

# Payday, Mayday!

## Payday and Title Lender Compliance to Signage and Brochure Regulations

Series on Predatory Lending: Report 1

March 2002

---

By Ray Prushnok  
Consumer Fellow

New Mexico Public Interest Research Group Education Fund  
PO Box 40173  
Albuquerque, NM 87196  
(505) 254-1244  
<http://www.nmpirg.org>

New Mexico Public Interest Research Group (NMPIRG) Education Fund is a non-profit, non-partisan organization dedicated to promoting environmental preservation, consumer protection and good government in the state of New Mexico through research and education. NMPIRG Education Fund works closely with NMPIRG, a consumer and environmental advocacy organization.

A special thanks to:

Frederick Leonhardt and the Leonhardt Foundation for their generous support of consumer advocacy in New Mexico, Jeanne Bassett, Executive Director of NMPIRG, Ed Mierzwinski, U.S. PIRG Consumer Program Director, and Amy Welch for their assistance in reviewing and preparing this report and William Verant and the New Mexico Financial Institutions Division staff for their assistance in data collection.

---

Additional copies of this report are available for \$20 by sending a check made payable to:

NMPIRG Education Fund  
PO Box 40173  
Albuquerque, NM 87196

General Email Inquiries: [rjprushnok@pirg.org](mailto:rjprushnok@pirg.org)

## Section I: Executive Summary

The New Mexico Public Interest Research Group (NMPIRG), the Consumer Federation of America (CFA), and other consumer protection groups have documented the effect of financial deregulation on American consumers throughout the 1990's. One consequence of deregulation of interest rates, high credit card interest rates and high bank fees has been the rapid growth of the so-called predatory lending industry, which includes check cashing outlets, payday loan companies, rent-to-own stores, high cost second mortgage companies, sub-prime auto lenders, traditional pawn shops and the growing business of auto title loans. This report examines the regulatory environment of payday and title loan companies in New Mexico.

Payday and title loans, by definition, are marketed towards cash-strapped consumers that are struggling between paychecks. Although they provide rapid access to cash for many borrowers, their lofty rates are often unsustainable and trap consumers in a cycle of debt. Nowhere is this more troublesome than New Mexico.

According to a recent study by the U.S. Census Bureau, New Mexico has the highest percent of its citizens living in poverty (19.6%).<sup>1</sup> Additionally, New Mexico is one of two states with more than a quarter of its children living below the poverty line.<sup>2</sup> These citizens are most vulnerable to predatory lenders and, unfortunately, New Mexico lags in the regulation to protect consumers of these predatory practices.

New Mexico is one of only six states with no small loan, or "usury", cap that would regulate licensed payday and title lenders.<sup>3</sup> There are 19 states that prohibit these loans and 25 others that have specific laws that regulate, but permit payday lending.<sup>4</sup> In New Mexico, only the New Mexico Small Loan Act currently regulates these lenders. This merely requires licensing and review of firms that offer loans of \$2,500 or less.

---

<sup>1</sup> U.S. Census Bureau, "Poverty in the United States: 2000," September 2001.

<sup>2</sup> *Ibid.*

<sup>3</sup> NMPIRG and Consumer Federation of America, "Rent-a-Bank Payday Lending," November 2001.

<sup>4</sup> *Ibid.*

As recommended by the Consumer Lending Study Committee Report released in January 2000, the New Mexico Financial Institutions Division enacted two new disclosure regulations in October of 2001. These two new regulations are the focus of this report. In the absence of strict regulation of small loan practices, it is critical that the regulated industry at least comply with minimal disclosure standards.

These two regulations were a result of a study committee requested by the 1999 New Mexico House of Representatives Memorial (HM 36) to study consumer-lending practices. This committee's report came forward with thirteen recommendations for the small loan industry.<sup>5</sup> The first regulation, *New Mexico Regulation 12.18.3*, requires that all Small Loan Companies licensed in the State of New Mexico have an informational brochure readily available to all small loan consumers. The second regulation is *New Mexico Regulation 12.18.4*, which requires all licensed title and payday loan companies to display a prominent sign, readily visible to borrowers, disclosing the schedule of charges and the prominent sign in a reduced form must be displayed at every workstation where loans are originated.

According to the results of the NMPIRG Education Fund survey, only 33% (15/45) of the surveyed firms were in full compliance with the two regulations studied. Therefore, these regulations have not increased disclosure for consumers when taking out a payday or title loan.

Additionally, the penalties prescribed by the New Mexico Small Loan Act for noncompliance with these regulations would fine the violator up to \$300 – this is \$9,000 for the small sample studied. Based on an analysis of all firms licensed for the small loan business in 2001, there were 506 total firms and of those, approximately 350 firms engage in the payday and/or title loan business. Two-thirds of the firms studied were in violation of the mandatory signage and brochure regulations. NMPIRG Education Fund approximates that up to \$70,000 in fines could be collected for these violations statewide.

---

<sup>5</sup> Financial Institutions Division Director, "Consumer Lending Study Committee Report for the Forty Fourth Session of the New Mexico State Legislature," January 2000.

These unsatisfactory results lead NMPIRG Education Fund to conclude that the industry has not voluntarily complied with these new regulations and that their regulatory agency, the New Mexico Financial Institutions Division (FID), is not effectively monitoring compliance.

NMPIRG Education Fund Recommends that:

- The industry immediately takes action and comes into compliance with these signage and brochure regulations.
- The government, FID and the Attorney General more closely monitor this compliance, enforce the law and impose civil penalties or other sanctions as appropriate.
- The state legislature study this industry's growth and reexamine the adequacy of its existing policy.
- Consumers avoid predatory payday and title loans.

## Section II: Payday Lending

Payday lenders make small, short-term (“until payday”) deferred deposit loans based on personal checks held for future deposit, at interest rates averaging 508% in New Mexico.<sup>6</sup> For example, you write a check for \$360, and receive \$300, and the lender agrees not to cash your check for two weeks. The actual cost of that loan for two weeks is \$60, which works out to be an APR of 521%. If you cannot afford to pay it back within two weeks, you can simply pay the finance charge, or \$60, to “roll it over”, still owing the original \$360, ratcheting your total finance charges up to \$120 for a \$300 four week loan.

Payday lenders use several subterfuges to avoid regulation, however minimal it may be. For example, several variations of payday loans exist in New Mexico. A prominent example is a “signature loan”. These loans usually involve a credit check and sometimes use what is called a “lease buy-back”. In this case, the firm initiates a sham purchase of the goods you claim you own, and purports to charge a fee to lease the goods, typically furniture, back to you. Here, the firm claims the furniture, not a post-dated check, is actually the collateral. The terms and schedule of payments are usually identical to those of payday loans.

## Section III: Title Loans

A title loan is (also called “auto title pawn” in other states) a loan borrowed against the value of a motor vehicle. Usually, title loans range from \$250 to \$1500, but they may be as high as \$5000 or \$10,000.<sup>7</sup> A typical title loan’s monthly cost is \$25 per \$100 borrowed and has an APR of 300%. The borrower keeps their motor vehicle and may drive it after receiving a title loan, but the lender keeps the title to the motor vehicle as security for repayment of the loan and also gets a copy of the borrower’s keys, much like a pawn. If the borrower cannot make the payments on their loan, the lender will repossess their motor vehicle, sell it, and pocket whatever money he or she gets for it. The lender can often repossess the motor vehicle – even if only one payment is missed.

---

<sup>6</sup> NMPIRG and Consumer Federation of America, “Rent-a-Bank Payday Lending,” November 2001.

<sup>7</sup> Florida Attorney General’s Office, “How to Protect Yourself: Title Loans,” <http://legal.firn.edu/consumer/tips/title.html>.

## Section IV: The Regulations Examined

The regulatory environment changed dramatically in 1981 when the New Mexico legislature virtually eliminated limits on interest rates. Today, the lender determines rates and fees with very little regulation aside from federal disclosure requirements.

On October 1, 2001, two new regulations that affect companies conducting small loan businesses in New Mexico took effect. The New Mexico Financial Institutions Division of Regulation and Licensing Department oversees this industry and is the issuing agency of these regulations.

The first of these regulations applies to all firms engaging in the small loan business. This regulation, *New Mexico Regulation 12.18.3: Mandatory Brochure for Small Loan Business*, requires that all Small Loan Companies licensed in the State of New Mexico have an informational brochure readily available to all small loan consumers. These brochures must be placed in a brochure rack, which must always be fully stocked, on the wall by the main door entrance. Additionally, there are specific rules pertaining to the text size and contents of the brochure. The brochure must contain the 12 terms and definitions required by this regulation (See Appendix 1 to view Regulation 12.18.3.8D). For the purposes of this study, only the small loan companies involved in payday and title loans are included in the analysis.

The second regulation is *New Mexico Regulation 12.18.4: Mandatory Signage for Payday Lenders and Title Loan Companies*. Under this regulation, all Title and Payday loan companies must display in each licensed place of business a prominent sign, readily visible to borrowers, disclosing the schedule of charges. The prominent sign in a reduced form must be displayed at every workstation where loans are originated. The contents of these signs are outlined in the regulation, which can be found in the appendix.

Please see Appendix II for full text version of these regulations.

## Section V: Survey Methodology

NMPIRG Education Fund's long history of consumer watchdog advocacy inspired this report. In order to fully understand the impact of payday and title loan firms on New Mexicans, it is important to examine the regulations that govern them and their compliance to these regulations. Our goal was a simple one: to discover who is and is not complying with very limited, unambiguous regulations in an industry with far less regulation than it's national counterparts.

The survey conducted measured compliance of these loan firms to these two regulations. Throughout January and February 2002, NMPIRG Education Fund staff surveyed 45 companies licensed to engage in the small loan business in New Mexico. Of the firms surveyed, 18 (40%) offered payday and title loans, 19 (42%) offered payday loans, 4 (9%) offered title loans and 4 (9%) firms offered signature loans. Detailed, store-by-store results of the January 2002 survey of 45 lenders in New Mexico are located in Appendix I.

In spite of the similarities between signature and payday loans, signature loan firms must comply only with the brochure regulations that apply to the small loan industry as a whole and not the signage regulations that apply to payday loan firms. This discrepancy is accounted for in the data section of the report and signature loan firms are not counted in the signage tally and are marked with an "S" (See Appendix 1).

Surveys were conducted by personal visits to these small loan company stores. Surveyors asked clerks what products or services their firm offers, looked for a prominent sign disclosing the schedule of charges, and collected the mandatory informational brochure when available. The surveyors asked specifically if the firm made payday or title loans. Surveyors posed as potential consumers to ensure that we obtained the same information available to any consumer entering the storefront.

Section VI: Survey Findings

One-third (33%) of the firms surveyed were in full compliance with the new regulations. Two-thirds (67%) of the firms had the mandatory brochures, slightly more than one-half (54%) had a prominent sign disclosing the schedule of fees and fewer than two of five (39%) had a reduced version of this sign at all workstations where loans are originated.

This survey was conducted in a number of cities around New Mexico. The results varied from place to place (See Table 1).

MAJOR CITIES:	Number Surveyed	Full Compliance	Brochures	Prominent Sign	Sign at Workstation
Albuquerque	28	9/28 (32%)	18/28 (64%)	16/27 (59%)	10/27 (37%)
Las Cruces	10	1/10 (10%)	5/10 (44%)	3/9 (33%)	1/9 (11%)
Santa Fe	4	4/4 (100%)	4/4 (100%)	3/3 (100%)	3/3 (100%)
Southern Cities	3	0 (0%)	3/3 (100%)	0/2 (0%)	0/2 (0%)
<b>Total</b>	<b>45</b>	<b>15/45 (33%)</b>	<b>30/45 (67%)</b>	<b>22/41 (54%)</b>	<b>16/41 (39%)</b>

**TABLE 1:** City-by-city breakdown of compliance with mandatory signage and brochure regulations.

Thorough examination of the data show that, statewide, the majority of the payday and title loan industry is not in compliance with the October regulations. The differences between data for firms engaged in the payday loan business, title loan business or both are not significant (See table below).

BUSINESS TYPE:	Payday and Title Loan	Payday Loan	Title Loan	Signature Loan	Total
Number Surveyed:	18	19	4	4	45
Full Compliance:	6/18 (33%)	6/19 (32%)	1/4 (25%)	2/4 (50%)	15/45 (33%)

**TABLE 2:** Breakdown of firms surveyed by product(s) offered and their rate of compliance with mandatory signage and brochure regulations.

This study shows that the payday and title loan industry in New Mexico is not independently abiding by these regulations, nor is the FID adequately enforcing them.

See Appendix I for a complete, detailed listing of the survey's findings.

## Section VII: Conclusion

According to the results of the NMPIRG Education Fund survey, only 33% of the surveyed firms were in full compliance with the two regulations studied.

Therefore, these regulations have not increased disclosure for consumers when taking out a payday or title loan.

Additionally, the penalties prescribed by the New Mexico Small Loan Act for noncompliance with these regulations would fine the violator up to \$300 – this is \$9,000 for the small sample studied. Based on an analysis of all firms licensed for the small loan business in 2001, there were 506 total firms and of those, approximately 350 firms engage in the payday and/or title loan business. Two-thirds of the firms studied were in violation of the mandatory signage and brochure regulations. NMPIRG Education Fund approximates that up to \$70,000 in fines could be collected for these violations statewide.

These unsatisfactory results lead NMPIRG Education Fund to conclude that the industry has not voluntarily complied with these new regulations and that their regulatory agency, the New Mexico Financial Institutions Division (FID), is not effectively monitoring compliance.

### NMPIRG Education Fund Recommends that:

- The industry immediately takes action and comes into compliance with these signage and brochure regulations.
- The government, FID and the Attorney General more closely monitors this compliance, enforce the law and impose civil penalties or other sanctions as appropriate.
- The state legislatures study this industry's growth and reexamine the adequacy of its existing policy.
- Consumers avoid predatory payday and title loans.