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Borrowing Trouble: Predatory Lending in Native American Communities

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Borrowing Trouble: Predatory Lending in Native American Communities

I. Introduction

With the collapse of the subprime mortgage lending market, predatory lending has become a significant national concern. In Native communities, however, predatory lending has been a major concern for years, since abusive lending practices have tended to proliferate more in minority and low-income communities than elsewhere.

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. This has a negative impact on family economic security, and drains assets out of the local economy. Some common vehicles for predatory lending are loans against tax refunds, payday loans, pawn shop transactions, car title loans, and mortgage loans with unreasonable fees or interest rates.

In 2003, First Nations Development Institute (FNDI) issued its first report on predatory lending in Native communities.[1] This second report expands upon its analysis, updating information on the prevalence of predatory practices and adding new information from more recent quantitative data sources. It 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. This paper 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.

II. Quantitative Evidence Concerning Predatory Lending in Indian Country

NAIHC Conference Data

According to attendees at the annual National American Indian Housing Council (NAIHC) meeting held in May 2007, predatory lending is a significant concern across Indian Country: 73% of the 140 respondents to an FNDI-coauthored survey administered at the conference reported that predatory lending was either "a big problem" or "somewhat of a problem" in their communities. These 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.[2]

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[1] Kyle Smith, "Predatory Lending in Native American Communities," Native Assets Research Center, First Nations Development Institute, Fredericksburg, VA, May 2003.

[2] The NAIHC-administered survey was designed by FNDI in collaboration with NAIHC, to address predatory lending as well as several others issues of concern to NAIHC leadership. Conference attendees were given the survey when they registered and had the opportunity to enter a drawing for a computer

When asked about specific predatory practices, more respondents (36%) identified loans against tax refunds as "a big problem" than any other practice. These loans are appropriately termed refund anticipation loans, or RALs, but they are perhaps best (but inaccurately) known as "rapid refunds." Close behind RALs, respondents expressed concern about payday loans and pawn shop transactions; respectively, 33% and 30% of respondents identified these products and practices as "a big problem" in their communities. Other situations in which predatory lending is common—in mortgage lending and car title loans—were concerning to respondents, but ranked as less problematic in their Native communities. (See Table 1.)

Table 1

In your opinion, how much of a problem are these specific types of predatory loans in your community?

	A big problem (%)	Somewhat of a problem (%)	Not much of a problem (%)	Not a problem (%)
Loans against tax refunds	36	32	19	7
Payday loans	33	34	22	7
Pawn shop transactions	30	28	21	15
Mortgage loans	21	33	28	28
Car title loans	21	29	33	12

The greatest concern respondents had about both refund anticipation loans and pawn shop transactions was that they prey on vulnerable, uninformed people. The greatest concern expressed about payday loans, mortgage loans, and car title loans was that the interest rates are too high. In a separate question, respondents identified similar concerns with predatory lending in general. (See Table 2.)

memory stick when they returned the survey. Surveys were collected throughout the conference at designated sites. Overall, NAIHC staff collected 162 surveys; for most predatory lending questions, there were approximately 140 usable responses. Respondents represented 67 Native nations, 28 states, and all 11 NAIHC regions (Alaska, Northwest, California, Mountain States, Southwest, Northern Plains, Midwest, Great Lakes, Northeast, Eastern, and Southeastern).

Table 2

To your knowledge, what specific types of predatory practices are occurring in your community?	
Issue	% identifying this as an issue
Loans with exceptionally high interest rates	79
Loans made to people who don't understand the terms of the loans	78
Loans made to people who cannot afford the loans	67
Loans with high points and fees are offered	49
Lenders who contact customers at all hours and otherwise harass borrowers	43
Loans on manufactured and mobile homes with high rates or abusive terms	40
Loans with excessive prepayment penalties	37
Mortgage brokers push customers to banks and mortgage companies with higher rates	33
Home improvement scams	19
Loans with large down payments	18
Loans made to the mentally ill	8

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.

Table 3

In your opinion, why are members of your community taking out these types of loans?	
Reason	% identifying this as a reason
To get access to cash	77
To pay bills	69
To have cash at Christmastime	43
To buy a car	34
To pay credit card bills	25
To buy a home	21
To make home repairs	18
To pay medical bills	15

Sixty-eight percent of respondents said that the members of their communities accessed predatory lending services off-reservation.[3] Most of this outside access is reportedly local: in border towns or major cities no more than 30 miles away from the tribal community. However, some respondents suggested that the members of their communities were travelling significant distances to access subprime lending services—to major cities 100 or more miles away. (See Table 4.)

Table 4

Where do the majority of your community members access predatory lending services?

Location	% citing this location
Border town	32
Major city within 10 miles of the reservation	4
Major city 10-30 miles from the reservation	13
Major city 30-100 miles from the reservation	15
Major city more than 100 miles away	4
On reservation	11
Not sure	13
Doesn't apply	8

Additional RAL Data

Other studies back up the impressions of respondents to the survey administered at the NAIHC annual meeting. Regarding RALs, 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 and North Dakota—the counties' land is largely reservation land and at least 80% of the population identifies as Native.[4] In Shannon County, SD, part of the Pine Ridge Reservation, 62% 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%, 51%, and 49% 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%—or a $100 cost in addition to the fee for tax preparation (which averaged

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[3] For the 10% of respondents from Oklahoma, most access is necessarily "off-reservation," since there is only one reservation in Oklahoma (the Osage Reservation).

[4] See Brian Tumulty, "Tax Refund Anticipation Loans Prevalent on Indian Reservations," 14 March 2007, http://www.ournativecircle.org/node/117, accessed 18 January 2008 for the Gannet News Service report. See US Census Bureau, State and County Quick Facts, http://quickfacts.census.gov/qfd/states/, accessed 18 January 2008, for county population data.

$146).[5] 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.[6]

Certainly the RAL costs are unnecessary: most filers will receive their federal refund in one to three weeks.[7] Even tax preparation costs can be wasted money, as nearly 63% of respondents to the NAIHC-administered survey noted that free tax preparation was either available locally or was available at a nearby, off-reservation site open to community members. Unfortunately, use of paid tax preparers and RAL usage go hand-in-hand. Anecdotal evidence suggests that when clients seek a RAL—now available even before the end of the calendar year with data from an end-of-year pay stub—they often return to the lender for tax preparation services.[8]

Additional Payday Lending Data

Payday loans are short-term cash advances on an individual's next paycheck. They are offered at high interest rates and marketed to cash-poor borrowers. Given the short repayment periods and high interest rates, these loans compound rapidly and tend to catch borrowers in debt traps. For example, a customer might borrow $200 and promise to pay the lender $235 in two weeks' time. If repaid on time, the fee constitutes 17.5% of the loan amount—but calculated as an annual percentage rate (APR), the true interest rate exceeds 400%. If the customer cannot repay at the designated time, she may take another loan, this time for $235 with a $41 (17.5%) fee. Research suggests that overall, "payday lending now costs American families $4.2 billion per year in excessive fees."[9]

At the time of FNDI's last report on predatory lending in Native communities, payday lending was emerging as a problem in Indian Country but did not yet have widespread consequences. That is no longer true. In the 1990s, most states loosened the lending and usury laws that had protected consumers since the early 20th century and by the mid-2000s, those changes had led to a proliferation of payday lenders, particularly in and near lower-income communities. For instance,

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5 Chi Chi Wu, Jean Ann Fox, and Patrick Woodall, "Another Year of Losses: High-Priced Refund Anticipation Loans Continue To Take a Chunk Out Of Americans' Tax Refunds: The NCLC/CFA 2006 Refund Anticipation Loan Report," National Consumer Law Center, Boston, MA, January 2006.

6 Kristen Wagner and Miriam Jorgensen, "VITA Sites Serving Native Communities: Public Service, Economic Development Engine [Draft]," Kathryn M. Buder Center for American Indian Studies and the Center for Social Development, Washington University, St. Louis, March 2008.

7 The Internal Revenue Service issues refunds on complete, accurate returns within six weeks (see http://www.irs.gov/taxtopics/tc152.html, accessed 23 January 2008). However, electronic filing offers a much faster refund schedule. Users of Volunteer Income Tax Assistance sites who e-file and opt to receive their refund via direct deposit can receive their money in a week; see the entire direct deposit and check-mailing schedule for 2008 at http://www.taxact.com/products/all_efcycle.asp, accessed 23 January 2008.

8 Tumulty, *op cit.*

9 Uriah King, Leslie Parrish, and Ozlem Tanik, "Financial Quicksand: Payday Lending Sinks Borrowers in Debt with $4.2 billion in Predatory Fees Every Year," Center for Responsible Lending, Durham, NC, 30 November 2006, p.2.

there is a strong correlation between the concentration of payday lenders and the location of military bases in the United States.[10]

Maps 1-7 explore whether, similar to military bases, there is a concentration of payday lenders near Native communities. They show all of Montana, Oklahoma, and South Dakota as well as the regions around Albuquerque, NM, Gallup, NM, Phoenix, AZ, and Seattle, WA. These maps do not provide visual evidence that payday lenders (red dots) have concentrated their services near Indian lands in the same comprehensive way that they have near military installations. Nonetheless, there appears to be a degree of regional clustering, especially where policy and "target populations" create an attractive market for non-bank lenders.[11]

For example, 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.[12] The *Rapid City Journal* observes, "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."[13]

The maps also 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).[14] Given the strong service orientation of payday lenders and their allied businesses as compared to that of banks,[15] and given many reservation residents' limited experience with banks,[16] this ready access has translated to predation and escalating debt for numerous Native consumers. One participant in a breakout

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10 Steven M. Graves and Christopher L. Peterson, "Predatory Lending and the Military: The Law and Geography of 'Payday' Loans in Military Towns," *Ohio State Law Journal* 66(4)(2005): 653-832. Such findings led the US Department of Defense to issue a report to Congress in 2006 highlighting the high rate of predatory lending near military bases. Recommendations included a 36% APR cap on loans to military personnel. (See "Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents," 9 August 2006, at http://www.responsiblelending.org/issues/payday/reports/page.jsp?itemID=29862306, accessed February 14, 2008).

11 We plan to conduct additional research in this area to determine whether there is statistical evidence of spatial correlation.

12 Graves and Peterson, p. 792.

13 Journal Editorial Board, "Payday Loan Industry Targets the Vulnerable," *Rapid City Journal*, 26 November 2007.

14 In these data, payday lenders are entities that make high-interest short-term loans; most states' regulations include car title lenders in this category but not pawn shops (per email correspondence with Steven Graves, 29 January 2008). Thus, predatory options are even more numerous than indicated by the maps.

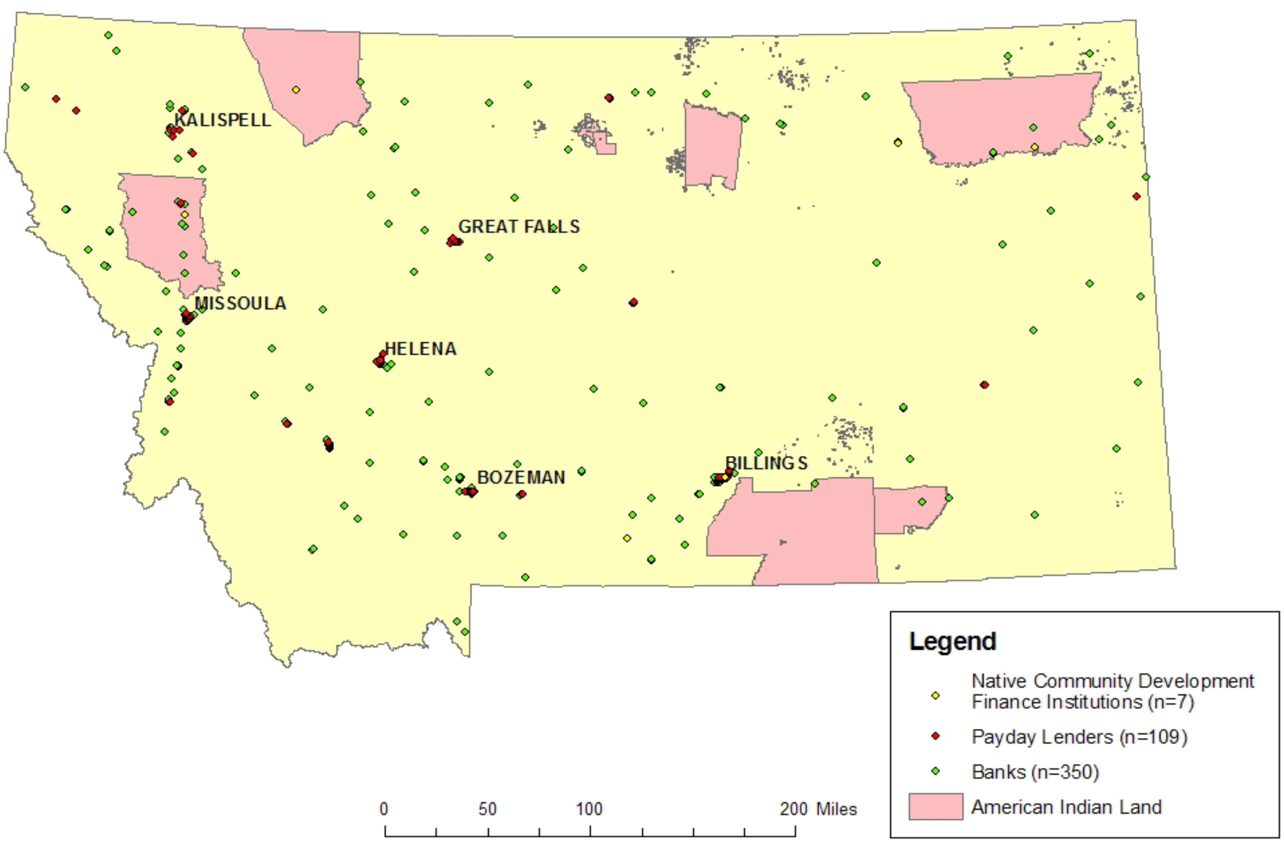
15 Anecdotally, customers of payday lenders report friendlier service, more convenient opening hours, and an opportunity to access multiple services (such as utility bill payment, money orders, and check cashing).

16 See Kristen Wagner, Karen Edwards, Miriam Jorgensen, and Dana Klar, "Contributions of the Earned Income Tax Credit to Community Development in Indian Country: Report to the Annie E. Casey Foundation, 2005 Native Community VITA Site Project," Kathryn M. Buder Center for American Indian Studies and the Center for Social Development, Washington University, St. Louis, MO, 19 October 2006, especially pp. 10-11.

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." In these circumstances, the small but growing number of Native community development finance institutions (yellow dots) is a welcome trend.

Map 1

Payday Lenders and Bank Branches in Montana

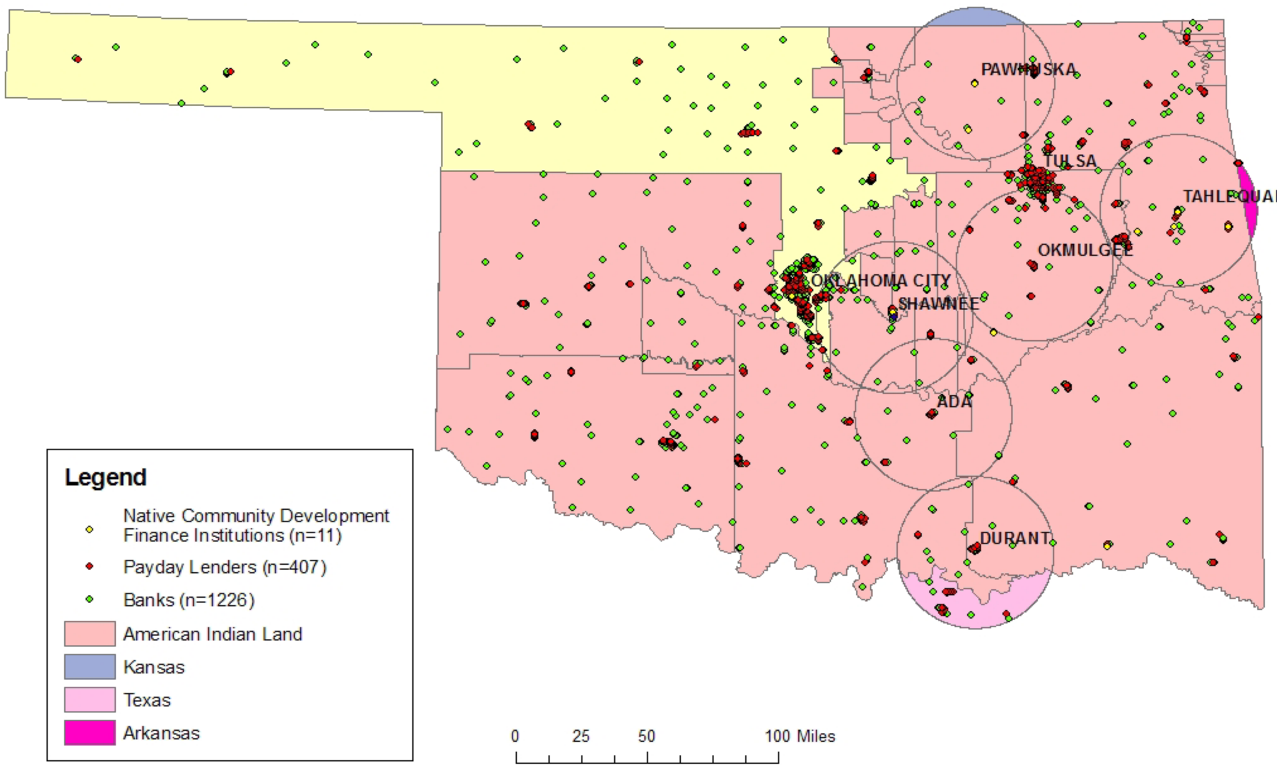


Sources: Payday lender data are from Steven Graves, compiled for Steven Graves and Christopher Peterson, "Usury Law and the Christian Right: Faith-Based Political Power and the Geography of American Payday Loan Regulation," *Catholic University Law Review* 57(3): forthcoming; bank branch data are from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

Map 2

Payday Lenders and Bank Branches in Oklahoma

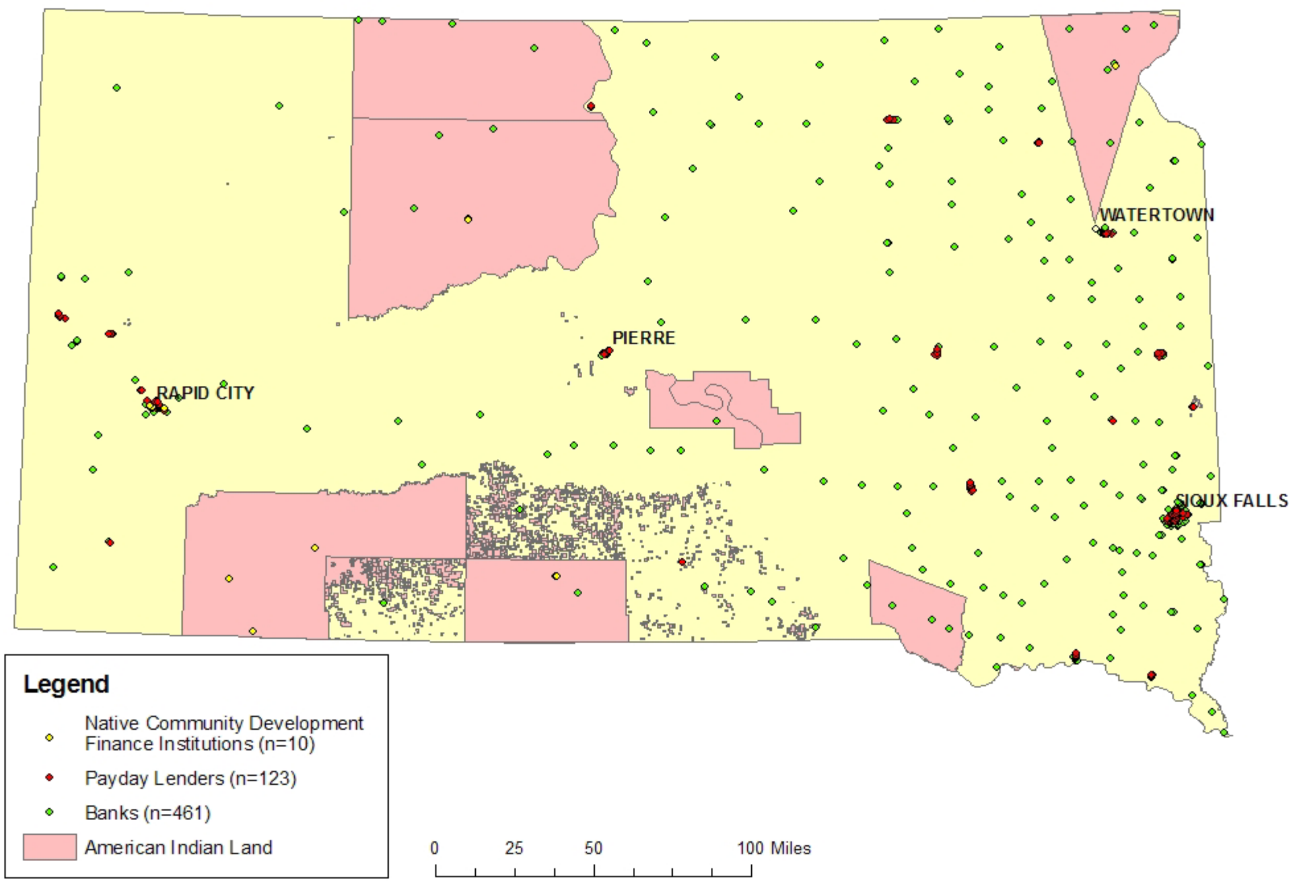
(also showing 30-mile radii from major centers of Native population)



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.

Map 3

Payday Lenders and Bank Branches in South Dakota

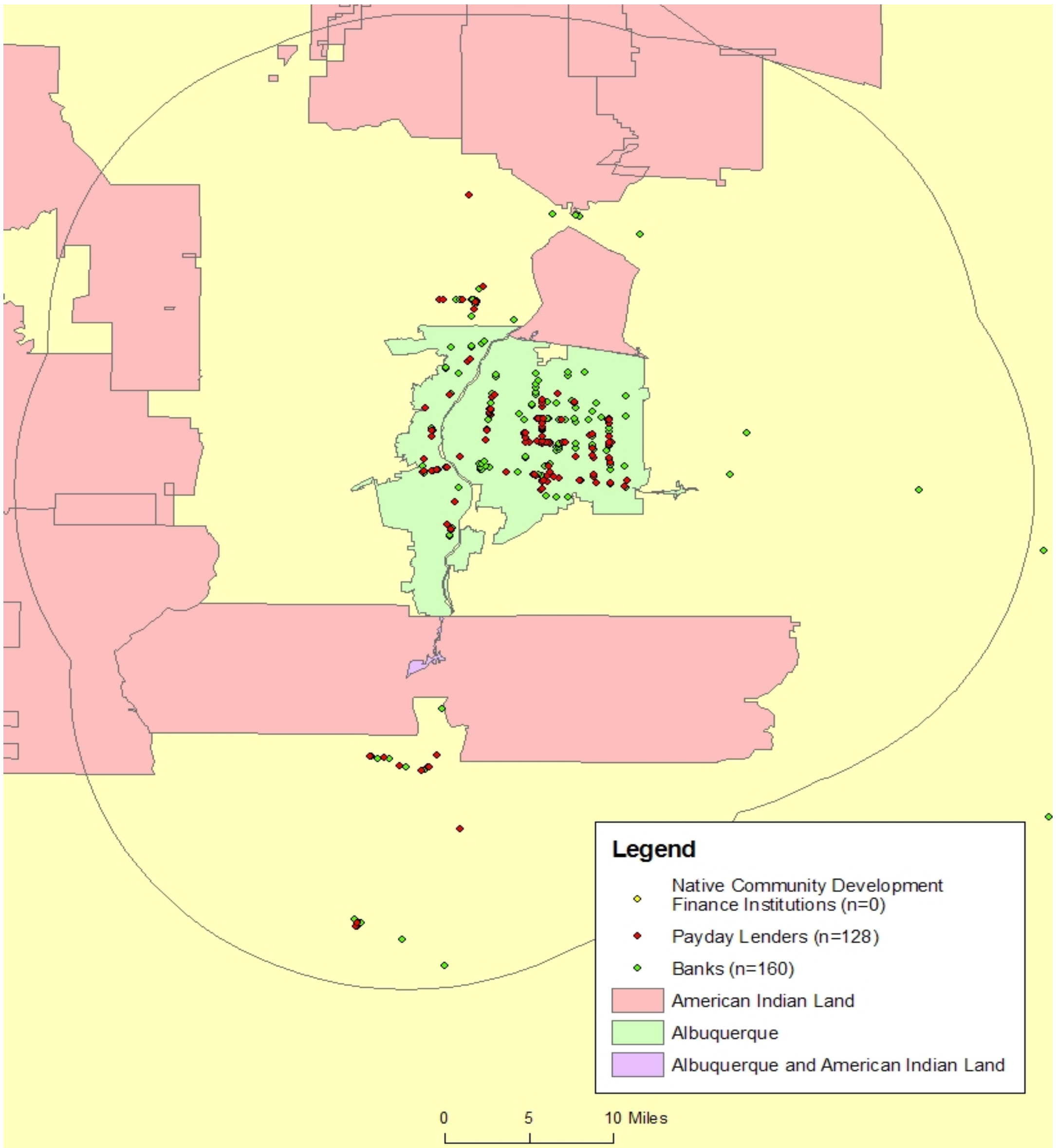


Sources: Payday lender data are from Steven Graves, compiled for Steven Graves and Christopher Peterson, "Usury Law and the Christian Right: Faith-Based Political Power and the Geography of American Payday Loan Regulation," *Catholic University Law Review* 57(3): forthcoming; bank branch data are from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

Map 4

Payday Lenders and Bank Branches in the Albuquerque, NM Region

(with a 20-mile "buffer" around the metropolitan area)

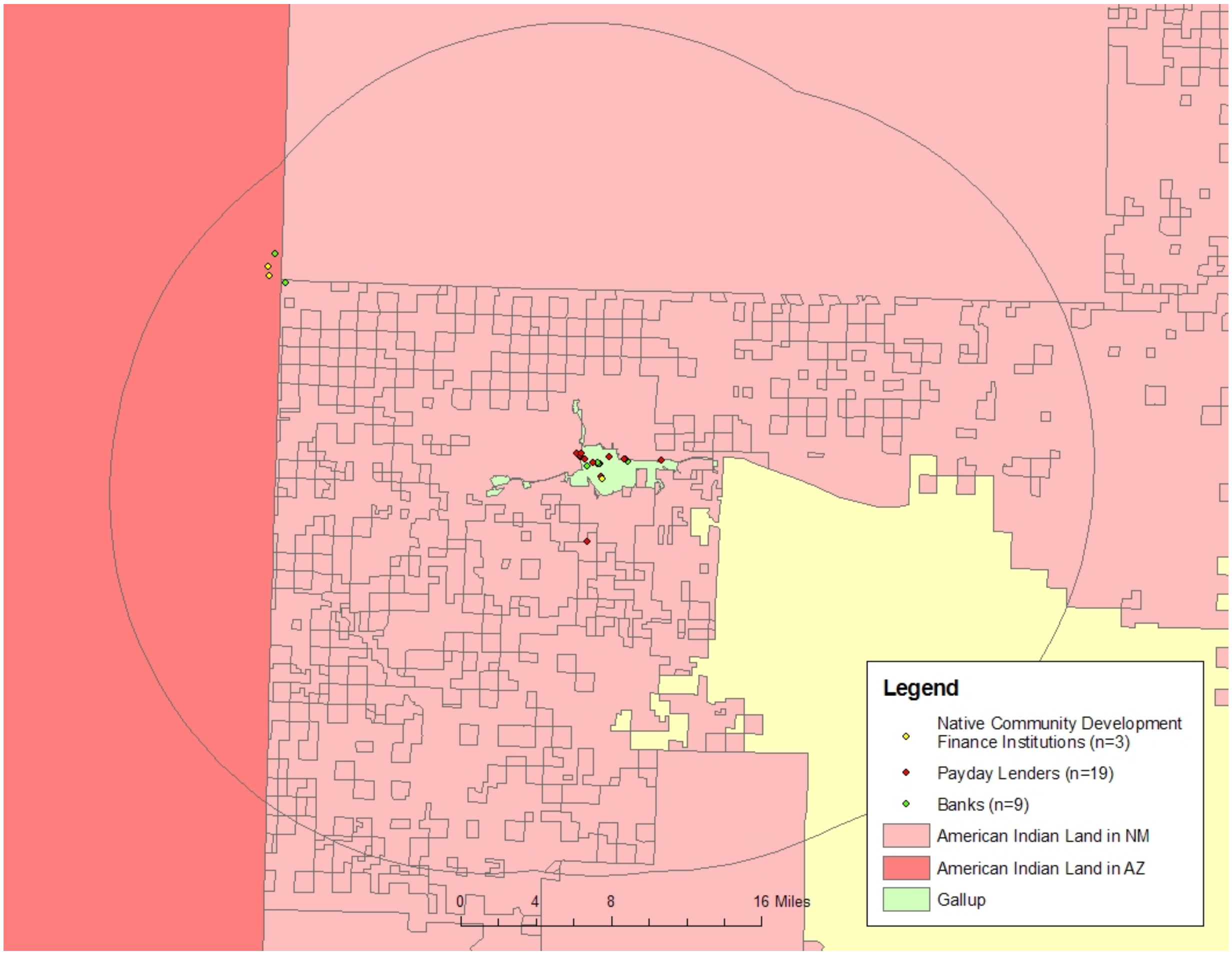


Sources: Payday lender data are from Steven Graves, compiled for Steven Graves and Christopher Peterson, "Usury Law and the Christian Right: Faith-Based Political Power and the Geography of American Payday Loan Regulation," *Catholic University Law Review* 57(3): forthcoming; bank branch data are from 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 Albuquerque. Counts (n values) are of payday lenders and banks within the buffers.

Map 5

Payday Lenders and Bank Branches in the Gallup, NM Region

(with a 20-mile "buffer" around the metropolitan area)

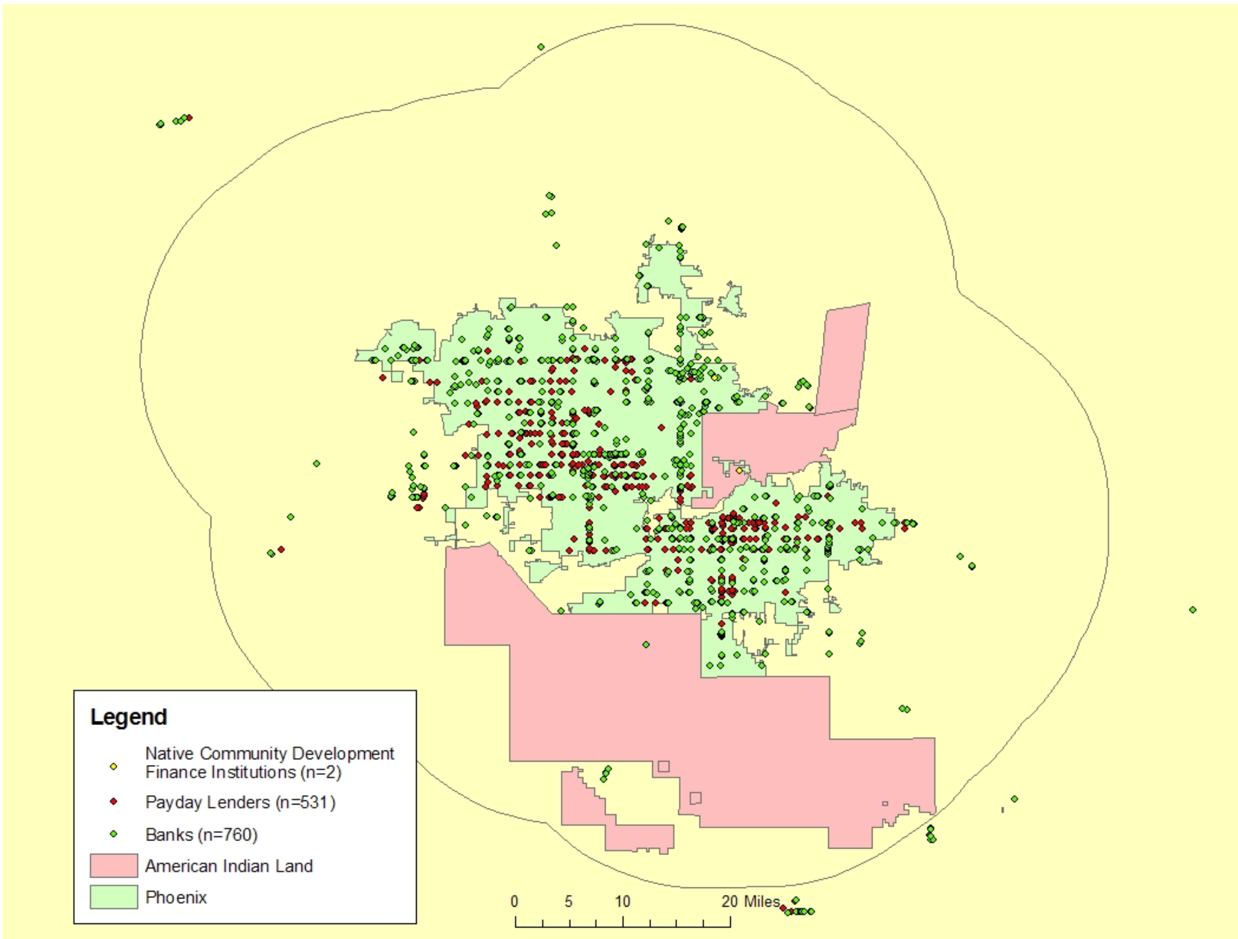


Sources: Payday lender data are from Steven Graves, compiled for Steven Graves and Christopher Peterson, "Usury Law and the Christian Right: Faith-Based Political Power and the Geography of American Payday Loan Regulation," *Catholic University Law Review* 57(3): forthcoming; bank branch data are from 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.

Map 6

Payday Lenders and Bank Branches in the Phoenix, AZ Region

(with a 20-mile "buffer" around the metropolitan area)



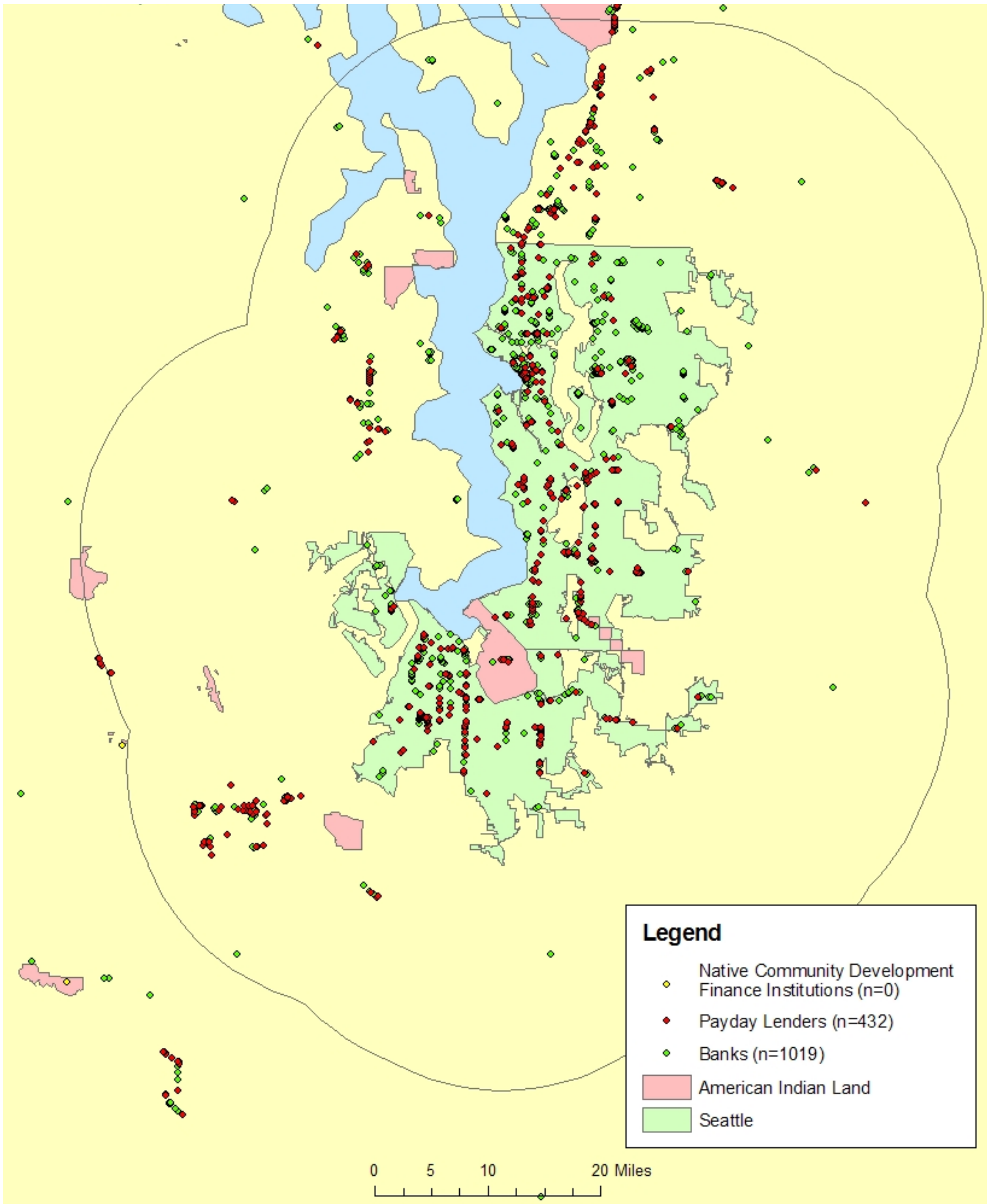
Sources: Payday lender data are from Steven Graves, compiled for Steven Graves and Christopher Peterson, "Usury Law and the Christian Right: Faith-Based Political Power and the Geography of American Payday Loan Regulation," *Catholic University Law Review* 57(3): forthcoming; bank branch data are from 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 Phoenix. Counts (n values) are of payday lenders and banks within the buffers.

Map 7

Payday Lenders and Bank Branches in the Seattle, WA Region

(with a 20-mile "buffer" around the metropolitan area)



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 Seattle. Counts (n values) are of payday lenders and banks within the buffers.

Additional Data on Home Mortgage Lending

A "subprime loan" is a loan offered at a *higher* rate than the best rates banks have available. The higher rate serves to compensate the lending institution for the added risk of default. Typical (but not defining characteristics) of subprime mortgage loans are adjustable rates, more stringent and higher fee schedules, pre-payment penalties, looser approval and underwriting guidelines, and limited pre-approval long-run affordability analysis. It is also the case that certain banks and lending institutions tend to specialize in subprime loans, a tendency that may increase the propensity for predatory behavior in this market.

These characteristics make subprime loans dangerous for consumers. For instance, foreclosures are more common in the subprime market, which means that consumers with subprime mortgages are more likely to lose their homes. In fact, even though subprime loans were marketed as a way to make homeownership more accessible, the high foreclosure rate and the large number of subprime loans made for home refinancing may ultimately mean that the active subprime market of the last decade results in less homeownership rather than more.[17]

In 2003, the NAIHC, in collaboration with the National Community Reinvestment Coalition (NCRC), analyzed data available under the Home Mortgage Disclosure Act (HMDA) for the period 1998-2001.[18] These data show that over the period, 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, NAIHC and NCRC found that Natives were engaged with the high-cost market more than twice as often as Whites (disparity ratios in the range 2.04:1 to 2.55:1).

Disparity between American Indians and Whites in the share of loans from lenders engaged in the subprime market has continued since that time. Figure 1 shows data for the period 2002-2005; market share ratios are in the 2.06:1 to 2.32:1 range. Figure 2 shows that the problem is worse in some states than others, with the District of Columbia and North Dakota having ratios that are quite out of line with the rest of the nation. These outlier values arise from two problems in the data that affect some states more than others—relatively small numbers of Native borrowers and differences in the way manufactured home loans were classified over time. Even after adjustments to downplay these statistical concerns, however, the disparity is clear and persistent in the non-outlier states.

In one sense, there is good news in the extended data series: the problem has not worsened. Native Americans are engaging with lenders operating in the high cost market in the same proportion as they were in the previous four-year period. On the other hand, the news is not good at all: as a group, Native borrowers remain more at risk of the negative outcomes associated with subprime lending than non-Natives. To better understand who is at risk, however, more data on the loans and borrowers themselves are needed. Given responses to the NAIHC-administered survey that

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[17] See Ellen Schloemer, Wei Li, Keith Ernst, and Kathleen Keest, "Losing Ground: Foreclosures in the Subprime Market and Their Cost to Homeowners," Center for Responsible Lending, Durham, NC, December 2006; and, no author, "Subprime Lending is a Net Drain on Homeownership," CRL Issue Paper No. 14, Center for Responsible Lending, Durham, NC, 27 March 2007.

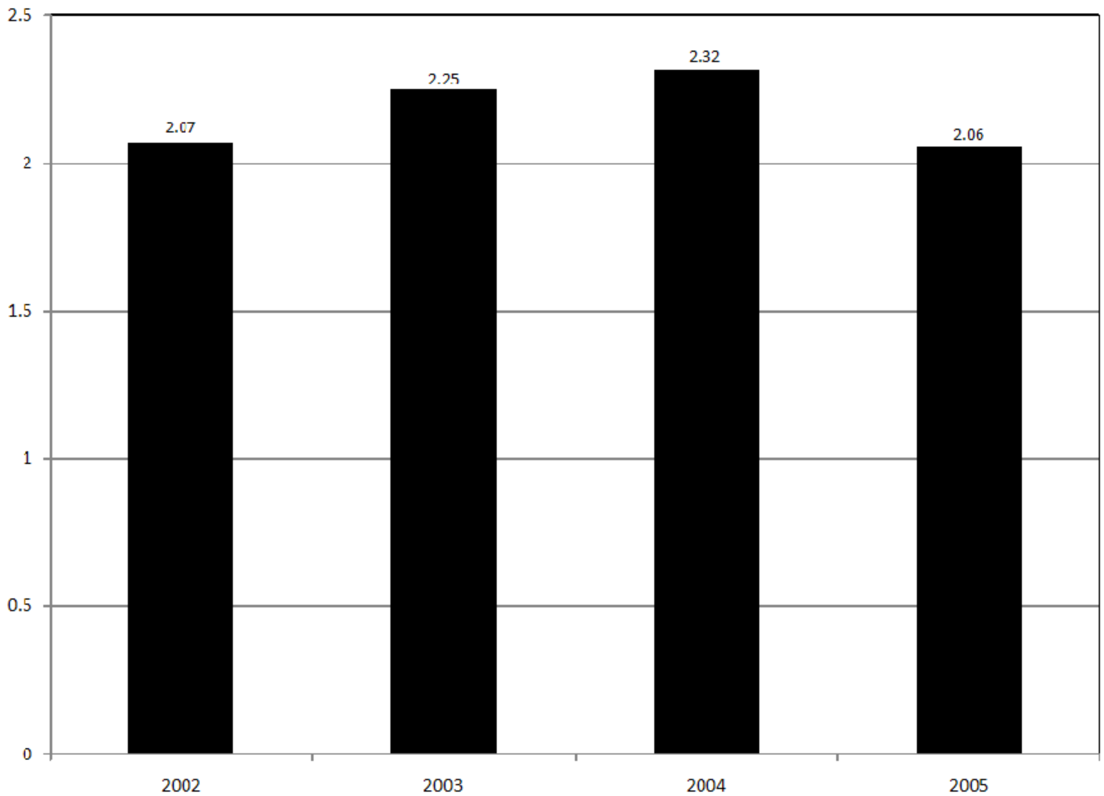
[18] "High Cost Lending on Indian Reservations—Watch Out If You Are Buying a Home," National American Indian Housing Council, Washington, DC, and National Community Reinvestment Coalition, Washington, DC, June 2003.

predation in mortgage lending is not a primary concern for most Native communities, this short-run data gap is tolerable. Looking to the future, changes in the HMDA reporting requirements will make some of this analysis possible.

Figure 1

Disparity in the Market Share of Loans from High-Cost Lenders, Entire Nation

(ratio of American Indian market share to White market share)



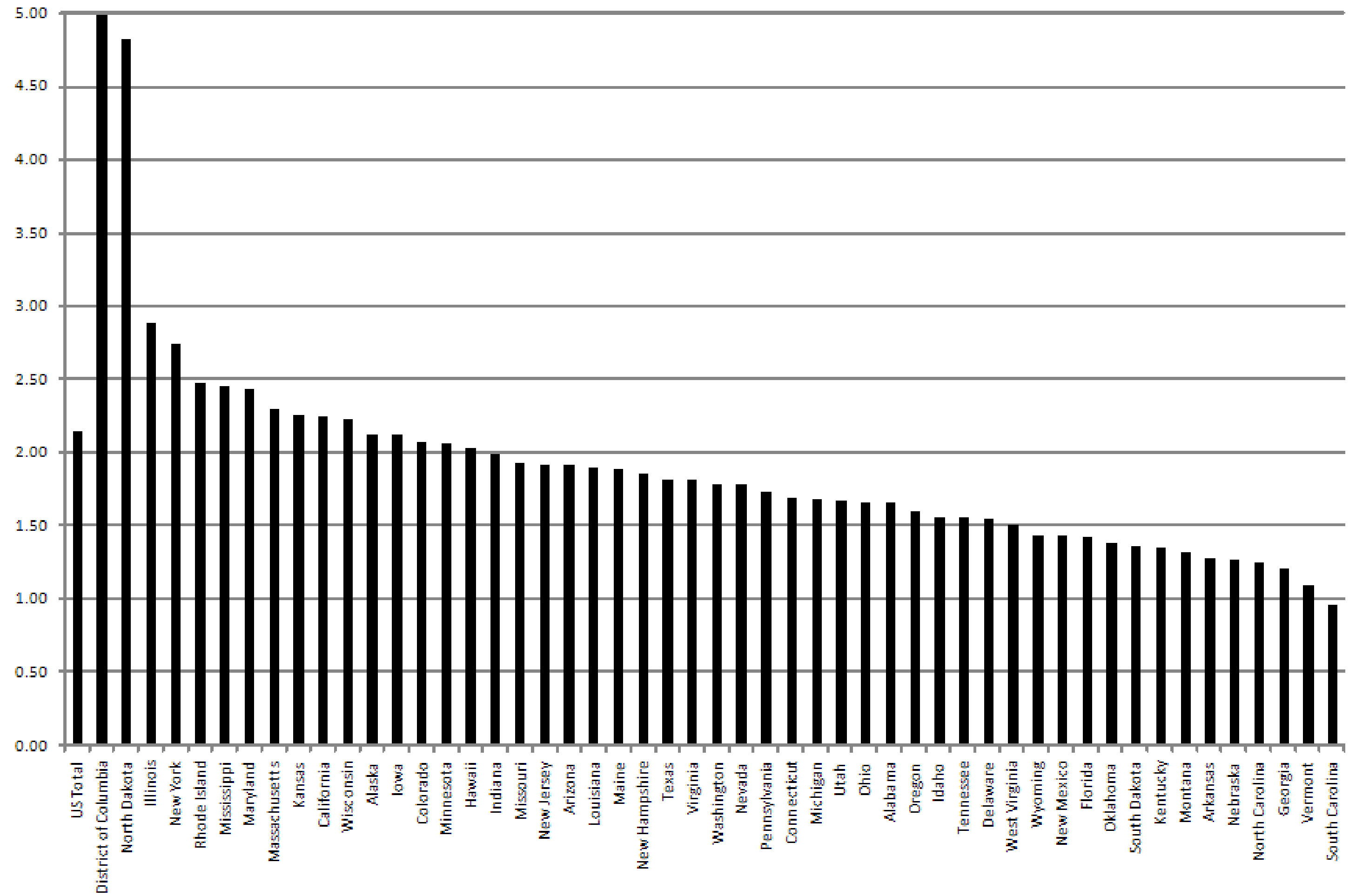
Source: Home Mortgage Data Act datasets, 2002-2005, and US Department of Housing and Urban Development lists of subprime issuers, 2002-2005.

Notes: Borrowers are coded "American Indian" if the applicant and co-applicant are both Indian or if the applicant is Indian and there is no co-applicant. Native Hawaiian is merged with Asian in 2002 and 2003, but in 2004 and 2005 is reported with other Pacific Islanders; for consistency, Native Hawaiians are not grouped with Indians for any years. Borrowers are coded "White" if both the applicant and co-applicant (if any) were white, not Hispanic. In 2004, 2005, and 2006, persons reporting more than one race were not coded as white. In 2002 and 2003, Hispanic is included as a race category, and is thus mutually exclusive with other race categories. In 2004, 2005, and 2006 Hispanic ethnicity moves to its own question, but for consistency purposes we retain mutually exclusive coding. A subprime issuer was any issuer listed on the HUD subprime list with a code 1 for the same year as the year of the data. In 2002 and 2003, the HUD list had a manufactured home category. In 2004, a "manufactured home" item was added as an explicit reporting item, and HUD no longer produced the manufactured home lender code. The manufactured home lender list identified fewer loans than the explicit item, so to avoid a discontinuity in the series, manufactured homes/lenders were not included in the subprime calculation, unless explicitly identified as subprime lenders on the HUD list.

Figure 2

Disparity in the Market Share of Loans from High-Cost Lenders, mean over 2002-2005, by state

(ratio of American Indian market share to White market share)



Source: Home Mortgage Data Act datasets, 2002-2005, and US Department of Housing and Urban Development lists of subprime issuers, 2002-2005.

Notes: See Figure 1. Mean ratios are adjusted means, which attempt to eliminate noise in the statistics arising from low numbers and the differential treatment over the years of manufactured home loans; the reported means are calculated by replacing the largest outlier year's data with the true mean.

III. Five Case Studies on Combating Predatory Lending in Native American Communities

While predatory lending is a substantial problem for the citizens of Native communities, some tribes are taking an active stand against it. This section profiles the outreach efforts of five Native nations—the Cherokee Nation, the Citizen Potawatomi Nation, the Confederated Tribes of the Umatilla Indian Reservation, the Lac Courte Oreilles Band of Lake Superior Chippewa, and the Winnebago Tribe of Nebraska—whose innovations with financial education, alternative financial services and products, and other asset-building programs and strategies are helping to intercede in tribal citizens' decisions to "borrow trouble."[19]

Cherokee Nation

The Cherokee Nation of Oklahoma is headquartered in northeastern Oklahoma, where its Tribal Jurisdictional Statistical Areas (TJSA) encompasses approximately 9,200 square miles. While the TJSA includes the Tulsa area, Cherokees in Oklahoma predominantly reside in rural areas. The 14 counties in which much of the Cherokee Nation membership lives (and that comprise much of the TJSA) represent the highest density of Native Americans in the state. For instance, as of 2006, 42% of the total population in Adair County was Native as was 32% of the population in Cherokee Country, compared to 8% of the population for the whole state. A significant proportion of adults in this population have less than a twelfth grade education (33% of Natives age 25 and above in Adair County and 23% in Cherokee County). [20]

Similar to NAIHC conference survey respondents, the staff person we interviewed at the Cherokee Nation Commerce Department identified a large problem with people using predatory tax preparers and payday lenders. In addition, many community members reported problems with unscrupulous car dealers.

The cost to families and communities was often significant. The program manager stated,

> 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

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[19] Three of the case-study tribes are located on largely rural reservations; the other two are located in US Census Bureau-designated Tribal Jurisdictional Statistical Areas in Oklahoma that encompass both rural and urban communities. We conducted telephone interviews with at least one staff person from a key tribal program engaged in asset building and anti-predatory lending activities and asked a series of questions regarding these activities.

[20] Data in this paragraph come from the U.S. Census Bureau's State and County QuickFacts page, http://quickfacts.census.gov/qfd/, accessed 11 March 2008.

> 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.

A lack of financial knowledge and options was identified as a key factor in the uptake of predatory loans. Our interviewee stated,

> Many clients do not realize the costs of using predatory lenders and that they have other options. In many ways, this is truly a part of the "poverty cycle"—people continue using the same fringe banking resources their parents used. Those clients realizing the cost of this type of financing either have had past negative banking relationships or use the most convenient method of immediately gratifying their desires.

Since at least the late 1990s, the Cherokee Nation has made it a high priority to expand the number of financial and asset-building opportunities available to citizens. A critical catalyst was the Nation's development of one of the first matched savings programs in the United States (often called individual development account, or IDA, programs) serving Native people and one of the first youth IDA programs, both of which were run through the Nation's Commerce Department. Today, the Nation's youth and adult IDA programs work to discourage dependence on unscrupulous lenders, encourage debt repair and good financial management, increase financial literacy, promote savings, and better facilitate asset accumulation in low-income families. All are accompanied by community-based financial education.

Through IDA and financial education program implementation, however, the Cherokee Nation discovered that many citizens lacked the financial skills necessary to take full advantage of the opportunities offered. As a result, the Nation developed additional financial skills and asset building programs, including programs to combat predatory lending. In particular, the Cherokee Nation:

- Contracted with Consumer Credit Counseling of Oklahoma to provide on-site financial counseling services to community members (particularly those requiring debt management and pre-bankruptcy counseling).

- Contracted with Boys and Girls Clubs serving the Nation to provide financial education to students of all ages.

- Initiated a consumer loan program for tribal government employees, intended to offer low-cost alternatives to predatory loans. A reasonable interest rate is charged, payments are made through payroll deduction, a preset time limit is established for loan payoff, and high-risk applicants are required to get budget counseling to gain loan approval. The consumer loan program is coordinated through the Cherokee Nation's Economic Development Trust Authority, a community development financial institution (CDFI).

- Implemented a pilot youth savings program as part of a national private youth savings demonstration initiative (Saving for Education, Entrepreneurship, and Downpayment, or SEED), with a select group of high school students and a group of children who receive Indian Child Welfare monies.

- Expanded a Volunteer Income Tax Assistance (VITA) site to provide free tax preparation services, increase receipt of the Earned Income Tax Credit (EITC), increase awareness of predatory business practices, and provide referrals to asset-building initiatives such as budget counseling and IDA programs.

- Initiated self-sufficiency counseling services for prospective homebuyers (including homeownership education, budget counseling, and credit repair), to prepare them for traditional lending institution requirements and practices.

- Partnered with the Housing Authority of the Cherokee Nation to begin an "Assumable Mortgage Program" for families that have enough income to make conventional mortgage payments, but lack the good credit histories and ratings needed to obtain a traditional mortgage product. Families are offered a lease-to-purchase home-buying option that lasts for three years, during which time they work with self-sufficiency counselors to establish acceptable credit histories and qualify for a traditional mortgage.

- Began a small business development program to encourage income generation through self-employment. The program offers low-interest loans and entrepreneurial development courses. The latter (which are offered both one-on-one and in classroom settings), include financial education, household budgeting, and business planning information. The microenterprise component has one set of services targeting adults and another targeting youth in low-income households.

- Developed a youth and adult leadership program designed to foster more responsible decision making in the greater community, including important decisions pertaining to financial management. All tribally supported programs are being asked to adopt the leadership program.

Positive impacts of the Nation's long-standing engagement in financial education and anti-predatory lending programming are large and growing. For example, over 40 people have graduated from the Cherokee Nation IDA program, representing over $100,000 of savings leveraged. At every step of the way, Cherokee Nation's leadership has been supportive of—and has invested in—these asset building and asset protection efforts. Our interviewee stated, "They want tribal members to become more financially savvy, while becoming more self-sufficient. They see tribal members' financial competence as a win-win situation for the tribe. The tribe has put many thousands of dollars into our efforts and wants to take it even further."

Citizen Potawatomi Nation

The Citizen Potawatomi Nation (CPN) is headquartered in central Oklahoma and covers approximately 900 square miles of a TJSA, including the Oklahoma City area. The CPN has a membership of 26,000, and according to the U.S. Census, a CPN member's median household income in 2000 was $46,181.[21]

Growth in the Nation's economy overall has opened the door to change. CPN's leaders are now in a position to help citizens escape poverty and debt and build sustainable assets. Over the last several years, the Nation has created a CDFI to assist members in financing small businesses, developed an IDA program, created a financial education program, and supported a VITA site to improve EITC uptake among citizens.

Unfortunately, as the Nation developed these initiatives, it became apparent that predatory lending was a problem for CPN members—and more pervasive than program staff ever imagined. For instance, many citizens interested in business or other loans needed to clean up their credit before they could apply. Our interviewee indicated that predatory lending affected 10-15% of the local tribal population. She stated,

> It keeps people stuck in a destructive financial situation, which prohibits the establishment and building of good credit. It permits the creation of no banking relationships. It makes the financial burdens of members worse. Renewing loans goes on forever: five- to six-year-old loans are common and must be renewed because they can't be paid off. It keeps the community financially dependent and illiterate, which does not encourage a sense of healthy community.

Financial education, which the Nation offers in partnership with the local Consumer Credit Counseling Service, has become the lynchpin initiative for combating predatory lending. Notably, various tribal government departments and programs—including the Citizen Potawatomi Community Development Corporation (or CPCDC, the Nation's CDFI), the Housing Department, the Human Resources Department, and Indian Child Welfare program of the Family and Children Services Department—collaborate to implement financial education so that anti-predatory lending support is available not only to all participants in tribally established asset-building programs, but to broader audiences as well.

For example, innovative CPCDC financial education outreach includes monthly financial education workshops (called "Lunch and Learn" sessions), which are open to all community members, and a booth at the Nation's annual "family reunion" (a pow-wow like event for CPN citizens, which draws over 7,500 tribal members from across the U.S.), where information is made available about how to combat identity theft and get a free credit report. Another program—this one delivered through the Nation's Indian Child Welfare services—offers financial education to tribal citizens who have been victims of domestic violence.

But the Nation employs other strategies against predatory lending as well. For example, it has expanded its IDA program to help people with debt repair (that is, made debt repair an approved IDA program savings goal). It also has an employee loan program (modeled on the Cherokee Nation program) that provides short-term, low-interest loans. This popular tribal government

[21] Data in this paragraph come from the website of the Citizen Potawatomi Nation, http://www.potawatomi.org/, accessed 11 March 2008; and the U.S. Census Bureau's FactFinder program, http://factfinder.census.gov/home/saff/main.html?_lang=en, accessed 11 March 2008.

program provides a cheaper alternative to the services of payday lenders *and* builds up borrowers' credit histories. The program manager we interviewed stated, "With our employee loan program, the tribe looks at it as an employee benefit, and so do members. Payroll deduction is used to pay back these loans, which the employees have two years to pay off. The tribe then reports [to credit bureaus] that the loan is being paid on time and/or is paid off."

The impact of these multiple efforts to build CPN members' assets, increase their financial well-being, and reduce their use of predatory lenders has been significant. In the first year of the Citizen Potawatomi Asset Builders IDA program, for example, 23 participants saved over $18,325, and 15 savers paid off $32,910 worth of debts. In its first two years of business, the Citizen Potawatomi Community Development Corporation employee loan program (the anti-predatory lending product) made 298 loans totaling $220,176. The program manager we interviewed identified additional impacts of the Nation's anti-predatory lending efforts:

> Members have bought their first cars and kept them, and learned how much predatory lending practices cost them and their families—and passed that word along. They have submitted letters to the three credit bureaus saying they have graduated from a financial education course and thereby raised their credit scores, and they have paid off old loans and gotten out of the predatory lending trap.

The Nation's support of the program has been critical. Our interviewee stated,

> Tribal leadership has invested $250,000 so far for an employee loan program, and allowed our office to open CCCS [Consumer Credit Counseling Service] training to non-Indians living in the community. They have put a lot of support, including monetary support, into the creation and ongoing efforts of our CDC and all our work. They want tribal members to have opportunities to own a business, but they also want them to have opportunities to clean up their debt and save money on loan and credit products. We will continue to work with our current tribal leadership, and hopefully beyond.

The Confederated Tribes of the Umatilla Indian Reservation

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) owns approximately 172,000 acres within a large, checkerboarded reservation in northeastern Oregon and an additional 26,000 acres of non-reservation trust land in Oregon and Washington State.[22] Approximately 1,200 of CTUIR's 2,500 members live on or near the reservation. Tribal government and tribal enterprises employ more than 1,100 people in the area (50% tribal members, 40% non-Indian, 10% other Indians), making the tribe the second largest employer in the state of Oregon.[23] After years of struggle and limited opportunity, CTUIR is moving towards economic self-sufficiency by diversifying its economy. Nonetheless, obstacles remain, including physical infrastructure deficits, a housing shortage and high building costs, and a significant percentage of citizens with poor credit histories, high debt, and a lack of the financial knowledge necessary to navigate in today's world.

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[22] Veronica Tiller, *Tiller's Guide to Indian Country* (Albuquerque: BowArrow Publishing Company, 2005), p. 904.

[23] See http://www.umatilla.nsn.us/labor.html, accessed 14 February 2008.

At CTUIR, the initiation of a creative homeownership strategy by the tribe's Housing Authority led to awareness that predatory lending was a community problem. As a variety of new business ventures helped improve the tribes' economy, tribal leadership decided to use some of this new income, in combination with federal housing funds, to assist members in building or buying homes on or near the reservation. In order to ensure that tribal home buyers were prepared for the financial commitments necessary to owning a home, CTUIR's Housing Authority developed an integrated homeownership program—including financial education, a new IDA initiative, and homebuyer education—to complement the new financing opportunities.

The financial education program was an eye-opener for the tribe. The Housing Authority discovered that many community members had poor or no credit and were paying very high fees on loans from unscrupulous lenders for cars and other products. As at CPN, CTUIR's leaders and program managers learned that predatory lending was a bigger problem than they originally imagined. Our interviewee stated,

> Numerous tribal members have been and currently are victims of predatory lending for car loans and at check cashing institutions. It has been around for awhile, and is still happening here on the reservation—but, even though we are trying hard to reach as many susceptible people as possible, at present we can only reach and educate so many. The people use check cashing stores the most. They pay for one check to be cashed, then another to pay the interest on the first, and another on top of that, and pretty soon it's a chain of checks with nothing to show for the repayment effort. If they bounce a check, they then have to pay an astronomical amount of interest rate… We are attempting to change mindsets and educate people to be wary and stay away from predatory lenders through good budgeting and spending plans.

After making this discovery, the Housing Authority decided to focus its immediate efforts on financial education. Program principals felt that it was critical to assist tribal citizens in gaining financial skills and repairing credit before putting significant energy into a homeownership program that, in light of members' financial circumstances, might not work.

Because of its linkage to the ultimate goal of greater homeownership among tribal citizens, financial education at CTUIR is closely tied to the tribe's IDA program. Prospective savers must complete a certain number of classes before they can participate in IDA savings. Once clients are hooked into this process, the Housing Authority connects them to other resources along the path to home-ownership. For example, the Housing Authority staff has helped build relationships between tribal members and local financial institutions that offer reasonably priced products and services.

Today, CTUIR helps its citizens through a deliberate progression of steps toward asset building. The results of these efforts are encouraging. Program evaluation figures show that over 50% of the reservation's Native residents have received some form of financial education, which means that more and more citizens are budgeting, saving, and changing poor financial habits. As a result, they are turning away from predatory lenders and seeking financial relationships with local lenders and financial institutions that charge reasonable rates. Notably, a significant number of tribal citizens are purchasing homes and cars at market rates through a local credit union that works in partnership with the tribe. The program manager we interviewed stated,

> Personal impacts [that we have seen] are reduction in loans for autos that include high interest rates, and less use of rent-to-own institutions. We have seen a reduction in all the destructive financial practices that can take a toll on tribal members because they can't afford to complete paying back the loans within the contract date and the items or cars are repossessed, which damages their credit. When their credit is damaged they become victims, and it takes even longer to get out of debt. This has been an ongoing cycle for our people, and we are making significant headway in breaking it. I have seen credit reports that have multiple accounts sent to collections, and it adds up to financial disaster. This gives a person low self-esteem so that they often don't know where to go to for help or think they can't get help out of debt. Those types of reports are becoming fewer.

What started as a housing program is now that and more. Throughout the development of these outreach and training programs, tribal leaders' support was consistent and strong. They also led by example. Our interviewee summed up the contributions of elected and appointed leaders by stating,

> Almost all of our tribal leaders have gone through our financial literacy program, and all are supportive of it. They are amazed at what we are teaching the people, and that we have come up with so many alternatives to the old predatory way of doing things around the rez. They support us both in spirit and monetarily. As we show more and more results, they will give us more and more support.

Lac Courte Oreilles Band of Chippewa Indians

The Lac Courte Oreilles Band of Chippewa Indians is one of seven Wisconsin-based Ojibwa bands. Its territory is centered at the Lac Courte Oreilles Indian Reservation in northwestern Wisconsin, which surrounds Lac Courte Oreilles (*Odaawaa-zaaga'igan* in the Ojibwe language, meaning "Ottawa Lake"). The reservation and trust lands encompass 108 square miles and had a population of approximately 2,900 persons as of the 2000 census.[24] The most populous community is Little Round Lake, at the reservation's northwest corner, southeast of the non-reservation city of Hayward, the county seat of Sawyer County.

Chartered in 2001, the Lac Courte Oreilles Federal Credit Union (LCOFCU) in Hayward, Wisconsin serves the Lac Courte Oreilles Reservation with basic bank accounts and consumer loans. LCOFCU is a Native American-managed CDFI certified by the U.S. Department of Treasury's CDFI Fund in 2002 and has over 1,500 members. The credit union was created not only because tribal members and others living on the reservation needed access to basic financial services but also because of their need for financial education and training. Responding to these needs, LCOFCU's current products and services are basic consumer loans for new and used autos and other larger consumer purchases, smaller consumer loans that are designed to provide access to short-term credit at reasonable rates, and financial education programs.

Several of LCOFCU's loan products are explicitly designed to provide an alternative to predatory lending. One is called "Easy Money" and is for tribal employees who have been working for at least

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[24] See Veronica Tiller, *Tiller's Guide to Indian Country* (Albuquerque: BowArrow Publishing Company, 2005), p. 1038 and http://www.census.gov/geo/www/ezstate/airpov.pdf, accessed 14 February 2008.

32 hours a week for one year. Clients may borrow up to $500 without a credit check, and the money is repaid through payroll deduction. A second loan product is called a "GOOD" loan, which stands for "Getting Out Of Debt." This loan is designed to help people clean up their credit so they can qualify for a larger consumer loan. To qualify for a GOOD loan, which is given in increments of $500, clients must complete a financial education course and then use their loans to pay off debts that appear on their credit reports. LCOFCU reports the repayment progress to credit bureaus, helping people repair their credit and boost their credit scores. Two other smaller loan programs are the Santa Loan Program and the Summer Loan Program, which allow clients to take out seasonal, short-term consumer loans, under the same requirements as the Easy Money loan products.

The average loan at LCOFCU is $600, well below the minimum that other local financial institutions are willing to lend. Yet these small loans have a big impact. "The idea is that we do a simple, low-cost loan so our people won't have to go to a pawn shop or a payday lender or a check cashing store," stated one of our interviewees. "If they keep coming in our door, we keep exposing them to more and more financial education, and hopefully, we start to keep more wealth in our own community." LCOFCU reports that the major competition for such credit is an on-reservation payday loan business that charges an annual interest rate in excess of 300% (26% for one month); by contrast, LCOFCU charges an average of 18% APR for a short-term consumer loan. In 2006, over 22% of LCOFCU's total loan portfolio was in anti-predatory loans.

As noted, LCOFCU also offers several educational services, including financial education classes, credit counseling, and credit repair. LCOFCU works closely with the Lac Courte Oreilles Ojibwa Community College to offer financial education courses at least four times a year, and to provide free tax preparation services through a VITA site that is open during tax season. LCOFCU is currently preparing to develop an IDA program and has considered offering classes in investor education.

LCOFCU's efforts to provide new opportunities and financial education are helping change attitudes about money and credit in the community. Our interviewee stated that the biggest impact he has seen from the credit union was, "Changing financial habits. People are actually seeing the benefits of savings in creation of their own individual wealth, and by becoming more money conscious and understanding how money and credit work."

Winnebago Tribe of Nebraska

The Winnebago Tribe of Nebraska's territory is located in east-central Nebraska. The 120,000-acre, rural reservation is home to approximately 2,600 tribal citizens, a population projected to expand to 5,000 by the year 2040 because of the youthful age distribution.[25] According to census figures, median household income among Native Americans in the community was $20,795 in 2000 (49.5% of the national figure) and only 41% of the population age 16 and above was employed.[26]

Ho-Chunk, Inc. (HCI) was created in 1994 to function as a catalyst for nongaming economic growth and revenue generation for the Winnebago Tribe. Founders of the corporation recognized that the

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25 See http://www.winnebagotribe.com/winbagoFrameset-1.htm, accessed 14 February 2008.

26 See http://factfinder.census.gov/servlet/QTTable?_bm=y&-geo_id=16000US3153275&-qr_name=DEC_2000_SF4_U_DP3&-ds_name=DEC_2000_SF4_U&-_lang=en&-_sse=on, accessed 14 February 2008.

businesses then located on the reservation (a gas station and one grocery store) could employ only a small proportion of the overall population, and that increasing off-reservation competition meant that the tribe could not rely on gaming income as a perpetual supplement to tribal government revenue. HCI was conceived as a solution to both concerns, and the corporation's ultimate goal is to set the Winnebago Tribe firmly on the path to economic stability.

Through savvy investments (which were initially made off the reservation), the corporation multiplied its capital and provided employees with the opportunity to acquire business and financial management expertise. HCI then began investing on the reservation: it started and expanded businesses to serve the local community (like the grocery store) and sited nationally focused HCI subsidiaries in the town of Winnebago (like AllNative.com). As of 2008, HCI operates in eight US states and three countries. The expansion of the company has increased the Nation's clout and financial resources and has given citizens the option of seeking employment with HCI either at home or in locations beyond the reservation. As a result, rates of unemployment among members have fallen and the economy of the Winnebago Tribe is increasingly thriving.

HCI also has initiated several programs that are designed specifically to support community and social development on the Winnebago Reservation. In 2001, the company founded the Ho-Chunk Community Development Corporation (HCCDC), a nonprofit entity whose mission is to make the Winnebago Reservation a better place to live. HCCDC's largest accomplishment to date is the Ho-Chunk Village Project, a 40-acre housing and commercial development based on the principles of "new urbanism," which call for mixed-use (residential and commercial), higher-density developments and the promotion of a sense of community through the built environment. The project will eventually include 110 housing units (both single-family homes and multi-family rentals). A major goal of the Ho-Chunk Community Development Corporation and its Ho-Chunk Village Project is to increase asset ownership among tribal members through private homeownership.

Similar to other cases profiled here, when HCCDC began working with tribal citizens, it discovered that many clients had poor credit, too much debt (and too much *bad* debt), and could not qualify for even a subsidized home loan. Many people could trace their poor credit histories to specific local car dealerships that had saddled them with high-cost loans. Even those with good credit and a large down payment were unable to buy a quality car for a decent price or finance it at a reasonable interest rate. Often, people ruined their credit by buying new cars at interest rates—sometimes up to 20%—that ultimately made their loans unaffordable.

An innovative solution was born from this problem: Rez Cars, a used car dealership owned and managed by HCI. The dealership's goals are to help customers buy reliable and affordable cars and to gain or repair credit. As a Rez Cars representative stated, "[The] income level of our customers is not the issue, access to credit and good interest rates are the issues." Some of Rez Cars' clients have a good income, but had not been able to get loans from local banks and thus had turned to car dealers for their loans. Other customers don't have bad credit yet, they just have no credit history. Rez Cars does a full review of an applicant's creditworthiness before giving a loan and requires that borrowers fill out a standard credit application. The company also requires that borrowers be employed for a year or more and that payments be made through payroll deduction. If a person has poor credit, or has been turned down by more than two banks, the Rez Cars staff discusses ways to help that individual qualify for a loan. So far, the company has had few defaults.

Rez Cars' managers feel optimistic about the company's impact. It sells about 100 cars a year, and business is increasing as people learn about the company; in fact, it now operates from two locations, one in the town of Winnebago and one in South Sioux City, NE. By fall 2007, HCCDC had sold five homes to people who had repaired their credit with help from Rez Cars. As a manager at Rez Cars states,

> We are very hopeful for the future because of steps we are taking now. We know that we are improving the financial situation of a number of our members, and figuring out some solutions to the overall barriers to homeownership. We also know that we are setting the stage for future generations to change destructive financial patterns.

The Winnebago Tribe has several other financial education programs in place, as well. The tribe brought Junior Achievement onto the reservation and into the schools to teach economic and financial skills for children in grades K-8. It provides financial education in a summer internship program for college students and teaches financial education at the local tribal college.

The tribal government has been very supportive of these programs—and understanding of the gradual but significant nature of the change being wrought. The manager at Rez Cars states:

> As to success, we are seeing more questions asked, which is good. We are not receiving a super high return on investment, financially, but the social impact return is huge. The tribe knows we are making a little profit, and at least breaking even, but believes, along with us, that the investment is fully worth it.

IV. Themes and Findings

Reflecting on the data presented in this paper (the NAIHC-administered survey, the review of national datasets, the five case studies), several important themes emerge. These themes highlight the impact of predatory lending on tribal communities, point to strategic opportunities for reducing impact, and set the stage for the final section of this paper—recommendations.

Predatory Lending is Having a Substantial Impact on Native Nations

While it is hard to estimate how many people in a tribal community use predatory lenders, it is a substantial problem for many communities. One interviewee estimated that 10-15% of her community's adult population relies on predatory lenders. Another interviewee, from another community, identified the figure as higher than 15% among low- to moderate income families. All case study interviewees agreed that the number of tribal citizens negatively impacted by predatory lending is high enough to cause concern among tribal leadership. The response to a financial education question on the NAIHC-administered survey is yet another indicator. When asked which services were needed in their communities, attendees at the May 2007 NAIHC conference ranked "legal advice or services for loan or credit problems" as the number one need (tied with the need for investor education)—a response which signals tribal community members' high degree of involvement with predatory lenders. (See Table 5.)

Table 5

Financial Education and Services Ranked by Need *(Responses to "Please indicate whether your community needs these services.")*	
Type of financial education	% identifying this as a need
Legal advice or services for loan or credit problems	68
Investor education	68
Entrepreneurship education	62
Consumer credit education and credit counseling	58
Classroom-based financial education in K-12 schools	57
Individual Development Accounts (for home purchase)	54
Community-based adult financial education	53
Community-based youth financial education	53
Financial education at the tribal college or university	43
Homebuyer education & homeownership preparation	31

The interviews conducted with key staff at our case study sites also drive home the fact that, in communities where action has yet to be taken, the problem is probably bigger than people think it is. Typically, concerns intensified for the case study tribes *after* they initiated a particular asset building program. Homeownership programs, IDA programs, and CDFI business loan programs were eye-openers for tribal leaders and program managers about the breadth and depth of their communities' predatory lending problems, including excessive debt and credit repair issues. Program staff came to realize that credit repair combined with financial education was an important part of ensuring that tribal citizens were ready to take out larger loans and begin the asset-building process.

The negative impact of predatory lending takes a variety of forms. Borrowing from predatory lenders lowers credit scores, and if an individual has trouble repaying loans, scores fall even lower. Some borrowers ultimately find bankruptcy the only option. Asset stripping occurs through high interest rate charges and foreclosures. Other personal impacts include lower workplace productivity and increased stress on families caused by worry over dire financial circumstances. The net result is a reduction in the financial and human capital needed for Native community economic development.

Easy access increases the impact of predatory lending and makes it even harder to combat—and members of Native communities often have easy access to several local predatory lenders. As reported by survey respondents and interviewees, these lenders include payday lenders, car title lenders, pawn shops that lend, mortgage companies, rent-to-own businesses, tax preparers that offer RALs, car dealers and, in one case, a car dealer that offers free tax preparation to entice customers to use tax refunds as down payments on cars. While some businesses have been readily available to tribal community residents for ten to twenty years, there has been tremendous growth in the sector over the last decade. One interviewee noted that the number of predatory lenders has grown as the tribe's economy has improved, showing that the businesses prefer to situate in areas where growing incomes allow for growth in customer bases; if people with growing incomes continue to regularly use predatory lenders, the lenders' profits grow.

Respondents to the NAIHC-administered survey report that Native community members use high interest loans for a vast array of purposes, including everyday expenses that paychecks don't seem to cover, cars and luxury items not affordable in any other way, unexpected (and unplanned for) expenses (such as medical, car-related, and family emergencies), and occasionally even for financing purchases of homes. Interviewees from the case study tribes noted that community members who patronize predatory lending businesses often believe they have no place else to go for short-term loans that will get them through pressing, mostly small-scale financial crises, or that will allow them to immediately purchase the things they need (or want). Some interviewees spoke about the fact that people felt more comfortable and respected in establishments that offered predatory loans than they did in banks or that tribal members had unpleasant past experiences with mainstream financial institutions. For all of these reasons, the use of predatory loans tends to be pervasive in Indian communities—another fact which increases the depth and impact of the problems they cause.

Financial Education is a Key Strategy

Surveys and interviews both identified basic financial education as a key strategy for educating borrowers and assisting them in accessing affordable credit. Typically, financial education includes basic instruction about money management, credit repair, savings, and investment.

Each of the five case-study tribes provides financial education services in combination with other key strategies for combating predatory lending, such as tribally sponsored low-interest consumer loans. Similarly, a majority of respondents to the survey administered for this report at the May 2007 NAIHC conference noted that financial education is available in their communities, particularly through tribal housing authorities and tribal colleges.[27] (See Table 6.)

Table 6

Financial Education and Services Ranked by Availability

(Responses to "Please indicate whether your community already provides these services.")

Type of financial education	% identifying this as available
Homebuyer education & homeownership preparation	67
Financial education at the tribal college or university	34
Community-based adult financial education	32
Community-based youth financial education	28
Consumer credit education and credit counseling	28
Individual Development Accounts (for home purchase)	26
Legal advice or services for loan or credit problems	19
Entrepreneurship education	17
Classroom-based financial education in K-12 schools	15
Investor education	4

[27] We note, however, that NAIHC conference attendees are likely to know most about housing authority-affiliated financial education and less about the local efforts of other programs and institutions.

Alternative Credit Programs are a Key Strategy

In four of the five case-study communities, interviewees highlighted the strategic importance of making lower-interest consumer loans available to community members, so that they did not have to resort to predatory lending contracts. By charging higher than prime but non-usurious rates, and using payroll deduction to assure repayment, these loans can be viable for a tribal program, business, or nonprofit, and at the same time "steal" part of the predatory lenders' market share.

The most important aspect of these programs is that they draw borrowers away from predatory lenders. But they also have other benefits. When people accessed credit at the Lac Courte Oreilles Federal Credit Union, Citizen Potawatomi Community Development Corporation, Cherokee Nation Economic Development Trust Authority, or Rez Cars, Inc., they had the added benefit of learning how to reduce their need for short-term and unaffordable consumer credit. These groups provide credit counseling and financial education, help borrowers end unsustainable credit practices, and steer community members toward credit repair and asset building programs (such as credit building loan programs and IDA programs). In so doing, they keep borrowers' assets in the local economy and help these assets—and these economies—grow.

Legislative and Regulatory Approaches are Not Common

Both the Cherokee Nation and Citizen Potawatomi Nation have passed commercial codes that, while primarily focused on business development, do provide some consumer benefits. However, neither has passed consumer protection laws. One factor is these nations' lack of reservation land; without it, they cannot exercise territorial jurisdiction over predatory lenders. Instead, the Cherokee and CPN governments work with the Oklahoma state government to institute state laws curbing predatory lending.

On the other hand, even with territorial jurisdiction, The CTUIR, Winnebago Tribe of Nebraska, and Lac Courte Oreilles Band of Chippewa Indians have not passed any predatory lending-related laws either. Ninety-two percent of the respondents from our NAIHC survey also stated that their tribes had not passed laws or adopted regulations concerning lending.

In fact, our research reveals only a few cases where tribes have passed legislation to limit predatory lending on their reservations. The stand-out example is the Blackfeet Tribe, which has enacted a comprehensive consumer protection code, addressing consumer credit, consumer sales practices, equal credit opportunity, and truth in lending. Notable components are a 21% APR interest rate cap (see Chapter 1, Section 4 of the code) and an "unconscionability statute" (Chapter 1, Section 9). The latter reads, "The Court may refuse to enforce any agreement or part of any agreement which it finds to be unconscionable."[28]

Other examples are the Grand Traverse Band of Chippewa and Ottawa Indians and the Navajo Nation. Both have passed legislation aimed at halting abusive lending practices on tribal lands, and the Navajo Nation has addressed the issue in case law as well:

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[28] The Blackfeet Tribe of Indians Consumer Protection Code is available at http://www.narf.org/nill/Codes/blackfeetcode/blftcodetoc.htm, accessed 30 January 2008.

- The Grand Traverse Bands' *Housing Homeownership Protection from Predatory Lending Ordinance* sets out stringent measures to regulate the behavior of creditors, lenders, appraisers, builders, and others to ensure that tribal citizens and lands are respected in all housing transactions.[29]

- In an effort to combat unscrupulous, dishonest, and predatory lending practices on Navajo lands, the *Navajo Consumer Protection Law* sets forth acceptable consumer business practices for doing business on the Navajo reservation and establishes principles for the regulation of pawn transactions, automobile sales, and loan interest rates.[30]

- In *Capital Loan Corporation v. Platero, Henry, and Largo* the Navajo Nation Crownpoint District Court established an interest rate cap of 21% on loans made prior to the *Navajo Consumer Protection Law*. In this ruling, the courts utilized tribally established contract law to rule that Capital Loan Cooperation, located in Gallup, New Mexico, charged the plaintiffs "unconscionably excessive" interest rates (ranging from 89%-233%) on small payday loans.[31]

Tribal Anti-Predatory Lending Efforts are Replicable

When asked whether any of their anti-predatory lending strategies or programs could be replicated by other Native nations, the answer from our interviewees was a resounding "yes." However, all five also noted that replication was possible only if the nation's government was "on board" and capable of providing some support—including funding and staff—to the effort.

Other elements of success mentioned by interviewees include:

- A thorough understanding of the issues related to predatory lending in the community.

- An ability to provide financial education in a variety of settings, so that *anyone* in the community could be reached.

- Available and accessible alternatives to predatory lenders and services, with products and services targeted squarely at tribal citizens' borrowing needs, and appropriate capital to actually finance these products and services.

- A tracking or evaluation plan, for all information and effects, to inform sustainability.

- At least one tribal department, nonprofit, or other tribal entity to lead the way and stay committed to the effort.

- "Community will," or a broad-based community desire to make the initiative work and improve citizens' lives in this way.

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[29] The Grand Traverse Band Code §203 is available at http://www.narf.org/nill/Codes/gtcode/, accessed 31 January 2008.

[30] The Navajo Nation Tribal Code, Title 3, available at http://www.navajocourts.org/Resolutions/CJY-71-99.pdf, accessed 31 January 2008.

[31] Capital Loan Corporation v. Genevieve Platero, Fern Henry, Julia Largo, 2000 CP-CV0-001 (2000).

- Partnerships within and outside the tribal community for the development and provision of pertinent products and services (with the reminder that partners of all stripes are possible, from local child welfare agencies to off-reservation banks).

V. Recommendations and Conclusions

Despite the prevalence and impact of predatory lending in Native communities, Native nations can limit the activities of predatory lenders and promote asset building rather than asset stripping in the local economy. In particular, tribal governments can establish policies and programs that help extricate borrowers who are already doing business with predatory lenders, educate consumers so that they avoid predatory lenders in the first place, and shut down predatory lending through regulation and legislation. Our recommendations are:

1. Native Nations Should Develop Credit Programs and Borrowing Opportunities that Reduce the Demand for Predatory Lending

When Native nations provide accessible, lower-rate consumer loans and check-cashing services, they give borrowers alternatives to the services of payday, car title, pawn shop lenders, and other quick-cash lenders.

Significantly, Native nations may be able to implement alternate lending programs at relatively low risk. If the borrowers are employed by the tribe or tribally owned corporations, loan repayment can occur through payroll deductions. Alternatively, loan payments may be deducted from tribal government distributions, such as per capita payments. Tribes can also assist borrowers in setting up automatic payments through their banks. All of these strategies minimize the risk of default.

While our research suggests that home mortgage predation has not been a widespread problem in Native communities, tribal governments (or their affiliated agencies) can provide a similar alternative service by providing access to lower-cost mortgage options.

Certainly, this policy option does not directly address the issue of citizens' *demand* for short-term loans. Rather, it is a form of consumer protection, which can be undertaken in combination with other preventative measures, particularly financial education and credit repair. In other words, alternative lending programs offer opportunities for intervention, so that citizens who need support in emerging from credit crisis can be steered to that support.

2. 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. 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 must reach the relevant audience.

One strategy is for service organizations and tribal programs to reach out early, finding ways to offer financial education alongside other, broadly accessed programming. If possible, consumers should be required to *opt out* of the training rather than be asked to opt in. For example, financial education can be required of anyone seeking credit repair assistance. To the extent that clients with a history of damaged credit feed the predatory lending market by becoming trapped in cycles of increasing debt, this moment of intervention for credit repair can be sustained through financial education—which may in turn prevent new predatory loans.

Finally, we note that an important aspect of credit repair is for alternative lending institutions—banks, credit unions and CDFIs—to report improved situations back to credit agencies; tribal service organizations and programs can advocate for these actions.

3. Tribes Should Set Interest Rate Caps

Native nations should set caps on the interest rates offered by lenders under their jurisdiction, as a few tribes have done already. In the narrowest interpretation, such laws would extend only to lenders located on tribal lands. While the majority of predatory lenders are located off-reservation, a tribal consumer protection law capping interest rates would send a powerful signal to lenders on and off-reservation that higher rates are usurious.

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 made significant inroads against payday lending. Similarly, in late 2007, the US 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% APR cap for loans to military borrowers.[32]

For tribes that wish to enact additional legislation aimed at curbing predatory lending to their citizens, codes enacted by the Blackfeet Tribe, Grand Traverse Band of Chippewa and Ottawa Indians, and Navajo Nation are useful examples.

4. Tribes Should Collaborate with States

While this study suggests that Native communities have been targeted by unscrupulous lenders, predatory lending is a nationwide problem, one that is garnering more and more attention as the subprime mortgage crisis grows. It is an opportune time for Native nations to collaborate with state governments to establish a policy agenda to combat all types of predatory lending. Only a few tribes have consumer protection laws. Similarly, a 2002 study shows that only 19 states had strict small loan caps, while 25 states allow triple digit interest rates and six states have no usury caps.[33] Tribes and states have plenty of work to do to educate their citizens, to assist those in need of credit

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[32] I 2 CFR part 232; *Federal Register*, 31 August 2007, pp. 50579-50594.

[33] "Payday, Heyday!: Measuring Growth in New Mexico's Small Loan Industry (1999-2001)", NMPIRG Education Fund Series on Predatory Lending, Report 2, April 2002

rehabilitation, and to regulate lenders in their respective jurisdictions. Native nations are in a position to influence and lend force to state anti-predatory lending efforts and vice versa. If states and tribes have similar rules and recognize each others' authority and judgments, usurious lending practices cannot continue in either jurisdiction.

Appendix A: List of Acronyms

APR	Annual Percentage Rate
CCCS	Consumer Credit Counseling Service
CDC	Community Development Corporation
CDFI	Community Development Financial Institution
CPN	Citizen Potawatomi Nation
CTUIR	Confederated Tribes of the Umatilla Indian Reservation
EITC	Earned Income Tax Credit
FNDI	First Nations Development Institute
GOOD Loan	"Get Out of Debt" Loan
HCCDC	Ho-Chunk Community Development Corporation
HCI	Ho-Chunk, Inc.
HMDA	Home Mortgage Data Act
IDA	Individual Development Account
LCOFCU	Lac Courte Oreilles Federal Credit Union
NAIHC	National American Indian Housing Council
NCRC	National Community Reinvestment Coalition
RAL	Refund Anticipation Loan
TJSA	Tribal Jurisdictional Statistical Area
VITA	Volunteer Income Tax Assistance