SLIPPING THROUGH THE CRACKS: POLICY OPTIONS TO HELP AMERICA'S CONSUMERS DURING THE PANDEMIC

VIRTUAL HEARING

BEFORE THE

SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCIAL INSTITUTIONS

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

MARCH 11, 2021

Printed for the use of the Committee on Financial Services

Serial No. 117–9

U.S. GOVERNMENT PUBLISHING OFFICE
44–342 PDF WASHINGTON : 2021

HOUSE COMMITTEE ON FINANCIAL SERVICES

MAXINE WATERS, California, *Chairwoman*

CAROLYN B. MALONEY, New York
NYDIA M. VELÁZQUEZ, New York
BRAD SHERMAN, California
GREGORY W. MEEKS, New York
DAVID SCOTT, Georgia
AL GREEN, Texas
EMANUEL CLEAVER, Missouri
ED PERLMUTTER, Colorado
JIM A. HIMES, Connecticut
BILL FOSTER, Illinois
JOYCE BEATTY, Ohio
JUAN VARGAS, California
JOSH GOTTHEIMER, New Jersey
VICENTE GONZALEZ, Texas
AL LAWSON, Florida
MICHAEL SAN NICOLAS, Guam
CINDY AXNE, Iowa
SEAN CASTEN, Illinois
AYANNA PRESSLEY, Massachusetts
RITCHIE TORRES, New York
STEPHEN F. LYNCH, Massachusetts
ALMA ADAMS, North Carolina
RASHIDA TLAIB, Michigan
MADELEINE DEAN, Pennsylvania
ALEXANDRIA OCASIO-CORTEZ, New York
JESÚS "CHUY" GARCIA, Illinois
SYLVIA GARCIA, Texas
NIKEMA WILLIAMS, Georgia
JAKE AUCHINCLOSS, Massachusetts

PATRICK McHENRY, North Carolina, *Ranking Member*
FRANK D. LUCAS, Oklahoma
BILL POSEY, Florida
BLAINE LUETKEMEYER, Missouri
BILL HUIZENGA, Michigan
STEVE STIVERS, Ohio
ANN WAGNER, Missouri
ANDY BARR, Kentucky
ROGER WILLIAMS, Texas
FRENCH HILL, Arkansas
TOM EMMER, Minnesota
LEE M. ZELDIN, New York
BARRY LOUDERMILK, Georgia
ALEXANDER X. MOONEY, West Virginia
WARREN DAVIDSON, Ohio
TED BUDD, North Carolina
DAVID KUSTOFF, Tennessee
TREY HOLLINGSWORTH, Indiana
ANTHONY GONZALEZ, Ohio
JOHN ROSE, Tennessee
BRYAN STEIL, Wisconsin
LANCE GOODEN, Texas
WILLIAM TIMMONS, South Carolina
VAN TAYLOR, Texas

CHARLA OUERTATANI, *Staff Director*

SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCIAL INSTITUTIONS

ED PERLMUTTER, Colorado, *Chairman*

GREGORY W. MEEKS, New York
DAVID SCOTT, Georgia
NYDIA M. VELÁZQUEZ, New York
BRAD SHERMAN, California
AL GREEN, Texas
BILL FOSTER, Illinois
JUAN VARGAS, California
AL LAWSON, Florida
MICHAEL SAN NICOLAS, Guam
SEAN CASTEN, Illinois
AYANNA PRESSLEY, Massachusetts
RITCHIE TORRES, New York

BLAINE LUETKEMEYER, Missouri, *Ranking Member*
FRANK D. LUCAS, Oklahoma
BILL POSEY, Florida
ANDY BARR, Kentucky
ROGER WILLIAMS, Texas
BARRY LOUDERMILK, Georgia
TED BUDD, North Carolina
DAVID KUSTOFF, Tennessee, *Vice Ranking Member*
JOHN ROSE, Tennessee
WILLIAM TIMMONS, South Carolina

CONTENTS

SLIPPING THROUGH THE CRACKS: POLICY OPTIONS TO HELP AMERICA'S CONSUMERS DURING THE PANDEMIC

Thursday, March 11, 2021

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CONSUMER PROTECTION
AND FINANCIAL INSTITUTIONS,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:59 a.m., via Webex, Hon. Ed Perlmutter [chairman of the subcommittee] presiding.

Members present: Representatives Perlmutter, Meeks, Scott, Velazquez, Sherman, Green, Foster, Vargas, Lawson, San Nicolas, Casten, Pressley, Torres; Luetkemeyer, Lucas, Posey, Barr, Williams of Texas, Loudermilk, Budd, Kustoff, Rose, and Timmons.

Ex officio present: Representative Waters.

Chairman PERLMUTTER. The Subcommittee on Consumer Protection and Financial Institutions will come to order. Without objection, the Chair is authorized to declare a recess of the subcommittee at any time. Also, without objection, members of the full Financial Services Committee who are not members of this subcommittee are authorized to participate in today's hearing.

Staff has been instructed not to mute Members, except where a Member is not being recognized by the Chair and there is inadvertent background noise. Members are reminded that all House rules relating to order and decorum apply to this remote hearing.

Before we begin, I want to take a moment and talk about our subcommittee and the road ahead. This is our first subcommittee hearing. This is the first time I have chaired a subcommittee, and I want to say to my friends on both sides of the aisle, my door is open to everyone. This subcommittee will cover a lot of important issues, and there are many opportunities to work together.

As we turn the corner on the pandemic, we must ensure that the financial system remains stable.

Next, there must be equity in the recovery. This means the Community Reinvestment Act (CRA) works to root out discrimination and empowers Minority Depository Institutions (MDIs) and Community Development Financial Institutions (CDFIs). It also means strong consumer protections and making sure everyone has a chance to share in the recovery.

Last, the pandemic has shown how important access to financial services is, and I look forward to working on helping unbanked and underbanked communities gain access to banking services.

I am also pleased that the ranking member of this subcommittee is my friend from Missouri, Blaine Luetkemeyer. I look forward to working with you, Blaine, and I think we can do a lot of good things together.

The title of today's hearing is, "Slipping Through the Cracks: Policy Options to Help America's Consumers During the Pandemic." I will now recognize myself for 4 minutes for an opening statement.

Just this week, a constituent of mine called my office—we will call her Mrs. McGillicuddy. She was looking for help. Mrs. McGillicuddy called because, like many Americans, she lost income during the pandemic. She could not afford her car payments anymore and her car was repossessed. If that was not enough, she is being charged an additional $500 repossession fee for the privilege of having her car taken away.

One of the words Mrs. McGillicuddy used to describe her situation was, "unfair." And she is right. Her situation is unfair, and the virus is unfair. COVID-19 has impacted Americans from all walks of life, but it has disproportionately affected lower-income Americans, communities of color, and service-sector workers, who have continued to work in person throughout the pandemic.

For many of us, we are doing okay, and the vaccines are a light at the end of the tunnel. But for millions of Americans who have lost income, savings, or opportunities, there is a long road to recovery ahead. As of today, more than 10 million Americans are still out of work. Twenty-nine million Americans have gotten sick with the virus, and COVID-19 has claimed the lives of more than half a million. This is the health and economic crisis of our lifetime.

Congress has passed several laws providing relief to consumers and small businesses, including yesterday's historic American Rescue Plan. These packages have included forgivable small business loans and direct payments to individuals and families, but even these relief efforts have further illustrated a world of haves and have-nots in our country, particularly with financial services.

Small businesses with strong relationships with financial institutions were the first to get access to the Paycheck Protection Program (PPP). Folks with bank accounts linked to the IRS for direct deposit were the first to get their economic impact payments. And if you did not have a good relationship with a bank or a credit union, you had to wait, and some are still waiting.

The purpose of this hearing is to explore gaps in consumer protections during the pandemic, and to evaluate policy responses to ensure that all consumers and small business owners can get through this period of uncertainty and share in the economic recovery.

The hearing will also address racial and economic disparities exacerbated by the pandemic. Specifically, today we will explore issues in debt collection, credit reporting, private student loans, non-agency-backed mortgages, small businesses, and commercial rent.

Let's go back to my example of Mrs. McGillicuddy for a moment. She had her car repossessed and owes fines on top of that. But without a car, it is more difficult for her to get to a job interview or to get to work when she is employed. This will prolong her financial recovery.

Now, picture her situation for millions and millions of other Americans who might be slipping through the cracks and facing similar financial challenges. This will hurt those millions of individuals and families, and also do damage to our economy as a whole. If we want a full recovery and an inclusive recovery, we must have comprehensive and thorough consumer protections.

It is now my pleasure to recognize the ranking member, Mr. Luetkemeyer, for 5 minutes for an opening statement, and I yield back.

Mr. LUETKEMEYER. Thank you, Mr. Chairman, and congratulations, Congressman Perlmutter. Ed, you and I have been friends for a long time, and I am looking forward to your chairmanship, and your common-sense approach to things, and hopefully, we can do a lot of good for the good citizens of the United States, including our constituents, and the economy as a whole. I look forward to your leadership.

The country is finally beginning to open back up. Currently, we have administered more than 90 million vaccine doses. States across the country are beginning to lift their lockdowns, and we are starting to get back to business as usual around the country.

As we begin to put the coronavirus pandemic behind us, it is appropriate to measure how consumers and businesses have fared over the past year. It is true that the pandemic has hit certain consumers and businesses harder than others. For instance, part-time workers have been especially hard-hit. Commercial real estate, including restaurants and other small businesses, have also struggled. I welcome conversations that examine what Congress can do to help these sectors and consumers.

I believe that there are meaningful bipartisan initiatives this subcommittee can work on to improve how consumers and businesses can get better access to financial systems. Unfortunately, when I looked at the 18 pieces of legislation attached to this hearing, I did not see meaningful efforts to improve financial access. Instead, the Majority has decided to retract policies from last year's Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act that have no chance of becoming law, even with Democrats controlling the House, the Senate, and the White House, and seek to fundamentally alter key aspects of a lending market, which will only limit access to credit for low- and moderate-income Americans.

One of the most concerning trends of the legislation attached to this hearing is the erosion of the accuracy of consumer credit files. As I have noted many times in this committee, eliminating valuable credit information would mean that lenders would not have access to information to determine the creditworthiness of borrowers. In those instances, lenders will be forced to increase the cost of credit to account for the additional risk of an incomplete credit file. This will ultimately decrease access to credit for those who need it most.

Furthermore, Congress has already taken action to protect the credit files of consumers during the pandemic. Section 4021 of the

Coronavirus Aid, Relief, and Economic Security (CARES) Act protects borrowers from negative credit reporting that results from loan accommodations made during the national emergency associated with COVID. The CARES Act also requires lenders to report accounts with an accommodation as current to the credit bureaus if the borrower is meeting the requirements of the payment plan.

Another dangerous trend my colleagues on the other side of the aisle are pursuing is related to debt collection. Multiple pieces of legislation attached to this hearing would suspend or prohibit debt collection. What my colleagues fail to realize is that the majority of the debts being serviced by debt collectors originate from small businesses that do not have the means to collect the debts themselves. In addition, prohibiting debt collectors from communication with debtors eliminates the ability of collectors to work with consumers and get them on a path to repay their debts.

Let's be clear: Payment for services rendered is a fundamental premise of the free market system and a functional economy. No business can survive if they cannot collect the money owed them for their services.

As I said before, I welcome the conversations to improve access and functionality of the financial system. I believe there are bipartisan solutions to increase transparency and functionality in both credit reporting and debt collection, while still maintaining the fundamental principles of lending and a free market economy.

For example, in just the past few years, we have seen innovation in financial services result in increased access to low- and moderate-income consumers. From the uses of alternative data in credit reporting, the rise in mobile banking, and fintech partnerships, financial products are adapting to serve the consumers who need them most.

If my colleagues truly want to have conversations around ensuring consumers do not slip through the cracks, I believe this committee should focus on common-sense solutions that seek to broaden the pool of individuals involved in the financial system and drive upward mobility for all Americans as opposed to increasing government control and countless roadblocks to financial services.

Furthermore, in a truly partisan manner, none of the legislation attached to this hearing was introduced by a Republican. Failure to allow Republican measures to be attached to this hearing prevents this subcommittee from having conversations with subject matter experts on the merits of these bills.

One such piece of legislation introduced by Full Committee Ranking Member McHenry, the Protecting Consumer Access to Credit Act, would remove non-elective medical debt from a consumer's credit report and grant the Consumer Financial Protection Bureau (CFPB) authority over the cybersecurity efforts of the credit reporting agencies. I am disappointed that we will not be able to discuss this legislation and other common-sense bills at this hearing.

With that, I look forward to hearing from the witnesses today on the panel. And, Mr. Chairman, I yield back.

Chairman PERLMUTTER. Thank you. The gentleman yields back.

I would like to yield 1 minute to the Chair of the Full Committee, Chairwoman Waters from California.

Chairwoman WATERS. Thank you, Chairman Perlmutter. Your leadership of the Consumer Protection and Financial Institutions Subcommittee is starting off strong with your first hearing as Chair. Congratulations.

While we have reason to be hopeful about the future, the pandemic is still raging, and consumers and small business owners remain vulnerable. Under the leadership of President Biden and Vice President Harris, Congress passed this week, H.R. 1319, the American Rescue Plan Act of 2021, to boost the pandemic response and provide additional support for workers, consumers, and small businesses.

However, additional borrower protections could not be included in the bill, given the limitations of the reconciliation process. And Congress and the Administration have a lot more work to do to help consumers and small businesses who are most in need, especially those communities of color which have been hit the hardest by the pandemic crisis.

So, I look forward to hearing from our witnesses today, and I yield back the balance of my time. Thank you.

Chairman PERLMUTTER. Thank you. The gentlewoman yields back.

And to our witnesses today, thank you very much for being here. You have heard some buzzers in the background. Earlier, I mentioned to you all that we are having a whole series of votes on the House Floor, so there will be a little coming and going of Members as people go to vote. We will try to keep things moving along as much as we can without interruption, but it will be a little bit interesting for my first hearing to have all these votes.

I want to welcome each of our witnesses, and I am pleased to introduce our panel.

Ashley Harrington is the Federal advocacy director and senior counsel at the Center for Responsible Lending. Thank you for being here.

Robert James is the president of Carver Development CDE, and chairman of the National Bankers Association. Thank you, sir, for your attendance.

Carla Sanchez-Adams is an attorney and a team manager of the Survivor-Centered Economic Advocacy Team for Texas RioGrande Legal Aid. Thank you for being part of our panel.

Valarie Shultz-Wilson is the managing partner at Shultz&Co Nonprofit Management Consultants. I appreciate you being here.

And Joel Griffith is a research fellow at the Roe Institute for Economic Policy Studies at the Heritage Foundation.

We thank you all for joining us. Witnesses are reminded that your oral testimony will be limited to 5 minutes. You should be able to see a timer on your screen, and that will indicate how much time you have left, and a chime will go off to alert you, as well. I would ask you to be mindful of the timer, and quickly wrap up your testimony if you do hear the chime, so that we can be respectful of your time and others.

And without objection, your written statements will be made a part of the record.

Once the witnesses finish their testimony, each Member will have 5 minutes to ask questions.

And without objection, I would like to introduce into the record two letters that we received dated March 10th: the first is from the Consumer Bankers Association, signed by Mr. Richard Hunt, president and CEO; and the second is from the National Association of Federally-Insured Credit Unions, signed by Mr. Brad Thaler, vice president of legislative affairs. Without objection, it is so ordered.

Ms. Harrington, you are now recognized for 5 minutes for your testimony.

STATEMENT OF ASHLEY C. HARRINGTON, FEDERAL ADVOCACY DIRECTOR AND SENIOR COUNSEL, CENTER FOR RESPONSIBLE LENDING (CRL)

Ms. HARRINGTON. Thank you. Good morning, Chairman Perlmutter, Ranking Member Luetkemeyer, and subcommittee members. I also want to thank Chairwoman Waters and Ranking Member McHenry for their leadership of this committee. Thank you for the opportunity to testify at today's hearing.

I am the Federal advocacy director and a senior policy counsel for the Center for Responsible Lending, an affiliate of Self-Help, one of the nation's largest community economic development lenders.

A year ago today, the World Health Organization declared that we were in a global pandemic. In the past year, we have watched as the number of lives lost grew to an alarming 520,000 souls, and as families and communities struggle to adjust to a new reality.

The economic crisis caused by COVID-19 has devastated the financial lives of millions of Americans. We have seen the images: long lines of cars outside food banks; the shuttered storefronts of restaurants and other small businesses; and people sleeping in parking lots in the shadow of empty Las Vegas hotels. People have lost their jobs at a nearly unprecedented rate. Many low-income renters and homeowners have been unable to make their monthly payments, while racking up debt, and praying for a change in fortune.

The financial devastation from the COVID recession has not been evenly shared. The pain has been most acute for Black, Latino, and low-income Americans, as well as women—groups that typically have far less of a financial backstop to begin with due to ongoing systemic inequities. Black women and Latinas are especially suffering and currently have the highest unemployment rates of any group.

Federal policymakers have responded with relief that has been both essential to preventing additional widespread suffering in the form of another Great Depression, and also insufficient in meeting many basic human needs. Lawmakers should be commended for these urgently-needed relief packages, including the just-passed American Rescue Plan. But packing it up and calling it a day would ignore the precarious position in which countless families find themselves.

To sufficiently protect American consumers and set the stage for an equitable recovery, policymakers must take a range of steps. These include straightforward, common-sense actions, such as extending the Paycheck Protection Program, which will expire at the end of March, and ensuring that the many very small businesses have a chance to get full loans under their recently-fixed Schedule C solution; requiring that private mortgage loans adopt the foreclosure moratorium and forbearance policies offered by Fannie Mae, Freddie Mac, and the FHA, as well as mirror the federally-backed loans in providing a post-forbearance solution that does not increase borrowers' monthly payments; addressing the nation's student debt crisis, starting with executive action to cancel $50,000 per Federal borrower, and ensuring that relief is extended to private student loan borrowers and other Federal borrowers who have thus far been excluded from Federal support; stopping banks from gouging consumers with overdraft fees that are unreasonable, harmful, and regressive through comprehensive reform, including a limit on the number of fees that can be charged; and, before a fast-approaching Spring deadline, using the Congressional Review Act to overturn a 2020 OCC rule that severely weakened State usury laws that protect people and small businesses from predatory high-interest loans; and exempting consumer stimulus payments from assignment and garnishment by debt collectors.

These steps will help everyone as we work to move from rescue to recovery. They will be particularly impactful for people of color and low-income, low-wealth people who have had to bear the brunt of every crisis we have faced, including this one.

This is a watershed moment. We get to determine how we respond to a crisis that is compounding longstanding inequities that have plagued our country for centuries. We get to prove that the lessons of the Great Recession will not go unheeded. In short, we get to do better. The policy choices made now will determine whether the next new normal will look more like the old status quo or whether economic opportunity and financial stability are widely available to everyone.

Thank you. I look forward to answering your questions.

[The prepared statement of Ms. Harrington can be found on page 51 of the appendix.]

Chairman PERLMUTTER. Thank you, Ms. Harrington.

Mr. James, you are now recognized for 5 minutes for your testimony.

STATEMENT OF ROBERT E. JAMES II, PRESIDENT, CARVER DEVELOPMENT CDE, AND CHAIRMAN, NATIONAL BANKERS ASSOCIATION

Mr. JAMES. Thank you, Chairman Perlmutter, Ranking Member Luetkemeyer, Chairwoman Waters, and members of the subcommittee. Good morning. And again, thank you for this opportunity to testify on ways to protect communities and minority small businesses during the pandemic. It gives me great hope that one of this subcommittee's first hearings of the 117th Congress is shining a light on these critical issues.

Again, my name is Robert James II, and I am the president of Carver Development CDE, an affiliate of Carver State Bank of Savannah, Georgia. I am also the chairman of the National Bankers Association (NBA).

The NBA is the leading trade association for the country's Minority Depository Institutions (MDIs). Our mission is to advocate for the nation's MDIs and the communities they serve. Many of our members are also CDFIs and have become the banks of last resort for the underserved. Our member banks are on the front lines, reducing economic hardship in vulnerable, hard-hit, minority communities. Our banks, many of which have existed for over 100 years, are best-positioned to help these communities recover and overcome many of the systemic issues that have placed them at an economic disadvantage.

The House Financial Services Committee and Chairwoman Waters have been instrumental in the inclusion of several provisions in multiple relief packages adopted during the course of the pandemic that ensure MDIs and the small businesses and individuals we serve are not forgotten during this national emergency.

Tier 1 capital, or the equity invested in a bank, is the most critical component of the resilience of any bank, and it is what allows us to grow and scale. MDIs, particularly African-American MDIs, have historically lacked access to capital markets that would allow them to scale. Without sufficient Tier 1 capital, not only are banks limited in the amount of deposits they can take in, but they are also hampered in their ability to weather loan losses. In this unprecedented economic crisis, many financial institutions, particularly those in underserved communities, will have increased delinquent loans.

The creation of the Emergency Capital Investment Program and the $3 billion in additional funding for the CDFI Fund will help institutions like ours provide more access to credit to low- and moderate-income (LMI) communities. The NBA applauds Congress for the adoption of these two important measures, and we look forward to working with you on additional legislation to ensure that our communities experience lasting, material changes that will support a broad and deep economic recovery for all Americans.

As you know, the situation brought on by the pandemic is dire in our communities, and we all need to do our part to ensure that individuals in the middle of this health crisis, particularly minority communities that have accounted for over 50 percent of the debts, have equal access to government relief funding. It is important to note that an average of 70 percent of minorities do not have a bank branch in their neighborhood, coupled with 94 percent of Black small businesses being sole proprietors that are typically underbanked.

Given the challenges faced by small businesses, especially minority and all small businesses, it is imperative to assess which banks are best-placed to provide access to capital for these communities. This is especially true in the Black community.

Unfortunately, our smaller size has not always allowed us to act as quickly or with as much scale as the current situation demands. We saw these disparities play out during both rounds of the Paycheck Protection Program. Congress devised this program as a mechanism to aid small businesses who suddenly found themselves forced to close during stay-at-home orders. A set of conditions that have favored larger businesses, including many of the large banks only approving loans for existing customers, delaying the applications of sole proprietorships, and not allowing enough time for banks like ours to help our customers through the application process, shut out many minority-owned businesses.

Recent efforts to expand eligibility in the PPP program have been welcomed, but our members need more time to help the smallest businesses. Many of our banks have seen double the applications with this problem and see no way to get these customers served by the program's sunset at the end of March.

We are also focused on the long-term recovery, which is why the MDIs and CDFIs need capital and need to be included in programs like the State Small Business Credit Initiative (SSBCI).

We also recommend MDI-focused offices in agencies like the SBA and the CDFI Fund to ensure MDI access to these existing programs for, again, a long-term recovery.

The NBA has recommended several potential solutions to Congress and the Administration, including: passage of the Ensuring Diversity in Community Banking Act; consumer, small business, and nonprofit credit enhancements; an MDI investment tax credit; fully supporting and funding the CDFI Fund; Federal deposits in MDIs; and many others.

The NBA, again, applauds the subcommittee for holding this important hearing, and for the full committee's ongoing efforts to ensure equity for all businesses and the community. We look forward to working with you, and thank you for the work that you have already done. I am happy to answer any questions.

[The prepared statement of Mr. James can be found on page 80 of the appendix.]

Chairman PERLMUTTER. Mr. James, thank you for your testimony.

Ms. Sanchez-Adams, you are now recognized for 5 minutes for your testimony.

STATEMENT OF CARLA SANCHEZ-ADAMS, ATTORNEY, TEAM MANAGER OF SURVIVOR-CENTERED ECONOMIC ADVOCACY TEAM, TEXAS RIOGRANDE LEGAL AID

Ms. SANCHEZ-ADAMS. Chairman Perlmutter, Ranking Member Luetkemeyer, Chairwoman Waters, and members of the subcommittee, thank you for inviting me to testify today on behalf of my organization and the low-income Texan consumers we represent. My name is Carla Sanchez-Adams, and I am a managing attorney at Texas RioGrande Legal Aid, or TRLA.

As the leading provider of free legal aid in Texas and the second largest legal aid in the country, TRLA serves nearly 25,000 people annually. TRLA serves the largest geographic area of any legal aid in the U.S., covering some of the poorest counties in the nation. More than 2.7 million residents of southwest Texas are considered eligible for our services.

The COVID-19 pandemic triggered a health crisis and a simultaneous economic crisis. Prior to the pandemic, systemic inequalities and disenfranchisement already existed among marginalized social groups, such as minorities, women, individuals with disabilities, survivors of domestic abuse, and immigrants. TRLA's clients all belong to one or more of these social groups, and we found that COVID-19 exacerbated these pre-existing inequalities.

In my written testimony, I address three harms faced by our client population during the pandemic: one, the rise of debt collection activity; two, the impact of credit reporting on debt and poverty; and three, the failure to protect consumers from fraud.

In my oral testimony, I will focus on two key points. First, we have observed how credit reporting has left many vulnerable Texans prone to future disenfranchisement and poverty. Although there are many problematic types of debt found in consumers' credit reports, I want to highlight the problem of coerced debt.

Each year, approximately 800,000 women in the U.S. are physically assaulted by an intimate partner. One in four women will have experienced some form of intimate partner violence in their lifetime. During the pandemic, domestic violence has increased and many survivors find themselves without any available options to relocate and leave abusers.

In addition to physical violence, survivors are subject to other forms of abuse, including economic abuse. In fact, it is estimated that 94 to 99 percent of domestic violence survivors experience economic abuse. While economic abuse spans a wide array of tactics, damage to credit is of particular importance. Abusive partners damage credit by fraudulently opening accounts in the survivor's name, lying about paying bills in the survivor's name, overcharging credit accounts, or coercing survivors to sign for loans, credit lines, or other expenses. This type of activity is known as coerced debt. Coerced debt encompasses all non-consensual credit-related transactions, and although the term is most used in the context of intimate partner violence, it also exists in other contexts, such as elder and child abuse.

The appearance of coerced debt on a consumer report is so destructive because credit reporting permeates almost every aspect of a consumer's financial life and can make or break the financial security of an individual. Consumer reports and credit scores are used by potential creditors, landlords, employers, telecom and utility companies, and even the government.

As a result, coerced debt ultimately impairs a survivor's ability to obtain the credit, job, or housing needed to stay safe. Traditional lenders become less accessible, and survivors are left to obtain credit from predatory sources, such as payday lenders. These high-cost loans aggravate an already-desperate financial situation, trapping survivors in insurmountable debt. Without economic security, domestic violence survivors cannot have physical security.

Coerced debt is best understood in two buckets: one, fraudulent debt; and two, coercive debt. Fraudulent debt fits the basic understanding of identity theft. The coerced debt victim did not know about the account or charges, did not authorize the opening of the account or the use of an existing account, and did not benefit from the debt.

On the other hand, coercive debt is incurred by force or threat of continued violence or other forms of abuse. The victim does not really consent to the debt, but opens a new account or allows the use of an existing account out of fear of the repercussions of saying no to the abuser.

Currently, only coerced debt victims who fit neatly into the bucket of fraud have avenues for relief. However, the vast majority of coerced debt victims in the coercive bucket have no remedies. Texas addressed this problem by amending our definition of identity theft to include coercion, but coerced debt victims from everywhere else in the country do not have this solution and need help.

We have also seen an increase in aggressive collection activities. The number of default judgments obtained in 2020 increased despite a moratorium. Lenders were quick to repossess vehicles when consumers were unable to make timely payments on auto loans and, based on our observations, refused to work out payment plans or forbearance options.

Simultaneously, we saw debt collectors more aggressively pursue post-judgment collection, like bank garnishments. These collection methods led to seizure of economic impact payments (EIPs). And, because not all EIPs were or are protected from garnishment, collectors have taken advantage of consumers in already vulnerable circumstances and diminished the important work of Congress in providing much-needed relief.

I yield back. Thank you.

[The prepared statement of Ms. Sanchez-Adams can be found on page 89 of the appendix.]

Chairman PERLMUTTER. Thank you, Ms. Sanchez-Adams.

Ms. Shultz-Wilson, you are recognized for 5 minutes for your testimony.

STATEMENT OF VALARIE SHULTZ-WILSON, MANAGING PARTNER, SHULTZ&CO NONPROFIT MANAGEMENT CONSULTANTS

Ms. SHULTZ-WILSON. Good morning. First, I would like to thank Full Committee Chairwoman Waters and Subcommittee Chairman Perlmutter and Ranking Member Luetkemeyer for inviting me here today to testify on behalf of the low-income and low-wealth consumers that I have served over the past 30 years. I come before you today to provide a face behind the statistics and the data on the economic toll of COVID-19 on these communities.

During my career, I have had the privilege to lead several nonprofit organizations—some small, with $500,000 operating budgets, and some large, with $50 million operating budgets, but with one goal in mind, and that is always to serve the community.

I have been CEO of organizations such as the Connecticut Food Bank and the Urban League of Southern Connecticut. It is at the Urban League where we provided much-needed services to consumers, which included first-time homebuyer education, credit repair, financial education, foreclosure prevention, loan modification, and student loan services. My vocation and passion and commitment revolve around empowerment. I have devoted my life to these endeavors and will continue to do this work. It is important that we all, in the nonprofit community, continue to stand in the breach to help consumers.

The economic devastation that has impacted small business owners, including sole proprietorships in the Black and Latino communities, continues to disenfranchise these groups.

As heartbreaking as these scenarios are, many consumers are forced to use title loan companies, payday lenders, and other predatory lending businesses just to make ends meet. Rather than allowing borrowers to speak with someone to address these issues, many institutions are now forcing consumers to use computers. They are forcing them to go to their websites, and this includes mortgage companies, student loan companies, and auto finance companies. Many of our consumers have lost their internet. Many did not have computers to begin with, and if they did, some of them have been forced to sell their computers or to pawn them—we know that pawn shops are a business that is booming today—which eliminates their ability to communicate with financial services institutions.

In addition, bank fees and overdrafts have plagued low-income consumers, causing many to lose their traditional bank accounts and to become unbanked, forcing them to rely on check-cashing establishments that charge predatory fees, to the detriment of our consumers.

Credit card companies monitor credit reports and raise interest rates based on credit usage. Late payments and missed payments generate additional fees that folks from low-income and low-wealth communities cannot afford. Many of them are having to choose between feeding their families and providing essential basic services for their families.

In Connecticut, I serve on the board of the Community Foundation for Greater New Haven, which has launched a $26 million initiative called Stepping Forward, a program which has set aside money to provide low-interest loans and grants to Black-, Latino-, and women-owned businesses impacted by the pandemic. It is also providing capacity-building grants and operational support to the nonprofit community who are in the trenches doing this work every day to ensure economic empowerment and stability. Nonprofit organizations like the Foundation stand in the breach and provide a safety net to many consumers who may not be eligible for traditional financial services.

Recently, JPMorgan Chase announced that it would pledge $30 billion to close the racial wealth gap in Black and Latino communities over the next 5 years by funding organizations such as CDFIs, and Black-owned banks, and by providing down payment assistance for people of color. I am very pleased that they have decided to launch this initiative. However, if credit restrictions are not relaxed, many of our low-income and low-wealth consumers will not be able to take advantage of this program and the wealth gap will remain.

In closing, low-income and low-wealth consumers need help. We need policies now that will allow businesses and consumers to be resurrected and made economically viable for the future. We need policies now that address structural barriers to resources, financing, and capital.

Thank you so much for your time today, and I look forward to addressing your questions.

[The prepared statement of Ms. Shultz-Wilson can be found on page 105 of the appendix.]

Chairman PERLMUTTER. Ms. Shultz-Wilson, thank you for your testimony.

And Mr. Griffith, you are now recognized for 5 minutes for your testimony.

STATEMENT OF JOEL GRIFFITH, RESEARCH FELLOW, FINANCIAL REGULATIONS, THE ROE INSTITUTE FOR ECONOMIC POLICY STUDIES, THE HERITAGE FOUNDATION

Mr. GRIFFITH. Thank you, Chairman Perlmutter, Ranking Member Luetkemeyer, and members of the subcommittee for the opportunity to testify today. My name is Joel Griffith, and I am a research fellow at the Heritage Foundation.

Are Americans slipping through the cracks in our economy? That is a very important question. Without a doubt, many are still suffering from the historic plunge in economic output that was triggered by the widespread shutdowns imposed last March.

For the first time in our nation's history, governments across the country intentionally suppressed the supply of goods and services and artificially suppressed consumer demand. Within months of these shutdowns, more than 20 million jobs were lost. In April 2020, the U.S. unemployment rate was nearly 15 percent, a full 4 percentage points above the previous post-World War II high.

Of course, the partial reopening of the economy did spur a robust recovery. Economic growth in the third quarter smashed all prior records, growing at a 33 percent annual pace. But this highest economic rebound this summer, the highest in history, proves that those who were properly informed of the actual risks of COVID and of the appropriate mitigation measures are enthusiastically participating in the reopening, going back to work, and going back to their lives.

Financial conditions for most consumers actually show marked improvement compared to pre-pandemic. We have an increase in overall credit scores, and that reflects the surprising reality.

Over the past year, delinquency rates on consumer loans actually plunged. In fact, delinquency rates now are the lowest in more than 30 years.

Auto delinquencies in quarter three of 2020 were substantially lower than the year before, dropping by nearly one-third.

Mortgage delinquencies, as well, are holding up relatively well through the crisis. They have edged up slightly by .4 percentage points. Contrast this to the Great Recession where mortgage delinquencies nearly quadrupled, soaring to 12 percent.

Rental delinquencies also appear to not have substantially increased. The Census Bureau's Household Pulse Survey indicates that 21 percent of renters did fail to pay rent in December, but this is up just slightly from the 18 percent reported in March of 2020. National Multifamily Housing Council data confirms this trend.

We have an elevated savings rate; it hit an all-time high in April 2020. This helped drive down the amount of credit card debt outstanding to under 4.5 percent of disposable income. By the middle of last year, this was down sharply from the 8 percent rates that we saw during the Great Recession more than 10 years ago.

Overall, the data are encouraging, in that consumers are more financially secure now than before the pandemic began. However, it is very important that we compare this national financial data to State-specific unemployment economic output data. We know that nearly 10 million people who have lost their jobs during the pandemic still are without work.

The economic misery from these shutdowns is concentrated geographically in those regions affected by continued onerous restrictions, such as curfews, capacity limitations, and distancing guidelines, and full business closures in States like California.

The Federal Reserve State Coincident Index shows the approximate GDP by State, and it actually shows that in eight States, the economy now is bigger than it was before the pandemic. These are States that have reopened, like Utah and Georgia. Contrast this with the deep recession that lingers in Hawaii, Michigan, Rhode Island, Massachusetts, and New York, many of which have economies that are nearly 10 percent smaller now than they were a year ago.

In December, the 10 States with the fewest restrictions in place were averaging just 4.7 percent unemployment. Meanwhile, Los Angeles suffers from 10 percent unemployment. In New York City, it's up 8 percent. In El Centro, California, unemployment is near 20 percent. These economies are shut down. Compare that with unemployment in numerous towns and cities in Alabama, Idaho, Nebraska, and Utah where unemployment is actually under 3 percent.

Politicians in State and local governments who continue to advocate for shutdowns and economic restrictions are pushing millions of those who are unemployed or financially underwater off an economic cliff. And, meanwhile, they are telling the public that these individuals are merely slipping through the cracks.

Unfortunately, some are now using the persistent economic troubles in parts of the nation to push through a wish list of harmful credit policies. This includes suspending capitalization of interest and debt collection and repossession, along with suppression of accurate, predictive credit reporting. Policymakers need to consider the unintended consequences of these actions, which will result in less available credit for both consumers and businesses, often to those who most need it.

In summary, the financial condition for many families has improved over the past year, but restrictions that are still in place in some State and local governments on basic economic activity continue to hold back millions of individuals from gainful employment and financial help. Using the economic misery that persists across portions of the nation as an excuse to advance a wish list of extreme proposals will suppress future economic growth.

Congress should instead focus on better positioning our nation to lead in the [inaudible]. Thank you.

[The prepared statement of Mr. Griffith can be found on page 44 of the appendix.]

Chairman PERLMUTTER. Thank you, Mr. Griffith. And thanks to all of our panelists for their testimony.

I am going to go vote, so I am going to turn over the chair to Mr. Casten, and I am also going to recognize him for 5 minutes for his questions of this panel. Thank you.

Mr. CASTEN. [presiding]. Thank you so much, Chairman Perlmutter, and thanks to all whom I have hopped over in the seniority as Ed and I try to shuffle through the voting pattern here.

Mr. James, I want to brainstorm with you a little bit. And this is an idea without legislation, so I am not—none of these are intended to be leading questions. But, it strikes me that there is a—as we have gone through and passed these really important and necessary eviction moratoriums, there are two parties to that. There are the tenants, who have not been evicted and have not been financially squeezed, and then there are the landlords, who are trying to figure out how to make sure that they can stay current on their mortgage payments.

And I wonder if you have any data? Because on the one hand, in talking with, particularly some of the low- and moderate-income property owners in my district, a lot of them have said that among their tenants, when they miss a payment, they can come current and stay current again, but oftentimes, these folks do not have the income to ever catch up on all of the back rent, so their credit scores permanently struggle. And, on the other hand, for the landlords, they are always carrying this bad debt expense because if you have someone who is staying current on their payments but not catching up on the back end, you are carrying some assets on your books that everybody knows needs to be partially written off.

My first set of questions is for tenants who fall behind, do you have any data on what portion—even before COVID, what portion never catch up? And how does that vary between low-, and moderate-, and higher-income tenants? Have you ever seen [inaudible] office?

Mr. JAMES. Thank you for your question, Congressman. I don't have any data on that specific issue, but I can respond and just agree with you that it is a very vexing question. In our institution, Carver State Bank in Savannah, Georgia, we actually see both sides of this because a lot of our retail customers are the tenants who reside in some of these low- to moderate-income residences. But, then, a lot of our borrowers—one of the specialties that we have is actually lending to small landlords, who own one, two, three, or four units of property that they rent out in LMI communities. So, we kind of refer to that as sort of naturally occurring affordable housing.

And we have been surprised that more of our landlords have not fallen behind. We did extend very generous forbearances at the beginning of the pandemic to all of our borrowers across-the-board to make sure that people did not have cash flow chops. We have been able to find that our past dues have been reasonably strong. We have not seen a lot of impact. I think that that is because many of the lower-income tenants and moderate-income tenants have been able to access local programs in our community to help them to keep up with their rent.

So, I do not have sort of universal data on the question, but we would certainly be happy at the NBA to explore this issue further, because we do recognize it not just at my bank in Savannah, but across our membership. We do recognize that there is a potential for this to be a really serious problem.

Mr. CASTEN. I would love to see some data. And I want to let some of the folks who spend their time exclusively on the consumer side of this weigh in. Ms. Sanchez-Adams, I don't know if you have any thoughts?

But what strikes me is in some sort of completely ideal policy mode, if we were to say that the Federal Government would provide X percent of back rent, if landlords agreed to write off the balance. And I don't know what X is, right? But, there is some number there where we protect tenants' credit scores and we enhance the borrowing position of those landlords. Because when you go out to write the mortgage, you are sitting there saying, yes, I know you have these assets, but not there. And if you have any analysis of where that is, I would love to see it. Maybe we can follow up after the hearing.

Ms. Sanchez-Adams, with the little time I have left, do you have any thoughts on that question?

Ms. SANCHEZ-ADAMS. Sure. So, on the one hand, if low-income tenants are living in public housing, they do have a portion of their rent that is being paid by housing authorities and, so, those tenants are not necessarily falling behind on their payments. They have steady incomes from public benefits and things like that, so that is not the case there. It is more the middle income that do not have public benefits that maybe have seen reduced income cut.

The last thing that I will say, though, is that the credit reporting is easy to fix if you just put a moratorium on reporting of it for this certain period. That might be able to alleviate some of what you are talking about.

Mr. CASTEN. Okay. Like I said, this is brainstorming. I don't have a specific policy, but I would love to work with you on that.

I am out of time now, and I recognize my friend, Mr. Barr, for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman. I appreciate that.

We recently held a hearing in the Oversight and Investigations Subcommittee examining portions of the population who are being left behind by the banking system. And, during that hearing, one witness highlighted the problem of credit invisibility, where individuals have no credit record, and the three nationwide credit reporting agencies don't really have any information about these people. Credit invisibility disproportionately impacts consumers in rural areas and can perpetuate the cycle of reduced access to traditional financial services.

Mr. Griffith, how would you recommend that we address the problem of credit invisibility, especially in underserved communities?

Mr. GRIFFITH. Thank you for your question. Yes, this is definitely a problem where there are a significant number of people who either have insufficient credit to have a credit score or they actually have no credit lines at all. But what we see is that we have a number of institutions, including the credit bureaus such as Experian, that are making it possible for people to begin adding alternative credit lines, such as their housing payments, cell phone bills, and other nontraditional types of credit, and this is beginning to be factored into some of these scores.

So, the private sector recognizes this is a problem. In fact, they have an interest, as well, in reaching an expanded marketplace because many of these individuals are people who are financially responsible; it is just that they don't have a credit score associated with their name.

I think my fear is that policymakers will use this as a reason to put mandates in place, not recognizing all of the requirements that are incurred when you actually have somebody put it into the credit bureaus. There is time spent. There is a legal liability, as well. And we see significant progress being made right now in the private sector.

Mr. BARR. Yes, I agree with you, Mr. Griffith. I think innovation, especially in fintech with alternative data, is a way in which the private sector, without any government intervention, has provided greater access to credit for underserved individuals.

One other question related to that, Mr. Griffith, how might nationalization of credit reporting, as some on the other side have suggested, adversely affect underserved individuals' ability to gain access to financial services?

Mr. GRIFFITH. Thank you. Nationalization of this in terms of requiring credit companies to not report certain stints of bad credit, will actually impact those who are trying to develop their credit. It will impact them most adversely, and that is because you are going to require institutions, whether it is an automobile company, whether it is an appliance company, wherever you are looking at to get that credit, you are going be requiring them to fly really in the dark and, so, their risk is going to be elevated. They are going to either have to exclude more people from the universe of people that they will lend to, or they are going to have to adjust interest rates, not just for those who are higher-risk, but for those who are actually paying their bills on time, because the credit agencies will no longer have access to that information to have the ability to provide it.

Mr. BARR. Yes. One of the things I am worried about is policymakers using the pandemic as an excuse to eliminate risk-based pricing. Lenders and other financial market participants really rely on risk-based pricing for their products and services. They use the best, most complete information available to assess the creditworthiness of the borrower and his or her ability to repay, and mispricing risk could lead to negative terms for customers and ultimately undermine their financial stability.

Mr. Griffith, final question, what impact would a government-imposed prohibition on risk-based pricing have on the price, availability, or access to financial services? And do you believe that suppressing one's credit data could ultimately cause undue hardships for consumers?

Mr. GRIFFITH. Yes. The unintended consequences are very severe with this. If you [inaudible] ability to actually accurately report somebody's financial situation or how they perform during a time of economic stress like we have certainly seen over this past year, you are going to diminish that availability.

Those who have a very long-established track record or who can prove their income, are likely going to be fine. They will be able to obtain that credit. But it is those people who actually need credit the most, sometimes in periods of emergencies, who are going to be the most harmed, because they won't be able to find the credit when they need it. They are going to have to pay higher interest rates for legitimate credit. Or, even worse, you are going to see a lot of people forced into that unlawful black market, and you are going to see them pawning off belongings or even using a loan shark, where their physical life might actually be in danger.

Mr. BARR. My time has basically expired, so I do not have the time for another question. But, one final comment on debt collection.

I worry that, again, policymakers will use the pandemic as an excuse to restrict legal debt collection. And, of course, debt collection and remedies for lenders is key to providing access and creating a willingness for lenders to actually extend credit, so I don't want to go there either. But with that, I yield back, and I appreciate the opportunity to participate in this hearing.

Mr. CASTEN. Thank you. The Chair will now recognize Ms. Velazquez, who is also the Chair of the House Committee on Small Business. Ms. Velazquez, you are recognized for 5 minutes.

Ms. VELAZQUEZ. Thank you, Mr. Chairman. Before I start with my questions, I would like to respond to Mr. James, who raised the issue of the necessity to extend the PPP loans process beyond March 31st.

I am happy to report that Mr. Luetkemeyer and I reached an agreement, a deal, last night on extending PPP for 2 months. And, for new loans, an extra 30 days for SBA to go over pending applications, until June 30th. So, I want you to know that, and I want to thank Mr. Luetkemeyer for his cooperation.

Ms. Harrington, one of the bills that we are discussing today is my bill, the Small Business Lending Fairness Act, which will prohibit the use of confessions of judgment in commercial lending transactions at the Federal level. Can you explain the confession of judgment practice and how it is often used to harm unsuspecting small business owners and borrowers?

Ms. HARRINGTON. Thank you, Congresswoman. Absolutely. This is a really problematic practice and tool and just another example of why we need more oversight.

These are tools that are placed in contracts. Business owners have been forced to sign them, and it means they are basically agreeing in advance for a default judgment against themselves, and it really puts them in a very severe predicament. And then, it exposes them to so much harm later and so much financial constraint, and this is what we have seen. We saw it in New York, in your home State. We have seen this happen, and we have seen the economic strain it causes, the mental health strain it causes, and just how abusive and predatory this practice really is.

Ms. VELAZQUEZ. And can you explain, please, why this is something that we need to prohibit at the Federal level, and why it should not be left to the States, as some might argue?

Ms. HARRINGTON. It is basic principles of fairness and consumer protection. This is essentially contracting away your legitimate rights, your legitimate defenses, and so, we need to be protecting consumers as much as possible and creating a ceiling, and creating a floor for consumer protections at the Federal level, and then States can go beyond that. But we want to make sure that consumers are as protected as possible, especially when we are seeing such predatory acts going on.

Ms. VELAZQUEZ. Thank you. Ms. Harrington, as you know, the Truth in Lending Act (TILA) requires transparent disclosures for consumer loans, but not for small business loans. I have been working with Senator Menendez on legislation that will extend

TILA to small business loans. How would extension of the TILA statute to small business loans better protect small business borrowers and enable them to make fully informed comparisons on their financing options?

Ms. HARRINGTON. I think it would be really impactful. It would enable them to compare products, to know when they are being offered high-cost, predatory loans. But in addition to that, we should really be thinking about a Federal rate cap because that will protect consumers and small businesses and ensure that they have the best protections.

TILA is great, and TILA for small businesses would be wonderful, but we need a rate cap. We need to be protecting them as much as possible.

Ms. VELAZQUEZ. And can you please explain how transparent and standardized pricing is particularly important to small business owners during this time of COVID, particularly those that are women- and minority-owned?

Ms. HARRINGTON. This is why women and people of color are actually more likely to rely on online lenders. They have traditionally been shut out of the traditional credit market in many ways, and we saw that play out, especially during the first round of the Paycheck Protection Program. And because they have been more likely to use online lenders, these fintech lenders that use excessive pricing models, they are more at risk of being subjected to these higher-cost products. So, they definitely need that protection so that they are able to fully evaluate, but they also need real access to affordable, safe credit products, and more banks need to be in the business of serving all small businesses.

Ms. VELAZQUEZ. Thank you. Mr. Chairman, I yield back. Thank you.

Mr. CASTEN. The Chair now recognizes Mr. Posey from Florida for 5 minutes.

Mr. POSEY. I thank the chairman and the ranking member for holding this hearing.

Many of us believe our financial institutions and markets are the envy of the world. Over a long and innovative history, they have evolved to process information, reflect that information in prices, and send those price signals to lenders and borrowers to provide gains from trade to both parties. Borrowers, as well as lenders, benefit from markets based on good information. To jeopardize these informative functions would risk creating a market for lenders where good credit risks could not be distinguished from bad credit risks. The result would be a market where credit access is difficult and expensive for everybody.

Today, with the rush in the House to reinvent all of our best institutions, I am reminded of a variation of an old joke where a constituent comes to a Congressman and asks, "Who was it that invented progressivism? Was it the politicians or the scientists?" The Congressman replied, "Why, the politicians, of course." The constituent responds, "Well, that explains it. The scientists would have tried it on mice first." Our first duty is to avoid adverse and unintended consequences. We cannot try out these programs in a lab. We have to rely on principles and common sense.

And, so, Mr. Griffith, could you please describe how our financial markets would be affected by imposing restrictions on credit reporting?

Mr. GRIFFITH. Thank you, Congressman, for your question. When you impose restrictions on credit reporting, what you are really doing is you are forcing lenders to fly blind. You are disabling their ability to actually judge risk based on somebody's past decisions, but also the circumstances they find themselves in.

I understand that the intentions are good, because we want the people to have access to the credit necessary to fund their dreams. But what you are in effect doing is you are increasing the risk that is involved in making those lending decisions, because now a company is not actually able to model what the risk is in making a loan to an individual.

The less information that a company has to make a decision for anything in business, especially when it comes to lending—the less information that they have, the more likely that they are going to either choose not to actually provide the loan, or they are going to have to increase the interest rate on that loan or on loans they make to others to compensate themselves for that increased risk. So, you will end up seeing a number of people priced out of the marketplace or not have access at all.

And, then, the worst-case scenario is you end up with individuals who have to pawn their possessions or seek financing on the black market where the rules to protect them do not apply at all.

Mr. POSEY. Thank you. What are the effects of eviction restrictions that are imposed for too long periods of time?

Mr. GRIFFITH. Thanks for that question. We have seen eviction moratoriums for some of the national level, and state and local levels, through this period. And what is very interesting, as I mentioned in my testimony, is that we actually see rental payments only up slightly over the past year.

So, what we have seen is we have seen a lot of folks who are not paying their rent because they know they cannot be evicted. And, even if the eviction moratoriums are lifted in the near future, much of that revenue that was not paid to the landlords, is not going to be returned. That is just going to be an expense that the landlord is going to have to eat. It is going to harm the business.

But that is going to have an impact beyond just the landlords. You are going to see now with this knowledge that these moratoriums might be imposed, you are going to see lenders once again have to tighten up their risk parameters, as well. They might have to charge extra for security deposits. There might be instances in which they choose not to rent to someone for whom the credit score might not be high enough.

And, of course, Congress, the government, can try to work around that, as well, and force them to rent out those properties, but then you are going to see landlords keeping more money on retention because they are still going to have to pay for repairs, upkeep, taxes, and their own mortgage payments.

So, the repercussions are still going to be not just on the landlords, but be on those who are looking for a place to rent, as well. Often, it is going to be those who are most in need of a rental place because they cannot yet buy a home.

Mr. POSEY. What would you change about the CARES Act provisions that have targeted pandemic relief of credit reporting and mortgage forbearance and evictions?

Mr. GRIFFITH. When it comes to these eviction moratoriums, any of these really should have been done on a State and local level, and only used very sparingly. The ability to actually possess your own private property and enforce the contractual arrangement that you have underpins our entire economic system. It has made us the most prosperous economy in the history of mankind. When you start eroding those property rights and the ability to actually enforce the contract, you are [inaudible] private property in general.

Mr. POSEY. Thank you.

Chairman PERLMUTTER. The gentleman's time has expired. Mr. Posey yields back. I would like to thank Mr. Casten for covering for me.

And I would now like to recognize the Chair of the Full Committee, Chairwoman Waters, for 5 minutes.

Chairwoman WATERS. Thank you very much, Mr. Perlmutter, for the time. I would like to direct this question to Robert James, president of Carver Development CDE, and chairman of the National Bankers Association.

As you know, before Chair Yellen left the Federal Reserve, she placed a cap on the assets of Wells Fargo. Wells Fargo indicated they wanted to do PPP, but because of the cap, they would not be able to do it. And there was an agreement made that they would be able to do PPP if, in fact, they would donate, contribute to CDFIs and MDIs, all who need capital. We have been working hard for years to do everything that we can to increase the capital for our banks, minority banks, and for our CDFIs.

And, so, what I want to know is, have Wells Fargo and other banks who said they were going to follow suit and they were going to make the PPP funds that they had earned because of their work, that they were doing with distribution of PPP, available to the MDIs and the CDFIs? We don't know if they followed through. And I just talked with one of our staffers who indicated that they are trying to track it, also.

But, have you had any experience? Do you know whether or not our MDIs and CDFIs have been receiving donations, contributions from either Wells Fargo or any of the other banks who claimed that they were going to do it?

Mr. JAMES. Thank you, Chairwoman Waters, for that great question.

We do know that Wells Fargo, as well as a handful of the large financial institutions in addition to them—just a handful—have been making some capital equity investments in some of the MDI banks. I am not sure if those funds were previously earmarked or if they were of the funds that are coming from the PPP fees. And I am familiar with the commitment that you reference.

I do know that some of the capital investments have started to flow into our banks. But, of course, those are transactions where our banks are selling a security to Wells or some of the other large institutions, so they are receiving a preferred stock investment. Sometimes, it is common that they are receiving a security in exchange for that. There has not been an enormous amount of just grant activity from the large institutions into the MDI sector.

Chairwoman WATERS. Okay. Yes, that is different. That is different because you have a term sheet that you have to negotiate. And sometimes, we worry about what they are asking, so I am hopeful that those who are negotiating that kind of investment will be very careful to protect the ownership of our minority banks.

But, here is what I want to ask also on Wells Fargo. They are touting a down payment assistance program. Have you heard about any of the beneficiaries being worked with?

Mr. JAMES. Chairwoman Waters, I am not specifically familiar with that program, so I cannot speak on it one way or the other, just I know that it is occurring.

Chairwoman WATERS. Would you do me a favor? As the chairman of the National Bankers Association, could you make inquiries of the bankers in the National Bankers Association to find out who are the recipients of contributions, donations from Wells Fargo and others? And, whether it is like you are indicating here today, all of the relationships basically, as you understand it, are transactional relationships where they are equity investments?

Mr. JAMES. Chairwoman Waters, we will absolutely get that information to you and your staff as soon as possible. Thank you.

Chairwoman WATERS. I would appreciate that because we intend to follow up. Oftentimes, we have the banks indicating they have programs that are assisting MDIs and CDFIs, but we never really understand what they have done, or how much they have done. We have never done a good job of following up. And this time, I am going to actually engage in that effort so that we can know whether or not they are living up to what they are representing so that we can deal with it.

So, thank you so much for being here today and for agreeing to do some follow-through on this.

Mr. JAMES. Absolutely. And thank you for your continued support. We appreciate it.

Chairwoman WATERS. You are so welcome.

I yield back the balance of my time, Mr. Perlmutter.

Chairman PERLMUTTER. Thank you. The gentlelady yields back. The ranking member of the subcommittee, the gentleman from Missouri, Mr. Luetkemeyer, is recognized for 5 minutes.

Mr. LUETKEMEYER. Thank you, Mr. Chairman. And I just wanted to open with a statement with regards to the PPP program. I know several of the witnesses referenced this. And I know that Chairwoman Velazquez of the House Small Business Committee—which I am also the ranking member of—and I had an agreement last night and the bill was dropped, I think late last night or this morning, to extend the PPP program. And I want to extend my congratulations and thankfulness to her for her help and willingness to work in a bipartisan fashion on that issue, and we look forward to that bill's passage on a bipartisan basis, as well.

As we go through the—getting everybody back up to speed here, one of the things that is concerning to me has been the lockdowns. My State came basically out of the lockdown back in mid-May, and we had a 5 percent increase in revenues from 2020 over 2019. I live close to the Lake of the Ozarks, one of the greatest recreation areas in the middle of the country there. We had double visitation in 2020 over 2019, and 2019 was the second-highest visitation year in history for the Lake. So, it is huge economic activity that can come back after the lockdowns. And so, to me, the greatest, biggest deal in coming back for our economy is to get everybody out of the lockdown, get everybody vaccinated, and off and running.

Mr. Griffith, I just would like to ask you your perspective on that comment?

Mr. GRIFFITH. You are absolutely right. Thank you for that question. Yes, what you see across the country right now is really almost a tale of two different economies. I have visited New York City multiple times over the past year during the lockdowns, and it is just so sad when you see entire blocks of, not just businesses that are temporarily closed, but they are closed for good.

And then, visiting family and friends in Florida and Georgia, it is a different universe. You have restaurants that are—many restaurants and bars in New York City, for instance, and retail establishments that are shut down forever, have relocated to Florida because they can actually run those businesses there. And, of course, the tax structure is better.

The same thing goes with California. Look at California compared to Utah. California compared to any other—or Texas.

[Audio malfunction.]

Mr. LUETKEMEYER. Okay. You are fading out on me here, Mr. Griffith. Let me ask another question very quickly as soon as you get back up and running here.

Mr. James, I appreciate your testimony this morning. One of the things that we have talked about throughout this pandemic—and it is something I have been pushing for a long time—has been forbearance by the regulators with regards to enabling banks and credit unions, and pretty much the financial services industry as a whole, to be able to give time to their customers to be able to get back on their feet. I think that the quick rebound that we have seen so far, and I think you can anticipate coming shortly, would indicate that people can get back, businesses can get back to a new normal, which would be similar to what it was in the 3 years prior to the pandemic.

And so, my question to you is, in the CARES Act, and in the bill at the end of the year, we had an extension of the total debt restructuring rule, as well as Current Expected Credit Losses (CECL). How important do you think the continuation of those forbearance tools, or the forbearance on those regulations, is going to be in the coming months and years here?

Mr. JAMES. Ranking Member Luetkemeyer, thank you for the question. We actually are very much in agreement with any kind of assistance that we can get from our regulatory partners and are grateful for Congress including those provisions in the recent relief packages.

It is of critical importance that our institutions are not forced to declare troubled debt and that we have time to work with our customers to allow them back. Most of our banks in the MDI community experienced this in the last economic slowdown in 2008 and 2009, where we were forced to write down certain credit, even in the event that we knew that the borrower was going to be able to recover it. And, so, we are grateful for Congress including that. We are grateful for your advocacy on that point, and we welcome the continuation of the easing of those regulations so that we can work with our customers.

Mr. LUETKEMEYER. Thank you for that response because I think that it is extremely important to be able to allow people and businesses time to work through this. I think we can actually get back on our feet very quickly if we don't become really punitive from the regulatory side. So, thank you for that.

Going back to Mr. Griffith, and talking again about getting our country back on track, it would seem to me that what showed in the 3 years prior to the pandemic was that low taxes and minimal regulation really inspired and enabled and empowered the businesses and people to be able to drive our economy. How important do you think it is going to be, Mr. Griffith, to continue that low tax, minimal regulatory [inaudible] to be able to make it—

Mr. GRIFFITH. If we want to go back and see median household income hit new all-time highs and see record-low unemployment across the entire nation, we do need to keep an eye on the ball there, and that is knowing what works and continuing with those advances.

Mr. LUETKEMEYER. Thank you very much.

Chairman PERLMUTTER. Thank you. The gentleman's time has expired. Thank you very much.

I remind everybody, if you are not speaking, please make sure you are muted so that we don't have feedback.

I now recognize the gentleman from California, Mr. Sherman.

Mr. SHERMAN. Thank you, Mr. Chairman, and congratulations on your first hearing of one of the most important subcommittees in the House of Representatives.

Glass-Steagall was the law of this country for a long time, but in Gramm-Leach-Bliley, we at least allowed financial institutions in one part of the financial world to be aligned with those in another so that your credit union could also sell you insurance. But, the basic rule there was that we drew a line between financial services on the one side and the rest of commerce on the other. There was, however, one vestigial exception to this that was not part of any overall plan reached in the latter part of the last century, but it went back well over 100 years, and that is the industrial loan company.

Ms. Harrington, just over a week ago, it was reported that Wal-Mart had hired Goldman Sachs' head of consumer banking, and announced a partnership with Ribbit Capital, in an apparent attempt to expand itself into the financial services world.

Wal-Mart and other major retailers have at one time or another sought State-issued industrial loan company (ILC) charters to break that wall between commerce on the one hand and banking and financial services on the other.

On December 15, 2020, just as the last Administration was leaving, the FDIC adopted rules that paved the way for nonbanks to own ILC-chartered banks without being subject to the same oversight requirements.

Do you see this as a problem for consumers and taxpayers when it looks like Wal-Mart can get involved in financial services and not be subject to the same rules?

Ms. HARRINGTON. Absolutely, and I am so glad that you asked this question, Congressman. This is something that we have been advocating about for a while. We really urge Congress to impose a moratorium and close that loophole. This is really concerning. There are six ILC applications pending right now. We saw what would happen with ILCs in the last recession, actually. There was a major meltdown from that. They pose a lot of systemic risk, and consumer protection concerns. We all should be worried about these companies and these pending applications, and we urge Congress should impose a moratorium.

Mr. SHERMAN. Hopefully, the new FDIC will take a look at the moratorium that had been imposed for many years and re-evaluate this last-minute change of policy in December of last year.

Mr. James, I was a strong advocate for the extension of Section 4013 of the CARES Act, which allows banks to modify certain loans, work with the borrower, and restructure, whether it be a consumer loan or a commercial loan, without that debt being classified as a troubled debt restructuring and hitting the bank's capital. But, we have this unusual end date for this program, where it is supposed to end at the end of this year or 60 days after there is a an end of a declaration of national emergency, and we do not know when that is.

So, the banks are trying to decide what to do and to do their business planning without having a definite date. Wouldn't it be easier to plan if you knew that this special provision was going to expire on December 31st, or maybe earlier?

Mr. JAMES. Thank you, Congressman. Again, we would very much appreciate some certainty on that particular issue. And, quite frankly, in the MDI community, what we have experienced is that oftentimes, with our borrowers, the shock happens a little bit later. People will make payments, will stay current, and then it will happen a year from now, or later.

What we need is to be able to just work with our customers. We know our customers. We are on the ground, and we think that we can manage that risk the best from the grass roots perspective. And, so, we appreciate the suggestion in your question, as well as in Ranking Member Luetkemeyer's question.

Just very quickly on the ILC issue, as heavily-regulated institutions, we certainly invite all financial services providers to be subject to the same regulatory partnerships that our institutions are subject to, and, so, we welcome the committee's actions on those in that regard, as well.

Mr. SHERMAN. Thank you for your answer. I yield back.

Chairman PERLMUTTER. The gentleman's time has expired.

The gentleman from Oklahoma, Mr. Lucas, is recognized for 5 minutes.

Mr. LUCAS. Thank you, Mr. Chairman, and I, too, congratulate you on this challenge that you have taken on for the next 2 years. And I also was very impressed with the line of questioning from the Full Committee Chair about what she personally expected. I am sure that will be a topic of discussion later at some point.

But for the moment, let's cut back to the fundamental issues at hand here. Congress has leaned on the strength of the banking system throughout the COVID-19 pandemic. We gave financial institutions enormous tasks of delivering billions of dollars to support small businesses all over the country. Banks have also offered avenues to help individuals and businesses affected by the pandemic by deferring payments, waiving fees, and all sorts of modifications.

Mr. Griffith, how can Congress ensure that financial institutions continue to have the flexibility to meet their customers' needs during the pandemic?

Mr. GRIFFITH. Thank you for that question, Congressman. I think it goes to allowing the private sector to actually enter the—there was some discussion just a second ago, for instance, about Wal-Mart's efforts to provide banking services at its locations. And, of course, we have competing interests—some interests that do not want another competitor entering the marketplace. In this situation, if we want to actually reach more of those who are unbanked, it seems to make a lot of sense that there would be an institution with thousands of additional locations being able to access those individuals. That is one way.

Second of all, Congress can refuse to actually interject themselves in the systems that already are set up between merchants, between customers, and between other banks.

We saw several years ago caps that were placed on debit card transaction fees, for instance. I understand, once again, the intentions may have been good, to help consumers, but what did that result in? Well, that resulted in a giant shift of wealth from small retailers to big retailers. And, it also resulted in many consumers who are middle class and lower middle class no longer having access to free checking accounts, because every time they would swipe that card through, a lot of those fees would go to actually providing basic services, such as no-fee checking accounts. So, we actually hurt the very people we were intending to help.

Right now, the financial sector is innovating tremendous—just think about all of these new apps that we use to go back and forth with people, such as Venmo and PayPal. This is innovation that is occurring organically, on its own, because there is a desire on the part of businesses to meet the needs of consumers. Both sides win. The businesses, the providers make money, and the consumers win because it makes their lives easier and oftentimes less expensive.

The worst thing that we can do is to implement bad policy with the best of intentions because you end up hurting the people you are trying to help.

Mr. LUCAS. Mr. Griffith, the next one I want to bring up, many people might consider to be a paradox or something ironic. But you and I both know, in economics, there is a reason for everything. Everything. So, could you further discuss why, as COVID-19, the pandemic, has severely damaged the U.S. economy, the average American's credit score actually improved? Some would call that a paradox, but there is a reason. Can you discuss that for a moment?

Mr. GRIFFITH. Thank you, Congressman. Yes, we saw credit scores actually increase over the past year. That is for one big reason, which is that people ended up saving more of their money than they have at any time in our nation's history—the savings rate that briefly eclipsed at 25 percent of income. And that was in large part because most people, thankfully, were able to retain their jobs but unfortunately were not able to actually engage in the marketplace. And instead of spending the money, they actually paid down debt or saved or invested.

But, another piece of this was we saw a lot of transfer payments in the form of enhanced unemployment benefits that paid people more off the job than on the job. And, then, also stimulus checks that went to most Americans indiscriminately, thousands of dollars in stimulus checks. And this is another thing. It is tough with politics. It maybe makes for good politics to give people free money. The problem is, of course, that we borrowed from future generations to do that. And people acted responsibly in their own way with that free money, but they are actually going to be paying for it for many, many years to come. And that explains a big chunk of why we actually saw credit scores increase, and we also saw the amount of disposable income use and credit card debt actually shrink dramatically over the past year.

Mr. LUCAS. Are you telling me, Mr. Griffith, that nothing is ever free?

Mr. GRIFFITH. Nothing is ever free. In fact, we are already starting to pay for this. We see the uptick in inflation. We have seen economists on both the left and the right warn that this latest package that was passed could have very severe consequences in terms of our monetary system going forward.

We will pay for this one way or another, either through higher inflation or higher taxes, or other consequences. We are going to pay for it at some point.

Mr. LUCAS. With that, I yield back to my good friend from Colorado, the chairman.

Chairman PERLMUTTER. Thank you, Mr. Lucas.

Mr. Green, the gentleman from Texas, is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman, and my compliments to you for the outstanding job you are doing. But it is what I expected, so thank you very much.

I want to associate myself with the remarks of the Chair of the Full Committee. I enjoyed hearing her make comments about the small banks, the minority banks, and I completely agree with her, which is a good segue into H.R. 1669, Mr. James. This is a piece of legislation that Chairwoman Waters assigned to me, and I am proud that the legislation has been made a part of the package, the Rescue Plan, and it deals directly with small banks, minority-owned banks, MDIs.

I am sure, Mr. James, that you are familiar with President Vignaud, and Chair of the Board Lawal with Unity National Bank in Houston, Texas, which happens to be in my congressional district. Are you there, Mr. James?

Mr. JAMES. I am here. Yes, I am very familiar. Thank you.

Mr. GREEN. I can tell you that President Vignaud speaks highly of you. I am appreciative that you are part of this hearing today.

This bill would restart the State Small Business Credit Initiative (SSBCI) and it courts $10 billion in getting this credit initiative re-generated, and it is expected that this would stimulate up to $100 billion.

My concern is whether or not the intentionality that we had in mind when this bill was being crafted, and hopefully will pass, is going to actually be implemented. Because the thought was that Treasury would make sure that these funds, in implementing the program, would be moved through CDFIs and MDIs, and we would like to see that you and other small depository institutions would have the opportunity to receive these funds and to work with them to make sure they get to small businesses.

One of the reasons that I am so interested in seeing it work through this process is because you didn't get any PPP help, and I was one of the persons who pushed for PPP help for small banks. I thought that it could be done, but it wasn't, and I respect those who were not able to do what they probably wanted to do, as well, but couldn't get done. So, I have great respect for them and appreciate what they have done since that time.

So, the question to you is, do you think that Treasury should help us to get this money to the CDFIs and MDIs and then to the small businesses that can benefit from the program?

Mr. JAMES. Thank you for the question, Congressman Green, and thank you for your leadership. Just very quickly, Laurie Vignaud, President of Unity National Bank, and Kase Lawal, who is their chairman, are very active members of the NBA. Laurie is a great member of our board and we are happy to have her service and leadership.

Yes, to answer your question, we think it is very, very important that the Small Business Credit Initiative funds are at least in part directed towards CDFIs and MDIs that are really closest to these small businesses.

And, again, it is a very common-sense concept that you raise, Congressman Green, to make sure that the banks that are closest to the smallest businesses have access to a proven program to help them leverage funds to ensure that they can offer more credit to the businesses that need it the most. It makes an incredible amount of sense to marry CDFIs and MDIs that, again, have a mission to serve minority businesses, a mission to serve rural communities, low-income borrowers, to marry those mission-driven banks and institutions with a program like the SSBCI program that has the possibility of being leveraged up 10 times, as you so clearly articulated.

So, yes, we strongly support Treasury acting with intentionality to make sure that our institutions, our banks, as well as other CDFIs, have full access to the SSBCI program and are able to get those resources into the hands of small borrowers in low-income communities.

Mr. GREEN. My time is about up, so let me simply thank you and the other MDIs for the outstanding work that you do in communities that, if not for you, might not receive the kind of payment assistance that they get from other lending institutions.

And I, of course, will yield back the balance of my time. Thank you so much, Mr. Chairman.

Chairman PERLMUTTER. The gentleman from Texas yields back.

The gentleman from Georgia, Mr. Loudermilk, is now recognized for 5 minutes.

Mr. LOUDERMILK. Thank you, Mr. Chairman, and congratulations to you for your new position here. I have always enjoyed working with you, and I appreciate that you need me on this subcommittee, as well.

Chairman PERLMUTTER. To the panelists, I say, everybody is congratulating me because they never thought I would make it this far.

[laughter]

Mr. LOUDERMILK. Thank you, Mr. Chairman, and I have always enjoyed working with you.

But I must admit, I am disappointed to see legislation in this hearing to eliminate the OCC's True Lender Rule. This is something that we worked on very hard in the previous Congresses to get done. And, the rule provides clarity that is so critical and important for the bank-fintech partnerships, which have resulted in incredible advances in access to credit for consumers and businesses who have been unable to obtain a traditional bank loan. And it is odd that the Majority is opposing another fintech provision again, seeing that fintech companies have been by far the number-one source of PPP loans to minority-owned businesses.

The FDIC's new Chief Innovation Officer recently said that the best way of banking the underbanked is through technology. So, instead of opposing fintech, I believe we, in a bipartisan way, should be embracing it and seeing how we can use it more effectively to help small businesses and individuals, especially those that were underbanked.

On another topic, our country has a credit-based economy. That means it is essential for lenders to evaluate borrowers' ability to repay loans, and it is also essential for lenders to be able to collect debts. Otherwise, no rational lender would blindly extend credit that may never be paid back, which would further hurt those who need access to credit the most.

Mr. Griffith, as you know, removing important information from credit reports is a bad idea. Instead, Republicans, led by Ranking Member McHenry, have proposed legislation to make targeted reforms, such as removing paid medically-necessary debt from credit reports after one year. Could you comment on that proposal?

Mr. GRIFFITH. Thank you, Congressman. Thank you for your question.

And you are so right. When it comes to making reforms in the credit system, we have to keep in mind what those negative consequences, unintended consequences, might be. We know that lenders, banking institutions in particular, need to be able to make proper judgments when it comes to making risk assessments.

This option that you have talked about is certainly far more targeted in its approach because it does not just eliminate all collections from off the report; it focuses in on those which were incurred through no fault of the customer's own. They are usually medically-necessary procedures.

But, more importantly, it would only eliminate from that report those that have been fully repaid. I think that is an essential improvement over some of these other suggestions.

I think it is important to note, as well, that oftentimes when it comes to getting a loan, lenders actually do take those provisions into account already. Even if it shows up as a medical lien on the credit report, lenders do have the option to take that into consideration, especially when it has been repaid, and we see a number of people who have been able to secure financing, even with that on the report.

Mr. LOUDERMILK. Thank you. I grew up in a low- to middle-income family. My dad worked construction, and started his own business when I was in high school. And I remember, he was trying to expand the business. He had more work than he had employees or capital to actually expand his business. And he went to the bank and he came back—this was in the early 1980s—and I asked him if he got the loan, and he said, "No, I wasn't able to get the loan because, basically, you have to prove you don't need the loan to get a loan."

And, so, lenders are an intrinsic part of our economy, especially for those who don't have the resources. It is an equalizer, you might say, because if it wasn't for the lenders, only those that already had the resources would be able to conduct business.

So, what incentive would lenders have to make loans if they are unable to collect on those debts?

Mr. GRIFFITH. Yes. It's an important distinction that you have made between medically-necessary, paid debt and medical debt that has not been repaid. I think a lot of folks may not be familiar with how that process works. If you have an emergency medical procedure, if you have a need for that, a hospital is required to give you that procedure whether or not you have medical insurance and whether or not you are covered by any of the government programs. And they do that knowing that they can go ahead and collect later, and ultimately they can put that on your credit report, which is an encouragement for you to repay that loan.

And, it is an incentive for people to try to be responsible, to try to maintain health coverage. Because if you know that you can have any medical procedure that you need, and you might be billed for it but it is never going to show up on your credit report, that is an incentive for some to actually go ahead and just move that responsibility for their health onto those around them. Because it is not the hospital ultimately that is paying for that; it is everyone else in your community. So, I think that legislation is important to keep.

Mr. LOUDERMILK. Thank you. I yield back.

Chairman PERLMUTTER. The gentleman yields back.

The gentleman from California, Mr. Vargas, is recognized for 5 minutes.

Mr. VARGAS. Thank you very much, Mr. Chairman. And I want to add my congratulations to you, too. I have to say that you even seem taller.

Chairman PERLMUTTER. Let's not go there, please.

[laughter]

Mr. VARGAS. And, I have to say, my good friend from Oklahoma said that, in a sense, there is no free lunch, that we are borrowing from future generations. I have to say, it rings sometimes a little hollow to me when I did not hear the same speech when the Republicans did their tax giveaway of about $1.9 trillion to the wealthiest Americans. And we were going to do that again on the backs of future generations because that went right into the deficit and it is going right into the debt. I did not hear that same speech. It seems that speech only comes along when Democrats are in charge, so it always rings a little bit hollow to me. I hate to say that. But, that is the way it rings to me when you have the same issues, but there is a giveaway to the rich and no one says anything about that. And, then, when you try to help out people who are poor or struggling, they say, oh, that is going to come out of the future generations. I don't agree with that.

But anyway, in a normal economy when a borrower requests forbearance on a loan, it could be the sign of a borrower's inability to pay that loan, moving forward. However, as we know, this is the pandemic, so a lot of people have asked for forbearance. And one of the bills that I have is the Promoting Access to Credit for Homebuyers Act. It basically says that when you are doing this—my legislation would prevent Fannie Mae, Freddie Mac, and the FHA from treating mortgages differently, but solely on the basis of this forbearance because of the pandemic.

So, I would like to ask Ms. Ashley Harrington, would you further explain why any penalties that are imposed on borrowers for requests for forbearance could be detrimental to equal access to homeownership, especially when it comes to this issue now during the pandemic?

Ms. HARRINGTON. Absolutely. Homeownership, first of all, remains so out of reach still for so many people of color and, so, we need to be at this time protecting homeownership rates as much as possible and keeping people in their homes, both from the economic standpoint and from the public health standpoint. People being in their homes and being safe and having a safe place to go makes all of us safer and makes our economy better.

And, so, if we don't prevent these negative consequences from happening, what we may see down the road is a foreclosure crisis. And, what we are trying to avoid is that happening because that has impacts. That is very negative for not just the individuals involved and their families, but it can have a ripple effect on the communities around them. So, we want to be very careful to have as many protections in place as possible, and we need to be acting to have the private-backed mortgages mirror what is happening with the federally-backed mortgages, as well, so that all borrowers can have some of those protections.

Mr. VARGAS. Thank you. With respect to that then, what can Freddie, Fannie, and FHA do? What can they do to help to make sure that this does not happen?

Ms. HARRINGTON. Sorry. Still to me, right, sir?

Mr. VARGAS. Yes. So, what can we do to make sure that this does not happen? We are the Federal Government. What can we do to make sure we don't have all these defaults? When we had them before, obviously it was devastating for people of color, especially the African-American community and the Latino community. What can we do? How are we going to do things differently this time so we don't get it wrong like we did last time?

Ms. HARRINGTON. So, absolutely making sure that, one, we are doing the outreach and we are giving borrowers all of the options. We were really glad to see in the American Rescue Plan that is about to be signed, the $10 billion homeowner assistance fund. That is also going to be very helpful in keeping homeowners in their homes. We would love to see more of that type of support because that is going to be pivotal when so many folks are reporting that they are behind, that they are worried about how they are going to pay their next mortgage payment and all of these other things. Especially when we know that the low-income, low-wealth folks who do have homes are the ones who are disproportionately impacted by the job losses.

And there are many jobs that are not going to come back, and small businesses that are not going to come back. So, we need more, more, more relief and more support programs like that, and we need to make sure that the homeowner assistance fund is distributed equitably, and that will fall to Treasury. We need to be watching to make sure that happens.

Mr. VARGAS. Thank you. Lastly, if I could just sneak it in, I would like to ask Mr. James, I am very concerned about potential default risk for people of color and the small loans that they have needed to survive this pandemic. What can we do? What should we be doing more than what we are doing already?

Mr. JAMES. Very quickly, Congressman Vargas, thank you for the question. I think we should explore the creation of credit enhancements and opportunities for consumers to have some room for credit and to partner with the banks so that we can continue to extend credit to consumers who really desperately need to purchase groceries or pay rent. I think we can explore some ideas like that with your subcommittee. Thank you.

Mr. VARGAS. Thank you.

Chairman PERLMUTTER. The gentleman's time has expired.

The gentleman from Tennessee, Mr. Rose, is recognized for 5 minutes.

Mr. ROSE. Thank you, Chairman Perlmutter and Ranking Member Luetkemeyer for holding this hearing, and thanks to our witnesses for being with us today. And, Mr. Perlmutter, I will join everyone else in congratulating you on your chairmanship and I look forward to working with you on all that we do with this subcommittee.

Throughout the pandemic, we have seen financial institutions make unprecedented accommodations for their consumers. Several weeks ago, I was meeting with a group of bankers back home in the sixth district of Tennessee and they were detailing all of the ways that their institutions are helping their customers during the pandemic. And I think that this serves as yet another reminder that Federal intervention should not be the automatic answer, even in times of crisis.

I believe we need to be focused on economic recovery, and it is my concern that some of my colleagues on the other side of the aisle could be using the pandemic as an opportunity to restructure parts of our financial system by implementing long-time, progressive policies that they have advocated.

The HEROES Act put forward by House Democrats, which this committee discussed at length, went beyond provisions put forward in the CARES Act by suspending negative credit reporting during COVID-19, as well as any other future major disaster. I believe this has the potential to create barriers to accurate credit reporting.

Mr. Griffith, in your testimony and during your exchange with Mr. Lucas, you pointed out that during the pandemic, credit scores have actually been increasing, and that overall, the financial situation of most consumers is far less precarious now than during the financial crisis of 2008. Mr. Griffith, would you discuss how barriers to accurate and complete reporting would actually decrease the predictive power of credit files, as well as jeopardize the availability of low-cost credit for some consumers?

Mr. GRIFFITH. Thank you, Congressman, for your question. Without a doubt, if you impede the ability of lenders to actually have an accurate snapshot of the people to whom they are intending to lend, there are going to be a few consequences from that. Either they are going to have to deny individuals credit that they otherwise would lend to because those that may have been deemed a moderate credit risk, now they don't have a way of making that determination; or, they will have to increase interest rates on those that they are making a loan to, and in some cases, across-the-board to compensate themselves for that additional risk. You are forcing them to fly blind.

When you have a lender or any institution that is loaning out money, that is their capital that they are lending out and they need to have a reasonable assurance they can actually be repaid. When you blind them to the reality of whom they are lending to, you might be trying to help the borrower, but in effect you are hurting both the lender and the borrower.

And I think we need to be very careful, as well, when it comes to suspending these reporting requirements during this emergency or others. There are proposals now to suspend reporting on adverse sub-credit issues during national emergencies. Well, there are hundreds of active national emergencies in any given year and suspending reporting during any of those crises just by being able to say, I was impacted by this, that is going to have severe consequences for credit markets long term.

And, we really need to keep in mind that even those who are restarting their credit or are emerging from bankruptcy, have options, as well. We have a robust credit market. Those who are looking to get a vehicle or a home, even a year or two out of bankruptcy, have the option to do so.

So, we need to keep the focus on transparency and disclosure so that these lending companies can actually make risk-based, risk-informed decisions. It is a benefit to all of us.

Mr. ROSE. Thank you. I want to shift gears a little. Another provision put forward in the HEROES Act was a government takeover of the student loan industry. H.R. 6800 would direct the Treasury to make payments of up to 10,000 per student for private student loan borrowers.

I am a big proponent of career and technical education programs. And, back home, many of the students in my district make the decision to go into the trades, whether it be farming, welding, plumbing, or other necessary services. It concerns me that these taxpayers who did not avail themselves of a college education, but in fact got trade training, who choose not to go into debt for a 4-year degree, would be subsidizing, in effect, the education of others, when all of the data seems to show that college-educated employees earn more over a lifetime.

Mr. Griffith, in your view, in the little limited time I have left, is canceling student debt a good policy choice?

Mr. GRIFFITH. Canceling student loan debt is regressive, it is inequitable and it is ill-perceived. The progressive [inaudible] you are forcing them to pay for the education incurred by others. Really, this is a giveaway to the many levels of higher education administrators.

Mr. ROSE. Thank you. I yield back. Thank you, Mr. Chairman.

Chairman PERLMUTTER. Thank you, Mr. Rose.

I thought I saw Mr. Timmons. I was going to recognize him, but he seems to have gone to vote. Oh, Mr. Timmons, if you are ready, I will recognize you, and then I will close. It is up to you.

Mr. TIMMONS. Yes, sir, Mr. Chairman. Thank you. I really appreciate the opportunity to ask questions. Thank you for holding this hearing.

Chairman PERLMUTTER. The gentleman from South Carolina, Mr. Timmons, is recognized for 5 minutes.

Mr. TIMMONS. Thank you, Mr. Chairman.

Mr. Griffith, the Consumer Financial Protection Bureau (CFPB) worked on debt collection rules for nearly 7 years under the leadership of both Richard Cordray and Kathy Kraninger. The rules were finalized under Director Kraninger and have significant consumer protections, such as new call limits and strict compliance requirements around sending texts and emails.

Would consumers and industries benefit from consistency moving forward now that there are clear rules of the road?

Mr. GRIFFITH. Thank you, Representative Timmons. You raise a very important question. Under those provisions, if a banking institution wants to reach out to a customer, let's say during a time like we have seen this past year or two, and offer them alternatives to their existing loans, they actually cannot do so. It is a violation of law. They cannot reach out with those offers through the text messaging system.

And, really, this is one of the ways in which we want to help consumers. We can do this just by rolling back that regulation in and of itself. Banks, lending institutions, they want to help people avoid going into default and going into bankruptcy. This is a great way to make it easier for these institutions to reach out to those with whom they already have a pre-existing client relationship.

Mr. TIMMONS. Thank you. My wife gets so many texts and calls from people asking for campaign contributions. We probably need some call limits for that area of the law, as well.

On a more serious note, Mr. Griffith, how would you say the average consumer has fared during the pandemic?

Mr. GRIFFITH. Thank you again. That really varies, both by geographic area and the sector. Those who are in professions such as myself, a former lawyer, those who have those white collar types of jobs, overwhelmingly, they have been able to work from home even if their communities are shut down. But, if you are in the service sector, let's say if you worked at a theater or a restaurant or a bar, your life in many parts of the country has been severely, severely impacted, to the point of you not being able to go out and even earn a living. But, that also varies from State to State.

You have a number of cities and States that have reopened, where unemployment is now under 3 percent. In South Florida, if you visit there for a weekend, you will see the bars and the restaurants are absolutely packed. People who are in the service sector there are earning a solid living. And that stands in stark contrast to those in New York City or Chicago where, if you are in that service industry, you have been laid off in most cases for a very long time, and a lot of them are having to consider leaving and pursuing opportunities elsewhere. So, it really varies by sector and the State in which you are located. Reopened States are doing far, far better, and a number of them are actually in an economic boom.

Mr. TIMMONS. I have been saying ever since COVID first started that if the government is going to shut you down and not let you work, the government has an obligation to make you whole. And I just wish that we were targeting our economic relief to only people who have been adversely impacted by COVID, who have been put out of work. In many instances, hundreds of millions of dollars have been sent to people who have had no adverse economic impact, and I think that is a lesson that I hope we will learn going forward.

One more question, what are some of the patterns in consumer spending that have emerged during the pandemic?

Mr. GRIFFITH. Thank you. We have seen a lot of consumers focusing their spending on their homes themselves, because in parts of the country where people have not been able to go out and participate in the typical entertainment that they would have, going out to eat, going to a movie theater, or taking a vacation, they still have those resources. And consumers have chosen to really bolster their at-home spending and those possessions, or, in many cases, are actually paying down their debt or saving the money.

So, it is going to be very interesting to see, as more of the nation opens up over the next several months, where that burst of spending might be. And it really might be a lot of people making up for lost time, going out to eat more often and taking more vacations because they have been denied in many parts of the country that opportunity for a year now.

Mr. TIMMONS. Like most Americans, my wife and I experienced the cost savings of cooking at home. It really was incredible the amount of money we saved. And I am just happy that South Carolina is reopening and we are able to get back out and support the local economy. We need to open as quickly and as safely as possible. We have to get our kids back in school. That is the only way that we are going to overcome this pandemic. So, I appreciate you taking the time.

And Mr. Chairman, I appreciate you holding this hearing, and I look forward to working with you for many months to come. Thank you. I yield back.

Chairman PERLMUTTER. Mr. Timmons yields back.

Mr. Kustoff, if you are ready, I will recognize you for 5 minutes.

Mr. KUSTOFF. Thank you, Mr. Chairman. Thank you for convening today's hearing, and thank you for your leadership today. And I do want to thank all of the witnesses for appearing today, as well, virtually. Hopefully, we can get back to the time where we can do this live.

Mr. Griffith, I know you touched on this in your written testimony, but can you compare, if you could, the consumer circa 2008–2009 to the consumer now during the pandemic? Does one fare better than the other?

Mr. GRIFFITH. Sure. Thank you, Congressman. It is night and day, looking at the typical consumer now versus during the Great Recession, and this really shows up when you look at the delinquency rates.

When it comes to mortgage delinquencies, that is where it really shows up. We saw mortgage delinquencies just go up about .4 percent during this pandemic. It was a modest increase of still around 2.8 percent. During the Great Recession, during that financial crisis, we saw the default rate quadruple, and it was actually at a rate that is about 6 times the default rate that we see now.

And we have seen repeating patterns of that. If you look at just standard credit card default rates is low, the default rate during the Great Recession soared from about 4.6 percent to 6.8 percent on overall credit lines. And we are actually near a record low in delinquencies during this crisis.

And, the other big difference, too, is just the rapid pace of recovery. It took years to recover from the Great Recession nationally, and within 1 year, we see eight States that are actually bigger now economically than they were a year ago. So, it is very varied based on the reopening process. But definitely, night and day between now and 10 years ago for the typical consumer.

Mr. KUSTOFF. Thank you very much. And touching on some themes from today's hearing, as it relates to debt collection and debt collection services, if they are further restricted, can you talk about the impact, Mr. Griffith, as to small businesses, those that need those debt collection services? What is the impact to those small businesses?

Mr. GRIFFITH. Thank you. Many small businesses actually rely on debt collection agencies to collect bad debts, and often these are servicing those that do not have access or do not have access to competitive rates to traditional credit. Think about auto repair centers, for instance, a number of retailers, financial services, doctors' offices, landlords. All of these folks have the option to actually extend credit to their clientele, and they do that with the knowledge, with the comfort, that if that customer ends up not repaying, they can at least get some of those debts back by selling to a debt collector.

If you handicap the ability for debt collection in general, you might be trying to help those who are in dire financial situations, but what you are actually doing is you are impacting those small businesses. You are going to make it harder for them to extend that credit in the future. And, long term, it is going to make those who need credit the most even less likely to be able to obtain it from their local businessperson.

Mr. KUSTOFF. Thank you. Thank you very much. If I could, Mr. Griffith, also, as it relates to the landlord-tenant relationship with rental assistance and rent being deferred, talk about the impact—I am not talking about large apartment corporations. I am talking about these mom-and-pop apartment owners who have X number of units. What does it do to them in terms of their debt service and maybe property taxes?

Mr. GRIFFITH. Sure. Yes, that is a very important question for those who have just a few rental units. A lot of folks in retirement, they have saved up, and they have bought a duplex, maybe two duplexes, and the mortgage is mostly paid off, and they rely on that to supplement their Social Security. Over the past year, many of these individuals have not been able to collect any rent at all. And, like we referenced earlier, that is not necessarily because the people in the units cannot pay; it is that now there is an assurance that they cannot be evicted if those payments are not made. And that is a very real threat to them.

And for those smaller investors that look to investing in small pieces of real estate in order to have a secure retirement, this is going to give a lot of them pause for concern. Because now we have this precedent set where from Washington, D.C., even, there can be Executive Orders put in place, or even legislation, to suspend these moratoriums.

Evictions serve an important purpose. No one wants to be evicted. You do not want to see that happen to people, but it ensures that we have an adequate supply of affordable housing for millions of people because landlords know that if somebody does not hold up their end of the bargain, that they are going to have to move out. That is just the [inaudible] to the rule of law.

Mr. KUSTOFF. Thank you very much. I yield back my time. Thank you, Mr. Chairman.

Chairman PERLMUTTER. Thank you, Mr. Kustoff.

I don't see anybody else, so I guess I will recognize myself for 5 minutes to close, and maybe we will be done by noon.

So, I would like to start with a question for you, Ms. Sanchez-Adams. In your testimony, you stated that during this health and economic crisis, debt collection default judgments have risen and post-judgment collection activity has also intensified. You also noted that some debt collectors are seeing record profits during this period.

Is the court system more difficult to navigate for consumers at this time? And are debt collectors taking advantage of this situation?

Ms. SANCHEZ-ADAMS. Absolutely, and I will tell you a story. I had a client who was sued on a debt at the very height of the pandemic, at the end of March. She was not served until May. And, then, when she was served, she didn't know what to do, so she called the court and she told the court, "Hey, I have a lawsuit, a debt collection lawsuit. It looks like it is for a bank account and I don't owe any money to a bank."

They said, "Oh, you called the wrong court. You must be wanting the Justice of the Peace court," and they gave her that number.

She called them, and they said, “We have nothing here for you. I think you are mistaken. Call the other court.”

She called the other court. They said, “Well, there is no hearing date. Why don’t you call the attorney for the plaintiff and talk to the bank and talk to them?”

So, she called the attorney for the bank and said, “This is not my debt, I don’t owe this.” And they said, “Well, you are still going to have to pay, so I don’t know what to tell you.”

All this time, she didn’t know she was supposed to file an answer, but she keeps calling the court and asking them if there is a hearing date. Now, if the courts were not closed, she would have been able to go to the court and ask, and they would have been able to write down an answer for her, which is generally the case with our clients, or even refer her to us or someone else.

But, 6 months later, she got the referral to us. By that time, there had already been a default judgment, a motion for the default judgment entered, and they got a default judgment against her. Luckily, she was fortunate enough to have us to reopen that case. But, that is not the case for most consumers.

And, I also just wanted to comment, if I may, on the credit reporting aspect, because there were so many things that were said that were not truly accurate.

The first thing that I wanted to say is that everyone is saying if this information isn’t on the report, then it is not accurate, it doesn’t affect somebody’s credit risk or creditworthiness, and that just simply is not true. Things like medical debt are not accurate indicators of credit risk. That is something that is unplanned. It is something that usually is catastrophic. It is the same for events like this.

And, so, if you do put a moratorium on these kinds of debts that don’t really reflect on someone’s creditworthiness, you still have all of the past history there. If you do that for the pandemic, you still have the last 7 years’ worth of credit data to determine whether someone is a creditworthy risk or not.

And, I will just say, for example, when I was getting married, I lived in my apartment complex on my own. I qualified on my own. When my husband was going to move in, he made more money than I did, but he had no credit, so they forced us to get a cosigner. But there is no credit risk there because I was already there on my own, and adding a new person who had more income is not indicative of credit risk.

The other thing is that the industry is rife with inaccuracies as it is. As you know, the CFPB’s top complaint time and time again from consumers is credit report inaccuracies. And, you also see that there are no mandatory requirements for reporting, so actually, there is a lot of data that does exist but is not on there and is not truly reflective of the consumer.

So, I will just say that everything that was said on credit—taking this off and that showing, being detrimental, is absolutely untrue.

Chairman PERLMUTTER. Thank you for that testimony. I would like to turn to Ms. Shultz-Wilson and Mr. James, asking a question about small businesses.

The pandemic has been devastating to small businesses around the country, and particularly harmful to businesses led by people of color. What challenges are small businesses and nonprofits faced with during this crisis, especially for those in minority communities? And I will start with you, Ms. Shultz-Wilson.

Ms. SHULTZ-WILSON. Thank you so much for that question. I would say that the biggest challenge, not only for nonprofits and small businesses, is occupancy cost, and they are really struggling, trying to make ends meet. And many nonprofits, particularly the grass roots nonprofits, did not apply for PPP, primarily because they thought it was a loan and that it was not going to be forgiven.

And so, it is the case with a lot of minority small business owners, particularly those who are located in the minority communities. They were not clear that PPP was for them. They thought it was going to be a loan that was going to have to be repaid. And many of them still did not have access to banks that were willing to give them loans, and so they struggled. And nonprofits are continuing to struggle. Many of them have gone out of business. They have closed their doors because revenue is down, donations are down, and they don't have the necessary resources.

Chairman PERLMUTTER. Thank you. My time has expired. I have about a thousand questions and a few responses for you, Mr. Griffith, but I will yield now to the gentleman from New York, the former chairman of this subcommittee, and now the chairman of the House Foreign Affairs Committee, Mr. Meeks.

Mr. MEEKS. Thank you, Mr. Chairman. It is good to be with you in this very, very important hearing. I don't know if this is your first or second one, but I am proud to be on your subcommittee, for sure.

My first question goes to Robert James. Research has shown that minority banks and community development financial institutions play a significant role in extending financial services to underbanked communities. And because of their effectiveness in hard-to-serve communities, we must not lose sight of the hurdles that MDIs and CDFIs face.

Unfortunately, a recent study from August showed that there was a 41 percent drop in active Black-owned small businesses, compared to a 22 percent decline overall. And, on top of that, with the uncertainty that the pandemic brings, the number of MDIs is already declining, and the average assets are significantly less than traditional banks, so advancements and grant programs are crucial to saving MDIs and CDFIs.

Can you explain how additional capital investments into MDIs can ensure that hard-hit communities are not only protected through this pandemic, but also enjoy the benefits of our eventual economic recovery in an equitable way?

Mr. JAMES. Congressman Meeks, thank you for that question, and thank you for your continued leadership on these issues around MDIs and CDFIs and making sure that we have access to capital so that we can serve these communities where they have been underserved due to systemic inequity for decades.

As I mentioned in my earlier remarks, as you suggest, Tier 1 capital is really the lifeblood of any bank, any institution that makes loans and makes credit available to consumers or small businesses.

And, so, additional access to Tier 1 capital in MDIs and CDFIs is critical to us being able to scale up, to be able to extend our services to even more communities in need. Our institutions are at the very, very front line. And many institutions have been there for over a century, providing access to capital and credit, especially in the Black community.

And, so, additional funding for the CDFI fund, the Emergency Capital Investment Program that has just been rolled out from the Treasury Department, as well as continuing to encourage large financial institutions to make investments and provide grants to MDIs and CDFIs, we think will enable us to exponentially increase our impact in the communities and hopefully eliminate the racial wealth gap.

Because, as you know, eliminating the racial wealth gap would add $5 trillion to the economy in the next 5 years, if we could close that racial wealth gap. And, so, our institutions are laser-focused. The NBA is laser-focused on trying to eliminate the racial wealth gap. And we welcome the partnership with your office, as well as the subcommittee and the committee on solutions to get more Tier 1 capital to our banks so that we can work hard on eliminating this racial wealth gap for the benefit of not just these communities, but all Americans.

Mr. MEEKS. Thank you so very much.

Let me ask Ms. Harrington a quick question. The pandemic has had a monumental effect as far as a desperate impact on Black businesses in minority communities, and many of them have to make decisions on whether or not they are going to pay off their debt or pay to keep a roof over their heads. And the debt collectors continue to crack down on them, so it is imperative that we give them some help.

So, what would be the top three specific policy proposals the Federal regulators in the Biden-Harris Administration should prioritize to eradicate unfair debt collection practices?

Ms. HARRINGTON. Absolutely. Thank you for that question. And I think it is important to remember that, unlike some of the things we heard today, small business owners are the ones who are being dragged into court by debt collectors. The debt-collecting industry is actually booming right now when other industries are failing; it is booming and bringing in record profits.

So, what we can do is, one, we need to have a moratorium for the crisis to prevent these debt collections, prevent repossessions so that people can maintain and make it through.

We need to strengthen debt collection rules, strengthen the recent debt collection—the CFPB was definitely not strong enough. We could have stronger consumer protections for folks facing debt collectors. They should not be able to be harassed. Earlier, there was this conversation about whether they should be able to text folks.

Mr. MEEKS. Thank you very much. I yield back to the gentleman from Colorado.

Chairman PERLMUTTER. Thank you, Mr. Meeks.

Mr. Meeks is the last Member on our side to want to ask questions. Do you have anybody else on your side, Mr. Luetkemeyer?

Mr. LUETKEMEYER. Mr. Chairman, I think we are finished, as well. Thank you for a great hearing. And, again, congratulations. I look forward to working with you. All the best.

Chairman PERLMUTTER. Thank you.

So, thank you all, to the panel. You have been very professional witnesses, and we appreciate the testimony of everybody.

Your testimony today will help advance the important work of this subcommittee and of the United States Congress in protecting consumers during this pandemic.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

Again, thank you to the witnesses. It went pretty smoothly, even with all of the votes that were being taken. And, so, thank you very much for your testimony today. This hearing is adjourned.

[Whereupon, the hearing was adjourned at 12:06 p.m.]

APPENDIX

March 11, 2021

The Heritage Foundation

CONGRESSIONAL TESTIMONY

Testimony before the

Subcommittee on Consumer Protection and Financial Institutions

U.S. House of Representatives

March 11, 2021

Joel Griffith
Research Fellow in Financial Regulations
The Heritage Foundation

Thankyou Chairman Perlmutter, Ranking Member Luetkemeyer, and other members of the subcommittee for the opportunity to testify today. My name is Joel Griffith. I am a Research Fellow in Financial Regulations at The Heritage Foundation. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

This testimony will provide an overview of the economic conditions facing consumers in the wake of widespread shutdowns and restrictions imposed over the past year. This testimony will also briefly examine the counterproductive nature of some proposals offered ostensibly to benefit consumers.

Are American consumers "slipping through the cracks" throughout this pandemic? Without a doubt, many are still suffering from government-mandated closures and restrictions. Never before have state and local governments intentionally suppressed the supply of goods and services. Never before governments suppressed demand by prohibiting or severely restricting consumer activity. The historic plunge in economic output in the second quarter of 2020 of 33.1% annualized is a direct result of this government action.[1] Within months of these widespread shutdowns, more than 20 million jobs were lost. In April 2020, the U.S. unemployment rate reached 14.8 %, a full four points above the previous post-World War II high.[2] Hundreds of thousands of businesses closed forever, including more than 100,000 restaurants.[3]

The reopening of the economy spurred a robust recovery following this devastating

[1] The nation's economy in the second quarter of 2020 shrank at a 31.4% annualized rate. Personal consumption dropped at a 33.2% annualized rate. Consumption of personal services dropped 41.8% annualized. Table 1.1.1, Bureau of Economic Analysis,https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=2#reqid=19&step=2&isuri=1&1921=survey (accessed February 24, 2021). By the middle of 2020, the economy had contracted by 10.2% from its peak. Federal Reserve Bank of St. Louis, Series GDP, https://fred.stlouisfed.org/series/GDP (accessed February 24, 2021).

[2]Bureau of Labor Statistics, "Labor Force Statistics from the Current Population Survey," https://data.bls.gov/timeseries/LNS14000000 (accessed February 13, 2021).

[3] "Restaurant Industry in Free Fall; 10,000 Close in Three Months," National Restaurant Association, December 7, 2020, https://restaurant.org/news/pressroom/press-releases/restaurant-industry-in-free-fall-10000-close-in (accessed February 24, 2021).

contraction. Nationally, economic growth in last year's third quarter smashed all prior records — growing at a stunning 33.4% annual pace. [4] Record growth occurred even as government transfer payments and Paycheck Protection Program expenditures dropped by 20% in the quarter.[5] The strong recovery of the third quarter along with continued—albeit slower-- growth in the fourth quarter closed more than two-thirds of the drop in output. Gross domestic product finished only slightly below 2019 levels at the end of 2020. [6] However, much damage remains. Although the unemployment rate fell by more than half between April 200 and October 2020, ending the year at 6.7 %, [7] 9.9 million fewer individuals are employed now compared to one year ago.[8]

Financial Conditions for Most Consumers Show Marked Improvement

Delinquency data on rental homes, mortgages, revolving debt, and automobiles indicate that consumer financial health has not deteriorated broadly this past year. In fact, for many, the financial outlook improved. An increase in credit scores overall reflects this surprising reality.[9]

Consumer credit delinquencies are near historic lows. Over the past year, the delinquency rate on consumer loans plunged from 2.44 % in the first quarter of 2020 to 1.84% in the third quarter of 2020. In fact, these delinquency rates are the lowest in more than thirty years of Federal Reserve data. Contrast this with the Great Recession when delinquency rates soared from just under 3.5% at the end of 2007 to 4.85% in the midst of the recession. This was this highest in more than 30 years of Federal Reserve data. [10] Delinquency rate on credit card debt plunged from 2.68 % in Q1 of 2020 to 2.0% in Q3 of 2020, a generational low. By contrast, credit card delinquency soared from 4.6% to 6.77% during the Great Recession.[11] The 30-day auto delinquencies rates in Q3 2020 were actually lower than the year before, dropping from 2.25% to just 1.56%.[12]

Rental delinquencies do not appear to have substantially increased since the start of this extended period of COVID-19 shutdowns. The latest Census Bureau Household Pulse Survey tracking the impact of COVID-19 on financial health indicates that 21 % of renters failed to pay rent in December.[13] This is up only slightly from the 18 % in the month of March 2020—just as the impact from the pandemic began. [14] Data from the National Multifamily Housing Council, which tracks

[4] U.S. Bureau of Economic Analysis, National Economic Accounts, Table 1, January 28, 2021, https://www.bea.gov/sites/default/files/2021-01/gdp4q20_adv.xlsx (accessed February 16, 2021).
[5] U.S. Bureau of Economic Analysis, Effects of Selected Federal Pandemic Response Programs on Personal Income, https://www.bea.gov/sites/default/files/2020-10/effects-of-selected-federal-pandemic-response-programs-on-personal-income-2020q3-adv.xlsx (accessed February 16, 2021).
[6] Federal Reserve Bank of St. Louis, Series GDP, https://fred.stlouisfed.org/series/GDP (accessed February 13, 2021).
[7] Bureau of Labor Statistics, "Labor Force Statistics from the Current Population Survey."
[8] Federal Reserve Bank of St. Louis, Series PAYEMS, https://fred.stlouisfed.org/series/PAYEMS (accessed February 24, 2021).
[9] AnnaMaria Andriotis, "Coronavirus Tanked the Economy. Then Credit Scores Went Up," The Wall Street Journal, October 18, 2020, https://www.wsj.com/articles/coronavirus-tanked-the-economy-then-credit-scores-went-up-11603013402 (accessed March 9, 2021).
[10] Federal Reserve Bank of St. Louis, Series DRCLACBS, https://fred.stlouisfed.org/series/DRCLACBS (accessed March 9, 2021).
[11] Federal Reserve Bank of St. Louis, Series DRCCLACBS, https://fred.stlouisfed.org/series/DRCCLACBS (accessed March 9, 2021),
[12] "30- and 60-day delinquency rates improve in Q3 2020, as the automotive industry continues to rebound," Experian, https://www.experianplc.com/media/news/2020/30-and-60-day-delinquency-rates-improve-in-q3-2020-as-the-automotive-industry-continues-to-rebound/ (accessed March 10,2021).
[13] U.S. Census Bureau, "Week 22 Household Pulse Survey: January 6–January 18," January 27, 2021, https://www.census.gov/data/tables/2021/demo/hhp/hhp22.html (accessed February 13, 2021).
[14] U.S. Census Bureau, "Week 2 Household Pulse Survey: May 7–May 12," May 20, 2020, https://www.census.gov/data/tables/2020/demo/hhp/hhp2.html (accessed February 13, 2021).

more than 11 million professionally managed apartment units, likewise shows only a minimal deterioration in rental payments year over year.[15] In December, 93.8 % of units had made a rental payment by the end of the month. This was down just slightly from 95.9 % in December 2019, prior to the pandemic.

Mortgage delinquencies through the current crisis edged up only slightly from 2.38% to 2.79%. Contrast this to the Great Recession when mortgage delinquencies soared from 3.1% in Q4 of 2007 to 11.58% in Q1 of 2010.[16] The decline in delinquencies coincided with a surge in the savings rate last year. This reached an all-time high of 33.7% in April 2020. Savings rates soared as businesses closed their doors, leaving consumers with fewer options to spend their income. [17] In addition, the uncertainties posed by an economy reeling from the first ever widespread restrictions on basic social and commercial activity spurred households to retain more income as well in the form of savings. Also contributing to the rise in the savings rate over the past year were massive government transfer payments, including federal unemployment benefits which often exceeded income lost and multiple rounds of "stimulus" checks.

For those seeking credit, the credit markets continue to supply consumer and small business demand. Total consumer credit owned and securitized totaled $4.2 trillion in February 2020 before dipping slightly to $4.1 trillion in May 2020 as shutdowns reached their zenith. By January of 2021, consumer credit neared the all-time high of $4.2 trillion once again, down just 0.7 % from the pre-pandemic levels. This bottomed out in May 2020, just 3 months after the COVID-shutdown recession began February 2020).

Consumer credit is more widely available this recession than the Great Recession of 2007-2009. Total consumer credit owned and securitized did not bottom out until June 2010, 2 ½ years after the recession began.[18]
Although the number of subprime credit card accounts declined by 13.2% from Q3 of 2019 through Q3 of 2020, the number of subprime accounts is still 55% higher than just 5 years ago.[19] Another 18 million new subprime credit card accounts were opened in Q3 of 2020. Although this is down 22% from the year prior, this indicates continued credit availability.[20]

The elevated savings rate is reflected in the amount of credit card credit outstanding which plunged to under 4.5% of disposable income in Q2 of 2020, down from nearly 8% in the midst of the Great Recession more than 10 years ago.[21]

Overall, the financial situation of most consumers is far less precarious now than during the financial crisis. In fact, the data show many consumers are more financially secure now than before the pandemic began.[22]

---

[15]National Multifamily Housing Council, "NMHC Rent Payment Tracker," https://www.nmhc.org/research-insight/nmhc-rent-payment-tracker/ (accessed February 13, 2021).
[16] https://fred.stlouisfed.org/series/DRSFRMACBS (accessed March 9, 2021).
[17] Federal Reserve Bank of St. Louis, Series PSAVERT, https://fred.stlouisfed.org/series/PSAVERT (accessed March 9, 2021).
[18] Federal Reserve Bank of St. Louis, Series TOTALSL, https://fred.stlouisfed.org/series/TOTALSL (accessed March 9, 2021).
[19] American Bankers Association, Credit Card Market Monitor, February 2021, https://www.aba.com/-/media/documents/reports-and-surveys/2020-q3-credit-card-market-monitor.pdf?rev=614856cd60c3450f81f029d0d8585b17&hash=D2D878A05257E8FA459D002430CD2850 (accessed March 10, 2021).
[20] Ibid.
[21] Ibid.
[22] Small businesses likewise are being amply served by the credit markets. Most small businesses are saying they are generally not looking for more credit. Only 3% of respondents in a recent National Federation of Independent Business (NFIB) survey reported their borrowing needs were not satisfied. See William C. Dunkelberg and Holly Wade, NFIB Small Business Economic Trends, NFIB Research Center, December 2020, https://assets.nfib.com/nfibcom/SBET-Dec-2020.pdf (accessed February 23, 2021).

Positive National Data Contrasts Sharply with State Specific Data

This positive national financial data should be compared with state specific unemployment and economic output data. The economic misery from the shutdowns is concentrated geographically in those regions and sectors affected by continued onerous restrictions such as curfews, capacity limitations, onerous distancing guidelines, and full business closures.

The Federal Reserve State Coincident Indexes—an approximation of state GDP—vividly illustrates how variant the economic recovery is based on states. [23] This index suggests economic output at the end of 2020 was actually greater than pre-pandemic in Utah, Missouri, Idaho, Nebraska, Alaska, South Dakota, Mississippi, and Georgia—notably states without crushing, long-lasting shutdowns. The economies in Hawaii, Michigan, Rhode Island, Massachusetts all remain more than 10% smaller. Meanwhile, states like New York, Hawaii, and Illinois remain mired in severe recessions.

For instance, in El Centro, California, 17.7% are unemployed, Los Angeles suffers from 9.9% unemployment. Across New York City, draconian restrictions and an army of compliance officers continue to push tens of thousands of businesses out of business, resulting in 8.4% unemployment.[24]

Meanwhile, unemployment in numerous communities in Alabama, Idaho, Iowa, Nebraska, South Dakota, and Utah is at 3% or less. The statewide unemployment rate of under 4% in Alabama, Iowa, Kansas, Nebraska, South Dakota, Utah, and Vermont contrasts sharply with rates at least twice as high in California, Colorado, Connecticut, Hawaii, Illinois, Nevada, New York, and Rhode Island.[25] Overall, in December, the 10 states with the fewest restrictions in place[26] averaged 4.7 % unemployment—while the 10 states with the most restrictions averaged 7.1 % unemployment.[27]

Millions of those who do remain unemployed or financially underwater are not "slipping through the cracks" of our dynamic economy. Government authorities in select cities and states are pushing them off an economic cliff.

Enabling individuals and businesses to resume operations—as many states have already done—will yield full economic recovery. The historic economic rebound this summer proves that those properly informed of the actual risks of the virus and the appropriate mitigation measures are enthusiastically participating in this reopening.

Unfortunately, some are using the persistent economic troubles in parts of the nation to push through a wish-list of progressive policies which will stunt future economic growth and transfer more power to the federal government. This includes suspension of debt collection, creation of a government-run credit reporting bureau, suppression of credit reporting, and eviction moratoriums. Policy makers should consider the unintended consequences of these actions.

Denying Lenders the Ability to Enforce Contractual Obligations Harms Consumers

[23] Federal Reserve Bank of Philadelphia, State Coincident Indexes, https://www.philadelphiafed.org/-/media/frbp/assets/surveys-and-data/coincident/coincident-revised.xls (accessed February 16, 2021).
[24]U.S. Bureau of Labor Statistics, Unemployment Rates for Metropolitan Areas, preliminary for December 2020, https://www.bls.gov/web/metro/laummtrk.htm (accessed February 23, 2021).
[25] U.S. Bureau of Labor Statistics, Unemployment Rates for Metropolitan Areas, preliminary for December 2020, https://www.bls.gov/web/metro/laummtrk.htm (accessed February 23, 2021).
[26]Adam McCann, "States with the Fewest Coronavirus Restrictions," WalletHub, January 26, 2021, https://wallethub.com/edu/states-coronavirus-restrictions/73818 (accessed February 4, 2021).
[27]U.S. Department of Labor, Bureau of Labor Statistics, Local Area Unemployment Statistics Data Series, December 2020, https://www.bls.gov/web/laus/laumstrk.htm (accessed February 4, 2021).

Proposals to suspend capitalization of interest, debt collection, repossession, or penalties related to nonpayment of debt during the "COVID-19 emergency" will incentivize some to default on obligations. Lenders will be forced to pass these costs on to others through higher interest rates. In addition, lenders may choose to tighten credit standards in response to this increased risk of default. This penalizes responsible consumers through higher interest rates and fewer credit options. In addition, small businesses which often rely on debt collection agencies to manage their uncollectible receivables will also be financially harmed. Without any government mandate, financial institutions are proactively working with customers in many instances to defer payments, alter payment plans, or reduce interest rates.

A Government-Run Credit Reporting Bureau Poses Additional Risks

A government-run credit reporting program has been proposed as an alternative to compete with the private credit reporting agencies.[28] Government access to private consumer information would be a prerequisite of such a reporting program. Security concerns would also arise with one government agency potentially holding troves of personal data.

Even if private credit scores were still an option, requiring lenders to use this score when available could incentivize consumers to opt-in especially if this score were perceived as more favorable to borrowers. Over time, regulations could conceivably require private lenders to make determinations utilizing this government score when available.

Some government-subsidized lending programs could even require use of this score in determining a loan or award. Isolated islands of nonparticipation will be overwhelmed.

A government-operated credit reporting system would exist to benefit political constituencies rather than to primarily assist lenders in determining risk. Politicians would be tempted to tweak the system in an effort to allocate credit in a more politically expedient manner. Decisions over credit allocation would increasingly be made according to the whims of politicians.

Impeding the Ability to Provide Complete and Accurate Credit Reporting

Impeding the ability to provide complete and accurate credit reporting decreases the predictive value of consumer credit ratings. This also threatens to undermine the safety and soundness of our financial system. Additionally, this could shrink the number of low-cost credit options for consumers as lenders. As explained by the Congressional Research Service, "If lenders view credit reports and scores as unreliable due to premature removal of negative information, they could increase downpayment requirements across the board for all credit applicants or reduce loan amounts. In short, lenders who are uncertain about data reliability might adopt stricter underwriting and lending policies."[29]

Moratoriums on evictions

Those efforts represent an abdication of a core government responsibilities; namely, enforcement of private contracts and protection of private property. Forcing property owners to provide free housing is a subtle form of expropriation of private property without just compensation. Politicians may enjoy a short-

[28] Amy Traub, Establish a Public Credit Registry, Dēmos, March 2019, https://www.demos.org/sites/default/files/2019-03/Credit%20Report_Full.pdf (accessed March 9, 2021).
[29] Cheryl R. Cooper and Darryl E. Getter, CRS Report R44125, "Consumer Credit Reporting, Credit Bureaus, Credit Scoring, and Related Policy Issues," Congressional Research Service, January 22, 2020, p. 11, https://fas.org/sgp/crs/misc/R44125.pdf (accessed March 9, 2021).

term boost in popularity from such measures. However, the unintended consequences are extensive. Initially, the decrease in cash flow affects the landlord only. However, as this persists, delayed maintenance and upgrades ensue.

Some landlords may delay their own mortgage payments, negatively affecting the owners of those mortgages—banks, credit unions, investors, institutional shareholders, and even taxpayers. As landlords postpone property tax payments, local schools, fire departments, law enforcement, and parks experience a decline in funding. Landlords will increase rents to mitigate the heightened risk of future moratoriums and to recoup revenue already lost. Prospective renters may find themselves subject to increased security deposits and tighter credit checks. Ultimately, fewer affordable housing units may be constructed.

The eviction and moratorium processes serve as a safeguard to protect the private property rights essential to ensuring an ample supply of safe, affordable housing.

Conclusion

Families across parts of the nation face economic hardship as a result of the myriad of COVID-19 restrictions enacted by state and local governments. Resolution requires governors and mayors to permit people once again to freely create, work, shop, and engage.

Using the economic misery persistent across portions of the nation as an excuse to advance a wish-list extreme proposals—including expanded government control over the financial system, credit allocation, and contractual obligations--will suppress economic growth far into the future.

Congress should instead focus on better positioning the United States to lead in the years to come. The Heritage Foundation's Coronavirus Commission articulates specific measures Congress can take, including the following: partnering with key strategic allies in Western Europe and the Indo-Pacific, removing barriers to free trade while simultaneously protecting intellectual property rights, and transitioning the temporary waivers and emergency exceptions in numerous sectors into permanent regulatory reform.[30]

[30] *Saving Lives and Livelihoods; Recommendations for Recovery*, National Coronavirus Recovery Commission, a project of The Heritage Foundation, June 10, 2020, http://thf_media.s3.amazonaws.com/2020/NCRC_FINAL.pdf (accessed March 9, 2021).

****

The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2017, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2017 income came from the following sources:

Individuals 71%
Foundations 9%
Corporations 4%
Program revenue and other income 16%

The top five corporate givers provided The Heritage Foundation with 3.0 % of its 2017 income. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

Testimony of Ashley C. Harrington
Federal Advocacy Director and Senior Policy Counsel
Center for Responsible Lending

Before the House Financial Services Subcommittee on Consumer Protection and Financial Services

"Slipping Through the Cracks: Policy Options to Help America's Consumers During the Pandemic"

March 11, 2021

I. Introduction

Good morning, Chairman Perlmutter, Ranking Member Leutkemeyer, and members of the United States House Committee on Financial Services Subcommittee on Consumer Protection and Financial Services. Thank you for the opportunity to provide testimony today. My name is Ashley Harrington, and I am the Federal Advocacy Director and Senior Policy Counsel for the Center for Responsible Lending. CRL is a nonprofit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, one of the nation's largest nonprofit community development financial institutions. For 40 years, Self-Help has created asset-building opportunities for low-income individuals, rural communities, women, and families of color. In total, Self-Help has provided over $9 billion in financing to 172,000 homebuyers, small businesses, and nonprofit organizations and serves more than 160,000 mostly low-income families through 72 credit union branches in North Carolina, California, Florida, Illinois, South Carolina, Virginia, Washington, and Wisconsin.

The COVID-19 pandemic has shaken our nation and the world. As of this testimony, over 29 million people have been infected and more than 520,000 people have died in the United States over the course of one year.[1] COVID-19 is one of the greatest public health crises in modern history and has spurred unprecedented economic strain on American families.

In the United States, this crisis is bringing to light what many of us already knew: Blacks and Latinos are disproportionately suffering due to structural racism that has led to health disparities, lower incomes, stagnant wages, lack of savings, lower credit scores, unemployment rates, and a multitude of other issues affecting communities of color.[2] Congress has provided relief in the form of the CARES Act, the stimulus package passed in December, with more urgently needed support coming pursuant to the American Rescue Plan Act. But more will be needed to help families pay for housing, food, and other necessities during this unprecedented moment in our history and to ensure an equitable recovery. Further, tax-paying undocumented immigrants, many of whom are classified as essential workers, did not qualify to receive the first two stimulus checks and have not received financial assistance from the government to cover health care costs.

As we continue to navigate the deep economic turmoil exacerbated by COVID-19, we need actionable policy solutions that protect consumers and help preclude further disparities in economic recovery. This is a watershed moment. The policy choices made now will determine whether economic opportunity and financial stability are widely available to everyone. To that end, my testimony today will cover a robust set of policy recommendations to protect consumers and provide them with the relief necessary to ensure that they have a real chance for an equitable recovery following the post-COVID recession.

---

[1] The New York Times. Updated March 5, 2021. *Coronavirus in the U.S: Latest Map and Case Count.* Available at Coronavirus in the U.S.: Latest Map and Case Count - The New York Times (nytimes.com)

[2] Center for Responsible Lending, NAACP, National CAPACD, and UnidosUS, & The Leadership Conference on Civil and Human Rights. August 2020. Comments to the Consumer Financial Protection Bureau Notice of Proposed Rulemaking Debt Collection Practices (Regulation F). Available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-and-partners-commenttime-barred-debt-disclosures-4aug2020.pdf.

II. Ensuring Equity in Small Business Lending

A. Small Businesses of Color Entered the Pandemic Credit Starved

Business ownership is a proven mechanism for wealth-building, with economic benefits that extend beyond the individual business to the entire community. Unfortunately, there are profound disparities in how business owners fund their enterprises, with businesses of color having less access to loans from financial institutions. Research from the Federal Reserve found that in the previous five years, 46% of white-owned businesses with employees accessed credit from a bank, and 6% accessed credit from a credit union. During that same time, just 23% of Black-owned employer firms accessed credit from a bank, and 8% from a credit union and 32% of Latino-owned employer firms accessed credit from a bank and 4% from a credit union.[3] A recent study by the National Community Reinvestment Coalition found steep reductions in SBA 7(A) lending to Black businesses between 2008 and 2016.[4] That same study also found that Black and Hispanic testers when applying for loans were required to produce more documentation to support their loan application and received less information about fees, and less friendly service when visiting a small business lender.[5] Additional research found that business owners of color are more likely than white business owners to feel discouraged from seeking loans.[6] Research from the Federal Reserve also found that business owners of color were more likely to rely on personal funds and personal credit scores to finance their business. Twenty-eight percent of Black and Asian owners and 29% of Latino owners relied on personal funds as the primary funding source for their business, compared to 16% of white business owners. Black and Latino business owners were also more likely to use their personal credit scores when obtaining financing with 52% and 51% doing so, respectively, compared to 45% of white and 43% of Asian business owners.[7] In addition, in SBA's fiscal years ending September 30, 2019 and 2018, for all SBA 7(A) loans made, only 5% were made to Black-owned businesses, and only 9% were made to Hispanic-owned businesses.[8]

B. The Paycheck Protection Program was not implemented equitably

Lack of access to credit can be harmful in the normal course of business, but in the midst of a pandemic, lack of access can have disastrous consequences for microbusinesses, the owners, and employees who

---

[3] Small Business Credit Survey: Report on Employer Firms (2020).
[4] National Community Reinvestment Coalition. (2019). "Disinvestment, Discouragement and Inequity in Small Business Lending." Available at https://ncrc.org/wp-content/uploads/2019/09/NCRC-Small-Business-Research-FINAL.pdf.
[5] *Ibid.*
[6] *See* McManus, 2016. ("Research also finds that minority business owners are more likely to feel discouraged from seeking private loans. In a Census survey, only 16% of nonminorities felt discouraged from seeking a loan, while almost 30% of minorities felt the same way. These, in combination with other reasons, may be why minority business owners have a heavier reliance on personal finances.") (citing Christine Kymn, U.S. Small Business Administration, Office of Advocacy, Access to Capital for Women- and Minority-owned Businesses: Revisiting Key Variables, January 2014, https://www.sba.gov/sites/default/files/Issue%20Brief%203%20Access%20to%20Capital.pdf)
[7] Federal Reserve (2019) "Small Business Credit Survey: Report on Minority-Owned Firms." Available at https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/20191211-ced-minority-owned-firms-report.pdf.
[8] Small Business Administration, SBA Business Loan Approval Activity Comparisons for Fiscal Years 2012 to 2019, for the Period Ending 08-30-2019. Available at https://www.sba.gov/sites/default/files/aboutsbaarticle/WebsiteReport_asof_20190830.pdf.

depend on them for their livelihoods. The Paycheck Protection Program (PPP) is the most recent example of these disparities and is likely to be the largest taxpayer funded wealth transfer in the history of our nation as small businesses of color were mostly locked out of the initial funding of $350 billion. The design of the program, which relied on banks to originate the loans, unfairly put Black, Latino, and Native American business owners at a distinct disadvantage in attempting to access PPP funds when so many were already on precarious financial footing. Banks prioritized customers with whom they had an existing banking relationship; as noted above, Black businesses are less likely to access credit through a bank. Banks also tended to prioritize larger PPP loans to maximize fees, leaving out the smallest of small business from accessing relief.[9]

The effect of the crisis on small businesses is profound—in May 2020, more than half of small businesses said the crisis has had a large negative effect on their businesses and 74% of small businesses said they had a decrease in operating revenues in the prior week. These impacts were far worse for some hardest-hit sectors, including education, foodservice and accommodations, and recreation. A year into the crisis, businesses still hurt at the end of February 2021, over 73% of businesses reported moderate or large negative effects from the pandemic. [10]

The pandemic and economic downturn have had a particularly large impact on the smallest businesses and self-employed individuals. These businesses struggled to access PPP funds, especially during the critical first round. The majority of loans under $150,000 occurred in the 2nd round. Self-employed business owners, sole proprietors and independent contractors could not even apply during the first week of the first round of the program. Researchers also estimate that half of the jobs lost as a result of the delay in receiving PPP funding and the flawed PPP implementation were in firms with fewer than 10 employees and that if the program had been designed and implemented more effectively to reach the smallest firms, more jobs would have been saved more cost effectively.[11] Further, at the onset of COVID, job loss was greater for the self-employed than for small business employees. Just last week, SBA's Office of Advocacy issued a report noting that:

> The total number of people who were self-employed and working declined by 20.2 percent between April 2019 and April 2020. The Hispanic group experienced a higher decline, at 26.0

---

[9] For further discussion of the structural inequities in the PPP program, *see* Testimony of Ashley Harrington, Center for Responsible Lending, Before the U.S. House Committee on Small Business Regarding "*Paycheck Protection Program: Loan Forgiveness and Other Challenges*," (June 17, 2020), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-testimony-harrington-house-smallbusiness-17jun2020.pdf.

[10] "Small Business Pulse Survey – Multiple weeks" March 9th, 2021. https://portal.census.gov/pulse/data/#data. The survey target population was all nonfarm, single nonfarm, single-location employer businesses with between 1-499 employees and receipts of $1,000 or more in the 50 states, District of Columbia, and Puerto Rico. Some industries were excluded, a complete list is provided in the survey methodology available at https://portal.census.gov/pulse/data/#methodology. The Small Business Pulse Survey The Small Business Pulse Survey may be subject to non-response bias, as businesses that have closed due to COVID-19 may not be receiving the invitation to participate and unable to respond.

[11] Doniger, Cynthia L., and Benjamin Kay (2021). "Ten Days Late and Billions of Dollars Short: The Employment Effects of Delays in Paycheck Protection Program Financing," Finance and Economics Discussion Series 2021-003. Washington: Board of Governors of the Federal Reserve System, Available at https://doi.org/10.17016/FEDS.2021.003.

percent. The highest declines were experienced by the Asian and Black groups, with a decline of 37.1 percent for the Asian group and 37.6 percent for the Black group.[12]

Currently, the PPP is set to expire on March 31st while hundreds of thousands of small businesses have not yet been able to access full relief.

1. Ongoing failures to equitably serve the smallest businesses

In addition to other documented flaws in the PPP, microbusinesses – the vast majority of whom file their business income taxes on IRS Form 1040, Schedule C or Schedule F – have largely received little or no PPP relief, because SBA calculated PPP loan amounts as a percentage of Schedule C or Schedule F taxable "net profit." This means that their loan amount, which is based on their payroll, was calculated after the income they paid themselves was deducted. In December, Congress addressed this issue for Schedule F microbusinesses engaged in farming or ranching by requiring loan amounts to be calculated as a percentage of "gross income" instead of taxable "net profit." This simple change provides a much more realistic measurement of the relief promised under the CARES Act. Recognizing the inequity of making this change so late in the program, Congress appropriately applied it retroactively, allowing farming and ranching microbusinesses that had earlier received inadequate PPP funding to receive this much-needed support. However, no similar provisions were enacted for Schedule C filers.

In the CARES Act, Congress allocated funds to all small businesses, including sole proprietors, independent contractors, and self-employed individuals, and explicitly directed SBA to prioritize businesses owned by socially and economically disadvantaged individuals. The majority of small businesses in America are non-employer businesses (80.5%) and 17.4% have 20 or fewer employees.[13] Further, 95% of all Black-owned businesses and 91% of all Latino-owned businesses are non-employer firms.[14]

Following calls from over 100 organizations seeking equitable treatment for all microbusinesses,[15] last week SBA implemented this same simple change for Schedule C microbusinesses.[16] As a result, going forward, microbusinesses, sole proprietors, independent contractors, and self-employed individuals filing Schedule C forms will have the opportunity to receive meaningful PPP relief. Congress must act, otherwise, this change will not be applied retroactively, and tens of thousands of businesses will never have access to the relief they need. This will result in an even greater decline in microbusinesses and the employment they provide.

---

[12] Wilmoth, Daniel. March 2021. "The Effects of the COVID-19 Pandemic on Small Businesses." US Small Business Administration, March 2021. Available at https://cdn.advocacy.sba.gov/wp-content/uploads/2021/03/02112318/COVID-19-Impact-On-Small-Business.pdf.

[13] "2018 Small Business Profile." Small Business Administration Office of Advocacy, 2018. Available at https://www.sba.gov/sites/default/files/advocacy/2018-Small-Business-Profiles-US.pdf?fbclid=IwAR2mlIFIyWGX0RwJtDR6CDT21cpreCyXtS15N2XJgHNIJ7n8SVYKBcxfd7U.

[14] "Small Business Credit Survey: Report on Nonemployer Firms." Washington, DC: Board of Governors of the Federal Reserve System, 2019. https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/sbcs-nonemployer-firms-report-19.pdf.

[15] See: https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/coalition-letter-to-sba-treasuryreqs-for-sched-cfilers-feb2021_0.pdf

[16] See: https://www.sba.gov/sites/default/files/2021-03/SBA%20PPP%20IFR%20Loan%20Amount%20Calculation%20and%20Eligibility%20%283-3-21%29-508.pdf

Examples of the inequity of failing to provide this change retroactively abound:

- A Black woman-owned childcare microbusiness in North Carolina received only $2,750 in PPP funding for a first PPP loan under the old formula; she would be eligible for an additional $14,456 to support her business if this change were made retroactively.
- A teacher in Chicago who supplemented her income by working as an independent contractor for Lyft received a PPP loan of only $1,085 under the old formula; if this change is applied retroactively, she would instead be eligible for $6,336 in needed PPP support.
- A Latino-owned auto repair microbusiness in California with 1 employee (in addition to the owner) received only $4,680; under the new formula he would be eligible to receive $23,216 to support his business.

Perhaps most frustrating are the thousands of microbusinesses that have received a PPP loan under the old formula since the program was reopened in January of this year. Absent retroactive application of this change, microbusinesses that received their PPP loan in January or February will not receive this critical increase and will be that much less likely to survive. For example, an Asian American woman-owned childcare microbusiness in California received a PPP loan on February 1 for only $2,302; under the new formula, she would receive $14,659. Denying her – and all other microbusinesses in this same situation – the critical relief they need to survive is unacceptable.

It is critical that Congress keep the promise it made in the CARES Act to provide meaningful support to microbusinesses – especially those owned by socially and economically disadvantaged individuals – by codifying the Schedule C change and making it retroactive and ensuring that all microbusinesses receive their fair share of PPP relief. Schedule C filers should be eligible for an increase to their 1st Draw and 2nd Draw PPP loans using the same increase procedures in place for Schedule F filers. The program must also be extended through June 30 to ensure these businesses can actually access the relief.

2. Lack of data and transparency in small business lending

The PPP also highlighted the dearth of data on small business lending that has been a major obstacle for ensuring equity for decades. An analysis of the SBA's PPP data shows that over three-fourths of the 5.2M loans made in 2020 contained *no demographic information*. Just 9.5% reported proprietor race or ethnicity information, 16.2% reported proprietor gender, and 14.5% reported whether the proprietors were veterans.[17] By collecting such little information, the SBA made it nearly impossible to fully evaluate their own success in extending relief to vulnerable communities. Thus, utilization of other data and surveys, such as those discussed previously, was required to demonstrate that the delivery was clearly inequitable. The limited data masks the lack of equitable investment of taxpayer-supported funds and access to business capital for communities of color and those in rural markets. In fact, in addition to data collection being one of the much-needed improvements to the PPP program, robust data collection is also needed for existing laws enacted to incentivize community investment and job creation through access to business capital. Without publicly available data, it is difficult to prove or disprove, or adequately address, discrimination and inequities in small business lending. Ten years ago, Congress took steps to address this issue through Section 1071 of the Wall Street Reform and Consumer Protection Act, requiring the collection of key data elements, including demographic data, with respect to applications for small business loans. We are pleased that the CFPB is now moving forward

[17] CRL analysis of SBA PPP data.

implementing section 1071, having convened the SBREFA panel and released a proposed outline. It is essential that the CFPB press forward and complete this rulemaking by the middle of next year.

Beyond data collection and transparency, it is imperative that SBA, Treasury, CFPB and the prudential regulators establish, monitor, and enforce an affirmative duty to fairly serve all small business borrowers; and establish affordable small business lending goals for all credit providers. The prudential regulators should require banks covered by CRA to include a robust small business community reinvestment requirement that includes loans approved for small businesses and for business owners where the business credit runs through their personal credit profile. It is critical for equitable small business lending to be considered in CRA evaluations.

III. Helping Struggling Homeowners Stay in Their Homes

Families of color who are hardest hit by COVID-19 are the same families long denied equity in homeownership opportunities.[18] Indeed, there are statistically significant correlations between redlining and susceptibility to COVID-19.[19] The same low-income neighborhoods of color that were intentionally cut off from lending and investment today suffer from reduced wealth, greater poverty, lower life expectancy, and higher incidence of chronic disease that are risk factors for poor outcomes from the coronavirus.[20]

According to the Bureau of Labor Statistics, while the unemployment rate of whites, which peaked at 14% in April, has dropped to 5.6%, the reported unemployment rate of Blacks stands at 9.9% and actually increased in February, even while the economy added over 350,000 new jobs. And a recent report from the Center for Economic and Policy Research demonstrates that BLS' surveys systematically understate the unemployment rate for Blacks relative to whites.[21] Further, the unemployment rate captures only those who are still deemed to be within the labor force and thus misses the decline in workforce participation. That has been especially pronounced for Blacks women and Latinas: there are 9.9% fewer Black women and 8.6% fewer Latinas in the workforce today than at the start of the pandemic.

Not surprisingly given their employment situation, Black and brown families are struggling to make ends meet. The most recent Household Pulse Survey from the Bureau of the Census found that 44% of Blacks and 43% of Hispanics reported that they were finding it difficult to pay their usual household expenses, a rate more than 60% higher than for whites. Moreover, according to a CFPB report, as of December,

[18] *See* Alan Gomez, et al, '*An Unbelievable Chain of Oppression': America's History of Racism Was a Preexisting Condition for COVID-19*, USA Today, Oct. 12, 2020, https://www.usatoday.com/in-depth/news/nation/2020/10/12/coronavirus-deaths-reveal-systemic-racism-united-states/5770952002/; Andre M. Perry, Black Americans Were Forced Into 'Social Distancing' Long Before the Coronavirus, The Brookings Institution (March 20, 2020), https://www.brookings.edu/blog/the-avenue/2020/03/20/black-americans-were-forced-into-social-distancing-long-before-the-coronavirus/.
[19] Jason Richardson, Bruce C. Mitchell, Helen C.S. Meier, Emily Lynch, Jad Edlebi, *Redlining and Neighborhood Health*, NCRC, September 2020, https://ncrc.org/holc-health/.
[20] *Ibid.*
[21] Yixia Cai and Dean Baker (March 2021) *Masking Real Unemployment: The Overall and Racial Impact of Survey Non-Response on Measured Labor Market Outcomes*, Center for Economic and Policy Research, https://www.ineteconomics.org/research/research-papers/masking-real-unemployment-the-overall-and-racial-impact-of-survey-non-response-on-measured-labor-market-outcomes.

almost one in five Black homeowners and one in seven Hispanic homeowners reported being behind on their mortgage compared to only one in twenty white homeowners.[22]

Fortunately, the CARES Act – coupled with actions taken by FHA, FHFA and the GSEs, as well as many private lenders – have provided a lifeline to many struggling homeowners. Under the CARES Act, those with a federally-backed mortgage suffering a COVID-19 related hardship were granted the right to obtain up to 12months of forbearance on their mortgage payments. Many private lenders appear to have extended similar rights to borrowers whose mortgages are not federally backed. And in February, both FHA and FHFA announced that they would allow those who have obtained forbearance to extend forbearance by up to six additional months and that they would extend the CARES Act moratorium on foreclosures, which lasted only six months, through the end of June.

To date, 6.9 million borrowers – 13% of all borrowers – have obtained forbearance. Those in forbearance experienced significant drops in income; indeed, fully 85% received unemployment benefits. Over 60% of those who obtained forbearance have since exited forbearance, leaving 2.7 million borrowers in forbearance as of the end of January. Importantly, a much smaller share of FHA borrowers have been able to exit forbearance.

However, there is a significant number of borrowers who are struggling with their mortgage obligations. There are approximately 500,000 borrowers who are now at least three months past due who are not in forbearance. Many of these borrowers never obtained forbearance in the first place; others exited forbearance but have been unable to resume making their regular payments. Indeed, of those who have exited forbearance, more than one in ten have fallen behind on their mortgages and for FHA borrowers the number is closer to one in five. Moreover, whereas those who were able to exit forbearance last summer have low levels of delinquencies, among those exiting more recently the subsequent delinquency rates have been two to three times higher.

For those still in forbearance, the most significant question is what happens to them once their forbearance period ends. Fortunately, the mortgage market is in a much better position than it was entering the last crisis. The government agencies, led by FHA, as well as FHFA and the GSEs, acted quickly to develop post-forbearance policies to help affected borrowers. As a result, mortgage servicers have much better tools than during the Great Recession to help borrowers struggling to repay.

For federally-backed mortgages, borrowers can exit forbearance and simply resume their regular monthly payments and then repay the arrearages -- that is, the amounts that they would have paid but for the forbearance -- without interest, when they pay off the loan. And borrowers who are not able to resume their regular payments can receive a streamlined loan modification that reduces the monthly payments required. If the borrower needs more payment relief than the streamlined offer provides, they may be eligible for greater payment reduction if they provide income documentation.

In addition, servicer capacity is much greater than during the housing crisis, when few were set up to work with borrowers to obtain a modification. However, servicers may be sorely tested when forbearance comes to an end as upwards of two million borrowers may need assistance in a limited time frame, and execution by large organizations is always a challenge, particularly with something as

[22] CFPB, Housing Insecurity and the COVID-19 Pandemic (March 2021), Available at https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf.

complicated, and important, as a mortgage. Housing counselors have reported instances of borrowers not receiving correct information from servicers, and counselors' support will be essential.

Moreover, when forbearance ends there will be many borrowers – especially Black and brown families – who will need further relief if they are not to lose their homes. Even though many borrowers have equity in their houses today, positive equity alone does not prevent homeowners from losing their home to foreclosure; depending on the time period and associated home price appreciation, between 30% and 80% of foreclosed-upon homeowners had positive equity at the time of default.[23]

Foreclosure is costly to society and comes with significant negative after-effects for the household and their neighbors. The average foreclosure costs society between $51,000 (HUD) and $70,000 (U.S. Congress Joint Economic Committee) and is borne by the foreclosed-upon household, their neighbors, the lender, and local governments.[24] Foreclosed upon households are likely to move more frequently, less likely to own a home in the future, and some move to neighborhoods with lower incomes and school test scores and are more likely to get divorced.[25] Foreclosed-upon homeowners also suffer from negative physical health consequences resulting in increased incidences of unscheduled hospital visits[26] as well as a range of mental health issues, including depression, anxiety, alcohol use, and even suicide.[27] Unfortunately, foreclosure is also contagious. Studies show that foreclosure reduces the value of neighboring properties by nearly $15,000 and leads to an additional 0.5 foreclosures in the neighboring area.[28] Foreclosure alternatives (i.e., short sales and deed-in-lieu of foreclosure) and forced sales may be less costly to lenders, but the end result for the homeowner may be equally negative.

As a result, it is incumbent on policymakers at all levels to do everything in their power to reduce the number of needless foreclosures that occur. **Congress should extend the protections that FHFA and FHA provide to private loans, which comprise about 30 percent of the mortgage market**. While many servicers of private loans are voluntarily adopting GSE policies, and forbearance rates for private loans are higher than the market as a whole, some are not providing comparable assistance. In addition, the lack of standardization and specificity in forbearance and post-forbearance terms limits servicers in some cases from offering this relief.[29] Congress should not attempt to spell out these policies in detail in

---

[23] David Low, *Mortgage Default with Positive Equity,* Working Paper (2018), Andrew F. Haughwout and Ebiere Okah, *Below the Line: Estimates of Negative Equity Among Nonprime Mortgage Borrowers,* Economic Policy Review, Vol. 15, No. 1, pp. 32-43 (2009), and Anthony Pennington-Cross, *Subprime and Prime Mortgages – Loss Distributions*, FHFA Staff Working Papers 03-01, Federal Housing Finance Agency (2003).

[24] United States Department of Housing and Urban Development, *Economic Impact Analysis of the FHA Refinance Program for Borrowers in Negative Equity Positions* (2010) and U.S. Congress Joint Economic Committee, *Report of the Joint Economic Committee Congress of the United States on the 2007 Economic Report of the President Together With Minority Views,* U.S. Government Printing Office (2007).

[25] Rebecca Diamond, Adam Guren, and Rose Tan, *The Effects of Foreclosures on Homeowners, Tenants, and Landlords*, Working Paper (2020).

[26] Janet Currie and Erdal Tekin, *Is There a Link between Foreclosure and Health?*, American Economic Journal: Economic Policy, 7 (1): 63-94 (2015).

[27] Alexander C. Tsai, *Home Foreclosure, Health, and Mental Health: A Systematic Review of Individual, Aggregate, and Contextual Associations*." *PLoS ONE* 10(4): e0123182 (2015).

[28] Arpit Gupta, *Foreclosure Contagion and the Neighborhood Spillover Effects of Mortgage Defaults*, Journal of Finance *74*, 2249–2301 (2019).

[29] Urban Institute (2020), "Why it's Harder to Offer Mortgage Assistance to 3 Million Borrowers with Private Loans". Available at Why It's Harder to Offer Mortgage Assistance to 3 Million Borrowers with Private Loans | Urban Institute

legislation since government policies change as policymakers adjust as circumstances do and in accord with lessons learned.

Therefore, Congress should simply require private loans to adopt the foreclosure moratorium and forbearance policies offered by one of the GSEs or FHA, as well to mirror the federally-backed loans in providing a post-forbearance solution that does not increase borrowers' monthly payments. In addition, Congress should provide servicers of private-label securities a safe harbor from investor lawsuits when they follow these provisions.

Additionally, the $10 billion dollar Homeowner Assistance Fund is a critical component of the American Rescue Plan bill. It will help protect struggling homeowners and communities by preventing avoidable foreclosures, evictions, and utility shut offs. The Fund would provide a flexible source of federal aid to housing finance agencies to help people who have experienced COVID-19 hardships maintain their housing payments so they can stay in their homes. A critical lesson of the Great Recession is that the communities most impacted need aggressive, targeted, early intervention. **Once the Homeowner Assistance Fund is enacted, the Department of Treasury must ensure an equitable distribution of funding to ensure the families hardest hit by the COVID crisis – Black and brown families – are able to access relief.**

Consumer Financial Protection Bureau

First, if Congress doesn't enact the 120-day foreclosure pause, CFPB should require it using its RESPA authority. Second, if Congress doesn't require private loans to follow federally-backed requirements after forbearance, CFPB should prohibit servicers from requiring borrowers to repay their arrearages from COVID-related forbearance without first evaluating the borrower for all loss mitigation options the borrower is eligible for. Third, CFPB should facilitate servicers offering streamlined payment reduction modifications to borrowers who indicate that they cannot afford their previous monthly payments, as it did with its interim final rule on deferrals and partial claims, with appropriate consumer protections. Fourth, CFPB should supervise servicer conduct when transitioning borrowers out of forbearance and take appropriate action against servicers who revert to previous bad practices. Fifth, CFPB should continue its good work providing information to borrowers to explain their options in dealing with COVID-19 hardships, and in particular it should provide outreach to borrowers who are delinquent but not in forbearance. Finally, CFPB should help servicers in conducting effective communications with their borrowers by establishing best practices for servicer communications, including websites and emails.

Federal Housing Finance Agency

The modification provided by the GSEs, called the Flex Mod, is commendable. It is streamlined for borrowers 90 days or more delinquent, which reduces frictions and increases take-up rates, and provides substantial payment relief for borrowers with loan-to-value (LTV) ratios above 80%. When the Flex Mod was developed, the expectation was that if there were another crisis, it would look like the last one and housing values would fall, which would push up borrowers' LTVs over 80% and most would get this payment relief. However, the current crisis is accompanied by continued rapid house price appreciation in many communities, and so roughly 75 percent of GSE borrowers exiting forbearance will have LTVs **below** 80 percent.[30] As a result, the only modification step these borrowers are eligible for under the Flex Mod is extension of the mortgage term to 40 years. The GSEs target 20 percent reduction in principal and interest (P&I) payments, which equates to about a 14 percent reduction in the overall monthly payment. After receiving the term extension, some borrowers below 80% LTV will receive this level of payment relief, but some others will not, depending largely on how old the loan was. However, even if they receive this amount of payment relief, it will not be enough for many borrowers given the economic dislocations they face and they will lose their house to foreclosure, or in the best case, through a forced sale.

The GSEs should target a higher level of payment reduction with their Flex Mod, providing a 25% or 30% reduction in the P&I payments. For their below 80% LTV borrowers, the GSEs should reduce the interest rate as much as necessary to reach the target, although no lower than the market interest rate, or simply provide the market interest rate as they do with their above 80% LTV borrowers. The GSEs and wealthier borrowers benefit from current low mortgage rates, which is in significant part due to Federal Reserve purchases of their MBS, and these benefits should be shared with the GSEs' most distressed borrowers. The 20% P&I target for reductions should be compared with the FHA-HAMP target of a 20% reduction in the full monthly payment, which equates to a 31% reduction in P&I for the average borrower in forbearance with a Government-backed mortgage. Greater payment relief would also bring the Flex Mod payment reduction target closer to that offered by private modifications; those offered by Chase in the 2011-2014 period targeted a 30% P&I reduction.[31]

Second, the GSEs should provide streamlined refinances for low-wealth borrowers. Especially now, during the COVID-19 crisis and at a time of historic low interest rates, more borrowers should be able to benefit from the current refinance boom to save money on their mortgage payment. Unfortunately, the refinance surge is not reaching lower-income, lower-wealth, or Black and Hispanic families adequately, particularly borrowers with smaller loan balances.[32] Refinance activity for higher FICO borrowers accelerated significantly in 2020, boosting the average FICO score for GSE refinances to 775, well above credit scores for communities of color due to less family wealth.[33]

At a time that the Federal Reserve is purchasing $40 billion in agency mortgage-backed securities per month to help reduce the cost of buying or refinancing a home and to stimulate the economy, FHFA and the GSEs should ensure rate term refinances are more available, not more costly, for lower-income, Black, or Hispanic families who would benefit greatly from the savings on their mortgage payment. We urge the GSEs to create a streamline refinance program to ensure that affordable refinances are more accessible to borrowers, particularly borrowers of color. By doing so, the GSEs would be taking a positive step toward helping the Federal Reserve undo the disproportionate benefits of monetary policy that

[30] Black Knight (https://cdn.blackknightinc.com/wp-content/uploads/2020/10/BKI_MM_Aug2020_Report.pdf) indicates that 84% of homeowners with a GSE-backed mortgage have a current CLTV below 80%. After capitalizing arrearages, roughly 75% of homeowners with a GSE-backed mortgage have a current CLTV below 80%.
[31] Peter Ganong and Pascal Noel, *Liquidity Versus Wealth in Household Debt Obligations: Evidence from Housing Policy in the Great Recession*, American Economic Review, 110(10): 3100-3138 (2020).
[32] Sumit Agarwal, Souphala Chomsisengphet, Hua Kiefer, Leonard C. Kiefer, and Paolina C. Medina, *Inequality During the COVID-19 Pandemic: The Case of Savings from Mortgage Refinancing*, Working Paper (2020) and Kristopher Gerardi, Paul Willen, and David Hao Zhang, *Mortgage Prepayment, Race, and Monetary Policy*, Working Paper 20-7. Boston: Federal Reserve Bank of Boston (2020).
[33] Urban Institute, Housing Finance At a Glance: A Monthly Chartbook (February 2021), https://www.urban.org/sites/default/files/publication/103746/housing-finance-at-a-glance-a-monthly-chartbook-february-2021_0.pdf. See pages 17 and 23.

accrue to the wealthy. Moreover, the GSEs should not charge any LLPAs on a streamline refinance, as LLPAs were already paid at purchase.

Federal Housing Administration

FHA acted quickly as the economic effects of the pandemic began to be felt to create its COVID-19 home retention options. Its waterfall of post-forbearance options is significantly more streamlined than FHA's standard waterfall, and therefore can accommodate the hundreds of thousands of FHA borrowers all needing assistance in a compressed time frame to help them remain in their homes. HUD should be commended for its swift and effective action. However, given the stakes involved for FHA borrowers, their families' futures, and the neighborhoods in which they live, it is worth continuing to evaluate the FHA COVID waterfall to determine whether further improvements could provide greater payment relief to borrowers and permit more to qualify for modifications, while taking into account any effects on the MMIF.

IV. Protecting Student Borrowers

In the past decade, the higher education landscape has become significantly more perilous for student borrowers. When state legislatures began to tighten their belts in the wake of the Great Recession, investments in public colleges and universities began to decline.[34] In response, public colleges and universities raised tuition, and cut student services.[35] As states slashed budgets and schools raised the cost of a degree, families experienced massive wealth declines from a sinking economy.[36] With foreclosures, job loss, and downturns in the market fracturing family balance sheets, an entire generation of students needed to borrow more than ever before to attend college.

Historically, access to higher education has been dramatically unequal.[37] This pattern persists today as African American and Latino students struggle to fund their college experiences due to the effects of compounding wealth and educational inequities rooted in discrimination. Too often, these students are preyed upon by poor quality for-profit institutions that fail to provide reliable educational benefits.[38] As a result, students of color accumulate high levels of unsustainable debt.

The growth of outstanding student loan debt over the last decade has been staggering. Today, more than 44 million people carry over $1.7 trillion of outstanding student loan debt, an amount that exceeds

---

[34] Mitchell, M.; Leachman, M.; & Masterson, K. 2016. Funding Down, Tuition Up: State Cuts to Higher Education Threaten Quality and Affordability at Public Colleges. *Center on Budget and Policy Priorities*. Available at https://www.cbpp.org/sites/default/files/atoms/files/5-19-16sfp.pdf.
[35] *Ibid.*
[36] Center for Responsible Lending. August 2013. *2013 Update: The Spillover Effects of Foreclosures*. Available at https:// www.responsiblelending.org/sites/default/files/nodes/files/research-publication/2013-crl-research-update-foreclosurespillover-effects-final-aug-19-docx.pdf.
[37] Center for Responsible Lending, UnidosUS, the National Association for the Advancement of Colored People, the National Urban League, and the Leadership Conference Education Fund. September 2019. Quicksand: Borrowers of Color and the Student Debt Crisis. Available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-quicksand-student-debt-crisis-jul2019.pdf.
[38] McMillan Cottom, T. 2017. *Lower Ed: The Troubling Rise of For-Profit Colleges in the New Economy*. New York: The New Press.

all other types of non-mortgage loan debt.[39] In recent years, more than two out of three graduates borrow federal student loan debt to finance their education.[40] This phenomenon is especially concerning for communities of color, as the existing wealth gap makes the burden of student loan debt particularly heavy for African American and Latino communities.[41] While the student loan portfolio is primarily federal, the private student loan market is large and growing rapidly. The market now stands at almost $130 billion and has been growing quickly over the last five years after a decline after the Great Recession.[42] In 2015 – 2016, 5% of undergraduates utilized private education loans to fund their education, and most of this group did not maximize available federal aid. [43]

Private student loans are generally risky and inferior from a consumer protection standpoint compared to federal student loans. Private student loan borrowers are unable to access such options as guaranteed income-based repayment and loan forgiveness plans, assistance for getting out of default and discharges for disability or death. Since both federal and private student loans are much more difficult to discharge in bankruptcy than other kinds of debt, these protections are crucial.[44] Additionally, consumer protection advocates have identified troubling practices in private student loan servicing and origination, revealing that the industry is plagued by poor customer service, breaches of contract, and even possible violations of the law.[45]

In the worst cases, some institutions such as for-profit colleges, in cooperation with financial institutions, make harmful private loans to their students.[46] These loans deserve particular attention.[47] As indicated by CFPB lawsuits against Corinthian Colleges and ITT Tech, the private student loan programs created by for-profit colleges in concert with lenders and other third parties after the credit market constricted were often based on deception and other illegal practices.[48] These lawsuits allege that these for-profit institutions "lured tens of thousands of students into taking out private loans to cover expensive tuition costs by advertising bogus job prospects and career services [and] then used illegal debt collection tactics to strong-arm students into paying back those loans while still in school."[49] Similar programs may still be making loans with very high default rates.

---

[39] Board of Governors of the Federal Reserve System. January 2021. *Consumer Credit – G.19*. Available at https://www.federalreserve.gov/releases/g19/current/default.htm.
[40] Center for Responsible Lending et. al. September 2019.
[41] *Ibid.*
[42] Kaufman, B. 2020, April 30. "Private Student Loans: New Report Sheds Light on the Need for Borrower Protection in an Opaque $130 Billion Market." *Student Borrower Protection Center*. Available at https://protectborrowers.org/130-billion-psl-market/.
[43] The Institute for College Access & Success. April 2019. *Private Student Loans: Facts and Trends*. Available at https://ticas.org/wp-content/uploads/2019/08/pl_facts_trends.pdf.
[44] The Institute for College Access & Success April 2019.
[45] Consumer Financial Protection Bureau. 2015, June 18. *CFPB Finds 90 Percent of Private Student Loan Borrowers Who Applied for Co-Signer Release Were Rejected*. Available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-90-percent-of-private-student-loan-borrowers-who-applied-for-co-signer-release-were-rejected/.
[46] Student Borrower Protection Center. July 2020. *Shadow Student Debt*. Available at https://protectborrowers.org/wp-content/uploads/2020/12/Shadow-Student-Debt.pdf.
[47] Student Borrower Protection Center July 2020.
[48] Consumer Financial Protection Bureau. 2015, October 28. *CFPB Wins Default Judgment Against Corinthian Colleges for Engaging in a Predatory Lending Scheme*. Available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-wins-default-judgment-against-corinthian-colleges-for-engaging-in-a-predatory-lending-scheme/.
[49] *Ibid.*

Congress instructed the Consumer Financial Protection Bureau to pay special attention to private loans precisely because they have a problematic history of causing long-term financial distress to borrowers. Furthermore, private student loans lack the public reporting requirements that other consumer products often have, making oversight even more crucial.[50] In the early 2000s, private student loans followed a path similar to mortgage lending, and loans were made using questionable underwriting, trapping borrowers in unaffordable debt. Securitization led to mushrooming growth of questionably underwritten, variable- and high-interest-rate loans, which suffered high default rates after the economy crashed. Many borrowers today suffer from the loans made before the market corrected.

A. Loan servicers are not helping borrowers manage their student debt

It has long been clear that student loan servicers have consistently failed to fulfill their obligations, engaging in a variety of abusive practices that have long-term negative consequences for borrowers.[51] Audits and borrower complaints have shown that servicers are failing to fulfill these obligations consistently, resulting in long-term negative consequences for borrowers who usually do not have a choice in who is servicing their loans.[52] Indeed, from the time the Consumer Financial Protection Bureau (CFPB) began taking complaints about student lending in late 2011 until February 2017, there were tens of thousands of complaints about loan servicers.[53] Other federal agencies have reported on poor servicing practices as well. An audit conducted by the US Office of the Inspector General found that, from 2015 – 2017, Federal Student Aid rarely enforced servicer compliance with their contracts and did not follow policy when evaluating servicer performance.[54] The failure of servicers to do their job contributes to the growing debt burden as their practices result in unnecessarily longer and larger debt loads.

Recently, concerns have also been raised that servicers are providing access to affordable income-driven repayment in an unequal way, with a disproportionate impact by race and sex.[55] Borrowers of color are also more likely than their white peers to experience servicer misrepresentation.[56] First, historical

---

[50] Kaufman 2020.

[51] Center for Responsible Lending. September 2019. *Testimony of Ashley C. Harrington Before the United States House Committee on Financial Services: A $1.5 Trillion Crisis: Protecting Student Borrowers and Holding Student Loan Servicers Accountable*. Available at https://financialservices.house.gov/uploadedfiles/hhrg-116-ba00-wstate-harringtona-20190910.pdf.

[52] Consumer Financial Protection Bureau. 2017, April 25. CFPB Monthly Snapshot Spotlights Student Loan Complaints. Available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-monthly-snapshot-spotlights-student-loan-complaints/.

[53] *Ibid.*

[54] U.S. Department of Education Office of the Inspector General. 2019, February 12. *Federal Student Aid: Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements for Servicing Federally Held Student Loans* (ED-OIG/A05Q0008). Available at https://www2.ed.gov/about/offices/list/oig/auditreports/fy2019/a05q0008.pdf.

[55] Center for Responsible Lending, Student Borrower Protection Center, Lawyers' Committee for Civil Rights Under Law, National Association for the Advancement of Colored People, Southeast Asia Resource Action Center, Leadership Conference on Civil & Human Rights, & UnidosUS. 2019, June 3. *Letter to Director Kraninger*. Available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-cfpb-civilrights-jun2019.pdf.

[56] Douglas-Gabriel, D. 2017, April 14. "Government watchdog investigating discrimination in student loan servicing." *The Washington Post*. Available at https://www.washingtonpost.com/news/grade-point/wp/2017/04/14/government-watchdog-investigating-discrimination-in-student-loan-servicing/.

practices preventing inter-generational wealth building mean that borrowers of color graduate with more student loan debt.[57] Second, the over-representation of students of color in the student bodies of predatory, for-profit schools and ongoing workplace discrimination mean that borrowers of color are more likely to struggle with repayment of those loans.[58] Servicer misrepresentations increase the costs of those loans and erect yet another barrier to wealth building, perpetuating the cycle.

Servicing failures and abuses have continued during the current pandemic and extend to both private and federal loans. The CFPB recently noted numerous instances of servicers providing inaccurate information, misallocating payments, and generally failed to respond to their customers.[59] Protections and relief programs for private student loan borrowers have also been sparse and inadequate.

Unfair and substandard servicing practices also open the door to scammers purporting to advise borrowers about their options and mislead them into thinking they need to pay large upfront fees to enroll in free income-driven repayment plans or to consolidate their loans. State attorneys general and the CFPB have sued fraudsters taking advantage of borrowers – but the practice will continue to flourish as long as student loan servicers fail to adequately communicate with and assist borrowers.[60] This is a particular concern during the current pandemic and Congress rightfully took steps to address this last year, but strong oversight and enforcement is still crucial to ensuring student borrowers aren't preyed upon. As long as the Department of Education relies on private financial services companies to handle borrowers' student loan accounts, the regulation of these companies' practices will fall to the Financial Services Committee and legislation protecting student borrowers will be essential.

B. Other forms of risky private education debt are emerging

While about 90% of student loan debt is held by the federal government, the reliance on debt to finance higher education has attracted private investors and new private debt models continue to emerge. One prominent effort to enter the student loan space is income-share agreements (ISAs), which have emerged recently as a private alternative to federal student loans. An ISA is an arrangement between a student and a school in which the school provides education to the student at no upfront cost; in exchange, the student agrees to pay back a percentage of their post-graduate income. This model has the benefit of tying future payments to income, though federal loans offer income-driven repayment plans to do the same.

[57] Center for Responsible Lending. September 2019. *Testimony of Ashley C. Harrington Before the United States House Committee on Financial Services: A $1.5 Trillion Crisis: Protecting Student Borrowers and Holding Student Loan Servicers Accountable*. Available at https://financialservices.house.gov/uploadedfiles/hhrg-116-ba00-wstate-harringtona-20190910.pdf.

[58] McMillan Cottom, T. 2017. *Lower Ed: The Troubling Rise of For-Profit Colleges in the New Economy*. New York: The New Press.

[59] Consumer Financial Protection Bureau. October 2020. *Annual Report of the CFPB Private Education Loan Ombudsman*. Available at https://files.consumerfinance.gov/f/documents/cfpb_annual-report_private-education-loan-ombudsman_2020.pdf.

[60] Consumer Financial Protection Bureau. October 2019. *Annual Report of the CFPB Private Education Loan Ombudsman*. Available at https://files.consumerfinance.gov/f/documents/cfpb_annual-report_private-education-loan-ombudsman_2019.pdf.

ISAs pose many significant risks to consumers[61] and ISA providers have been accused of a wide-range of abuses.[62] First and foremost, ISA providers insist that ISAs are not loans and shy away from using terms such as "principal" and "interest" and market their products as "not loans or alternatives to student loans" intentionally to appeal to borrowers and to steer state and federal regulators away from regulating ISAs as a consumer financial product.[63] This is incorrect as a matter of law.[64] Rather, it is a classic tactic to evade consumer protection laws. ISAs are loans and should be regulated as such and subject to CFPB oversight and basic consumer protection laws such as the Truth in Lending Act, Fair Debt and Credit Protection Act, Equal Credit Opportunity Act (ECOA), Military Lending Act, and Servicemember Civil Relief Act. Furthermore, the algorithms by which ISA providers and other fintech private student lenders determine the amount the borrower will pay back can often be skewed based on factors such as college major and earning potential. Baked into this pricing model is discrimination against students in certain majors. Inherent in the repayment model of ISAs is the need to predict the future value of the borrower, opening the door to ECOA violations, specifically, regarding the treatment of protected classes.

Additionally, because ISAs providers claim their product is not a loan it makes it hard for borrowers to shop for the best product since ISA providers do not use Annual Percentage Rate (APR) calculations, a tool traditionally used by borrowers to cross compare financing products. As such, borrowers may not realize the high price tag or burden of turning over a share of their future income when they sign up for an ISA. It is also unclear how affordable payments will be or how defaults will be handled, and, unlike conventional student loans (private or federal) where early repayment saves costs, borrowers sometimes have to pay extra to get out from under their ISA agreement early.

ISA products are consistently marketed as innovative and accessible bridging the gap to financial services for low-income people and communities of color. However, they are not providing a novel product and ISAs have the potential to create economic conditions that outweigh the benefit of access. Recently, an ISA provider, MentorWorks, obtained certification from the CDFI fund. This certification is troubling for numerous reasons, as it represents another effort to expand this industry and brings to light serious concerns about the CDFI certification process.

As we navigate the ongoing pandemic, it is vital that we expand protections and relief for all student borrowers. While the CARES Act and executive actions have provided for the suspension and interest waiver on federally-owned student loans and halted all involuntary collections on these loans, millions of borrowers are still struggling without relief. These provisions only apply to Department of Education-held loans, excluding 1.9 million Perkins Loan borrowers, 5.98 million commercially held FFEL borrowers,

---

[61] Barkley-Denney, W. & Corona, C. November 2020. *System Reboot: Challenges & Opportunities at the State Level for Higher Education During COVID-19 & Beyond*. Available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-student-loan-edu-covid-nov2020.pdf.

[62] See, e.g., National Consumer Law Center and Student Borrower Protection Center, *In re: Vemo Education, Inc.* (2020), available at https://www.nclc.org/media-center/advocates-file-complaint-with-ftc-urge-enforcement-action-against-vemo-education-for-its-deceptive-marketing-of-income-share-agreements-to-students.html.

[63] Mishory, J. 2020, August 7. "ISA Industry Relies on Age-Old Strategy to Ignore Existing Regulations." *The Century Foundation*. Available at https://tcf.org/content/commentary/isa-industry-relies-age-old-strategy-ignore-existing-regulations/?agreed=1.

[64] Pearl, Joanna and Shearer, Brian, *Credit By Any Other Name: How Federal Consumer Financial Law Governs Income Share Agreements* (2020), available at https://protectborrowers.org/credit-by-any-other-name-how-federal-consumer-financial-law-governs-income-share-agreements/.

1.22 million guaranty agency-held FFEL borrowers, and all private student loan borrowers.[65] To date, no federal support has been provided for these borrowers even as the lenders themselves take part in numerous federal relief programs. There is no reason for this disparity – in fact, the same borrower may have some loans that are covered, and some that are not, leading to confusion and possible disruptions in payment. At minimum, payment suspension should be extended to these borrowers. Further, while stronger servicing standards and oversight are essential, true relief must begin with broad-based cancellation for all student loan borrowers.[66]

V. Protecting Consumers from Predatory Small Dollar Loans

A. High-Cost Lending During COVID-19

Payday and car title lenders market their products as quick, easy and short-term under the guise of "access to credit." But in reality, they operate a debt-trap business model. They make loans at triple-digit rates due in full on the next payday, which borrowers typically cannot afford to repay. Instead, lenders flip the borrower into a new loan and charge the same high rates again, effectively to extend the repayment date by another two weeks. According to the CFPB, more than 75% of fees generated are by people stuck in more than 10 loans a year. Payday and car title lenders also make high-cost installment loans, which can set larger and longer debt traps. These lenders succeed not when borrowers repay loans as designed -- but when they fail.

Payday and car title loans charge on average **triple-digit** interest rates, with an average of 300-400% APR (see *Appendix A)* stripping approximately $8 billion dollars in fees from consumers.[67] Additional research reveals additional harms caused by their deb traps such as overdrawn bank accounts, bank account closures, bankruptcy and in the latest available research - payday lending can lead to poorer health outcomes, including drug overdoses and suicide.[68] With car title loans, borrowers must own their car free and clear in order to get the loan. Then, CFPB found, one in five borrowers have their car repossessed, often taking away their only way to get to work. Many of these harms are felt by consumers who are low-income and/or people of color.

---

[65] Center for Responsible Lending. 2020, April 9. *Student Debt Cancellation is Essential to Economic Recovery from COVID-19.* Available at https://www.responsiblelending.org/research-publication/student-debt-cancellation-essential-economic-recovery-covid-19.

[66] Center for Responsible Lending & the Student Loan Borrower Assistance Project of the National Consumer Law Center. November 2020. *Road to Relief: Supporting the Federal Student Loan Borrowers During the COVID-19 Crisis and Beyond.* Available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/nclc-crl-road-to-relief-23nov2020.pdf.

[67] Standaert, D., Davis, D. and Rios, C. April 2019. "Payday and Car-Title Lenders Drain Nearly $8 Billion in Fees Every Year." Available at https://www.responsiblelending.org/research-publication/payday-and-car-title-lenders-drain-8-billion-fees-every-year

[68] Jaeyoon Lee, Credit Access and Household Welfare: Evidence from Payday Lending (SSRN Working Paper, 2017); Elizabeth Sweet et al., Short-term lending: Payday loans as risk factors for anxiety, inflammation and poor health, 5 SSM—Population Health, 114–121 (2018), https://doi.org/10.1016/j.ssmph.2018.05.009; Jerzy Eisenberg-Guyot et al., From Payday Loans To Pawnshops: Fringe Banking, The Unbanked, And Health, 37(3) Health Aff. 429 (2018).

Black Americans are three times as likely as white Americans to have had a payday loan.[69] Hispanic Americans are twice as likely as non-Hispanic whites.[70] While this is in part the result of centuries of systemic racism, it is also because payday lenders target Black and brown communities, and the disparities hold even when controlling for income: Payday lenders are more likely to locate in more affluent Black and brown communities than in less affluent white communities.[71] Protecting payday and car title loan borrowers during the pandemic should be a priority to avoid further immediate and longer-term harms to these communities.

Unfortunately, during COVID-19, the fundamental predatory business model of payday and car title lenders remains unchanged. In fact, during the COVID-19 crisis payday lenders have attempted to position themselves as a trustworthy lender through their advertising. One lender states on their homepage, *"As we go through these uncertain times, you can remain certain that we will be here for you"*, while also carrying over 200% APR on a $500, two-week loan [Advance America]. A car title lender in another state coupled a blog post on handwashing and precautions during COVID-19 with an encouragement for readers to take out a car title loan if they live paycheck to paycheck and need help "*infusing their income*". [Texas Car Title and Payday Loan Services] (see *Appendix B*).

While there is evidence that payday originations have decreased during the pandemic[72], there is also evidence suggesting that the market is rebounding. Some lenders are reporting increased originations in their latest public filings and according to a report from Gusto, a payroll company for small businesses, three times as many employees reported using a payday loan since the start of the pandemic than had reported doing so beforehand.[73] For these and other consumers who have used these loans, there has been no reduction on the interest rates or fees of these loans since the start of the pandemic, or changes to the fundamental business model, and thus, the economic harms still are very present for these consumers. According to the CFPB complaint database from March 7, 2020 to March 7, 2021 (roughly 1 year of the pandemic), the top complaint related to payday lending was related to being unexpectedly charged fees or interest, followed by struggling to pay the loan.[74] These top two

[69] The Pew Charitable Trust. July 2012. "Payday Lending in America: Who Borrows, Where they Borrow, and Why." Available at Payday Lending in America: Who Borrows, Where They Borrow, and Why (pewtrusts.org)
[70] Ibid.
[71] Davis, D. and Stifler, L. August 2018. "Power Steering: Payday Lenders Targeting Vulnerable Michigan Communities." Available at Power Steering: Payday Lenders Targeting Vulnerable Michigan Communities | Center for Responsible Lending; David, D. and Coleman, B. March 2016. " Perfect Storm: Payday Lenders Harm Florida Consumers Despite State Law." Available at Microsoft Word - crl_perfect_storm_florida_mar2016.doc (responsiblelending.org); Alabama Appleseed Center for Law and Justice and Alabama Arise. 2019. *Broke: How Payday Lenders Crush Alabama Communities.* Available at Broke: How payday lenders crush Alabama communities – Alabama Appleseed
[72] Veritec Solutions, LLC. July 2020. "COVID-19 Impact Study On Small Dollar Lending." Available at Veritec_COVID_study_rev (veritecs.com)
[73] Pardue, L. January 2021. *The COVID Pandemic is Pushing Small Business Workers Deeper into Debt – Here's How To Help Change that.* Available at The COVID Pandemic is Pushing Small Business Workers Deeper Into Debt—Here's How To Help Change That | Gusto
[74] Consumer Financial Protection Bureau. Consumer Complaint Database. Search of Top Issues by product and issue/sub-issue from March 7, 2020 -March 7, 2021. Available at https://www.consumerfinance.gov/data-research/consumer-complaints/search/?dataNormalization=None&dateRange=1y&date_received_max=2021-03-07&date_received_min=2020-03-07&issue=Struggling%20to%20pay%20your%20loan&issue=Charged%20fees%20or%20interest%20you%20didn%27t%20expect&product=Payday%20loan%2C%20title%20loan%2C%20or%20personal%20loan&searchField=all&tab=Map

complaints are consistent with the same time period (March 7, 2019 to March 7, 2020) revealing the same consumer harms that existed prior to the pandemic still exist now during a time when many consumers are even more economically vulnerable.

Payday lenders even exploited the PPP program to help fund their predatory practices during the crisis. At least 80 high-cost lenders drained at least $60 million from the program, even as it was not supposed to be available for lenders.[75] These loans should *not* be forgiven, and the high-cost lenders should be required to repay all PPP funds they received.

B. Congress has the Responsibility to Protect Consumers from High-Cost Lending

In order to reign in the excessive rates payday lenders charge, Congress should pass a rate cap of no more than 36% APR, consistent with the Military Lending Act that provides this protection for servicemembers. There is broad bi-partisan support for capping rates[76]; Nebraska most recently capped rates with 83% support for the ballot initiative, and the Illinois legislature this year passed a 36% rate cap bill, which awaits Governor Pritzker's signature.[77] But the majority of states have no meaningful protections against the payday loan debt trap and are subject to excessive interest rates. The federal rate cap should not be preemptive, and it should allow states with lower interest rate caps to maintain those.

An additional huge concern is that lenders are making strategic efforts to evade state lending laws through Rent-a-Bank schemes -- whereby a non-bank high-cost lender launders its loans through a bank, using the bank's charter to offer products above the legal usury rate in states. States have had success stopping these schemes by applying a "true lender" anti-evasion doctrine; states and courts have followed the money to determine that the non-bank is the real party in interest and thus the true lender. A rulemaking from the Office of the Comptroller of the Currency (OCC) late in the prior administration seeks to legalize this evasive scheme. The rule, known as the "True Lender Rule" -- but more aptly described as the "Fake Lender Rule" -- provides that the bank is the true lender so long as its name is on the paperwork, even if all other factors point to the non-bank being the true lender. This rule dismisses states' rights and ultimately allows for the continuation of products with high rates even where states have set lower usury limits. Congress should use a Congressional Review Act resolution to overturn the outrageous fake lender rule and protect states' usury laws from non-bank predatory lenders.

C. The CFPB must restore the ability-to-repay protections of the 2017 Payday Loan Rule and conduct research and heighten supervision of high-cost installment lending

With appointments from the Biden Administration, new leadership is taking shape at the CFPB. The CFPB should revoke the final 2020 payday lending rule that repealed the critically important 2017

[75] Whoriskey, P., Jacobs, J. and Gregg, A.Jan. 15, 2021, "Debt collectors, payday lenders collected over $500 million in federal pandemic relief." Washington Post. Available at https://www.washingtonpost.com/business/2021/01/15/debt-collectors-payday-ppp/,

[76] Center for Responsible Lending. February 2020. *New Morning Consult Poll Shows Broad, Bipartisan Support among Voters for 36% Interest Rate Cap on Payday and Installment Loans.* Available at New Morning Consult Poll Shows Broad, Bipartisan Support among Voters for 36% Interest Rate Cap on Payday and Installment Loans | Center for Responsible Lending

[77] CFO. November 2020, "Nebraska Voters OK 36% Cap on Payday Loan Interest." Available at Nebraska Voters OK 36% Cap on Payday Loan Interest - CFO

Payday Rule's ability-to-repay protections. The 2017 rule would have stopped long sequences of lending that drain borrowers of desperately needed funds and inflict all kinds of distress -- financial, emotional, psychological, physical. But without a federal rulemaking addressing unaffordable payday and car title lending, these kinds of practices continue today -- and we have every reason to expect they will continue for years to come. The Bureau spent more than five years conducting research, holding field hearings, and engaging with stakeholders, revealing the harms of payday and car title lending that guided the original rulemaking. It's time the Bureau carried out its mission of protecting consumers by repealing the 2020 rule and ensuring that ability-to-repay protections apply to payday and car title lending.

In addition to payday lending, there has been substantial growth in the high-cost installment loan market, with the issuance of loans with longer terms with rates frequently ranging from 100%-200% APR. The growth in longer-term and/or higher balance high-cost installment lending is occurring among brick-and-mortar lenders, but also through lenders operating online over the last decade. Many of these online lenders, making excessively priced loans with direct access to a borrowers' bank account and no safeguards of affordability, seek to disguise their harmful lending practices under the guise of "fintech." The "fintech" label does not wipe away the underlying harms and consequences of unaffordable loans. Regardless of whether the loan is made through an "app" or a storefront, high-cost loans, made without regard to the borrower's ability to afford them, can erode consumers' financial health and make it harder for them to qualify for better, low-cost credit. These loans can also ensnare people in a debt trap as harmful as that caused by payday loans -- but with higher-dollar amounts and even longer terms. The CFPB should conduct more research into the harms of high-cost consumer installment loans given documented harms consumers experience.

Some lenders have co-opted the language of racial equity to try and justify attempts to evade or weaken state interest rate limits by claiming this will "help" address the lack of access to low-cost, mainstream credit. These cynical efforts should be decisively rejected. Loans so expensive they exceed long-standing state usury limits are no solution to the lack of low-cost responsible credit, for Black and brown families, or for anyone else.

D. Financial Regulators Should Ensure Rulemakings and Bank Charters Do Not Facilitate Predatory Lending

Finally, the OCC and FDIC must ensure that their rulemakings and chartering practices do not enable predatory lending or predatory debt collection. In 2020, during the height of the pandemic, the OCC and FDIC each finalized a rule providing that assignees of loans made by banks are able to continue charging the interest rate the bank charged, even if the rate exceeds the rate the assignee could itself charge under state law. The "interest rate rule," or so-called "Madden fix" rule, seeks to overturn the Second Circuit's 2015 ruling in *Madden v. Midland*.[78] This case held that Section 85 of the National Bank Act is limited to national banks and does not govern the rate charged by non-bank assignees, and that the alternative "would create an end-run around usury laws." This evasion contravenes the intent of the National Bank Act's legislative drafters, who did not contemplate non-banks as beneficiaries of national banks' interest rate preemption.

As the pandemic fallout continues, the agencies nonetheless issued this rule, despite lacking evidence that the *Madden* ruling had had any substantial effect on banks. The agencies ignored the procedural

[78] Madden v. Midland Funding, L.L.C., 786 F.3d 246, 252 (2d Cir. 2015).

safeguards established by Dodd-Frank specifically to prevent the harms caused by the OCC's aggressive preemption rules leading up to the foreclosure crisis. The rule has been widely expected to facilitate rent-a-bank schemes on its own, even without the OCC's subsequent gutting of the true lender doctrine, discussed above.

Bank charters are also of increasing concern. Industrial Loan Companies (ILCs) or industrial banks (IBs) (together, "ILCs") are concerning because they are not subject to the Federal Reserve's consolidated supervision, and they permit the intermingling of commercial and financial activity, which is prohibited for traditional banks. After no ILC charters had been approved for a decade following a moratorium imposed by Dodd-Frank, In March 2020, the FDIC approved two ILC charters and proposed a rule that could open the floodgates for additional ILCs.[79] New ILCs pose threats both to the financial system as a whole and to consumers, as they offer non-banks a far easier path to federal interest rate preemption than they would otherwise have – or than has ever been intended under the law. Financial companies are widely expected to seek ILC charters over traditional bank charters because they want interest rate preemption without the responsibilities stemming from consolidated Fed supervision. The result would be an increase in high-cost predatory lending that avoids state interest rate caps and causes severe harm to consumers. The FDIC should abandon its ILC rule and impose a moratorium on additional ILC charters, until Congress prohibits additional ILC charters and makes existing ILCs subject to the same requirements as other banks. Congress should take such action in short order.

The OCC's so-called fintech charter and potential payments charter threaten to provide other routes for non-banks to easily obtain the ability to avoid state interest rates. These charters have the potential to cause consumers grave harm by undermining critical state protections. Moreover, the OCC lacks the authority to issue charters to entities that don't take deposits. It should abandon these efforts. It should also take great care to ensure that any charters it approves are to entities that are engaging only in responsible lending and fair debt collection.

On November 25, 2020, Oportun applied to the OCC to become a national bank. While Oportun claims to be a "mission-driven financial institution providing inclusive, affordable financial services" to Latinos, immigrants, and low-to-moderate income borrowers, it has aggressively marketed unaffordable loans to these communities and then used abusive and intimidating debt collection tactics when they cannot repay them.

ProPublica investigated Oportun's **sue-to-intimidate method**, finding that the company filed 47,000 suits across Texas over the last four years, making it the state's most litigious personal loan company.[80] *The Guardian* uncovered similar patterns in California, revealing that Oportun accounted for at least 15% of small claims filings in California from mid-2017 to mid-2018.[81] Oportun has acknowledged publicly

---

[79] For CRL's comments on this proposal, see https://www.responsiblelending.org/media/comment-letters-advocates-slam-fdics-proposed-industrial-loan-company-rule-invitation.

[80] K. Collier, R. Larson, and P. Trevizo. August 2020. "The Loan Company That Sued Thousands of Low-Income Latinos During the Pandemic," ProPublica. Available at https://www.propublica.org/article/the-loan-company-that-sued-thousands-of-low-income-latinos-during-the-pandemic#:~:text=A%20monthslong%20investigation%20revealed%20that,%E2%80%94%20even%20amid%20COVID%2D19.

[81] Hosseini, R. August 2020. "Exclusive: The Litigious Debt Collectors Targeting Latinos During a Pandemic." The Guardian. Available at https://www.theguardian.com/us-news/2020/aug/02/oportun-loans-lawsuits-latino-small-claims-california.

that it has become the largest filer of debt claims in both California and Texas[82], and CRL's analysis of cases filed in 2019 and 2020 in Los Angeles County confirms that Oportun files even more cases than prolific collectors like Midland Funding and Portfolio Recovery Associates (Figure 2).[83] The data shows that in 2020, in months when the pandemic economically devastated families, Bank of America, Capital One Bank, and Wells Fargo—all regulated by the OCC—each filed about a quarter of the debt collection cases in the county as did far smaller Oportun, and American Express Centurion Bank filed about one half as many lawsuits (Appendix 5). CRL's analysis of the top 10 most-populous counties in California indicates that Oportun filed at least 23,500 cases in California in 2019 and has filed over 13,000 cases in 2020, for a total of over 36,500 cases filed over two years clogging courts during ongoing health and economic crises.[84]

The impacts of high-cost lending and predatory debt collection have been well documented and cannot be overstated: through research and countless borrower experiences - these products are toxic – and should never be called responsible access to credit. Congress, the CFPB, financial regulators, and the Biden Administration should act immediately to protect consumers from the potential of deep health and financial harms.

VI. Congress must protect hardworking families' income and savings during this perilous time

A. Curbing Widespread Abusive Debt Collection Practices

In the face of losing over 520,000 people to COVID-19, debt collectors have made blockbuster profits – some raking in more money than ever before.[85] Even before the onset of the COVID-19 pandemic, US household debt was on the rise, reaching over $14 trillion. While much of this debt stems from mortgages, a growing amount stems from non-mortgage consumer debt, including student loans, credit cards, installment loans, and auto loans. As people continue to lose jobs and have hours cut, and as deferred rental payments and other debts come due, we can expect to see an uptick in delinquencies and defaults on these non-mortgage debts. And as a result, people will be exposed to debt collectors

---

[82] Oportun. 2020, July 28. Oportun to cap new loan originations at an "all-in" 36% APR. Available at https://oportun.com/about/press/oportunto-cap-new-loan-originations-at-an-all-in-36-apr/.

[83] Center for Responsible Lending (CRL) analysis of cases filed in the top-ten most populous California (including Los Angeles, Orange, San Diego, Riverside, San Bernardino, Sacramento, Contra Costa, Santa Clara, Fresno, and Alameda). 2019 totals are from reporting by R. Hosseini in The Guardian (missing data from Riverside, San Bernardino, and Contra Costa), 2020 totals were gathered by searching online court records databases in each county (missing data from San Bernardino and incomplete data from San Diego).

[84] Center for Responsible Lending (CRL) analysis of cases filed in Los Angeles County Superior Courts. Cases filed in 2018 and 2019 were filed within the calendar year, and cases filed in 2020 reflect cases filed from January 1 through December 11, 2020. Companies listed here alongside Oportun represent the top two most-filing debt collectors in California from 2012 to 2017, according to a 2020 CRL analysis. Oportun also filed more cases in 2018, 2019, and 2020 than prolific collectors such as Capital One Bank, Discover Bank, American Express Centurion Bank, and Wells Fargo Bank. For more information, see Appendix 5 and Barnard, J.; Sidhu, K.; Smith, P.; & Stifler, L. October 2020. "Court System Overload: The State of Debt Collection in California after the Fair Debt Buyer Protection Act." Center for Responsible Lending. Available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-california-debt-oct2020.pdf.

[85] Kiel, P. Ernsthausen, J. (ProPublica). October 2020. "Debt Collectors Have Made a Fortune This Year. Now They're Coming for More." Available at https://www.propublica.org/article/debt-collectors-have-made-a-fortune-this-year-now-theyre-coming-for-more. – "In August, Encore Capital, the largest debt buyer in the country, announced that it had doubled its previous record for earnings in a quarter."

and debt buyers, and the hardest hit will be those with the fewest available resources to manage this collection activity or oppose debt collection errors and abuses.

1. **Congress has the responsibility to protect consumers from abusive debt collection, both during the COVID-19 crisis, and after the crisis is behind us.**

During the pandemic, many states and municipalities have stepped up to protect consumers from seizure of their stimulus payments.[86] But still, the majority of U.S. consumers live in states without protections, and unless Congress passes legislation to exempt consumers' stimulus payments from assignment and garnishment, payments will be garnished – imposing significant burdens on many, many families – especially families of color facing unprecedented circumstances. Also, worth noting is that many depository institutions, as well as several debt collectors and buyers, agree that payments should be exempt from assignment and garnishment. However, without the passage of legislation, banks' hands are tied as they will be forced to comply with court orders and freeze bank accounts.

2. **Congress must also act to protect consumers' wages and bank accounts after the COVID-19 crisis is behind us.**

Allowing every adult to save and hold onto at least $1000 per week in wages, and $12,000 per bank account, will help families avoid eviction and afford essential costs like medicine and food. While family savings cannot replace the social safety net, it is critical that families be able to provide for themselves at a minimum, basic level. These protections are more urgent than ever: recent research has established that 8 million more families have fallen into poverty since May 2020.

Financial experts recommend that families have enough savings to cover three to six months of living expenses, yet a report from the Financial Health Network shows that 41% of Americans do not have enough savings to cover even three months.[87]

Never in United States history have Black and other families of color experienced a fair financial playing field.[88] This reality has resulted in a wide and persistent racial wealth gap: In 2016, the average white household had over $300,000 in wealth, whereas Black households had less than $50,000.[89] Differences in typical net worth and wealth are even more stark, and the COVID-19 crisis has exacerbated existing

[86] Saunders, L. and Saunders, M. May 6, 2020. "Protecting Against Creditor Seizure of Stimulus Checks." Available at https://library.nclc.org/protecting-against-creditor-seizure-stimulus-checks -- including CA, DC, IL, IN, MD, MA, MN, NE, NV, NY, OR, RI, TX, VA, WA.

[87] CNBC. "Do you need more than 3 to 6 months' worth of expenses saved during the COVID-19 pandemic? Here's what experts say." Available at *https://www.cnbc.com/2020/03/27/howbig-*your-emergency-fund-should-be-during-the-covid-19-pandemic.htm; Financial Health Network. *U.S. Financial Health Pulse – 2020 Trends Report* https://s3.amazonaws.com/cfsi-innovation-files-2018/wp-content/uploads/2019/05/07151007/FHN-Pulse_Baseline_SurveyResults-web.pdf.

[88] Baradaran, M. The Color of Money: Black Banks and the Racial Wealth Gap. 2017. Boston, MA: Belknap Press.

[89] McIntosh, K.; Moss, E.; Nunn, R.; & Shambaugh, J. February 2020. "Examining the Black-white wealth gap." Brookings Institution. Available at https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/.

disparities.[90] In fact, in many cases, white families will have 5.5 times more savings than Black families to financially withstand the pandemic.[91]

B. Addressing Abusive Overdraft Fees

Overdraft practices typically drain $15 billion a year from consumers, through fees averaging about $35, drawn largely from those most vulnerable. CFPB found that the vast majority of these fees come from consumers who tend to carry low balances—averaging less than $350—and have relatively low monthly deposits.[92] For one group of hard-hit consumers, the median number of overdraft fees was 37 fees, nearly $1,300, in a year -- meaning some paid much more. Many hit by relentless overdraft fees end up having their checking account closed and are driven high-cost fringe financial services. Reentry into the banking system can be difficult.

Black and brown Americans are more likely to pay high numbers of overdraft fees than white Americans, which is striking given that those communities are *less likely* to have a bank account at all. These fees punish people for, above all else, not having wealth, and exacerbate the extent to which Black and brown Americans are disproportionately unbanked and underbanked.

During COVID, banks' response related to overdraft fees has been sorely lacking. The banking regulators only generally encouraged banks to give relief,[93] and banks will say they are waiving some fees, but virtually no banks have made firm, lasting commitments to adjust their typical practices during COVID. Emergency steps during COVID to address overdraft fees are still needed; perhaps, for example, relief for financial institutions should be contingent on providing meaningful relief from overdraft fees. But this should just be the start.

Comprehensive overdraft reform should be one of the Bureau's highest priorities. During the Obama Administration, the Bureau did voluminous research that uncovered abuses in the market and supported a rule but did not propose a rule before the director's departure. Congress could also move legislation, as Congresswoman Maloney has long supported and that Senators Brown and Booker have pushed in the Senate, that directly address overdraft fees.

---

[90] Moss, E. McIntosh, K.; Edelberg, W.; & Broady, K.E. December 2020. "The Black-white wealth gap left Black households more vulnerable." Brookings Institution. Available at https://www.brookings.edu/blog/up-front/2020/12/08/the-black-white-wealth-gap-left-black-households-more-vulnerable/.

[91] Gould, E. & Wilson, V. June 2020. "Black workers face two of the most lethal preexisting conditions for coronavirus—racism and economic inequality." Economic Policy Institute. Available at https://files.epi.org/pdf/193246.pdf

[92] CFPB 2014 Data Point at 12, Table 3; see also CFPB Data Point: Frequent overdrafters at 16, Table 2 (Aug. 2017), https://files.consumerfinance.gov/f/documents/201708_cfpb_data-point_frequent-overdrafters.pdf [CFPB 2017 Data Point].le at https://www.epi.org/publication/black-workers-covid/.

[93] *See,* e.g., Board of Governors of the Federal Reserve System, FDIC, and Office of the Comptroller of the Currency, Joint Statement on CRA Consideration for Activities in Response to COVID-19, March 19, 2020, https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-19a.pdf; FDIC Statement on Financial Institutions Working with Customers Affected by the Coronavirus and Regulatory and Supervisory Assistance, FIL-17-2020, March 13, 2020, https://www.fdic.gov/news/news/financial/2020/fil20017a.pdf; OCC Bulletin 2020-15, Pandemic Planning: Working with Customers Affected by Coronavirus and Regulatory Assistance, https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-15.html.

II. Credit Reporting Protections Are Essential

Under the very best of circumstances, the credit reporting system in the United States is reflective of – and at one and the same time a contributing cause of– the enormous inequities in the distribution of income, wealth, and opportunities that have plagued this country from its inception and continue to this day. Within any given age bracket, Black and brown people are less likely to have a credit record than whites because their parents are less able to help them get credit and they are less able to do so on their own.[94] Those Blacks and Latinos with sufficient credit history to generate a credit score are far more likely to have subprime scores than is true for whites due to historic and ongoing discrimination in housing and society in general. Indeed, the median Black FICO score is below 620 at least through age 45.[95]

The pandemic is likely to further aggravate these disparities. The economic fallout of the pandemic has been felt most acutely within communities of color as the most recent unemployment numbers make clear that Black women and Latinas have yet to recover jobs lost. That means that Blacks and Hispanics are most likely to be having difficulty keeping up with their payments and most likely to see their credit scores drop.

To be sure, the CARES Act provided a right to forbearance with respect to federally-backed mortgages for those suffering from a COVID-19 related hardship. Private lenders, to their credit, have followed suit and offered forbearance not only on mortgages but on other types of loans – but only to those who requested the forbearance. Can anyone doubt that when the dust settles and the data is in, we will find that, once again, Blacks and Hispanics were disproportionately left behind or left out and are more likely to see their credit scores negatively impacted than their white counterparts?

One small, concrete step that Congress could take to ameliorate this situation would be to prohibit consumer reports from including information reported by debt collectors and debt buyers. The information provided by these data furnishers is notoriously unreliable; for example, the rate of disputes with respect to debt collection tradelines is five times the dispute rate with respect to credit card or mortgage trade lines and more than 3.5 times the dispute rate with respect to auto loans and student loans.[96] Two-thirds of debt collection reports involve medical debt and almost 25% involve telecommunications and utilities accounts – accounts for which positive payment history is not reported, creating a heads-I-win, tails-you-lose situation with respect to these companies.[97] Tragically, over one in five low-income consumers first become visible to the credit reporting system because of a report furnished by a debt collector, setting these consumers on a downward path.[98] Excluding these tradelines from credit reports would provide at least some mitigation of the disparate effects of the pandemic and create a fairer credit reporting system.

---

[94] CFPB, *Data Point: Credit Invisibles* (2015), Available at https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf

[95] Brown & Dey, *The Role of Credit Attributes in Explaining the Homeownership Gap between Whites and Minorities since the Financial Crisis, 2012-2018* (202) Available at, file:///C:/Users/dsilb/Downloads/SSRN-id3327483%20(4).pdf

[96] CFPB (2012)., *Key Dimensions and Processes in the U.S. Credit Reporting System* (2012), Available at https://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf

[97] CFPB, *Market Snapshot: Third Party Debt Collection Tradelines Reporting* (2019), Available at https://files.consumerfinance.gov/f/documents/201907_cfpb_third-party-debt-collections_report.pdf

[98] CFPB (2017). *Data Point: Becoming Credit Visible*), Available at https://files.consumerfinance.gov/f/documents/BecomingCreditVisible_Data_Point_Final.pdf

The pandemic also highlights the urgency of Congress enacting the Comprehensive CREDIT Act which the House passed last year. That bill would bring a greater transparency, accountability and accuracy to the credit reporting system by, among other things, providing consumers with notice when adverse information is reported about them; creating a more robust dispute resolution system; and requiring the removal of adverse information after a reasonable period of time. That legislation is needed now more than ever as evidenced by the fact that in 2020 the CFPB received over 280,000 complaints about the accuracy of credit reports -- more than double the volume in 2019 (which was itself a record year).[99]

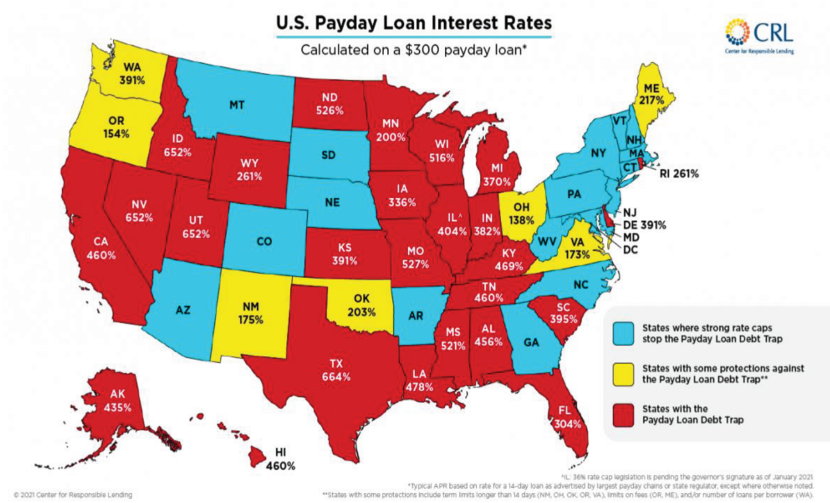
Finally, the pandemic underscores the need to place credit reporting issues within the broader context of racial equity and of the pressing need to remedy the effects of the historic and ongoing discrimination that people of color face. This country has a massive racial wealth gap. If we are to create meaningful wealth building opportunities for all, Black and brown people need to be able to buy the same kind of houses, at the same costs, and with the same frequency as whites. Black and brown entrepreneurs need to be able to obtain credit in the same amount and on the same terms as whites. Lenders look at would-be-borrowers' past credit performance and/or current financial situation, to determine to whom to lend, how much, and on what terms. And so, the cycle continues and will continue unless and until the Congress takes the steps needed to stop the legacy of institutional racism from crushing the prospects of each succeeding generation.

III. Conclusion

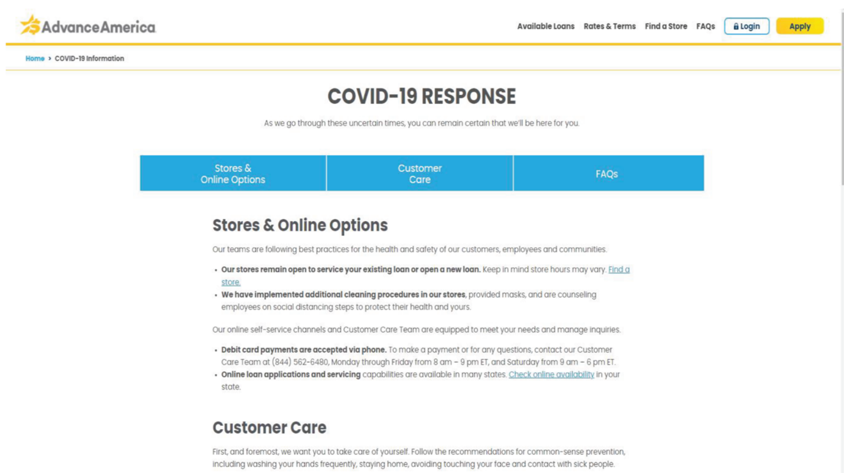
Ten years after the Great Recession, the current economic contraction and public health crisis is again hitting Black and Brown communities and lower-wage workers the hardest – beating down once again some of the same communities that never recovered from the wealth lost in the last crisis. The pandemic and its economic impacts are worsening long-standing and growing racial and economic inequities at the very moment of national reckoning on race, and the urgent cry for their redress. Too often, predatory financial services and products prevent families and small businesses from accessing opportunities and instead impede their ability to build wealth. In a time of crisis, the need for consumer protections and equitable relief is more apparent than ever. Bold action to curb predatory lending and ensure access to safe, affordable credit will ensure more Americans can survive this crisis and participate in the recovery to come.

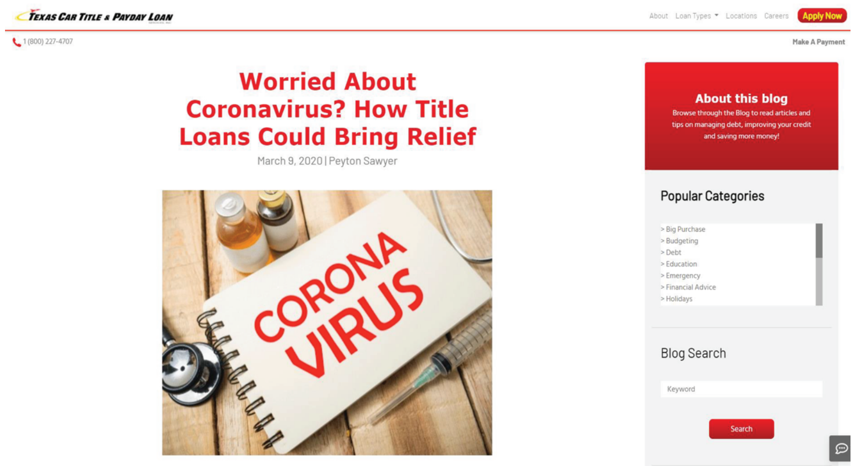
[99] U.S. PIRG (2021), *Consumers in Peril,* Available at https://uspirgedfund.org/sites/pirg/files/reports/USP_CFPB_Report_%20Consumers%20in%20Peril.pdf

Appendix A: Map of APR's on $300 Loan, unless otherwise specified.



Appendix B: Example of Covid-19 Statements from Payday lenders





I unfortunately pulled amount [for] 2 loans to pay off my rent at the time. One was roughly around 400 and the other was estimated at 900. at the time I was struggling a bit during the pandemic to pay my rent due to me not being able to work. *My daughters daycare was closed due to covid.... I thought paying back XXXX overtime wouldnt have been so hard,* ***but then I was attacked of course with 304 % of interest which ultimately made paying the debt back difficult for me.*** *My daughter is still out of school, and since this pandemic I havent had steady transportation back and forth to work nor a steady and trustable sitter. Covid really made it things a lot harder...* ***I was told that garnishments will take into affect of i didn't come up with the XXXX $ to start off my new payment plan that already discussed I couldnt afford at the moment.*** *Even when I said I didnt have the XXXX at the time, he threatened that if I didnt come up with a way, they would send letters out that morning.* ***It really hurts because most companys had some type of covid relief, such as student loans, comed, and even housing finally came up with something to help people. Americash loans kept taxing on 304 % interest every single day since the summer, even though Ive explained countless times I cant afford it. I am still to this day 2/3 months behind on rent, and now the little times Im able to work actually .. they now have 2forms of garnishments sent to my employer. They also sent me letters threatening that if I revoke it, they will send me to court.*** *..I feel so horrible I took out a little over XXXX for rent and now I am being charged with thousands and still cant even afford rent.* ***I wish this Americas loans took in consideration that I am definitely human and is in the middle of a pandemic. The fact Ive explained to them my issues and still have been taxed through the roof, had my wages garnished,*** *and even failed to come up with an agreement with me is a lot....* ***If cfpb cant help me, I will be filing bankruptcy soon.***

Borrower from Illinois in December 2020 on CFPB Database re:AmeriCash Holdings[100]

In JXX/XX/XXXX, I had a family emergency that required financial assistance and I turned to NetCredit (NC) for assistance with a personal loan. My loan was approved, and I have made consistent payments on this loan for over a year. ***In this past year, my balance has barely changed****.* ***My loan was funded for {$5700.00}. As of todays date, my balance is {$5700.00}****. I contacted NetCredit in XX/XX/XXXX to see if I qualified for any type of assistance with my loan. I was given a one-month deferral.* ***My loan is now MORE than my original amount.*** *I called again on XX/XX/XXXX and advised that I needed assistance and wanted to discuss any program options available to me. XXXX, from the escalation team spoke with me and advised the following :* ***NetCredit does not offer any option to lower interest rates****. An additional deferral could be offered, providing financial documents to ensure that I actually qualify for the assistance, however, this would only further increase my balance.* ***Total interest at the end of the loan comes to approximately {$11000.00}****...As a result of COVID-19, many other companies have come forward to offer assistance and work with their customers for solutions...* ***I have advised NC that I may need to file for bankruptcy to which there was also no response.***

- *Borrower from Georgia in August 2020 on CFPB Database re: NetCredit.*[101]

[100]Consumer Financial Protection Bureau. Consumer Complaint Database. Search of Payday Loan Complaints. Available at https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4028661
[101]Consumer Financial Protection Bureau. Consumer Complaint Database. Search of Payday Loan Complaints. Available at https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3792609

Testimony of Robert James II
Chairman of the National Bankers Association

Before the House Financial Services Subcommittee on Consumer Protection and Financial Institutions

"Slipping through the Cracks: Policy Options to Help America's Consumers during the Pandemic."

March 11, 2021

Chairman Perlmutter, Ranking Member Luetkemeyer, Chairwoman Waters and members of the Subcommittee, good morning and thank you for this opportunity to testify on ways to protect consumers and minority small business during the pandemic. It gives me great hope that one of this Subcommittee's first hearings of the 117th Congress is aimed at shining a light on this critical issue.

My name is Robert James II, and I am President of Carver Development CDE, an affiliate of Carver State Bank of Savannah, Georgia and Chairman of the National Bankers Association (NBA). The NBA is the leading trade association for the country's Minority Depository Institutions ("MDIs"). A critical part of our mission is to serve as an advocate for the nation's MDIs on all legislative and regulatory matters concerning and affecting our member institutions as well as the communities they serve.

Many of our member institutions are also Community Development Financial Institutions ("CDFIs") and have become banks of last resort for consumers and businesses who are underserved by traditional banks and financial service providers. Members of our association are on the front lines, trying to reduce the economic hardship in minority communities, which are historically the most vulnerable during any slowdown. We believe our banks are best positioned to help our communities recover and overcome many of the systemic issues that have placed them at an economic disadvantage.

The House Financial Services Committee and Chairwoman Waters have been instrumental in the inclusion of several provisions in multiple relief packages adopted during the course of the pandemic that ensure that MDIs and the small businesses and individuals we serve are not forgotten during this national emergency.

The creation of the Emergency Capital Investment Program and the $3 billion increase in funding the CDFI fund can help banks like those within the NBA scale up and allow for more access to credit for individuals and small businesses in LMI communities. The NBA applauds the Congress for the adoption of these two important measures and very much look forward to continuing to work with you on additional legislation to ensure that our communities, hardest hit by the pandemic and systemic inequity, experience lasting, material changes that will support a broad and deep economic recovery for all Americans.

The situation brought on by the pandemic is dire in our communities and we all need to do our part to ensure individuals in the middle of the health crisis, principally minority communities that have accounted for ~50% of the deaths, have equal access to government relief funding.

It is important to note that an average of 70 percent of minorities do not have a bank branch in their neighborhood, coupled with 94% of AA small businesses being sole proprietors that are typically un/underbanked. Given the challenges faced by small businesses, especially minority-owned small businesses, it is imperative to assess which type of banks are best placed to provide access to capital for minority communities. National banks may not be fastest in reaching this constituency.

Minority-owned small businesses are the lifeblood of their communities. The pre-pandemic 1.1 million minority-owned small businesses employed more than 8.7 million workers and annually generated more than $1 trillion in economic output. Women own nearly 300,000 of them, employing 2.4 million workers. Despite their significance, these businesses face underlying challenges that make them vulnerable during normal times. In an assessment of the financial health of companies, the Federal Reserve Banks reported that minority-owned small businesses were significantly more likely to show signs of limited financial health—by factors such as profitability, credit scores, and propensity to use retained earnings as a primary funding source.

These companies were approximately twice as likely to be classified as “at risk” or “distressed” than nonminority-owned small businesses. That is particularly concerning, since the US Federal Reserve also indicates that distressed companies are three times as likely as healthy businesses to close because of a two-month revenue shock.

Limited access to credit is a compounding factor that hurts the underlying health of minority-owned small businesses. Based on data from the 2018 Small Business Credit Survey, the Brookings Institution found that large banks approve around 60 percent of loans sought by white small-business owners, 50 percent of those sought by Hispanic or Latinx small-business owners, and just 29 percent of those sought by black small-business owners. Research has found that black small-business owners were significantly more likely to be asked to provide more information about their personal financials—including personal financial statements and personal W-2 forms—when applying for small-business loans than white small-business owners were, even when controlling for credit score and business characteristics.

Black-owned businesses, overall, also tend to start out with far less capital, whether from investments or bank loans, than white-owned businesses do. And only 1 percent of black business owners get a bank loan in their first year of business, compared with 7 percent of white business owners. The COVID-19 crisis has compounded this issue: 42 percent of minority-owned small businesses responding to McKinsey's US Small Business Pulse Survey reported that obtaining credit was becoming increasingly difficult, compared with 29 percent of all respondents.

As an additional consideration, research suggests that the average minority-owned mature small business is 30 percent smaller than the average nonminority-owned mature small business. Our own analysis of the data provided by Minority Business Development Agency found that only 11 percent of minority-owned small businesses had employees, compared with 22 percent of nonminority-owned small businesses.[7] And, when looking exclusively at small businesses that have employees—excluding sole proprietorships—we found that, on average, minority-owned small businesses had 32 percent fewer employees and 47 percent lower receipts than nonminority-owned ones did.

Traditionally, MDIs and CDFIs can be economic development engines due to their relative concentration in minority and low-income communities, and established relationships. This is especially true in African American communities. Unfortunately, MDIs' smaller size, especially among African American MDIs, has not allowed us to as quickly or with as much scale as the current situation demands. With African Americans overrepresented by the health and economic crisis, but potentially underrepresented by the relief efforts, more customized solutions are required.

We saw this play out during both rounds of the Paycheck Protection Program (PPP). Congress devised the program as a mechanism to aid small businesses who suddenly found themselves forced to close during stay-at-home orders. A set of conditions that have favored larger businesses, including many banks only approving loans for existing customers, delaying the applications of sole proprietorships and not allowing enough time for institutions like ours to help extremely small borrowers work through the application process, shut out many minority-owned businesses. For those that have received loans through the program, many received smaller amounts than they could have due to calculation rules that disadvantaged the smallest businesses.

MDIs themselves have experienced a period of significant decline. From 2009 to the second quarter of 2018, nationally, the number of MDIs dropped from 215 to 155. In addition, MDIs are far smaller than the average non-MDI bank. Compared to commercial banking institutions on average, they are very small; the largest institution has only $38 billion in total assets. Black and Hispanic MDIs have average assets of $245 million and $2.7 billion, respectively, compared to an average of $3.1 billion for all US banks.

Tier 1 Capital, or the equity invested in a bank, is the most critical component of the resilience of any bank, and it is what allows banks to grow and scale. MDIs, particularly African American MDIs, have historically lacked access to capital markets that would allow them to scale so, while these banks maintain more than adequate capital from a ratio perspective, the total amounts of capital available have led to them being undersized in terms of the needs and demands of the communities they serve. Without sufficient Tier 1 Capital, not only are banks limited in the amount of deposits they can take in, but they are also limited in their ability to weather loan losses. In this unprecedented economic shock, many financial institutions, especially those in underserved communities, will have increased delinquent loans. Although federal government efforts to stand up new loan loss reserves are important, standing up a new federal program with significant red tape will create a bottleneck when speed is necessary.

The NBA has recommended several potential solutions to Congress and the Administration including the following:

Passage of the Ensuring Diversity in Community Banking Act

The bill is a historic and important first step by Congress to more fully embrace its role in supporting MDIs and creating a regulatory and operating environment that will help to ensure that MDIs continue to play a vital role in meeting the banking and credit needs of communities of color throughout the country. The bill also provides a mechanism to ensure MDIs can be better capitalized and in turn provide services in LMI communities.

Consumer Credit Enhancements

As you know, the vast majority of U.S. economic activity is ultimately driven by consumer spending, and this activity is severely threatened by protocols to protect the public health and slow the progression of the virus. As a result, wage earners in the service sector across many industries are losing their livelihoods. Many our banks' customers live from "check-to-check". This phenomenon has been particularly acute among women, whose jobs have been disproportionately impacted by COVID-19. These are hard-working, low- to moderate-income wage earners, who typically have low balance ($1,000 or less), high-transaction checking accounts. While we fully support policy proposals to immediately transmit cash to consumers and offer our banks as vehicles to efficiently and effectively deliver that cash to our customers, we also recommend additional support in the form of a Treasury-backed consumer loan loss pool or other credit enhancement mechanism for MDIs that would allow us to offer our customers small-dollar loans that would function like overdraft protection, allowing them to continue to afford essentials like food, shelter, and medicine, without having to resort to expensive, predatory lenders.

Small Business, Faith-Based, Non-Profit Institution Credit Enhancements

The NBA supports proposals to stabilize and protect small businesses during this crisis, in particular streamlined, U.S. government guaranteed loans or lines of credit that will allow small businesses to continue to make payroll. Our member banks are perfectly positioned to get this funding into the most vulnerable small businesses, but we need to cut through the SBA red tape to ensure we can make households available to our bank customers.

In addition, we call your attention to the financial predicament that will be confronting many churches and other faith-based institutions and non-profits. Many of our banks, especially African American MDIs, have traditionally been the lenders of choice and necessity for many churches in their communities. We know from decades of experience that these churches face bleak financial times, as attendance at worship services becomes limited by public health realities, and donations rapidly decline due to financial hardship among their members. These church customers are not only centers of spiritual solace, but often provide vital community services such as daycare, feeding programs, and the like, so it is imperative that we assist them. As such, we ask that Treasury partner with us to create a loan loss reserve or guarantee pool for churches, other faith-based institutions and non-profits. This would allow us to work with these customers to restructure their loans in advance, extend working capital lines, or provide other assistance to ensure that they are able to survive the downturn, maintain their staffs, and continue to be beacons for their communities.

MDI Investment Tax Credit

A handful of the nation's largest banks are beginning to make direct equity investments in MDIs, and some private equity funds are being assembled with a mission of providing long-term private capital to MDIs. The Association believes that a tax credit for equity investments in MDIs would further encourage private-sector investors to make equity investments in our institutions. Given our institutions' track record of impact investments in the LMI communities we serve, we believe that our institutions' work confers enough of a benefit on LMI communities that an investment tax credit is warranted. We look forward to working with House and Senate sponsors to introduce MDI investment tax credit legislation this year.

Amend the Bank Holding Company Act to allow MDIs and CDFI banks under $3B to raise additional capital without triggering the BHCA's change-of-control provisions

The Bank Holding Company Act's change-of-control provisions are triggered when an investment exceeds 25% of the institution's equity. For smaller institutions like our member banks, relatively small equity investments implicate the BHCA therefore limiting both the attractiveness of smaller banks for investors and the size of the investments that investors are willing to make in our member banks. We are confident that modifications to these rules would allow our banks to attract more private capital and therefore multiply our impact. The BHCA should be modified to allow for significant infusions of non-dilutive equity investments in our member banks. The Association supports legislative proposals that would exempt community banks under $3 billion from the 25% change-of-control provisions of the BHCA in an effort to both attract more significant equity investments and to help protect the minority ownership status of our member banks.

Fully Supporting the Community Development Financial Institutions Fund

We fully support increased appropriations for the CDFI Fund and encourage the establishment of a permanent set aside of 40 percent of CDFI Fund appropriations reserved for award, guarantee, and grant programs for minority lending institutions, and required reporting on such activities. We also support the establishment of a new Office of Minority Community Development Financial Institutions to administer these funds led by a new Deputy Director of Minority Community Development Financial Institutions.

Federal Deposits in Minority Depository Institutions

Current rules require that federal agency deposits in MDIs must be fully collateralized, which has proven an insurmountable hurdle to implementation of the Minority Deposits Program, as doing so locks-up capital that could be mobilized for lending. We call on Congress to clarify that any such deposits may also be insured, including through reciprocal deposits. Doing so will ensure that any such deposits do not pose any financial risk to federal government, while also allowing the deposits to be mobilized for lending and therefore having a positive multiplier effect in the communities in which these banks operate.

Custodial Deposit Program for Covered Minority Depository Institutions

Establish a new program whereby the Treasury Department will deposit into MDIs funds up to the FDIC insured amount, from Funds under management by the Treasury Department. The program is to be implemented by the Treasury Department, working via custodial banks, which can more easily and efficiently distribute the funds across covered MDIs. This initiative will help mobilize stable deposits into MDIs, which will have a multiplier effect on the communities they serve without creating any new exposures or loss risks for the Treasury Department.

Troubled Asset Relief Program Resolution

TARP effectively expired on October 3, 2010—two full years after its inception. After this date, funds could no longer be extended. In 2014, the U.S. government reported a $15.3 billion profit as a result of TARP. There are, however, MDIs who have not been able to exit the program. These institutions face significant hurdles in raising Tier 1 capital and are limited in their ability to participate in programs such as the Emergency Capital Investment Program created last year by Congress. The Treasury Department should work expeditiously to release these institutions from the program so they are able to raise capital and better serve the communities in which the operate.

Establish MDI Offices in SBA and USDA

We strongly support the establishment of dedicated, staffed offices within the Small Business Administration, United States Department of Agriculture, and Consumer Financial Protection Bureau focused on unique issues related to MDIs. Minority participation in SBA and USDA guaranteed lending, especially among African American entrepreneurs, significantly lags that of businesses from majority communities. At SBA, the head of this office should be primarily focused on ensuring that MDIs can more easily participate in core SBA programs, such as the 7(a) program. At USDA, the office should focus on making lending programs such as the Business & Industry Program, as well as USDA mortgage offerings, more accessible to MDIs. These offices should be direct reports to the highest level within these agencies and should report on their progress to Congress annually.

CONCLUSION

The NBA again applauds the Subcommittee for holding this important hearing and for the full Committee's ongoing efforts to ensure equity for all businesses and communities in the country. While we commend Congress on its leadership to date in responding to the COVID-19 pandemic, we firmly believe much work remains to be done in supporting the MDI sector as we respond to the credit needs of the communities and small businesses that our member institutions serve that will disproportionately shoulder the burden of any economic downturn attributable to the COVID-19 pandemic. In this regard, the NBA and its members banks look forward to working closely with the Committee and Subcommittee on workable solutions that ensures LMI communities and minority small business do not just simply survive but ultimately thrive. Thank you again for the opportunity to testify. I will be pleased to answer any questions.

Testimony before the

U.S. HOUSE OF REPRESENTATIVES FINANCIAL SERVICES SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCIAL INSTITUTIONS

Regarding

“Slipping through the Cracks: Policy Options to Help America’s Consumers during the Pandemic”

March 11, 2021

Carla Sanchez-Adams

Managing Attorney

Texas RioGrande Legal Aid, Inc.

4920 N. IH 35

Austin, Texas 78751

512-374-2763

csanchez@trla.org

Testimony of Carla Sanchez-Adams, Texas RioGrande Legal Aid, Inc.
Before the U.S. House of Representatives Financial Services Subcommittee on Consumer Protection and Financial Institutions
regarding
"Slipping through the Cracks: Policy Options to Help America's Consumers during the Pandemic"
March 11, 2021

Introduction and Summary

Chairman Perlmutter, Ranking Member Luetkemeyer, and Members of the Subcommittee, thank you for inviting me to testify today on behalf of Texas RioGrande Legal Aid, Inc. (TRLA) and low-income Texans.

As the leading provider of free legal aid in Texas and the second largest in the country, TRLA serves nearly 25,000 people yearly. TRLA's 20 branch offices provide legal services organized around broad groups: Labor and Employment, Economic and Social Justice, Community Preservation and Empowerment, Public Benefits, Housing, Family, Victim Rights, and Individual Rights. They encompass over 45 practice areas, including immigration, farm worker rights, disaster benefits, disability rights, domestic violence, mental health law, and veteran's benefits. TRLA serves the largest geographic area of any legal aid office in the U.S. It includes the Coastal Bend from Port Lavaca and the Victoria area south to Brownsville, extends along the length of the Rio Grande to El Paso and includes Southwest and South-Central Texas, covering some of the poorest counties in the nation. More than 2.7 million residents of Southwest Texas are considered eligible for TRLA services.

As others have noted, the COVID-19 pandemic triggered a health crisis and a simultaneous economic crisis. Prior to the pandemic, systemic inequalities and disenfranchisement already existed among various socioeconomic[1], racial[2], and gender[3] groups, and COVID-19 exacerbated

---

[1] Annie Waldman & Paul Kiel, ProPublica, *Racial Disparity in Debt Collection Lawsuits: A Study of Three Metro Areas* (Oct. 8, 2015); Peter A. Holland, *Junk Justice: A Statistical Analysis of 4,400 Lawsuits Filed by Debt Buyers*, 26 Loyola Cons. Law Rev. 179, 218 (Mar. 2014) ("Debt buyers sued disproportionately in jurisdictions with larger concentrations of poor people and racial minorities. For example, Prince George's County has only 15% of [Maryland's] population, yet 23% of all debt buyer complaints were filed against Prince George's County residents."); Richard M. Hynes, "*Broke but Not Bankrupt: Consumer Debt Collection in State Courts*," 60 Fla. L. Rev. 1, 3 (2008) (concluding that "civil litigation [in Virginia] is disproportionately concentrated in cities and counties with lower median income and homeownership rates; higher incidences of poverty and crime; and higher concentrations of relatively young and minority residents"). *See also* Mary Spector and Ann Baddour, "*Collection Texas-Style: An Analysis of Consumer Collection Practices in and out of the Courts*," 67 Hastings Law Journal 1427, 1458 (June 2016) (Texas study; finding "a somewhat higher likelihood of default judgments in precincts with a higher non-White population"). *See generally* National Consumer Law Center, Fair Debt Collection § 1.3.1.5 (9th ed. 2018), updated at www.nclc.org/library.
[2] Bhutta, Neil, Andrew C. Chang, Lisa J. Dettling, and Joanne W. Hsu (2020). "*Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances,*" FEDS Notes. Washington: Board of Governors of the Federal Reserve System, September 28, 2020, (documenting that, in 2019, white families, on average, had eight times more wealth than Black families, and five times more wealth than Hispanic families).
[3] According to U.S. Census Bureau data, of the 38.1 million people living in poverty in 2018, 56 percent—or 21.4 million—were women. Robin Bleiweis, Diana Boesh, and Alexandra Cawthore Gaines, "*The Basic Facts About Women in Poverty*," (August 3, 2020), available at

these pre-existing inequalities. In Texas, as in most of the country, a vast majority of individuals live from paycheck to paycheck, without the many safety nets of their wealthier counterparts. Without additional assistance and protection, the continued ripple effects of the pandemic will lead to further financial insecurity.

I. The Rise of Debt Collection Activity During the COVID-19 Pandemic

A. Debt collection lawsuits and post-judgment collection

Amid job cuts and reduced income due to the COVID-19 pandemic, debt collectors have profited.[4] During 2020, the total number of default judgments in debt collection lawsuits increased in Texas, despite a moratorium on issuing default judgments between April 9 and May 18 and a 21% decrease in new cases filed.[5] Post-judgment collection activity intensified as well. TRLA observed debt collectors more aggressively seek orders to garnish bank accounts or court appointments of receivers who can collect money from bank accounts. Collectors attempted, and in some cases successfully seized, economic impact payments and unemployment benefits deposited into bank accounts. These opportunistic collection acts diminish the important work of Congress in providing relief and take advantage of the desperate circumstances of many.

1. Client story: Ms. N

Ms. N[6] is a single mother struggling to support her five minor children, the oldest of which has special needs. After leaving an abusive relationship in the fall of 2018, Ms. N experienced further victimization. A "friend" attempted to traffic Ms. N's oldest son and simultaneously allowed her debit card to be used to make unauthorized deposits and withdrawals leading to an overdraft of over $6,600. Because law enforcement found Ms. N's oldest son abandoned at a park, child protective services removed her children from her care and placed them in the custody of another family member. Ms. N faced depression, but with a lot of effort and determination, worked for all of 2019 to get her children back, go to school, get a job, and become economically and emotionally stable for her family.

---

https://cdn.americanprogress.org/content/uploads/2020/08/07060425/Women-In-Poverty-UPDATE.pdf?_ga=2.8819511.363012631.1615331060-692144665.1615331060 Women are particularly prone to economic hardship as a result of the prevalence of domestic violence. Women remain in or return to abusive relationships because they lack the financial resources to live independently from their abuser. Adrienne Adams, *The Frequency, Nature, and Effects of Coerced Debt Among a National Sample of Women Seeking Help for Intimate Partner Violence*, Violence Against Women 22:1077801219841445 (2019); Ryan Matlow, et. al. *The Impact of Appraisals and Context on Readiness to Leave a Relationship Following Intimate Partner Abuse*, 21 Violence Against Women (2015). Abusers foster victims' economic dependence by interfering with employment, restricting access to or stealing money, hiding financial information, and generating debt in their partner's name, among other strategies. *See* Adrienne Adams et al., *Development of the Scale of Economic Abuse*, 14 Violence Against Women 563, 563-88 (2008); Angela Littwin, *Coerced Debt: The Role of Consumer Credit in Domestic Violence*, 100 Calif. Law Rev. 1 (2012). The consequences for victims include less money to meet basic needs, greater material hardship, and reduced financial self-sufficiency. Adrienne Adams, et al., *Evidence of the Construct Validity of the Scale of Economic Abuse*, 30(3) Violence Vict. (2015); Judy Postmus, et al. *Measuring Economic Abuse in the Lives of Survivors: Revising the Scale of Economic Abuse*, 22(6) Violence Against Wom. (2015).

[4] "*Debt Collectors Have Made a Fortune This Year. Now They're Coming for More*," ProPublica (Oct. 5, 2020).

[5] Ann Baddour and Dr. Ellen Stone, Texas Appleseed analysis of Texas justice court data January 2, 2018 to December 31, 2020, [Forthcoming Publication].

[6] [6] Throughout this testimony, pseudonyms are used for clients to protect their privacy and protection.

When the pandemic hit Texas and the stay-at-home orders were announced in March 2020, Ms. N's life was thrust into chaos. Her five children could no longer be at school or daycare, and she had to work from home. Working from home was not tenable; her job required her to have a stable internet connection, but her employer received complaints from customers that she had poor internet connection. Ms. N was required to go into her office to work or she would lose her job. Without childcare, she could not leave her children unattended at home, so in April 2020, she lost her job. To make matters worse, Ms. N and her entire family contracted COVID-19 and were ill at home for the entire month of July.

On March 27, 2020, right after the stay-at-home orders went into effect, the bank that had not investigated the unauthorized use of Ms. N's debit card filed suit against her for over $6,600. The bank filed its lawsuit at the beginning of the pandemic, without any consideration of the difficult circumstances endured by many. Though the bank waited two months to serve Ms. N after filing its lawsuit, it sought a default judgment in July 2020.

2. What about other consumers?

Ms. N is fortunate in that she was able to get legal help to fight the default judgment, but most consumers being sued on a debt do not have attorneys to represent them.[7] In fact, default judgments make up 61% of all debt collection judgments in Texas.[8] Once a consumer has a judgment against them, they are susceptible to increased financial instability.

With a minimum of ten years to collect on a judgment, Texan consumers who strive to recover from catastrophic events such as the COVID-19 pandemic or Winter storm Uri, may suddenly (in some cases many years later) lose access to all funds in their bank accounts. Even when consumers have defenses to seizures of exempt funds in bank accounts, such as child support, FEMA assistance, or public benefits, the burden is on the impacted consumer to seek the help of a court to return the funds that should have been protected. Many people are not able to navigate the legal process, so they end up in a financial crisis with no access to money to pay rent or buy food.

3. How do we help?

Current legislative proposals can help provide relief to consumers during this unprecedented time. For example, Congresswoman Beatty's "Relief for Consumers During COVID-19 Act of 2021" prohibits, among other acts: filing of new debt collection lawsuits; the continuation of litigation on existing debt collection suits; obtaining judgments on existing debt collection suits; and levying funds from bank accounts or seizing any other assets to satisfy a debt during the pandemic and within the 120-day period following the end of the COVID-19 emergency. These

---

[7] In 92% of all debt collection lawsuits in Texas, the defendants did not have a lawyer. However, the plaintiffs had a lawyer in 81% of all cases. Ann Baddour and Dr. Ellen Stone, Texas Appleseed analysis of Texas justice court data January 2, 2018 to December 31, 2020, [Forthcoming Publication].

[8] Ann Baddour and Dr. Ellen Stone, Texas Appleseed analysis of Texas justice court data January 2, 2018 to December 31, 2020, [Forthcoming Publication]; data obtained from the Texas Office of Court Administration, Court Reporting Directory System, Ad Hoc Search for statewide debt claim data in justice court for January 1, 2018-December 31, 2020, downloaded February 14, 2021.

measures will protect the economic impact payments Congress authorizes and it will bring penalties for engaging in these unlawful debt collection practices up to date.

B. Auto repossessions

TRLA has observed an increase in auto repossessions. Without access to reliable public transportation, Texans need cars to move around, even during the COVID-19 pandemic. Our state has many rural areas where a car is necessary for obtaining basic items such as groceries. Additionally, many low-income Texans are considered essential workers who must work outside of their homes. When these cars are repossessed because lenders are unwilling to work with consumers who have been unable to make payments because of job loss or income reduction due to the pandemic, consumers suffer. To make matters worse, these consumers have difficulty getting new transportation because their credit has been damaged by the repossession and reporting of non-payment. Many TRLA clients find themselves in this situation and are then forced to purchase a vehicle that may not be reliable (because that is all they can afford) or agree to a high-cost loan with worse credit terms than their previous auto loan to purchase a vehicle.

1. Client Story: Ms. C

Ms. C sought help from TRLA because her vehicle was repossessed. Her income was reduced due to a reduction in hours at her work because of Covid-19. Ms. C needed her vehicle and feared losing it. She had to choose between paying for her car insurance or making payments on her car loan. Ms. C thought that if she continued to make payments on her car loan, the lender would not take her vehicle away. However, she learned the hard way that not having insurance was a "breach of her contract" as she was told. The lender repossessed her vehicle and would not return it until she could provide proof of insurance. Ms. C could not afford insurance and therefore never had her car returned to her.

2. How do we help?

Proposals such as Congresswoman Beatty's "Relief for Consumers During COVID-19 Act of 2021" which prohibit repossession during the pandemic will help consumers. However, Congress should also consider how non-payment of auto loans and other debt will impact a consumer's credit report and by extension their future financial security.

II. The Impact of Credit Reporting on Debt and Poverty

Credit reporting is pervasive and permeates almost every aspect of a consumer's financial life. Consumer reports and/or credit scores are used by potential creditors, landlords, employers, telecommunication companies, utility companies, and even governments. Having bad credit (and in some cases, no credit) can mean a consumer obtains credit at a very high interest rate, resulting in thousands of dollars in higher-priced credit, or denial of credit and therefore the inability to get much needed consumer goods like automobiles. In other cases, bad credit or no credit can result in the denial of an apartment rental, the inability to buy a house, the denial of a job, or the denial of insurance coverage.

Aside from the many problems plaguing the credit reporting industry due to inaccurate reporting[9], the type of debt reported and how it is reported can unfairly prejudice a consumer. These different types of debts, analyzed in more detail below, have increased or are likely to increase as a result of the Covid-19 pandemic.

A. Coerced debt

1. The Origin of Coerced Debt and Credit Damage as a Method of Economic Abuse

Each year in the U.S., approximately 800,000 women are physically assaulted by an intimate partner.[10] Abusive partners utilize different methods to control their victims[11] including physical, emotional, psychological and economic abuse. Economic abuse involves behaviors that control a person's ability to acquire, use, or maintain economic resources, therefore destabilizing that person's financial security.[12] Economic abuse surfaces most in the context of intimate partner violence, though it can occur in other coercive and abusive familial relationships. Researchers estimate that between 94 and 99% of women seeking services for intimate partner violence have experienced economic abuse.[13]

While economic abuse spans a wide array of abusive behavior, damage to credit is one predominant tactic abusers use to exert control over survivors. This phenomenon has become increasingly prevalent, as consumer lending has permeated American life.[14] This dynamic, as Professor Littwin succinctly notes, "makes the consumer credit system an unknowing party to domestic violence."[15]

Abusive partners destroy credit by fraudulently opening accounts in a survivor's name, lying about paying bills in a survivor's name, overcharging credit accounts, or coercing survivors to sign for loans, credit lines, or other expenses. This type of activity is known as "coerced debt,"

---

[9] For example, The Federal Trade Commission (FTC) found that 1 in 5 consumers have verified errors in their credit reports, and 1 in 20 consumers have errors so serious that they would be denied credit or need to pay more for it. Federal Trade Comm'n Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003 (Dec. 2012). Furthermore, credit reporting complaints to the Consumer Financial Protection Bureau (CFPB) have been the top category of complaints. *See* Consumer Financial Protection Bureau, Consumer Response Annual Report January 1 – December 31, 2017 (March 2018), at 9, available at http://bit.ly/2TiROLR and Consumer Financial Protection Bureau, Complaint snapshot: Mortgage (January 2019), at 5, available at https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_complaint-snapshot-mortage_2019-01_liwsYNV.pdf

[10] Shannan Catalano, *Intimate Partner Violence: Attributes of Victimization, 1993–2011*, Department of Justice, Bureau of Justice Statistics (2013).

[11] Advocates interchangeably use the terms "victim" and "survivor" depending on the preference of the person who experienced the abuse. If a person continues to be victimized by the abuse, or the abuse is ongoing, the person most often identifies with the term "victim." If a person has escaped an abusive relationship and is free from ongoing abuse, the term "survivor" is more often preferred. For clarity, in this testimony the term "survivor" will be used in the context of intimate partner violence, and the term "victim" will be used in the context of coerced debt.

[12] A.E. Adams et al., *Development of the Scale of Economic Abuse*, 14 VIOLENCE AGAINST WOMEN 563 (2008).

[13] *See id.*; J.L. Postmus et al., *Understanding Economic Abuse in the Lives of Survivors*, 27 J. OF INTERPERSONAL VIOLENCE 411 (2011).

[14] A. Littwin, *Coerced Debt: The Role of Consumer Credit in Domestic Violence*, 100 CALIF. L. REV. 954 (2012).

[15] *Id.*

defined as "all non-consensual credit related transactions that occur in a violent relationship."[16] Abusive partners utilize the consumer credit system to leave many survivors of domestic violence with hundreds or thousands of dollars of coerced debt.

Coerced debt has a long-lasting impact on whether a survivor will have access to credit, employment, or housing. Consumer reports are routinely used by creditors, potential employers, and landlords to make determinations about an applicant. The appearance of coerced debt and other detrimental information resulting from economic abuse negatively impacts a survivor's ability to obtain the credit, job, or housing. Additionally, survivors are often unable to obtain credit from traditional lenders and may be driven to borrowing from predatory sources such as payday lenders. These high-cost loans aggravate an already desperate financial situation, trapping survivors in insurmountable debt.

2. Client Story: Ms. Q

Ms. Q is a mother of two. She is industrious and resourceful but was in an abusive relationship. Her then husband exhibited all the textbook signs of an abuser committing financial abuse and exploitation: he prevented Ms. Q from accessing the mail; prevented her from accessing her wages by having her paycheck directly deposited into a "joint" bank account that only he had access to; prevented her from accessing the joint bank account by physically holding onto the debit card and only allowing her to use it to purchase food and then return it along with receipts; told her she was stupid and didn't understand financial matters so she had to do everything he told her to do and sign anything he wanted her to sign; always included his email address and phone number as contact information for any type of consumer credit or financial account; and purposefully concealed the truth about financial matters when confronted or retaliated with bursts of anger and violence.

Ms. Q tried leaving her abusive husband. She went to work in the Midwest as a farm worker where she lived with her husband's relatives and rented from them. However, she was also paying the mortgage on the marital home and could not afford to continue making two housing payments. She returned to her home in Texas hoping her ex-husband would leave her alone. Unfortunately, the abuse continued. Yet every time Ms. Q attempted to get the police to file a report against him or arrest him for family violence, they would minimize her suffering, tell her that family disputes were a civil matter, and do nothing else. She did her best to self-advocate in Spanish, once telling the police "do I need to be killed for you all to be heroes and do something?" Nevertheless, the police provided no help for Ms. Q. Ms. Q and her husband continued to live in the same residence, but he had his own room that Ms. Q was prohibited from entering.

In 2018, Ms. Q's daughter revealed to her that she had been sexually abused by Ms. Q's husband. Fearing criminal prosecution, Ms. Q's husband fled the home. When her husband left the home, Ms. Q discovered multiple credit cards in his drawer in the room he was living in; all these credit cards had her name on them, but she had no knowledge of their existence. She felt helpless and angry. Back in 2016, Ms. Q had learned about two credit card accounts her husband had opened without her knowledge or permission because she received phone calls from the

[16] *Id*. at 954.

creditors. She had told them when they called her that the accounts were not hers and she wanted the accounts closed, but the creditors refused to investigate the fraud and instead told her she would have to pay any money owed before the accounts could be closed. Based on this experience, she had no hope that the creditors for all these cards would help her.

3. What about other victims of coerced debt?

Ms. Q was "fortunate"; all the accounts were opened without her knowledge or permission allowing her to receive the same exact protections as other traditional identity theft victims.[17] However, many like Ms. Q, including past TRLA clients, are not as fortunate.

Coerced debt falls into two buckets: fraud or coercion. Fraud is better understood as "traditional identity theft" where the victim doesn't know about the fraudulent account or charges, didn't authorize the opening of the account or the use of an existing account, and didn't benefit from the debt. Coercion is better understood as debt incurred by force or threat (of continued violence or other forms of abuse). Where debt is obtained by coercion, the victim doesn't actually provide effective consent, but nevertheless opens a new account or allows the use of an existing account to be used for fear of repercussions of saying no to the abuser.

When a coerced debt victim has coerced debt that fits neatly into the first bucket of fraud, the victim has protections afforded under consumer protection statutes for identity theft victims. However, in all states except Texas[18], coerced debt victims cannot avail themselves of these legal remedies when the debt is obtained by force or threat.

Evidence of coerced debt has emerged in several existing studies. In a qualitative study of 187 women stalked by former intimate partners, 22.5% had abusive partners who exerted financial control over them, including opening credit cards in their names.[19] In their research to develop the Scale of Economic Abuse (SEA), Adams and colleagues found that 39% of the 103 women who were interviewed and were seeking services for domestic violence had debt built under their name by their partners putting a car, apartment/house, or credit card in their name; 53% reported that their partner had used their checkbook, ATM card, or credit card without their permission and/or knowledge; and 68% reported that their partner had forced them to give him money or let him use their checkbook, ATM card, or credit card.[20] The connection between abuse and debt is substantiated by findings from the 2007 Consumer Bankruptcy Project (CBP) showing that 17.8% of the 258 married and cohabitating female participants experienced intimate partner

---

[17] Some of these protections include a block under 15 U.SC. § 1681c-2 of the Fair Credit Reporting Act and unauthorized use protections under 15 U.S.C. § 1643 of the Truth in Lending Act.

[18] In Texas, the definition of identity theft encompasses both types of coerced debt (fraudulent and coercive). Texas changed its definition of identity theft effective September 1, 2019, in order to address coerced debt. Section 32.51(b)(1) of the Texas Penal Code states the updated definition of identity theft: [https://legiscan.com/TX/text/HB2697/id/2010292/Texas-2019-HB2697-Comm_Sub.html] A person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses an item of: identifying information of another person without the other person's consent or effective consent. "Effective consent" is defined in Section 1.07(a)(19)(A) of the Texas Penal Code: "Effective consent" includes consent by a person legally authorized to act for the owner. ***Consent is not effective if induced by force, threat, or fraud.***

[19] M.P. Brewster, *Power and Control Dynamics in Prestalking and Stalking Situations*, 18 J. OF FAM. VIOLENCE 207 (2003).

[20] A.E. Adams et al., *Development of the Scale of Economic Abuse*, 14 VIOLENCE AGAINST WOMEN 563 (2008)

abuse in the year they filed for bankruptcy. This rate is much higher than the rates of abuse found in studies of the general population of women, which range from 1.5% to 9.8% in samples of women most comparable with that of the CBP, suggesting a strong connection between abuse and financial distress.[21]

Survivors of domestic violence are apt to stay in abusive relationships if ending the relationship would result in poverty or homelessness, and if children are involved, survivors are even more prone to stay in an abusive relationship in order to shield their children from economic instability. The threat of homelessness[22] is not an idle threat; approximately 22%-55% of women experience homelessness as a result of domestic violence, with approximately 38% of all domestic violence survivors becoming homeless at some point in their lives.[23]

When coerced debt appears on victims' credit reports, it negatively impacts the victim's ability to achieve financial security and economic independence. As a result, perpetrators use the damage to credit they inflict to gain further financial control over survivors' current and future economic choices.[24] Some states have sought to address the collection and reporting of coerced debt.[25] For example, Maine passed two laws in 2019 addressing coerced debt.[26] Texas changed its definition of identity theft to encompass both types of coerced debt. However, federal response is needed to address the negative impacts of coerced debt.

4. Coerced debt and the COVID-19 pandemic

The Covid-19 pandemic has caused an increased risk of violence and decreased sense of safety. According to a recent Texas-based research study, 80.9% of domestic violence survivors

---

[21] A. Littwin, *Coerced Debt: The Role of Consumer Credit in Domestic Violence*, 100 CALIF. L. REV. 954 (2012).

[22] Among mothers with children experiencing homelessness, more than 80% had previously experienced domestic violence. Y. Aratani, *Homeless Children and Youth, Causes and Consequences*, NAT'L CTR. FOR CHILD. IN POVERTY (2009).

[23] *Domestic Violence and Homelessness Statistics*, FAM. & YOUTH SERVICES BUREAU (2016), available at https://www.acf.hhs.gov/fysb/resource/dv-homelessness-stats-2016

[24] A. Littwin, *Coerced Debt: The role of consumer credit in domestic violence*, 100 CALIF. L. REV. 954 (2012).

[25] As part of its report to the Maine Commission on Domestic and Sexual Abuse, the Maine Coalition to End Domestic Violence (MCEDV) asked survivors of domestic violence a series of questions related to economic abuse, including coerced debt. MCEDV found that 40% of the respondents indicated their partners falsely used their identity without their knowledge; 36% reported their identities were used to access credit or set up utilities; and 72% of the respondents said their partners often claimed they were paying bills when they were not. *A Report on the Impact of Economic Abuse on Survivors of Domestic Violence in Maine,* Presented to the Joint Standing Committee on Judiciary, February 7, 2019, p. 14. In fact, 57% of those surveyed reported that their abusive partners incurred debt using their name. *Id.*

[26] Specifically, a survivor can dispute coerced debt and other debt resulting from economic abuse directly to the consumer reporting agencies (CRAs) and have these debts removed from their reports. 10 MRSA §1310-H (2-A). The statute provides guidance on what documents a survivor can include in their dispute to the CRAs to prove economic abuse. *See* 14 MRSA §6001(6)(H). Additionally, Maine's debt collection statute was amended to prevent any collection of debts caused by economic abuse by debt collectors. *See* 32 MRSA §11014(2-A). If a survivor provides a debt collector the same type of documentation it provided to the CRAs under 14 MRSA §6001(6)(H), the debt collector must cease collection of the debt or any disputed portion of the debt- including reporting the debt to any CRA. 32 MRSA §11014(2-A); 32 MRSA §11013 (2)(H). The Consumer Data Industry Association filed a lawsuit to invalidate Maine's statute regarding credit reporting based on FCRA preemption. The case is up on appeal in the First Circuit Court of Appeals. Maine's debt collection statute has not been challenged.

reported that relationship difficulty increased and 40% said their safety decreased.[27] In Texas, 91% of domestic violence survivors report facing health and safety challenges due to the COVID-19 pandemic, including not being able to socially distance and risking their health for their job[28]; 92% of domestic violence survivors report facing money and resource challenges due to the pandemic which includes trouble getting food, inability to pay their bills, experiencing lost income, and lack of transportation[29]; and 33% of domestic violence survivors report facing issues with inflexible landlords and creditors due to the pandemic.[30]

5. How do we help?

We can expect survivors of domestic violence will feel the aftermath of the pandemic long after emergency orders end.[31] It is imperative to address the problem of coerced debt before the negative impact of coerced debt compounds with the negative impact of other Covid-19 related factors such as job loss, reduced income, increased healthcare expenses and medical debt. While there are many approaches to the problem of economic abuse[32], coerced debt is predominantly a

---

[27] Wood, L., Temple J. (2020). *COVID-19 and Family Violence: What's New in Texas-Based Research*. The University of Texas Medical Branch at Galveston.

[28] Adams, A.E. & Wee, S. (2020, December 17). *Economic Effects of the COVID-19 Pandemic on Domestic Violence and Sexual Assault Survivors: A Survey of Service Providers. Center for Survivor Agency and Justice*, unpublished report. Retrieved March 3, 2021 from https://public.tableau.com/profile/sara.wee#!/vizhome/DVSA_COVID19_061520_PUB1/Story1

[29] *Id.*

[30] *Id.*

[31] *See* http://stories.texasappleseed.org/abuse-by-credit-the-problem-of-coerced-debt-in-texas- for more examples of the prevalence of domestic violence, coerced debt, and economic abuse from before the COVID-19 pandemic. *See also* Sara Shoener and Erika Sussman, *Economic Ripple Effect of IPV: Building Partnerships for Systemic Change*, (2013) available at https://csaj.org/document-library/Shoener_and_Sussman_2013_-_Economic_Ripple_Effect_of_IPV.pdf (understanding the long term economic ripple effect of economic abuse).

[32] SEC. 406 of the Comprehensive Credit Act provides:

> (a) In general.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), as amended by section 301, is further amended by inserting after section 605E the following new section:
> **§ 605F. Financial abuse prevention**
> For a consumer who is the victim of intentionally abusive or harmful financial behavior, as determined by a court of competent jurisdiction including a family court, juvenile court, or other court with personal jurisdiction, that was conducted by a spouse, family or household member, caregiver, or person with whom such consumer had a dating relationship in a manner which resulted in the inclusion of an adverse item of information on the consumer report of the consumer, and the consumer did not participate in or consent to such behavior, the consumer may apply to a court of competent jurisdiction, including a family court, juvenile court, or other court with personal jurisdiction, for an order to require the removal of such adverse information from the consumer's file maintained by any consumer reporting agency.

This proposal poses many challenges:

1. Many victims don't have access to lawyers to be able to get a court order. If they are in family court seeking relief and representing themselves, they likely won't know how to ask for this relief.
2. Many courts, including family courts, won't order this relief because they don't feel it's in their purview. For example, even when state statutes permit orders on economic justice judges are still wary to do include this type of relief in an order.
3. If there was no marriage, there is no way to get this relief from a family court (for example, through a divorce decree). If the victim and abuser were dating and there was physical violence, a victim could try to obtain a civil

consumer credit problem which requires a consumer credit solution. The change in the definition of identity theft in Texas is instructive; this measure offered avenues of relief previously not available to coerced debt victims.[33]

B. Medical debt

1. The problem of medical debt reporting

Medical debt is very different from other types of consumer debt. Medical bills result from services that are frequently involuntary, unplanned, and unpredictable, and for which price quotes are rarely provided, and which can be a matter of life or death. However, medical debt still factors into credit scores and credit decisions. In fact, medical debt represents an enormous portion of the debt collection entries that appear on credit reports. The CFPB found that medical debt collection entries account for over half (52.1%) of all entries by debt collectors on credit reports.[34] Additionally, nearly one in five credit reports contain a medical debt item.[35]

The accuracy of medical debt accounts on consumer reports is also questionable. Medical debt accounts are often riddled with problems such as billing errors and disputes with insurers over liability for accounts.[36] Over 99% of medical debts are reported by debt collectors, not healthcare providers.[37]

2. Client Stories: Mr. G and Ms. M

Mr. G was stabbed while working at his job, a clerk at a convenience store. He was rushed to the hospital and treated for his wounds. Months later, the hospital filed a debt collection suit against him to recover the cost of the life-saving medical procedures he needed.

---

protection order, but many District Attorneys don't prosecute on civil protective orders when there isn't enough evidence of physical violence, so a victim may be deprived of this relief. If the victim and her abuser were dating and there was no physical violence, or the violence was not recent enough to be entitled to a protective order, then there is no way for a victim to get any relief in family court.

4. If there is no availability in family court (including to the elderly or foster youth when the coercion is not an intimate partner relationship), what type of suit would a victim of coerced debt have to/be able to file to get the court order? A state would have to have a declaratory action remedy available, but who would be the opposing party? Would the victim have to sue the abuser? Many may not choose to do this because of fear of retaliation or facing the abuser in person again (retraumatization). If the abuser is not the defendant, would the consumer reporting agencies be the defendant? Would the creditors?

[33]Mechanisms to help victim or identity theft and/or unauthorized use exist in federal consumer protection statutes such as the Fair Credit Reporting Act, the Truth in Lending Act, the Electronic Funds Transfer Act, and the Fair Debt Collection Practices Act to name a few. These definitions could be expanded to include the different types of coerced debt and thus protect all coerced debt victims.

[34] *Consumer Credit Reports: A Study of Medical and Non-Medical Collections*, CONSUMER FIN. PROTECTION BUREAU (2014), www.consumerfinance.gov.

[35] *Id.*

[36] Mark Rukavina, *Medical Debt and its Relevance When Assessing Creditworthiness*, 46 SUFFOLK U. L. R. 967 (2014).

[37] *Data Point: Medical Debt and Credit Scores*, CONSUMER FIN. PROTECTION BUREAU (2014), www.consumerfinance.gov

Although Mr. G qualified for crime victims' compensation which would pay any costs associated with medical treatment needed from the stabbing, the hospital delayed in providing the documents needed to process the claim. Specifically, the hospital initially submitted an incomplete bill for $11,120. The processing of the claim for that bill was, therefore, delayed, but was paid. Nevertheless, the hospital obtained a default judgment against Mr. G, even though he had filed an answer with the court explaining he didn't owe anything.

Ms. M had a medical debt account appear on her credit report for treatment her grandson received. She was also contacted by debt collectors regarding the same medical debt. Ms. M's grandson was covered by Medicaid, and under Texas law[38], neither Ms. M nor her grandson were responsible for costs of any medical services provided to him. However, the debt collectors continued to collect on the debt and report the debt.

3. Medical debt is not predictive of a consumer's credit worthiness

These two client stories represent just part of the problem with medical debt. Although medical debt is one of the most prevalent types of consumer debt, with one in five Americans contacted by a debt collector over an unpaid healthcare bill[39], the impact medical debt has on credit reporting and future financial security is staggering.

According to the CFPB, the presence of medical debt on a credit report unfairly penalizes a consumer's credit score, resulting in a credit score that is typically lower by ten points than it should be.[40] For consumers who have a paid-off medical collection item, their scores are up to twenty-two points lower than they should be.[41] This can set families on a path to financial hardship that can last for years. The CFPB further noted that "[c]redit scoring models which differentiate medical collections from other collections are likely to more accurately reflect the actual creditworthiness of consumers."[42]

In response, FICO modified its latest scoring model, FICO 9, so it does not consider paid collection items (both medical and non-medical).[43] Consumers whose only negative item is unpaid medical debt can expect their score to increase up to twenty-five points.[44] VantageScore had already made a similar change to its scoring system in March 2013.[45] However, not all creditors use these scoring models. Mortgage industry giants Fannie Mae and Freddie Mac currently do not use these models. They currently use an older FICO model, which leave consumers with lower credit scores.[46]

---

[38] *See* Texas Administrative Code Title I, §354.2321(h), and Title I, §354.1131(c).
[39] Sara R. Collins et al., The Commonwealth Fund, *Insuring the Future: Current Trends in Health Coverage and the Effects of Implementing the Affordable Care Act* (Apr. 2013).
[40] *Id.*
[41] *Id.*
[42] *Consumer Credit Reports: A Study of Medical and Non-Medical Collections* 51-52, CONSUMER FIN. PROTECTION BUREAU (2014), www.consumerfinance.gov.
[43] *Understanding FICO Scores*, FICO 8 (2016).
[44] Tara Seigel Bernard, *Credit Scores Could Rise with FICO's New Model*, N.Y. Times, Aug. 7, 2014, at B3.
[45] Kevin Wack, *Credit Scoring Model Bucks the Industry Line on Paid Debts*, Am. Banker, Mar. 11, 2013. (VantageScore removing paid collection accounts from its latest scoring model).
[46] Tara Seigel Bernard, *Credit Scores Could Rise with FICO's New Model*, N.Y. Times, Aug. 7, 2014, at B3.

4. Medical debt and the Covid-19 pandemic

By virtue of being a health care crisis, the Covid-19 pandemic will leave many Americans with new medical debt. TRLA has seen first-hand how Texans have been impacted by the coronavirus.[47] Many of our clients who have been treated for the virus have expressed concern over medical debt collection and insurance coverage.

Low-income consumers fortunate enough to have Medicaid coverage should be able to obtain health care without the burden of medical debt, though as demonstrated in Ms. M's story, debt collectors continue to collect and report medical debt that should not exist. Insured consumers also face unmanageable medical debts as a result of high cost-sharing responsibilities (i.e., copays and deductibles) under some plans, "surprise" out-of-network bills, or denied insurance claims.

5. How do we help?

Proposals such as Congresswoman Tlaib's Consumer Protection for Medical Debt Collections Act would address some of the problems identified above and help clients like Mr. G and Ms. M. Specifically, by preventing the reporting of any information related to a debt arising from a medically necessary procedure (such as Mr. G), the Consumer Protection for Medical Debt Collections Act would alleviate much of the stress and fear consumers face in choosing to undergo health treatment. By preventing the reporting of medical debt generally for 365 days, the Act would allow consumers who have disputes (such as billing error disputes in the case of Ms. M) to be protected from premature and incorrect reporting. This too will be helped by prohibiting debt collectors from collecting or attempting to collect medical debt for two years from when the medical debt was first due.

C. Debt Caused by Pandemics and Natural Disasters

Credit reports and credit scores can be misleading. Credit reports are snapshots in time; they contain information about a consumer without providing context for changes in a consumer's credit history. Because credit scores are based on algorithms that "interpret" data in credit reports, this dynamic penalizes consumers who have fallen on hard times through no fault of their own, especially during the COVID-19 pandemic where consumer suffer from illness or job loss, or when consumers are victims of fraud or dealing with the consequences of natural disasters such as Winter Storm Uri. Consumers end up with impaired credit histories due to the financial trauma caused by these extraordinary life events[48], which in turn can lead to the denial of housing, jobs, or higher cost credit and insurance premiums.

---

[47] It is not without exaggeration to say that almost every one of my current clients has disclosed that they contracted COVID-19 at some point during the time period of April 2020 until the present.

[48] Lananh Nguyen, *How the Last Shutdown Affected Federal Workers' Household Finances*, Bloomberg News, Feb. 12, 2019, available at www.bloomberg.com/news/articles/2019-02-12/workers-missed-bills-burned-savings-during-government-shutdown (finding that 27% of federal employees, contractors, or their spouses missed a mortgage or rent payment during the shutdown, 13% missed a student loan payment, and nearly half fell behind on bills in general).

Communities of color are particularly affected by these traumatic life events; they not only have less income than white Americans[49], but Black and Latino households also see less of a return than white households on the income they earn.[50] Without a safety net or a cushion to fall back on, people of color are far less able to weather financial calamities. With fewer assets to draw on, people of color find are more prone to poverty traps.[51] Damaged credit histories in turn impede access to employment, housing (both rental and homeownership), insurance, and of course, affordable credit, which in turn make it more difficult for communities of color to move ahead.

TRLA has seen multitudes of clients who find themselves amid collection actions, credit denials (such as housing denials), and poverty traps from high-cost lending, all because of a life event that derailed their finances.

1. Client story: Ms. R

Back in 2009, in the wake of the financial recession and housing crash, TRLA represented Ms. R who was being harassed by her creditors. Ms. R had a son who had suddenly become ill and needed full time care. Ms. R had to quit her job to provide full time care for her son. The household who had once boasted two incomes was now forced to survive off one income. As finances became tight, Ms. R found she could no longer make payments on one of her credit cards. The employees for this bank called Ms. R incessantly demanding payment. Ms. R informed them that she needed time to be able to recover financially and pay back the debt. She mentioned that this bank (Citigroup) had themselves received help from the federal government when they were hit by the credit crisis. Instead of being met with understanding, Ms. R was accused of being a bad mother, a derelict, and the reason why Citi had to request help from the government.

2. How do we help?

Although current proposals address the collection of debt during the Covid-19 pandemic, very few address the wholistic reporting of debt during the Covid-19 pandemic. Congresswoman Garcia's Covid-19 Mortgage Relief Act does address how mortgage debt is reported during forbearance periods and the subsequent twelve month period after the forbearance ends, and Congresswoman Tlaib's Consumer Protection for Medical Debt Collections Act addresses reporting of medical data, but no current proposal should be prohibit consumer reporting

[49] "In 2011, the median white household had an income of $50,400 a year compared to just $32,028 for Blacks and $36,840 for Latinos." Amy Traub, et al., Demos and Institute for Assets & Social Policy, Brandeis University, *The Racial Wealth Gap: Why Policy Matters*, Mar. 10, 2015, at 1, https://www.demos.org/research/racial-wealth-gap-why-policy-matters

[50] "For every $1 in wealth that accrues to median Black households associated with a higher income, median white households accrue $4.06. Meanwhile, for every $1 in wealth that accrues to median Latino households associated with higher income, median white households accrue $5.37." *Id.*

[51] "Low-income individuals bear the brunt of the shift toward algorithms. They are the people most vulnerable to temporary economic hardships that get codified into consumer reports, and the ones who need and seek public benefits. Over the years, Gilman has seen more and more cases where clients risk entering a vicious cycle. 'One person walks through so many systems on a day-to-day basis,' she says. 'I mean, we all do. But the consequences of it are much more harsh for poor people and minorities'." Karen Hao, *The Coming War on the Hidden Algorithms that Trap People in Poverty*, MIT Technology Review Dec. 4, 2020, available at https://www.technologyreview.com/2020/12/04/1013068/algorithms-create-a-poverty-trap-lawyers-fight-back/

agencies from reporting any adverse information caused when the consumer is affected by economic dislocation on a mass scale, such as the Covid-19 pandemic or a federal or state declared natural disaster.

III. Failure to Protect Consumers from Fraud

The Covid-19 pandemic brought along with it many actors seeking to profit from consumers' desperate situations. Scams targeting economic stimulus payments and unemployment benefits proliferated among TRLA's clients. Many low-income Texans sought help for payments made to

A. Client story: Ms. Y

Ms. Y lost her job due to Covid-19. She qualified for unemployment benefits through the Texas Workforce Commission (TWC). Ms. Y does not have a bank account, so her only option to receive her unemployment benefits was to have the funds deposited on a prepaid card (reliacard).

TWC disbursed $6,000 in unemployment benefits through the reliacard. Soon after receiving her card, Ms. Y got Covid-19 and had to be hospitalized. When she was released, she tried to access the funds on her reliacard and discovered there was no money on the card. When she called reliacard to inquire about the problem, she was told that someone had called, requested a new card be issued to an address in Michigan, and that someone in Michigan had used all the funds.

Although Ms. Y has rights under the Electronic Funds Transfer Act's unauthorized use provision, the bank has failed to return the $6000 to Ms. Y or conduct a reasonable investigation of the fraud. In fact, they continue to send correspondence to the Michigan address even after Ms. Y requested on multiple occasions to send everything to her Texas address. Recently, TWC issued additional unemployment benefits to Ms. Y through reliacard; Ms. Y found when she tried to access these funds from her reliacard that it was again depleted.

Although Ms. Y did not willingly participate in a scam or fraudulent scheme, she has been the victim of fraud committed by either a hacker or someone who had access to her personal identifying information.

B. Client story: Ms. Z

Ms. Z is a victim of sex trafficking. After receiving help from TRLA in leaving her traffickers and obtaining a T-Visa, Ms. Z fell prey to additional scams.

Ms. Z was contacted by individuals who lived in her native country of Colombia on Facebook messenger and later through Whatsapp. They said they were part of a "Templo" a religious organization and she disclosed personal identifying information to this Templo, such as her address, her telephone number, and photos of her and her family. She even told them she had a visa.

The Templo began to extort Ms. Z claiming that if she didn't pay them money, she and her family members would all get cancer or another illness. They threatened to physically harm her and her son if she did not pay them since they knew where she lived. The Templo also told her she could be arrested and her visa could be taken away if she did not pay them. Ms. Z sent money to these scammers through Western Union. At first, Ms. Z sent the Templo money from her wages, foregoing food to pay them. When this wasn't enough, she borrowed money from friends and took out loans to pay the Templo.

Ms. Z believed a lawyer in her native country was helping her get her money back. She was contacted by this lawyer who asked for $3,000 for medical costs because he was denying; he said the Templo had put a curse on him. This same lawyer told her that he needed her to pay him so she could get her money back. He instructed her to open a bank account at Bank of America and deposit money for this payment, and then 24 hours later he would deposit all the money she had previously paid the scammers. Of course, the money never materialized.

Ms. Z paid a total of $50,000 to these scammers and never recovered one cent. She has been sued for nonpayment of one of the loans she took out to pay the Templo.

C. How do we help?

Congresswoman Axne's Covid-19 Fraud Prevention Act provides, among other things, grants to States to hire staff to identify, investigate, and prosecute cases involving fraud; to fund technology, equipment, and training to combat, investigate, identify, and prosecute these cases; and to develop and provide educational materials. While these are all beneficial and necessary, none of these provide direct relief to consumers affected by these scams. Consumers would benefit from restitution funds that should be established by States when enforcement actions are taken against bad actors perpetuating fraudulent schemes and scams.

IV. Conclusion

The COVID-19 pandemic has exacerbated problems consumers already faced before the health care crisis. Minorities, women, and low-income consumers are among those hardest hit by the pandemic. Debt collection activities increased in 2020, as did profits for debt collectors. Auto repossessions were prevalent, and consumers were left at the mercy of their lenders. Consumers would benefit if all debt activity ceased during the pandemic.

The problems with our credit reporting system continued and revealed the need for reform around what consumer information is reported and how it is reported during a pandemic. Consumers would benefit from a moratorium on the negative reporting of unpaid debt during the pandemic.

Scams and fraud also surged. Consumers would benefit from some form of monetary relief.

Congressional Testimony by Ms. Valarie Shultz Wilson

I would like to thank **Chairwoman Maxine Waters** and sub-committee chair, **Ed Perlmutter** and, ranking member **Blaine Luetkemeyer**, for inviting me here, today, to testify on behalf of low-income and low-wealth communities that I have served for the past 30 years. I come before you to provide a face behind the statistics and data on the economic toll of COVID-19 on these communities.

During my career, I have had the privilege to lead nonprofit organizations with $500,000 operating budgets and those with $50 million operating budgets. I have been CEO of organizations such as the Connecticut Food Bank and the Urban League of Southern Connecticut. At the Urban League, we provided services which included First-Time Homebuyer Education; Credit Repair; Financial Education; Foreclosure Prevention; Loan Modification; and Student Loan Services. My vocation, passion and commitment revolve around empowerment. I have devoted my life to these endeavors and I will continue to do this work.

The economic devastation that has impacted **small business owners, including sole proprietorships,** in Black and Latino communities, continues to disenfranchise these groups. As heartbreaking as these scenarios are, many consumers are forced to use title loan companies, payday lenders and other predatory lending businesses to make ends meet. Rather than allowing borrowers to speak with someone to address these issues, many of these institutions require customers to use their websites, including mortgage companies, student loan companies and auto finance companies. People have lost their Internet and have been forced to pawn their computers which eliminates their ability to communicate with financial services institutions. In addition, bank fees and overdrafts have plagued low-income consumers, causing many to lose their traditional bank accounts and force them to rely on check cashing establishments that charge predatory fees. To the detriment of consumers, credit card companies monitor credit reports and raise interest rates based on credit usage, late payments and missed payments, generating more fees that people from low-income and low-wealth communities cannot afford to pay. As a result, many consumers are having to choose between feeding their children or providing Internet access.

In Connecticut, I serve on the board of The Community Foundation for Greater New Haven which has launched a 26 million dollar initiative, “Stepping Forward,” a program which has set money aside to provide low-interest loans and grants to Black, Latino and women small business owners impacted by the pandemic. It is also providing capacity building and operational support to non-profit organizations engaged in the work of economic empowerment and sustainability. Nonprofit organizations like The Community Foundation stand in the breach and provide a safety net for consumers who may not be eligible for traditional financial services.

JP Morgan Chase announced that it would pledge 30 billion dollars to close the racial wealth gap in Black and Latino communities over the next 5 years by funding CDFIs, black-owned banks and providing down payment assistance for homebuyers of color. It is encouraging to know that this initiative has been launched but if the credit restrictions are not relaxed so that low-income and low-wealth consumers can take advantage of this program, the wealth gap will remain.

LOW-INCOME AND LOW-WEALTH CONSUMERS NEED HELP! We need policies, now, that will allow businesses and consumers to be resuscitated and made economically viable for the future. We need policies, now, that address structural barriers to resources, financing and capital.

Thank you for your time, today.

Slipping through the Cracks: Policy Options to Help America's Consumers during the Pandemic

March 11, 2021

Statement for the Record in response to request from the House Committee on Financial Services

Farah Majid, Managing Attorney

Legal Services Alabama

I am a lawyer with Legal Services Alabama (LSA). We are on the frontlines of the pandemic, providing direct legal representation to low-income individuals. We are the only full-time provider of free civil legal services in Alabama.

During the pandemic, we have had to be flexible to keep our staff safe and continue to meet the rising legal needs of low-income Alabamians. Key areas of concern for us include:

- **Student loan forgiveness and protection from collection**

Many of our low-income consumers have large amounts of student loan debt. Placing these debts into forbearance and freezing the interest has been helpful, but consumers need additional assistance. Many of the consumers we see are not able to find jobs in their field and must accept lower-paying jobs in other fields. Others become disabled and are unable to work entirely. Allowing student loans to be discharged in bankruptcy would help those who are unable to support themselves using the degrees they've obtained (or who were unable to complete a degree).

We often see clients whose wages are being garnished or who are having their tax refunds intercepted for student loans. A better administrative process to challenge these actions, and implementing better due process/notice procedures, would be helpful. A comprehensive system of education for student loan borrowers on the various options available to them would also be helpful – making this information readily and publicly available.

- **Protection for stimulus payments from collection**

In Alabama, judgment creditors can garnish bank accounts, and often do. Stimulus payments that are deposited into bank accounts are subject to garnishment by creditors for judgments that are up to 20 years old. Alabama does have a "wildcard exemption" to protect money in bank accounts. However, this requires consumers to affirmatively file a "Claim of Exemption," which few consumers know how to do. That Claim of Exemption can be challenged by the creditor in court. Even assuming the consumer knows how to claim an exemption and is successful after a court hearing, they are deprived of their funds for weeks or months. Thus, automatically protecting stimulus payments from garnishment by creditors would help to serve the purpose of the stimulus payment – putting funds into individuals' pockets which they can use for their expenses.

- **Debt collection suits and garnishments**

Alabama consumers continue to face debt collection lawsuits and wage garnishments. They are also being sued and having balances pursued by landlords.

In Alabama, some creditors include a "waiver of exemption" clause in their contracts. This is a clause by which a consumer purportedly waives all their rights to claim exemptions under state or federal law. Such clauses are considered unconscionable under FTC regulations. 16 C.F.R. 444.2(a)(2). However, creditors in Alabama, including landlords, hospitals, and finance companies, routinely include these clauses in their contracts and enforce them in court judgments. They raise the existence of the clauses to keep consumers from asserting their exemption rights.

16 C.F.R. 444.2(a)(2) provides:

> In connection with the extension of credit to consumers in or affecting commerce…it is an unfair act or practice…for a lender or retail installment seller directly or indirectly to take or receive from a consumer an obligation that…Constitutes or contains an executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer...

The FTC's Trade Regulation Rule Credit Practices report (49 FR 7740-01, 1984 WL 139281(F.R.)) provides background as to why the FTC rule was adopted to ban waiver of exemption clauses. "The basic reason for exemption laws is to afford minimal protection to debtors and their families by allowing them to retain the prime necessities of life, with a view to preserving the family unit and furnishing the insolvent with nucleus to begin life anew." Id.

The report further found that:

> much exempt property has little economic value as collateral, but great economic, psychological, and sentimental value to consumers…
>
> The record also shows that, in some instances, threats to seize exempt property force debtors to pay disputed debts or to waive legitimate claims or defenses that would otherwise reduce or eliminate their debts. Such threats can also disrupt household finances, leading to delinquency on other obligations or resulting in costly refinancing…
>
> The rulemaking record shows that most consumers are neither aware of the rights they have under exemption statutes nor of the presence or significance of waiver

> clauses in their contracts. Creditors do not explain these rights or the contract clause to their customers. Consumers would thus find it difficult to bargain over this provision or shop around for contracts without one. Thus, consumers cannot reasonably avoid the injury caused by waivers of exemption clauses.
>
> Trade Regulation Rule; Credit Practices, 49 FR 7740-01.

The current FTC rule prohibits waiver of exemption clauses in "the extension of credit" by "retail installment sellers." See 16 C.F.R. §444.2 (2019). Expanding this definition to explicitly include landlord/tenant and medical debt would help protect consumers in Alabama. By the time such lawsuits are filed, there is nothing distinguishing such debts from any other type of consumer debt. The effect on the consumer – losing their paycheck, their vehicles, any savings they have in the bank, or their home – is the same, regardless of how the debt originated.

CONSUMER BANKERS ASSOCIATION

March 10, 2021

The Honorable Ed Perlmutter, Chair
U.S. House Subcommittee on Consumer Protection
and Financial Institutions
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Blaine Luetkemeyer, Ranking Member
U.S. House Subcommittee on Consumer Protection
and Financial Institutions
2129 Rayburn House Office Building
Washington, D.C. 20515

Dear Chair Perlmutter and Ranking Member Luetkemeyer:

Thank you for your continued leadership as our nation rises to meet the challenges posed by the COVID-19 crisis and for your efforts to support consumers and our economy during this time. This letter includes our views on a number of legislative proposals scheduled for consideration during your Subcommittee hearing on Thursday, March 11 entitled "Slipping through the Cracks: Policy Options to Help America's Consumers during the Pandemic."

CBA is entering our 102nd year as the voice of retail banking in Washington, D.C. and strongly advocates for polices that allow banks to continue offering well-regulated services to families and small businesses across the country. We are the only member-driven trade association focused exclusively on retail banking. Whether buying a home, financing an education, or launching a small business, our members partner with consumers to help them achieve their unique dreams. Our corporate members include the nation's largest retail banks serving every part of the country, 85% of which hold over $10 billion in assets. CBA members are also the private sector lenders that make the majority of private education loans to help families finance a postsecondary education. At this time of extreme uncertainty, our banks remain in strong financial condition and are stepping up to serve the needs of consumers and small businesses.

CBA member institutions are well capitalized and have worked diligently with consumers and small businesses since the very beginning of the COVID-19 pandemic to provide highly regulated financial products that helped to mitigate the financial challenges many are experiencing. **The nation's largest banks have donated millions of dollars, offered proactive assistance to communities and with your leadership worked to create the Paycheck Protection Program (PPP) in a matter of weeks to deliver billions to small businesses to meet payroll and cover their bills.**

The unprecedented level of service our banks' employees delivered over the past year is all due to the strong, well-regulated foundation banks have built up in the last decade. As we emerge and build back from the COVID-19 crisis our member banks will be focused on helping consumers and small businesses regain their financial footing and reach new levels of success. Key to those efforts will be working with your leadership to improve access to credit and opportunity for all Americans, including small dollar loans and other affordable, high-quality consumer financial products.

Included below are concerns we raise with the Committee on several bills under consideration in this hearing that will have unintended or negative impacts on individuals' access to credit and other banking services, including student loans.

H.R. ___, the "Relief for Consumers During COVID-19 Act" (Beatty)
H.R. ____, the "Relief for Small Businesses and Nonprofits Act" (Perlmutter)

Throughout the COVID-19 crisis, banks have provided relief options to affected customers across the country. Fee waivers, forbearance programs, and loan modifications are commonly offered by banks to those customers experiencing hardship. Prudential banking regulators and general safety and soundness principles require in all instances that options to defer payments first take into account the borrower's financial circumstances. This legislation would eliminate that step and make all consumers and small business eligible for relief regardless of need, fundamentally banks' financial stability and reducing available resources to help borrowers truly facing hardship. At a minimum the legislation should consider the capital requirements associated with these proposals, as Congress did under Sec. 4013 of the CARES Act.[1]

H.R. ____, the "Disaster Protection for Workers' Credit Act" (Sherman)

Safe and affordable access to credit is based entirely on lenders' ability to accurately price risk based on the best and most complete information available. Mispriced risk leads to negative credit terms for borrowers and ultimately undermines financial stability. Any effort to suppress or prohibit accurate consumer credit reporting standards creates unnecessary potential for harm to the consumer because it is shown as a break, or gap, in consistent credit reporting. Existing procedures have been in place since before the crisis began that ensure consumer credit reports are properly coded to reflect a continuation of service but prevent negative impact to an individual's credit score because they were affected by the COVID-19 pandemic. These long-standing procedures are designed to protect both consumers and credit access.

H.R. ____, the "Emergency Relief for Student Borrowers Act" (Dean)
H.R. ____, "Private Loan Disability Discharge Act of 2019" (Dean)

The Emergency Relief for Student Borrowers Act would have the Secretary of the Treasury make the monthly payments for private education loan borrowers, regardless of need, for the rest of the COVID-19 national emergency and for the following six months. The amount paid would be a minimum of $10,000 or the total owed. This step would require extensive, complex coordination and across-the-board servicing system changes at a time when financial institutions, like other parts of the economy, are coping with workplace challenges. We also question if these payments are a good use of federal resources, since *98 percent of private student loans are repaid successfully*, *and the most recent delinquency rate was only 3 percent*, indicating that, unlike federal student loan borrowers, private loan borrowers are successfully making payments. However, as we have stated in the past, should Congress decide to proceed CBA members will work with their affected customers and the Treasury Department to implement the policy and create a process for the government to make payments to lenders on behalf of their borrowers.

In addition, while well meaning, the Private Loan Disability Discharge Act of 2019 is unnecessary and would impose unhelpful bureaucracy into a situation where banks are already doing what the legislation would mandate. Currently, banks are discharging private student loans when the borrower becomes totally and permanently disabled. Adding a federal mandate with various extra steps and requirements will only hinder a well-functioning process and not provide any help to private student loan borrowers.

---

[1] Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, § 4013 (2021).

H.R. ____, "Ending Debt Collection Harassment Act of 2019" (Pressley)

The Fair Debt Collection Practices Act (FDCPA) is not intended to apply to banks, though many voluntarily comply through normal business practices. The CFPB confirmed this in rulemaking last year.[2] Nonetheless we note that while the FDCPA does not apply directly to banks, it was modified last year to allow text and email communications between third-party debt collectors and customers under certain conditions. This change occurred in part because customers increasingly want to receive communications over text or email instead of phone calls or U.S. mail. The modifications did not impose a strict limit on those communications because it is hard to design a one-size-fits-all limit: what could be discussed in a 3-minute phone call could take 5, 10, or more text messages. The CFPB already has authority to punish debt collectors who abuse this privilege, and they have not hesitated to do so in the past. Provisions in this legislation requiring specific consent for texts and emails, and their frequency, will create confusing opt-in systems that will overall make it more difficult to reach customers over their often-preferred mode of communication.

H.J. Res. _____, Resolution of Disapproval on the OCC's National Banks and Federal Savings Associations as Lenders Final Rule.

CBA supports the OCC True Lender rule[3] that brings much needed clarity to the marketplace without sacrificing consumer protections. Opponents have mislabeled the "true lender" definition with usury claims based on the theory that the non-bank partner is the "true lender." These claims assert that the non-bank partner is not a chartered entity and therefore cannot export the interest rate of its home state and, accordingly, the interest rate is usurious under a second state's law. These challenges in the absence of regulatory authority created divergent standards for identifying the true lender based on outlier court opinions. This uncertainty in turn casts doubt on loans made under bank-fintech partnership models and threatened credit availability.

Under these circumstances the OCC has the obligation and the necessary statutory authority to promulgate rules to clarify which entity is the "true lender" under the National Banking Act (NBA). Clarity on this issue is important for a robust, competitive, nationwide lending marketplace and in no way relieves OCC-regulated banks of their existing legal and risk management responsibilities in their relationships with bank partners, including those detailing robust consumer protection standards. This rule benefits consumers, small businesses, and other borrowers who rely on access to credit to cover various expenses, start businesses, and engage in trade and commerce.

[2] Fair Debt Collection Practices Act, 85 Fed. Reg. 76,735, "When an account becomes delinquent, initial collection efforts often are undertaken by the original creditor or its servicer. The FDCPA typically does not cover such recovery efforts and, if they result in resolution of the debt, whether through payment in full or another arrangement, the consumer typically will not interact with a third-party debt collector" (Nov. 30, 2020).

[3] National Banks and Federal Savings Associations as Lenders, 85 Fed. Reg. 68,742 (Oct. 30, 2020) (to be codified at 12 CFR pt. 7).

Thank you again for your decisive actions and leadership during this time. We look forward to working with you on all these proposals to ensure the best possible outcome for consumers and lenders.

Sincerely,

Richard Hunt
President and CEO

Cc: Members of the Subcommittee

NAFCU
3138 10th Street North
Arlington, VA 22201-2149
703.522.4770 | 800.336.4644
f: 703.524.1082
nafcu@nafcu.org | nafcu.org
National Association of Federally-Insured Credit Unions

March 10, 2021

The Honorable Ed Perlmutter
Chairman
Subcommittee on Consumer Protection and Financial Institutions
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

The Honorable Blaine Luetkemeyer
Ranking Member
Subcommittee on Consumer Protection and Financial Institutions
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Re: Tomorrow's Hearing on "Slipping through the Cracks: Policy Options to Help America's Consumers during the Pandemic"

Dear Chairman Perlmutter and Ranking Member Luetkemeyer:

I am writing on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) to share our thoughts ahead of tomorrow's virtual hearing, "Slipping through the Cracks: Policy Options to Help America's Consumers during the Pandemic." NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 123 million consumers with personal and small business financial service products. NAFCU is supportive of the Subcommittee's efforts to examine ways that consumers can be helped during the COVID-19 pandemic.

As you know, credit unions have been on the frontlines working with their members during these times of economic uncertainty. Credit unions have voluntarily implemented programs to protect their members' financial health, including skipping payments without penalty, waiving fees, low or no-interest loans, loan modifications and no interest accruals. The relief provided by Congress thus far has been helpful in these efforts; however, more must be done to ensure credit unions have the necessary tools to continue to support their members – consumers and small businesses – through this crisis.

Proposals that Can Help Credit Unions Serve Their Members

<u>*MBL Cap Relief*</u>
Looking ahead, most experts agree that the economic impact of COVID-19 and the credit needs of small businesses will be with us beyond the short-term bridge provided by the Paycheck Protection Program (PPP). While increasing the scope of other Small Business Administration (SBA) programs will help with the recovery, we need to ensure that small businesses have access to as many potential sources of capital as possible. With that in mind, we believe that you should consider legislation to exclude business loans made in response to COVID-19 relief from the credit union member business lending (MBL) cap, such as H.R. 1471, the *Access to Credit for Small Businesses Impacted by the COVID–19 Crisis Act of 2021*, introduced last week by Representatives Brad Sherman (D-CA) and Brian Fitzpatrick (R-PA). This proposal had bipartisan support in the House last Congress in the form of H.R. 6789, the *Access to Credit for Small*

Businesses Impacted by the COVID-19 Crisis Act of 2020, and similar legislation was also introduced in the Senate. On April 16, 2020, a bipartisan group of 65 representatives wrote to House leadership to urge this issue be included in future pandemic relief. Moreover, National Credit Union Administration (NCUA) Board Chairman Todd Harper and Board Member Rodney Hood have voiced their support for MBL cap relief as a step to make it easier for credit unions to do more to help small businesses in light of the pandemic.

Loan Maturity Extension
When it comes to lending, we ask that you consider legislation to provide credit unions with relief from the outdated 15-year general maturity limit found in the *Federal Credit Union Act* (FCU Act) for most credit union loans. Credit unions frequently hear from small businesses that a 20-year loan would be preferable in terms of a lower monthly payment, but because of the 15-year maturity limit, small businesses often turn to banks in order to get those loans. However, with credit likely to be constrained for the foreseeable future, these loans will be harder to get. We ask that you give credit unions this flexibility so they can work with their members and provide them with the funds they need as we face the recovery ahead. H.R. 1661, which would address this issue, had 21 cosponsors during the 116th Congress.

Modernize the E-SIGN Act
The *Electronic Signatures in Global and National Commerce Act* (E-SIGN Act) was passed nearly 20 years ago and generally allows electronic signatures and documents to carry the same legal weight as hard copy or paper documents. At a time when social distancing has become paramount to the health and safety of credit union members, employees, and their families, credit unions are discovering that some of the E-SIGN Act's outdated provisions have become a burden. Over 90 percent of NAFCU members responding to a survey noted challenges in getting documents signed in light of the pandemic. Congress needs to modernize provisions in the E-SIGN Act to help credit unions better meet the needs of members, while respecting social distancing requirements.

Underserved Areas
NAFCU asks that you allow credit unions to do more to help underserved populations. Too many Americans are unbanked, underbanked, or underserved by financial institutions, and do not have the access that they need to financial services. Credit unions stand ready to help with financial literacy education and access to loans and other financial products, but many are limited in their ability to add underserved areas to their fields of membership. Allowing all credit unions to add underserved areas to their fields of membership is one way to help those who need it most have access to capital without burdening the federal government. This request has bipartisan NCUA Board support.

Relief Efforts Should Be Balanced to Not Harm Credit Unions' Ability to Serve Their Members

As we communicated to the Committee in our letter on February 3, 2021, we would like to raise concerns with some provisions that have been put forth that, although well-meaning, may have unintended consequences and could place new hardships on credit unions, hampering their ability to help members get access to credit. Enacting provisions now that harm community financial institutions could further exacerbate the current health and economic crisis.

Legislatively Mandated Blanket Loan Forbearance Is Problematic
We would caution against any additional mandated blanket loan forbearance as a response to the pandemic. The forbearance provisions in sections 4022 and 4023 of the CARES Act have raised a number of issues and concerns for credit unions, as many of the consequences of these provisions were not addressed in the Act. We are concerned that broad mandated loan forbearance that does not balance the perspectives of financial institutions could create both operational questions and safety and soundness issues without providing regulators the flexibility to address them.

Credit unions are already working with members to ensure they get the relief they need, including providing forbearance and skip payments options on many types of loans based on need. Blanket mandated loan forbearance, regardless of actual need, can strain a financial institution's liquidity, making it harder to operate and provide additional credit to members. Financial institutions continue to face payment obligations on mortgage loans during a forbearance period, which compound these issues. Legislatively mandated blanket forbearance programs would cause credit unions to lose the ability to work with a member to achieve a mutually agreeable solution that protects both the member and the institution.

Restrictions on First Party Debt Collection Must Only Target Abuses
We would also caution against overly broad restrictions on credit unions' ability to collect on consumer debt during the pandemic. Credit unions do not engage in harmful debt collection tactics; and, as outlined above, credit unions are working with their members to ensure they get the relief they need during this crisis, including waiving late fees and offering payment deferrals. We are concerned that a blanket restriction on first party debt collection during a national emergency could put unnecessary stress on credit unions. As you know, credit unions are already under significant pressure due to this crisis. While the credit union system is well-capitalized and can weather this pandemic, we are concerned that compounding this stress could strain their liquidity and impact their ability to provide credit to members in need.

However, as we communicated to Congress in a group letter earlier this week, we do support efforts to protect the latest round of Economic Impact Payments (EIPs) from the *American Rescue Plan Act of 2021* from assignment and garnishment, similar to the protection for EIPs from the *Coronavirus Response and Relief Supplemental Appropriations Act of 2021*. We would urge swift Congressional action to protect these payments prior to them going out to consumers.

Reject Efforts That Could Lead to Elimination of Courtesy Pay Programs
We are concerned that some have called for a moratorium on courtesy pay fees, which could lead to an elimination of this important option for consumers. Such a blanket moratorium may end up denying credit union members a service they have indicated they want, and to which have affirmatively consented. A number of institutions are already waiving fees and helping members with alternative options, including short-term, low- or no-interest loans. The courtesy pay program allows credit unions to pay a transaction even when the consumer has insufficient or unavailable funds in the account. This can be a faster way to help consumers in need make necessary payments or get needed supplies. A blanket effort to eliminate courtesy pay fees may force institutions to stop many of these programs due to concerns about abuse and the financial impact on the institution. Consumers could then lose out on this immediate assistance option, which, again, is something they have already opted to have. We urge you to oppose any moratorium on courtesy

pay fees that would threaten this important service and cause more harm than benefit to consumers.

The Integrity of the Credit Reporting System Must Be Maintained
The nation's credit reporting system is an important tool for financial institutions. Blanket suppression of adverse information in credit reports could lead to significant changes in how lenders use credit information to make loans and disrupt consumer access to credit. We urge Congress to reject efforts aimed at blanket suppression of adverse credit reporting information. A better step would be to encourage efforts to allow credit reporting to reflect loans where payments are deferred or in forbearance, so these loans do not negatively affect a consumer's credit score.

Oppose Any Effort to Extend Interchange Price Caps
When the price cap was set on debit interchange rates in the *Dodd-Frank Wall Street Reform and Consumer Protection Act*, the retail industry did not follow through on their promise to pass on interchange fee savings to their customers. Now they are asking for the same failed price controls to be extended to credit card transactions in response to the pandemic. This would cause irreparable harm to credit unions and could reduce the availability of credit to consumers.

The electronic payments system is a two-sided market, with consumers on one side and merchants on the other. Both sides benefit from the arrangement, with card networks setting interchange rates based on the cost of doing business, and the benefit to consumers and merchants. The credit card system allows consumers to purchase goods and services from merchants that they may not be able to otherwise. In the wake of the pandemic, many merchants are requesting cashless payments for employee safety. This is evidence that the electronic payments system offers real value to merchants and consumers alike. Ultimately, merchants receive far more value from accepting electronic payments than they pay in interchange fees. Any new caps on interchange fees would only hurt community institutions such as credit unions and the American consumer. NAFCU opposes these efforts and we urge you to reject proposals to extend interchange price caps.

We thank you for your leadership and ongoing efforts to help American consumers during the ongoing pandemic. We appreciate the opportunity to share our input and look forward to continuing to work with the Subcommittee on these issues. Should you have any questions or require any additional information, please contact me or Janelle Relfe, NAFCU's Associate Director of Legislative Affairs, at jrelfe@nafcu.org.

Sincerely,

Brad Thaler
Vice President of Legislative Affairs

cc: Members of the Subcommittee on Consumer Protection and Financial Institutions

NATIONAL ASSOCIATION OF REALTORS®

500 New Jersey Avenue, N.W.
Washington, DC 20001-2020
202.383.1194 Fax 202.383.7580
https://www.NAR.REALTOR/political-advocacy/federal-advocacy

Charlie Oppler
2021 President
Bob Goldberg
Chief Executive Officer

ADVOCACY GROUP
Shannon McGahn
Chief Advocacy Officer

U.S. HOUSE COMMITTEE ON FINANCIAL SERVICES

SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCIAL INSTITUTIONS

HEARING ENTITLED

"SLIPPING THROUGH THE CRACKS: POLICY OPTIONS TO HELP AMERICA'S CONSUMER DURING THE PANDEMIC"

STATEMENT FOR THE RECORD OF

THE NATIONAL ASSOCIATION OF REALTORS®

MARCH 11, 2021

On behalf of the National Association of REALTORS®'s (NAR) 1.4 million members, we thank the committee for holding this important hearing on "*Slipping Through the Cracks: Policy Options to Help America's Consumers During the Pandemic*." NAR is invested in ensuring housing access for all Americans and to support consumers during this critical time as our nation strives toward economic resurgence. In the 117th Congress, NAR will work to improve access to homeownership, enable a quick recovery after the COVID-19 pandemic, ensure fair housing for all, and build strong and resilient communities and businesses.

As we mark the one-year anniversary since the beginning of the pandemic, we applaud Congress' efforts in passing the "*American Rescue Plan of 2021*" to provide additional financial assistance to struggling businesses and consumers. This investment is especially crucial to ensuring housing stability for homeowners and renters. REALTORS® applaud and support these efforts and agree that more work needs to be done. Through this Committee's recent and ongoing actions, and those of Congress and the Administration, we are confident that our economy will bounce back. Since the beginning of the pandemic, NAR has advocated for the self-employed, small business owners, consumers, and families, by advocating for homeowners and renters through forbearance programs and rental assistance, unemployment benefits for those not traditionally eligible like independent contractors, greater credit reporting protections, use of alternative data in credit scoring, and innovative forms of financing to provide greater financial flexibility. We thank the Committee for releasing legislative proposals aimed at achieving these goals and protecting consumers to ensure future access to financial resources are attainable during the economic recovery.

The Paycheck Protection Program (PPP), administered through the U.S. Small Business Administration, the Pandemic Unemployment Assistance (PUA) program, and the Federal Pandemic Unemployment Compensation (FPUC) program have all been extremely beneficial to our members and their clients. These programs have provided key support and have allowed many Americans to stay afloat during this difficult time. Our members have continued to work in many states throughout the country during the pandemic to make the dream of homeownership a reality for Americans, as housing security is essential now more than ever. If the health pandemic persists throughout the year, NAR supports continued adjustments and extensions to these programs so that REALTORS® and businesses can continue to provide for Americans' housing needs. We also thank you for the recent changes to the Paycheck Protection Program, including the changes to the loan amount calculations for independent contractors, sole proprietors, and the self-employed. We support an extension to the PPP program, which expires on March 31, 2021, so our members can take advantage of these new improvements to the loan amount calculations.

As REALTORS® continue to advocate for credit-worthy consumers and their ability to achieve homeownership, we will work with Congress to come up with sustainable solutions to address the many hurdles we currently face as a result of the pandemic. NAR remains laser focused on many issues, including working to avert a housing crisis when mortgage forbearance programs end, maintaining student loan debt relief, securing small business stabilization, and promoting fair housing protections. The draft legislation that the Committee has released will help consumers in many ways, including those most in need of mortgage forbearance and student loan flexibilities.

Mortgage forbearance programs remain a lifeline of much needed support for homeowners who are unable to meet their mortgage obligations due to financial hardship. In a recently released Consumer Financial Protection Bureau report,[1] "over 11 million families are behind on their rent or mortgage payments" and "2.1 million families are behind...on mortgage payments, while 8.8 million are behind on rent." Additionally, the report states that homeowners owe approximately $90 billion in missed payments, which will continue to rise as hardships continue. These numbers

[1] Consumer Financial Protection Bureau (CFPB), March 2021. Housing Insecurity and the COVID-19 Pandemic. https://www.consumerfinance.gov/data-research/research-reports/housing-insecurity-and-the-covid-19-pandemic/.

are staggering, but not unexpected given the current health crisis. NAR is a proponent of continuing these forbearance programs to provide stability to borrowers as long as needed.

NAR fully supports housing stability and working to keep homeowners in their homes by providing this forbearance program as long as necessary. We believe there should be forbearance in both the government backed and private space and that lenders should adopt best practices from government programs. We remain equally concerned about the potential challenges homeowners and renters will face when the forbearance programs end, should personal financial security remain uncertain. We ask that the Committee continue to work to come up with viable solutions to address this issue and protect consumers exiting forbearance programs.

NAR is encouraged by the "*Promoting Access to Credit for Homebuyers Act of 2021*," which provides borrowers with credit protections for six months following the pandemic emergency by ensuring they are not penalized for taking advantage of forbearance programs. Additional measures such as preventing the GSEs or FHA from refusing to insure or purchase a mortgage because of a borrower's participation in or inquiry about a forbearance program is extremely helpful during this time. Oversight reports by the GSEs, FHA, and GAO on the pandemic's impact on the mortgage market will be beneficial in an effort to ensure there are adequate protections in place moving forward to prevent future economic harm to homeowners.

We also applaud your efforts to provide relief to student loan borrowers currently and for six months following the pandemic through the "*Emergency Relief for Students Act*." Suspension of all involuntary student loan debt collection and providing forbearance for student loan payments and interest will give borrowers greater flexibility to meet their more immediate financial obligations during this pandemic crisis. Providing student loan relief and support during this time is extremely beneficial for borrowers who are also seeking to become homeowners.

NAR remains a partner and ally committed to working with the Committee, Congress, and the Administration, to protect consumers, current and prospective homeowners, and small business owners. We realize the current challenges facing our nation are extremely nuanced and complex, and we stand ready to ensure housing and market stability now and in the future for consumers.

ACA INTERNATIONAL
The Association of Credit and Collection Professionals

March 10, 2021

Chairman Ed Perlmutter
House Financial Services Committee
Subcommittee on Consumer Protection and Financial Institutions
Washington, D.C. 20510

Ranking Member Blaine Luetkemeyer
House Financial Services Committee
Subcommittee on Consumer Protection and Financial Institutions
Washington, D.C. 20510

Dear Chairman Perlmutter and Ranking Member Luetkemeyer,

On behalf of ACA International (ACA), the Association of Credit and Collection Professionals, I am writing regarding the subcommittee hearing titled, "Slipping Through the Cracks: Policy Options to Help America's Consumer During the Pandemic."

ACA International is the leading trade association for credit and collection professionals representing approximately 2,500 members, including credit grantors, third-party collection agencies, asset buyers, attorneys and vendor affiliates in an industry that employs nearly 125,000 employees worldwide. Most ACA member debt collection companies, however, are small businesses. Women make up nearly 70 percent of the total debt collection workforce and it is ethnically diverse. Additionally, the debt collection industry is diverse in terms of racial demographics as well. Overall, racial and ethnic minorities make up around 42 percent of debt collection employees. During this challenging time for the country, many ACA members—particularly our smallest member companies—are facing financial and operational challenges like many other businesses throughout the country. This has, at times, made it more difficult to continue to offer employment opportunities in our heavily regulated and compliance-focused industry, which for many Americans is an important stepping stone to a career in the financial services industry.

As businesses, community lenders, hospitals, and other providers throughout the country continue to face unprecedented challenges as a result of COVID-19, the work of ACA's members is more important than ever. As part of the process of attempting to recover outstanding payments, ACA members are an extension of every community's businesses. ACA members work with these businesses, large and small, to obtain payment for the goods and services already received by consumers.

Significant research has confirmed the basic economic reality that losses from uncollected debts result in higher prices and restricted access to credit. The collections process plays a critical role in a healthy credit ecosystem. Lenders rely on the ability to collect to be able to lend to consumers of all means with diverse financial backgrounds. In a world without a collections

ASSOCIATION HEADQUARTERS
4040 WEST 70TH STREET 55435
P.O. BOX 390106, MINNEAPOLIS, MN 55439-0106
TEL (952) 926-6547 FAX (952) 926-1624

FEDERAL GOVERNMENT AFFAIRS OFFICE
509 2ND STREET NE, WASHINGTON, D.C. 20002
TEL (202) 547-2670
FAX (202) 547-2671

ACA@ACAINTERNATIONAL.ORG WWW.ACAINTERNATIONAL.ORG

process, consumers' ability to obtain credit cards or other unsecured credit would be greatly limited and, in many instances, consumers would only have the option to pay cash. This would be a disadvantage to many consumers, particularly to those who are low-income, and significantly limit options for credit and services. The work of ACA members allows lenders to continue to lend while keeping the cost of credit down, particularly for the riskiest borrowers.

ACA members continue to play an important role in the economy during the COVID-19 crisis by working to help consumers understand their options for resolving legally owed debt. When there is an open dialogue, ACA members can help consumers understand how they may qualify for options like financial assistance or options they may have through their own insurance. Learning about options, which can also include the ability to enter longer payment plans or take advantage of forbearance opportunities, helps consumers preserve their ability to access credit and services in the future. Ignoring outstanding obligations or remaining in the dark about payment options can lead to the worst outcome for consumers. This is in part why ACA members have seen a record number of inbound calls at times over the past year. As lenders and creditors continue to work to meet the credit needs of all consumers, particularly during this challenging time, the requirement for financial institutions to maintain safety and soundness is an important component of maintaining their ability to continue to lend and therefore a critical factor in this discussion.

Research shows that a system with reasonable debt collection regulations combined with an efficient debt collection industry can contribute to an expanded supply of consumer credit and generally lower interest rates.[1] This dynamic is essential for high-risk borrowers who are more likely to be able to access affordable credit in an environment where lenders can mitigate losses through post-default collection.[2] High-risk borrowers will, in many instances, either not qualify for credit or find credit to be prohibitively expensive, particularly if the lender cannot be satisfied that the loan will be repaid.[3] Simply stated, if creditors cannot collect, they will be forced to not to lend and consumers who much of this legislation at issue in this hearing aims to protect will end up being harmed most.

Alternatively, with an effective debt collection industry in place, lenders can extend credit to borrowers of all means when expected recoveries after default compensate for the higher probability of default. Those same high-risk borrowers might also benefit the most if the increase in post default recoveries leads to a reduction in interest rates and expansion of supply to riskier borrowers. Quite simply, the debt collection industry provides a degree of security for lenders and a mechanism for them to mitigate losses. The work of the industry facilitates a marketplace where credit is more available to a broader range of consumers across a variety of income categories and credit histories.

Accordingly, ACA offers the following comments on legislation at issue in this hearing.

[1] Todd J. Zywicki, The Law and Economics of Consumer Debt Collection and Its Regulation, MERCATUS WORKING PAPER, MERCATUS CTR AT GEORGE MASON UNIV., at 47 (Sep. 2015), available at https://www.mercatus.org/system/files/Zywicki-Debt-Collection.pdf.
[2] *Id.*
[3] *Id.*

- **The Relief for Consumers During COVID-19 Act**

This legislation, which halts almost all collection activities, would be devastating to the economy, medical providers, small businesses, and many others during a time when they are already suffering. Consumer welfare also depends on open communication, and it is important to engage in policymaking during this critical time for the country that provides consumers with more options to access credit and services, not fewer. Stopping the operations of the credit and collection system for the part of the economy that is still functioning causes difficulties for hospitals, utility providers, governments, and many businesses trying to survive and serve the whole community. For example, many protections and programs are already in place for consumers who are no longer employed.

However, nearly 94 percent of the country is still fully employed, and more people are going back to work every day. Impeding the ability to collect past-due payments through legal recourse from consumers who are still fully employed and able to fulfill legal obligations, owed to businesses sometimes directly impacted by COVID-19 closures does not protect those most harmed by the pandemic. ACA members have worked with health care providers and consumer groups to develop best practices that for instance address legal collections in medical debt during COVID-19.[4] These well-researched policies and best practices that reflect the input of various stakeholders are important during this challenging time for the country. In the alternative, broad sweeping policies that threaten businesses and the economy, such as this legislation, are not an effective solution for anyone.

- **The Relief for Small Businesses and Nonprofits Act**

In addition to other concerns previously outlined, which are also relevant to this this legislation, it impedes the operations of small businesses and creates complex and rigid guidelines that could interfere with hardship programs and other efforts to create flexibility in providing solutions for a consumer's unique financial situation. It is not clear that any research or data provides evidence that the timeframes or dollar amounts outlined in the defined payment schedule in this legislation result in any consumer benefit. It is not clear where the arbitrary dollar amounts: $2,000 or less, 12 months to repay; balances between $2,001 and $5,000, 24 months to repay; greater than $5,000, 36 months to repay are coming from and why this would be relevant to the pandemic. This legislation also requires an automatic grant of forbearance for consumers after the request and attestation of financial hardship, directly or indirectly related to COVID-19, until the end of the covered periods. No documentation proving the hardship is required. This legislation is not appropriately targeted to those directly impacted by COVID-19, and instead asks small businesses to carry the burden of these challenging times alone.

---

[4] Best Practices For Resolution of Medical Accounts, available at https://www.acainternational.org/news/aca-international-and-hfma-release-new-best-practices-for-resolution-of-medical (September 2020).

- **The Disaster Protection for Workers' Credit Act**

This legislation would create uncertainty around a consumer's credit score and create the possibility of further putting them in financial turmoil by allowing an individual to borrow when they cannot afford to repay. After exhausting other options, credit reporting can be the best way to alert consumers of their outstanding debts and allow them to address it and have it removed from their credit portfolio. If this legislation becomes law, credit providers will not understand a consumer's financial situation if they have an inaccurate credit report and consumers could take on new obligations that will lead to problems down the road. We saw this happen in the past mortgage crisis when consumers purchased homes in droves that they could not actually afford. Inflating credit scores in a way that does not accurately portray a consumer's ability to repay does not benefit them.

- **The Emergency Relief for Student Borrowers Act**

Not all student loan borrowers were impacted by COVID-19, and impeding communication with them may hinder their ability to consolidate loans in the future. Colleges, debt collection agencies, and ultimately taxpayers will be harmed if student loan relief is not appropriately targeted. ACA members are committed to working with borrowers to help them understand their options.

- **The Stop Debt Collection Abuse Act**

The stated purpose of this bill is to extend the Fair Debt Collections Practices Act to collectors of debt owed to a federal agency and limit any interest, fee, charge, or expense incidental to the principal obligation. The bill also mandates that debt buyers are subject to FDCPA, and it requires a GAO study on the use of debt collectors by local state and federal agencies. ACA is particularly concerned that definitions in the legislation for "debt" and "debt collector" conflict with definitions the Consumer Financial Protection Bureau recently finalized for those terms in its final rule for Regulation F. The rule is the result of the Dodd-Frank Wall Street and Consumer Protection Act, which provides the bureau with rulemaking authority for the debt collection industry.

Communicating about debt owed to the government is unique. For example, providing information about outstanding student loans may help borrowers avoid penalties or other negative consequences, such as the inability to obtain a federal government job. Congress previously has correctly recognized the unique distinctions for government owed debt. This distinction for debt owed at the state and local level is also particularly acute considering budget shortfalls as a result of COVID-19, which will be exacerbated by adding new requirements to collection efforts that will require additional time and resources to implement. This legislation also conflicts with the Debt Collection Improvement Act of 1996, the Fixing America's Surface Transportation Act, and Section 484A(b)(1) of the Higher Education Act that empowers the Department of Education to set the appropriate collection cost amount/percentage.

The FDCPA also already requires that fees and interest can only be charged if expressly authorized by the agreement creating the debt or permitted by law. There are also situations where state law allows collectors to add fees, but only if the contract creating the debt is silent on the issue. In these types of situations, the Federal Trade Commission has stated it is permissible to add collection fees to the debt. The legislation requires that the Comptroller General of the U.S. shall commence a study on the use of debt collectors by state and local government agencies. We applaud and support this aspect of the bill and are confident that this study will be in line with other research in this area, which shows both consumer and economic benefits from debt collection efforts for the government.

- **The Debt Collection Practices Harmonization Act**

The stated purpose of this bill is to extend the FDCPA to cover debt owed to a state or local government and adds specific requirements for national disasters. As noted above, ACA does not support extending the FDCPA to debts owed to the federal government, and it also does not support extending it to local governments. Collecting government owed debt is an important part of a functioning economy and there may be a unique need for consumers to be able to efficiently resolve debts owed to a local government, for example maintaining a valid driver's license. Allowing professionals in the accounts receivable management industry to aid local and federal government in collection efforts benefits both consumers and the economy.

This bill also allows the damages amounts under the FDCPA to be tied to inflation. The vast majority of FDCPA litigation is for hyper-technical violations, where there was arguably not actual harm to a consumer. Most notably, given the mechanical language and requirements under the FDCPA, self-described "consumer protection" attorneys have generated unnecessary litigation based on technical, inconsequential, non-abusive violations. Many consumer attorneys throughout the country coordinate with their clients to call collectors with the intent of eliciting a response that will form the basis of an FDCPA suit. These bait calls or trap calls are no different than acts of entrapment that plague well-intended collectors.

These attorneys burden collection agencies (which as noted above are often small businesses) with demands for tens of thousands of dollars to resolve claims arising from hyper-technical violations of the law. Moreover, they and their clients openly invoke the FDCPA as a pretext for avoiding the repayment of lawful debt. Some attorneys even use the FDCPA to drive their bankruptcy law practices. Many go so far as to search public court databases for newly filed collection actions to recruit new clients. Most importantly, these attorneys thrive on the mere threat of litigation, knowing that most agencies will pay $5,000 to settle a frivolous case instead of spending $50,000 to successfully defend one. In short there is already abusive litigation in this area that rewards the trial bar more than actual consumers. Tying this type of litigation to inflation will only further reward lawyers, while associated costs continue to be passed on to consumers.

- **Non-Judicial Foreclosure Debt Collection Clarification Act**

The stated purpose of this bill is to amend the FDCPA to clarify that entities in non-judicial foreclosure proceedings are covered by the law. However, the broad language of "enforcement of security interest" may be interpreted to encompass creditors collecting secured debt. This arguably could sweep a large swath of products from creditors under the FDCPA including mortgage loans, auto loans, pawn loans, etc.

- **Ending Debt Collection Harassment Act of 2021**

The stated purpose of this bill is to amend the Consumer Financial Protection Act of 2010 to require the director of the CFPB to issue a quarterly report on debt collection complaints and enforcement actions and prohibit the director of the CFPB from issuing rules that would allow a debt collector to send unlimited email and text messages to a consumer. ACA would be interested in additional reporting on the complaint database if it more accurately portrayed what the raw complaint data means for the accounts receivable management industry. The most troubling aspects of the complaint database are: (1) the bureau's broad definition of a complaint, (2) the bureau's failure to verify the accuracy of the complaints it receives, and 3) not contextualizing the number of complaints versus the number of contacts that are made. Notably, debt collection complaints account for only 0.005% of all consumer contacts made in a given year by the accounts receivable management industry. It also important to acknowledge that the CFPB already regularly issues reports that include information about the complaint database.

Regarding the provision that would prohibit, "allowing a debt collector to send unlimited email and text messages to a consumer," in the CFPB debt collection rule, we disagree with this interpretation of the final rule and believe this legislation is misguided. Alternatively, the CFPB's final rule instead addresses modern forms of communication and gives unprecedented power to consumers to control those modes of communication. Most notably, consumers have the ability to opt out of receiving messages and also control the contact information that they provide to creditors as an opt-in. In addition to this, there are many compliance hurdles that must be met for the accounts receivable management industry to be able to send emails and text messages in the first place, which require extensive training and compliance with the FDCPA and other consumer financial protection laws. The debt collection industry is not motivated to send unlimited communications causing consumers to opt-out after working hard to come into compliance with CFPB rules.

Lastly, it is also important to recognize that the FDCPA already imposes several requirements on the accounts receivable management industry, for example, the prohibition of engaging in any conduct that is harassing, oppressive, or abusive in connection with the collection of a debt. This legislation is redundant of that established law and instead seeks to further muddy the waters for already overly complex requirements for using consumers' preferred methods of communication. The CFPB's final rule was a small step forward in putting consumers in the collections process on a level playing field with others in the financial services marketplace by recognizing their preference to use email and text messaging over other outdated methods of communication recognized in the FDCPA, such as faxes. Treating consumers in the collections process differently than those who are bank customers, or other financial services customers, and limiting their ability to communicate makes unfair assumptions about their preferences.

- **Consumer Protection for Medical Debt Collections Act**

ACA has several concerns about this bill, particularly regarding the year-long delay in reporting medical debt and the lack of clarity surrounding what is a "medically necessary procedure." Many consumers are unaware of the options they may have to handle their debt obligations and deadlines they face for insurance corrections and charity care options. After exhausting other options, credit reporting can be the best way to alert consumers of their outstanding debts. Moreover, consumers could be at risk if they are obtaining unaffordable credit and services during the lengthy time frame credit reporting would be delayed if this legislation were to become law. Providers will not understand a consumer's financial situation if they have an inaccurate credit report.

ACA supports the intent of the Fair Debt Collection for Servicemembers Act and Senior Investor Pandemic and Fraud Protection Act.

Thank you for your attention to these important matters. We look forward to continuing our engagement with Congress.

Sincerely,

Mark Neeb

Chief Executive Officer
ACA International

Credit Union National Association
CUNA

Jim Nussle
President & CEO

Phone: 202-508-6745
jnussle@cuna.coop

99 M Street SE
Suite 300
Washington, DC 20003-3799

March 10, 2021

The Honorable Ed Perlmutter
Chairman
Subcommittee on Consumer Protection and Financial Institutions
House Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Blaine Luetkemeyer
Ranking Member
Subcommittee on Consumer Protection and Financial Institutions
House Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Perlmutter and Ranking Member Luetkemeyer,

On behalf of America's credit unions, I am writing regarding the hearing entitled, "Slipping Through the Cracks: Policy Options to Help America's Consumers During the Pandemic." The Credit Union National Association (CUNA) represents America's credit unions and their more than 120 million members.

Implement COVID-19 Policies that Protect Both Consumers and Financial Institutions
Throughout the COVID-19 pandemic and ensuing economic disruption, credit unions have tailored their services to meet immediate and long-term needs of their members by providing low- and no-interest loans, payment forbearance, fee waivers, payroll advances, loan modifications, and other services that help meet the needs of their members in crisis. The credit union "People Helping People" philosophy is alive every day, but during uncertain times credit union members feel its impact greatest.

As Congress considers further policy options related to the public health and economic crisis we urge you to avoid implementing certain well-intentioned protections such as suspension of negative credit reporting, a debt collection moratorium, and extended forbearance periods that, could put the safety and soundness of all financial institutions at risk while providing little help to consumers.

Debt Collection Proposals
Credit unions have significant concerns with legislation that would prohibit the collection of debt related to past due consumer and small business loans or expand the scope of the Fair Debt Collection Practices Act (FDCPA).

Debt collection is a critical function that supports the safety and soundness of all lending institutions. A blanket suspension of the debt collection process—even for a temporary period—could disrupt creditors' ability to actively manage their loan portfolios, increase the cost of credit for all borrowers, and reduce access to credit from reputable lenders when Americans need it most. While we understand the desire to insulate borrowers significantly impacted by the economic consequences of the pandemic, this type of relief should be focused to those who are truly in need as opposed to applying broadly to all consumers.

We note with concern the bills that in various ways would expand the scope of the FDCPA. Credit unions use third party collectors to assist in making credit union membership whole when borrowers are delinquent on debt; so, expansion of the FDPCA as it relates to third party collectors is of concern to us because it will have an impact on credit unions and their members. Congress should carefully consider potential unintended consequences of these bills including impact on access to safe and affordable credit.

While none of the bills would expand the FDCPA to cover first party collectors, we feel given the focus this committee has on the FDCPA that we must reiterate strongly that regulation of this function as it pertains to creditors collecting their own debts must remain a part of safety and soundness regulation under the supervision of the prudential regulators. Congress purposely limited the scope of the FDCPA to third-party collectors, recognizing that the relationship that exists between creditors and borrowers incentivizes creditors to maintain goodwill with their customers or members in order to maintain an ongoing banking relationship with the consumer long after the collections process has been concluded.

Expanding the scope of the FDCPA to creditors or first-party collectors would disrupt the management of lending portfolios, increase the cost of and reduce access to credit. Therefore, credit unions would strongly oppose any bill that would expand the scope of the FDCPA to cover creditors collecting their own debts, and we urge the committee to reject any such legislation.

Throughout this crisis credit unions have been working with financially distressed members to develop customized solutions that secure their financial well-being during this pandemic and beyond —this is what credit unions do regularly to support their members' financial well-being. Relying on credit unions to do what they do best is preferable to an environment where credit unions are unable to assist members because of diminished resources or rigid public policy.

Suspension of Negative Credit Reporting
Credit unions have significant concerns with legislation affecting credit reporting during the pandemic, including suspending most negative credit reporting and requiring adverse information be excluded from consumer credit reports. Credit unions are concerned a blanket suspension of negative credit reporting will undermine the confidence lenders have in credit reports by impairing the accuracy and completeness of the reports. This could ultimately result in reduced access to credit for consumers.

In addition, uniformly reducing relevant information on credit reports – negative or otherwise – could create challenges for lenders making lending or pricing decisions post-crisis, which would in turn threaten safety and soundness. Suspending negative credit reporting may be introduce unnecessary risks to the lending system as procedures already exist to account for delinquent or missed payments resulting from economic hardships, including the current pandemic. Credit unions are using these proven processes and have been since the start of the crisis to guard their members' financial well-being and creditworthiness.

Aiding Distressed Borrowers via Mortgage Forbearance
While we support initiatives to aid distressed mortgage borrowers, credit unions are concerned about the impact the large volume of mortgage forbearances will have on the liquidity of mortgage servicers. The longer mortgage servicers are expected to deliver scheduled payments while the borrowers themselves are in deferment, the greater the likelihood that servicers will start to experience liquidity issues. Given Federal Housing Finance Agency (FHFA) and Federal Housing Administration's (FHA) forbearance period extensions, financial institutions may need aid themselves in order to accommodate this large volume of mortgage forbearances. That said, Congress should consider creating a financing program, or liquidity facility, for mortgage servicers in need of assistance in order to preserve their ability to respond to the unprecedented levels of payment forbearance required to help families affected by the pandemic.

Further Congressional Action on COVID-19 is Needed
CUNA appreciates the steps taken in the 116th Congress that helped credit unions remain in a position to serve their members, including the passage and enactment of legislation to accommodate troubled debt restructuring, to extend the borrowing authority of the Central Liquidity Facility (CLF), to include credit unions as lenders in the Paycheck Protection Program (PPP), to simplify the PPP loan forgiveness process and to leverage the power of Community Development Financial Institutions (CDFI) to assist communities in need.

That said, we urge Congress to take further legislative action to ensure that credit unions remain in a position to serve America's consumers including:

Exempt Member Business Loans During and for One Year After the National Emergency
As the COVID-19 pandemic persists, small businesses across the country will continue to need capital and credit unions are able to pump billions into the economy at no cost to the government. However, an obstacle impedes credit unions from fully assisting these businesses: the arbitrary credit union business lending cap which limits credit union business lending activity to 12.25% of assets.

Given the financial needs of so many small businesses, now is the time to provide credit unions with additional flexibility to serve their business members by lifting the cap.

While credit union business lending has increased greatly since the Great Recession, many credit unions are now approaching the 12.25% of asset cap. We conservatively estimate that even temporarily removing the member business loan (MBL) cap will provide over $5.5 billion in capital to small and informal business ventures, creating nearly 50,000 jobs just over the course of the next year[1].

Additional credit union lending will not impede bank lending activity. Small Business Administration (SBA) research shows that growth in credit unions' small business lending is apparent in many respects, but a majority of credit union business lending is for loans that banks will not originate. This means a majority of credit union lending does not replace lending that would otherwise be done by banks—it is lending that otherwise would not occur[2].

Small businesses and communities around the country are suffering and need access to relief. Providing credit unions flexibility to temporarily exceed the MBL cap would not only provide small businesses and consumers with the assistance they need immediately, but also stimulate the economy in the long term. As such, we urge swift passage of H.R. 1471, a bill introduced by Representatives Brad Sherman and Brian Fitzpatrick, that would exempt COVID-related lending from the MBL cap for up to one year after the pandemic.

Provide Temporary Flexibility to NCUA to Offer Forbearance from Prompt Corrective Action Requirements
Credit union capital requirements are different than bank requirements in several respects, including that only retained earnings count as Tier I capital for credit unions and thresholds for credit union capital levels are hardwired into statute. These limitations restrict the National Credit Union Administration (NCUA) in its ability to provide accommodations to otherwise healthy credit unions impacted by natural disaster, pandemic and other crises.

As Congress considers additional policy options, we encourage you to include language that provides temporary flexibility to NCUA to offer forbearance from prompt corrective action to credit unions impacted by the pandemic and which were otherwise healthy prior to the onset of the crisis. While credit unions entered the crisis extremely well-capitalized, the impact of the ensuring economic crisis has and will put stress on capital and, given credit unions' limited ability to raise capital, the regulator could use additional tools. We believe that this would require a statutory change and we would be happy to work with you on a remedy.

---

[1] CUNA estimate assumptions: 1. Grandfathered CUs, Non-Federally Insured and/or Low-Income designated do not increase lending; 2. Non-Commercial lenders lend in amount equal to 1% of assets on average under the new authority; 3. All other Commercial CUs lend in amount equal to 60% of their current use rate; 4. Estimates produced using assumptions 1-3 are further adjusted as follows: * CUs with net worth/assets <=6% are assumed to have no Commercial Loan growth* CUs with net worth/assets between 6% and 7% remain at the current 12.25% cap. * CUs with Comm Lns/assets >= 10% are limited to a 30% increase in Commercial Loans in the 1st year. 5. First year increases: baseline estimate = 50% of new use rate; adjusted/conservative estimate = 40% of new use rate. 6. Employment increase is based on Council of Economic Advisors 5/09 ARRA job creation estimates ($92,000 in spending creates 1 job / $109,633 in 2019 dollars).

[2] SBA research specifically shows that roughly 80% of credit union business loans are loans that banks would not make. Wilcox, James A., The Increasing Importance of Credit Unions in Small Business Lending. Small Business Administration Office of Advocacy (2011).

Increase the Arbitrary Credit Union Loan Maturity Limit
Credit unions have worked around the clock to meet members ever shifting financial needs during this pandemic. However, the 15-year loan maturity limit has hampered credit union's abilities to offer more affordable loan terms to those in need. Except for mortgage lending, federally chartered credit unions are prohibited by statute from making loans with maturity limits in excess of 15 years, while no such constraint exists for banks. The ability to set a longer loan term would provide more affordable options and opportunities for consumers in this economic recovery.

In closing, on behalf of America's credit unions and their more than 120 million members, thank you for the opportunity to share our views and look forward to partnering with Congress on the road to recovery ahead.

Sincerely,

Jim Nussle
President & CEO

Responses from the National Bankers Association to Representative Meeks

Traditionally, CDFIs and minority-owned depository institutions (MDIs) can be economic development engines due to their relative concentration in minority and low-income communities and established relationships. Unfortunately, MDIs' small scale does not allow them to move fast enough, especially in times like these. With African Americans overrepresented by the health and economic crisis, but potentially underrepresented by the relief efforts, more customized solutions are required.

We saw this play out during all rounds of the Paycheck Protection Program (PPP). Congress devised the program as a mechanism to aid small businesses who suddenly found themselves forced to close during stay-at-home orders. A set of conditions that have favored larger businesses, including many banks only approving loans for existing customers, delaying the application of sole proprietorships, and not allowing enough time for institutions like ours to work with smaller businesses to work through the application process, shut out many minority-owned businesses. Our institutions learned that technology and capital are critical to delivering the type of help the communities we serve need.

Answer

The House Financial Services Committee and you Mr. Chairman have been instrumental in the inclusion of several provisions in multiple relief packages adopted during the course of the pandemic that ensure that MDIs and the small businesses and individuals they serve are not forgotten during this national emergency.

The creation of the Emergency Capital Investment Program and the $3 billion plus up of the CDFI Fund can make real transformational changes to institutions like those within the NBA and allow for more access to credit for individuals and small businesses in LMI communities. The NBA applauds the Congress for the adoption of these two important measures and very much look forward to continuing to work with you on measures to ensure that the changes borne by these two measures transcends the pandemic and lead to material changes in the communities our members serve.

With the expected infusion of new capital from these programs, it is critical for our institutions to maintain sufficient flexibility to deploy investments in the communities we serve. While there can be friction at times with institutions who are not regulated to the same extent that we are, we have learned that it makes sense to develop strategic partnerships with Fintech companies in the deployment of capital and the adoption of new technology to make the process efficient and cost effective for our communities.