The Availability of Safe and Affordable Credit From Non-Depositories in Colorado

A Report to the Colorado Attorney General

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The findings and conclusions contained in this report are those of the Financial Health Network which maintained full editorial control throughout this study.

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Executive Summary

In the 2021 legislative session, the Colorado General Assembly appropriated funds to the Colorado Department of Law, Consumer Protection Section, Consumer Credit Unit for use "to contract with a vendor to study, collect, and report data to the general assembly related to the availability of safe and affordable credit, such as the use, total costs, and overall consumer impacts of non-depository lending products available under existing Colorado laws." The Department of Law selected the Financial Health Network (FHN) to conduct the requested study. This report sets forth FHN findings from the study it has conducted.

We have focused this study on two types of loans:

- Small-dollar loans, which in Colorado primarily take the form of what are termed "alternative charge loans." These are installment loans with a maximum loan size of $1,000, minimum term of three months, and maximum term of twelve months;
- Larger installment loans, which can be either secured or unsecured and have terms that typically range from one to five years but can be even longer.

These are by no means the only types of credit available in Colorado from entities other than depositories, as mortgage companies and finance companies account for a large share of first mortgages and auto financing, and the federal government issues most student loans. (We have excluded those products from the scope of this study for reasons we explain in Section One.) Beyond that, there is informal lending among friends and family; alternative financial services such as pawn loans or rent-to-own contracts; and new forms of credit or liquidity such as "buy now, pay later" and "earned wage access." We have chosen to focus on small-dollar and larger installment loans given the prominent issues around availability, safety, and affordability of such loans and the fact that non-depositories are an important part of those markets.

We explore two discrete—albeit closely related—issues: first, the extent to which Colorado consumers who desire small-dollar or larger installment loans can obtain such loans from non-depositories; and second, the extent to which such credit is made on terms that fit borrowers' household budgets and help them build financial stability and resilience. These are ultimately questions of judgment and degree. We therefore do not seek in this report to render judgments as to whether credit is sufficiently available, whether the available credit is safe and affordable enough, or whether a different balance would better serve the welfare of Coloradans. Rather, our goal here is simply to provide a factual basis to ground any discussion of such questions by, as directed by the General Assembly, reporting data relevant to those questions.

KEY FINDINGS

Drawing on data obtained through annual reports submitted to the Administrator of the Colorado Uniform Consumer Credit Code and aggregated data procured from Experian Information Solutions (Experian), we have found the following:

Small-Dollar Loans

***Availability*:** In 2021, nine lenders originated alternative charge loans in Colorado; we believe these include all of the national lenders involved in payday lending. Ninety locations were licensed to make alternative charge loans, although not all of these locations necessarily made loans in 2021. This is a significant reduction in the number of lenders who were making deferred deposit (payday) loans and the number of licensed locations as of 2018, when Coloradans overwhelmingly voted for a referendum that imposed a 36% finance charge cap on such loans. Given the growth of online lending, however, we do not believe that this reduction in the number of retail outlets has materially affected the ability of consumers who desire and qualify for an alternative charge loan to obtain one.

Cumulating the total number of borrowers reported by each lender, we find that 95,747 individuals obtained alternative charge loans in 2021. (These are not necessarily unique individuals; consumers who obtained loans from more than one lender would be counted more than once). This, too, is a significant decline relative to 2018. However, much of that decline appears to be attributable to the pandemic and the various types of transfer payments and other forms of relief provided by the public and private sectors to individuals and families, rather than to a diminution in the availability of credit.

Of the consumers who applied for alternative charge loans in 2021, 64.9% were approved. There was considerable heterogeneity in the approval rates among lenders, ranging from a high of 92.2% to a low of 48.2%. These approval rates are considerably higher than the average approval rates for subprime credit cards—the most closely analogous product for which data is available—but the comparison is inexact given the differences between the two types of products and, potentially, in the applicant pools.

We do not find any evidence that alternative charge lenders are refraining from making loans in small amounts, nor do we find evidence that most lenders are refraining from making loans up to the $1,000 limit permitted by Colorado law.

The Experian data indicates that there are lenders making loans of $1,000 or less outside of the alternative charge framework and reporting those loans to the credit bureaus but there appear to be a substantially smaller number of consumers who obtain such loans than consumers obtaining alternative charge loans. The reported loans go disproportionately to borrowers with near prime and subprime credit scores. Comparing the share of borrowers in Colorado who obtain reported small-dollar loans with the share in two states without usury limits (Missouri and Utah), we find that for subprime and deep subprime consumers and those with insufficient credit history to generate a credit score, reported small-dollar loans appear to be less available for such consumers in Colorado than in these other states.

Safety and Affordability: The evidence with respect to the ability of alternative charge borrowers to afford the loans they obtain is mixed. On some measures, it appears that roughly one in five borrowers experience substantial difficulty in making the required payments. Other measures, however, suggest a substantially lower percentage.

The evidence with respect to reborrowing is clearer. The average alternative charge borrower obtained 2.3 alternative charge loans during the course of 2021, and almost one-third of the borrowers (31.9%) obtained more than two loans. Among the five largest lenders (who originated 99% of all alternative charge loans), fully 66% of the loans they made in 2021 went to consumers who either had an outstanding loan or who had repaid a prior loan within 30 days of taking out the new loan. These reborrowings may reflect financial challenges borrowers faced as a result of the payments they had made on their preexisting loan, or they may evidence discrete new needs for credit.

For borrowers who obtained small-dollar loans that were reported to Experian, we do not observe their repayment patterns on those loans but rather observe a set of broader measures that look at their overall credit performance over a 12 to 24 month period commencing within one to six months after they obtained a loan. Among these borrowers, those with lower credit scores when they obtained their loans evidence substantial levels of distress as measured, e.g., by the number of occurrences of major delinquencies and number of tradelines reported as delinquent or in a derogatory status. (These terms are defined in Section 2.2.2.) There is also some evidence to indicate that this was truer for borrowers in Missouri—where credit was more available to borrowers in these credit tiers--than for borrowers in Colorado, although the evidence on this score is mixed.

Larger Installment Loans

Availability: Forty lenders reported making “Other Supervised Loans” in 2021, i.e., loans with an APR above 12%. Of these, just three lenders accounted for almost three-quarters of the loans originated, while just over half of the lenders (22) made fewer than 100 such loans. An additional 42 companies took Other Supervised Loans by assignment—that is, they were assigned the right to collect payments on such loans. Here, too, the market is fairly concentrated, as the top three lenders accounted for over 75% of the Other Supervised Loans taken by assignment. (We exclude lenders making or taking by assignment auto financing loans.)

In contrast to the market for small-dollar loans, where nearly all national lenders are operating in Colorado, a number of sizable installment lenders have chosen not to originate loans or take loans by assignment in Colorado. These include both traditional brick-and-mortar finance companies and fintechs.

In 2021, 39,295 consumers obtained Other Supervised Loans from non-depositories, and non-depositories took by assignment an additional 87,880 Other Supervised Loans. The number of originated Other Supervised loans in 2021 is almost identical to the number originated in 2019. Another 14,000 consumers obtained loans with APRs at or below 12% in 2019, and while we do not have data for 2021, it seems reasonable to assume that the numbers were comparable. The number of loans taken by assignment in 2021 is substantially higher than the number reported in 2019, but that is attributable to the fact that one or more lenders that did not report in 2019 did so in 2021.

On an overall basis, 25.9% of consumers who applied for an Other Supervised Loan were approved. Not surprisingly, the approval rate was higher for those with a prime credit score (41.9%) and lower for those with a deep subprime score (14.4%). These approval rates are in line with approval rates for credit cards for the various credit tiers, although again the comparison is inexact.

Using data obtained from Experian, we can compare the share of Coloradans who obtained an installment loan with that of Missouri and Utah which, as noted, do not have usury limits. We find that for consumers in the subprime and deep subprime credit tiers and those without a credit score—who constitute just over 20% of all consumers in Colorado--the share of Coloradans obtaining an unsecured installment loan is noticeably below the share in both of the comparison states. We attribute this in part to the fact that the lenders operating in Colorado report that they have more restrictive lending criteria and also the fact that some lenders who operate in one or both of our comparison states do not operate in Colorado. For secured loans, the penetration rate in Colorado is equal to or above that of Utah but Missouri's penetration rate exceeds that of both states across all credit tiers. We are unable to explain this seeming anomaly.

With respect to the size of loans available, we find that within any given credit tier, the loan sizes skew larger in Colorado than in the comparison states without usury limits. This appears to be because lenders who do not operate in Colorado may be more inclined to make smaller loans than the lenders who do operate in Colorado. We find no evidence that the lenders in Colorado are disinclined to make smaller loans.

Safety and Affordability: We find, not surprisingly, that consumers' ability to repay the loans they receive vary considerably across the credit spectrum. For example, of the unsecured loans that were on the books at the start of 2021, 4.8% of consumers with a prime credit score were behind on their payments, compared to 14.4% of deep subprime consumers. Similarly, among consumers who obtained an unsecured loan in the first quarter of 2021, 3.6% of consumers with a prime credit score were behind on their payments by year-end, compared to 8.5% of deep subprime consumers. We observe a similar pattern with respect to secured loans.

The same pattern is observed when it comes to refinancing: 21% of unsecured borrowers and 25% of secured borrowers who obtained a loan in the first quarter of 2021 refinanced later that year, and the share who refinanced is substantially smaller among prime borrowers than those with lower credit scores. This may suggest that refinancing was a response to challenges borrowers experienced in repaying their loans, although borrowers in these lower credit tiers also may be more vulnerable to financial shocks and thus had a greater need for a new infusion of cash.

The Experian Data again allows us to take a broader perspective and examine over a 12- and 24-month period the extent to which borrowers who obtained a larger installment loan experienced difficulty in repaying one or more of their debts. We find, again, wide variations across credit tiers and high levels of repayment difficulty among those in the subprime and deep subprime tiers. At the extreme, we find for example, that over a two-year "Performance Window," 70% of the subprime and deep subprime borrowers in Colorado who obtained a secured loan have at least one "derogatory" trade line as defined by Experian and another 10% of such borrowers have at least one trade line that is between 60 and 180 days past due.

In comparing data from Colorado to states without a usury limit, we find that in most comparisons, borrowers in Missouri—and especially borrowers in the subprime and deep subprime credit tiers-- experience even greater levels of repayment difficulty. This is true to a much lesser extent for borrowers in Utah, although on some measures we do see marginally higher levels of delinquencies and derogatories there. Further, these data likely understate disparities between the states because the data, by definition, are limited to loans reported to credit bureaus and thus exclude what are commonly referred to as "alternative financial services" which are more likely to be prevalent in states without usury limits and more likely to reach borrowers facing even greater financial challenges.

Part One: Introduction

In the 2021 legislative session, the Colorado General Assembly appropriated funds to the Colorado Department of Law, Consumer Protection Section, Consumer Credit Unit for use "to contract with a vendor to study, collect, and report data to the general assembly related to the availability of safe and affordable credit, such as the use, total costs, and overall consumer impacts of non-depository lending products available under existing Colorado laws."[1] The Department of Law selected the Financial Health Network (FHN) to conduct the requested study. This report contains the results of FHN's study.

This section of the report seeks to put this study into context first by providing an overview of consumer lending in the United States and then by reviewing the Colorado laws governing the offering of consumer credit by non-depositories and depositories in Colorado. Against that background, we then outline the scope of this study and define with more particularity the research questions we have sought to address. Finally, we describe the data sources on which we have relied and the limitations of those data. Parts Two and Three of the report set forth our findings.

1.1 Types of Credit and Credit Providers

There is a wide range of types of credit providers and credit products that together make up the consumer credit market. Broadly speaking, creditors can be divided into two categories: depositories—that is, banks and credit unions—and non-depositories, a term that literally encompasses any lender that is not a depository but which is usually used to refer to entities engaged in the business of consumer lending without a bank or credit union charter. In this report, we use the term "non-depository" in the latter sense.

Although outside the scope of this study, it is noteworthy that there also is an informal lending sector in the United States, including loans between friends and families and within organizations such as lending circles. The size of this informal lending sector is unknown but it undoubtedly plays an important role in providing liquidity to cash-strapped consumers. Indeed, the most recent Survey of Household and Economic Decision Making by the Board of Governors of the Federal Reserve System found that among the 21% of households that would use credit to cover a $400 emergency expense, almost 40% said that they would turn to friends or family—four times the percentage who said that they would obtain a loan from a bank or credit union and eight times the percentage of those who would use a payday loan or overdraft.[2] Similarly, a recent

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[1] Colorado Senate Bill 21-205, page 151, footnote 70a, available at https://leg.colorado.gov/sites/default/files/documents/2021A/bills/2021a_law_act.pdf

[2] Federal Reserve Board, *Economic Well-Being of U.S. Households in 2021* at 36, https://www.federalreserve.gov/publications/files/2021-report-economic-well-being-us-households-202205.pdf.

survey by the Consumer Financial Protection Bureau (CFPB) found that 25% of households-–and 48% of those with incomes under $20,000-–received financial assistance from other households at least once over a twelve-month period.[3]

1.1.1 Mainstream Credit Products

Turning to the types of credit products available from depositories and non-depositories as defined above, the Federal Reserve Bank of New York's quarterly report on Household Debt and Credit provides a useful taxonomy along with data as to the size of each of these product categories as shown below:[4]

	Outstanding Debt (Billions)	Percentage
Mortgage	$11,669	70.7%
Home Equity Revolving	$320	1.9%
Auto Loan	$1,524	9.2%
Credit Card	$925	5.6%
Student Loan	$1,574	9.5%
Other	$491	3.0%
Total	$16,503	100.0%

Mortgages include first mortgages obtained either to purchase a home or to refinance an existing home as well as second mortgages (often referred to as home equity loans). "Home equity revolving" refers to lines of credit secured by a mortgage; these are usually termed home equity lines of credit (HELOCs). Auto loans include financing for the purchase of new or used vehicles and refinancing of such loans as well as auto leases. Student loans encompass federal student loans and private student loans including private refinancing of federal loans. Finally, "other" includes personal loans, sales financing, and "retail loans."[5]

The author's calculations in text exclude those who would use cash or its equivalent (68%) and those who report that they could not cover a $400 expense even with credit (11%).

[3] CFPB, *Making Ends Meet in 2022: Insights from the CFPB Making Ends Meet Survey* at 28, https://files.consumerfinance.gov/f/documents/cfpb_making-ends-meet-in-2022_report_2022-12.pdf

[4] The calculations in text are taken from the Excel spreadsheet accompanying the quarterly report for the third quarter of 2022 which can be accessed at https://www.newyorkfed.org/microeconomics/hhdc

[5] New York Federal Reserve Bank, *Quarterly Report on Household Debt and Credit: Q3 2022* at 41, https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2022Q3.

The role that non-depositories play in providing these various credit products varies considerably by product category as described below:

- **Mortgages and Home Equity Revolving:** Data collected pursuant to the Home Mortgage Disclosure Act shows that in 2020, mortgage companies—which are non-depositories—accounted for 62% of purchase mortgages and 61% of refinances originated that year. In contrast, non-depositories accounted for only 7% of second mortgages and HELOCs.[6]

- **Student Loans:** Student loans are predominantly provided by the federal government, with only 7.6% of student loans coming from private sources. Most private student lenders are depository institutions.[7]

- **Auto Loans:** For new vehicle purchases in the second and third quarters of 2022, captive finance companies—that is, finance companies affiliated with an automobile manufacturer—were responsible for over 35% of all financing, while other finance companies accounted for another 5%. For financing to purchase used vehicles, captive finance companies accounted for under 10% of all credit extended, while other finance companies and "buy here, pay here" auto dealers each account for over 15% of such credits. Depositories accounted for just under 60% of both new and used car auto loans.[8] These figures for depositories include both direct and indirect financing —that is, extensions of credit that are initially made by an auto dealer and immediately resold to a depository. (The captive finance companies engage only in indirect auto financing.)

- **Credit Cards:** The New York Federal Reserve Bank report from which the data cited above is derived defines credit cards to mean "bankcards," a category that is by definition limited to credit cards issued by depository institutions. We believe this includes private-label credit cards issued by banks but with a retail partner's brand as well as MasterCard, Visa, American Express, and Discover cards. In any event, there is not a material non-depository presence in either the general-purpose or private-label credit card markets.

- **Other:** This is a catch-all category that includes both secured and unsecured installment loans and lines of credit (other than HELOCs). Comparing data from TransUnion to the New York Federal Reserve Bank report, it appears that unsecured installment loans make

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[6] National Community Reinvestment Coalition, *NCRC 2020 Home Mortgage Report* at 38 & interactive chart, https://ncrc.org/ncrc-2020-home-mortgage-report-examining-shifts-during-covid/#24

[7] Measure One, *Measure One Private Student Loan Report* (Dec. 2021) at 3, https://fs.hubspotusercontent00.net/hubfs/6171800/assets/downloads/MeasureOne%20Private%20Student%20Loan%20Report%20Q3%202021%20FINAL%20VERSION.pdf

[8] Experian, *State of the Automotive Finance Market Q2 2022* at 14, 32 https://www.experian.com/content/dam/noindex/na/us/automotive/finance-trends/2022/q2-2022-state-auto-finance-market.pdf; Experian, *State of the Automotive Finance Market Q3 2022* at 14, 32.

up roughly half of the "other loan" category.[9] In TransUnion's taxonomy, banks and credit unions account for under 30% of unsecured installment loan originations, finance companies account for roughly a third of originations, and "fintechs" account for the rest.[10] We believe that the "fintech" category includes loans for which the fintech is the lender at the point of origination as well as loans originated pursuant to partnership between fintechs and banks or credit unions in which the fintech purchases the loans or most or all of the receivables shortly after the loans are originated and services the loans.

1.1.2 Alternative Financial Services

The New York Federal Reserve Board report discussed above is derived from reports to Equifax, one of the three national consumer reporting agencies (NCRAs). The report thus does not capture credit products that are often referred to as alternative financial services (AFS) as that category is by definition limited to products from providers who do not furnish data to the NCRAs. We believe all AFS providers are non-depositories.

AFS credit can be broadly subdivided into two categories: single-payment products and multi-payment products. The former—including payday loans, some vehicle title loans, and refund anticipation loans—are unlike products typically reported to the NCRAs in that these are short-term loans payable in a single payment. Multi-payment products include both rent-to-own contracts and installment loans that resemble in structure the installment loans that are reported to the NCRAs and that, when reported, are included in the New York Federal Reserve Board's "other" category as discussed above. These installment loans are classified as "alternative financial services" because the lenders who make them choose not to report their loans to the NCRAs. At least some of these lenders also choose not to obtain data from an NCRA when underwriting an application although an AFS loan can be underwritten with NCRA data

Limited data is available with respect to the amount of outstanding AFS credit. One often-quoted industry analyst reported that in 2019, there was $3.6 billion in single-payment loans outstanding and $18 billion in small installment loans.[11] However, not all the loans the analyst included in his total as "small installment" would qualify as AFS since some of those loans were attributable to lenders who do report their loans to the NCRAs. At the same time, we believe that there are some AFS installment lenders whose volumes were not captured in the analyst's estimate.

Some AFS providers report to specialty consumer reporting agencies of which Clarity Services is believed to be the largest. Experian purchased Clarity in 2018 but has chosen to operate it as a separate credit bureau and to isolate Clarity's data from its mainstream database branded as

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[9] TransUnion, *Credit Industry Insights Report Q2 2022* at 69, *available at* https://onlinexperiences.com/scripts/Server.nxp?LASCmd=AI:4;F:QS!10100&ShowUUID=D8C96564-2807-4DB6-BE23-52185565CA07&AffiliateData=PRNewsroom

[10] *Id.* at 68.

[11] Hecht, *State of Consumer Lending Amongst Pandemic, Politics, and Payment Innovation,* on file with Financial Health Network.

Experian File One. Experian issues an annual report on AFS lending trends based on the data reported to Clarity. In 2022, Experian reported that measured in terms of dollar volume, installment loans made up 67% of AFS originations, rent-to-own comprised 27%, and single-payment products comprised just 2%. Experian further reported that since 2017, the number of AFS installment loans had grown by 56%, whereas the number of single-payment loans had declined by 70%.[12]

From Experian's annual AFS report, it is possible to infer some distinguishing features of AFS installment loans. First, they tend to be for relatively small amounts: roughly half are for under $1,000, and another roughly 30% are for amounts between $1,000 and $2,500,[13] placing them in the category that the Federal Deposit Insurance Corporation (FDIC) has labeled as "nearly small-dollar loans." [14] By contrast, in the credit bureau data obtained for this study as described in Section 1.5, less than a quarter of the borrowers obtained loans of $1,000 or less and another 20% obtained loans between $1,001 and $3,000.

Second and relatedly, AFS installment loans tend to be for relatively short terms, with approximately 60% for one year or less and an average term of 8.1 months.[15] According to the credit bureau data used for this study, 30% of borrowers obtained loans for less than one year while just under 25% obtained loans for three years or longer.

Third, according to Experian's AFS report, AFS installment loans have relatively high missed payment rates compared to other consumer credit products, with 12-month rates for loans originated in 2020 reaching over 30% and missed payment rates for loans made in 2021 trending higher, reaching 40% within the first six months for loans made in the second and third quarters of 2021.[16]

1.1.3 Other Sources and Types of Consumer Credit

Certain types of consumer credit fall outside of the loans that are typically reported to the NCRAs and yet are generally not considered to be AFS. We already have noted the role that family and friends play as a source of credit. We describe here several other sources of credit that are neither considered part of the mainstream credit system covered by the NCRAs nor included in Experian's categorization of AFS.

Pawn Loans: Consumers in need of liquidity with personal property for which there is a market can pawn their property and obtain a non-recourse loan; if they repay the loan, they can redeem the property they have pawned. According to the FDIC's biennial Survey of the Unbanked and

[12] Experian, *2022 Alternative Financial Services Lending Trends* at 6, *available at,* https://www.clarityservices.com/insights/2022-alternative-financial-services-lending-trends-report/
[13] *Id.* at 17.
[14] FDIC, *The FDIC's Small-Dollar Loan Pilot Program: A Case Study After One Year,* https://www.fdic.gov/analysis/quarterly-banking-profile/fdic-quarterly/2009-vol3-2/smalldollar.pdf
[15] *2022 Alternative Financial Services Lending Trends* at 18.
[16] *Id.* at 22.

Underbanked, 1% of households used pawn loans in 2021, which is in line with the percentage using payday loans (1.1%), auto title loans (0.9%) rent-to-own services (1.2%).[17]

Emerging Forms of Credit: In the past several years, financial technology companies have introduced several new products designed to provide liquidity to consumers facing a cash shortfall or to manage their spending. Some of these products are unmistakably loans, while the status of others is less clear. The best known of these are "buy now, pay later" products, which are sometimes referred to as "pay-in four" plans, and "earned wage access" products, sometimes called "pay on demand." Buy now, pay later volume has grown quickly in recent years, totaling over $24 billion in 2021, and each of the NCRAs has announced plans to enable BNPL providers to furnish data to them.[18] Less is known about the size of the earned wage–access market, although it, too, appears to be experiencing rapid growth.

Beyond these much-discussed innovations, there are several other liquidity products that defy easy characterization and that the Financial Health Network has referred to as "direct to consumer advances."[19] And there are various other products designed to provide funding to consumers for major expenses in return for sharing future income (in the case of education funding)[20] or future home appreciation (in the case of mortgages)[21].

1.2 Colorado Laws Governing the Offering of Consumer Credit

Non-depositories and Colorado depositories that make loans in Colorado are subject to the Colorado Uniform Consumer Credit Code (UCCC).[22] Certain out-of-state depositories offering credit to Colorado residents are subject to other legal regimes, depending on their charter. This section first summarizes the laws applicable to non-depositories (which are the subject of this study) and then briefly reviews the legal regime for depositories.

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[17] FDIC, *National Survey of Unbanked and Underbanked Households Appendix Tables F*.4, https://www.fdic.gov/analysis/household-survey/2021appendix.pdf

[18] https://www.consumerfinance.gov/about-us/newsroom/cfpb-study-details-the-rapid-growth-of-buy-now-pay-later-lending/

[19] Financial Health Network, *Earned Wage Access and Direct-to-Consumer Advance Usage Trends, https://cfsi-innovation-files-2018.s3.amazonaws.com/wp-content/uploads/2021/04/26190749/EWA_D2C_Advance-_sage_Trends_FINAL.pdf*

[20] *See* Ritter & Webber, *Modern Income-Share Agreements in Postsecondary Education: Features, Theory, Applications* (2019), https://www.philadelphiafed.org/-/media/frbp/assets/consumer-finance/discussion-papers/dp19-06.pdf

[21] https://www.nerdwallet.com/article/mortgages/shared-appreciation-home-equity

[22] Co. Rev. Stat. §§ 5-1-101 *et seq*

1.2.1 Loans by Non-Depositories

Colorado enacted the UCCC in 1971 and then repealed and reenacted it in 2000. It has been amended on several occasions since then. The Colorado UCCC contains provisions regulating who may offer consumer credit in Colorado and the terms on which such credit may be offered.

In general, the UCCC applies to "consumer credit transactions" made by creditors in Colorado or made to Colorado residents by creditors who have advertised or solicited in Colorado.[23] "Consumer credit transaction" is defined to cover loans made to natural persons for personal, family, or household purposes pursuant to a written agreement if payable in installments or subject to a finance charge provided that the lender is a person regularly engaged in making loans.[24] Consumer credit transactions also encompass "consumer credit sales" in which credit is extended to a natural person to finance the purchase of goods, services, mobile homes, or an interest in land if purchased primarily for personal, family, or household purposes and if certain other conditions are met.[25]

The UCCC establishes maximum permitted finance charges that vary depending on the type of loan and lender. Lenders who are not "supervised lenders"—meaning that they have not obtained a license from the UCCC Administrator authorizing them to make consumer loans or take assignment of the lender's right to payment under such loans[26]—can charge no more than 12% per year on unpaid balances.[27] A "Supervised Lender" (which is defined to include an assignee of the lender's right to payment[28]), in contrast, is permitted to make loans—denominated as "supervised loans"[29]—either at an interest rate of up to 21% or using a tiered interest rate structure beginning at 36% (for up to the first $1,000 on unpaid principal balance) and declining to 21% (for amounts owed between $1,000 and $3,000) and then to 15% (for amounts owed above $3,000).[30]

For loans of up to $1,000, the UCCC permits supervised lenders to impose "alternative charges" consisting of an "acquisition charge" not to exceed 10% of the amount financed for an initial loan or 7.5% for a refinanced loan plus a "monthly installment account handling charge" in tiered

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[23] *Id.* § 5-1-201.

[24] *Id.* § 5-1-301(11), (14), (12), (15). Reverse mortgages and loans of more than $75,000 that are not secured by real estate are excluded from the definition of "consumer loan." *Id.* § 5-1-301(15).

[25] *Id.* § 5-1-301(11). To be covered as a "consumer credit sale" the transaction must be pursuant to a written agreement requiring payment in installments or subject to a finance charge and, for purchases of goods or services, the transaction cannot exceed $75,000.

[26] *Id.* §§ 5-1-301(46), 5-2-301.

[27] *Id.* § 5-2-201(1).

[28] *Id.* § 5-1-301(23).

[29] *Id.* §§ 5-1-301(47).

[30] *Id.* § 5-2-201(2).

amounts starting at $12.50 for loans of up to $300 and increasing in increments, rising to $20 for loans between $750 and $1,000. Such "alternative charge loans" must be repayable in equal periodic installments with a minimum term of 90 days and maximum term of 12 months.[31]

In addition to authorizing these alternative charge loans, the UCCC also authorizes "deferred deposit loans"—often referred to as "payday" or "payday advance" loans—of up to $500. As originally authorized in 2000, such loans had a maximum term of 40 days with permitted charges of 20% on up to the first $300 of principal and 7.5% on amounts above $300.[32] In 2010, the Colorado legislature amended the law to impose a minimum repayment term of six months. The amendment also changed the permitted charges, authorizing a finance charge not to exceed 20% of the first three hundred dollars plus 7.5% of any amount loaned in excess of three hundred dollars, an interest rate of 45% per year, and monthly maintenance fees.[33]

In 2018, Colorado voters overwhelmingly approved Proposition 111 (by a vote of 77% to 23%), which imposed a 36% annual percentage-rate cap on deferred deposit loans.[34] Prior to this referendum, the average APR on such loans had been 186% [35] which was, in turn, a substantial reduction in the average APR of 339% prior to the effective date of the 2010 legislation.[36] As a result of the referendum, lenders ceased making deferred deposit loans in Colorado; as discussed further in Section 2.1.1, some of these lenders began making alternative charge loans instead.

For supervised loans other than deferred deposit loans, the UCCC permits "delinquency charges" (which are capped at $15) and regulates when and how often such charges may be imposed.[37] The UCCC likewise permits certain other fees including a fee for a dishonored check or other instrument tendered as payment (capped at $25).[38] Additionally, the UCCC authorizes, but does not regulate the size of, charges for insurance so long as purchase of the insurance is not required as a condition of the loan and permits "reasonable" charges for other benefits of value to the consumer pursuant to rules established by the Administrator.[39]

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[31] *Id. §* 5-2-214. Installments may be at various regular intervals, e.g., monthly, weekly, or bi-weekly.
[32] Colorado SB 00-144, https://www.leg.state.co.us/2000/inetcbill.nsf/billcontainers/F50E7DFD79FF9118872568390053B67B/$FILE/144_enr.pdf
[33] Colo. Rev. Stat. Ann. § 5-3.1.-101, et seq.
[34] *Id.* § 5-3.1-101.5
[35] https://coag.gov/app/uploads/2020/11/Annual-Report-Composite-Comparison.pdf
[36] https://spl.cde.state.co.us/artemis/lawserials/law6213internet/law62132015internet.pdf
[37] Col. Rev. Stat. § 5-2-203.
[38] *Id.* § 5-2-202(e)(II).
[39] *Id.* § 5-2-202(d), (e)(3)(b).

1.2.2 Loans by Depositories

***Banks*:** Under the National Bank Act, as interpreted by the United States Supreme Court, national banks are permitted to export the maximum interest rates permitted by their home state when conducting business in other states.[40] Similarly, "[i]n order to prevent discrimination against State-chartered insured depository institution," federal law generally allows state-chartered banks to export the interest rate cap of their home state to the same extent as national banks are permitted to do.[41] This means that while Colorado-chartered state banks are subject to Colorado's UCCC, including its usury limits, a national or state-chartered bank that is not domiciled in Colorado can make loans to Colorado citizens at any interest rate permitted by the bank's home state. (Although states can opt out of interest-rate exportation by state-chartered banks, Iowa is the only state that currently does not permit such exportation. Colorado opted out in 1981 but subsequently rescinded that decision in 1994.[42])

In practice, most banks tend to constrain the range of consumers to whom they lend and their pricing. For example, even within the credit card market—which has the largest penetration rate and highest interest rates of any bank-issued lending product—only 7% of consumers with a deep subprime credit score held a credit card as of 2020, and the average APR on those cards was 23.9%.[43] However, there is a small number of banks that are subprime specialists and whose products are significantly more expensive.[44]

In recent years, some banks have entered into what are termed "partnerships" with fintechs, pursuant to which loans are originated in the name of the bank but the accounts or substantially all of the receivables are almost immediately sold to a fintech. In *Fulford v. Marlette Funding* and *Fulford v. Avant of Colorado*,[45] the Administrator brought lawsuits against two such fintechs operating in Colorado and engaged in lending above Colorado's usury limit, asserting that because the fintechs had the "predominant economic interest" in those loans, the fintechs were the "true lender" and thus subject to Colorado's usury law. After the Denver County District Court entered summary judgment in favor of the Administrator, the parties—including the bank partners that had intervened in the lawsuits—entered into an Assurance of Discontinuance to resolve the litigation. In so doing, the intervenor bank partners and the defendant fintechs agreed

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[40] *E.g., Marquette Nat'l Bank v. First Omaha Service Corp.*, 439 U.S. 239 (1979).
[41] 12 U.S.C. 1831d(a).
[42] Vanderbrink, *Usury Ceilings and the DIDMCA* (1985), https://www.chicagofed.org/publications/economic-perspectives/1985/september-october-vandenbrink.
[43] CFPB, *The Consumer Credit Card Market* at 20,48 (2021), https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2021.pdf
[44] The CFPB reported that in 2015, the total cost of credit for consumers with a credit card from one of these banks was 41%, of which roughly half was attributable to interest and half to fees. CFPB, *The Consumer Credit Card Market* at 79 (2015), https://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf
[45] No. 17CV70376 and 17CV70377 (Colo. Dist. Ct. Denver County) (2017).

to provide Colorado consumers with certain protections to ensure that they are making true bank loans. Additionally, they committed to providing Colorado consumers with other protections required by Colorado law and not to lend to Colorado consumers at rates above 36%. The fintechs also agreed to maintain a Colorado lending license.

Credit Unions: The activities of federally chartered credit unions, including the interest rates they are permitted to charge, are generally governed by the National Credit Union Administration (NCUA). The NCUA has established a maximum permissible interest rate of 18% for most loans and 28% (plus an application fee not to exceed $20) for loans of up to $2,000 made under its short-term loan program.[46] State-chartered credit unions making loans to Colorado residents are subject to Colorado's usury limits regardless of whether Colorado chartered the credit union.

Loans Taken by Assignment: The UCCC applies to loans as to which a non-depository has taken assignment of a depository's right to payment.

1.3 The Scope of This Study

Against this background, we seek to define the scope of this study.

We have focused this study on those credit products as to which issues of availability as well as safety and affordability loom large and where non-depositories are an important part of the market. For that reason, we have excluded from our study mortgages, even though they are the single largest source of consumer credit and a market in which non-depositories play a sizable role in originating first mortgages; indeed, we estimate that approximately 280,000 Coloradans obtained over $100 billion in mortgage credit from non-depositories in 2021.[47] As a practical matter, the federal government—through the government sponsored enterprises (Fannie Mae and Freddie Mac), the Federal Housing Administration, and the Department of Veterans Affairs are the dominant players in determining to whom mortgage credit is available and on what terms. We know of no reason to believe that access to mortgage credit from non-depositories in Colorado differs from that of other states.

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[46] NCUA, Permissible Interest Rate Ceiling, https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/permissible-interest-rate-ceiling-1

[47] Data submitted to the Consumer Financial Protection Bureau pursuant to the Home Mortgage Disclosure Act, 12 U.S.C. §§ 461 *et seq* (HMDA), shows that there were 440,861 mortgages originated in Colorado in 2021. The CFPB has identified the top 20 non-depository lenders nationally, and those lenders accounted for 35% of the Colorado mortgages, the same percentage as they accounted for nationally. We therefore assume that the remaining non-depositories in Colorado also accounted for the same percentage of mortgages as they did nationally to arrive at the estimate stated at text. The HMDA data is accessible at https://ffiec.cfpb.gov/data-browser/data/2021?category=states&items=CO&actions_taken=1&getDetails=1, and the CFPB's calculations regarding national lenders and lending volume can be found in *Data Point: 2021 Mortgage Market Activity And Trends* at 56, 60-62, https://files.consumerfinance.gov/f/documents/cfpb_data-point-mortgage-market-activity-trends_report_2022-09.pdf

We likewise have excluded from our study auto-purchase and auto-refinance loans even though non-depositories play a large role in this market as well; we estimate that approximately 200,000 Coloradans obtained roughly $6 billion in credit for automobile purchases in 2021.[48] We nonetheless exclude auto financing from our study for three reasons: first, the extent of auto lending is largely a function of the health of the auto-purchase market; second, an estimated 80% of auto loans are arranged through auto dealers;[49] and third, the typical pricing of those loans—even for those in the riskiest credit tier—falls well within Colorado's permissible limits.[50]

Finally, we have excluded student loans because of the dominant role the federal government plays in providing such loans and because non-depositories play a very small role in the private student-loan market. However, some of the data on which we rely may include student loans within aggregated reporting.

The focus of this study and report, then, is on two types of loans: small-dollar loans—which in Colorado primarily take the form of alternative charge loans with, as previously noted, a maximum loan size of $1,000—and larger installment loans. Alternative charge loans generally are not reported to the NCRAs and thus would be viewed as AFS. There is a relatively small segment of small-dollar loans that are reported to the NCRAs and they are within the scope of this study. We do not, however, include other forms of small-dollar AFS credit that may be available in Colorado such as pawn loans or rent-to-own products because these are not subject to the UCCC's annual report requirements.[51]

Our study of larger installment credit covers both unsecured loans and secured loans which typically are secured by an interest in a motor vehicle. We have sought to study both

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[48] This may be an underestimate as the annual reports submitted to the Administrator for 2021 show $16.7 billion in retail credit sales and another $4.5 billion in sales financing taken by assignment, much of which undoubtedly is attributable to auto financing. The estimate in text assumes that Coloradans received a pro rata share of the total amount of auto financing done by non-depositories in 2021 which is calculated based upon data reported by Equifax (number of auto loans), the Federal Reserve Bank of New York (dollar volume of auto loans), and Experian (non-depository share of auto financing market). *See* Equifax, *U.S. National Consumer Credit Trends Report: Originations* (Jan. 2022) at 23, https://assets.equifax.com/marketing/US/assets/monthly-credit-trend-report-originations-feb-2022.pdf; Federal Reserve Bank of New York, *Household Debit and Credit* (downloadable data accessible at https://www.newyorkfed.org/microeconomics/hhdc); Experian, *State of the Automotive Finance Market Q3 2022* at 7, https://www.experian.com/content/dam/noindex/na/us/automotive/finance-trends/2022/q3-2022-state-of-automotive-finance.pdf

[49] Gruenewald *et al., Auto Dealer Loan Intermediation: Consumer Behavior and Competitive Effects* at 6 (2020), https://www.nber.org/system/files/working_papers/w28136/w28136.pdf

[50] Independent of this study, Experian has reported that in Q3 2021, 3% of used auto loans went to consumers with a deep subprime score, and their average interest rate was 19.36%; subprime consumers accounted for 20% of used auto loans, and their average interest rate was 14.98%. *See* Experian, *State of the Automotive Finance Market Q3 2022* at 34, 40, https://www.experian.com/content/dam/noindex/na/us/automotive/finance-trends/2022/q3-2022-state-of-automotive-finance.pdf

[51] Pawn loans are governed by the Colorado Pawn Code, Col. Rev. Stat. § 29-11.9- 101 *et seq.* Rent-to-own is regulated by the Administrator through the Colorado Rental Purchase Agreements Act. Col. Rev. Stat. § 5-10-101, et seq. Active rent-to-own notification filers are available on the Colorado Attorney General's website: https://coag.gov/app/uploads/2022/11/Active-RTO-11-11-22.pdf.

“mainstream” installment loans as well as any AFS installment loans made in Colorado although, as we explain in Section 1.5, there are limitations in the data available to us to study AFS installment loans. We do not believe, however, that there are AFS installment lenders making larger installment loans in Colorado to any meaningful degree for the reasons discussed in Section 3.1.

1.4 Defining the Research Questions

As noted earlier, the Colorado legislature directed a study of “the availability of safe affordable credit” from non-depositories in Colorado. In light of the market and statutory structure as described in Sections 1.1 and 1.2, this report addresses that question separately with respect to small-dollar loans (Section Two) and larger installment loans (Section Three). We discuss below our approach to studying that question.

Availability: The threshold question we seek to answer is the extent to which small-dollar loans and larger-installment loans are available to consumers in Colorado from non-depositories. The Oxford Dictionary defines “available” as “able to be used or obtained.” Consistent with that definition, we seek to assess the extent to which Colorado consumers who desire small-dollar or larger-installment loans can obtain them.

At one time, the availability of credit turned on both the willingness of lenders to make loans and the physical accessibility of such lenders to would-be-borrowers. However, in the digital age, lenders generally have an online presence and borrowers can apply for and, if qualified, obtain a loan over the Internet. The lenders we spoke to in connection with this study generally indicated that a substantial and growing portion of their loans are originated online or that the application process begins online.[52] Given that over 90% of individuals have Internet access,[53] in seeking to assess the availability of credit we focus here primarily on the willingness of lenders to make loans in amounts desired by consumers.

“Assessing credit availability is a challenging task,” as the CFPB has observed, because “readily available metrics … conflate the willingness of issuers to make credit available to consumers (supply) and the willingness of consumers to avail themselves of the credit that issues are willing to extend (demand).”[54] One useful metric is the approval rate for applications for credit since that measure reflects the share of consumers seeking credit who are able to obtain it. But credit applications may not reflect true consumer demand for credit if, for example, consumers are

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[52] *See* Section 1.5 for a discussion of these interviews.

[53] FDIC, *How America Banks: Household Use of Banking and Financial Services* (2020) at 26, https://www.fdic.gov/analysis/household-survey/2019report.pdf

[54] Consumer Financial Protection Bureau, *CARD Act Report* (2013) at 38, https://files.consumerfinance.gov/f/201309_cfpb_card-act-report.pdf

discouraged from applying for credit that they desire. Accordingly, where available, we also examine data with respect to the "penetration rate" for various types of credit products—that is the share of consumers in Colorado who have obtained such products—and compare those rates to rates in other states—recognizing that this metric also reflects to some extent supply and demand.

Safe and Affordable: As the questions posed the Colorado General Assembly seem to recognize, credit availability is not inexorably socially optimal nor are limitations on credit availability inexorably negative. Indeed, one function of credit underwriting is precisely to protect would-be-borrowers from debt they may desire but lack the financial capacity to handle. Thus, the legislature directed that this study examine whether the credit that is available from non-depositories is "safe and affordable," including the credit's "total costs, and overall consumer impacts."

The Oxford Dictionary defines "safe" to mean "secure from threat of danger, harm, or loss" and defines "afford" to mean "have enough money to pay for." Beyond these dictionary definitions, a law that was enacted in the same legislative session as the one which authorized this study provides insight into how the Colorado legislature understood those terms. Specifically, in 2021 the General Assembly enacted a law establishing a state-level Office of Financial Empowerment (OFE) within the Colorado Attorney General's Office for the stated purpose of "grow[ing] the financial resilience and well-being of Coloradans'' including "[i]ncreasing access to safe, affordable, low-cost credit" that can "help improve the financial stability of unbanked and underbanked individuals and families."[55] That law contrasts such credit with "products and practices that may undermine financial stability." Further, the statute calls upon the Director of the Office to seek to "increase access to safe and affordable credit-building loans and financial products, and "to identify products and practices that may undermine financial stability." [56] The OFE statute thus suggests a legislative understanding that "safe and affordable" credit grows financial resilience which, as the Financial Health Network and other experts have recognized, is a core element of financial health or well-being.[57]

Assessing whether credit is "safe and affordable" as thus understood is, of course, even more challenging than assessing credit availability. Whether a loan is safe and affordable will vary from person to person depending upon individual financial circumstances. Further, loans that may be

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[55] Senate Bill 21-148, *available at* https://leg.colorado.gov/sites/default/files/2021a_148_signed.pdf
[56] *Id.* § 24-31-1102(3)(c)-(f).
[57] *See, e.g.,* Financial Health Network, *What is Financial Health,* https://finhealthnetwork.org/about/what-is-financial-health/ ; Consumer Financial Protection Bureau, *Financial Well-Being: the Goal of Financial Education,* https://files.consumerfinance.gov/f/201501_cfpb_report_financial-well-being.pdf ; United Nations Secretary General's Special Advocate for Inclusive Finance for Development, *Measuring Financial Health* (2021), https://www.unsgsa.org/sites/default/files/resources-files/2021-11/Measuring-Financial-Health-note-v2.pdf.

safe and affordable when made may prove to be otherwise during the term of the loan if, for example, the borrower's financial situation changes in ways that were not foreseeable *ex ante.*

One useful metric for assessing whether credit is "safe and affordable" is the repayment rate (or its inverse, delinquency, and default rates). But successful repayment of a given loan may mask the impact that such repayment has on the consumer's ability to manage debts and other expenses and thus on the consumer's financial stability and well-being. Accordingly, where available, we also examine data with respect to the overall credit performance of consumers who obtain small-dollar or larger installment loans from non-depositories. In addition, we analyze refinancing rates for the reasons discussed in Section 2.1.2.

1.5 Sources of Data and Data Limitations

To address the questions described above, we have relied on two primary data sources.

Annual Reports: The UCCC directs licensed lenders in Colorado to submit annual reports containing information as required by the UCCC Administrator. These reports contain aggregated information from each licensed lender with respect to their originations, outstanding loans, and loan performance. Since 2019, the reports have included separate appendices for alternative charge loans (Appendix C) and since 2020 for "Other Supervised Loans" (Appendix F) requesting data tailored to the different loan types. The latter category is defined in the instructions to the annual report to mean loans for which the rate of the finance charges exceeds 12%. (In 2019, Appendix F covered "Other Consumer Credit Transactions" and thus encompassed both loans and "credit sales" and did so without regard to the rate of finance charges.)

For the 2021 Annual Report, FHN worked with the Administrator and the Consumer Credit Unit (CCU) within the Colorado Attorney General's Office to add a "Larger Lender Supplement" to these Appendices seeking more detailed, aggregated information from lenders with $5 million or more in total amount financed in 2021 (including refinanced loans) with respect to (i) applications received and loans originated in 2021, including the performance of those loans and (ii) the status and performance of loans that were outstanding as of the start of 2021. A copy of the template for the 2021 reports and the accompanying instructions are available on the Colorado Attorney General's website.[58]

Pursuant to a confidentiality agreement, the CCU provided FHN with tabulated results from the 2018, 2019, and 2020 reports and copies of the 2021 reports. We have analyzed those data in preparing this report and present those data in composite form in accordance with the

[58] The template can be found at https://coag.gov/app/uploads/2022/11/2021-Annual-Report-051022.pdf and the instructions at https://coag.gov/app/uploads/2022/04/2021-AR-Instructions.041322_final.pdf

requirement of the UCCC.[59] These filings allow us to report on the number of loans made in 2021 and in prior years to the extent such loans were reportable. The Larger Lender Supplement also allows us to report on the number of applications received for alternative charge loans and Other Supervised Loans, the approval rate with respect to those applications, and the performance of loans that were originated in 2021. Additionally, the Supplement provides performance data with respect to loans that were still outstanding as of the start of 2021.

Experian Data: As part of this study, FHN contracted with Experian Information Solutions (Experian) to obtain certain aggregated data. Specifically, based on information supplied to it by lenders, Experian identified auto loans, other secured installment loans, and unsecured installment loans that were originated during the periods October 2017–March 2018 (the 2017–18 Observation Period) and October 2018–March 2019 (the 2018–19 Observation Period) by non-depositories.[60] For borrowers obtaining such loans, Experian provided aggregated data with respect to certain borrower attributes (including the borrowers' credit tier) and loan attributes (including loan size and term but not including the interest rate). Experian also provided aggregated data relating to the credit performance of these borrowers over a one-year and two-year period prior to April 2020. The time periods for the Experian analyses were selected to allow for a two-year (in the case of borrowers obtaining loans during the 2017–18 Observation Period) and one-year (in the case of borrowers obtaining loans during the 2018–19 Observation Period) "Performance Window" ending prior the start of the pandemic. This assures that the data were unaffected by the pandemic and the government responses to the pandemic, which have been shown to have affected borrowing and repayment behavior in ways that were not representative of past, and are unlikely to be representative of future, behavior.[61] Experian did not provide FHN with any loan-level or consumer-level data or personally identifiable information. We describe further the Experian Data in Section 2.2.2 of this report.

In order to benchmark the Colorado results, the Experian Data covers two other states—Utah and Missouri—that do not place limits on the interest rates that lenders may charge.[62] These

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[59] Col. Rev. Stat. 5-2-304.

[60] In the Experian database furnishers of data are identified by business type such as banks, credit unions, or finance companies. Experian devised a set of criteria to identify loans believed to have been originated by non-depositories. Experian likewise devised screening criteria, using loan types as reported by data furnishers, to identify loans believed to be personal secured loans (excluding, e.g., mortgages even when made non-depositories) and loans believed to be personal unsecured loans (excluding, e.g., student loans even when made by non-depositories). Experian also identified secured and unsecured personal loans made by banks and credit unions and provided those data to us, in the same format as the data with respect to non-depositories, but our analyses here are limited to non-depositories and exclude auto loans.

[61] Sandler, *Delinquencies on credit accounts continue to be low despite the pandemic* (June 2021), https://www.consumerfinance.gov/about-us/blog/delinquencies-on-credit-accounts-continue-to-be-low-despite-the-pandemic/

[62] Missouri permits loans at any rate agreed to by the parties. Mo. Rev. Stat. § 408.100. Utah has a similar law with a restriction against unconscionable terms. Utah Code Ann. §§ 70C-2-101, 70C-7-106

states were selected because they provided close, albeit imperfect, comparisons across a number of dimensions, as shown below[63]:

	% Minority	Median Income	% LMI	Avg. FICO Score
Colorado	35%	$77,127	40%	725
Utah	25%	$75,780	37%	723
Missouri	24%	$57,409	39%	707

In addition, to provide data in the nature of a control, the Experian Data also covers two states —Iowa and New York—with regulatory regimes that resemble Colorado's.[64] Where we observe differences relating to either the availability or safety and affordability of credit in Colorado compared to the states without usury limits, we have analyzed data with respect to New York and Iowa to see if the same pattern holds for those states.

As discussed in Section 1.1.2, Clarity Services, which is owned by Experian, collects data with respect to AFS loans. FHN was unsuccessful in its effort to procure data or analytics with respect to the separate Clarity database. Accordingly, our analyses using the Experian Data necessarily exclude AFS loans.

Other Sources: To supplement these data sources, FHN, along with representatives of CCU, conducted interviews with a number of stakeholders including lenders, trade associations, and consumer advocacy organizations. A complete list of the entities interviewed appears in an Appendix to this report. Additionally, FHN has conducted secondary research to examine other reports and studies that, while not specific to Colorado, may provide insight into the issues under study.

Data Limitations: The Annual Report data and Experian Analysis are subject to a number of limitations:

First, the Annual Report data is aggregated data as computed by individual licensed lenders and the Experian Data is based on loan-level data as furnished by individual furnishers (i.e., lenders or servicers of loans) to Experian. Where we identified seeming inconsistencies in the Annual

[63] Median income from https://fred.stlouisfed.org/release/tables?rid=249&eid=259462. LMI percentages calculated at the tract level from https://hudgis-hud.opendata.arcgis.com/datasets/HUD::low-to-moderate-income-population-by-tract/about. FICO scores from Experian Consumer Credit Review (2020 values), https://www.experian.com/blogs/ask-experian/consumer-credit-review/

[64] The Iowa Banking Superintendent has adopted a regulation establishing maximum tiered interest rates ranging from 36% for the first $3,000 to 18% for amounts above $8,400. Iowa Admin. Code § 15.13(2). New York has a maximum interest rate of 25%. N.Y. Penal Law § 190.40

Report data submitted by any given lender, we engaged with that lender to obtain clarification and, in some cases, lenders revised their submissions. Beyond that, we have not been able to conduct any independent audit of these data but assume their accuracy.[65]

Second, these data sources are necessarily limited to data from those submitting reports. All licensed lenders in Colorado are required to submit annual reports with respect to alternative charge loans and Other Supervised Loans, but to the extent non-licensed non-depository lenders made loans in Colorado, such loans would not be reflected in the Annual Report data. Similarly, although installment lenders making larger installment loans generally report to all three of the national consuming reporting agencies, there is no legal obligation to do so. If there were a systematic bias in the lenders furnishing data to Experian or on the loans with respect to which data was furnished, that would potentially affect the analyses. Given the norms with respect to credit reporting, we believe that the Experian Data is representative of the data reported to consumer reporting agencies although, as previously noted, it does not capture the activity of AFS lenders who operate outside of the mainstream credit reporting system.

Third, the Experian Data are also necessarily dependent on certain categorizations made by the entities in furnishing data to Experian. For example, furnishers identify loans by product categories and there may be variance in the way in which some furnishers categorize loans that are secured by a vehicle but that are not made to finance the purchase of a vehicle. If there were a systematic bias in the coding, that could affect some of the analyses. Similarly, loans are categorized by Experian as having been made by a bank, credit union, or an "other" type of entity—a term intended to capture non-depositories—based on the nature of the entity furnishing the data to Experian. This means that loans made by a depository as to which servicing is outsourced may be categorized as loans made by a depository or non-depository depending on whether information is being furnished by the depository lender or the non-depository servicer. If there were a systematic bias in this regard that could affect some of the analyses.

[65] CCU may withhold certain annual reports of supervised lender(s) under investigation, if any, from those provided to FHN.

Part Two: Small-Dollar Loans

Although the UCCC does not establish a minimum loan amount for supervised loans, as discussed in Section 1.2.1 it does contain special authorization for two types of small-dollar loans: deferred deposit loans with a maximum permissible amount of $500 and alternative charge loans up to $1,000. Prior to 2019, most small-dollar loans in Colorado were of the former type although there appear to have been some lenders who made loans of $1,000 or less outside of the deferred-deposit or alternative-loan structure. Beginning in February 2019, when the 36% annual percentage-rate cap passed by Colorado voters in 2018 took effect with respect to deferred deposit loans, lenders ceased offering such loans. Some of those lenders switched to making alternative charge loans, which permit an annual percentage rate above 36%. This section of the report first addresses the availability and the safety and affordability of alternative charge loans and then addresses those issues with respect to other small-dollar loans in Colorado as reflected in the Experian Data.

Although our focus here is primarily on small-dollar loans by licensed lenders, it bears repeating that, as discussed in Section 1.1, there are a number of other ways through which consumers may access small amounts of credit from non-depositories including, e.g., pawn loans, loans from friends and family, and some emerging forms of liquidity such as "buy now, pay later" and "earned wage access." These are, as noted, outside the scope of this study. It also is noteworthy that a number of depository institutions recently have launched or announced the launch of small-dollar loans including two of the top five banks in Colorado.[66]

2.1 Alternative Charge Loans

We begin by comparing the terms of alternative charge loans with the deferred deposit loans that had been prevalent prior to the 2018 referendum. Panel A of Table 2.1 sets forth the key statutory provisions governing alternative charge loans and compares those provisions with those governing deferred deposit laws. Panel B sets forth some key comparative metrics with

[66] In November 2022, Wells Fargo announced the launch of Flex Loans which will provide eligible customers with loans of up to $500 repayable over four months. https://newsroom.wf.com/English/news-releases/news-release-details/2022/Wells-Fargo-Introduces-Flex-Loan-to-Give-Customers-More-Options/default.aspx. U.S. Bank has offered a similar product, branded as "Simple Loan," for several years. https://www.usbank.com/customer-service/knowledge-base/KB0208837.html, Data from the FDIC indicates that Wells and US Bank rank first and fourth, respectively in Colorado, in terms of their share of deposits and first and third, respectively in terms of the number of branches in Colorado, https://www7.fdic.gov/sod/sodMarketRpt.asp?barItem=2. Bank of America, which has a smaller presence in Colorado, also offers a small-dollar, three-month installment loan branded as "Balance Assist," https://promotions.bankofamerica.com/consumer/banking-solutions?cm_mmc=DEP-Checking-_-vanity-_-DC01VN007X_bankingsolutions-_-N/A

respect to loans originated in 2018 and 2019 as previously reported by the Administrator based on lenders' annual 2018 and 2019 reports[67]:

Table 2.1 Comparison of Deferred Deposit and Alternative Charge Loans
Panel A—Statutory Provisions

	Deferred Deposit Loans	Alternative Charge Loans
Maximum Loan Amount	$500	$1,000
Minimum Term	6 months	90 days
Maximum Term	None	One year
Origination Fee	20% of the first $300 + 7.5% for amounts above $300	10% on new loans and 7.5% on refinanced loans
Interest Rate	45%	N.A.
Monthly Maintenance Fee	$7.50 to $30 tiered to loan size	$12.50 to $20.00 tiered to loan size
Other Fees	$25 returned check fee	$15 late fee $25 returned check fee

Panel B—Key Metrics

	Deferred Deposit Loans	Alternative Charge Loans
Avg. Loan Size	$404	$531
Avg. Contract Loan Term	191 days	130 days
Actual Avg. Loan Term	91 days	80 days
Avg. Finance Charges Collected	$115	$95

Data from the 2021 annual reports indicates that in 2021, the average alternative charge loan size was $633, the average contracted loan term was 148 days, the average actual loan term was 89 days, and the average finance charges collected was $104.[68]

2.1.1 Availability of Alternative Charge Loans

In 2021, nine lenders originated alternative charge loans in Colorado including most, if not all, of the large lenders involved in payday lending across multiple other states. Seven of those lenders

[67] *Comparison of 2018 vs 2019 Small-Dollar Lending,* https://coag.gov/app/uploads/2020/11/Annual-Report-Composite-Comparison.pdf

[68] The data in the table and in this paragraph reflects weighted averages.

originated more than $5 million in loans (including refinancings and renewals) and thus submitted responses to the Larger Lender Supplement to their annual reports, as is discussed further below. Those seven lenders accounted for over 99% of all alternative charge loans. The top three lenders accounted for 67% of the alternative charge loans.

By way of comparison in 2018 twenty lenders reported originating deferred deposit loans in Colorado. It seems reasonable to infer that the adoption of the 36% annual percentage-rate cap for deferred deposit loans caused some lenders to cease doing business in Colorado. Similarly, after the 2010 reforms took effect as described in Section 1.2.1, the number of licensed lenders whose annual reports indicated that they were deferred deposit lenders dropped from 97 in 2009 to 50 in 2011 of which 41 reported deferred deposit originations in 2011. We discuss at the end of this chapter the implications of these changes for the physical availability of credit.

Number of Borrowers: Annual Reports published by the Office of the Attorney General show the number of borrowers each year calculated as the sum of unique borrowers reported by each lender. To the extent that consumers take out loans from multiple lenders, the reported number would overstate the number of borrowers.[69] With that caveat, we discuss below trends in the number of borrowers.

According to the annual reports, the number of individuals obtaining deferred deposits almost doubled between 2003 and 2008, reaching slightly over 300,000. The number declined by 8% in 2009 and by another 11.5% between 2009 and 2011, the first full year after the 2010 law took effect which increased the minimum term of a deferred deposit loan to six months and reduced the permissible charges.[70] It is uncertain whether, and if so to what extent, the reported reduction in the number of borrowers was a result of a reduction in the availability of deferred deposit loans in Colorado rather than, e.g., changes in consumer demand as the economy recovered from the Great Recession or a reduction in the number of borrowers obtaining loans from multiple lenders and thus counted more than once in the reported totals for years prior to 2011.[71]

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[69] One study covering data from five of the largest payday lenders over a period of four years found that in markets in which all five operated and where consumers were free to take loans from multiple lenders, 75% used only a single lender and that of those who used a second lender 85% did so seriatim. *See* Nonprime101, *How Persistent is the Borrower-Lender Relationship in Payday Lending?* (2015), https://www.researchgate.net/publication/283091140_How_Persistent_Is_the_Borrower-Lender_Relationship_in_Payday_Lending_Storefront_and_Online_Small-Dollar_Lending_Customer_Migration_Patterns_Within_Markets_and_Between_Markets_Relationship_of_Borrower_

[70] Because those changes took effect in the middle of the year, data from 2010 is difficult to interpret.

[71] Relying on an often-cited industry analyst, the CFPB reported that revenue for storefront payday loans declined by over 20% from 2009 to 2014. *See Payday, Vehicle Title, and Certain High-Cost Installment Loans Final Rule,* 82 Fed. Reg. 54472, 54479 & n.45 (Nov. 17, 2017).

In the initial years after the 2010 reforms took effect, the reported number of deferred deposit borrowers held fairly constant at around 250,000. The number began to decline in 2015 and by 2018—the last full year before the 2018 referendum took effect—was just under 200,000, a decline of more than 20%. In 2019, the number of alternative charge borrowers was 13% less than the number of deferred deposit borrowers in 2018.[72] Again, it is not possible to determine whether, and if so to what extent, this reflects a reduction in credit availability.

Between 2019 and 2021, the number of borrowers appears to have declined by almost 50%, from a reported number of 170,867 to 95,747.[73] Much of this decline appears to be attributable to the pandemic and the various types of transfer payments and other forms of relief provided by the public and private sectors to individuals and families. The decline in the number of alternative charge borrowers in Colorado appears to be consistent with the experience in other states with respect to other types of small-dollar loans. For example, Veritec Solutions, which collects information on all payday-lending volume in a number of states other than Colorado, has reported that, relative to 2019, payday-lending volume dropped by 60% at the start of the pandemic and remained between 40% and 60% lower than pre-pandemic levels throughout 2021.[74] Similar although somewhat less dramatic trends have been observed with respect to overdraft volume[75] and credit card balances.[76]

Approval Rate: As explained in Section 1.4, the approval rate of applications for credit provides a useful albeit imperfect metric for assessing credit availability. As part of the Larger Lender Supplement, lenders reported the number of consumers who applied for loans in each quarter, excluding consumers seeking to refinance a loan, the number who were denied, and the number who obtained a loan. The data submitted by the lenders indicates that 245,985 consumers applied for loans in 2021 and that 35.1% were declined, implying an approval rate of 64.9%.[77]

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[72] The total number of borrowers for 2019 represents an annualized number of alternative charge borrowers based on eleven months of data after the annual percentage-rate cap took effect on February 1, 2019.

[73] As previously noted, the number of borrowers is the sum of unique borrowers reported by each lender. To the extent that consumers take out loans from multiple lenders, the reported number would overstate the number of borrowers.

[74] Veritec Solutions, *Update: COVID-19 Impact on Small-Dollar Lending,* *https://www.veritecs.com/update-covid-19-impact-study-on-small-dollar-lending-2/*

[75] Nagypal, *Banks overdraft/NSF fee revenues evolve along with their policies* (July 20, 2022), https://www.consumerfinance.gov/about-us/blog/banks-overdraft-nsf-fee-revenues-evolve-along-with-their-policies/

[76] Adams *et al., Why Did Credit Card Balances Decline So Much During the COVID-19 Pandemic* (2021), https://www.federalreserve.gov/econres/notes/feds-notes/why-did-credit-card-balances-decline-so-much-during-the-covid-19-pandemic-20211203.html

[77] Some of the denials reported for the first quarter of 2021 could have been with respect to applications submitted towards the end of 2020 and some of the applications received towards the end of 2021 could have been pending as of the year-end. This could have a minor impact on the approval rate that we have calculated.

There was considerable heterogeneity among lenders, with approval rates ranging from a high of 92.2% to a low of 48.2%.

We are not aware of any data with respect to the approval rate for small-dollar loans from other jurisdictions that could be used as a point of comparison to the approval rate reported by Colorado lenders. The closest comparison of which we are aware is with respect to the approval rate for credit cards for consumers with subprime and deep subprime credit scores. The CFPB has reported that in 2020, 13.3% of consumers who applied for a credit card had subprime or deep subprime credit scores (i.e., under 620) and 15.6% of these consumers were approved.[78] The average credit limit granted on credit cards issued to subprime and deep subprime consumers was $865 and $527 respectively, indicating that these may be underwritten as forms of small-dollar credit. However, the fact that credit card accounts are open-end lines of credit rather than short-term installment loans makes the comparison inexact as lenders may apply more demanding standards before extending a line of credit that can be used indefinitely and repaid over a prolonged period of time as compared to the standards used for underwriting short-term installment loans where the lender's risk exposure is fixed in duration.

Penetration Rate: As noted in Section 1.4, the penetration rate—that is, the share of individuals within the state obtaining a loan—provides another potentially useful metric for measuring credit availability and for comparing availability across states. For loans that are reported to the NCRAs, this is a relatively straightforward task as we discuss elsewhere in this report. However, for alternative financial services—including alternative charge loans—this is far more challenging.

We have calculated the percentage of Coloradans over the age of 18 who obtained an alternative charge loan in 2020 and 2021 by comparing the number of borrowers as reported in the annual report data to Census data regarding the size of Colorado's adult population.[79] We have made similar calculations for three other states–California, Ohio, and Washington–that publicly report on the number of their residents obtaining a small-dollar loan. This is admittedly not an apples-to-apples comparison given the differences that exist between the states with respect to the types of authorized small-dollar loans but these data nonetheless offer a rough comparative benchmark.

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[78] CFPB, *The Consumer Credit Card Market* at 19–20, 70 (2021), https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2021.pdf . The data for the figures in the report can be found at https://www.consumerfinance.gov/data-research/credit-card-data/

[79] Calculations for this paragraph are based upon the Census Bureau's July 2020 population estimates, available at https://www.census.gov/programs-surveys/popest/technical-documentation/research/evaluation-estimates/2020-evaluation-estimates/2010s-state-detail.html

State	2020 Penetration Rate	2021 Penetration Rate
Colorado	2.5%	2.1%
California[80]	3.7%	2.6%
Ohio[81]	1.7%	Not available
Washington[82]	1.9%	Not available

It thus appears that a larger share of Californians obtained small-dollar loans than Coloradans, although the gap narrowed in 2021, and that a smaller share of Washingtonians and Ohioans did so. Of course, these differences may be explained by a myriad of factors other than the availability of credit, including factors relating to the demand for credit, which, in turn, may be driven by the composition of the respective states' population, their economic situation, and also by the types of small-dollar products they allow.

Size of Loans: We have thus far been exploring measures of whether consumers who desire credit can obtain it. There is a related question as to whether there are limitations on the amount of credit consumers seeking credit can obtain. Such limitations could, in principle, work in either direction—that is, lenders might have higher minimum- or lower maximum-size loans than some consumers may desire, even within the statutory upper bound of $1,000 for alternative charge loans.

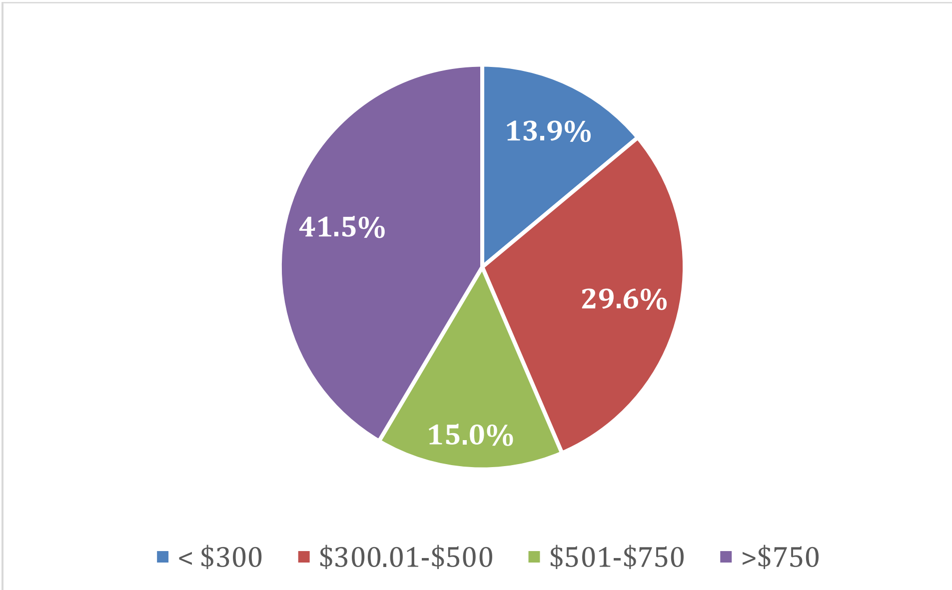
The Annual Report requires lenders to provide the number of loans made within different loan-size tiers. Figure 1 shows the distribution of alternative charge loans made in 2021 by loan size.

[80] California Department of Financial Protection and Innovation, *Annual Report of Payday Lending Activity Under the California Deferred Deposit Transaction Act* 2021, https://dfpi.ca.gov/wp-content/uploads/sites/337/2022/07/DFPI_AnnualReport_CDDTL-2021.pdf?emrc=ab9fe7, and 2020 https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/07/DFPI_AnnualReport_CDDTL-2020.pdf. The number of California borrowers for each year is calculated by summing the numbers shown for each age band on Chart 2.

[81] Ohio Department of Commerce, *Small Loan Act Annual Report, 2020, https://com.ohio.gov/static/documents/fiin_AnnualReport2020.pdf*

[82] Washington State Department of Financial Institutions, *2020 Payday Lending Report, https://dfi.wa.gov/sites/default/files/reports/2020-payday-lending-report.pdf*

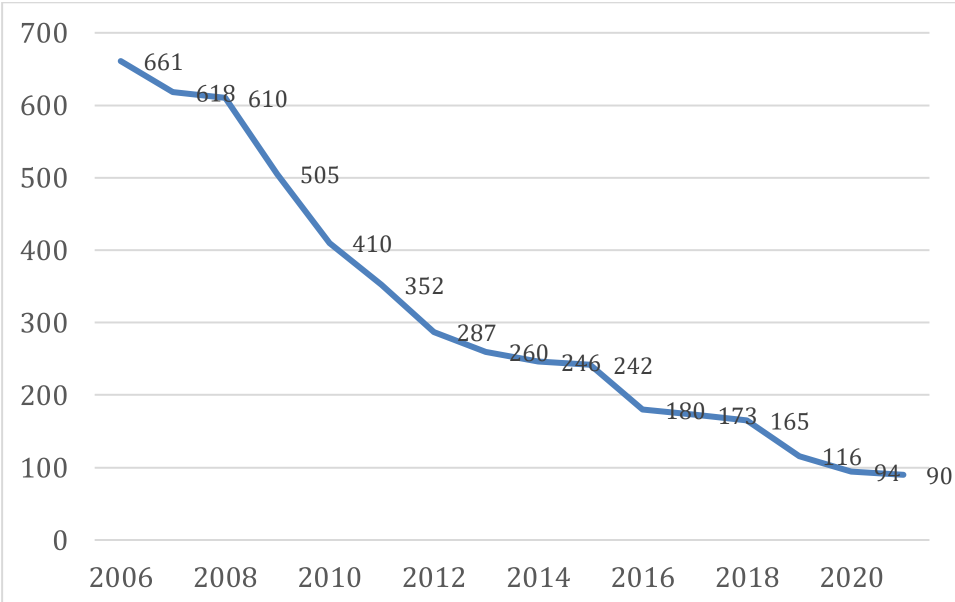
Figure 1—Distribution of 2021 Alternative Loans by Size



The Annual Report data suggests heterogeneity among the lenders in their approach to loan sizes. Although all lenders reported making at least some loans within the smallest tier, one or more lenders made no loans above $500, while one or more other lenders made more than half of their loans in amounts greater than $500. As a result, the average loan size across lenders varied by over 200%.

Physical Access: As noted in Section 1.4, another, albeit less important, measure of credit availability in the digital age is physical access. Figure 2 shows the number of licensed locations within Colorado for lenders whose annual reports indicated that they were deferred deposit lenders from 2008 to 2018 and for lenders whose annual reports indicated that they were alternative charge lenders from 2019 to 2021. We note that some licensed locations may not actually originate loans.

Figure 2—Number of Licensed Small-Dollar Locations



These data indicate that there was a significant decline in the number of licensed locations that began in 2009, and that trend continued for several years after the 2010 reforms to the deferred deposit law took effect. The number then held fairly flat from 2013 to 2018 except for in 2016 when there was a 25% decline in the number of licensed locations. There was another sharp (30%) decline following the effective date of the 2018 referendum and a further decline in 2020 leaving 90 licensed locations as of 2021. This is consistent with the data previously reviewed noting the sizable drop in the number of licensed lenders between 2009 and 2011 and again between 2018 and 2019.

The decline in the number of licensed locations outpaced the decline in the number of borrowers previously discussed. For example, in 2011, the number of locations declined by 30% relative to 2009 whereas the number of borrowers declined by 11.5%. Similarly, in 2019, there was a 30% decline in locations compared to a 13% decline in borrowers.

In 2016, the CFPB published a study that included an analysis of physical access to payday-lending stores in Colorado from 2009 to 2015. For that study, the CFPB obtained data on the location of each deferred deposit lending location in Colorado from 2009 to 2015 and analyzed the distance between locations. The Bureau also used loan-level data it obtained from lenders covering a period of at least twelve months in 2011 and 2012, which linked the borrower's location to the location of the store from which the borrower had obtained a loan, to calculate how far borrowers had traveled to obtain their loan. That analysis showed that the median distance traveled was five miles. The data further showed that 100% of borrowers lived within five miles of a store location as of 2011-12. The Bureau then estimated that, holding borrowers' addresses constant, as of 2015, 95% of these borrowers were still within five miles of a location notwithstanding the reduction in the number of locations that had occurred. Within metropolitan areas—which accounted for 88% of locations—the percentage was even higher (98.9%). In non-Metropolitan Statistical Areas, in contrast, by 2015 while 63% of borrowers were within five miles of a payday store the remaining 37% were more than 20 miles away from the nearest location.[83]

We have not been able to reconstruct that analysis for this study to assess the effect on physical access of the reduction in the number of locations offering small-dollar loans that occurred following the implementation of Proposition 111. We therefore cannot report on the current distance would-be-borrowers may need to travel if they wish to obtain a loan from an alternative charge physical location. However, the 2021 Annual Reports show that four of the alternative charge lenders, who together represent 75% of alternative charge loan volume, originated loans via the Internet in 2021. Given that, and given the widespread availability of Internet access as previously discussed, we do not believe that the reduction in the number of locations has materially affected the availability of alternative charge loans.

2.1.2 Safety and Affordability of Alternative Charge Loans

There is considerable controversy among stakeholders as to what constitutes a safe and affordable small-dollar loan. For example, many consumer advocates believe that loans with an APR above 36% are neither safe nor affordable.[84] It was largely on this basis that advocates were critical of the Colorado deferred deposit loan structure prior to the 2018 referendum, pointing to qualitative research they conducted which found that "in many cases unaffordable loan payments triggered significant additional financial hardships."[85] In contrast, The Pew Charitable Trusts has reported, based on its research, that in general, small-dollar borrowers "can afford payments of around five percent of their gross paychecks."[86] Based on their analysis of data with respect to deferred deposit loans under the 2010 reforms and their research among Colorado

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[83] CFPB, *Supplemental findings on payday, payday installment, and vehicle title loans, and deposit advance products* at 91–97 (2016), https://files.consumerfinance.gov/f/documents/Supplemental_Report_060116.pdf

[84] *E.g.,* National Consumer Law Center, *Why Cap Interest Rates at 36%* (2021), https://www.nclc.org/wp-content/uploads/2022/09/IB_Why_36.pdf

[85] Center for Responsible Lending, *Sinking Feeling: Colorado Borrowers Describe their Experiences with Payday Loans* (2018), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-sinking-feeling-jul2018.pdf. *See also* Center for Responsible Lending, *Payday Lenders Continue to Put Coloradans into High-Cost Debt* (2018), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-colorado-payday-highcost-feb2018_0.pdf.

[86] Pew, *Standards Needed for Safe Small Installment Loans from Banks, Credit Unions* at 4 (2018), https://www.pewtrusts.org/-/media/assets/2018/02/standards_needed_final.pdf.

borrowers, Pew concluded that those loans were safe and affordable and, indeed, Pew has championed the 2010 deferred deposit loan structure as a model for other states.[87]

Industry-sponsored research, in contrast, has questioned the relationship between payment-to-income ratios and the ability of consumers to repay their loans and has suggested, at a minimum, that a five or six percent threshold is too limiting.[88] Nonetheless, Pew's five percent threshold has been adopted as part of Virginia's reform of small-dollar lending and Ohio has enacted a similar six percent threshold.[89]

Without intending to express a point of view as to whether the Pew threshold represents a useful rule of thumb for defining safe and affordable loans, we note that in 2021, the average alternative charge loan required a monthly payment of approximately $150 which, in constant dollars, is equivalent to what Pew found the average bill to be in 2013 ($131).[90] Under the Pew threshold, the payment would be affordable for borrowers with monthly incomes of $3,000 or annual incomes of $36,000.[91] We do not have data on the incomes of alternative charge borrowers but in 2015 the average gross monthly income for deferred deposit borrowers was slightly over $2,800[92] which, assuming wage growth consistent with the growth in the average wage index,[93] would translate to a current average monthly income of approximately $3,350. That suggests that for the average borrower the average alternative charge loan size meets the Pew test. Of course, many borrowers would fall below the average; for example, the FDIC's Survey of the Unbanked and Underbanked indicates that in 2021 nationally 32% of payday borrowers had household incomes under $30,000.[94]

Delinquency Rates: As explained in Section 1.4, we believe that loan performance data that measure delinquencies provide a useful metric for assessing the safety and affordability of loans. The Annual Report Data includes a number of discrete data points that can be triangulated to

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[87] Pew, *Payday Lending in America: Policy Solutions* (2013), https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pcs_assets/2013/pewpaydaypolicysolutionsoct2013pdf.pdf; Pew, *Trial, Error and Success in Colorado's Payday Lending Reforms* (2014), https://www.pewtrusts.org/-/media/assets/2014/12/pew_co_payday_law_comparison_dec2014.pdf

[88] *See* NonPrime 101, *Predictive Value of Payment-to-Paycheck Ratio in Payday Lending* (2015). A summary of this research can be found at https://www.24-7pressrelease.com/press-release/401889/five-percent-payment-cap-in-payday-lending-found-to-have-no-correlation-with-decreasing-default

[89] *See* Va. Code § 6.2-1816.1(2) (requiring that loans for less than four months of duration not exceed 5% of gross income); Ohio Rev. Code § 1321.39(B)(2) (requiring that loans for less than 91 days not exceed 6% of gross income);

[90] Pew, *Payday Lending in America: Policy Solutions, supra* n 88, at 29.

[91] Based upon an average loan size of $633, average term of 142 days, and monthly finance charge of $17.50.

[92] *Colorado Payday Lending—Demographic and Statistical Information* at 8, https://coag.gov/app/uploads/2019/06/ddlasummary2000-2015.pdf

[93] https://www.ssa.gov/oact/cola/awidevelop.html

[94] Calculations from FDIC, *supra* n.17, Table F4.

develop a perspective on the extent to which alternative charge loans are affordable for the borrowers obtaining such loans.[95]

- The Larger Lender Supplement required lenders to report the status of loans held as of January 1, 2021, by their status at that time. Across all larger lenders, 25% of loans were reported to be delinquent of which 70% (or 17% of all loans) were reported to be at least 60 days delinquent, meaning that the borrowers had missed at least three consecutive monthly payments or at least six bi-weekly payments.

- All lenders were required to report the number of loans that were current or delinquent as of December 31, 2021. Thirty-two percent of the loans were reported as being delinquent. This total may or may not include loans that were non-performing at the time meaning that a default event had occurred. It also includes loans that may have been only one day past due.

- All lenders also were required to report the dollar amount of their charge-offs in 2021. Comparing that number to the total of the dollar amount of loans reported as being outstanding as of the start of the year implies a dollar charge-off rate of 22.6%. We note, however, that charge-offs are more typically calculated as a percentage of the average outstanding dollars over the course of a year and we do not have the data from which to make that calculation.

- The Larger Lender Supplement required lenders to report on the status as of December 31st of loans originated in the first quarter and second quarter of 2021 including loans that were paid off and not refinanced during the course of the year. For loans originated in the first quarter 7.2% were reported as delinquent as of year-end of which 37% were at least 60 days past due. For loans originated in the second quarter, 9.8% were reported as delinquent of which 37% were at least 60 days past due.

- The Larger Lender Supplement also required lenders to report on the number of loans originated in the first and second quarters from which late or NSF fees were collected over the course of the year. Not all lenders collect such fees. Among those that did, late fees were collected with respect to 10.2% of loans originated in the first quarter and 11.5% of loans originated in the second quarter and NSF fees were collected with respect to almost the identical percentages of loans (10.9% and 11.7%, respectively).

These data points provide a somewhat mixed picture. Looking at the status of loans held as of January 1st and the charge-off rate (the first and third bullet points), it would appear that roughly

[95] The data reported in this section exclude outlier data points that appear to reflect either a misinterpretation of a question on the annual report or an outlier policy with respect to when delinquent loans are charged off which in turn affected the number of loans reported to be delinquent.

one in five borrowers experienced serious difficulty in repaying their loans. On the other hand, looking at the status of loans originated during the first half of the year as of the end of the year and the share of those loans incurring late or NSF fees over the course of the year (the final two bullet points) suggests much lower levels of repayment difficulty.

Reborrowing: One of the concerns that often has been raised about payday loans is the frequency with which consumers reborrow either by rolling over a loan, taking out back-to-back loans, or taking out a new loan within a relatively short period of time after repaying a prior loan. Such reborrowing can lead consumers to be continuously or near-continuously indebted for a prolonged period at a high cost. In the payday-loan context, reborrowing can be viewed as an indication that the prior loan was unaffordable since in most cases the only benefit the borrower obtains from reborrowing is deferring the date on which the principal of the original loan must be repaid, and to obtain that deferral the borrower must pay the finance charges that were due and incurs another round of charges at the same rate as the original charges.[96]

With respect to installment loans, however—including alternative charge loans and Colorado's deferred deposit laws after the 2010 reforms—reborrowing is more likely to involve borrowers who have been making their scheduled payments and enable such borrowers to increase the outstanding principal balance of their loans and thereby obtain additional liquidity. The new loan may be for the amount of the original loan, in which event the borrower is effectively reborrowing an amount equal to the principal the borrower has repaid, or the new loan may be for a larger amount than the original loan—although, in the alternative charge loan context, there is a maximum loan amount of $1,000.

Reborrowing in this context thus provides a less clear signal regarding the affordability of the original loan than in the payday loan context. A reborrowing may simply reflect a new credit need. However, to the extent that borrowers who were paying as agreed need to reborrow the amount they have repaid before reaching the end of the term, such reborrowing also may suggest that the payments were challenging for the borrower to handle. In all events, frequent reborrowing would suggest that loans are not enabling the borrowers to build financial resilience. In addition, long periods of indebtedness before borrowers can extinguish their initial debt may indicate that the debt is not safe and affordable.

Against this background, we report findings from the 2021 Annual Report data with respect to reborrowing, recognizing that these data are subject to more than one interpretation.

All respondents (and not just the larger lenders) were required to report the total number of borrowers served in 2021 distributed by the number of loans the borrowers received and the

[96] The CFPB has found that in only 15% of multi-loan, payday loan sequences did the borrower obtain any additional liquidity, i.e., an increase in the loan amount. In the remainder, the borrower either simply maintained the same outstanding principal balance and deferred any repayment or made a partial payment of the outstanding principal. CFPB, *Supplemental findings on payday, payday installment, and vehicle title loans, and deposit advance products* at 15 (2016), https://files.consumerfinance.gov/f/documents/Supplemental_Report_060116.pdf

total number of loans made. Those data indicate that the average borrower received 2.3 loans during the course of 2021 and that almost one-third of the borrowers (31.9%) obtained more than two loans, although the percentages varied considerably across lenders. As noted in Section 2.1.1, the Annual Report data also indicates that the average actual term of alternative charge loans originated in 2021 was 89 days compared to an average contract term of 148 days, implying that, on average, borrowers are prepaying their loans which they may do in order to obtain a new loan.

The Larger Lender Supplement required lenders to report the number of loans made to refinance an existing loan (i.e., where some or all of the loan proceeds are used to pay off the existing loan) and the number made to a borrower who had repaid a prior loan within the previous thirty days. Only three of the responding lenders reported any refinancing, while all respondents reported making loans to a borrower who had prepaid a prior loan within the previous thirty days. These latter transactions may have been back-to-back loans (i.e., new loans extended to borrowers immediately after repaying an outstanding loan so long as the loan proceeds were not themselves used for the repayment). Of the total alternative charge loans originated by the larger lenders in 2021, 66% went to consumers who either had an outstanding loan or who had repaid a prior loan within 30 days of taking out the new loan.

Respondents to the Larger Lender Supplement also were required to report with respect to loans held as of January 1, 2021, and with respect to loans that were originated in the first two quarters of 2021, the number that were refinanced during the course of the year. Among those lenders who reported allowing refinancing, 43% of the loans held as of January 1st were refinanced in 2021 and 46% of the loans originated in each of the first two quarters of 2021 were refinanced during the year. We note that these percentages do not include new loans made to a consumer within thirty days of repaying a prior loan; each of the lenders who reported doing refinancing in 2021 also reported making loans to consumers who had repaid their loans within thirty days. From the reported data, we are unable to calculate the share of loans held as of January 1st or originated during the first two quarters with respect to which a new loan was made within thirty days of repayment.

In sum, to the extent reborrowing is viewed as an indicator of the safety and affordability of a loan, it is clear that it is quite common for alternative charge loan borrowers to either refinance a loan or prepay a loan and take out a new loan in short order thereafter.

2.2. Small-Dollar Loans Reported to the National Consumer Reporting Agencies

The Experian Data indicates that during the Observation Periods as described in Section 1.5, some lenders made installment loans of $1,000 or less and reported those loans to Experian. We do not believe that these were either deferred deposit loans or alternative charge loans and assume that these loans were made within the 36% interest rate cap the UCCC permits for loans of that size. We therefore use the Experian Data to report separately on the availability, and the safety and affordability, of small-dollar loans made by non-depositories outside of the alternative charge framework. We refer to these as “reported small-dollar loans.”

2.2.1 Availability of Reported Small-Dollar Loans

We do not have current data on the number of borrowers obtaining reported small-dollar loans in Colorado but only data from the Observation Periods as described in Section 1.5. During the first Observation Period, covering the period from October 2017-March 2018, 12,537 borrowers obtained small-dollar loans that were reported to Experian. During the second Observation Period, covering October 2018-March 2019, 24,037 borrowers obtained such loans, almost twice the number during the first Observation Period. We do not know what explains the growth in the number of borrowers obtaining these loans nor do we know whether either number is representative of the current volume of reported small dollar loans. We note that Proposition 111 was enacted towards the beginning of the second Observation Period and took effect during that Observation Period; that may have had a temporary, or a more long-lasting effect, on the volume of reported small-dollar loans.

By way of comparison, almost 200,000 consumers obtained deferred deposit borrowers in 2017 and 2018. During the last eleven months of 2019, after Proposition 111 took effect, there were over 155,000 alternative charge borrowers which, on an annualized basis would equate to over 170,000 borrowers. Thus, unless the number of reported small-dollar borrowers has held constant at the level during the second Observation Period while the number of alternative charge borrowers declined by 50% as described in section 2.1.1, it would be safe to assume that the number of individuals obtained reported small-dollar loans is a fraction of those obtaining alternative charge loans.

We cannot report on the distribution of the reported small-dollar loans by loan size as the Experian Data groups these loans in a single size category. The Experian Data does indicate that 93% of the reported small-dollar loans were for terms of one year or less, and at least 88% were unsecured loans.[97]

The Experian Data does allow us to classify borrowers by credit tier as defined by Experian based on VantageScore® 4.0 scores as follows:[98]

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[97] One percent of the reported small-dollar loans were classified as “note loans” which may be secured or unsecured.

[98] The unscored category listed below represents records with a code in the Experian database indicating that the record was not scorable either because the individual was deceased or because the file had insufficient information to generate a score. Experian also identified a category labeled as “Null '' consisting of records in the database without either a score or a code indicating the reason the record was unscored. We exclude these “null” records in the analyses that follow.

Credit Tier	Score Range
Superprime	781-850
Prime	661-780
Near prime	601-660
Subprime	501-600
Deep subprime	300-500
Unscored	N.A.

For each calendar quarter in the two Observation Periods, Experian determined the number of consumers in its database as of the start of the quarter, disaggregated by these credit tiers, in each state for which data was collected for this report. Table 2.2 shows for Colorado and for Missouri and Utah—the two states in our analysis without usury limits—the average share of consumers in each credit tier at the start of the four quarters of the Observations Periods, and the share of the reported small-dollar loan borrowers that fall into each of these tiers obtained cumulatively during the Observation Periods.[99]

Table 2.2 Share of Consumers and Share of Reported Small-Dollar Loan Borrowers by Credit Tier

	CO		MO		UT	
	Share of All Consumers	Share of Borrowers	Share of All Consumers	Share of Borrowers	Share of All Consumers	Share of Borrowers
Superprime	32.6%	3.7%	27.4%	1.2%	28.9%	2.7%
Prime	30.4%	25.8%	27.4%	9.8%	34.4%	21.4%
Near Prime	14.6%	33.0%	16.8%	25.3%	16.1%	30.4%
Subprime	16.4%	31.8%	20.3%	50.5%	14.5%	37.1%
Deep Subprime	2.4%	4.9%	3.9%	12.0%	2.4%	7.0%
Unscored	3.7%	0.7%	4.3%	1.2%	3.7%	1.4%
Total	100%	100%	100%	100%	100%	100%

As Table 2.2 indicates, in each state consumers in the lower credit tiers—and especially those in the near prime and subprime tiers—received a disproportionate share of the reported small-dollar loans and superprime consumers received a very small share of those loans. There were, however, far greater variations across these states in the share of loans received by consumers in the various credit tiers than in the share of consumers in each tier. This is especially true with respect to the prime tier where the share of consumers ranges from 25% in Missouri to 33% in

[99] If a borrower obtained more than one loan during the Observation Periods and the borrowers credit tier changed from loan to loan, the borrower will be included in the count for each credit tier in which the borrower fell at the time they obtained a loan. To that extent, these numbers overstate the number of unique borrowers. This is true of each analysis in this report that uses Experian data disaggregated by credit tier.

Colorado whereas the share of borrowers of reported small-dollar loans in this tier ranges from 9.8% in Missouri to 33% in Colorado.

Penetration Rate: The Experian Data also provides a means of measuring the penetration rate for reported small dollar loans by dividing the total number of consumers obtaining a reported small-dollar loan during the Observation Periods by the average of the number of consumers at the start of each of the four quarters of the Observation Period. Table 2.3 provides these calculations disaggregated by credit tier. Because the two Observation Periods are not consecutive and cover the same months in two different time periods, the penetration rates shown below should not be taken as necessarily representative of the share of consumers obtaining loans in a rolling 12-month period of time.[100]

Table 2.3 Penetration Rate for Borrowers Obtaining Reported Small-Dollar Loans

	CO	MO	UT
	Penetration Rate	**Penetration Rate**	**Penetration Rate**
Superprime	0.08%	0.08%	0.08%
Prime	0.60%	0.61%	0.54%
Near Prime	1.61%	2.56%	1.64%
Subprime	1.38%	4.22%	2.22%
Deep Subprime	1.47%	5.14%	2.51%
Unscored	0.13%	0.46%	0.32%
Total	0.71%	1.69%	0.87%

As Table 2.3 shows, the penetration rates in the top two tiers are virtually identical across the three states. In the near prime tier, Colorado's penetration rate is essentially equal to that of Utah but significantly below that of Missouri, and in the remaining tiers Colorado's penetration rate lags that of both Missouri and Utah. [101] This indicates that at least among subprime, deep subprime, and unscored consumers—which together comprise just over 20% of the population in Colorado —small dollar loans of the type that are reported to the credit bureaus are less available in Colorado than in the comparison states without usury limits.

[100] In Section 3 of this report we disaggregate the Experian Data with respect to larger installment loans between secured and unsecured loans. Given the small number of small, unsecured loans reported to Experian we combine unsecured and secured loans here to allow for more meaningful analysis.

[101] The penetration rate in New York is comparable to that of Colorado across credit tiers and thus bears the same general relationship to Missouri and Utah. The Iowa penetration rate lags all the other states in all tiers; indeed, on an overall basis the penetration rate in Iowa for reported small-dollar loans is just 0.16%.

2.2.2 Safety and Affordability of Reported Small-Dollar Loans

The Experian Data does not enable us to estimate the extent to which borrowers who obtained reported small-dollar loans experienced difficulty in repaying those loans. These data also provide only limited insight into the extent of reborrowing by those borrowers because the data covers only loans obtained during two, non-consecutive six-month periods.[102] But the Experian Data does provide alternative performance metrics for considering safety and affordability for borrowers who obtained a reported small-dollar loan during the Observation Periods. For these borrowers (and also for borrowers obtaining larger installment loans as discussed in section 3.2.3) Experian reported on what it terms "Premier Attributes"[SM] which look at overall credit performance for a 12-month and 24-month period. We relate these "Performance Windows," which ended on March 30, 2020, to the two Observation Periods as follows:

Observation Period	Performance Window	Performance Period
Borrowers obtaining loans between Sept. 2018-March 2019	12 months	April 2019-March 2020
Borrowers obtaining loans between Sept. 2017-March 2018	24 months	April 2018-March 2020

Note that under this methodology, for borrowers who obtained a loan at the beginning of an Observation Period (i.e., in October 2018 or October 2019), we are looking at a "Performance Window" that begins in the seventh month after they obtained a loan, whereas for borrowers who obtained a loan at the end of an Observation Period (i.e., in March 2018 or March 2019) the Performance Window commenced in the month after they obtained the loan.

We first examine a Premier Attribute that reflects the number of times during the relevant Performance Window a borrower was seriously delinquent on a loan meaning that the borrower had made no payments for three months (and thus was 60 or more days delinquent or past due). We refer to this as a "major delinquency." This attribute, as defined by Experian, does not include what Experian terms "derogatories" meaning a status such as charge-off, repossession, or a referral to a debt collector; to that extent this Attribute may understate consumers' level of difficulty in repaying their debts.[103] On the other hand, a consumer could

[102] For borrowers who obtained reported small-dollar loans during the Observation Periods the average number of loans per borrower obtained during those periods was 1.7. We note that this average includes borrowers who obtained loans as late as the last month of the second Observation Period and for whom we have no visibility into subsequent reborrowing and, for borrowers who obtained loans during the first Observation Period, this average does not count any reborrowing that occurred between the two Observation Periods, i.e., between April 2018 and September 2018. The average is thus almost surely an understatement of the average number of loans a borrower obtained within, e.g., 12 months of taking out a loan.

[103] We examine other Premier Attributes that include various categories of derogatories below.

have more than one occurrence of a major delinquency with respect to a single loan if, for example, the consumer fell 60 days past due and then fell 90 days past due. Thus, the numbers reported here should not be understood to reflect the number of loans with respect to which consumers fell seriously behind.

Panel A of Table 2.4 looks at borrowers who obtained a small-dollar loan during the 2018–19 Observation Period and covers major delinquencies occurring during the 12-month Performance Window. Panel B shows results for borrowers who obtained a small-dollar loan during the 2017–18 Observation Period and reflects results over the two-year Performance Window. Because we are disaggregating the two Observation Periods, we combine the top two credit tiers (superprime and prime) and the bottom two (subprime and deep subprime) to allow for more robust analysis.

Table 2.4 Number of Occurrences of Major Delinquencies

Panel A—Borrowers Obtaining Reported Small-Dollar Loans During the 2018-19 Observation Period

	Colorado			Missouri			Utah		
	0x	**1-4x**	**5+x**	**0x**	**1-4x**	**5+x**	**0x**	**1-4x**	**5+x**
Prime/ Superprime	92.2%	5.0%	2.9%	90.1%	5.9%	4.0%	92.3%	5.2%	2.5%
Near Prime	78.7%	11.2%	10.1%	77.9%	12.6%	9.4%	78.8%	11.6%	9.6%
Subprime/ Deep Subprime	63.4%	18.8%	17.8%	69.2%	16.4%	14.4%	64.4%	17.8%	17.8%

Panel B—Borrowers Obtaining Reported Small-Dollar Loans During the 2017-18 Observation Period

	Colorado			Missouri			Utah		
	0x	**1-4x**	**5+x**	**0x**	**1-4x**	**5+x**	**0x**	**1-4x**	**5+x**
Prime/ Superprime	87.1%	7.9%	5.0%	86.0%	7.9%	6.1%	86.4%	8.8%	4.8%
Near Prime	70.6%	14.6%	14.7%	73.3%	14.2%	12.5%	71.6%	15.0%	13.5%
Subprime/ Deep Subprime	62.1%	17.3%	20.6%	68.0%	15.6%	16.4%	62.6%	16.4%	21.0%

Table 2.4 shows, not surprisingly, that a larger share of those borrowers who are in higher-risk credit tiers experience major delinquencies compared to consumers in lower-risk tiers. It also shows that, at least for borrowers with near prime credit scores or lower, the share experiencing at least one such delinquency is sizable. For example, in Colorado, among subprime and deep subprime consumers who obtained a reported small-dollar loan during either of the Observation Periods, over one-third experienced at least one major delinquency during the applicable Performance Window. The share of those with five or major delinquencies grows as the Performance Window expands from one year (Panel A) to two years (Panel B), although these

two Performance Windows are looking at different sets of borrowers. The same patterns hold in Missouri and Utah with similar levels of consumers experiencing major delinquencies across the credit tiers, although surprisingly across these tiers Missouri has a materially larger share of consumers without major delinquencies than either Colorado or Utah.[104]

The next table expands the focus by reference to a Premier Attribute that, rather than counting the number of occurrences of major delinquencies during a Performance Window, instead counts the number of discrete trade lines on which borrowers experienced a major delinquency or a derogatory as defined above. Trade lines are the various accounts reflected on a consumer's credit report and include, for purposes of this Attribute, collections accounts reported by debt collectors other than those reported with respect to a medical debt.[105] We caution that while the delinquencies counted here all necessarily occurred during the relevant Performance Window, the derogatories—such as non-medical collections--could have occurred earlier so long as they were reported during that Window.[106] Further, the incidence of the reporting of collections accounts across different states is a function, at least in part, of the extent to which seriously delinquent accounts are referred to debt collectors which may, in turn, be affected by the extent to which states regulate debt collection activities.[107] Even so, by counting discrete trade lines rather than occurrences of major delinquencies we believe this Attribute provides a useful window into challenges borrowers may be experiencing in repaying their obligations.

Panel A of Table 2.5 shows the results for borrowers who obtained a small-dollar loan during the first Observation Period and covers major delinquencies and derogatories reported during the 12-month Performance Window, and Panel B shows results for borrowers who obtained small-dollar loans during the second Observation Period and covers delinquencies and derogatories reported during the 24-month Performance Window.

[104] We also observe these patterns, and major delinquencies at comparable levels, in New York and Iowa, with a slightly lower level of major delinquencies in Iowa among subprime and deep subprime borrowers than in the other states and a slightly higher level in New York compared to the other states.

[105] https://www.experian.com/blogs/ask-experian/what-are-tradelines/

[106] This could be true, for example, of an unsatisfied non-medical collection that occurred before the start of a Performance Window (or even before the start of an Observation Period) if that item was reported at some point during the Performance Window although, as a general rule, collections trade lines tend to be reported for relatively short periods of time. CFPB, *Consumer credit reports: a study of medical and non-medical collections* at 6 (2014), https://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf

[107] Researchers from the Federal Reserve Bank of Philadelphia have developed an index that rates states in terms of the restrictiveness of their regulation of debt collection. Of the five states covered by the Experian Data, Missouri is rated the laxest followed by New York and Iowa (tied), Utah, and then Colorado. Fedaseyeu, *Debt Collection Agencies and the Supply of Consumer Credit* (202) at 50, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3587648

Table 2.5 Total Number of Trade Lines with Major Delinquencies

Panel A—Borrowers Obtaining Reported Small-Dollar Loans During the 2018-19 Observation Period

	Colorado			Missouri			Utah		
	0	1 to 2	3+	0	1 to 2	3+	0	1 to 2	3+
Prime/ Superprime	88.6%	7.8%	3.6%	82.4%	11.6%	6.0%	88.0%	8.1%	3.9%
Near Prime	68.3%	17.7%	14.0%	54.8%	27.9%	17.3%	66.0%	18.5%	15.5%
Subprime/ Deep Subprime	37.4%	30.5%	32.1%	23.5%	40.8%	35.7%	31.5%	34.0%	34.5%

Panel B—Borrowers Obtaining Reported Small-Dollar Loans During the 2017-18 Observation Period

	Colorado			Missouri			Utah		
	0	1 to 2	3+	0	1 to 2	3+	0	1 to 2	3+
Prime/ Superprime	80.8%	11.0%	8.2%	73.3%	14.7%	12.0%	80.1%	12.8%	7.1%
Near Prime	54.5%	20.9%	24.6%	40.8%	29.7%	29.5%	52.7%	22.6%	24.7%
Subprime/ Deep Subprime	25.1%	28.1%	46.9%	14.7%	35.0%	50.3%	25.0%	29.9%	45.1%

The inclusion in Table 2.5 of derogatories along with the major delinquencies that were reported in Table 2.4 shows even higher levels of repayment difficulties than was seen in the prior Table, especially among subprime and deep subprime borrowers. For Colorado borrowers in those credit tiers who obtained a reported small-dollar loan during the 2018–19 Observation Period (Panel A), over the 12-month Performance Window almost two-thirds experienced at least one major delinquency or derogatory and of those just over half experienced that on three or more separate trade lines. For the subprime and deep subprime Colorado borrowers obtaining small-dollar loans during the 2017–18 Observation Period (Panel B), 75% experienced at least one major delinquency or derogatory over the two-year Performance Window and of those over 60% experienced that on three or more discrete trade lines.

While the delinquency/ derogatory levels shown in Table 2.5 for borrowers in Colorado and Utah are quite close, borrowers in Missouri appear to have experienced even more difficulty handling their credit. Within each credit tier and for each Performance Period, the share of borrowers without a major delinquency or derogatory is smaller in Missouri than in Colorado or Utah. At the extreme, 85% of subprime and deep subprime borrowers in Missouri who obtained a reported small-dollar loan during 2017-18 Observation Period experienced at least one major delinquency or derogatory during the two-year Performance Window and of those almost 60% experienced three or more major delinquencies or derogatories.[108]

Finally, we expand our focus further by looking at a Premier Attribute that reflects the worst status reported on any trade line during the Performance Periods. The values defined by Experian for this Attribute are as follows:

- **"Current":** No late payments reported during the Performance Window
- **"30 DPD":** A payment was reported to have been 30 days past due at least once on one or more loans during the Performance Window.
- **"60–180 DPD":** A payment was reported to have been at least 60 days past due at least once on one or more loans during the Performance Window. This equates to what we have been referring to as major delinquencies.
- **"Derog":** A trade line contained a status such as charge-off, repossession or collections including unsatisfied medical collections.

We again note that a derogatory—which, as noted above, now is defined to include unsatisfied medical collections—could have occurred prior to the start of a Performance Window or Observation Period so long as the derogatory was reported during the Performance Window.

Again, Panel A shows the results for borrowers who obtained a reported small-dollar loan during the first Observation Period and looks at the worst status reported during the 12-month Performance Window and Panel B shows results for borrowers who obtained reported small-dollar loans during the second Observation Period and looks at the worst status reported during the 24-month Performance Window.

Table 2.6 Worst Status on Any Trade Line

Panel A—Borrowers Obtaining Reported Small-Dollar Loans During the 2018-19 Observation Period

	Colorado				Missouri				Utah			
	Current	30 DPD	60-180 DPD	Derog	Current	30 DPD	60-180 DPD	Derog	Current	30 DPD	60-180 DPD	Derog
Prime/ Superprime	77.6%	8.8%	4.7%	8.9%	70.3%	8.4%	5.2%	16.1%	76.4%	8.9%	4.5%	10.2%
Near Prime	52.1%	12.0%	10.8%	25.1%	39.0%	8.1%	8.1%	44.8%	50.4%	11.1%	9.3%	29.2%
Subprime/ Deep Subprime	25.3%	7.4%	10.8%	56.5%	13.6%	3.6%	6.4%	76.2%	20.6%	5.8%	8.9%	64.4%

[108] The data from New York shows levels of major delinquencies and derogatories comparable to that of Colorado and thus significantly lower than in Missouri. In Iowa, in contrast, the level of major delinquencies and derogatories was higher than in any of the other states.

Panel B—Borrowers Obtaining Reported Small-Dollar Loans During the 2018-19 Observation Period

	Colorado				Missouri				Utah			
	Current	30 DPD	60-180 DPD	Derog	Current	30 DPD	60-180 DPD	Derog	Current	30 DPD	60-180 DPD	Derog
Prime/ Superprime	65.3%	12.1%	6.0%	16.6%	58.0%	10.8%	5.8%	25.4%	64.0%	12.7%	6.7%	16.5%
Near Prime	37.8%	12.0%	10.7%	39.5%	25.9%	7.0%	7.1%	59.8%	37.6%	10.9%	9.9%	41.6%
Subprime/ Deep Subprime	14.9%	6.0%	7.2%	71.8%	7.3%	2.3%	3.8%	86.5%	14.7%	4.9%	6.5%	73.8%

Expanding the definition of derogatory to include unsatisfied medical collections reveals an even higher level of repayment difficulties than in the prior analyses. For example, for Colorado borrowers who obtained reported small-dollar loans during the 2018–19 Observation Period, almost half of those in the near prime tier and three-quarters in the subprime and deep subprime tiers experienced at least one major delinquency or derogatory during the 12-month Performance Period. For Colorado borrowers obtaining reported small-dollar loans during the 2017–18 Observation Period, the comparable percentages are 62.2% and 85.1% over the two-year Performance Window. Further, the growth in those rates between the two Performance Windows is attributable to a growth in the share with a derogatory report, suggesting that over a longer period of time major delinquencies turn into derogatories.

Once again, the same pattern is seen in the data from Missouri and Utah. Moreover, once again, the level of payment challenges as reflected in trade line status is higher in Missouri compared to Colorado or Utah. At the extreme, 92.7% of Missouri subprime and deep subprime borrowers who obtained a reported small-dollar loan during the 2017-18 Observation Period experienced a major delinquency or derogatory during the two-year Performance Window as compared to 85.1% of Colorado borrowers. We note that the disparity between Colorado and Missouri is driven by derogatories rather than major delinquencies which, as previously noted, may be in part a function of exogeneous factors such as state regulation of debt collection.[109]

In sum, the data suggest that at least the near prime, subprime and deep subprime borrowers—who together account for between 67% (in Colorado) and 88% (in Missouri) of reported small-dollar loan borrowers—experienced considerably difficulty in repaying at least some of their loans or other obligations. There is also some evidence to indicate that this was truer for

[109] Again, the levels of significant delinquencies and derogatories in New York is comparable to those in Colorado and well below those in Missouri. The data from Iowa, in contrast, closely parallels the results from Missouri.

borrowers in Missouri—where credit was more available to borrowers in these credit tiers--than for borrowers in Colorado, although the evidence on this score is mixed.

Part Three: Larger Installment Loans

This part reviews data with respect to the availability, and the safety and affordability, of larger installment loans in Colorado, i.e., loans for amounts over $1,000. As shorthand, we use the term “installment loans” even though alternative charge loans are also repaid in installments as are mortgages, auto loans, and student loans, which latter three categories are outside the scope of this study.

3.1 Availability of Larger Installment Loans

3.1.1 Colorado Market Metrics

Forty lenders reported making “Other Supervised Loans” in 2021, i.e., loans with an APR above 12%.[110] Just over half (22) made fewer than 100 such loans and only five made more than 1,000 such loans. As further evidence of market concentration, the three largest lenders accounted for 79% of all Other Supervised Loans and 73% of total dollar volume.

An additional 35 companies took Other Supervised Loans by assignment in 2021.[111] Here, too, the market is fairly concentrated as the top three licensees accounted for almost 75% of the Other Supervised Loans taken by assignment.

In contrast to the market for small-dollar loans where, as noted in Section 2.1.1, most or all national payday lenders are operating as alternative charge lenders in Colorado, we have identified some sizable installment lenders that have chosen not to originate loans or take loans by assignment in Colorado. Among traditional brick-and-mortar finance companies, we identified the following companies that do not operate in Colorado: World Finance, which operates in 16 states; Regional Finance, which operates in 17 states; Mariner Finance, which operates in 28 states; Security Finance, which operates in 11 states[112]; and Heights Finance, which also operates in 11 states but in a number of states caps its maximum loan size at $1,500.

[110] If any lenders only made loans with an APR below 12%, they were not required to report on their activity.

[111] Four companies both originated loans and took loans by assignment. Three of these took fewer than 50 loans by assignment and also originated a small number of loans.

[112] Security Finance offers loans with maximum amounts ranging from $1,440 to $2,500 depending on the state. The company previously offered alternative charges loans in Colorado prior to 2008. It signed a consent agreement with the Colorado Attorney General’s Office and the Administrator that was entered by the district court in 2010. Security Finances paid refunds to consumers, paid $125,000 for attorney and expert fees to the Administrator, and agreed to surrender its lending licenses.

Additionally, some financial technology companies (fintechs) that are engaged in installment lending, either directly or in partnership with a bank, do not operate in Colorado.[113] We identified three publicly traded fintechs which do not operate in Colorado (Opportunity Financial, which appears to operate in 34 states; Elevate, which appears to operate in 28 states; and Opportun, which appears to operate in 41 states) as well as several privately held fintech lenders operating in at least nine states and as many as 28 states which also do not make loans in Colorado.[114] Some of these lenders offer only lines of credit in some of the states in which they do business and many have maximum loan sizes well below those of lenders operating in Colorado. We do not believe that this is an exhaustive list.[115] Some of these lenders publicly state that they report to the NCRAs while others are AFS installment lenders as described in Section 1.1.2.

As noted in Section 1.5, to the extent there are tribal (or other unlicensed) lenders operating in Colorado, their activity is not reflected in any of our findings.

3.1.2 Loan Volume and Loan Characteristics

The Annual Report data for 2019 include data on supervised loans regardless of APR as shown below:[116]

Table 3.1 2019 Annual Report Data Closed-End Loan Originations

	Originated	Taken by Assignment	Total
APR ≤ 12%	14,302	10,749	25,051
APR > 12%	39,690	33,599	73,289
Total	53,992	44,348	98,340

The Annual Report data for 2020 and 2021 are more limited than the 2019 data because the 2020 and 2021 data reflect only Other Supervised Loans, i.e., loans with an APR above 12%.

113 As discussed in Section 1.2.2, in 2020 the Colorado Attorney General entered into an Assurance of Discontinuance (AOD) with two fintechs and their bank partners. That AOD requires these banks, among other things, to cease partnerships with fintechs who fail to provide compliance reports that accompany the fintech partners annual reports.

114 These include Advance Financial, Balance Credit, Boost Finance, Cash Store, Credit Ninja, Integra Credit, Perch, MoneyKey, and Xact.

115 We have generated this list from information supplied by the Online Lenders Alliance in the course of this study and through independent internet research using publicly-available lists, including a list of leading installment-loan marketers, https://www.epicresearch.net/fintechs-dominate-personal-loans/, and a list of higher-cost lenders, https://www.nclc.org/resources/predatory-installment-lending-in-the-states-2022/

116 These totals exclude credit sales made or taken by assignment.

Table 3.2 shows the total number of Other Supervised Closed-End Loans reported for 2019–2021.

Table 3.2 2019–21 Annual Report Originations of Other Closed-End Supervised Loans

	2019	2020	2021
Originated	39, 690	32,962	39,295
Taken by Assignment	33,599	17,641	88,021

As this table indicates, the number of originated loans declined in 2020 but largely recovered in 2021. Given that the volume of originated Other Supervised Loans in 2019 and 2021 were quite similar, it would follow that the number of loans originated in 2021 with lower APRs would also be roughly equivalent to the 2019 total unless there was a change in either the demand for credit or its supply that affected only those consumers qualifying for lower rates.

In contrast, the number of Other Supervised Loans taken by assignment increased considerably between 2019 and 2021. That difference is largely attributable to one or more licensees who previously had not reported any loans taken by assignment but reported a sizable number in 2021. However, given the volatility in the numbers of loans taken by assignment with APRs above 12%, it is difficult to estimate the number of loans taken by assignment with APRs below that level in 2021.

Finally, the annual reports show a much smaller number of Other Supervised open-end lines of credit originated in 2019–21, although, with a material number of such lines of credit reported as having been taken by assignment in 2021 (by lenders who did not previously report any lines of credit taken by assignment):[117]

Table 3.3 Other Supervised Open-End Lines of Credit

	2019	2020	2021
Originated	821[118]	583	975
Taken by Assignment	1	3	5,228

Table 3.4 shows several metrics for the Other Supervised closed-end originated loans in 2021. These data are for six lenders who made at least 500 such loans and exclude one or more

[117] For open-end loans, an Other Supervised Loan is a loan with a cap rate in excess of 12% regardless of the originating rate.

[118] The 2019 Annual Reports show that there were 169 open-end lines of credit originated with an APR at or below 12%.

specialty lenders with at least 500 loans.[119] These six lenders account for 87% of all originated Other Supervised loans and 89% of dollar volume.

Table 3.4 Characteristics of 2021 Originated Closed-End Other Supervised Loans

	Originated
Percent Secured	39%
Weighted Avg. APR	21.8%
Weighted Avg. Loan Size	$10,216

There is considerable heterogeneity among these six lenders with respect to these metrics. For example, only three of the six lenders make secured as well as unsecured loans and among those lenders the share of secured loans ranges from under 40% to over 80%. Similarly, there were one or more lenders with an average loan size of under $4,000 and average APR of 27.8% whereas at the opposite extreme, there were one or more lenders with an average loan size of $30,000 and an average APR of 13.8%.

We note that late fees and NSF fees are not included in the APR; based on the amount of fees the lenders reported collecting in 2021 and the outstanding balances reported at the beginning and end of the year we estimate that these fees added approximately 0.15% to the overall yield.[120]

Additionally, the APR does not include any revenue the lenders received from selling insurance products, such as credit life insurance or credit unemployment insurance, or non-insurance products such as home and auto club products to borrowers. The Larger Lender Supplement to the Annual Report indicates that only some of the lenders sell insurance products to their customers. On a weighted average basis, in 2021 those lenders who do offer such products sold credit life insurance on 33% of their loans and credit accident and health insurance and involuntary employment insurance on a slightly smaller percentage (31% and 29%, respectively). These products are typically single-premium policies in which the amount of the premium is added to the amount of cash provided to the borrower to create the total amount financed.

In a recently-published report, the Center for Responsible Lending reviewed collections cases filed by two lenders in Denver over a two-year period and identified 40 cases (out of a universe of 67 collection cases) in which the loan at issue included an amount for insurance premiums or

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[119] The term "specialty lender" is used to refer to lenders whose business is limited to loans for a limited purpose, such as lawsuit financing or auto refinancing. These loans are excluded because they are not typical of the rest of the market and could skew the reported data.
[120] In addition, prepaid finance charges could yield higher returns that the APR may reflect.

other add-on products.[121] The authors of that report provided the Administrator with a spreadsheet showing the premiums or membership fees charged in those case as reflected in the court documents. Based on the data in that spreadsheet, the average premium was $634.55. We are unable to estimate, however, the amount of revenue these sales generate for the lenders nor are we able to assess how representative this cost is of the policies sold by the lenders selling such policies.

The only metric that can be calculated from the Annual Report Data for loans taken by assignment is the average APR. For lenders with at least 500 loans taken by assignment—excluding specialty lenders—that weighted average was 21.8%, identical to the average for originated loans. The range among these lenders was smaller than for originated loans, from 16.3% to 23.7%.

3.1.3 Approval Rates

Seven lenders (excluding one or more specialty lenders) originated more than $5,000,000 in Other Supervised closed-end loans in 2021 (including refinancing) and thus were required to complete the Larger Lender Supplement; these lenders accounted for 87% of reported originations. The Supplement sought information, disaggregated by quarter and credit tier, with respect to the number of applications, denials, and originated loans. The Supplement requested these data separately for unsecured and secured loans. However, in conversations with lenders who offer both secured and unsecured loans, we learned that consumers generally do not specify in their application whether they are applying for an unsecured or secured loan. Rather, after underwriting the application, some consumers may be offered a choice between the two product types (with a lower APR for a secured loan) while others may be offered only a secured loan. Accordingly, in reporting on the approval rate below, we have aggregated the data for the two types of products.

Table 3.5 shows the approval rate by the credit tiers set forth in the Larger Lender Supplement for applicants for closed-end loans. These tiers were defined by reference to FICO scores and differ from those used in the Experian Data based on VantageScores; instead these definitions follow the CFPB's definitions for prime, near prime, subprime, and deep subprime.[122] Lenders

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[121] Center for Responsible Lending, *Upsold and Weighed Down* (2022), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-upsold-weighed-down-colorado-dec2022.pdf. The principal author of this report to the Colorado Attorney General, in addition to serving as a Senior Advisor to the Financial Health Network, also serves as a Senior Fellow at the Center for Responsible Lending. He had no involvement in the Center's study cited here.

[122] CFPB, *The Consumer Credit Card Market* at 19 (2021), https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2021.pdf. The CFPB has not identified which scoring algorithm it uses other than to state that it is "widely used" and "commercially available." Comparing the (CFPB-derived) tier definitions in the Larger Lender Supplement with the Experian definitions using VantageScores, the definitions of prime appear congruent as each uses a score of 660 to demark the start of prime. (The Larger Lender Supplement did not subdivide superprime from prime whereas both the CFPB tiers and the Experian tiers do so.) However, the Larger Lender Supplement and Experian define the

were instructed to exclude from these totals applications and approvals for refinancing of an existing loan made by the lender submitting the report. We include in the bottom row of Table 3.5 the distribution of consumers in the United States across these tiers as reported by the CFPB for 2020.[123] Because the average FICO score in Colorado is higher than the national average,[124] we expect that the distribution of scores across tiers in Colorado skews higher than is true nationally.

Table 3.5 Approval Rate for Other Supervised Closed-End Loans by Credit Tier

	Credit Tier						
	Prime/ Superprime (FICO ≥660)	**Near Prime 620-659**	**Subprime 580-619**	**Deep Subprime <580**	**No Score**	**Unknown[125]**	**Total**
No. Applications	34,408	35,236	38,995	61,070	2,210	6,777	178,696
No. Approvals	14,357	10,052	8,788	8,997	1,151	1,002	44,347
% Approved	41.7%	28.5%	22.5%	14.7%	52.1%	14.8%	25.90%
% of Approvals	20.3%	19.8%	22.7%	32.4%	2.6%	2.3%	100%
% of U.S. Population	60.0%	7.0%	6.0%	14.0%	14.0%		100%

As Table 3.5 shows, consumers with subprime and deep subprime credit scores accounted for the largest share of applications. The approval rate, not surprisingly, was highest for consumers with prime credit scores and lowest for consumers with deep subprime credit scores. Nonetheless, the latter group represents a larger share of those approved for loans.[126]

The data also reveal considerable heterogeneity among the seven lenders. One or more lenders only reported applications within the highest credit tier, while one or more other lenders only

boundaries between near prime, subprime, and deep subprime differently, with the largest difference being that Experian limits deep subprime to consumers with scores of 500 or below whereas the Larger Lender Supplement, following the CFPB, defines deep subprime as beginning at score of less than 580. As a result the CFPB-defined tiers place a substantially larger share of consumers in the deep subprime category than does Experian. The CFPB also shows a larger share of unscored consumers than Experian which may be because Experian differentiates between unscored and "Null." See n. 99.

[123] *Id.* at 19-20. We have recalculated these percentages excluding the CFPB's estimate for "credit invisible" consumers, i.e., those without a credit record.

[124] https://www.experian.com/blogs/ask-experian/what-is-the-average-credit-score-in-the-u-s/

[125] Unknown was defined to mean cases in which the lender did not attempt to obtain a FICO score whereas No Score counts those where the lender sought but was unable to obtain a score.

[126] The number of approvals is higher than the number of loans originated as some consumers who are approved for a loan may not ultimately choose to consummate the loan.

reported applications with an unknown credit score. Within the lowest credit tier one or more lenders approved less than 1% of applications while one or more other lenders approved 23%; in the highest credit tier the range was from 31% to 88%.

A report prepared by the North Carolina Office of the Commissioner of Banks in 2011 found that the "declination rate" among finance companies in North Carolina was "70% or more" which is more-or-less in line with the overall approval rate (and, its inverse, the declination rate) observed in Colorado.[127] The only more recent data of which we are aware that can be used to benchmark these approval rates are data reported by the CFPB with respect to the approval rate for general purpose credit cards. According to the CFPB's report, in 2020, the approval rate for prime, near prime, and subprime applications was 49%, 29%, and 13%, respectively—all roughly comparable to the approval rates shown above.[128]

Although the approval rates thus appear in line with other benchmarks, in conversations with lenders, we were informed that they deploy tighter credit criteria in states like Colorado with more restrictive usury limits than they do in more permissive states in which they operate. According to these lenders, these state law differences affect whether consumers in certain lender-defined risk buckets will be offered a loan. The lenders with whom we spoke were unable to estimate how approval rates vary from state to state, although any such estimates would, in any event, in part be a function of the composition of the applicant pool across different states. These lenders also reported that they were more restrictive in offering unsecured loans in Colorado than in other states with more permissive regulatory regimes but were similarly unable to estimate the impact on the percentage of approved applicants offered an unsecured option. We discuss this further in Section 3.1.6.

3.1.4 Penetration Rate

Experian identified approximately 100,000 borrowers in Colorado who obtained larger installment loans during the four quarters of the two (non-consecutive) Observation Periods.[129] This is roughly comparable to the number of loans reported in the annual reports for 2017 and 2018 but below the number in 2019 when, as explained in Section 3.1.2, there was an increase in the number of lenders reporting loans taken by assignment and a corresponding increase in such loans.[130]

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[127] North Carolina Office of the Commissioner of Banks, *The Consumer Finance Act: Report and Recommendations to the 2011 General Assembly* at 24 (2011), https://nccob.nc.gov/media/310/open
[128] CFPB, *The Consumer Credit Market* at 70 (2021), https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2021.pdf
[129] If a consumer obtained both a secured and unsecured loan during the Observation Periods the consumer would be counted twice for purposes of the total stated in text and in the calculations that follow. These calculations exclude borrowers who obtained only a note loan for more than $1,000; there were under 1,500 such borrowers in Colorado during the Observation Periods.
[130] As noted in our discussion of data limitations in Section 1.5, such loans could be reported to Experian by depositories in which event they would not be captured in the Experian Data as non-depository loans. We know of

As explained in Section 2.2.1 and using the methodology and (VantageScore-based) credit tiers described therein, we can use the Experian Data to compare the share of borrowers obtaining larger installment loans during the Observation Periods in the various credit tiers with the share of such consumers in the population. We do so in Panel A of Table 3.6 for borrowers in Colorado, Missouri, and Utah. Panel B then compares the penetration rates for Colorado, Missouri, and Utah disaggregated by credit tier.[131]

Table 3.6 Observation Period Share of Borrowers and Penetration Rate for Borrowers Obtaining Larger Installment Loans From Non-depositories

Panel A-Share of Borrowers Compared to Share of Population

	CO		MO		UT	
	Share of All Consumers	Share of Borrowers	Share of All Consumers	Share of Borrowers	Share of Consumers	Share of Borrowers
Superprime	32.6%	9.8%	27.4%	6.9%	28.9%	8.2%
Prime	30.4%	39.9%	27.4%	27.9%	34.4%	35.9%
Near Prime	14.6%	30.3%	16.8%	32.2%	16.1%	31.5%
Subprime	16.4%	18.7%	20.3%	29.2%	14.5%	21.9%
Deep Subprime	2.4%	1.2%	3.9%	3.5%	2.4%	2.2%
Unscored	3.7%	0.2%	4.3%	0.2%	3.7%	0.3%
Total	100%	100%	100%	100%	100%	100%

Panel B-Penetration Rate

	Unsecured			Secured			Total		
	CO	MO	UT	CO	MO	UT	CO	MO	UT
Superprime	0.47%	0.37%	0.34%	0.25%	0.46%	0.26%	0.72%	0.83%	0.60%
Prime	2.39%	2.13%	1.66%	0.75%	1.20%	0.52%	3.14%	3.33%	2.18%
Near Prime	3.27%	3.36%	3.21%	1.70%	2.92%	0.88%	4.97%	6.28%	4.08%
Subprime	1.12%	2.15%	2.32%	1.60%	2.56%	0.84%	2.72%	4.71%	3.16%
Deep Subprime	0.32%	1.26%	1.40%	0.86%	1.65%	0.51%	1.18%	2.91%	1.91%
Unscored	0.03%	0.04%	0.09%	0.07%	0.08%	0.05%	0.10%	0.13%	0.14%
Total	1.55%	1.73%	1.56%	0.84%	1.53%	0.53%	2.39%	3.27%	2.09%

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no reason to believe, however, that this is more or less true in Colorado than in the other states from which data was obtained for this report and thus we believe the comparisons are representative of differences among the states.

[131] We exclude from these calculations 6,714 "note loans" which could not be classified as either secured or unsecured. These represent 2% of the total larger installment loans.

Panel A indicates that, as was true with respect to the reported small-dollar loans as discussed in section 2.2.1, superprime consumers are underrepresented among the share of borrowers relative to their share of the population while near prime borrowers are significantly over-represented. The share of subprime consumers obtaining larger installment loans is closer to their share of the population than is true for consumers who obtained reported small-dollar loans. Subprime consumers in Missouri again received a larger share of loans than in the other states.

With respect to the penetration rates, looking first at the unsecured loans, the overall penetration rate in Colorado is almost identical to that of Utah but below that of Missouri. When the data is disaggregated by credit tier, we see that for the superprime and prime consumers the penetration rate is higher in Colorado than in either Utah or Missouri, whereas for subprime and deep subprime consumers and those without a credit score, the reverse is true. Only among near prime consumers do we see mixed results, with the penetration rate of Colorado falling below Missouri and above Utah although the rates in all three states for near prime consumers are fairly close together.

Looking at secured loans we see that the penetration rate in Colorado exceeds that of Utah in all tiers other than superprime where the two rates are essentially equal. In contrast, in Missouri the penetration rate is higher than Colorado (and Utah) in every credit tier and for the deep subprime tier Missouri's penetration rate is almost twice as high as that of Colorado and more than three higher than in Utah. Missouri also had a substantially larger share of secured loans relative to unsecured loans than either Colorado or Utah as we discuss later in Section 3.1.6. We are unable to explain why the volume and penetration rate for secured loans in Missouri is so different than for either Utah or Colorado especially when, for unsecured loans, the differences are much smaller.

Combining the two types of loans we see that in the subprime and deep subprime tiers and among those without a credit score, the penetration rate in Colorado is below that of both Missouri and Utah whereas for the remaining credit tiers the Colorado penetration rate falls between that of Missouri and Utah. This implies that, at least for consumers in these bottom tiers, comprising just over 20% of the population in Colorado as shown in Table 3.6, credit for larger installment loans is less available in Colorado from non-depositories than in these other states.[132]

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[132] In New York—one of our comparison states with usury limits similar to those of Colorado—the penetration rate for secured and unsecured loans combined exceeds that of Utah for the superprime and prime credit tiers and falls below Utah and Missouri for the remaining credit tier. The New York penetration rate is below Missouri's across all credit tiers. The penetration rate in Iowa is below Utah for all but the superprime tier and below Missouri in all tiers.

There are two factors that likely explain the lower penetration rates and apparent reduced availability of credit, at least for consumers in the riskier credit tiers. First, as noted in Section 3.1.3, at least some of the lenders operating in Colorado have more restrictive criteria—especially for unsecured credit in Colorado—compared to some other states in which they operate. Second, as discussed in Section 3.1.1, there are non-depository lenders operating in Missouri and Utah and states with similar laws who do not make loans in Colorado. Some of these lenders appear to be focused on making loans to consumers with damaged credit. For example, we have been able to identify the APRs charged by eleven installment lenders making loans in Utah and/or Missouri but not in Colorado and who state that they report data to the NCRAs so that their originations would be reflected in the Experian Data to the extent they were operating in Utah and Missouri during the Observation Periods. Table 3.7 shows our findings:

Table 3.7 APRs on Loans Not Available in Colorado

Lender	Rates	Loan Size
Heights Finance	Up to 35.99%	\$5,000–\$10,000
Mariner Finance	18.99% to 35.99%	\$1,000–\$25,000
Opportun	35.99%	\$500–\$6,000
OppFi	160%	\$500–\$4,000
Perch Loans	149.99%	\$500–\$2,600
Personify	19% to 179.50%	\$500–\$1,500
Regional Finance	24% to 35.99%	\$2,501–\$10,000
Rise (Elevate)	103% (weighted average)[133]	\$500–\$5,000
World Finance	50.1% (weighted average)[134]	\$450–\$5,000
Xact	145% to 225%	up to \$5,000

Prior research similarly documents the extent to which installment lending in some states occurs outside of the usury limits in Colorado. For example, TransUnion has reported that the median APR for reported, unsecured installment loans for near prime consumers in 2021 was 23.8%; TransUnion did not report the median APR for subprime consumers who, according to the TransUnion report, accounted for between 35% and 40% of originations in 2021.[135] An

[133] Rise does not advertise its rates but in its most recent 10(k) filing (at 65), it reported that the effective average APR on Rise loans in 2021 was 103%. https://d18rn0p25nwr6d.cloudfront.net/CIK-0001651094/cb8a7636-0543-4483-b979-feb35cc4f479.pdf

[134] World Finance does not advertise its rates but in an investor presentation in September 2021 (at p.18), it reported its weighted average APR and reported the distribution of loans by rate in four tiers: sub-36%; 36%–50%, 50–100%, and above 100% (no longer originated). https://cms.loansbyworld.com/wp-content/uploads/2021/09/921investorspresentation.pdf?_ga=2.163029749.83222960.1668972430-1850852712.1667322777

[135] *TransUnion Unsecured Personal Lending Industry Report Q32022* at 10, 20. According to TransUnion, the average size loan in 2021 to near prime consumers was approximately \$5,000.

earlier study examining 1,000,000 installment loans made by four lenders in 2012–13 found that the median APR was 295% and the APR for the 75th percentile was 371%.[136] Another study consisting of a survey of members of the American Financial Services Association with respect to loans outstanding as of December 2013 found that 70% of the loans had an APR above 48%, including 11% with APRs above 100%.[137]

3.1.5 Loan Size

Some researchers have suggested that because the costs of originating and servicing loans do not necessarily scale with loan sizes while revenue is a function of size, usury limits below a certain level will cause lenders to impose larger minimum loan sizes.[138] Our research provides mixed evidence on this point.

The Annual Report data indicates that for the six lenders originating 500 or more loans (again excluding specialty lenders), 9% of their Other Supervised closed-end loans were for $3,000 or less with a range from no loans made under that level to over 40% of loans for such amounts. Further, in conversations with lenders, they reported that their loan size minimums were uniform across the states in which they operated (unless a particular state law mandated a particular minimum). The lenders further advised us that the size of the loan entered into their underwriting determination only insofar as it affected whether a particular payment was deemed to be affordable for the applicant, and that the bases for those determinations did not vary from state to state. Thus, it does not appear that the lenders operating in Colorado constrain the availability of smaller loans for those meeting their credit criteria and that the distribution of loan sizes among these lenders reflects the interaction of consumer demand (i.e., the amount of credit for which consumers apply) and lenders' assessment of the size of the monthly payment that consumers can afford.

On the other hand, when we examine the Experian Data, we find disparities in the distribution of loan sizes between Colorado and the states without a usury limit in our sample. Table 3.8 shows the distribution of borrowers by the size of loan they obtained for installment loans

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[136] Beales & Goel, *Small Dollar Installment Loans: An Empirical Analysis* (2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2581667. The median size of the loans in this study was $900 and the 75th percentile was $1600.Borrower

[137] Durkin, Elliehausen & Hwang, *Rate Ceilings and the Distribution of Small Dollar Loans from Consumer Finance Companies: Results of a New Survey of Small Dollar Cash Lenders* Table 3 2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2533143 This study covered 3,000,000 loans of which 51% were for $1,000 or less; 27% for between $1,000–$2,000, and 22% for greater than $2,000.

[138] *E.g.,* Chen & Elliehausen, *The Cost Structure of Consumer Finance Companies and Its Implications for Interest Rates: Evidence from the Federal Reserve Board's 2015 Survey of Finance Companies* (2020), https://www.federalreserve.gov/econres/notes/feds-notes/the-cost-structure-of-consumer-finance-companies-and-its-implications-for-interest-rates-20200812.html

made by non-depositories in amounts greater than $1,000 during the two Observation Periods.[139]

Table 3.8 Distribution of Borrowers by Loan Size for Borrowers Obtaining Larger Installment Loans From Non-depositories

	Unsecured			Secured		
	CO	MO	UT	CO	MO	UT
$1,001 - $3,000	25.7%	39.8%	42.0%	18.5%	37.1%	28.7%
$3,001 - $5,000	14.5%	17.0%	16.3%	19.6%	19.6%	16.9%
$5,001 - $10,000	24.7%	21.3%	18.9%	29.4%	22.4%	21.9%
$10,001 - $15,000	13.9%	9.5%	8.3%	13.2%	8.8%	11.6%
$15,001 - $20,000	8.3%	5.0%	5.2%	6.2%	4.0%	6.0%
> $20,000	13.0%	7.3%	9.3%	13.3%	8.1%	14.9%

As Table 3.8 indicates, for both unsecured and secured loans there is a sizable gap in the share of loans under $3,000 in Colorado relative to the share in Missouri and Utah and a higher share of loans for amounts over $5,000. Of course, there are multiple reasons that can explain this but the results coupled with the Annual Report data suggest that lenders operating in Missouri and Utah but not in Colorado make a larger share of loans at the lower end of the larger-installment range than lenders operating in all three states. This is consistent with our finding in Table 3.7 regarding the maximum loan sizes of some of these lenders, especially the fintech lenders.[140]

3.1.6 Secured vs. Unsecured Loans

As noted in Section 3.1.3, the lenders with whom we spoke indicated that, for applicants who passed their underwriting screen, their criteria for making an unsecured offer were tighter in Colorado than in other states in which they operate with a more permissive regulatory regime. This presumably reflects these lenders' greater tolerance for risk (and losses) in states in which they can charge higher rates, recognizing that secured loans are less likely to result in losses than unsecured loans. This is in part because consumers who are financially struggling tend to prioritize repaying loans secured by their automobile—and, outside of the mortgage context, the overwhelming majority of secured personal loans are secured by a lien on an automobile—

[139] If a borrower obtained two unsecured loans during the Observation Periods that fell in different loan size tiers the borrower would be counted more than once in the unsecured loan calculations in Table 3.8. The same is true for the secured loan calculations for borrowers who obtained more than one secured loan that fell in different loan size tiers.

[140] We also observe that compared to Missouri and Utah, the loan sizes for unsecured loans skew larger in New York and Iowa, the two other states with usury limits similar to that of Colorado. However, for secured loans, the share of loans of $3,000 or less is higher in New York than in Utah but below the share of such loans in Missouri.

over other debts to avoid repossession,[141] and in part because if a consumer defaults on a secured loan the lender can mitigate the loss by repossessing the collateral and selling it.

From the Experian Data, we can compare the share of secured and unsecured larger installment loans made by non-depositories in Colorado during the two Observation Periods with the share made in the comparison states without usury limits. Table 3.9 disaggregates the results by Experian-defined credit tier.

Table 3.9 Share of Borrowers Obtaining Secured Larger Installment Loans by Credit Tier

	CO		MO		UT	
	Share of Loans	**% of Tier Secured**	**Share of Loans**	**% of Tier Secured**	**Share of Loans**	**% of Tier Secured**
Superprime	9.81%	34.20%	6.95%	55.93%	8.25%	43.34%
Prime	39.88%	23.73%	27.91%	35.98%	35.87%	23.92%
Near Prime	30.30%	34.17%	32.22%	46.49%	31.49%	21.46%
Subprime	18.68%	58.69%	29.23%	54.36%	21.93%	26.60%
Deep Subprime	1.17%	72.76%	3.52%	56.65%	2.21%	26.85%
No Score	0.16%	73.94%	0.17%	65.20%	0.25%	35.00%
Total	100.00%	35.10%	100.00%	46.90%	100.00%	25.43%

Looking first at the data from Colorado and Missouri, we see that in Colorado the share of loans that are secured increases as credit scores decrease so that, e.g., 34% of superprime borrowers received a secured loan compared to 73% of deep subprime borrowers. In contrast, in Missouri the share of secured loans among superprime consumers is roughly equivalent to the share among subprime, and deep subprime consumers. As a result, the share of borrowers who received secured loans in Colorado is lower than in Missouri for the top three credit tiers but higher for subprime and deep subprime borrowers and those without a credit score. In the aggregate, a smaller share of consumers in Colorado received secured loans—and a larger share received unsecured loans—than in Missouri.

In Utah we find that a higher share of superprime borrowers received secured loans than in any of the other credit tiers. As a result, except among superprime borrowers, the share that received a secured loan is higher in Colorado than in Utah and in all credit tiers the share receiving secured loans is higher in Missouri than in Utah.

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[141] Experian, *Consumer payment hierarchy by trade type: Time-series analysis* (2020), *available at* https://www.experian.com/blogs/insights/2020/07/covid-19-consumer-payment-priorities/

Adding in the data for New York and Iowa (not shown) creates an even more disjointed picture. The share of borrowers obtaining secured loans in New York follows the same pattern as in Colorado, with that share increasing as credit scores decline. As a result, the relationship between the share of borrowers obtaining secured loans in Colorado, Missouri and Utah holds as well for New York. But in Iowa, the share of borrowers obtaining secured loans is higher for the superprime tier (82%) than for borrowers in any other credit tier (other than the unscored consumers) and for both the superprime and prime borrowers, there is a larger share of secured loans in Iowa than in any of the other states.

In sum, except for the deep subprime credit tier and for those without a credit score, there is no consistent relationship between the availability of unsecured credit in the states without usury limits relative to Colorado and our other comparison states with comparable usury limits. We can say, however, that compared to both Missouri and Utah, unsecured credit seems to be less available for subprime and deep subprime borrowers in Colorado, although the differences in the subprime tier between Colorado and Missouri are relatively small.

3.2 Safety and Affordability of Larger Installment Loans

We turn now to the question of whether the larger installment loans available in Colorado are safe and affordable as defined in Section 1.4.

Just as stakeholders have divergent views regarding the safety and affordability of small-dollar-loans as discussed in Section 2.1.2, so, too, there is a divergence of views regarding installment loans—or, more precisely, regarding what consumer advocates term "high cost installment loans." Those differences are manifested in two reports issued during the course of this study, each based on survey research by stakeholders with divergent perspectives. Based on a survey it conducted of consumers with installment loans with APRs above 36%, the Center for Responsible Lending reported that, in its view, its data showed that such loans "aggravat[ed], rather than alleviat[ed] financial challenges."[142] In contrast, the Online Lenders Alliance found in its survey of consumers who had borrowed money from lenders in Illinois that ceased doing business in the state following a change in Illinois' usury law that these consumers "struggled with paying their bills" and "were left with poor alternatives, including late bill payments, skipping urgent appointments or vital expenses, or pawning valuables" when Illinois imposed a 36% usury cap.[143]

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[142] Center for Responsible Lending, *Unsafe Harbor: The Persistent Harms of High-Cost Installment Loans* (2022), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-safe-harbor-low-sep2022.pdf . As stated in n.121,the principal author of this report to the Colorado Attorney General serves as a Senior Fellow for the Center for Responsible Lending (CRL). In that capacity he reviewed and commented on a draft of the CRL survey and the report prior to its publication.

[143] Online Lenders Alliance, *An Illinois Consumer Survey: Understanding the Impact of the 2021 Rate Cap on Consumers* (2022). This survey was conducted as part of research for an academic paper studying the effect of the change in the Illinois usury law on the availability of credit in Illinois. Bolen, Elliehausen and Miller, *Effects of Illinois' 36% Interest Rate Cap on Small Dollar Credit Availability and Financial Well-Being* (2022), https://www.openconf.org/southernfinance2022/modules/request.php?module=oc_program&action=summary.p

As discussed in Section 1.4, we seek to shed light on the safety and affordability of the loans made in Colorado by examining data regarding the extent to which the borrowers who obtained such loans have been able to repay them successfully.

3.2.1 Delinquency Rates

The Annual Report data from the Larger Lender Supplement provides several metrics to assess the extent to which borrowers were able to repay the loans they obtained. Table 3.1 shows, for the larger lenders (excluding specialty lenders), the percentage of closed-end Other Supervised Loans that were delinquent (DQ) as of January 1, 2021, by credit tier at time of origination. Note that the calculations here exclude loans that had been charged off prior to January 1st and thus may understate challenges consumers experienced in repaying the loans. Credit tiers for the analyses in this section are those defined in the annual report instructions based upon borrowers' FICO scores.

Table 3.10 Status of Closed-End Other Supervised Loans as of January 1, 2021

	Secured			Unsecured		
	1 to 29 days DQ	30-59 days DQ	60+ DQ	1 to 29 days DQ	30-59 days DQ	60+ DQ
Prime/Superprime	3.5%	0.5%	1.1%	2.4%	0.7%	1.6%
Near Prime	5.6%	0.8%	1.6%	4.6%	1.2%	2.8%
Subprime	8.8%	1.5%	2.1%	6.2%	1.6%	3.1%
Deep Subprime	10.5%	1.6%	3.5%	7.7%	2.3%	4.4%
Unknown	10.9%	1.7%	2.8%	4.2%	1.2%	3.1%
Total	7.7%	1.2%	2.2%	4.4%	1.2%	2.7%

Table 3.10 shows that, not surprisingly, consumers with lower credit scores experienced greater difficulty in repaying their loans, especially among those obtaining secured loans. For example, among those with deep subprime scores, 15.6.% of secured borrowers and 14.4% of unsecured borrowers were delinquent as of January 1st. Of these, almost half of the unsecured borrowers (46.5%) and one-quarter of the secured borrowers (22.4%) had missed at least two payments and were 30 days past due. That is significant because a sizable share of those who fall two payments behind—and an even larger share of those who fall three payments behind (i.e., 60 days past due)—end up being unable to repay their loans as Table 3.11 below shows:

hp&id=690. Its finding can be contrasted with those reported by the Woodstock Institute in a blog entitled *The PLPA's 36% rate cap is working – and the data proves it,* https://woodstockinst.org/news/blog/36-rate-cap-is-working/

Table 3.11 Year-End Status of Loans by Status on January 1st

	Secured Loans				Unsecured Loans			
	Status December 31st				Status December 31st			
Status Jan. 1	1-29 days DQ	30-59 days DQ	60+ days DQ	Charged Off	1-29 days DQ	30-59 days DQ	60+ days DQ	Charged Off
Current	3.10%	0.70%	1.30%	1.30%	2.20%	0.70%	1.70%	1.20%
1-29 days DQ	17.30%	3.50%	5.40%	11.80%	13.90%	2.40%	6.50%	21.40%
30-59 days DQ	Missing Data				6.10%	1.40%	10.40%	57.60%
60+ DQ	4.40%	1.40%	6.60%	75.70%	1.90%	1.20%	3.80%	81.90%

60+ includes charge-offs

The Larger Lender Supplement also contains data with respect to the status of loans originated in the first quarter of 2021 as of the end of 2021. Table 3.12 reports on these data for closed-end originated loans. This may provide a more useful metric for assessing safety and affordability as of the time of origination because the timeframe for the analysis is more limited and all loans originated within the observation period are accounted for. However, early delinquencies can be artificially elevated to the extent consumers who do not intend to repay are able to obtain loans but, alternatively, can be artificially depressed, especially for secured loans, to the extent consumers for whom loans are not affordable manage to make early payments by foregoing paying other bills.

Table 3.12 Status of Other Supervised Loans Originated in Q1 2021 as of December 31, 2021

	Secured				Unsecured			
Score at Origination	Paid off/ Current	1–29 days DQ	30–59 days DQ	60+ days DQ	Paid off/ Current	1–29 days DQ	30–59 days DQ	60+ days DQ
Prime/ Superprime	96.1%	1.7%	0.6%	1.7%	95.0%	1.4%	1.1%	2.5%
Near Prime	92.7%	4.1%	0.8%	2.4%	92.5%	2.9%	1.2%	3.4%
Subprime	92.3%	3.2%	1.2%	3.2%	89.6%	4.6%	1.2%	4.6%
Deep Subprime	87.3%	7.1%	1.5%	4.1%	86.7%	4.8%	2.6%	5.9%
Unknown	91.6%	4.3%	1.1%	3.0%	92.4%	1.7%	0.2%	5.7%
Total	91.6%	4.3%	1.1%	3.0%	92.1%	2.8%	1.2%	3.9%

60+ includes charge-offs

For unsecured borrowers, Table 3.12 indicates that borrowers in the lower credit tiers experienced some difficulty in repaying their loans during the first nine to twelve months after origination. For example, 8.5% of deep subprime unsecured borrowers were at least 30 days delinquent by year end, of whom almost 70% were at least 60 days delinquent. Borrowers with secured loans performed noticeably better. This may reflect differences in the affordability of these loans for those borrowers but is more likely attributable to decisions by borrowers who have pledged an asset as security to prioritize repaying these secured loans over other loans and thus may mask issues regarding the affordability of the secured loans.

National data as reported by TransUnion tells a similar if somewhat more dramatic story. For unsecured installment loans originated in 2021, Transunion reports that 8% were at least 60 days delinquent within eight months of origination. For subprime loans, however--which TransUnion, like Experian, defines using VantageScores of 600 or below--the percentage was twice that level.[144]

Another way of assessing affordability is to examine the incidence of late fees. The Larger Lender Supplement required lenders to report, by type of loan and credit tier, the number of loans originated during the first quarter of 2021 with respect to which late fees were collected during 2021 and the amount of late fees collected. Three lenders reported collecting late fees. It appears, however, that those lenders reported the number of late fees collected on loans originated in the first quarter rather than the number of such loans with respect to which fees

[144] TransUnion, *Unsecured Personal Lending Industry Insights Report Q3 2022* at 31-32

were collected.[145] As a result, we cannot calculate a true incidence rate as we do not know how many loans (or borrowers) incurred more than one late fee. As a rough approximation, Table 3.13 compares, for each credit tier, the number of late fees reported on loans originated in the first quarter to the number of borrowers who obtained loans during that quarter:

Table 3.13 Number of Late Fees Collected on Other Supervised Loans Originated in Q1 2021 Relative to Number of Borrowers Obtaining Loans

	Secured	Unsecured
Prime/Superprime	0.18	0.21
Near Prime	0.28	0.30
Subprime	0.48	0.48
Deep Subprime	0.66	0.87

Again, we see the unsurprising trend for the incidence of late fees to increase as credit scores decrease. Even among the prime borrowers, the ratio of late fees to borrowers is roughly one in five—slightly more for borrowers who obtained unsecured loans and slightly less for borrowers with secured loans—and in the lower credit tiers the ratio is two to four times higher. Even allowing for the fact that a borrower can incur multiple late fees over the course of a year, these numbers nonetheless suggest that a substantial share of these borrowers struggled with their payments.

3.2.2 Refinancing

As discussed in Section 2.1.2, there are a number of reasons why a consumer might choose to refinance an installment loan. Refinancing can reduce the consumer's monthly payment if, for example, the term of the loan is extended or the interest rate reduced; this could be valuable for a consumer who finds the payments on the outstanding loan to be unaffordable. But refinancing also can—and more typically does—allow the borrower to obtain additional cash. This may be attractive to the borrower either because of a new credit need or because the loan payments that the consumer already has made have stretched the consumer's budget such that new cash is needed to make ends meet. Given these varying use cases, it is unclear to what extent the incidence of refinancing in the installment loan context can be viewed as evidence with respect to the safety or affordability of the preexisting loan. With that said, we report here on the Annual

[145] Lenders reported the total amount of late fees collected for each credit tier. We find that for each lender the average late fee per loan is consistent across credit tiers which would be possible only if the lenders were reporting the number of late fees assessed rather than the number of loans with respect to which one or more fees were assessed.

Report data regarding the incidence of refinancing to enable readers of this report to form their own judgments regarding the significance of these data.

Table 3.14 shows for Other Supervised Loans that were originated in the first quarter of 2021 by lenders responding to the Larger Lender Supplement, the share of those loans that were refinanced in 2021 disaggregated by credit score at the time of origination using the FICO-score tiers defined for the annual reports.

Table 3.14 Percent of Other Supervised Loans Originated in Q1 2021 and Refinanced in 2021

	Secured		Unsecured	
	No. Loans	**% Refinanced**	**No. Loans**	**% Refinanced**
Prime/Superprime	360	19.4%	1,099	16.8%
Near Prime	491	21.0%	948	19.3%
Subprime	587	29.0%	711	20.4%
Deep Subprime	661	25.9%	391	27.6%
unknown	60	43.3%	407	30.5%
Total	2,159	25.0%	3,556	21.0%

As the above table indicates, just over one-fifth of unsecured loans and one-quarter of secured loans originated in the first quarter of 2021 were refinanced during the course of 2021. The fact that these refinancings occurred within nine to twelve months of origination, coupled with the fact that the refinancing rate was higher for borrowers in the lower credit tiers than borrowers in the highest tier, may suggest that refinancing was a response to financial distress, although borrowers in these lower tiers also may be more vulnerable to financial shocks and thus have a greater need for a new infusion of cash.

The lenders with whom we spoke informed us that although they proactively solicit some borrowers to refinance their loans based on the borrowers' loan performance, all refinances are re-underwritten. The lenders did indicate that they use different scorecards or other underwriting criteria when evaluating existing customers than those used in evaluating applicants with whom the lender does not have a previous relationship.

None of the larger lenders taking loans by assignment reported any refinancings of loans taken by assignment in 2021.

3.2.3 Overall Credit Performance

As discussed in Section 2.2.2, and using the methodology described therein, the Experian Data allows us to look at the overall credit performance of borrowers who obtained a larger installment loan during the Observation Periods over the ensuing one-year or two-year Performance Windows. We use the same Premier Attributes as in that Section and the same credit tiers, using Experian's definitions based on VantageScores but combining the top two tiers and also the bottom two tiers. For these analyses (in contrast to the analyses in Section 2.2.2 with respect to reported small-dollar loans) we disaggregate secured and unsecured borrowers as the numbers permit such disaggregation.

We again start with the Premier Attribute that counts the number of occurrences of major delinquencies, as defined in Section 2.2.2, during the Performance Windows. Panel A of Table 3.15 shows results for borrowers who obtained an unsecured loan during the 2018–19 Observation Period and covers major delinquencies occurring during the 12-month Performance Window. Panel B shows results for borrowers who obtained an unsecured loan during the 2017–18 Observation Period and reflects results over the two-year Performance Window.

Table 3.15 Number of Occurrences of Major Delinquencies—Unsecured Larger Installment Borrowers

Panel A—Borrowers Obtaining Unsecured Loans During the 2018–19 Observation Period

	Colorado			Missouri			Utah		
	0x	1-4x	5+x	0x	1-4x	5+x	0x	1-4x	5+x
Prime/ Superprime	93.7%	3.7%	2.6%	91.7%	4.8%	3.5%	92.9%	4.3%	2.7%
Near Prime	80.6%	10.2%	9.1%	75.4%	12.5%	12.2%	78.7%	11.1%	10.2%
Subprime/ Deep Subprime	63.7%	17.2%	19.0%	57.2%	20.1%	22.7%	61.2%	18.6%	20.2%

Panel B—Borrowers Obtaining Unsecured Loans During the 2017–18 Observation Period

	Colorado			Missouri			Utah		
	0x	1-4x	5+x	0x	1-4x	5+x	0x	1-4x	5+x
Prime/ Superprime	89.6%	5.5%	4.9%	87.0%	7.2%	5.9%	88.2%	6.4%	5.4%
Near Prime	73.4%	12.2%	14.4%	68.7%	14.8%	16.5%	72.9%	13.2%	13.9%
Subprime/ Deep Subprime	54.4%	20.0%	25.6%	54.9%	18.6%	26.5%	57.0%	19.2%	23.8%

As was true with respect to the small-dollar borrowers analyzed in Section 2.2.2, Table 3.15 shows, not surprisingly, that among borrowers obtaining larger, unsecured installment loans, a larger share of those in higher-risk credit tiers experience at least one major delinquency compared to consumers in lower-risk tiers. For example, in Colorado, among borrowers who obtained a larger installment loan during the 2018–19 Observation Period, 6.3% of prime and superprime borrowers had at least one major delinquency compared to 26.3% of subprime and deep subprime borrowers. The gap is even wider when considering Colorado borrowers who obtained an unsecured larger installment loan during the 2017–18 Observation Period, as over 45% of subprime and deep subprime borrowers in Colorado but over 10% of prime and superprime borrowers had at least one major delinquency over the two-year Performance Window. These same patterns hold in Missouri and Utah with quite similar levels of consumers experiencing major delinquencies across the credit tiers, although in Missouri for borrowers obtaining loans during the 2018-19 Observation Period, the share of consumes with at least one major delinquency and the share with three or more is noticeably higher than in Colorado or Utah.[146]

Table 3.16 shows the same data for borrowers who obtained a secured loan during the Observation Periods.

Table 3.16 Number of Occurrences of Major Delinquencies—Secured Larger Installment Borrowers

Panel A—Borrowers Obtaining Secured Loans During the 2018–19 Observation Period

	Colorado			Missouri			Utah		
	0x	**1-4x**	**5+x**	**0x**	**1-4x**	**5+x**	**0x**	**1-4x**	**5+x**
Prime/ Superprime	92.7%	4.7%	2.6%	92.2%	4.7%	3.2%	94.1%	3.8%	2.1%
Near Prime	74.5%	13.2%	12.2%	77.2%	13.1%	9.7%	76.1%	13.2%	10.7%
Subprime/ Deep Subprime	57.9%	20.8%	21.3%	64.6%	18.5%	16.9%	61.8%	20.2%	18.1%

Panel B—Borrowers Obtaining Secured Loans During the 2017–18 Observation Period

	Colorado			Missouri			Utah		
	0x	**1-4x**	**5+x**	**0x**	**1-4x**	**5+x**	**0x**	**1-4x**	**5+x**
Prime/ Superprime	89.8%	6.0%	4.3%	89.2%	6.1%	4.7%	90.9%	5.4%	3.7%
Near Prime	68.1%	15.8%	16.1%	72.9%	13.9%	13.1%	70.2%	14.2%	15.6%
Subprime/ Deep Subprime	52.8%	21.6%	25.6%	61.8%	18.3%	20.0%	58.6%	18.0%	23.3%

Looking first at the Colorado data, Table 3.16, like the prior table, shows substantial levels of distress among near prime and subprime/deep subprime borrowers who obtained secured loans. Indeed, across the credit tiers the share of Colorado secured borrowers with at least one major delinquency is slightly higher than for unsecured borrowers. In contrast, in Missouri and Utah,

[146] New York and Iowa likewise show the same patterns and levels of major delinquencies as is seen in Colorado.

across the credit tiers a smaller share of secured borrowers experience a major delinquency compared to unsecured borrowers in those states. As a result, secured borrowers in Missouri and Utah have lower levels of major delinquencies than those in Colorado.[147] Even so, the levels of repayment difficulty remain high; for example, over the two-year Performance Window, the data suggests that roughly 40% of subprime and deep subprime borrowers in Missouri and Utah experienced at least one major delinquency, and more than half of those actually experienced three or more such delinquencies.

The next set of tables expands the focus by reference to the Premier Attribute that reflects the number of discrete trade lines on which borrowers experienced either a major delinquency or a derogatory, as defined in Section 2.2.2, during the Performance Windows. We again note that, as explained in Section 2.2.2, while the delinquencies counted here all necessarily occurred during the Performance Window, the derogatories—defined for purposes of this Attribute to include non-medical collections--could have occurred earlier so long as they were reported during the Performance Window.

Panel A of Table 3.18 shows the results for borrowers who obtained an unsecured loan during the first Observation Period and covers major delinquencies and derogatories reported during the 12-month Performance Window and Panel B shows results for borrowers who obtained loans during the second Observation Period and covers delinquencies and derogatories reported during the 24-month Performance Window.

Table 3.17 Total Number of Trade Lines with Major Delinquencies or Derogatories — Unsecured Larger Installment Borrowers

Panel A—Borrowers Obtaining Unsecured Loans During the 2018–19 Observation Period

	Colorado			**Missouri**			**Utah**		
	0	1 to 2	3+	0	1 to 2	3+	0	1 to 2	3+
Prime/ Superprime	90.7%	5.4%	3.9%	85.8%	8.1%	6.0%	88.3%	7.1%	4.6%
Near Prime	73.0%	14.9%	12.0%	60.2%	20.6%	19.2%	66.3%	17.9%	15.8%
Subprime/ Deep Subprime	47.1%	26.8%	26.1%	27.4%	32.2%	40.4%	34.9%	29.0%	36.1%

147 In New York and Iowa the share of secured borrowers experiencing a major delinquency is a little lower than in Colorado and, in most comparisons, lower than that of Missouri or Utah.

Panel B—Borrowers Obtaining Unsecured Loans During the 2017–18 Observation Period

	Colorado			Missouri			Utah		
	0	1 to 2	3+	0	1 to 2	3+	0	1 to 2	3+
Prime/ Superprime	83.2%	8.1%	8.7%	76.3%	11.5%	12.2%	81.3%	9.5%	9.2%
Near Prime	59.0%	16.9%	24.2%	45.4%	22.1%	32.4%	54.9%	19.2%	25.9%
Subprime/ Deep Subprime	32.7%	25.2%	42.1%	19.0%	27.5%	53.5%	25.5%	27.1%	47.3%

As was true for our analyses of reported small-dollar loan borrowers, here, too, the inclusion of derogatories along with major delinquencies in Table 3.17 shows even higher levels of distress than was seen in Table 3.16, especially among subprime and deep subprime borrowers. For example, more than half of Colorado borrowers in those credit tiers who obtained an unsecured loan during the 2018–19 Observation Period (Panel A) experienced at least one trade line with a major delinquency or derogatory over the 12-month Performance Window. For Colorado subprime and deep subprime borrowers who obtained an unsecured loan during the 2017-18 Observation Period (Panel B), over the 24-month Performance Window more than two-thirds experienced at least one trade line with a major delinquency or derogatory and over 60% of those had three or more such trade lines.

Borrowers in Missouri, and to a lesser but still significant extent, borrowers in Utah appear to have experienced even more difficulty handling their credit. The differences are most pronounced for near prime, subprime and deep subprime borrowers: using either the one-year or two-year Performance Windows within each of those tiers a materially larger share of borrowers has at least one major delinquency or derogatory and of those in most tiers a substantially larger portion has three or more such trade lines.[148]

Table 3.18 shows the same data for borrowers who obtained secured loans.

[148] In New York and Iowa across all credit tiers the share of consumers with one or more major delinquency or derogatory is higher than in Colorado but below the level in Missouri or Utah.

Table 3.18 Total Number of Trade Lines With Major Delinquencies or Derogatories Secured Larger Installment Borrowers

Panel A—Borrowers Obtaining Secured Loans During the 2018–19 Observation Period

	Colorado			Missouri			Utah		
	0	1 to 2	3+	0	1 to 2	3+	0	1 to 2	3+
Prime/ Superprime	89.4%	7.4%	3.2%	86.6%	9.2%	4.1%	90.9%	6.2%	3.0%
Near Prime	62.4%	22.0%	15.7%	57.0%	27.4%	15.6%	62.1%	21.6%	16.3%
Subprime/ Deep Subprime	36.5%	31.5%	32.0%	30.2%	37.9%	31.9%	36.9%	32.1%	30.9%

Panel B—Borrowers Obtaining Secured Loans During the 2017–18 Observation Period

	Colorado			Missouri			Utah		
	0	1 to 2	3+	0	1 to 2	3+	0	1 to 2	3+
Prime/ Superprime	84.0%	9.8%	6.1%	80.4%	12.3%	7.3%	85.6%	9.2%	5.2%
Near Prime	49.0%	24.0%	27.0%	43.1%	29.3%	27.6%	53.6%	21.1%	25.3%
Subprime/ Deep Subprime	23.8%	27.8%	48.3%	19.9%	33.8%	46.3%	24.1%	28.5%	47.5%

Like Table 3.17, Table 3.18 shows a significant share of Colorado borrowers with multiple trade lines with major delinquencies or derogatories, especially among those with subprime and deep subprime scores. The percentages grow when we move from the one-year Performance Window for borrowers who obtained a secured loan during the 2018–19 Observation Period (Panel A) to the two-year Window for borrowers who obtained a secured loan during the 2017–18 Observation Period (Panel B). For example, of the Colorado borrowers with a subprime or deep subprime score who obtained a secured loan during the 2018–19 Observation Period, 63.5% experienced at least one major delinquency or derogatory over the 12-month Performance Period, whereas of the borrowers in those credit tiers who obtained a secured loan during the earlier Observation Window, over 75% experienced a major delinquency or derogatory over the two-year Performance Window. Comparing Table 3.18 to 3.17 we also see that for borrowers in most credit tiers, those who obtained secured loans during either of the Observation Periods have more trade lines with major delinquencies or derogatories than their counterparts who obtained unsecured loan.

Also, like Table 3.17, Table 3.18 shows even higher levels of distress for borrowers in Missouri compared to those in Colorado although that is not the case for borrowers in Utah. In Missouri, for example, 80.1% of the subprime and deep subprime borrowers who obtained a secured loan in the 2017-18 Observation Period experienced a major delinquency or derogatory during the two-year Performance Window. However, in most credit tiers the Missouri borrowers who obtained secured loans fared slightly better than their unsecured counterparts so that the gap between unsecured Colorado and Missouri borrowers is larger than the gap for secured borrowers.[149]

Finally, as we did in reporting on performance metrics for borrowers with reported small-dollar loans, we expand our focus by looking at the Premier Attribute that reflects the worst status reported on any trade line during the Performance Periods. The values defined by Experian are shown in Section 2.3.3 and the term derogatory now includes unsatisfied medical as well as non-medical collections.

Again, Panel A reports results for those who obtained larger installment unsecured loans during the 2018–19 Observation Period over a 12-month Performance Window and Panel B for those who obtained unsecured loans during the 2017–18 Observation Period over a 24-month Performance Window.

Table 3.19 Worst Status on any Trade Line During the Performance Period—Unsecured Larger Installment Borrowers

Panel A—Borrowers Obtaining Unsecured Loans During the 2018–19 Observation Period

	Colorado				Missouri				Utah			
	Current	30 DPD	60-180 DPD	Derog	Current	30 DPD	60-180 DPD	Derog	Current	30 DPD	60-180 DPD	Derog
Prime/ Superprime	81.5%	7.8%	3.9%	6.8%	75.6%	8.2%	4.4%	11.8%	79.5%	8.4%	4.2%	7.9%
Near Prime	55.5%	13.5%	10.3%	20.7%	43.5%	11.0%	10.0%	35.5%	50.3%	11.4%	9.0%	29.3%
Subprime/ Deep Subprime	30.6%	11.4%	14.6%	43.4%	15.9%	5.8%	10.1%	68.1%	21.6%	7.5%	10.1%	60.7%

149 In New York and Iowa the share of secured borrowers experiencing one or more major delinquencies or derogatories is comparable to that of Colorado—in some comparisons a little higher and in others a little lower—and generally below the levels in Missouri and Utah.

Panel B—Borrowers Obtaining Unsecured Loans During the 2017–18 Observation Period

	Colorado				Missouri				Utah			
	Current	**30 DPD**	**60-180 DPD**	**Derog**	**Current**	**30 DPD**	**60-180 DPD**	**Derog**	**Current**	**30 DPD**	**60-180 DPD**	**Derog**
Prime/ Superprime	70.4%	10.6%	5.2%	13.7%	62.5%	10.1%	5.3%	22.2%	68.2%	10.6%	5.5%	15.7%
Near Prime	41.8%	12.5%	9.4%	36.2%	29.7%	9.5%	8.5%	52.3%	37.9%	11.7%	9.0%	41.3%
Subprime/ Deep Subprime	18.5%	9.0%	11.6%	60.9%	9.2%	4.6%	7.1%	79.0%	13.5%	6.2%	8.2%	72.0%

Expanding the definition of derogatory to include unsatisfied medical collections—as this Attribute does—reveals an even higher level of distress than in the prior analyses. For example, for Colorado borrowers who obtained unsecured loans during the 2018–19 Observation Period, almost 45% of those in the near prime tier and almost 70% in the subprime and deep subprime tier experienced at least one major delinquency or derogatory during the 12-month Performance Period. For Colorado borrowers obtaining unsecured loans during the 2017–18 Observation Period, the comparable percentages are 58.2% and 81.5% over the two-year Performance Window. Further, the growth in those rates between the two Performance Windows is attributable to a growth in the share with a derogatory report, suggesting that major delinquencies became derogatories during the second year of a two-year performance window.

Once again, the same pattern is seen in the data from Missouri and Utah. Moreover, once again, the levels of distress are higher in Missouri and Utah across the credit tiers for borrowers obtaining loans during either Observation Period. At the extreme, over 90% of Missouri subprime and deep subprime borrowers who obtained an unsecured loan during the 2017-18 Observation Period experienced a major delinquency or derogatory during the two-year Performance Window.[150] We again note that the disparity between Colorado and Missouri is driven by derogatories rather than major delinquencies and thus may be at least partially attributable to difference in the regulation of debt collection in these states.

Table 3.20 shows these same data for borrowers who obtained secured loans during the Observation Periods.

[150] Also once again, the share of consumers with a major delinquency or derogatory in New York and Iowa is comparable to the level in Colorado and lower than the level in Missouri and Utah.

Table 3.20 Worst Status on any Trade Line During the Performance Period—Secured Larger Installment Borrowers

Panel A—Borrowers Obtaining Secured Loans During the 2018–19 Observation Period

	Colorado				Missouri				Utah			
	Current	30 DPD	60-180 DPD	Derog	Current	30 DPD	60-180 DPD	Derog	Current	30 DPD	60-180 DPD	Derog
Prime/ Superprime	79.0%	8.2%	4.5%	8.4%	75.6%	7.9%	4.3%	12.2%	80.7%	8.5%	3.9%	7.0%
Near Prime	42.8%	13.1%	11.8%	32.3%	38.5%	9.2%	9.2%	43.0%	43.8%	12.4%	10.1%	33.7%
Subprime/ Deep Subprime	21.9%	8.4%	13.2%	56.5%	16.7%	5.6%	8.9%	68.7%	22.0%	8.3%	11.6%	58.0%

Panel B—Borrowers Obtaining Secured Loans During the 2017–18 Observation Period

	Colorado				Missouri				Utah			
	Current	30 DPD	60-180 DPD	Derog	Current	30 DPD	60-180 DPD	Derog	Current	30 DPD	60-180 DPD	Derog
Prime/ Superprime	79.0%	8.2%	4.5%	8.4%	75.6%	7.9%	4.3%	12.2%	80.7%	8.5%	3.9%	7.0%
Near Prime	31.5%	11.5%	10.7%	46.3%	26.5%	7.8%	7.3%	58.4%	34.9%	13.8%	9.7%	41.6%
Subprime/ Deep Subprime	12.9%	6.4%	9.9%	70.8%	9.5%	3.8%	6.3%	80.4%	13.5%	5.8%	8.6%	72.0%

Looking first at the Colorado data, we see high levels of payment difficulty, especially for borrowers in the near the subprime/deep subprime tiers and we see those levels grow as the Performance Window expands from one year to two years, albeit for a different set of borrowers. We likewise see a higher level of payment difficulty for secured Colorado borrowers in Table 3.19 relative to their unsecured counterparts as shown in Table 3.18. And, comparing the data here across the states, we see similar levels of repayment difficulty in Utah and Colorado but higher levels in Missouri. At the extreme, 87.1% of the Colorado subprime/deep subprime borrowers who obtained secured loans during the 2017-18 Observation Period—and 91% of such borrowers in Missouri—have at least one major delinquency or derogatory during the two-year Performance Window.[151]

[151] Yet once again the data from New York and Iowa show quite similar results to those in Colorado and thus lower levels of distress than in Missouri.

In sum, to the extent credit is more available to consumers in the bottom credit tiers in Missouri and, to a lesser extent, in Utah than it is in Colorado, that broader access appears to be accompanied by higher levels of repayment difficulty among borrowers in those tiers especially in Missouri.

Finally, we note that all of the analyses above are, by definition, limited to larger installment loans reported to Experian and thus do not include any AFS loans. As we previously have observed, we do not believe that there is any appreciable amount of AFS lending taking place in Colorado except perhaps by unlicensed lenders. AFS lending is more likely to be occurring in Missouri and Utah given the absence there of usury limits. To the extent that is true, we believe that the differences we have observed here between the states would be magnified.

Conclusion

We end by repeating the statement with which we began this report: the ultimate questions implicated by this study are, in the final analysis, questions of judgment and degree. The data we have reported suggests that—at least for consumers in higher-risk credit tiers seeking larger installment loans—credit may be less available in Colorado than it is in states without usury limits. The data also suggests that borrowers in Colorado within these credit tiers may experience less difficulty in handling the credit they obtain than borrowers in states without usury limits. These data can provide a grounded empirical basis for any discussion that may ensue as to whether credit is sufficiently available within Colorado, whether the credit that is available is safe and affordable enough, and whether a different balance would better serve the welfare of Coloradans.

Appendix-Stakeholders Interviewed

Center for Responsible Lending

Colorado Financial Services Association

Lendmark Financial Services L.L.C.

Moneytree Inc.

One Main Financial

Online Lenders Alliance

Populus Financial Group

Worklife Partnership