



Public Testimony of Ryan Marchesi provided to the Nevada Legislative Committee Concerning the Adoption of FID Proposed Regulations Relating to the Implementation of SB 201.

December 28, 2020.

Good afternoon. Thank you for the opportunity to provide comment today. My name is Ryan Marchesi, I am a Nevadan, and I am with Check City. Check City operates 32 retail locations across the great State of Nevada and conducts online business in the State. Check City employs approximately 300 full-time employees and has provided Nevada Customers with fair, transparently priced, and regulated access to financial services for the past 21 years.

As other members of our industry have pointed out, the proposed final regulations stretch the language of SB 201 beyond recognition. Since this regulatory process began 9 months ago, my company, as well as several other members of the industry, has repeatedly requested an open dialog forum with the FID to allow the industry opportunity to express its concerns and ultimately to better understand the FID's respective reasoning and rationale. We have made these requests through written comment to three public workshops, through oral public comment in said workshops, via e-mail to the FID leadership, and via e-mail to the Deputy Attorney General representing FID. Despite our bringing concerns to the FID's attention, and trying to work constructively with them, the FID has failed to respond to—or even acknowledge—our concerns. And as Ms. Welch noted earlier, the FID waited until after adoption of the final proposed regulations to remove an entire subsection regarding “total obligations” from the rule, and did so via an email to an undisclosed mailing list.

Outside of the public rulemaking process we've learned from the Information Summary for Legislative Review that FID actually indicated the removal of the “total obligations” subsection was, I quote, “not considered a substantial change”. While we don't object to the removal of the “total obligations” subsection, no objective person could conclude that this was a nonmaterial change. It is a significant change that didn't just move a comma or change numbering. It removed an entire subsection of a FINAL rule.

Second, according to FID, it removed the “total obligation” requirement to “avoid a potential conflict between NRS 604A and NAC 604A for lenders that underwrite high-interest loans and deferred deposit loans since NRS 604A does not specifically require a customer's total obligations when determining a customer's ability to repay as the chapter specifically states it for Title Loans.” Had FID removed the total obligation requirement during the rulemaking process, and held public hearings on this modification, it would have been forced to reconcile its inconsistent treatment of the “total obligations” requirement and the numerous other criteria in Section 13(2) of the rule which are similarly unauthorized by SB 201.

FID has been all over the board in its flagrant over-reach and attempts to legislate through regulation and insert new ability to repay criteria into this final Rule. In fact, earlier in the rulemaking process FID was attempting to require that licensees obtain a customer's “net disposable income.” FID tried to justify its inclusion by falsely saying that “net disposable income” was already in the ability to repay sections of the

statutes.<sup>1</sup> This is 100% not true. There is no requirement to consider a customer's "net disposable income" in statute. Similarly, there is no requirement to consider a customer's "total obligations."

Just like there were no statutory requirements for the now-removed requirements to consider "net disposable income" and "total obligations", there are also no statutory requirements stating licensees must consider the other three new criteria remaining in Section 13(2). It represents yet another attempt in a long campaign of attempts by the FID to improperly create new criteria beyond the authority granted by the Legislature in SB 201.

Unlike the "net disposable income" and "total obligations" requirements that have now been removed from the final Rule, and for undisclosed reasons, the FID has declined to address this concern. To put it simply, FID is attempting to create its own new law and wholly circumventing the Legislature

In Sum, I would like to be clear on behalf of my company and others regulated by 604A. We are not asking for a veto of the entire final Rule before you, or the elimination of the database set forth in SB 201. Rather, we respectfully request this body return these issues to the FID for further consideration and modification of the Rule to accurately reflect SB 201 as you passed it - without the over-reaching and arbitrary Section 13(2) provisions currently pursued by the FID.

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<sup>1</sup> In response to comments from the industry that the requirement to consider "net disposable income" was beyond its statutory authority, the Notice of December 9, 2020 Hearing for the Adoption of Regulations, mischaracterized those concerns as: "Section 24(m) requires a licensee verify a customer's net disposable income, which would be burdensome." FID went on to dismiss the industry's concern as follows: *"This requirement is currently in NRS 604A.5011, 604A.5038 and 604A.5065 for determining a customer's ability to repay."* However, a clear and plain reading of those provisions show that they do not in any way reference or require total obligations or net disposable income, but instead, only use the metric of "current or reasonably expected income."