMENT OF JAMIE FULMER, DIRECTOR OF PUBLIC AFFAIRS, ADVANCE AMERICA, CASH ADVANCE CENTERS, INC.; REPRESENTATIVE, COMMUNITY FINANCIAL SERVICES ASSOCIATION

Introduction

Thank you for the opportunity to provide information at today's hearing. My name is Jamie Fulmer and I am Director of Public Affairs for Advance America Cash Advance Centers, Inc., a publicly held payday advance company headquartered in South Carolina. I am appearing today as the representative of the Community Financial Services Association of America (CFSA), of which my company is a founding member.

Background on the Community Financial Services Association

CFSA was founded in 1999 to promote laws and regulations relating to payday advance lending that protect consumers, while preserving their access to credit options, and to support and encourage responsible payday advance industry practices. Today, CFSA is comprised of 164 member companies, representing more than half of all payday advance locations nationally.

All CFSA member companies are required to adhere to a comprehensive set of payday lending *Best Practices* aimed at ensuring consumer protection. These *Best Practices,* a copy of which is attached, include requirements that often exceed those contained in state law and ensure that our member companies hold themselves to high standards of responsible service and help our customers make sound and informed financial decisions.

CFSA periodically audits its members to secure full compliance with its mandatory *Best Practices.* CFSA also continues to enhance these *Best Practices* as our industry evolves and I will highlight several important recent changes later in my testimony.

General Background on Payday Lending

How Payday Advances Work—The payday advance application process is simple and transparent. It requires supporting documents, including proof of a regular income, a personal checking account and identification. Individual companies have their own additional underwriting criteria.

If approved, a borrower reads and signs an agreement containing loan terms and disclosures required by the Truth in Lending Act and writes a personal check for the amount of the advance, plus a modest fee. The lender advances the customer funds immediately and waits to negotiate the borrower's personal check until an agreed upon date, usually within two to four weeks, when the borrower receives his or her next paycheck.

The average loan is around $300 and the typical fee is $15 per $100 borrowed. Payday lenders do not require collateral or personal property as security (e.g., no car titles) nor do payday loans involve check cashing.

State Regulated—Payday lending is highly regulated at the state level. CFSA member companies have taken a constructive leadership role in working with state legislators, regulators and other interested parties to help develop innovative and effective state statutes and regulations for this still-developing industry.

State requirements include, among other things, limits on the amount customers can borrow and the dollar amount of the fees lenders can charge. States also generally either prohibit loans from being "rolled-over" (i.e., extended for another term in exchange for the payment of another fee) or limit such rollovers to one or two times.

Size of Payday Advance Industry—There is a very strong consumer demand for short-term credit. Our industry serves approximately 19 million American households each year. Payday lenders extend about $40 billion annually in short-term, unsecured credit to hard-working, middle-class Americans who occasionally experience cash-flow shortfalls between paydays. According to analysts at Stephens, Inc., the payday lending industry employs more than 50,000 people in about 24,000 locations and pays its employees throughout the country roughly $2 billion in wages.

Payday Advance Customers—Research shows most payday advance customers to be from middle-income, educated, working families, with more than half earning between $25,000 and $50,000 annually, 58 percent having attended college, and one in five having a bachelor's degree.

Further, payday advance customers are *not* the "un-banked," as every customer is required to have a checking account at a bank or credit union plus a job or other steady source of income. Our customers turn to payday lenders for a reasonably-priced, well-regulated option for meeting unexpected, relatively low dollar, unbudgeted expenses and other short-term financial needs.

When CFSA members make a loan to our customers, we do so only if we believe the individual borrower can repay the loan in a timely manner. And, to state the obvious, our members can stay in business only if our customers do repay their loans.

Store Locations—Payday lenders are located in population centers and areas where customers live, work and shop. These convenient locations often include shopping centers with large national anchor tenants such as Wal-Mart, Blockbuster, Radio Shack, and/or regional grocery store chains.

Critics have often alleged that the payday lending industry inappropriately targets vulnerable populations. During the past few years, the industry unfairly has been accused of locating in communities with high populations of military personnel, women, the elderly, Hispanic Americans, Native Americans, African Americans, recent immigrants, young people, social security recipients, veterans, poor people and Christian conservatives. A recent *Business Week* article even said payday lenders are targeting affluent neighborhoods.

The claims that we target any specific group are without factual foundation. Payday lenders do not target people on the basis of class or specific racial, ethnic or other characteristics. In fact, we "target" the general population no differently than do Home Depot or other retail businesses and our lender locations reflect this fact. Payday advance stores are simply located near population and commerce centers. We do this for the convenience of our customers, who represent a broad demographic segment and cannot be fairly grouped based on race, sex, religion or similar characteristic.

Why Customers Choose Payday Advances—Customers use payday advances to cover small, unexpected expenses between paydays. They are generally ordinary people who have a bill to pay and who seek immediate, short-term credit to meet this obligation.

Short-term small loans of less than $1,000 generally are not offered by banking institutions. Banks have noted, and studies have confirmed, that the cost of offering such short-term loans is quite high relative to larger longer-term loans, and banks generally have deployed their lending resources in other more profitable ways.

Ordinary Americans who need such short-term credit therefore frequently must choose between a payday advance and often more costly alternatives, such as bouncing a check or paying overdraft fees, late bill payment penalties and credit card late fees, or asking family members for money or pledging personal possessions as collateral. All of these alternative forms of credit have associated fees or costs, and while payday advances are not always the best option, in many other cases consumers determine that a payday loan is in fact the best and cheapest credit option available.

Payday Loan Critics Unfairly Use Misleading "APR" Calculations—In addition to factors such as convenience and privacy, our experience is that consumers generally look at the real cost of their available credit options and make a rational, informed decision when they choose a payday loan. By contrast, critics of our industry tend to disregard the true relative costs of short-term credit alternatives and attack payday advances because our loan product has a relatively high rate when expressed in terms of an APR, or annual percentage rate.

Overly-simplified APR comparisons in this context tend to be quite misleading. Measuring a two-week payday advance at an annual rate is like Blockbuster quoting you what it would cost to rent a movie for a year's worth of nights, when all you want is to rent it for one night. Let me explain how the APR calculation works, or, in our view, does not work.

First, with respect to payday loans—which typically are made on a two-week basis for a fee of $15 per $100 borrowed—the APR is essentially calculated by making a theoretical assumption that the loan will be extended 26 times during a year with a new $15 fee being paid each time. Under this approach, the APR is almost 400 percent ($15 × 26 weeks = 390 percent in APR "interest"). This figure is totally misleading and suggests that a borrower normally would be paying $390 in interest on a $100 loan.[1] In reality, however, *this theoretical APR situation never occurs and*

[1] The term length of a loan likewise skews an APR calculation. For example, a $15 fee for a one-week loan = 780 percent APR; a two-week loan for the same total $15 fee = 380 percent

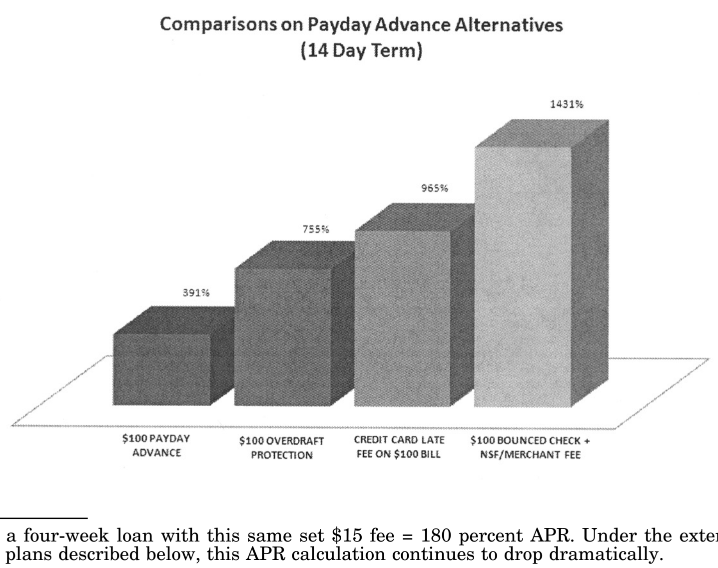
generally cannot occur as a matter of law. State laws now usually prohibit rollovers entirely, or allow only one or two. In real terms, the borrower is paying in most cases a fee that equates to an actual interest rate of 15 percent per $100 borrowed, which customers clearly understand.

Contrary to the impression given by some critics, financial data shows that payday lenders are not making excessive profits, and that their profits are often lower than those of other financial institutions. *American Banker* reported public companies reported profits of 8.5 percent and an article published in the *Fordham Journal of Corporate & Financial Law* supports the position that payday advance fees are in line with the high costs of operating payday lending businesses. The market for payday loans demonstrates that payday lenders' fees also are not out of line with the cost of competing short-term credit alternatives when you consider the actual cost of all fees and interest charged for these other credit options.

"Apples To Oranges" APR Comparisons—Applicable regulations require that the fees charged by traditional payday advance lenders must be disclosed as interest and stated on an annualized basis in terms of an APR. Unfortunately, these rules do not require that the cost of many competing short-term credit options be stated in the same way. Instead, depository institutions like banks and credit unions typically have to disclose their interest rate as an APR, but *do not have to include in their APR calculation the various fees* they also charge for their short-term credit products.

The practical result of these differing APR calculation requirements is that many other lenders charge a fee *or* both a rate of interest *and* one or more fees for the short-term credit service they provide, and yet have a relatively low APR because all their fees are not included in the APR computations. "Apples and oranges" comparisons are then made by critics who unfairly attack payday loans because they usually have a higher APR under these flawed calculation methods.

Therefore, we believe that the APR, as currently required to be calculated, is generally quite misleading with regard to the real cost of payday loans compared to other small, short-term loan products. Payday loans often are less costly in real terms when the annualized rate for competing products is calculated so as to include all interest and associated fees, as FDIC Chairman Sheila Bair and other experts have recommended. Using an "apples to apples" comparison, payday advances often prove to be the better borrower option. Consider these typical rate examples for several basic short-term credit alternatives when expressed as an APR as opposed to fees: a $100 payday advance with $15 fee is 391 percent APR.; a $100 bounced check with $54.87 NSF/merchant fee is 1,431 percent APR; a $100 credit card balance with $37 late fee is 965 percent APR; a $100 utility bill with $46.16 late/reconnect fees is 1,203 percent APR; and a $29 overdraft protection fee on $100 is 755 percent.



APR; a four-week loan with this same set $15 fee = 180 percent APR. Under the extended payment plans described below, this APR calculation continues to drop dramatically.

Flawed APR Caps—Many critics have called for capping rates at a 36 percent APR level as has been done with respect to military personnel. Some critics now are saying that new loan products being offered by credit unions show that loans can be made well below the proposed cap. What's the real story? It's pretty simple, but not what the critics would have you believe.

If a rate cap of 36 percent APR is imposed, payday lenders cannot provide borrowers with this important short-term credit option. Such a cap would mean that in real terms, a lender could only charge about $1.38 per $100 borrowed. There clearly is no economically viable way, short of subsidization from some source, that a payday lender, or for that matter other lenders, can provide short-term small loans at such a low rate. Why? Because the actual cost of delivering the loan, not to even mention allowing for loan losses and a modest profit, is far higher than $1.38 per $100.00.

For example, Goodwill, a non-profit, tax-exempt charity charges customers $9.90 per $100 borrowed, a 252 percent APR, for their "GoodMoney" payday loan. Even the Goodwill could not offer the product under a 36 percent annual rate cap.

The simple economic reality of a 36 percent APR cap is why we can no longer offer payday advances to military personnel. We think this is unfortunate because the better public policy approach would be to allow military service members access to this important short-term credit alternative. Military personnel now have fewer choices and often have to select a credit option that is significantly more costly in real terms than a payday advance.

We are not alone in our view that borrowers, be they military members or other consumers, should not have their short-term credit options limited. A staff report from the Federal Reserve Bank of New York [2] notes that "banning payday loans is not, by itself, going to motivate competitors to lower prices or invent new products." Research confirms that consumers have suffered in states where payday advances are no longer available. According to the authors of the Federal Reserve Bank of New York staff report, consumers in Georgia and North Carolina ". . . bounced more checks, complained more about lenders and debt collectors, and have filed for Chapter 7 bankruptcy at a higher rate" following the elimination of the payday lending industry in those two states.

It also is important to understand that many of the new alternative products, such as those being offered by credit unions, which are being touted by our critics, have various additional requirements and restrictions. Moreover, the "low rates" being advertised often prove to be comparable or higher in real terms when one considers both the interest rate and the fees being charged. In fact, if the current flaws in the APR calculation requirements were corrected to include both the interest rate and all fees, these alternative products could not be offered under a 36 percent APR rate cap. Despite what industry critics say, a 36 percent annual rate cap is not a reform approach, it is a ban.

Nonetheless, we welcome the further entry of credit unions and other financial institutions into the short-term credit advance market, and believe competition is good for the consumers we serve. We also recognize that some credit union products logically can be offered at somewhat lower rates because credit unions do not have to pay taxes, do not have to make a profit and may be able to subsidize the costs of such products.

In any case, most of the "alternatives" that we have seen are completely different products with different terms and different fee structures. Many come with a variety of restrictions and complicated fee structures. They provide another choice for some consumers, but have only a limited reach in the larger market we serve, and in all fairness cannot be considered a replacement for payday loans.

CFSA's Payday Lending Best Practices

Payday lending is a relatively new industry. As it evolves, CFSA has listened to the concerns raised about our industry and developed solutions to address them. In particular, we are proud that CFSA has demonstrated its commitment to responsible lending by adoption of payday lending industry *Best Practices,* beginning in 2000. Updating and changing our mandatory *Best Practices* are part of our ongoing efforts to respond to the concerns of policymakers and protect the financial well being of our customers. A copy of our current *Best Practices* is attached.

In the past year, CFSA has made significant changes to the *Best Practices* and I would like to take a few minutes to highlight two of them.

---

[2] *"Payday Holiday: How Households Fare after Payday Credit Bans"* by Federal Reserve Bank of New York Research Officer Donald P. Morgan and Cornell University graduate student Michael R. Strain.

Fee Transparency—CFSA member companies have always met or exceeded all applicable regulations in this regard. We have provided clear information on our pricing structure in our loan documents and other materials as required by applicable laws. Customers generally tell us they clearly understand the cost associated with payday advances and appreciate the straight-forward and transparent nature of the product.

Providing consumers with clear, accessible and easy-to-understand pricing information is one of the most basic responsibilities of any business. We have an obligation to make sure our customers understand exactly how much a payday advance will cost before they enter into the transaction.

This year, we took additional steps to ensure that the cost of a payday advance is even clearer. CFSA began requiring all member companies to present consumers with fees on poster-size displays in all stores and on company websites. As a result, members of CFSA prominently display the fees and annual percentage rates for at least five different loan increments on posters that are at least 18″ × 22″ in size in all stores and on company websites.

Now, every time a customer walks into a store they see a large poster letting them know both the fee in a dollar amount and expressed as an Annual Percentage Rate. Company websites also display the fee and APR information. Potential customers are clearly aware of all fees *before* they enter the transaction process.

CFSA has also established a website to provide consumers with information about how to use payday advances responsibly. The site, *www.knowyourfee.org,* includes a user-friendly, interactive map to make sure consumers are aware of the maximum fees and rate caps allowed by law in individual states.

Some consumers may review the fee structure of a proposed payday loan and conclude that they would be better served with a different loan product. Others will decide that a payday advance is their best choice. In either case, the important thing is that consumers are fully aware of the fees involved, and are able to make an informed decision.

Extended payment plan—Last year, CFSA's Board of Directors unanimously approved an addition to the association's *Best Practices* mandating the establishment of a new Extended Payment Plan (EPP) that allows our customers additional time to repay their loans, with no additional fee or finance charge of any kind. This EPP practice was added to address the concern that borrowers sometimes are unable to repay their loans in a timely manner.

Under this progressive *Best Practice,* CFSA member-companies make an Extended Payment Plan available to all customers without restriction. We also are actively supporting efforts to enact such a repayment plan requirement into law at the state-level so that it will apply to all providers of payday advances. Our efforts include active outreach to state legislators, community leaders and other constituent groups. In the past year, four states have added an extended payment plan to their state law, joining the five states that previously had a mandatory extended payment plan.

Taken together, these initiatives help ensure that CFSA member companies hold themselves to a high standard of responsible service and assist customers in making sound financial decisions.

CFSA's Financial Literacy Programs

CFSA and its member companies are committed to helping consumers improve their personal finance skills and judgment. CFSA has sponsored national public education advertisements on television and in print media explaining that payday loans are only intended as a short-term option, and are not for continued long-term usage. CFSA encourages borrowers to use payday advances responsibly. CFSA also has developed community outreach programs aimed at educating consumers on how to become financially savvy.

Among these programs are the *CFSA Youth Learn & Save program,* which teaches high school and college students in Boys and Girls Clubs the importance of building a solid financial future; and the *CFSA Community Volunteer Train-the-Trainer program,* which provides volunteers with resources needed to teach financial literacy in their community. Based on *Money Smart,* a financial literacy curriculum developed by the *Federal Deposit Insurance Corporation (FDIC),* these programs cover a broad range of personal finance topics, including basic banking services, consumer credit, budgeting and money management, homeownership, and savings and investing.

To assist member companies in their efforts to support local financial literacy programs, CFSA provides *Financial Literacy Grants.* Through this program, CFSA members can obtain a grant in amounts ranging from $500 to $2,500. These grants are matched by the member company, and are provided to community organizations to launch a CFSA financial literacy program.

To help payday advance customers improve their credit histories, CFSA partners with *Pay Rent Build Credit (PRBC),* a nontraditional credit reporting agency designed to help consumers build and rehabilitate their credit. PRBC offers payday advance customers the opportunity to build an accurate and complete credit history by monitoring payments on all the bills they pay.

On the national level, CFSA partners with organizations to combat financial *illiteracy* around the country. In collaboration with the *National Conference of Black Mayors,* CFSA sponsors *Youth Empowerment Summits (YES)* to host a day-long financial education summit for high school and college students. These events are organized in partnership with minority institutions such as historically black colleges and universities.

In addition, a partnership with the *National Black Caucus of States Institute,* CFSA supports efforts to educate legislators on economic issues impacting the African American community. Last year, CFSA sponsored a series of *Economic Empowerment Forums* to underscore inadequacies in the nation's credit reporting system. In doing so, legislators examined how credit reporting methodologies negatively impact African American consumers' ability to obtain wealth-building assets.

We are deeply committed to increasing financial literacy in the communities in which we operate, and would welcome the opportunity to explore partnerships and financial literacy programs specific to the Native American community. We recognize that the Boys and Girls Clubs of America, with whom we have partnered in other areas, are very involved in Indian Country. And, we understand that, like the historically Black Colleges with whom we have partnered, Tribally Controlled Community Colleges offer a rich resource for consumer education and skill training. We look forward to expanding our involvement in tribal communities throughout Indian Country.

Conclusion—In closing, we are proud of the service we offer to millions of hardworking Americans who deserve access to more financial options, not fewer. We employ tens of thousands of people and provide them with good wages and benefits such as healthcare and retirement. We are active members of the communities where our employees and customers live and work. We spread wealth in the community by not only providing access to credit, but hiring vendors, renting storefronts and using other local services.

I would be pleased to answer any questions you may have. I have attached a copy of our CFSA *Best Practices* as well as a map showing the location of lenders licensed to provide payday and other loan products in North Dakota. I ask that my written testimony be accepted into the record of this hearing, including these attachments, as well as the additional written testimony of Dr. Pat Cirillo who is accompanying me at this hearing. Dr. Cirillo is an expert in the field of consumer financial services behavior and choices. Thank you for your time and interest.

Best Practices for the Payday Advance Industry

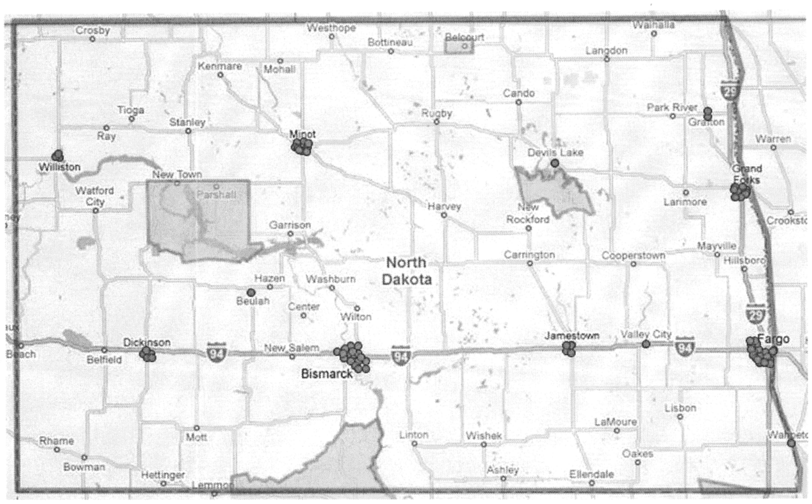
CFSA Members must abide by the following Best Practices:

1. **Full disclosure.** A member will comply with the disclosure requirements of the state in which the payday advance office is located and with federal disclosure requirements including the Federal Truth in Lending Act. A contract between a member and the customer must fully outline the terms of the payday advance transaction. Members agree to disclose the cost of the service fee both as a dollar amount and as an annual percentage rate ("APR"). A member, in compliance with CFSA guidelines where they do not conflict with applicable federal, state or local requirements, will further ensure full disclosure by making rates clearly visible to customers before they enter into the transaction process.
2. **Compliance.** A member will comply with all applicable laws. A member will not charge a fee or rate for a payday advance that is not authorized by state or federal law.
3. **Truthful advertising.** A member will not advertise the payday advance service in any false, misleading, or deceptive manner, and will promote only the responsible use of the payday advance service.
4. **Encourage consumer responsibility.** A member will implement procedures to inform consumers of the intended use of the payday advance service. These procedures will include the placement of a "Customer Notice" on all marketing materials, including all television, print, radio and on-line advertising, direct mail and in-store promotional materials.
5. **Rollovers.** Members shall not allow customers to rollover a payday advance (the extension of an outstanding advance by payment of only a fee) unless expressly authorized by state law, but in such cases where authorized the member will limit rollovers to four (4) or the state limit, whichever is less.
6. **Right to rescind.** A member will give its customers the right to rescind, at no cost, a payday advance transaction on or before the close of the following business day.
7. **Appropriate collection practices.** A member must collect past due accounts in a professional, fair and lawful manner. A member will not use unlawful threats, intimidation, or harassment to collect accounts. CFSA believes that the collection limitations contained in the Fair Debt Collection Practices Act (FDCPA) should guide a member's practice in this area.
8. **No criminal action.** A member will not threaten or pursue criminal action against a customer as a result of the customer's check being returned unpaid or the customer's account not being paid.
9. **Enforcement.** A member will participate in self-policing of the industry. A member will be expected to report violations of these Best Practices to CFSA, which will investigate the matter and take appropriate action. Each member company agrees to maintain and post its own toll-free consumer hotline number in each of its outlets.
10. **Support balanced legislation.** A member will work with state legislators and regulators to support responsible legislation of the payday advance industry that incorporates these Best Practices.
11. **Extended Payment Plan*.** A member will comply with Best Practices "guidelines" for Extended Payment Plans, which provides customers who are unable to repay a payday advance according to their original contract, the option of repaying the advance over a longer period of time at no additional charge. A customer shall be allowed to utilize an Extended Payment Plan at least once in a 12-month period. A member will adequately disclose the availability of the Extended Payment Plan to its customers.
12. **Internet lending.** A member that offers payday advances through the Internet shall be licensed in each state where its payday advance customers reside and shall comply with the disclosure, rollover, rate, and other requirements imposed by each such state, unless such state does not require the lender to be licensed or to comply with such provisions, or the state licensing requirements and other applicable laws are preempted by federal law.
13. **Display of the CFSA Membership Seal.** A member company shall prominently display the CFSA Membership Seal in all stores to alert customers to the store's affiliation with the association and adherence to the association's Best Practices.

*State law in some states does not permit implementation of CFSA's Extended Payment Plan (EPP). CFSA is working with regulators in these states to obtain approval of CFSA's EPP and with legislators to promote its adoption.

Supplemental Guidelines for member company implementation of CFSA Best Practices are incorporated herein by reference and are available upon request.

North Dakota
Payday Lending & Indian Country



Legend

Locations of deferred presentment service providers who are licensed to provide payday loans.

Indian Country

Population Rank	City	Population	Licenses
1	Fargo	90,599	18
2	Bismarck	55,532	13
3	Grand Forks	49,321	10
4	Minot	36,567	11
5	Mandan	16,718	3
6	Dickinson	16,010	5
7	Jamestown	15,527	4
8	West Fargo	14,940	2
9	Williston	12,512	3
10	Wahpeton	8,586	1
11	Devils Lake	7,222	1
12	Valley City	6,826	1
13	Grafton	4,516	2
14	Beulah	3,152	1

Sources: North Dakota Department of Financial Institutions, 2000 U.S. Census, NationalAtlas.gov, Google Maps

CFSA
Community Financial Services Association of America
515 King Street, Suite 300, Alexandria, VA 22314-3137
Telephone (703) 684 1029 Fax (703) 684-1219

June 19, 2008

Hon. Byron Dorgan
Chairman
Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Hon. Lisa Murkowski
Vice Chair
Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Re: Supplemental testimony for record of June 5, 2008 hearing on lending in Indian Country

Dear Chairman Dorgan and Vice Chair Murkowski:

Thank you once again for extending to me and the Community Financial Services Association of America (CFSA) an opportunity to provide oral and written testimony at the above-described hearing. I found the discussion invigorating and I hope the Committee's interests were well-served.

As I reflected after the hearing on what was said by the some of the other witnesses, I realized there are some additional points I would like to have included in the record. It is my understanding, from your statement at the conclusion of the hearing, Mr. Chairman, that you have held the record open until today for additional written comments. Please include this letter in the record on behalf of the CFSA.

You Heard: ***Payday loan fees are exorbitant.***

The Facts: **Payday loans compare favorably to many consumer alternatives.**

Consider the fees:

$100 payday advance = $15[1]
Overdraft protection = $29[2]
Late fee on credit card bill = $37[3]
Bounced check and NSF/Merchant fee = $55[4]

For example, if customers overdraw their bank accounts by a single transaction, let alone multiple transactions, they pay on average $29 per transaction (even if the overdraft were as small as $1). If these customers instead take out a payday loan to cover those transactions, they would actually save money.

Consumers have a right to know all of the fees associated with a financial product so they can make informed financial decisions. CFSA's members are required to post fees in large type on posters in all store locations to ensure that customers know, in simple terms, exactly what the fees are before they enter into any transaction.

You Heard: ***A typical customer pays $793 for a $325 payday loan.***

The Facts: **This is a completely erroneous allegation.**

In most states (by law) a customer who borrows $325 will pay $48.75 at most in payday advance fees. To rack up a charge of $793, a customer must count the principal for only one loan but add the fees for nine loans -- an impossible scenario as state laws and CFSA Best Practices do not allow this. In fact, Veritec Solutions LLC, the company which supplied the data for the original Center for Responsible Lending report that included

---

[1] Community Financial Services Association of America

[2] *Annual Fee Survey,* Bankrate.com 2007

[3] *Credit Cards: Increased Complexity in Rates and Fees,* Government Accountability Office, 2006

[4] *Avg. NSF fee $28.23 (Bankrate.com, Fall 2007); Avg. merchant returned check fee $26.64 (2006 CFSA fee survey)*

this figure, has said in a white paper analysis that CRL misinterpreted the data in order to generate flawed conclusions. [5]

You Heard: ***99% of customers can't pay the loan back when due.***

The Facts: **There is simply no evidence to back up this allegation.**

It would be an irrational, bad business practice for payday lenders to fail to consider borrowers' ability to repay. All reputable payday lenders have underwriting criteria, including a requirement that a borrower have a steady income and checking account. State regulator reports show that more than 90 percent of payday advances are repaid when due.[6]

Under CFSA Best Practices, customers who cannot pay back their loan when due have the option of entering into an extended payment plan, allowing them to repay the loan over a period of additional weeks. This option is provided to customers for any reason and at no additional cost.

You Heard: ***If someone uses a payday advance five or more times a year, they are "trapped."***

The Facts: **The vast majority of Americans use payday advance responsibly and as intended for short-term use.**
A 2007 survey by the American Payroll Association found that sixty-seven percent of American employees are living paycheck to paycheck, a situation in which a family may be unable to absorb unexpected expenses without short-term loans.

Research shows that many people who bounce checks and use overdraft protection often do so at a higher frequency than the rate at which customers use payday loans. Based on the reasons customers choose payday advance, limiting their use would, in most cases, drive them to

---

[5] *White Paper Analysis,* Veritec, January 2007, http://www.cfsa.net/downloads/Veritec%20White%20Paper%20Analysis.pdf
[6] California Department of Corporations 2005 Annual Report; "Trends in Deferred Presentment," FL Office of Financial Regulation, August 2006; Virginia Bureau of Financial Institutions Annual 2005 Report.

more expensive and less desirable alternatives that they had previously tried to avoid.

You Heard: ***The annual percentage rates on payday loans should be capped.***

The Facts: **APR rate caps fit annualized loan terms, not two-week payday advances.**

Payday loans cannot be offered at the same annualized rates as credit cards, auto loans and home mortgages. While efforts to cap payday loans at 28% or 36% APR may sound reasonable, payday loans are two-week loans offered for a total fee of about $15 per $100 in amounts of just several hundred dollars.

The pricing structure of payday loans is reasonable and justified based on the costs to deliver the service. For example, Goodwill, a non-profit, tax-exempt charity, charges customers almost $10 per $100 borrowed (i.e., 252% APR) for their "Good Money" payday loan. For-profit payday lenders charge an average of $15 per $100 borrowed while also paying taxes, commercial-level employee salaries and health care, rent and overhead costs.

Thank you for this opportunity to supplement the record and respond to some of the statements made by other witnesses at this hearing.

I remain available to answer any questions you or the Committee might have for me and CFSA.

Sincerely,

Jamie Fulmer

The CHAIRMAN. Mr. Fulmer, thank you very much.

I thank all of the witnesses for their testimony. I think that, as I indicated when I started, I do not intend to, or the intention offered here is not to tarnish an industry, it is to evaluate whether there are predatory practices and whether certain groups and populations are targeted with certain practices that we should be concerned about.

Mr. Fulmer, you heard Ms. DeCoteau talk about borrowing $400, and ending up owing $1,400. We hear a lot of stories like that. How does that happen? Someone comes in, needs to borrow $100 or $200 or $300, ends up owing much, much more than they borrowed from the payday lender.

Mr. FULMER. Yes, sir. Well, I think with any credit product, there is a potential for consumers to mis-use the product. Certainly if a customer has an intent to mis-use or gets in a situation where they are grasping for straws and try to reach out to as many credit products as possible, they can get in a situation where they have not used the product responsibly.

Our industry trade association and our company goes to great lengths to make sure that customers, first of all, have all the information that they need to make a fully-informed decision about all applicable aspects of the transaction, and then use the product responsibly. Nobody benefits when a customer gets into a situation like Ms. DeCoteau described. It is bad for the customer, certainly, and it is a very real-world situation for them, but it is also bad for the lenders. We are fully aware that there are consumers, like with any other credit product, that do mis-use it. But we believe that our trade association's best practices address many of those issues.

The CHAIRMAN. Your trade association's best practices cover 60 percent of the industry?

Mr. FULMER. Yes.

The CHAIRMAN. Do you have some assessment of what the other 40 percent are doing?

Mr. FULMER. Well, the other 40 percent are certainly required to adhere to the individual State laws that we operate in. And so what we have done at the State level is worked with State legislatures to try to encourage them to adopt many of the practices that we have in our best practices into State law. So that would be the solution that we believe would be best for consumers.

The CHAIRMAN. Let me ask, as you know, there is a perception of payday lending that it is necessary in some cases, but really taking advantage of a lot of people. Let me give you some examples. Critics of your industry, the Center for Responsible Lending, Consumer Federation of America, National Consumer Law Center, and so on. The allegations that are made are that the industry seeks out customers with little access to cash, with an inability to pay the amount in a typical two-week loan, which then rolls over, and for example, a 28-day loan, a relatively small loan, you end up with a very, very large effective annual percentage rate, a cost that is applied to that loan.

Do you think that these organizations, as they view your industry, are viewing the 40 percent or viewing a portion of the 40 percent that are predatory? Why do you think this perception exists? Is it real, or is it just a perception that is wrong?

Mr. FULMER. Senator Dorgan, I can't answer that specifically. I do know that folks like the Center for Responsible Lending, whose sole purpose as it relates to the payday lending product are to see its elimination, are focused on providing information that they think will present this product in the worst light. We know from our conversations with customers and the polling we do internally to determine customer satisfaction that customers are overwhelmingly satisfied with the product that we offer and also the service that we provide.

We understand that there can be situations where customers mis-use this product. But the average customer who uses our product uses it between seven and eight times a year. They are typically in the product as a whole, during the course of their experience with us, on average about two years.

So we believe that the product we offer compares very favorably in price to many of the other alternatives and also in usage. We think the things that we have done to prevent repetitive use and excessive use of our product are somewhat unique to financial services products. I talked about the seven to eight times they use our product on average in a year. If a consumer writes a bad check, they are typically going to write on average about 13 bad checks in a year. So we believe we present a financial option to consumers, and that is why we go to great lengths to make sure they have all the information.

I would also finally point out that the term "rollover" that you mentioned is only an allowable transaction in, I believe, 11 States across the Country. There are 35 States now that have specific enabling legislation. So that is only a fraction of the States that allow this.

What we have seen at the State level is that States have been moving toward the implementation of things such as a data base that can track the loan limit, the number of loans that customers have outstanding at any one time. They have adopted reasonable cooling-off periods of a day or the next business day so that if a customer has to take out a payday advance and they would like to have another payday transaction, first of all, they have to pay off that transaction in full. Then second of all, they would have to wait at least until the next business day to take out that transaction, to prevent them from taking out a transaction that was not based on a rational decision.

The CHAIRMAN. I am not very familiar with the industry, as a matter of fact. But it seems to me if you have the same people coming seven or eight times in a year for their financial needs to a payday lending institution, borrowing $100, paying a $20 fee, seven or eight times a year, that particular class of population are ending up paying 400 or 500 percent interest on their money. If you are borrowing $100 for 14 days and paying $20 for it, and you do that repeatedly over the year, that particular group of borrowers are ending up paying the highest interest rates in the Country, by far. And it seems to me they are the least able people to be doing that.

Mr. FULMER. Senator, the only way you would end up paying that 400 percent APR is if you took out a $100 the first day of the year and you took out that same loan, that same $100, every two weeks for an entire year. That is how you get to a 391 percent APR. In fact, many of the States that have a cooling-off period, it is actually physically impossible, with the cooling-off period, to get that high. And that is certainly not representative of the normal use of our product. That is a very small percentage of our customers who use the product excessively like that.

So we understand that there are situations where customers get into a situation where they are in over their heads. That is why we have adopted many of the practices that we have adopted, and that is why we have advocated their adoption at the State level.

The CHAIRMAN. But if you borrow $100 for a year and it costs you $20, that is 20 percent, right? A 20 percent APR for the year?

Mr. FULMER. Right.

The CHAIRMAN. If you borrow $100 and pay 20 percent for two weeks, that is a vastly different interest rate.

Let me ask Mr. Brokke, you heard the testimony. You say that you are president of a credit union, you have put together some impressive programs to reach out to this group of Americans. You exist and live and work in an area where there are payday lenders near an Indian reservation in Devils Lake, North Dakota.

Tell me, you of course are a competitor in a way of payday lending, is that correct? Do you view yourself as a competitor of the payday lenders?

Mr. BROKKE. Probably more so an alternative than a competitor.

The CHAIRMAN. Your assessment of what I have just described with respect to interest rates, what kind of charge or interest rate must you impose in order to offset the risk and in order to involve yourself with responsible lending to those folks at the lower end of the income level?

Mr. BROKKE. Mr. Chairman, of course, loan administration costs are quite expensive. It takes a fair amount of that interest rate to service the loan, to put it on the books, to meet disclosure requirements. There are a lot of costs involved.

Our interest rates are all based on a simple interest rate, 365 day basis. Of course, when you add the fees in there, if there should be any, the rate would increase considerably.

The CHAIRMAN. Mr. Brokke, let's say if I wanted to come to your credit union and borrow $250, because I had a financial need, and I don't have a lot of money. I have a job and I have a pay stub, and I have a checkbook that I can show you. But, I need $250 for something that is urgent and I need to borrow the money. I come to your credit union. Are you interested in dealing with me?

Mr. BROKKE. Yes, certainly, we are.

The CHAIRMAN. All right. Let me ask you this. I don't go to your credit union. I go to a bank in Devils Lake, I go to a bank in Denver or Salt Lake City. Is the bank in most cases, based on your knowledge of banking, are they going to be very interested in loaning me $250?

Mr. BROKKE. I really couldn't speak to that. My whole career has been with the credit union.

The CHAIRMAN. Ms. Gambrell, can you speak to that? I will tell you why I ask the question. My understanding is, there are a whole lot of banks in this Country. You show up and want to get a $225 loan. They are going to say, take a hike, we are not very interested in processing a $225 loan. The cost of processing exceeds, et cetera, and we are just not very interested in dealing with you. Is that the case?

Ms. GAMBRELL. I don't work at a regulatory agency any longer, but I will give you two observations. One, I think this is one of the reasons why the Native Community Development Financial Institutions play such an important role, because they are able to offer affordable, short-term, small dollar loans through a number of products and services that they provide to their community members.

The CHAIRMAN. And I like that program, that is a good program. But I am asking a different question. I am asking a question about whether that program is necessary, because you can't go, in most cases, to most banks in this Country and say, you know, I am a customer here, I am going to be a new customer, and I need a loan. They say, how big, well, $225, what are they going to do to you?

Ms. GAMBRELL. Well, Mr. Chairman, like Mr. Brokke, we serve as an alternative. We serve as a good alternative. I think what you find with large institutions is that many will say that the cost of that loan is too small for them to put that kind of effort in.

However, I will say that there have been some recent efforts by some of the bank regulatory agencies, including the Federal Deposit Insurance Corporation, that has a pilot underway now, looking at affordable, short-term, small dollar loans. Because I think there is recognition that the banks need to do more in this area, and that there are some options that they need to explore in providing those kinds of loan products, especially to low and moderate income communities.

The CHAIRMAN. Ms. DeCoteau?

Ms. DECOTEAU. I just want to say that I can speak to not being able to get a personal loan at a local bank. I have had that experience many times on the reservation for a number of reasons, loans ranging from maybe $300 to $700. I was never granted one, even though I had a good income, my husband had a good income, we were masters degree graduates. I didn't quite get it at the time, but this is really opening my eyes, too.

I think what this speaks to is the need for alternatives, for low interest alternatives that will help rebuild credit, that will keep people—I quit going to those banks, by the way. I think people do. But my alternative was that I did have an income and I did just finally save enough money. But people who don't have the masters degrees that we had don't always have that option, they just have to go find another source. So what we need to do is create those alternative sources.

The CHAIRMAN. Ms. DeCoteau, you raised another question this morning that I think we will look into. I don't know the answer to this, but you suggested that if someone has an address on an Indian reservation or a zip code on an Indian reservation, that there are some financial institutions that decide you are in a different category with regard to interest rates. Is that what you were suggesting?

Ms. DECOTEAU. Absolutely. And this came right from the mouth of the U.S. Attorney, and I am sure he would tell anybody that story. He has said to me, in fact, please tell my story.

The CHAIRMAN. Is that in writing in your testimony?

Ms. DECOTEAU. It is in our written testimony.

I might also point out that the Turtle Mountain State Bank just opened on our reservation.

The CHAIRMAN. That is Indian-owned?

Ms. DECOTEAU. That is Indian-owned, and one of the principals of that bank, Mr. Ken Davis, was quoted in a newspaper story saying that too often, Native Americans can't get bank loans off the reservation . That was part of the incentive for opening the bank. He said that if it is for a business, off-reservation banks want to loan that money off-reservation, they want to see you start that business off the reservation, not on the reservation. So they are looking after their own community financial interests.

The CHAIRMAN. Mr. Allen, the Congress took action dealing with the payday lending that the Congress believed was targeting military bases, soldiers on military bases. Congress saw a number of reports that suggested that was the case. Mr. Fulmer, of course, indicated his industry objects to and does not like that legislation. Nonetheless, it is now the law.

Let me ask your perspective. You represent a national organization. Your perspective of payday lending, and its relationship to Indian reservations. The origin of this hearing came about as a result of Senator Domenici asking us to take a look at what was happening surrounding Indian reservations, particularly in New Mexico, and especially Gallup, New Mexico. He observed such a large number of payday lenders and asked us to look into it. So we began to do that, and that is the origin of deciding to do a hearing.

Give me your perspective of payday lending generally with respect to the targeting of Indian reservations and your analysis of the determination of whether this is difficult for reservations, or whether it is an asset. Some would say it is an asset. If you don't have payday lenders, those who cannot get funding from any other area are going to lose a source of funding. Others say that it puts people in a pretty difficult situation, paying these rates and rollovers and so on, they get stuck in a web of credit difficulties. Give me your perspective of that.

Mr. ALLEN. Thank you, Mr. Chairman. First of all, there is a need, there is no question that throughout our communities, we have a sector of our tribal citizens who need these very short-term loans, just to deal with day to day issues. There is a whole, large variety of experiences and reasons that they need it. There is a need to provide some sort of guidelines or controls, similar to the State guidelines that Mr. Fulmer had addressed that are in many States, so that it prevents spiraling situations where a tribe, an Indian trial citizen borrows money and then all of a sudden ends up with an exorbitant amount of money that they owe, just for a simple, little day to day expense or crisis.

We believe that there is a need, and there is a need on the reservation. Without a doubt, the majority of these non-banking lenders, particularly, are around the reservation, not on the reservation. We believe there is a need to develop these kinds of alternatives on the reservation. That is the tribal jurisdiction issue that we referenced.

It does need to be a balance in terms of whether it is interest rates or whether it is fees, in order to provide the economic incentive for the institution to do business on a reservation. So it is a balance of protecting the citizen and of providing the right kind of incentive for the industry.

The military example, we are not sure, did it work or not work. We believe that we should examine whether or not it did cause more problems than the problems that it was trying to solve. So our agenda really is that competition is going to improve the situation for our tribal citizens, and as Ms. Gambrell had addressed, the fiscal literacy issue is a big ticket item in conjunction with the service. So we need the service in our communities.

The alternative that Mr. Brokke addressed, I don't know exactly if that serves it well or not. Credit unions usually need liens against some asset, whether it is a car or house or whatever it might be. So whether or not they have an alternative program that serves it or not, I don't know. We would certainly want to explore whether or not they can come onto the reservation or near the reservation and become an alternative and to improve the competitiveness that still protects the interest of the tribal citizens.

The issue for us is, we need to examine this real closely before the Congress decides on establishing any laws and/or regulations that would address this issue. I can assure you there is a need, there is a need for this service, there is a need for the parameters of controlling the industry so that we can move this agenda forward.

Our perspective, as a national organization, we advocate on behalf of the tribes' authority as a government. So we would like to see more on the reservation, we would like to see those kinds of controls authorized for the tribal government. But we also want to make sure that we increase the competition and the protection for the tribal citizens who get themselves into these precarious situations.

The CHAIRMAN. Mr. Barkley, you indicate that your program on your reservation that incentivizes savings and provides a match, I think you said it was a four to one or five to one match.

Mr. BARKLEY. Three to one and a five to one. There are two different programs.

The CHAIRMAN. Right. As a result, you got involved in that program, and you now have a three-bedroom home, two bathrooms, a deck, two-car garage, fenced yard, one acre of trust land and a view of the Blue Mountains, is that correct?

Mr. BARKLEY. Yes, sir.

The CHAIRMAN. That is a pretty good deal, isn't it?

Mr. BARKLEY. It doesn't get better.

The CHAIRMAN. Congratulations to you.

Let me ask you, how does the tribe fund the match? Three to one, five to one? Tell me the mechanism of that funding.

Mr. BARKLEY. The tribes are able to help leverage some of those dollars in helping with this program. We also use some other resources to help with this program. And we bring in local experts, CPAs and bank lenders in to help conduct those classes.

The CHAIRMAN. In many ways, that relates to the literacy issues Ms. Gambrell is talking about and Mr. Allen was just talking about, and Ms. DeCoteau. It sounds to me like a really interesting program. The key to it, of course, is to have the funding, to find the funding stream to be able to match in order to incentivize people to decide they wish to begin this savings process. But what it has done for you is quite extraordinary.

Mr. BARKLEY. Just one example, and probably one of the more positive attributes of that program that I see is that there are a lot of younger people who are taking advantage of this service, particularly my own son and daughter, who are going through this program. It is going to benefit them.

The CHAIRMAN. Mr. Fulmer, let me try to understand once again. My own sense it that here is some predatory lending going on. You represent an organization that develops best practices, perhaps enforces best practices or attempts to enforce them, with 60 percent of an industry. The other 40 percent is not part of your organization. But let's assume for the moment that a small percentage of it, 10 percent or 5 percent or the remaining 40 percent are predators, and there are some. What do we do about that? Because you don't want that, if your industry is an industry that you feel is necessary for people to access some short-term loans that could not otherwise access them in other circumstances, you I assume want to try to shut down predatory practices. What are you doing to shut it down and how extensive do you think those practices are?

Mr. FULMER. Senator, I agree with you, certainly this industry is not unique, there are some bad apples in this industry. It is difficult for those of us who are responsible lenders to take the heat for those that are not.

Being regulated in the 35 States that we operate in, even though they may not be members of the Association and may not adhere to the industry trade association's best practices, they still operate under State law, they are still regularly audited by the State agency's oversight, who have responsibility for oversight. They still can have enforcement actions taken against them if consumers have felt like they have been abused, so that they do complain to the State agencies.

I think many of the products we talked about here today on the panel that are competitive product of the payday lending product are all great products. I think there needs to be more products in the competitive marketplace, not fewer. That is what the independent research speaks to. We think that our customer who uses our product is a price-savvy customer. If there was an alternative that was better for them in the marketplace, that was less expensive, and met their requirements at that given time, they would be going to that provider.

So we think that it is important to have as many options as possible, as many regulated options as possible and have those options enforced by the relative States that we operate in. We think that is ultimately good for consumers and it is also good for the providers of that product.

The CHAIRMAN. One point that has been raised that I want to address for a moment is this issue of refund anticipation loans. I think that there certainly is some indication that there is a push to get people come in, do your income tax and pay a pretty substantial amount for a refund anticipation loan. That comes back in some ways to this issue of financial information and awareness and financial education again. I think the high number of people who are signing up for these and therefore losing a part, a significant part of their tax refund, they are doing it because they need the cash now, they need money. So they sign up, but the result is they sacrifice, in my judgment, too high a payment for that service. We are going to take a look at that as well. I suspect that there is a substantial amount of selling that is going on in connection with the preparation of the tax return.

This Committee wanted today to just have an open discussion about payday loans and payday lending and predatory lending, and try to get a sense of what is happening out there. We have had some discussions about what is happening around military bases. But we have not had that similar discussion with respect to Indian reservations. This is just a broad brush and a first opportunity to take a look at what is happening.

I appreciate very much information that has been brought to us by you. What we would like to do is keep the hearing record open for 14 days, and ask that if there are those who wish to submit information to complete this hearing record, they do so within the 14-day period. Then Senator Murkowski, I and other Committee members will be reviewing this. I expect this issue, to the extent that we would move to do something on this issue, and that is not certain, we want to try to understand what we are dealing with, but I expect this is one of those issues we will continue to look at in the remainder of this Congress and then moving into the next Congress as well.

I want to thank all of the witnesses for their preparation to be here this morning. Some of you have traveled some long distance to be here, and you have described a number of different approaches and programs and efforts to deal with these issues. Mr. Fulmer, thank you for telling us about your industry.

As I indicated when I started, I really think there is some predatory lending going on. I think it is pretty hard to drive down some streets, and I have driven down those streets in some American cities, and take a look at those big old signs in bright red and yellow and blue that say, get in here and get yourself some quick cash. Pretty hard to take a look at that and not believe there are some people trying to suck money out of some people's pocketbooks in an untoward way.

On the other hand, as I indicated when I started this, there will always be a place for short-term lending, provided it is properly regulated and done by people who are responsible. Ms. DeCoteau, did you have a concluding remark?

Ms. DECOTEAU. I actually do. I am a little bit tardy in my response, but I just wanted to point out that the problem is with the product design, in that while most people do use those products responsibly, but 90 percent of the revenue generated in the payday lending industry comes from borrowers who are trapped in a cycle of payday loans and they take five or more loans per year. So while 60 percent of the industry may say they are acting responsibly, they are offering a loan product that obviously vulnerable people can't handle.

So they need to be redesigned.

The CHAIRMAN. That is the very point that Mr. Fulmer was making, that in fact he was citing that as an asset, he was citing as an asset the fact that people come back six or seven times a year. I am not clear that is an asset, it seems to me, I have always thought of payday lending as a circumstance where somebody, on a rare occasion, needs some short-term cash. My understanding is that only about 10 percent of the lending at payday lenders is to someone who uses it once a year.

Mr. ALLEN. Senator, if I might. One of the problems is, a tribal citizen may not just go back to the same lender, they may go to multiple lenders, and they don't know about the practice. So if there is a State condition or law that requires a clearinghouse, a repository, so if a person comes in for a loan, the loaner can find out, based on their data system, that this person now has a half a dozen more from other lenders, that is a problem. So it prevents them from getting into those kind of multiple borrowing situations, where one lender doesn't know what another lender is doing.

The CHAIRMAN. I want to ask a final question here. Wouldn't it be better for someone who is using, on a more routine basis, five, six, eight times a year, a payday lending institution which is charging $20 every time they borrow $100, or $15 every time they borrow $100, wouldn't it be better for that particular borrower to be accessing some other kind of lending institution at a much, much lower cost?

Mr. FULMER. Yes, Senator Dorgan, it may very well be better for that consumer. I think that is part of what we try to do, is encourage responsible use of our product. If consumers are needing a payday loan for a longer term financial solution, the payday loan may not be the best alternative for them. It is the same argument that you wouldn't take a cab across country, but you might take it across town.

I don't want to leave you with the impression that I think a customer who uses our product five or seven or eight times is an asset for anybody. I think what I was trying to point out is that we want to be available for that customer when they have a need. It doesn't always fit into a cookie cutter approach. It may be that between seven and eight times a year, they may have a short-term financial need that they want to take care of very quickly, they want to keep it out in front of them, they don't want to use their credit card, they don't want to turn to one of these other alternatives. We believe more options, not fewer, is better for the consumer. We think that certainly our option is one that should be considered for consumers who have a short-term financial need, and they ought to carefully evaluate the cost associated with our product and then make the decision that they think is best for them and their families.

The CHAIRMAN. And our interest is, are certain kinds of people being targeted, targeted in a way that entices them to come in and pay higher rates than they otherwise would if they were qualified and capable of using other kinds of banking enterprises or lending alternatives. We will look at all of these issues.

Ms. Gambrell?

Ms. GAMBRELL. Chairman Dorgan, if I may, just as a last remark, I think certainly for us, from the Treasury Department, the CDFI Fund works with Native CDFIs that in fact have been very aggressive in reaching out to Indian populations to make sure that folks who are in vulnerable situations are not further preyed upon by offering those products that are affordable, short-term, small dollar loans. So I think that is an important point to continue to focus on, is the work that they do.

If I may just go back and respond to something you had asked me earlier about the banks and whether or not they can provide those kind of short-term dollar loans, there is a bigger issue here. I think in 2001, the CDFI Fund did a study that looked at the 17 barriers to Indian Country in particular. One of the primary obstacles to actually access to credit, especially in Indian Country, is that there was a lack of traditional financial institutions even in or near those locales. So I think that is an even larger issue in terms of asking what role financial institutions can and should play in providing those services.

The CHAIRMAN. You are right, and I made that point in my opening statement, that many Native Americans living on reservations do not live anywhere near a lending institution. But it is also the case that many lending institutions, particularly many banks, are not very interested in a customer that wants to borrow $300. They don't want to deal with it. The processing costs of the loan, in many cases, would have them saying, you know what, you will have to go elsewhere. In fact, the credit unions, by reputation, are supposed to be institutions of small borrowers and small savers. That is the origin of the credit union movement, in my judgment.

I think all of these things together represent a whole series of questions about lending, about access to financial services, about education for consumers and about the issue of, is there predatory lending going on and if so, what do we do about that.

I appreciate again the testimony of all of you. This hearing is adjourned.

[Whereupon, at 11 a.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF PATRICIA CIRILLO, PH.D., PRESIDENT, CYPRESS RESEARCH GROUP

Introduction

Good morning. My name is Patricia Cirillo, and I am president of Cypress Research Group, a statistical research consulting firm in Shaker Heights, Ohio.

Thank you for the opportunity to address the issue of payday lending, and specifically, the scientific merit of a recent report by the First Nations Development Institute entitled "Borrowing Trouble: Predatory Lending in Native American Communities."

I have been a statistical analyst for 20 years, and I work in numerous consumer and business-to-business industries. My areas of focus include public education, arts and culture, and financial services.

I have obtained a detailed understanding of the "payday" borrower through my and my colleagues' research during the past four years, where my work has included interviews with over 10,000 payday borrowers.

While there are now numerous studies which look at aggregate data of the payday loan industry (e.g., transaction data; Census Bureau demographic statistics; store location data) my work is distinctive in that I study the users of payday loans directly. The only other researcher I know of doing primary data collection of the payday loan market is Dr. Gregory Ellihausen at George Washington University.

In sum, we gain our views about the industry via the opinions, understandings, and actions of payday borrowers themselves. We are agnostic regarding whether or not payday loans are "good" or "bad." Instead we rely on the wisdom of the consumer, collectively known as the "market," to teach us how the industry should be regulated and how the industry can best serve this unique set of consumers.

Our understanding of the payday loan customer is fairly extensive. He or she is typically lower–middle income (more than half have annual incomes between $25,000 and $50,000), 35–40 years of age, employed, banked, with children in the household. Payday borrowers own their homes at half the level of the average American (one-third compared to two-thirds). They are educated at roughly the same levels of the general U.S. adult population.

Payday borrowers are extremely clear and consistent about why they obtain a payday loan: they needed cash for some unexpected expense, and a payday loan was their best (least expensive) option at the time. And this very, very important understanding is almost always left out of the debate over payday lending: borrowers choose a payday loan because it is their cheapest, and sometimes also their most convenient option. Many (about half) of the payday borrowers could opt (and sometimes they do if it is the less expensive option) to allow one or more checks to "bounce" that month, thereby invoking overdraft protection.

Alternatively, most have the option of delaying the payment of routine bills that month, thereby incurring the late fees associated with that choice, or risking damage to their credit rating.

Another common choice is credit card cash advances, although only about one in five payday borrowers have available credit on their credit cards and many express a dislike for using their credit cards at all because of the potential for revolving debt, which can grow far larger than the debt associated with a $300–$400 payday loan. A fourth option is obtaining a payday loan over the Internet, which is typically *more costly* than a storefront payday loan.

Faulty Data Points

With specific regard to the report on predatory lending in Native American communities, let me begin by first offering this summary of the First Nations study:

The First Nations paper purports to analyze information regarding what it calls the practice of "predatory lending" in Native American communities throughout the U.S. by grouping five different lending products under the category of "predatory":

tax refund loans, payday loans, pawn shop transactions, car title loans, and mortgage loans with high rates/fees.

In reaching its sweeping conclusions, the First Nations paper relies on two faulty data points rather than a broad, in-depth study that the broader scientific community would find acceptable:

- First, the paper relies on informal, survey data drawn from attendees at a May 2007 conference of the National American Indian Housing Council. Housing officials were asked their *opinions* about types of predatory lending in their communities.
- Second, the paper relies on analysis from a research paper [1] which examined the relationship between payday lending store locations and Christian political power. This paper references misleading map data of payday lending locations to American Indian Land which I will discuss in more detail shortly.

Scientific Shortcomings

These two data points, as offered by the First Nation's report, present serious scientific shortcomings which undermine the credibility of the study and definitely call into question the conclusions that are drawn, for the following reasons:

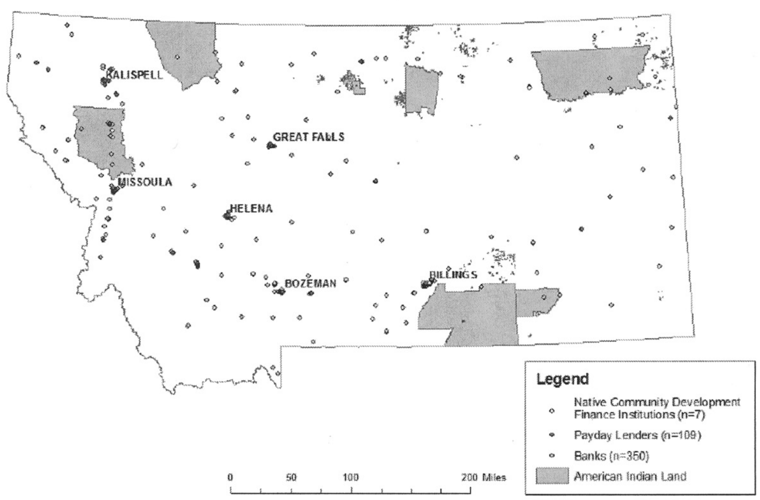
- First, an opinion survey of attendees at a *housing* conference lacks the specificity needed to properly evaluate the impact of *payday lending* in a community. Payday loans have little to do with the housing market. The opinion survey assembled anecdotal hearsay from housing representatives unlikely to have experience with payday lending markets (i.e., providers and consumers).
- Second, the study's premise that store location is a sole indication of "targeting" ethnic minorities is faulty at its very core. *All* retail establishments locate where their potential customers are. The payday loan industry is no different—with lenders locating in population centers, convenient locations where customers live, work and shop. Race and ethnicity (and of course, religion) are irrelevant. The need to borrow small amounts of cash and the ability to pay it back (which lenders need in order to survive) are associated with one and only one consumer indicator: economic status. Those with too low incomes cannot typically pay back a loan, and are therefore too risky for any lender. Those with higher-than-average incomes are likely to have access to emergency cash via other, more "mass produced" sources of credit (e.g., credit cards), so locating near them is unlikely to produce enough volume to keep the light bill paid. Targeting *any* racial or ethnic group provides absolutely no business value to payday lenders. Any relationship of store location and racial/ethnic composition of customers is simply coincident; economic status matters (need for the loan and ability to repay it); race/ethnicity does not.
- Third, the report itself does not support its own conclusions that payday loan stores are concentrated near American Indian land. The maps in the report demonstrate conclusively that the allegations of "locating near Native American lands" are without foundation in fact. The report itself states, "These maps do not provide visual evidence that payday lenders have concentrated their services near Indian lands . . ." (page 6). In fact, the visual evidence in this report confirms that payday lenders are located in population centers convenient to where customers live, work and shop.
- Fourth, *if* the payday loan industry were "targeting" American Indians, store location maps would look very different than what is shown in this report (see below) and the industry's marketing, advertising, and product design would support the "targeting" of Native Americans. There is absolutely no support, at all, for this allegation.

Below appears a sample map of Montana copied from the First Nations report. It shows very clearly that payday lenders locate, with few exceptions, near population centers and not near American Indian land.

[1] Graves & Peterson, pending 2008.

Map 1

Payday Lenders and Bank Branches in Montana



Factual Errors

Mr. Chairman, in addition to the faulty data points included in the report, the paper also includes several false factual assertions about the payday lending service and the customers who use it. These factual errors further call into question the reliability of the conclusions drawn by the First Nations study. Those factual errors include the following:

- *Report myth #1:* Payday lending customers are not part of the mainstream financial services.

  Fact: 100 percent of payday lending customers have a checking account with a bank or credit union. Each customer must have a regular paycheck or other form of steady income. These are the basic requirements for obtaining a payday advance. It is an attractive notion to assume that payday lenders *must* be outrageously profitable—why else would there be so many concentrated in certain areas? In that same light, it is tempting to conclude that payday lenders *must* be duping their customers—why else would consumers agree to such high fees?

  The answers to both of these questions can easily be explained simply by listening to the consumers of these loans themselves—the cost of both bounced checks and late bill fees has tripled in the past ten years. Consumers who previously relied on those options to get through a financially stretched month now sometimes prefer a different option—payday loans—simply because, for that particular month, they were the best choice.

  Payday loan stores are very small stores—on average they employ only 3–4 people. Customers want privacy and quick service; they prefer a small private setting to obtain a payday loan; hence, this is exactly how payday loan stores are structured and organized. The market prefers and therefore supports a "cluster" of small, separate stores, as opposed to a single, large, bustling store lined with customers. This is more the business model for the opt-referenced comparison industry of fast food chains. It is estimated that approximately 5 percent of U.S. adults have obtained a payday loan, while a good guess of the number of U.S. adults who have eaten in a fast food restaurant is closer to 100 percent.

- *Report myth #2:* Payday loans are predatory.

  Fact: The term "predatory lending" is often used incorrectly to describe subprime financial services, including payday advances. The definition of "predatory lending" is unclear, but even when looking at the range of definitions available, payday loans do not meet the criteria of "predatory lending." "Defining and Detecting Predatory Lending," a study by Donald P. Morgan, Research Officer, Federal Reserve Bank of New York, concludes that payday loans do not fit the definition of predatory because they are not a "welfare reducing" form of credit. To the contrary, the author suggests that payday lenders enhance the welfare of households by increasing the supply of credit.

- *Report myth #3:* Payday loans compound rapidly.

  Fact: Payday loans do not compound rapidly. Payday advances are small, unsecured, short-term loans, usually due on the borrower's next payday. The average loan is $300 and the typical fee is $15 per $100 borrowed. In fact, payday loans do not compound at all. Under CFSA's *Best Practices,* any customer who cannot payback their loan when due has the option of entering into an extended payment plan, allowing them to repay the loan over a period of additional weeks. This option is provided to customers for any reason and at no additional cost. Numerous accounting and financial studies have shown that, factoring in all of the costs associated with short-term, unsecured, small-value lending, payday lenders' profits are similar to other small-scale retail establishments. Payday lenders which are publicly traded show profit levels right "in the middle" of more mainstream retail financial institutions. In a nutshell, providing such loans is expensive; unfortunately, administering a $350 loan costs about the same as a $10,000 loan in terms of man-hours. Proportionately, the fees associated with payday lending then seem very high.

  The issue of high rates is the most common criticism of the payday loan product in its current form. Expressing the cost of a payday loan in A.P.R. is inflammatory and a useful tool for critics of the industry; even users of payday loans cringe when they are reminded of the A.P.R. of a payday loan they obtained and were perfectly happy about. What is more important, I believe, is to compare the relative costs of a payday loan to the particular options available to consumers; there is no doubt that, in many cases, a payday loan is the most cost effective alternative (assuming the cash is being obtained for a non-frivolous reason, which it almost always is).

  A triple-digit A.P.R. elicits a strong negative reaction from everyone, and rightly so. But the cost of payday loans expressed as an A.P.R. simply is not reflective of consumers' experiences. Very, very, very few payday borrowers obtain a payday loan every two weeks for an entire year, which is what is necessary for a loan to have, in effect, a 400 percent interest rate. While it is indeed typical for payday borrowers to obtain several loans (7–9) in a year, these loans are mostly "spread out" over the year, with some clustering of 2–3 loans within a short period, suggesting that the A.P.R. is not a good indicator of the cost of the loans. Alternatively, consumers use the "$ per $100" rate in order to make their purchase decisions. Their other options are *not* typically expressed in A.P.R. (bounced check fees are not, nor are late bill fees); therefore, A.P.R. does not help the consumer make an apples-to-apples comparison in the case of very short-term loans.

- *Report myth #4:* Tribal credit unions can offer cheaper alternatives to payday loans.

  Fact: The report calls on Indian tribes to offer financial literacy programs and develop payday lending alternatives, both consumer-friendly suggestions. We caution, however, that the payday loan products now offered by banks and credit unions differ a great deal from payday loans offered by CFSA members. Not only do banks and credit unions have stricter requirements on who qualifies for payday loan alternatives (typically only existing members of credit unions, or bank customers with direct deposit who have strong credit scores, are offered payday loans), they do not take on the default risk as do the industry's payday lenders.

Summary

Mr. Chairman, consumers benefit when competition is alive and well in markets. Competition encourages innovation to improve services, lower cost, and increase access to consumers. The storefront payday loan was, in itself, an innovation a couple of decades ago, in response to a real need in the community. Eliminating access to that choice will not improve the consumers' situation; limiting choice suppresses innovation by discouraging competition. Eliminating access will do nothing to impact demand; my studies and others have shown that when storefront lending is eliminated as a choice for consumers, they simply "substitute" another product: bounced checks increase; late bill payments increase; Internet payday borrowing increases.

What consumers need is vigorous enforcement of laws which ensure that they are fully informed of the real cost of all of their options. We don't want consumers to choose a payday loan when, in fact, being late on a utility bill is a better choice for that month. We don't want consumers to choose to bounce 5 checks if the resultant $175 in overdraft fees could have been avoided with a $45 payday loan. We don't want consumers to elect to be chronically late on a bill which will unknowingly damage their credit rating, thereby decreasing their access to credit even further. We want them to be fully aware of all of their options, their real costs, and the consequences (short-term and long-term) of each of their choices. Eliminating one of the choices with the hopes of suppressing demand is ineffective and probably harmful. Communication, in as many forms as possible, is what will best serve the customer.

We can all agree that, for some consumers, a payday loan turns out to be a bad choice. Research suggests that is about 10 percent of payday borrowers, as indicated by their inability to pay back the principle of the loan easily within the term of the loan. The industry's response to this is to offer extended payment plans for that particular consumer. Good public policy will ensure that extended payment plans are built into the regulation of payday loans, but not to a point where consumers have little incentive to pay back their loans on time under any circumstances. In sum, at a certain point it is clear that a minority of payday borrowers are "in trouble," and the industry and regulators should ensure a "safety net" for those consumers.

This concludes my review challenging the findings of the First Nation's Development Institute study. It is my professional opinion that this paper combines faulty data points along with numerous factually inaccurate assertions providing a misleading picture of the payday loan industry. I would caution you and the Members of this Committee from basing any conclusions derived from the findings of this report.

Thank you for your time and attention.

PREPARED STATEMENT OF THE UMATILLA RESERVATION HOUSING AUTHORITY STAFF

Mr. Chairman, and members of the Committee, we are the Umatilla Reservation Housing Authority (URHA)[1] of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR).[2] We wanted to provide a little information about what Umatilla is doing to combat predatory lending on our reservation.

I. History

URHA developed the six-week Wapayatat (meaning to learn): Financial and Homeownership series integrated with the Individual Development Accounts (IDA) savings-match concept in 2001. Umatilla developed and implemented the legal infrastructure to begin lending on the reservation prior to executing mortgages, but in the meantime the next course of action was to provide the tools to community members on how to save and budget with a long-term goal to assist families in gaining assets and building wealth. The program created down payment assistance as an IDA 3:1 match and later developed a Umatilla Builds IDA 5:1 match for site development costs due to the tribal trust land complexities on the rural reservation.

Although the initial goal was to help move families into a 30-year mortgage, the financial literacy portion needed to be the most critical objective to achieving home ownership. The program assisted nearly one-third of the community population and identified a variety of challenges that was not only unique to Indian country, but prevalent in nearly any community such as high interest rate car loans, high interest credit card debt often with high credit card balances, lack of credit or no credit, no assets, subsidized housing (rentals or HUD lease-to-own housing) into mortgages, fear of or bad relationships with lenders, racial barriers, no savings or budget plan and changing mindsets from a perception of free housing.

Umatilla adopted the Building Native Communities curriculum and tailored it to the community needs. Umatilla partnered with community stakeholders such as lenders, credit counseling, CPA's, attorney's, small business, economic development, and other expertise to help members understand how to be in financial control.

[1] http://www.urhousing.org
[2] http://www.umatilla.nsn.us

Nearly 1,500 Native Americans[3] reside on the reservation in which CTUIR currently owns approximately 174,000 acres of checker-boarded reservation land. The housing needs are dismal with nearly 230 rentals and 150 lease-to-own HUD housing developed since the late 1960s.

II. Importance

Financial education is important to Umatilla, because it allows the people to invest in the future, it creates a stronger-governance, it builds a healthy nation and the people have better control over their destiny including the ability to buy homes and pay their own bills.

III. Obstacles

Umatilla faces many challenges as is a common thread throughout Indian County today. As Oregon's only Tribal rural checker-boarded reservation out of nine federally recognized Tribes in the state there lies a fury of tribal trust land complexities, Bureau of Indian Affairs (BIA) oversight of the land and long waiting lists for title status reports, generational poverty issues, the ability to move families from subsidized housing into a 30-year mortgage, first-generation and first-time homeownership and the list goes on.

As many Tribes face, there is a quixotic perception that Indian Tribes have a lot of money. Umatilla received $85,000 in 2008 to build housing. Indian Housing Authorities relied heavily on federal funding formerly known as the 1937 Housing Act. When the Housing Urban Development (HUD) revamped the program in 1996 and called the funding Native American Housing and Self-Determination Act (NAHASDA), the funding decreased and the needs continue to be unmet. Poverty is still prevalent, but as Tribes focus on diversifying economic development on the reservation the ability to earmark dollars for the social need will take time. These efforts have only occurred over the past ten years. Tribal families have been able to increase incomes through new employment, which no longer meet the income restrictions through federal funding. This is also a success, but requires ongoing education to understand why there is no funding to build fair market rate rentals or development for those who no longer meet under the 80 percent median income levels. Next, Indian Housing Authorities face the daunting task to rehabilitate existing housing stock built as far back as the late 1960s. IHA's are finding mold and mildew problems, subflooring, roof repairs and the list of repairs go on. In most cases, NAHASDA funds can barely meet these needs. IHA's face a long list of responsibilities from administration, financial oversight, management, operations, crime prevention and the ability to create safe neighborhoods. Umatilla not only works on protecting families from predatory lenders, but is also responsible for compliance and management of the housing authority and providing services to the community.

IV. Successes

Nearly 400 individuals have participated in the classes, which has been an amazing feat for Umatilla. In lieu of the myriad obstacles and challenges, Umatilla continues to persevere and work at helping families become self-reliant. Umatilla's mission statement is to provide quality, community housing services and empower self-sufficient living for future generations. Umatilla wants to learn from the past and work on building communities to last generations.[4]

Pay day loan venues, rent-to-own vendors and shady car dealers were taking advantage of people's lack of financial education, but through education and extensive counseling, participants were learning so much more. Extensive budget counseling identified nearly 75 percent of class participants with maxed out credit cards who were paying late fees and high interest rates exceeding 28 percent or more. "We were paying 14.95 percent interest and now we are paying 7.5 percent interest rate after getting pre-approved," remarked one class participant. Another member shared, "I learned about buying a home, but also about interest rates, car buying and unnecessary spending habits." Keeping in mind, predatory lenders are sometimes the only hope for families because they have nowhere else to turn. Wapayatat provides individuals the tools to understand the process and the fees attached to borrowing money from any lender. Umatilla partnered with the local Legal Aid office and worked with the Attorney General's office to present material on how to understand what predatory lending is about and how much it costs.

"Indian people weren't put here to be business people, in real estate, or even own businesses. They only knew one thing and that was to live off the land, the only

[3] 1,200 enrolled Umatilla Tribal Members; 300 Other Native Americans according to CTUIR enrollment data.

[4] Umatilla adopted new slogan called "Building communities to last generations."

way we knew how since the beginning of time. During the Great Depression era our Indian people of the Umatilla, Yakama, Wanapum, & Warm Springs wasn't even affected by this. They didn't value the dollar like everyone else. They still lived off the land in our areas. I heard my uncles say this and it's important for all to know and understand that today we are behind main stream America and we too are being ripped off, but we know about that too much."—*Marcus Luke II, Tribal Member and First-Time Homebuyer/URHA Homeownership Counselor.*

The Wapayatat classes are critical and Umatilla is slowly adjusting to those changes today, now that there is an economy. Umatilla is learning about assets and the ability to grow and the purpose to educate the young people yet to come. Umatilla understood this need and implemented the action to protect themselves from the predatory lenders. As a 2006 Harvard Honoring Nations Award and the 2007 National Association of Realtors Award, the seven-year program continues to make incredible strides, yet slow, but steady. Umatilla has leveraged nearly $3.5 million in mortgage lending back into the community from first generation and first time homebuyers. Nearly one-fourth of the population completed the six-week series and nearly 25 families became first-generation and first-time homebuyers on the reservation.

V. Recommendations

In order to truly reduce poverty and gain assets on the reservation, it will be imperative for Tribes to have legislative representation to help decision-makers understand sovereignty and the ownership of land or real estate. The land today remains under the auspices of the federal government and can only be leased land.

Additional funding needs are critical to help provide needed staff capacity to manage effective programs and develop codes to help combat predatory lending on reservations.

The last suggestion would be to provide funding to community partners or agencies that not only provide literature, but have the ability to provide extensive counseling and education needs.

VI. Conclusion

Joe Garcia, National Congress of American Indians former President sums up what Wapayatat's vision is on the Umatilla Indian Reservation, "Financial Savvy individuals become financially savvy Tribal leaders who are equipped to make sound decisions for their communities." As we prepare our future leaders, Wapayatat is one effort to help combat the predatory lending issues that run rampant in every community, but will also protect our families and future generations to be financially strong.

In conclusion, Antone Minthorn, Board of Trustees Chairman summarized the hopes and dreams for the Umatilla Indian Reservation, "Self-governance . . . that means it is a place to build modern houses for people to live in; to build an economy to help the people so they can help themselves and their families; and as a part of creating economic wealth, the personal responsibility of money management or financial literacy. A viable Tribal economy means there is authority and power to protect and enhance Tribal culture."

We would like to thank you Mr. Chairman, and the Committee, for the opportunity to share this information in testimony today and for your interest in this subject and this Act which is critically important to many across Indian Country. We would be happy to provide any additional information that we have that would be of interest to the Committee.

Thank you.

PREPARED STATEMENT OF TEX G. HALL, FORMER CHAIRMAN, THREE AFFILIATED TRIBES—MANDAN, HIDATSA, AND ARIKARA; FORMER PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. Chairman:

I thank you, Mr. Chairman, my Senator and good friend, as a constituent of yours from North Dakota, for the opportunity to share my thoughts with the Committee, on the subject of payday lenders operating in and near Indian Country.

I am Tex G. Hall, Ihbudah Hishi (Red Tipped Arrow). I am a past President of the National Congress of American Indians and past Chairman of my Tribe, the Mandan, Hidatsa and Arikara Nation in North Dakota. Today, in addition to my work as Chairman of the Inter-Tribal Economic Alliance and CEO of a private Equity Firm, MTE Management, I am also the former Chairman of the Board of the Native American Bank. Although the Native American Bank does not involve itself in the area of payday lending, I understand banking, I understand risk, and I understand business. Unfortunately, growing up in Indian Country, I also understand how hard it is to get a loan.

It is because of my first-hand experience growing up in a hand to mouth existence, with two pair of overalls, one for school and one for ranch work, in a hard-working Indian ranch family that struggled to get ahead, that I have dedicated my adult life to furthering economic opportunities for Indian people and Indian businesses. I am very aware of many Indian people who have availed themselves to the services of payday lending and I feel that such lending is a service that is needed in lower and middle income communities.

Payday loans fulfill an unmet need for many, and are a viable short-term financial option:

> The fact is, payday loans are for small amounts, less than $500, and I understand more than half of the loans are for less than $300. The term of the loan is usually for two weeks. Mr. Chairman, you and I both know, banks will not loan such small amounts for such short terms, there is simply no profit in it. Most consumers who seek these loans have had an unexpected circumstance, such as car repair, or other small emergency that has left them short of funds until payday. Banks see the inability to prepare for unexpected expenses as further indication of high risk, payday lenders see filling this need as a business opportunity. The average fee for a payday loan is 15 percent of the principal amount, which seems high given the short, two week duration of the loan, but when you consider that these lenders are willing to provide a service, to fulfill a short-term need, that would otherwise be unmet; that they are willing to assume a risk that traditional banks will not assume, their compensation for that service is not unreasonable. Why would consumers take out such a loan? Well, if a consumer bounces checks to fulfill their short term needs, gas to go to work, groceries for their family, the multiple fees involved in bounced check charges and merchant recovery charges will cost far more than a 15 percent payday fee. People living on tight budgets can easily do that math.

Payday Concerns

Mr. Chairman, I share your concerns about stories of short-term lenders "preying" on low income people, including Native Americans. It is for this reason that I have familiarized myself with the Community Financial Services Association (CFSA) and their "Best Practices" requirements for their membership of payday lenders. Many of the predatory lenders are not of the payday variety and those that are, are not members carrying the CFSA seal. CFSA has been working with state governments to promote regulation of unscrupulous lenders of all types and trying to establish that best practices are followed in all states.

CFSA members only give loans to consumers who can provide proof of employment or other steady source of income, and proof of an existing checking account. This indicates a reasonable expectation of the individual's ability to pay. This also disqualifies many Indian people on poor reservations where the unemployment rate is often 60 to 80 percent from taking out a loan that cannot be paid back.

Paternalism in Indian Country

I fear, that although well-intentioned, singling out Indian Country for "protection" from a legitimate financial alternative would not only be unworkable, and paternalistic, but unfair as well. Unworkable, because how would a lender decide if a consumer was Indian? By their appearance? By Tribal I.D. card? Paternalistic because an adult, American Indian Tribal member, with a job, and checking account is surely able to represent themselves in the financial marketplace. If there are concerns about basic understanding of financial principles among certain members of an Indian community, please allow the Tribes the opportunity to provide financial counseling or enter into agreements with outside organizations, like CFSA, that can provide such education. Additionally, Tribal leaders should be allowed to work with their state governments on effective reforms where needed, not a one size fits all approach. For it would be unfair to deny qualified Native People a viable financial alternative for short term financial assistance that is not provided by the mainstream financial institutions.

Rate Caps Deny Access

One approach by those that have the complete elimination of payday lending as their goal, is rate caps. Such rate caps are usually in line with high interest credit cards, about 36 percent annually, which sounds quite high to those of us comparing annual rates. However an annual percentage rate of 36 percent on a payday loan of $250.00 for two weeks would only amount to less than $1.80 for the lender. There is no incentive for the lender to assume the risk, if the fee is less than two dollars!

That effectively drives lenders out of business, and takes this financial option off the table for consumers. Be aware, the consumer's circumstances haven't changed, just their access to money has been denied, so they now must pay higher rates for bounced check fees for gas and groceries, or to have utilities reconnected after payday. If such caps were only placed on businesses doing business near Indian reservations, then the effect will be that Indian People will have to use more gas to drive further to avail themselves to the payday option. What we need is more credit options in Indian country, not less.

Conclusion

I have no financial interest in any payday loan businesses. I come to you today simply as an American Indian leader and businessman who understands that businesses only survive if there is a legitimate need for their services. I know of many people who have needed the services of the payday lender. Is their rate one which I would pay to finance a long-term project, or a car or home? Certainly not. But, Indian people, like all consumers of moderate means, will have occasion when this type of financial option might be the difference between feeding your family for a few days, or bouncing hundreds of dollars of checks. It should not be taken off the table, simply because we are Indian people.

Like all businesses, there may be some who abuse the system and take advantage of consumers, including Tribal members, and we should be allowed, as sovereign Tribal governments, to work with state governments to address issues that concern us and find a balance between keeping limited financial options open to Indian Country while reigning in unscrupulous business people. I would also be willing to work with the people at CFSA and in the banking industry as a whole, to expand financial education to all of our people. Education, ultimately is the answer to most problems, not regulation.

Mr. Chairman, I thank you again for your time, and for your service to Indian Country.

PREPARED STATEMENT OF JOHN P. JURRIUS, PRESIDENT/CEO, NATIVE AMERICAN RESOURCE PARTNERS, LLC

Introduction

I would first like to thank and commend Chairman Dorgan and Vice Chairman Murkowski for holding today's hearing on an issue of such importance to Indian tribes and their members. My name is John Jurrius and I am the President and Chief Executive Officer of Native American Resource Partners, LLC (NARP), a private equity firm dedicated to working with and investing in Indian tribes to help them achieve their economic development goals.

Prior to founding NARP I served as financial advisor and strategic counselor to several Indian tribes. From 1995 to 2001 I served in these capacities to the tribal council of the Southern Ute Indian Tribe located in southwest Colorado. From 2001 to 2007 I served in these capacities to the tribal council of the Ute Tribe of the Uintah and Ouray Reservation in northeastern Utah. I have worked with other Indian tribes as well.

I was honored to work with the leadership of these tribes and my role was to help them access the capital markets, provide strategic guidance on how to aggressively deploy and maximize their energy resources, and bring discipline to the interaction between tribal government decision-making and tribal commercial operations. In particular, I aggressively pursued what was then a novel concept in the realm of Indian energy: the active participation by Indian tribes in the development of energy resources on tribal lands. These activities were made possible by securing over $900 million in capital for tribal development partnerships and the creation of several billion dollars of commercial value by forging partnerships between Indian tribes and industry participants.

The tribes I worked with made the decision to re-assume control over their energy assets and in so doing have made remarkable strides in generating revenues, creating job opportunities, and achieving long-term economic stability for their members.

The Ute Tribe of the Uintah and Ouray Reservation had no commercial ownership of their energy activities when I began working with them in 2001. Seven years later, the tribe is an owner of Ute Energy LLC, which owns commercial interests in over a hundred oil and gas wells on tribal lands, generates hundreds of millions of dollars in energy revenues, and possesses an interest in one of the largest gas gathering plants in the State of Utah served by some 120 miles of gas gathering pipelines and related infrastructure. The tribe's progress is a testament to its leadership and tenacity in wanting to improve the lives of tribal members.

I am particularly proud of the success enjoyed by the Southern Ute Indian Tribe. As recently as 1990, the tribe was a poor tribe with 63 energy companies operating on the reservation. In 1992, the tribe formed a tribal energy corporation to buy back the leases it had entered with the private energy companies. Through expanded energy development and skillful acquisitions, by 2005 the tribe came to own commercial assets worth more than $3 Billion. The tribe has a bond rating that exceeds the ratings of Denmark and Japan, operates a sprawling real estate portfolio, and is identified by industry as owning the eleventh largest private energy company in the United States. This tribe, by any standard, is engaged in Indian Self-Determination on a scale and to a degree that no one could have foreseen just 18 short years ago.

This hearing is timely given the recent sub-prime meltdown that is still rippling across the American economy and the lives of Americans nationwide. Predatory lenders, whether lending for home mortgages, business loans, or for other purposes, can and do take advantage of the most vulnerable members of American society including tribal members located on the reservation. In past years, this Committee has investigated such practices as lender "red-lining" in Indian communities and the general lack of capital and credit available to Native people.

I have seen banks and other lenders treat Indian tribes and their members poorly when it comes to lending practices, unsavory fee-charging schemes, and other arrangements that did everything to serve the interests of the banks but virtually nothing to serve the interests of the Indians.

The capital deficit in Indian country is not simply a cause of concern for economists or the Congress. Real people are suffering very real problems because of it. Despite recent improvements in the Indians' economic and social well-being, they continue to suffer high rates of unemployment and poverty, poor health, substandard housing, and social ills compared to any other group in the U.S.

To outside observers, this situation is in stark contrast with the Indians' rich cultural legacy and, in many cases, abundant natural resources on and under their lands and in their waters. As you know, large numbers of Indian tribes possess developable timber, huge reserves of coal, natural gas, and oil, fish and shellfish, and other natural amenities.

Yet the potential for economic progress and improved standards of living is stifled by geographic remoteness, distance from markets and population centers, a lack of physical infrastructure, a mixture of governmental and business functions, and most of all a lack of capital and proven financial expertise.

For decades efforts have been made by the Federal government and tribal leadership to resolve these problems and create more vibrant economies for the benefit of Indian people. Indeed, this Committee has focused on these factors—both alone and in combination—as part of its efforts to help stimulate Indian economies and make the American Dream achievable for America's Native people.

Energy Development in Indian Country

On May 1, 2008, this Committee held an Oversight Hearing the title to which I believe is a perfect description for how Indian country is currently positioned. The title of the Hearing was "Regaining Self-Determination over Reservation Resources."

There are three factors that give me reason to believe Indian country may be on the verge of an Economic Renaissance made possible by the prudent and sustainable development of energy resources on tribal lands. These factors are:

- The enactment in 2005 of the *Indian Tribal Energy Development and Self-Determination Act (Title V of Pub. L. 109–58);*
- The enormous energy resources the tribes own; and
- The current pricing environment for energy products.

Heeding the calls by tribal leaders in the years leading up to 2005, this Committee endorsed a classically liberal, pro-production Indian energy law that seeks to encourage tribal sovereignty and decision-making when it comes to energy resources. The new law will assist willing tribes develop whatever resources they have—whether renewable or non-renewable—and to that end provides technical and other assistance to them.

This new law also includes provisions that will assist tribes identify and inventory their energy resources, require the Federal purchase of energy produced on Indian lands, direct the Department of Energy to establish an Indian energy guaranteed loan program, and many others of importance.

While the new Indian energy law is comprehensive in scope and will encourage the development of Indian energy resources, what it does not and cannot provide is the volume of capital that modern energy project development requires.

The second factor is the importance of tribal energy resources. Indian tribes also possess energy resources of enormous quantity and world-class quality. As far back as 2001, even before the run-up in world energy prices, the U.S. government estimated that if tribes chose to develop just their non-renewable resources (oil, gas, and coal) they would generate *hundreds of billions of dollars* in revenues that would be available for tribal needs such as health care, elder care, law enforcement, education, housing and others.

These projections must be given some perspective: Indian gaming generates $25 Billion in gross annual revenues and has resulted in the rapid development of Indian economies fortunate enough to be located near urban population centers. If the Indian energy sector receives the kind if nurturing, technical expertise, and capital that is called for, we have every reason to think Indian energy revenues will come to dwarf Indian gaming in just a few short years.

The third factor at play is the pricing environment for energy resources. Oil is now priced at $120 per barrel. The price of natural gas is $12 per million cubic feet, and the price of coal ranges from $40 per short ton in the Powder River Basin to $65 in the Illinois Basin to $108 in Appalachia. Energy economists do not foresee a time when these prices will abate in any significant way and, taken together, these factors present an opportunity for Indian country that has never been present before but the lack of capital is holding the tribes back. With the founding of the Native American Resource Partners, LLC, that is about to change.

Capital for Indian Country Development

It is no secret that lack of capital is a major impediment to economic growth and development in Indian country. In November 2001 the Department of Treasury's Community Development Financial Institutions Fund issued "The Report of the Native American Lending Study"—a comprehensive study of lending and investment practices on Indian reservations and other lands held in trust by the United States. The Report issued dozens of findings and made recommendations to the Congress and the President to overcome the obstacles encountered by Indian tribes and their members. Among its conclusions, the Report states

> "Native American economies have about half the level of equity that comparable international economies (that is, countries or regions with similar GDP, population and other demographic factors) have. Further, the Equity Investment Research Report's comparisons to Indian Lands to similar economies suggests that if external equity investors were located in or serving Indian Lands and if the strategies to overcome existing obstacles were pursued and were successful, an additional $10 billion in equity could be invested in the Native American economy."

The need for capital in Native communities is great but only part of the demand is being met. Some Indian tribes own financial institutions to support economic development and housing. In addition, there are 19 tribally owned banks helping to provide banking services and capital to tribes and their members. There are also credit unions and Federally-created tools like Community Development Financial Institutions (CDFIs) that are now operating in Native communities.

As important as these sources of capital may be for purposes of housing, consumer credit, and small business loans, the volume of capital is simply too modest and the institutions lack the capacity for the kind of risk involved with energy development. The Native American Bank, a consortium of Indian tribes, Alaska Native Corporations, and other depositors, has just $59 Million in capitalization to lend across the breadth of Indian country.

These entities provide services that help meet the demand for capital but, frankly, the need for investment capital and growth in Indian country are simply too great to be satisfied by the existing lenders.

NARP'S Mission and Role in Capitalizing Tribal Projects

Whereas historically Indian tribes have assumed a passive role in the development of their energy resources, NARP's vision is to be partners in investing alongside tribes in their own tribal energy corporations. The Southern Ute Indian Tribe and the Ute Tribe of Utah have both used this model to achieve extraordinary success and benefits for their members.

Whereas the passive model relies on a lessor-lessee relationship between an Indian tribe and its energy partner, NARP's business model will help tribes build and operate lasting tribal enterprises that bring significant returns to the tribe and jobs and incomes to the tribal members.

The reason I founded NARP is to create an avenue for private sector capital to be channeled into Indian country for the development of energy and associated resource opportunities. The NARP model relies on the proven methodology of providing needed capital to tribes to create tribally-owned and operated energy resource companies in the service of Indian Self-Determination.

NARP's focus is not on developing or encouraging private sector energy companies in Indian country but investing in energy companies owned and operated by the tribes themselves on tribal lands.

Over the course of more than 15 years working with Indian tribes I have raised large amounts of capital for those tribal clients as needed for specific projects. My experience demonstrated to me the reality that there simply was not an avenue for private capital to be accessed by Indian country for development purposes.

In recognition of the billions of dollars of capital that has moved into the energy sector over the last 5 years seeking and competing for investment opportunities in exploration and development, mid-stream and service companies, the opportunity to establish a "Private Equity Fund" committed to Indian country at large was necessary and appropriate.

NARP is backed by Quantum Energy Partners IV, LP, a private equity firm founded in 1998 and specializing in the energy industry with over $3.2 billion in capital currently under management. With the resources and contacts of the Quantum team behind it, NARP will have access to significant capital to be used in pursuing energy opportunities with Indian tribes, including opportunities to develop oil and gas reserves, midstream and downstream assets, power generation and transmission assets, geothermal assets, renewable energy assets and water rights and associated infrastructure.

NARP anticipates that it will leverage the capital and contacts of Quantum to make direct investments as well as sponsoring the development of other energy opportunities involving other participants. I am pleased to inform this Committee that NARP was not only successful in attracting capital for the purpose of investing in Indian country but has secured a level of commitment never seen before in Indian country: NARP has available to it and can deploy over $1 Billion in capital dedicated to Indian country projects.

Mr. Chairman, I am certain that under your leadership the Committee will continue to pursue the issues of concern to tribal communities such as health care, education, housing, roads, law enforcement, and all the other challenges faced by the tribes and their members. In large measure, these challenges can be met with an infusion of resources and an intense focus by the responsible decision-makers.

I remain convinced that the problems Indian country faces can be solved by tribal leaders willing to accept the responsibility of Indian Self-Determination and begin to regain control over their energy resources and, indeed, over their own destiny.

That concludes my statement and I thank the Chairman for the opportunity to present my views on this important issue.

PREPARED STATEMENT OF MARTY SHURAVLOFF, EXECUTIVE DIRECTOR, KODIAK ISLAND HOUSING AUTHORITY; ON BEHALF OF THE NATIONAL AMERICAN INDIAN HOUSING COUNCIL (NAIHC)

On behalf of the National American Indian Housing Council[1] (NAIHC), I respectfully submit this testimony to the Senate Committee on Indian Affairs ("the Committee"), regarding the Oversight Hearing on Predatory Lending in Indian Country. I serve as the Executive Director of the Kodiak Island Housing Authority in Kodiak, Alaska. I am an enrolled member of the Lesnoi Village, Kodiak Island, Alaska. I am also the Chairman of the National American Indian Housing Council.

Without a doubt, predatory lending exists. The purpose of this testimony is not to debate the existence of impacts to Indian country. Rather, we hope that this testimony will offer the Committee our perspective on predatory lending and what we believe can be done to combat the ill-effects of such practices. Namely, we believe now is the time to devote considerable resources on financial education.

[1] The NAIHC was founded in 1974 to support and advocate for tribes and tribally designated housing entities (TDHEs). For nearly 35 years, the NAIHC has assisted tribes with their primary goal of providing housing and community development for Native Americans. The NAIHC consists of 266 members representing 460 tribes. The NAIHC is the only national organization whose sole mission is to represent Native American housing interests throughout the Nation.

The pervasiveness and impact of predatory lending in all its iterations has destructive consequences in Native communities. Still, the NAIHC believes the impact can be limited through increased financial education programs and through the development and promotion of asset building rather than asset stripping in Native communities. The NAIHC has been actively involved in the development, promotion and training for homebuyer education since 2004. We are expanding that service to include more curriculum development that centers on credit counseling, predatory lending, and credit repair. To this end we will offer several nation-wide training sessions later this year and in 2009. Additional support is needed to meet the growing demand for more financial education in Indian country.

What is Predatory Lending?

Predatory lending is defined by the FNDI as: Any predatory loan that is commonly understood to be an unsuitable loan designed to exploit vulnerable and unsophisticated borrowers. Predatory loans may have inappropriately high interest rates or fees or terms and conditions that trap borrowers; often, these conditions are not well explained to borrowers.

There are several methods that predatory lenders employ, such as payday lending, loans made in anticipation of tax refunds, pawn shop transactions, car title loans, and housing loans, especially for mobile homes. Many of these loans are of a type that is commonly understood to be of an unacceptable nature designed to exploit borrowers who are among the most vulnerable and financially uninformed. While some view this as "credit abuse," casting such aspersions on the borrower is not unusual in circumstances where the victim is seen as the culprit.

2007 NAIHC Survey

The NAIHC conducted a survey of its membership who participated the 2007 NAIHC Annual Convention. The purpose of this survey was to inform our decisions regarding the training and technical assistance that we offer our membership.

The NAIHC works closely with financial education leaders in Indian country such as the Oweesta Corporation, an affiliate of First Nations Development Institute (FNDI), to help provide tribes access to the tools they need to ensure financial education is available to tribal members. In partnership with FNDI, the survey was expanded to focus on the predatory lending practices that our tribal housing authorities experience in their communities.

The NAIHC membership is made up of housing professionals who work closely, and in many cases on a day-to-day basis, with their low-income residents to qualify them for rental assistance, down payment assistance, and other critical financial issues. These housing professionals manage admissions and occupancy policies and determine rental rates that are income-based. NAIHC's housing professionals work with basic Indian housing legislation, federal regulations and guidance, tribal housing policies; they also work in the area of assets, debts, and other financial scenarios; and they see predatory lending as an issue of signal importance in their tribal communities.

More than 160 of NAIHC's housing professionals completed the survey at the 2007 Annual Convention. While relatively small, this survey is useful because tribal housing professionals are in a unique position by virtue of their direct involvement in the provision of low-income housing assistance. Miriam Jorgensen, Associate Director for Research at the Native Nations Institute at the University of Arizona and Research Director for the Harvard Project on American Indian Economic Development, analyzed the data and noted that these housing professionals "know individuals and communities . . . they engage them in loan markets, and they are basing their perceptions on that knowledge."

Predatory lending was seen by 73 percent of NAIHC's housing professionals as an issue in their community. Just over 30 percent of the respondents identified predatory lending as a "big" problem while nearly 43 percent indicated predatory lending as "somewhat" of a problem. According to the NAIHC survey respondents, the largest single source of predatory lending was tax refund anticipation loans. Nearly 36 percent of survey respondents indicated that these refund anticipation loan were a "big" problem in their community. Other "big" problems identified were payday loans and pawnshop transactions at 33 and 30 percent, respectively.

Recommendations

On May 14, 2008, the NAIHC membership made financial education a priority of the organization. The NAIHC membership resoundingly approved Resolution #2008–08, "Supporting the Policy Recommendations of the Native Financial Education Coalition" (Coalition). The Coalition is a group of local, regional, and national organizations and government agencies, coordinated by First Nations Oweesta Corporation, which works to promote financial education in Native communities. Resolution #2008–08 includes the following:

- Endorsement and support NFEC policy recommendations on financial education to federal and tribal policymakers;
- Encouragement of its members to create and support Native Community Development Financial Institutions (CDFIs) or other organizations that offer financial education, credit counseling and affordable loan products as an alternative to predatory lenders;
- Collaboration with state governments to establish policy agendas that combat all types of predatory lending, particularly those that affect Native communities, including Indian reservations and border communities;
- Support for the creation of Volunteer Income Tax Assistance sites to assist Native people to file their income tax returns free of charge and avoid using high cost commercial tax preparers; and to create and support matched savings programs such as Individual Development Accounts (IDAs), children's savings, retirement, and college savings, adding tribal support to other resources available for funding these programs.

The NAIHC also endorsed the recommendations made at the conclusion of the FNDI study. The NAIHC will work with its non-profit collaborations, with the federal agencies, foundations, other national Indian organizations and, of course, the Senate Committee on Indian Affairs and other committees of jurisdiction to implement those recommendations that would result in the:

- Development of credit programs and borrowing opportunities that reduce the demand for predatory lending;
- Implementation of consumer education programs that assist in homebuyer education, financial planning, and credit repair;
- Establishment of interest rate caps where appropriate; and
- Collaboration with States and local governments to minimize the impact of predatory lending in Indian communities.

Summary

We would like to summarize our remarks with the following observations.

- Predatory lending appears in many forms in Indian country—but it does appear, and its impact harms Native communities. Clearly, further research would reveal more accurate information about the extent of that impact and we welcome that research.
- NAIHC believes access to capital is an ongoing obstacle to housing and community development in Indian Country.
- Financial education is the key to combating predatory lending.
- Financial education should be culturally-specific and tailored to Native communities. These programs exist and should receive more support and recognition by Federal appropriators.
- More access to financial services should be created to provide alternative credit programs. This is especially true for Native American non-profit programs such as the Community Development Financial Institution programs though the U.S. Department of the Treasury. Responsible borrowing opportunities should be increased to minimize the demand for predatory lending.
- Asset development, including tribal Individual Development Accounts and other forms of matched savings accounts, should be emphasized to change the landscape from asset stripping to asset building.

Conclusion

Thank you for the opportunity to submit our perspectives, concerns and recommendations. On behalf of the NAIHC Board of Directors and membership, thank you for your continuing efforts to improve the housing conditions of American Indian, Alaska Native and Native Hawaiian peoples. The NAIHC stands ready to work with the Committee to further those efforts.

PREPARED STATEMENT OF THE NATIONAL CONGRESS OF AMERICAN INDIANS (NCAI)

The National Congress of American Indians, the nation's oldest and largest national organization representing tribal governments, sincerely hopes the hearing held this past Thursday, June 5, 2008 serves to bring to light the important role Congress has in ensuring tribes are empowered to protect their citizens and give them every opportunity to advance themselves and their families.

This Committee knows well that American Indian Tribes continue to occupy the bottom of key indicators of prosperity: employment, asset holdings, home ownership, educational attainment and economic progress. American Indian communities, regardless of economic success, lack viable financial choices leaving them among the most under-banked in the nation. Having non-banking financial services fill the void is not an option that any community, military base or reservation should have to settle for.

The primary cause of our current economic downturn is the housing industry. The housing market run up and subsequent fall was caused by lax regulation of the mortgage intermediaries and financial service firms. Intermediaries pushed loan pools through while firms loosened standard underwriting requirements and created new and hybrid loan products to qualify a larger number of potential buyers. This lack of proper underwriting or due diligence failed to adequately qualify buyers or limit the amount approved to a reasonable value of a home's worth. In addition, loan products designed for short term needs were sold to borrowers as long term loans with the idea that housing would continue to rise and interest rates would remain low.

Now that the impact of the loan terms and adverse market conditions are being fully realized; many financial firms, homeowners, and ultimately most tax-paying Americans are paying the price with record defaults, decreased home values, tighter credit markets and possible a congressional fix that will allow the renegotiation of existing mortgages which may lead to further tightening of the credit markets. A recent article in the Washington Post (June 10, 2008) commented

> Loans were approved with little due diligence to qualify buyers and, of course, the creation and use of new loan products "Eager to put more low-income and minority families into their own homes, the agency [HUD] required that two government-chartered mortgage finance firms purchase far more "affordable" loans made to these borrowers. HUD stuck with an outdated policy that allowed Freddie Mac and Fannie Mae to count billions of dollars they invested in sub prime loans as a public good that would foster affordable housing.
>
> Housing experts and some congressional leaders now view those decisions as mistakes that contributed to an escalation of sub prime lending that is roiling the U.S. economy.
>
> Today, 3 million to 4 million families are expected to lose their homes to foreclosure because they cannot afford their high-interest sub prime loans. Lower-income and minority home buyers—those who were supposed to benefit from HUD's actions—are falling into default at a rate at least three times that of other borrowers.
>
> "For HUD to be indifferent as to whether these loans were hurting people or helping them is really an abject failure to regulate," said Michael Barr, a University of Michigan law professor who is advising Congress. "It was just irresponsible."

The very people who were supposed to be helped by the advancement of capital through lax regulation and due diligence are now the same people who have the greatest risk of loosing their largest potential asset and a tried path to the middle class. Predatory lending in its current state offers the same risk to an entire class of citizens.

NCAI agrees that there is a need for tribal citizens to access micro loans backed by income or assets. However, we have heard from tribal leaders and those involved in financial literacy programs that they are increasingly dealing with the adverse effects of tribal citizens caught in a cycle of debt.

For example, a tribal member on a rural eastern Washington reservation obtained a pay day loan from a border town to purchase household expenses during the winter. She lives on a fixed income and raises her grandchildren. The tribal member did not realize how the loan functioned and the high costs associated with the loan. The loan came due and the tribal member paid part of the loan but continued to have an outstanding balance owned. A few days after she paid the payday loan, her rent became due to the tribal housing authority. She did not have enough money to pay the rent in full so she paid a portion of the rent under her lease. Within a few days she was provided with a notice that she had not paid her rent in full and she had a meeting with her case worker as required by the tribal housing code but there was no accommodation for her because she did not have enough money to pay her rent.

The month went on and she was unable to pay the rest of the rent and what she still owed on the pay day loan. When she received her public benefits the next month she paid a portion of the pay day loan but still could not pay it off. Again she did not make her rent payment. This time, there was no meeting with a case worker; she was given an eviction summons in tribal court.

The impact of an eviction from a tribal housing authority is serious because the tribal citizen can no longer rent a tribal housing authority unit leaving her no other options in her home community. In the end this tribal member was evicted, still had to pay her on-going debt and had the same expense obligations to buy food, clothing and provide housing for her grandchildren.

Where was the due diligence on the part of the lender? And where are the regulations that used to protect our people that need them the most?

Predatory lending has the potential to be abusive to the consumer because the practice provides so little protection to the consumer. Banks and other financial institutions have an obligation to ensure a loan in the form of a mortgage, credit card, or personal loan is suitable for the consumer. They also can determine how much debt a consumer has with other financial service firms. The predatory lending industry has taken the obligation of consumer suitability out of consideration. The only underwriting or due diligence acknowledged is to ensure the industry participants will be repaid (paycheck, bank account to write an advanced check and identification). There is no consideration of a customer's ability to repay the obligation or a process for checking to see how many other lenders the customer has pledged their paycheck.

The industry touts that most payday loans are repaid within the two-week period and that the average customer borrows from their checks about 8 times in a year (Fulmer testimony). While this may be the case, it leaves out the fact that many use multiple lenders and borrow from one lender to pay off the initial lender and so on with some customers holding up to ten loans at a time giving new meaning to borrowing from Peter to pay Paul (and all of his relatives).

The lack of due diligence is the root of the current housing crises where consumers are at risk of losing their homes. And it is the root of the abusive practices of the predatory lending industry where it has the potential to strip an already vulnerable population of the opportunity to advance by preventing them from building assets, equity and wealth. This applies to both income lending (payday loans) and to asset lending (car or other title loans).

There is no doubt that there is a need for micro lending backed by income or assets in Indian country and other parts of America; however, there is also no doubt that protections should be provided to consumers. There are no other aspects of the financial services industry—from investments to all other forms of lending—that forego the obligation of performing due diligence prior to a customer investing or borrowing money.

The issue of predatory lending in Indian country is complex because, as with most issues, there are underlying causes that make tribal populations vulnerable to disproportionately using small payday loans to fulfill fundamental financial needs including high-interest, high fee, short-term loans with minimal due diligence. These loans are used not because they offer a great competitive alternative, but because they are simply one of only a few options available.

Because of the persistent lack of economic opportunity, a sustainable financial services market, and tribal jurisdictional issues, there have only been a handful of banks or credit unions that serve tribal communities. As a result, tribal citizens continue to lack basic financial services or financial choices that most Americans have come to take for granted. Tribal members have limited access when financing a home, starting a business or purchasing necessary property like cars needed to make a living accessing a line of credit to meet short term capital needs.

The vacuum created by the lack of responsive and regulated financial institutions offering competitive consumer financial products has been quickly filled by predatory lending firms that have proliferated after usury laws were lifted a few years ago. This is especially the case in transient and under-banked communities, like military bases and reservations.

The effect of having a tribal population under-banked and subject to predatory financial firms is that it leaves limited and sometimes no viable options for responsive bank products. Tribal citizens pay higher fees and much higher interest rates. When an emergency arises such as a death in the family or medical bill, there is a greater risk of being caught in a cycle of debt, especially for tribal citizens that live check to check.

There is real concern by tribal leaders to address predatory lending practices that target a captive Native population with limited choices and leave them dealing with the social repercussions. The lack of due diligence coupled with inadequate fee and interest-rate limitations make above average loan defaults or rollovers predictable and repayments from a fixed income very difficult. Especially considering the debtors expenses increase, compelling multiple loans from the same limited income.

This lack of industry accountability is why banking laws and limitations were imposed in the first place and a core reason that our tribal population will be prevented from building equity and wealth through property ownership. While families with greater means or financial education turn to regulated financial institutions or are better able to negotiate terms; those with limited means and financial experience tend to get easily caught in a cycle of debt.

The financial problems run deep in Indian country and will take a long time to fully address. Congress, agencies and intermediaries should focus on a 3-pronged approach to help tribal communities move toward a solution. The focus should be on; developing incentives to enable tribes to attract viable financial options and develop necessary products to serve their citizens, creating culturally-appropriate financial education programs, and authorizing jurisdiction over lenders that do business with their citizens.

1. Financial Choice—Indian Country is under-banked. There is a lack of regulated banking options that are responsive to tribal community needs. This tends to be true regardless of a tribe's success in building a local economy. The Community Development Financial Institutions (CDFI's) have just started to meet the needs of some tribal communities and Indian country is appreciative of the support Congress has shown by increasing CDFI funding; however, this serves a very specific and limited role in tribal communities and falls short of providing viable and responsive banking to the Native population. Congress should work to provide an incentive for banks and credit unions to serve the tribal population and provide competitive products and services, including micro-loans, that meet the unique financial needs of the tribal community.

2. Financial Education—Tribal governments need to be able to incorporate culturally relevant financial literacy programs at a young age to; understand fundamental credit issues and alternatives, understand the value an types of savings programs available such as "individual development accounts (IDAs)" and learn to take advantage of available programs such as "Volunteer Income Tax Assistance (VITA)" to reduce the incidence of Refund Anticipation Loans. In addition there is a need to increase the presence of intermediaries in tribal communities. Tribal citizens need help when buying a car, financing a mobile home or accessing a micro-loan to start a business. Intermediaries are under-represented in Indian country. These non-profits serve a key role in guiding consumers to make better financial and life decisions.

3. Jurisdiction—Non-bank lenders tend to cluster around reservations and military bases taking full advantage of financially unsophisticated consumers. To protect our soldiers and sailors on federal military bases from the irresponsible practices of payday lenders, car dealerships and tax preparers, Congress passed a bill that places a cap on non-bank loans to the military personnel. Congress should consider giving tribes the same capability to protect their citizens with the ability to opt into models similar to the military fix. It is very important for Congress to consider promoting responsive community banking in tribal communities by giving tribes the authority to approve banks that do business on their reservations in a manner similar to state governments.

Because we have been under-banked for so long, we may appreciate having a lender of any sort serve the needs in tribal communities. But do we really need to settle for lenders that provide little in the way of tribal citizen protections? And do we need to settle for unreasonable rates and fees with no consideration for an individual's ability to pay?

We need to identify and fix the underlying problems. We need jurisdiction, we need financial literacy and we need banks, credit unions, CDFI's and non-profits in Indian country. We need responsive institutions and products. Our tribal citizens deserve better.

○