

S. HRG. 117–700

**PROTECTING AMERICANS FROM DEBT TRAPS BY
EXTENDING THE MILITARY'S 36 PERCENT IN-
TEREST RATE CAP TO EVERYONE**

HEARING
BEFORE THE
COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE
ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

ON

EXAMINING EXTENDING THE MILITARY'S 36 PERCENT INTEREST RATE
CAP TO EVERYONE TO PROTECT ALL AMERICANS FROM DEBT TRAPS

JULY 29, 2021

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PROTECTING AMERICANS FROM DEBT TRAPS BY EXTENDING THE MILITARY'S 36 PER- CENT INTEREST RATE CAP TO EVERYONE

THURSDAY, JULY 29, 2021

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met at 10 a.m., via Webex and in room 538, Dirksen Senate Office Building, Hon. Sherrod Brown, Chairman of the Committee, presiding.

OPENING STATEMENT OF CHAIRMAN SHERROD BROWN

Chairman BROWN. Please sit. The Senate Committee on Banking, Housing, and Urban Affairs will come to order. I have never had witnesses stand out of respect or out of something, Chuy. I do not know what the three of you were standing for, but thank you for that.

This hearing is in a hybrid format. Appreciate the three Members of Congress being in person. We have some witnesses testifying in person, some by video.

For those joining remotely, a few reminders: Once you start speaking, there will be a slight delay before you are displayed on the screen. To minimize background noise, please click the mute button until it is your turn to speak or ask questions. You should all have one box on your screens labeled "clock" that will show how much time is remaining.

As we are here, those of us in person, our speaking order will be as is traditional, by seniority of the Members here when the gavel came down and then by seniority of Members arriving later. We alternate Democrat, Republican, back and forth.

Fifteen years ago, this Committee held a hearing looking for solutions to protect members of the military and their families from abusive lenders that went out of their way to target servicemembers. The then Chair of the Banking, Housing, and Urban Affairs Committee, Richard Shelby, described these practices as "predatory lending schemes that target financially inexperienced consumers and make loans without regard to the consumers' ability to repay." Another Member of this Committee, Senator Martinez of Florida, described these high-interest loans as "unconscionable." Senator Elizabeth Dole highlighted the efforts her home State of North Carolina had taken to shut down high-interest payday lending.

Following that hearing, a bipartisan consensus emerged. Congress passed the Military Lending Act, which President Bush signed into law in 2006. That spurred action from both parties around the country. States of all sizes in all regions passed laws protecting consumers from high-interest, predatory loans. Since 2010, Montana, South Dakota, Colorado, Nebraska, California, Illinois, all passed laws to cap interest rates and consumer loans at 36 percent. And like the Military Lending Act, these State laws were passed with overwhelming bipartisan support. Seventy-two percent of Montana voters, 75 percent of South Dakota voters, 77 percent of Colorado voters, 83 percent of Nebraska voters, all supported ballot issues to cap interest rates at 36 percent.

Of course, of course, the payday lending lobby did not give up. They spent every day since then trying to come up with new schemes to evade these laws, to exploit loopholes. They got an assist from the last Administration. Fortunately, a bipartisan group of Senators, including Members from this Committee, worked to overturn the Administration's giveaway to the payday lobby, the so-called True Lender Rule. It would have allowed predatory lenders to evade State interest rates caps. We put a stop to that specific scheme, but again the industry does not give up, not when their profits depend on tricking Americans out of their money.

We need national protections. Now is the time for this Committee to again lead the country by passing a Federal law establishing a 36 percent interest rate cap on all consumer loans. That is why I and so many of our colleagues joined under the leadership of Senator Reed, who is Chair of the Senate Armed Services Committee and the most senior Member on this Committee, to introduce the Veterans and Consumers Fair Credit Act.

Senator Reed's legislation, our legislation, builds on the success of the MLA. It extends its 36 percent cap to everyone, including to veterans and surviving family members left out of the original law. This Act is supported by more than 100 consumer, community, civil rights organizations as well as military and veterans service organizations. This bill is also supported by a broad coalition of faith organizations, including the Southern Baptist Ethics and Religious Liberty Commission, the National Association of Evangelicals, the National Baptist Convention, the National Conference of Catholic—the U.S. Conference of Catholic Bishops. And, like the MLA, it is bipartisan.

Our bill's lead sponsors in the House—the two members who are here, Republican Glenn Grothman, welcome, and Democrat Chuy García, welcome—are both here to testify before this Committee.

We know the tired arguments against the bill. They are the same ones we heard from the Military Lending Act. During the 2006 hearing, the payday industry claimed we would cut off access to credit to servicemembers; that did not happen. According to a May 21 Department of Defense report, the MLA is currently working as intended. We will hear from Mrs. Petraeus about that. And servicemembers continue to have ample access to necessary credit.

We will hear those talking points again today, I am sure, because that is all the lobbyists on this have. It is an argument we welcome. We do want to cutoff access to loans at high interest rates,

so high they ruin people's lives. That is kind of the whole point here.

Payday lenders do not offer access to responsible credit that consumers can afford to pay. They offer the opposite, products that trap consumers in a cycle of debt. We have heard the same stories. Consumers end up renewing their loans over and over, paying more in fees than the original loan amount. We know that 75 percent of loans go to borrowers who take out 11 or more loans each year.

Yesterday, I spoke with Ohioan Gloria Olivencia, a mother from Lorain. She took out a payday loan to pay her bills. She ended up trapped in a cycle of debt. She paid \$1,200 in interest on a loan that was 500-some dollars. She shared the story of her daughter who took out a \$200 car loan and ended up living in fear that her car would be repossessed. She had been unable to get to work to earn the money to pay off the loan. As she said, "It is easy to get a loan. It is not so easy to get out of it."

These Ohioans' experiences sound a lot like the business model laid out in this actual training manual from payday lender ACE Cash Express. You can see the trap that people fall into.

Another argument we hear is that no one can be profitable offering loans at 36 percent. Really? Thirty-six percent is still pretty darn high and will make any company plenty of money. I ask my colleagues to think about their own credit cards or mortgages or loans they have taken out. I am betting nobody on this panel has paid anything like 36 percent on any of those loans.

Federal credit unions across the country offer payday alternative loans at rates between 18 and 28 percent. Some banks have begun to do the same. Even the American FinTech Council supports our bill. Their members offer short-term loans at rates appreciably under 36 percent.

Fifteen years ago, Republicans on this Committee described high-interest payday loans as "predatory" and "unconscionable." If these loans are predatory and unconscionable when made to servicemembers, as Senator Reed always points out, they are also predatory and unconscionable when made to anybody, to a veteran, to a surviving family member, or to a mother trying to get her car repaired so she can keep getting to work.

Our Committee took bipartisan action to protect servicemembers. I am optimistic we can do that together to protect all Americans we serve from debt traps.

And in closing, I would like to enter into the record, letters in support of the Veterans and Consumers Fair Credit Act from the Faith and Just Lending Coalition, the American FinTech Council, the Military and Veterans service organizations, and a coalition of 188 consumer, community, civil rights, labor, and small business organizations. Without objection, those will be entered into the record.

Senator Toomey.

OPENING STATEMENT OF SENATOR PATRICK J. TOOMEY

Senator TOOMEY. Thanks, Mr. Chairman. And let me just start off by a word of thanks to both of our staffs for the very intense work they have been engaged in the last, I do not know, 48 hours

or so. I think we have essentially reached an agreement on a transit title for this infrastructure bill, and our staffs worked very, very hard to get us there. So I want to thank them.

I also want to thank all of our witnesses, both panels. A special thanks to Congressman Loudermilk for joining us today to explain and speak to the very significant damage this proposal would inflict on Americans and our economy generally.

You know, it is a fundamental principle of economics that markets discover prices. Sellers want to sell their products for as much as they can possibly get. It is competition with other sellers that forced them to lower their prices until they get to about the lowest price they can and still stay in business.

Now the exception to that is when there are monopolies or virtual monopolies, which usually only exist when Government creates or facilitates them. Nevertheless, history is littered with examples of Government planners and their failed attempts to override markets and set prices. They fail for many reasons but mainly because they generate huge unintended consequences and inevitably harm the very people they are supposed to be trying to protect.

Proponents of a 36 percent interest rate cap seem to think it would result in borrowers getting cheaper credit. That is certainly not the case. In fact, those most in need would simply lose access to credit. If a lender cannot recoup its costs, the lender will not make the loan. Studies have found that a loan under \$2,600 is usually a money loser for the lender at a 36 percent interest rate, and that is because there are fixed costs that are associated with the loan regardless of its size. A bank policy institute has estimated that issuing a 3 month \$100 loan would cost a typical bank \$35 to issue. Now if you express that as annual percentage rate, that is about 140 percent, meaning a 36 percent rate cap would make it illegal to offer that loan. So the loan will not get made.

And many would suffer if they lost access to small loans. A 2020 Federal Reserve study revealed that 35 percent of adults could not cover an unexpected \$400 expense using cash, savings, or the equivalent. Who would be at most risk of losing access to the credit? It would be the 30 percent of U.S. consumers who have a subprime credit score and the more 1 in 10 Americans who are credit-invisible.

Moreover, while I am skeptical about the evidentiary value of unverified complaints, I would point out that personal loans, payday loans, and title loans each account for less than 1 percent of consumer complaints in the CFPB's database, which certainly suggests that consumers are not vocally dissatisfied with them.

Here is another example that highlights the inflexibility and the problem of an annual percentage rate cap. Consider a renter who is \$100 short on rent on the first of the month but will not get paid until the second of the month. Well, in order to avoid a \$50 late fee, she might opt to borrow \$100 at a cost of \$15, paid back anytime over the next several months. If it is 3 months, that would be equivalent to a—that would be calculated as a 60 percent annual percentage rate. Well, this happens to be a real product that is offered by a real major American bank, and it appears that it would be illegal under the proposed 36 percent annual percentage

rate cap. Therefore, instead of paying \$15 to the bank, the renter would be forced to pay \$50 to her landlord. Congratulations.

The effects would be far more severe using the all-in rate cap that the Military Lending Act, known as the MLA, imposes. Even though it is called an annual percentage rate, an all-in APR like this encompasses far more than just interest expense. It includes fees, finance charges, and the cost of ancillary products like credit insurance. As a result, a supposed 36 percent rate cap functions like a much lower limit.

Now this is particularly evident for credit cards. Including even a modest annual fee in the all-in APR calculation can cause an ordinary credit card to appear to exceed 36 percent.

And what is more, virtually all other Federal and State laws use a standard annual percentage rate calculation, not the all-in calculation. The result is an all-in rate cap of 36 percent would preempt even those States that have interest caps that are seemingly set at a similar rate with the sole exception of Illinois.

So while some argue that the MLA should apply universally, servicemembers are not actually reflective of the general population in a number of ways. For one, they have a reliable income source and different factors affect their readiness to deploy on a moment's notice, different than most consider when ordering their finances.

And what is more, research on the MLA's effects suggest that the MLA has an adverse effect on servicemembers. A survey of servicemembers showed that the percentage of servicemembers suffering financial distress more than doubled from 16 percent before the MLA's passage to 34 percent 5 years later and about 51 percent of all military families have been denied credit specifically because of the MLA. And research by West Point professors found that payday lending had not adversely affected servicemembers.

Although proponents claim extending the MLA to all consumers would help veterans, veterans groups have disagreed. In 2019, a number of veterans groups opposed legislation to extend the MLA, with several noting that veterans have more difficulty accessing capital than others.

The fact is Congress should not be restricting, but rather expanding, access to credit. Regulators have already made it very, very difficult for banks to offer small-dollar credit, and relatively few do. Although federally chartered credit unions can offer payday alternative loans, an NCUA-approved small-dollar product, fewer than 600 credit unions nationwide offer them. And in the first half of 2020, the all-in APR for these loans, including fees, exceeded 36 percent. So presumably, under this legislation, this entire category of small-dollar lending by credit unions would become illegal.

At the end of the day, taking choices away from consumers just is not a good idea. Instead, it hurts the very people it is supposed to help. Thank you, Mr. Chairman.

Chairman BROWN. Thank you, Senator Toomey, and thank you for your words about the transit title that we were able to negotiate last night. Brad Grantz and Laura, our staff directors on both sides, assisted by Nicole and Dan and Homer and Ben, were working until late at night, and thank you for that. And I think the

members on both sides of the aisle will be pleased with the outcome.

I will introduce the three House colleagues joining us today on our first panel: The Honorable Glenn Grothman represents Wisconsin's 6th congressional District, currently serving his fourth term in Congress, he serves on the House Oversight and Reform Committee, Education Committee, and Budget Committee. Welcome, Congressman Grothman.

The Honorable Jesús "Chuy" García represents Illinois's 4th congressional District, serving his second term, serves on the House Financial Services Committee, Natural Resources Committee, and Transportation and Infrastructure Committee. Welcome, Congressman García.

And Barry Loudermilk represents Georgia's 11th congressional District, serving his fourth term in Congress, serves on House Financial Services Committee and House Administration Committee. Welcome, Congressman Loudermilk.

Congressman Grothman, you are recognized for 5 minutes.

STATEMENT OF REPRESENTATIVE GLENN GROTHMAN OF WISCONSIN

Mr. GROTHMAN. Chairman Brown, Ranking Member Toomey, distinguished Members of the Committee, thank you for inviting me to testify in support of the 36 percent cap.

Prohibitions against usury or excessively high interest rates have been around since Biblical times. It is hard to imagine a situation in which it is advisable to take out a loan for over 36 percent. While I normally do not like the Federal Government regulating business, the fact that so many loans today are online kind of leaves us with no choice but to have the Federal Government get involved.

I am sure you will be contacted by lobbyists for the payday loan industry. They will tell you they are providing a necessary service.

We have talked about all the caps in individual States as well as the caps provided in the Military Lending Act. Despite these caps, I hear of no disasters happening in other States. There is a reference here in my testimony to a study of what happened in South Dakota after South Dakota imposed caps, and you can see it was no great disaster.

One can say that one needs access to credit, but I would argue that we have too much credit in this country as it is and a lot of times the answer is not to take out so much credit. Throughout my time in the Wisconsin legislature and now in Congress, I have been told borrowers rarely take out—I have been told these borrowers take out loans for one-time emergencies.

According to a study by the Pew Charitable Trusts, they released a report titled "Payday Lending in America: Who Borrows and Where They Borrow and Why". They ask, who are the borrowers, demographically, how people borrow, and how much they spend and why they use payday loans. And I think if you look at that, you will see they are largely not because of one-time emergencies. They get themselves in a position in which this is paying for ongoing expenses. And as the result, it shows that you should be look-

ing for credit either elsewhere or just the amount you spend. It is not because of the car breakdown or something like that.

In States with strong legal protections, the result is: A large decrease in payday loan usage; borrowers are not driven to seek payday loans online or from other sources; 2.9 percent of adults reported payday loan usage in States with the most stringent regulations compared to 6.3 percent in moderately regulated States and 6.6 percent in States with the least regulation.

I will leave you with this interesting anecdote. I am always reminded of my days—I always kind of remind myself of my days as a State legislator when this topic came up. One of my staffers doing research on the topic showed up at a payday loan store. She was told by an employee, “Do not tell your husband. It is really not a very good idea.” So that I always get kind of a kick out of.

Some people would say that, being a conservative Republican, why can you be for this? And nobody in this room would argue that we should not be regulating some financial packages. Right? There are certain insurance contracts that we regulate. We do not let anybody sell any insurance contract in the world because we realize there are some that are just unconscionable.

OK, offers to purchase. We regulate what is in an offer to purchase because we do not want something that is unconscionable in there.

I think the reason people get confused a little bit on the payday loan thing is they think to them it is so obvious that you should not take a loan for 100 or 150 percent, that, why do we not let this be a legal product? But what is obvious to some of us is not obvious to all of us. And it is not difficult—I am sure you will have people later testifying today—to find examples of people who wound up in these 150, 200 percent jobbies that find it very difficult to get out from under them.

And I think the industry knows that very well. I know in the county I used to live the number one use of small claims court used to be the payday lenders. Eventually, they just let people not pay. It is part of the cost of doing business.

But in any event, I really appreciate you bringing this, allowing us to testify on this bill. Good luck because I do think Americans, sometimes the Americans least able to afford it, lose tremendous amounts of interest. And, thank you again.

Chairman BROWN. Thank you, Congressman Grothman. Congressman García.

STATEMENT OF REPRESENTATIVE JESÚS G. “CHUY” GARCÍA OF ILLINOIS

Mr. GARCÍA. Good morning to all and thank you for inviting me to join the conversation this morning. A special thanks to Chairman Brown and Ranking Member Toomey for convening this conversation, and of course, a thanks to all of my fellow witnesses that will be speaking today.

I applaud my colleagues in the Senate for introducing the Veterans and Consumers Fair Credit Act, and I look forward to re-introducing it in the House shortly.

Capping interest rates on consumer loans is important to me for a simple reason. My community needs it. I represent a working

class district in Chicago, in suburban Cook County. My constituents are mostly Latino and largely immigrant but also a lot of diversity. They know all about the dangers of predatory lending. Let me explain.

Rents in my district have skyrocketed since the Great Recession. One neighborhood that I represent, Logan Square, has lost more than 10,000 Black families and 20,000 Latino families since 2010. Wages simply are not keeping up with the cost of living. All too often, working class communities must turn to loans to fill the gaps. Families take out loans with double or triple-digit interest rates to pay for the necessities of life, and they quickly find themselves in a cycle of debt they cannot repay.

That is what happened to Billie Aschmeller from Springfield, Illinois, who took out a loan for less than \$600 to buy a coat, a crib, and a car seat for her pregnant daughter but ended living in her car due to the 300 percent annual interest rate on the loan. This is what we call “debt traps,” loans that trap working class people in a cycle of debt.

And these lenders focus on Black and Brown communities like mine. They know we are not paid what we are worth. They know we do not have as much access to credit. And this year a study in Houston found that payday and title lending web sites featured Latinos in more than 30 percent of their pictures even though Latinos make up only 20 percent of their customers in Texas. Meanwhile, 75 percent of mainstream banks did not feature a single Latina or Latino individual. That is a pretty stark difference, and the communities I represent need relief from these debt traps.

The good news is that States are acting. I am very proud that my State of Illinois, Governor Pritzker, signed an interest rate cap bill into law. This has been a key priority for my constituents as well as consumer advocates, civil rights leaders, and religious organizations. Studies show it is already keeping people out of debt traps.

And it is not a “red State” or “blue State” issue either. Just last year, as you have pointed out, Mr. Chairman, 82 percent of Nebraskans passed a ballot measure to cap interest rates at 36 percent. They joined States like Arkansas and South Dakota that put the interests of their citizens over the interests of predatory lenders. It is an important step.

And I am proud that both houses, the House and Senate, passed my resolution to repeal the OCC’s so-called True Lender Rule and allowed States to protect their consumers, but we need a national standard that protects consumers across the country from getting trapped by mountains of debt they cannot repay. It is time for Congress to act.

During the Obama administration, the CFPB did a great work to improve regulations around payday lenders, and I hope that the Biden administration picks up where they left off. But only Congress has the power to step in and say, enough is enough. Our communities are suffocated by double and triple-digit interest rates. It holds us back from prosperity and a full economic recovery. The time to act is now.

Before Congress passed the Military Lending Act in 2006, lenders trapped servicemembers in cycles of debt while they served our

country. It is a shame it took so long to protect our men and women in uniform from triple-digit interest rates, but Congress capped those loans at 36 percent. It worked, and it provided us with a robust model for regulating consumer loans. It is time to extend these same protections to veterans, to servicemembers' families, and other consumers.

I applaud Senators Brown and Reed for introducing the Veterans and Consumers Fair Credit Act. I look forward to introducing it in the House. Let us protect our communities from these high interest rates. Thank you.

Chairman BROWN. Thank you, Congressman García. Congressman Loudermilk, welcome.

STATEMENT OF REPRESENTATIVE BARRY LOUDERMILK OF GEORGIA

Mr. LOUDERMILK. Chairman Brown, Ranking Member Toomey, and Members of the Committee, thank you for the opportunity to be with you today and to testify in this Committee.

My district is in northwest Georgia, and it is a snapshot of different types of American life. I have urban and rural, high income, low income, families who have been in Georgia for five generations and immigrants who have just arrived in America for the first time. I am here to tell you that a national 36 percent interest rate cap would be devastating to my constituents and would harm the very people it is intended to help.

We often hear that a 36 percent interest rate cap would cause short-term, small-dollar consumer loans to disappear. That is not hypothetical; that is real. To break even on a \$2,600 loan, factoring in losses and the cost of producing the loan, lenders have to charge a 36 percent APR. In other words, if a maximum APR is 36 percent, lenders will experience a net loss on loans under \$2,600 because the break-even APR for those loans is more than 36 percent. This would have wide-ranging consequences, none of which are good for consumers. Many lenders simply would not offer small loans anymore, or consumers would be forced to borrow more money than they need or have a longer-term loan to get the APR under 36 percent.

This theory has been proven correct in practice. When the State of Oregon established an interest rate cap in 2007, access to credit decreased dramatically, borrowers switched to inferior alternatives, and consumers, on average, were financially harmed more than they were helped.

There is no question that consumers have a significant need for small-dollar credit. Current Federal Reserve data indicates that more than one-third of American adults would not be able to pay for a \$400 emergency expense without having to borrow money, and tens of millions of Americans do not qualify for traditional bank loans.

A 36 percent interest rate does sound high, but that is because the annual percentage rate is an inappropriate and misleading way to measure the cost of a short-term loan. The terms of these loans are usually much less than 1 year. So measuring the cost in annual increments is like saying a \$100-a-night hotel room is actually a \$36,500-a-year hotel room.

Take, for example, a \$500 loan with a term of 3 months and a \$55 fee. That results in a 44 percent APR, and under this bill, that loan would be illegal nationwide. Furthermore, the military APR includes both interest and fees, which overstates and distorts the true cost.

Under a 36 percent all-in rate cap, credit cards with interest rates as low as 25 percent would be impacted, which risks eliminating access to credit cards for more than a quarter of subprime borrowers in Georgia and half of subprime borrowers nationwide.

What do Americans frequently use small-dollar installment loans to pay for? Weddings, funerals, emergency car repairs and medical bills. Who are we to tell our constituents that they can no longer access credit to cover these expenses?

I should also take a moment to dispel the commonly stated myth that opposition to a national interest rate cap is rooted in a desire to protect payday lenders. Georgia has an outright ban on payday lending. So that has nothing to do with my opposition to this bill. Instead, my constituents have been fortunate to access affordable personal loans thanks to the growth of bank fintech partnerships and nationwide online lending programs. But if this bill becomes law, my constituents will not have access to installment loans or any other type of short-term, small-dollar credit.

Finally, I find it incredibly ironic that the Majority is attempting to override State laws with this bill. Just a few weeks ago, they described the OCC True Lender Rule as “a shameful attack on States’ ability” to determine their own policies. It is disappointing to see my colleagues selectively pick and choose when they think State laws matter and when they do not. The States, the CFPB, and multiple other agencies regulate these loans rigorously, and there is no justification for legislating them out of existence.

Thank you again for the opportunity to testify before the Committee.

Chairman BROWN. Thank you, Congressman Loudermilk. Thank you to all three of the Members of Congress. Really appreciate your joining us, the staff with them.

You are dismissed and as the other witnesses would make their way to the table, please. Thank you again.

And Senator Tester, while the staff is setting up name tags and people are looking forward, would like a minute to speak.

Senator TESTER. I appreciate that, Mr. Chairman, and I appreciate you and the Ranking Member having this hearing. I also appreciate your work in negotiations on transportation. I very much thank you for—both of you for your efforts.

Chairman BROWN. And yours, too.

Senator TESTER. I just want to thank our witnesses for being here today, especially Professor Miller, who is a native Montanan.

I just want to bring up one issue. First of all, it is clear that we need to protect consumers from bad actors and unscrupulous practices. We should be focused on doing that while making sure folks—while making sure that working folks can still get access to small-dollar loans at fair terms so that they are not putting their financial stability at risk when they have an emergency or unexpected expense that they cannot cover.

I think what we need to also consider in this bill, though, is an issue that impacts Indian Country, and it is called “sovereignty,” which is fundamental to who they are. And the sovereignty issue sets Native Americans in a bit of a different category that I think we can accommodate, but we have to realize that there is a challenge here.

For example, Plain Green Loans, which is owned and operated by the Chippewa Cree Tribe, it is one of the biggest businesses on the Rocky Boy’s Indian Reservation, which is about 25 miles away from where I live, gives good jobs, good-paying jobs, to a place that has about 80 percent unemployment, by the way, and invests in youth programs, does a lot of really good work. The way this bill is written, it could potentially have very negative impacts on them.

So my suggestion is, as this bill moves forward, as we have this hearing today, as we massage this bill to make this bill better, that we get some Indian tribes in here to talk about the impacts on them.

With that, I just want to thank you, Mr. Chairman. Take care. Thanks.

Chairman BROWN. Thank you, Senator Tester.

I will introduce the witnesses for our second panel. Three of them are in person, as we see; three of them will be testifying remotely.

Mrs. Holly Petraeus served 6 years Assistant Director at the Consumer Financial Protection Bureau, heading up its Office of Servicemember Affairs. She previously worked as the Director of the Better Business Bureau’s Military Line to conduct outreach to military communities across the country. Of course, welcome, Mrs. Petraeus.

Ms. Ashley Harrington is the Federal Advocacy Director, Senior Counsel at the Center for Responsible Lending, where her portfolio includes general consumer lending issues. Welcome, Ms. Harrington.

Richard Williams is the President and CEO of Essential Federal Credit Union. Essential is a \$360 million federally chartered credit union in Baton Rouge, with approximately 40,000 members. Welcome, Mr. Williams.

Bill Himpler is the President and CEO of the American Financial Services Association. He has been active in engaging on the policy issues that impact AFSA’s member companies’ ability to offer affordable credit. Welcome, Mr. Himpler.

Professor Thomas Miller is a senior affiliated scholar at Mercatus Center at George Mason, where his research focuses on small-dollar loans. He is also a professor of finance at Mississippi State University. Welcome to Mr. Miller, Professor Miller.

And David Pommerehn is General Counsel and Senior Vice President for the Community Bankers Association. His expertise covers a wide range of Federal legislative and regulatory issues associated with the area of consumer financial services. Welcome to you, Mr. Pommerehn.

We will begin the testimony with Mrs. Petraeus. Thank you for joining us.

STATEMENT OF HOLLISTER K. PETRAEUS, FORMER ASSISTANT DIRECTOR FOR SERVICEMEMBER AFFAIRS, CONSUMER FINANCIAL PROTECTION BUREAU

Mrs. PETRAEUS. Good morning, Chairman Brown, Ranking Member Toomey, and other distinguished Members of the Committee. Thank you for inviting me to speak to you today.

I first got interested in short-term lending over 15 years ago, when I was running the national military program for the BBB. A 2005 study of payday loan stores across the United States found them to be gathered outside military bases “like bears at a trout stream,” and the impact on the troops’ finances was a military readiness issue. A 2006 DoD report on predatory lending concluded that “there are hundreds of thousands of servicemembers using predatory loan products. Self-regulation, fine print, opt-out provisions, and cosmetic protections are not effective.”

Congress’ answer was the Military Lending Act of 2006, which capped small-dollar, short-term loans to active duty military and their dependents at a military annual percentage rate of 36 percent. DoD first focused on what they considered the three most harmful products: closed-end payday loans with terms of 91 days or fewer, closed-end auto title loans with terms of 181 days or fewer, and closed-end tax refund anticipation loans.

It did not take lenders long to figure out that the 2007 rule would be easy to evade. They simply had to make auto title loans 182 days, and they were not covered. Similarly, payday loans for over 91 days escaped coverage. A CFPB report in 2014 detailed some egregious examples, to include a \$485 loan to a servicemember in Texas, where he had to pay back \$1,428 in just under 6 months, and a \$2,575 auto title loan in Illinois to the spouse of a servicemember, with a finance charge of \$5,720.

There also was no specific guidance as to who would enforce the MLA, which meant that nobody did. So Congress gave MLA enforcement authority to those Federal agencies that were already charged with enforcing the Truth in Lending Act. It also directed DoD to review the 2007 rule. The new DoD rule of 2015 extended MLA coverage to almost all forms of consumer credit and closed off the loopholes that had been exploited by lenders.

I still remember the furious opposition from the payday lending industry. They were unwilling to lend at anything close to 36 percent and predicted dire financial outcomes for military families affected by the lack of short-term credit. But did that happen? In a DoD report published last month the answer is “no.” It said, “The Department believes the MLA is currently working as intended and that servicemembers continue to have ample access to necessary credit. Survey results generally reflect decreased use of high-cost credit products and improved financial condition among servicemembers over time.”

I also took a look at the annual reports of two military aid societies, Army Emergency Relief and the Navy-Marine Corps Relief Society, for the last 8 years, to see if they had experienced a big surge in aid applicants or in the amount of financial aid they granted, which could be indicators of post-MLA financial distress. For both societies, those numbers had actually declined since 2015.

And I see no evidence that military personnel have turned to loan sharks or the Mob since the MLA took effect, another prediction. Instead, they seem to have found other sources for the money: family, nonprofits, credit unions with low-interest loans, worked out a delayed payment schedule with their creditors, or decided not to borrow after all.

Short-term lenders often portray themselves as a helping hand during an emergency. The last time I went to Fort Campbell Army Post before 2015, I counted an astounding 22 fast-cash lenders in a 4-mile stretch outside the gate. Does anyone think they were all Good Samaritans? Of course not. They were there to make money by offering easy and expensive loans. And make money they did under theory of "If you build it, they will come."

So many of the testimonials sent to the CFPB from payday loan customers began with the words, "They gave me cash." That State-ment always disturbed me because the lenders were not giving away cash. They were loaning it to those customers at a very high interest rate and counting on them not being able to pay it back 2 weeks later.

A CFPB study in 2013 found that the average payday loan borrower was in debt at 199 days per year. Nearly half of the borrowers in the study had more than 10 transactions a year while 14 percent had 20 or more.

Lenders will try to persuade you that their products are helpful, not harmful, but I hope you will listen to the nonprofits. Ask faith leaders in your State how they feel. And if we judge by the 83 percent of Nebraska voters who chose last year to outlaw payday lending, you may find that a lot of your voters have an opinion that is not what you are hearing from the lending industry today.

Many borrowers are using payday loans to cover living expenses or discretionary spending, not emergencies, and the average borrower pays repeatedly to rent the same money. It is time for Congress to extend to all Americans the protections of the MLA and set reasonable loan rates of 36 percent or less that will provide those who need credit a true helping hand and loans that they have the chance to pay off successfully. Thank you.

Chairman BROWN. Thank you, Mrs. Petraeus.

Ms. Harrington is recognized. Thank you for joining us in person.

**STATEMENT OF ASHLEY HARRINGTON, FEDERAL ADVOCACY
DIRECTOR AND SENIOR COUNSEL, CENTER FOR RESPONSIBLE
LENDING**

Ms. HARRINGTON. Thanks so much. Good morning, Chairman Brown, Ranking Member Toomey, and Members of the Committee. I am Ashley Harrington, Director, Federal Advocacy, and a senior policy counsel at the Center for Responsible Lending. I appreciate the opportunity to discuss predatory high-cost lending today.

Payday and car title lenders charge around 300 percent APR and strip away nearly \$8 billion in fees annually from people typically earning just \$25,000 a year. Seventy-five percent of these businesses' fees are generated from people stuck in more than 10 loans a year. This is the debt trap, and it is how payday lenders succeed, by making sure their customers fail.

High-cost installment loans are no different. These loans are for much larger dollar amounts, with rates of 100 percent or higher and with repayment periods of 6 months to 7 years.

The high interest rate combined with the long repayment period turns these loans into interest-only or even negatively amortizing loans. Borrowers pay thousands of dollars toward interest with nothing going toward the principle for years, and defaults are extraordinarily high.

Many online installment lenders seek to disguise their harmful lending practices under the guise of fintech innovation while making excessively priced loans with direct access to a borrower's bank account and no safeguards of affordability. But let us be clear. These are marketing terms. They do not wipe away the harm caused by these unaffordable loans.

Payday lending, in many ways, is playing out the same way that the mortgage crisis did. Predatory lenders purport to provide access to credit in communities of color. Lax regulation enables lenders to target these communities and offer loans on predatory terms that are designed to strip wealth, not build it. Bottom line, high-cost lending disproportionately harms Black and Latino communities, exploiting and perpetuating the racial wealth gap.

Policy trends at the State and Federal level for more than a decade have been to rein in the harms of these unsafe loans, ranging from Congress' 2006 passage of the Military Lending Act to voter-enacted 36 percent rate caps in Nebraska, Colorado, South Dakota, Montana, and Arizona, all passed with overwhelming bipartisan support. In total, 32 States plus D.C. capped rates at 36 percent or less for a \$2,000 loan. Eighteen States plus D.C. have interest rate caps of 36 percent or less that apply to payday loans.

Some States with caps, like my home State of North Carolina, experimented with permitting payday lending, then determined their citizens were better off without those loans. And after North Carolina reinstituted its rate cap, data showed that people turned to other safer options, both credit and noncredit, to deal with financial shortfalls, and former borrowers said they were better off without these loans. And experiences in other States post-rate cap tell the same story.

Support for a rate cap is also strong across party lines. National polling data, as well as State ballot measures, repeatedly show this. Among registered voters, 70 percent of Republicans and 72 percent of Democrats support a rate cap of 36 percent on payday and installment loans. It is also supported by a broad, ideologically diverse coalition of faith, consumer, civil rights, and small business groups, adamant that predatory, high-cost lending must end. And they have long-advocated that a 36 percent Federal interest rate limit is the most effective way to do it.

Evidence from the real world is clear. The only access this predatory lending provides is access to debt. It is wealth stripping that fuels financial exclusion, not inclusion. Borrowing a payday loan makes a person more likely to face a cascade of harms, including delinquency on other bills, abusive debt collection, loss of a bank account, loss of a car, and even bankruptcy.

Make no mistake. High-cost loans are not rungs up the ladder to better credit. Rather, they knock the ladder out from under their borrowers, pushing the financial mainstream further out of reach.

It is past time that Federal lawmakers took the steps needed to protect consumers across this country from the devastating impact of predatory, high-cost lending. Just like pulling weeds from a garden allows the flowers to bloom, ridding the market of predatory loans clears space for responsible credit products and for borrowers and communities to thrive.

I want to thank Chairman Brown, as well as Senators Reed, Van Hollen, and Merkley for their leadership in protecting borrowers from predatory lending with the Veterans and Consumers Fair Credit Act. I look forward to your questions.

Chairman BROWN. Thank you, Ms. Harrington. Mr. Williams, remote, is recognized for 5 minutes.

**STATEMENT OF RICHARD WILLIAMS, PRESIDENT AND CEO,
ESSENTIAL FEDERAL CREDIT UNION**

Mr. WILLIAMS. Good morning, Chairman Brown, Ranking Member Toomey, and Members of the Committee. My name is Richard Williams, and I am President and CEO of Essential Federal Credit Union. Essential is a federally chartered credit union with a community field of membership serving the metropolitan area of Baton Rouge, Louisiana. We serve 40,000-plus members and have assets in excess of \$350 million. We are a certified community development financial institution, certified by the United States Treasury Department, and a low-income designated credit union by the National Credit Union Administration.

We are also a proud member of Inclusiv. Inclusiv is a national network of 400 credit unions, member-owned, regulated financial cooperatives, with a mission of helping low and moderate-income people and communities achieve financial independence through credit unions providing access to safe and affordable financial products and community development services. Expanding access to financially vulnerable or formerly excluded individuals—that is, those who may have no other alternative than predatory lenders—is at the heart of what Inclusiv credit unions do. Collectively, these credit unions are reaching more than 14 million American households with safe and responsible products and services designed to help borrowers to succeed with their credit needs and financial lives.

Today, I will share with you the harm we see high-cost loans cause in our communities, the role we play as a credit union in addressing these harms, and why our communities would benefit from the enactment of a Federal 36 percent interest rate cap as proposed by the Veterans and Consumers Fair Credit Act.

In 2019, we testified in support of House Bill 528 before the Louisiana House of Representatives to lower the maximum annual consumer loan interest to 36 percent, including fees and other charges. We were joined in our effort with support from a broad coalition of faith leaders, civil rights organizations, and social service providers. If the legislation had passed, Louisiana would have joined several other States in protecting its residents from harmful predatory loans.

We continue to believe that it is possible and reasonable to offer small-dollar loans under 36 percent as proposed by this bill because we do this. Our current payday alternative loan provides members easy access to funds to meet a variety of emergency needs at a rate significantly less than the rate of payday lenders and with the ability to offer our loan in compliance with the proposed bill. In addition to extending the loan, we also provide the member a financial literacy component to assist them in making better financial decisions in their daily lives. We have found our program to be profitable and beneficial to our membership.

I would like to offer some testimonials from our members about our payday alternative loan product which is branded Ready Cash:

"The Ready Cash loan helped me by allowing me to utilize Essential instead of a finance company at a much higher interest rate," Mr. Joseph C. Tilley.

"The Ready Cash loan from Essential has helped more in—more than in one way. It has provided the emergency funds to help me get back on track as well as build my credit," Ms. Adrienne Hayes.

"Having extended time to repay our Ready Cash loan back as compared to the shorter repayment window with the payday lender helped me get back on track sooner," Ms. Mellanee Nation.

We hear from our members every day about the challenges they face in making ends meet. This means putting food on the table and paying recurring bills. They are experiencing financial distress that does not go away in 2 weeks and is certainly made harder when they are trapped in a payday loan that takes large payments every 2 weeks or by a car title lender which forces the borrower into even tougher situations of facing threats of having their car seized. These extractive loan mechanisms do not help people make progress in their journey to financial security. Rather, it is quite the opposite.

Instead, what Essential is able to do with our small-dollar loan is not only to have it reasonably priced so that people can both pay it back and meet their other needs but also build a relationship with us to build their credit and eventually have wealth building opportunities such as buying a car or a home.

States like Louisiana are grappling with the effects on their economies of predatory lenders, and successes in other States with a rate cap point a way forward. These lenders, many of whom are headquartered outside of our State, pump marketing dollars to convince Louisiana residents they do not have other good alternatives.

As I mentioned earlier, we joined with numerous voices across the State to urge Louisiana to enact a rate cap of 36 percent. Despite the outcry from Louisianans all across the State to rein in the harms of these loans, the legislature refused to do so, and as such, high-cost lenders continue to drain our economies and pocketbooks of people already working to simply get by.

It is not just here in Louisiana that share these concerns. They permeate throughout the South and other communities. For example, from our neighbors in Mississippi, we hear stories of how these high-cost loans disrupt the lives of borrowers but also their families and communities. This includes a mother whose car was repossessed by a car title lender, which in places like the rural South results in the inability to get to work or to the store; or an elderly

woman on Social Security, whose car title loan payments consumed nearly half of her \$1,300 monthly income; or another stuck in 11 payday loans at a single time, causing tremendous anxiety and stress in addition to the financial strain. These stories could fill up pages and underscore the need for a solution.

In conclusion, we join with other CDFIs and credit unions in supporting a national interest rate cap. Additionally, there are many community development credit unions ready to meet the small-dollar borrowing needs of consumers. I would like to thank the Committee for allowing me this time to speak.

Chairman BROWN. Thank you, Mr. Williams.

Mr. Himpler is recognized for 5 minutes, in person. Thank you for joining us.

**STATEMENT OF BILL HIMPLER, PRESIDENT AND CEO,
AMERICAN FINANCIAL SERVICES ASSOCIATION**

Mr. HIMPLER. Can you hear me? Can you hear me? Chairman Brown, Ranking Member Toomey, and Members of the Committee, I want to thank you for the opportunity to testify today. At the outset, I want to apologize to the Members if my voice is a little rough. I spent a lot of time practicing to be ready for this hearing today. It is a great pleasure to be before you today to talk about how traditional installment lenders offer the oldest and safest form of small-dollar credit to hardworking Americans.

And there has been a lot of discussion about payday. I am not here to throw payday under the bus today, or any day, but installment lending is very different from payday. It is a product that is offered by banks, credit unions, and finance companies that put their own money at risk. The intention of this legislation has been targeted at payday, but it has a broad-ranging impact that will eliminate access to small-dollar credit from any institution.

A 2019 Federal Reserve study found that many adults, particularly people of color, may not withstand even small financial disruptions. Nearly 40 percent of adults reported difficulty covering an unexpected \$400 expense. For more than a century, the installment lenders have served customers with safe and affordable loans. Consumer finance companies, that I mentioned just a second ago, make more than three times as many personal loans to subprime borrowers than do credit unions, which are often cited as the small-dollar credit solution. In fact, CUNA President Jim Nussle, a former Member of Congress, recently said that rate caps such as the bill that we are talking about today would reduce access to such credit.

Congress passed the Community Reinvestment Act to encourage financial institutions to serve underserved neighborhoods that you are concerned with and you should be concerned with. AFSA members have been in, and continue to be in, those neighborhoods, and 9 out of the 10 customers that we serve in those neighborhoods are performing. We are there to help.

This credit lifeline would be dramatically hindered under a 36 percent rate cap on covered consumer loans. Nearly one in three Americans do not have a prime or excellent credit score. Fifty-three million adults have a thin or no credit file at all. And despite what Mr. Williams said, credit unions are looking for people that have

a credit history. These folks would go unserved by everybody if this cap went into place. When reputable, small-dollar lenders cannot serve underbanked or subprime customers, the customers are left to turn to unregulated or illegal, predatory lenders.

A 2020 survey by the National Foundation for Credit Counseling, the guys that help people in a hard situation, found that active duty servicemembers were more than twice as likely to take out a cash advance or payday loan in 2020 than in 2019. That tells you the MLA is not working.

And in fact, the most recent report from the DoD that they just put out earlier this month still did not provide any empirical data. We have been asking the Pentagon for 10 years to provide data on how the MLA is performing. Why will they not?

These borrowers, active duty servicemembers, said that they use these loans, the cash advance or the payday loan, because they had no other options.

As the National Commission on Consumer Finance noted, as the CFPB's Taskforce on Consumer Credit Stated, as the Federal Reserve, banks, nonbank lenders, and credit unions have all noted, especially recently, APR caps at 36 percent or below are unworkable for reputable lending institutions.

Traditional installment lending helps hardworking Americans cover necessities or unexpected expenses. Installment loans are transparent, with easy-to-understand terms, fixed rates, equal payments, no prepayment penalties, and defined payoff dates averaging between 12 to 18 months. The average loan amount is about \$2,000. There is no balloon payments, no hidden costs. And we work with the borrower to determine their ability to pay up front. And we look at their credit history, their repayment history, and it is reported. Their performance is reported to the credit bureaus, which takes care of those borrowers with thin files to improve their credit profile.

For such small-dollar loans, the quality, affordability, and soundness of the loan is best judged by its length and monthly payment, not its interest rate. The annual percentage rates are a function of time and not cost. And let us face it; at the end of the day, it is the cost that matters to the consumer and determines their ability to repay.

Say you borrow \$100 and are charged \$1 in interest. If you pay that loan off in 1 year, it is 1 percent. Nobody argues with that. You pay it off in a month, it is 12 percent. If you pay it off tomorrow, Chairman Brown, it is a 365 percent APR. It is \$1; that does not change but vastly different APRs. APR is not the type of measurement that we should be using to judge the quality of these loans. It should be the cost.

Analysis by the Federal Reserve study found that with a 36 percent rate cap consumers would be unable to obtain a loan of less than \$3,000. They would be forced to borrow large amounts, larger amounts than they need, with higher costs, longer repayment periods, despite having a lower APR.

Access to financial services is a cornerstone of the American way of life. For many consumers, such access enables opportunities that might otherwise be out of reach. Credit access should not be a privilege for the elite. When someone who is underbanked, has less

than perfect credit, or does not have access to a needed loan, it is not a consumer protection victory; it is a civil rights loss.

All consumers deserve access to safe and affordable and reliable credit, and AFSA, the American Financial Services Association, stands ready to work with the members of this Committee to ensure that everybody has that opportunity. Thank you, Mr. Chairman.

Chairman BROWN. Thank you, Mr. Himpler.

Professor Miller, remote, is recognized for 5 minutes. Thanks for joining us.

STATEMENT OF THOMAS W. MILLER, JR., JACK LEE CHAIR IN FINANCIAL INSTITUTIONS AND CONSUMER FINANCE, MISSISSIPPI STATE UNIVERSITY

Mr. MILLER. Chairman Brown, thank you. Thank you, Ranking Member Toomey and Members of the Committee. And thank you, Senator Tester. Our Montana blood runs deep.

My central message to you today is this: Interest rate caps do not make loans less expensive. They make loans less available.

We can see this through an example that Milton Friedman used in the tomato market. Suppose Congress passes a law that says tomatoes cannot sell for more than two cents per pound. Instantly, we will have a shortage of tomatoes. Why? Because the revenue under this law of selling tomatoes for two cents does not cover the cost of producing tomatoes. So setting the price of tomatoes at two cents a pound does not make tomatoes less expensive. It makes tomatoes less available.

The same logic Professor Friedman uses for tomatoes applies to loans. Setting the rate lenders can charge for loans does not make loans less expensive. It makes loans less available. It is simple arithmetic. If the revenue received from the loan is less than the cost of producing the loan, lenders will not produce the loan. If the lenders do not produce the loan, access to credit is lost.

There are two specific examples. A recent publication by the Federal Reserve shows that break-even installment loan size is about \$2,600 at a 36 percent APR. But suppose a consumer only needs to borrow \$500 or \$1,000. Access to these installment loan sizes is lost under a 36 percent interest rate cap.

At a 2-week payday loan for \$100 at 36 percent, the interest paid is \$1.38. In 2009, Ernst & Young studied this and found that the cost of producing a payday loan is about \$14. The cost far exceeds the revenue. So under a 36 percent APR cap, consumer demand will continue to exist, but the legal supply will dry up.

I think the goal should be to help subprime consumers keep access to credit. Actions such as an interest rate cap hurt a large number of constituents. For example, according to the FDIC, about 19 percent of all U.S. households were classified as underbanked in 2017. So for one in five households in America, access to small-dollar, nonbank-supplied loans is vital.

Congress can legislate away the supply of small-dollar, nonbank loans, but the demand for credit remains. If there is demand for loans but no available supply, what will consumers do? Perhaps they will delay going to the doctor or the dentist, or they will delay taking a pet to a veterinarian. Perhaps they will not buy needed

school supplies for their children. Perhaps they will defer necessary maintenance or repairs to their home or vehicle. These hardships have real impact on people's lives.

Good credit clearly increases the quality of life. Access to small-dollar credit products helps subprime consumers build their ability to become prime consumers and be able to borrow from banks. Access to small-dollar loans helps consumers build and repair their credit rating, and so as they repay the loan, their credit scores improve. Every ladder has rungs. If the lowest credit rung is missing, how can consumers climb the credit building ladder?

The rhetoric on interest rate caps does not match the arithmetic or the research. A high interest rate does not mean high-dollar cost to a consumer. Consider a loan for \$300 to be repaid with 3 monthly installments of \$120. The interest paid on this loan is \$20 per month. Does \$20 per month sound high or shocking or unaffordable? The APR on this loan is about 118 percent, however. That might sound high and shocking, but the extra cost to the consumer is only \$14 in interest per month as compared to similar loan that has a 36 percent APR.

But here is the catch. The loan at the 36 percent APR is unprofitable. It will not be offered. Therefore, it is not an option for consumers. I remind us all, we spend dollars; we do not spend "percents."

A belief in the effectiveness of an interest rate cap endures, but beliefs are not facts. Professor Harold Black and I summarized a large body of rigorous, peer-reviewed, academic research addressing arguments made by interest rate-capped advocates. We find little evidence supporting any of their arguments.

In 2015, two researchers from the United States Military Academy found that access to payday loans did not increase bad outcomes. I quote, "Our analysis," they conclude, "suggests no significant benefits to servicemembers from the MLA."

In conclusion, I urge Congress to press for much more research on interest rate caps before making decisions on them. Congress can call for Government and independent researchers to build a mosaic of transparent research results on the effect of interest rate caps, and this way, Congress can be assured that they are following the science concerning the impact of an interest rate cap. Thank you, and I stand ready to answer questions.

Chairman BROWN. Thank you, Professor Miller.

Mr. Pommerehn is recognized for 5 minutes, remote. Thank you for joining us, sir.

STATEMENT OF DAVID POMMEREHN, GENERAL COUNSEL AND SENIOR VICE PRESIDENT, CONSUMER BANKERS ASSOCIATION

Mr. POMMEREHN. Thank you, Chairman Brown, Ranking Member Toomey, and Members of the Committee. I am David Pommerehn, General Counsel at the Consumer Bankers Association, and I appreciate the opportunity to testify at today's hearing. CBA is the voice of the retail banking industry, whose products and services provide access to credit for millions of consumers and small businesses. Our members operate in all 50 States, serve more than 150 million Americans, and collectively hold two-thirds of the country's total depository assets.

As we discuss today, a fundamental aspect of lending and a cornerstone of prudent banking practices is the ability of banks to price for risk. While well intentioned, a cap on interest rates is not an effective policy for protecting against negative outcomes for consumers. Banks in the United States are highly regulated entities that carefully and appropriately price risk before extending credit to anyone. Placing a cap on the price in the form of an all-in maximum annualized percentage rate does not mean that consumers will get loans at lower rates. It simply means that consumers may not get loans at all. Research today demonstrates that interest rate caps reduce credit availability and create negative outcomes for the populations their proponents intend to benefit.

While many products are impacted by the proposed rate caps, today I am going to focus on two products that will most certainly be affected: short-term, small-dollar products and consumer credit cards.

Today, the need for accessible small-dollar credit for consumers has never been greater. The recovering economy has left consumers with less of a cushion for emergencies and reduced credit options, making access to reasonably priced, small-dollar liquidity products even more important. By now, we are all familiar with the many reports, including those by the Federal Reserve Board, indicating that nearly half of all American adults say they cannot cover an unexpected expense of \$400.

Accordingly, policymakers have encouraged banks to enter into, or remain in, the small-dollar lending market. Over the years, banks have worked with regulators to carefully design products to ensure consumers strong safeguards at reasonable prices. Low and moderate-income communities, and those seeking small-dollar emergency funds, are most often impacted.

The 36 percent rate cap leaves banks unable to adequately price for risk in order to viably offer affordable short-term credit. For a loan product to be sustainable, as we discuss today, banks must be able to recover costs. These costs not only include the amount loaned but also costs related to compliance, determining a borrower's ability to repay, customer service, IT, underwriting, administration, and defaults, including losses. An inflexible APR cap that incorporates fees, as well as the risk-based interest rate available to the borrower, make it exceedingly difficult for responsible lenders to extend credit to those in need.

Policymakers should consider the consumer benefit of bank-offered, short-term, small-dollar loans and the true cost of making them. For example, a \$50 loan at a fee of just 5 percent and with a term of 30 days carries an APR of nearly 70 percent, nearly twice the proposed cap. This \$50 may have covered a utility bill, a difference in a car payment, paid for gas to get work, or more. One can see that this \$2.50 is well worth the benefit to the borrower in these contexts.

Another product, credit cards, will also be adversely affected by the proposed caps. The consumer credit card market today offers a wide variety of products designed to meet the needs of different consumers at a variety of price points. Many customers choose cards with an annual membership fee because such products offer noncredit-related features such as reward programs, travel and

dining benefits, and insurance. While ostensibly designed to curb predatory lending practices, extending the MLA's all-in APR to this type of consumer lending would have the negative and untended consequence of limiting choice for consumers and reducing the availability of these credit cards, rewards, and benefits.

As outlined, the proposed all-in APR, or MAPR, is not simply a 36 percent rate cap on interest. Unlike the standard calculation of APR under the Truth and Lending Act, an MLA's all-in APR incorporates various fees that may be charged on the account, including the annual membership fee. Because the MAPR is calculated on an annualized basis, membership fees that are charged once a year are treated as though they were imposed, I am sorry, imposed every month. This means that if a customer has a balance in the month in which an annual fee is assessed even a small fee can cause the MAPR to exceed 36 percent.

In conclusion, banks provide safe, accessible, well-regulated, high-quality, consumer credit products. Before Congress considers any extension of MLA rate caps, a better understanding of the possible negative impacts on consumer access to credit is needed. Thank you for allowing me to testify today, and I look forward to your questions.

Chairman BROWN. Thank you, Mr. Pommerehn. And I apologize to you for introducing you earlier as from the Community Bankers. I know you are from the Consumer Bankers Association. I do know the difference, and I apologize for that.

Ms. Harrington, I want to start with you as we begin the questions. We have seen supermajorities of voters in State after State, several of us have mentioned that, support the 36 percent rate cap. It is clear the public wants these protections in very different kinds of States. What is driving this overwhelming support at the State level?

Ms. HARRINGTON. Thanks for that question. You hear me OK?

Chairman BROWN. Yes.

Ms. HARRINGTON. I think it is widespread recognition of the harms these—of the harms of these loans. These ballot initiatives have bipartisan support because people see the harms. And in fact, in States where we have rate caps, we see that people do not want predatory lending back. We have—since the rate cap in South Dakota, 2 years later CRL went back, and those same voters said they would vote for it again. They would keep this rate cap. Over 70 percent of Republicans said they would vote for this again because they see the harms and these purported benefits do not outweigh them.

That is why you have such a diverse coalition supporting this—supporting these rate caps. You have consumer groups. You have civil rights groups. You have faith groups. You have veterans groups. You have small business groups because everyone sees how these—how these loans drain billions of dollars in fees from hard-working Americans and strip wealth from them.

Even State legislators are passing this on a bipartisan basis. We saw this most recently in Illinois. So this is something that everyone should support. It is common sense.

Chairman BROWN. Thank you, Ms. Harrington.

Mrs. Petraeus, thanks for your service for so many years in so many ways. I want to talk to you about the impact of MLA on servicemembers, and you talked about it in your testimony. We heard 15 years ago in this Committee's hearing—I was not here then, but we heard from the payday trade association that a 36 percent interest rate cap would push legitimate lenders out of the market and drive servicemembers into the arms of loan sharks. They made the same arguments about the 2015 regulation that strengthened MLA. Did these predictions come true? What has been the experience of people who served our country since we passed these protections?

Mrs. PETRAEUS. Well, I think it is best evidenced by the Department of Defense report that was published just last month. They are saying that it is working, that servicemembers have access to credit, and that they have seen decreased use of high-cost products and an improved financial condition in servicemembers over time.

I found that NFCC report that was cited rather inexplicable. I have to wonder if they looked at nonactive duty military when they said that they were twice as likely to take out payday loans in 2020. If they were, then there are a lot of companies that are breaking the law in offering the products to them. It may be a regulation issue. I will point out that my old agency has done a couple of enforcement actions on—against companies that offered products against the law. And you know, I just find it fairly inexplicable.

I will say you have 150,000 and more new recruits every year. So it is constantly going to be an education to them to know what the—you know, what is legal for them to be offered and what is not. And I think you will have people take advantage of that.

But according to the Department of Defense assessment and what I cited from the Military Aid Societies, it has not triggered any kind of financial crisis for the military existing under the current Military Lending Act.

Chairman BROWN. Thank you. Mr. Williams, I want to turn to you—thank you, Mrs. Petraeus—with the Essential Federal Credit Union. Talk about the support that you provide to your members, including payday alternative loans at affordable interest rates. Do you have credit union members come to you, seeking help after they have gotten into a payday debt trap? Then, if you would, in answering that question, tell us about your interest rate you charge for payday alternative loans, Mr. Williams. Thank you.

Mr. WILLIAMS. Yes, Chairman, we—well, I cited a couple examples where I gave some testimony from our members who were in payday loan situations, clearly where it was very stressful for them because of the short repayment time that the payday lender was giving them.

But what we try to do is kind of do a comprehensive approach with all of our members. We bring them in. We do some financial counseling with them. We try to understand what all of their expenses look like in order for us to try to figure out the best way to structure the payday alternative loan that we have, the Ready Cash product. And we look to build long-term relationships with all of our members.

So the objective is that if you are coming to us via a payday or alternative loan product, the Ready Cash product, we are not try-

ing to keep you in that product for a very long time. We are trying to get you reestablished and trying to move you to some of our more traditional products at lower rates.

We do offer the product at the NCUA-regulated rate of 28 percent. We try to make sure that they are matching with a program or product that is going to help that member get out of that payday lending trap. So we do work with them closely in trying to make sure that they are able to service the loan that we are giving them in helping them make that transition. But it is all about us building a relationship. And the program has been very profitable from the standpoint that we have been able to cover our costs with respect to losses, and we plan on continuing to offer it in the foreseeable future.

Chairman BROWN. I thank you, Mr. Williams.

Senator Toomey is recognized.

Senator TOOMEY. Thanks, Mr. Chairman. You know, it strikes me that while there is no doubt a fundamental and philosophical disagreement on this Committee as to whether or not it is a good idea for the Government to dictate the cost of, in this case, credit, I hope that through this discussion it is becoming increasingly obvious that the all-in APR is a badly flawed and misleading measure of cost.

So, Professor Miller, let me turn to you. It seems to me from the point of view of a financial institution that is extending credit there are various categories of expenses that are associated with extending credit, including the marginal cost of doing so. The interest expense in funding the loan is an obvious one. Losses that inevitably occur in some percentage of cases is an obvious one. And while those presumably vary depending on the size of the loan, there are administrative and processing expenses that are much more likely to be fixed costs.

So, Professor Miller, I wonder if you could comment on whether that is true. Is it true that a loan, whether it is a \$5,000, \$4,000, \$3,000 or \$1,000 loan, might very well have essentially a component of the cost of providing that loan that is fixed and does not in fact vary with the amount of the loan? Is that your belief, Professor Miller?

Mr. MILLER. Yes, Senator Toomey, it is my belief. When you are operating a bricks-and-mortar loan operation, you have expenses during the month upcoming that will be paid regardless if we have—if there is any business that walks in the door. So costs are pretty constant from month to month. Over time, over a year or so, the costs can be changed but not in a short run.

Senator TOOMEY. And Mr. Himpler, you made, I think, a very powerful illustration of the way the APR inevitably is also a function of time and a very, very modest cost, if paid off quickly, under this calculation, is multiplied as though it occurs repeatedly when in fact it does not. Is that a fair description of what happens?

Mr. HIMPLER. Yes, Senator, it very much. I was—one of the things that constantly plagued me in this debate—and we saw it from the members of the House, and I have great respect for them—is how they interplayed the use of interest rate and APR. APR is a function of time, as I demonstrated in my example. What

we really need to do is look at cost, and that is measured in dollars and cents.

Congressman García mentioned a constituent that took out a \$600 loan at a 300 percent APR for 6 months. I did the calculations while I was waiting to testify. What we are looking at in that product is a 6-month loan, about \$100 payment per month, which you know, in an APR, comes out to 300 percent. But in terms of interest, it is less than 50 percent. That is still high, but it is a function of the size of the loan that Dr. Miller just spoke to.

Senator TOOMEY. It shows how the math gets distorted by this.

Mr. HIMPLER. Right. But there is a big difference between 50 percent and 300 percent——

Senator TOOMEY. Right.

Mr. HIMPLER ——for the exact same loan.

Senator TOOMEY. Right. Mr. Pommerehn, again the mechanism of this all-in APR calculation has very, very strange impacts on credit cards in some cases. You alluded to this in your testimony, but it is my understanding that this calculates—that the all-in APR approach calculates the APR by a reference to the balance carried in a given month and it compares that with the fee charged in that month even if that fee is an annual fee. So in effect, it treats an annual fee as though it were imposed 12 times over the course of the year when, of course, it is not.

So a lot of people choose a credit card that has an annual fee because they like maybe the rewards program that is associated with that. Could you address what the impact of this approach of calculating the all-in APR would have on some of the most popular credit cards in America? That was for Mr. Pommerehn. You are——

Mr. POMMEREHN. Yeah, I am sorry. Can you hear me?

Senator TOOMEY. Yes.

Mr. POMMEREHN. Yeah, I am sorry. It will certainly have a large impact on availability. I mean, as you—as you alluded to, any card that imposes a fee of any sort, which most reward cards do, has the potential of violating an all-in APR such as the MAPR with the Military Lending Act, and card issuers would certainly hesitate to offer them. The proposed caps would have a likely effect with any of these rewards programs, for everyone, just because running afoul of that MAPR is certainly an outcome that most lenders will want to take the risk for.

Senator TOOMEY. And I will close on this, Mr. Chairman. My understanding is that in the military case the MLA sort of contemplates this problem and considers like a grandfather or an escape clause if there are multiple credit cards offering similar products at similar prices. But if you have innovated and you have come up with a new idea for which there is not a whole range of comparable alternatives, then my concern is you would be captured by this. Thank you, Mr. Chairman.

Chairman BROWN. Thank you, Senator Toomey.

Senator Reed, the sponsor of the bill, is recognized for 5 minutes.

Senator REED. Thank you very much, Mr. Chairman.

Ms. Harrington, we have discussed and alluded to the issue of the debt trap that people are caught in. According to data that I have seen from the Consumer Financial Protection Bureau, 80 percent of payday loans are rolled over, which is essentially suggesting

that it may be the business plan of these companies to get a situation and a client who they know even beforehand will not be able to effectively make the payoff or, you know, be in this situation of rollover. Have you seen that evidenced in your work, in your studies?

Ms. HARRINGTON. Thank you, Senator. Absolutely. The vast majority of fees, over 75 percent of the fees, are drained from people who have been stuck in over 10 loans a year. So for most people in real life—we are not talking about hypotheticals. We are not talking about tomatoes. We are talking about real people in real life with real examples. These are not short-term loans. These are long-term debt traps. They are designed for consumers to fail. That is the entire business model of the industry. That is how they make their profit. That is how they drain billions of dollars in fees.

Senator REED. Well, and the other argument is that—well, one of the other arguments is that access to credit would be severely constrained. In your home State of North Carolina, the situation was from 1997 to 2001 they lifted the ban, then they reimposed the ban. And I had the opportunity to question the attorney general, Mr. Stein, in April 21, and he indicated that he saw no evidence of a lack of access to credit. Is that substantiated by your research or just your personal knowledge of the North Carolinians?

Ms. HARRINGTON. Absolutely. It is true in North Carolina. It is true in South Dakota. It is true in all the States where we see rate caps. Borrowers are not clamoring for payday lending to come back. They are not—they are not claiming that they are not saying that there is a big reduction in access to credit.

In fact in South Dakota, we saw the opposite. Right? When—after the cap, we saw other lending options open up. We saw the community thrive in other ways as well. We saw small businesses open up, things like community gardens. We saw the community grow and borrowers thrive in so many different ways. And that is why when you go back to all of these States they say: No, we want our rate cap. This is helpful, we know. We have seen the harms.

And that is exactly what happened in North Carolina. They tried it, and nobody wanted it. It was not helpful, and in fact it was extremely predatory and detrimental to millions of people.

Senator REED. Thank you. Mrs. Petraeus, first, let me commend you for your extraordinary work as the first head of the Servicemembers Affairs Office in the Consumer Financial Protection Bureau. So thank you very much.

And on these topics, you outrank your husband. You are a five-star. OK?

Mrs. PETRAEUS. Thank you.

Senator REED. We have heard a lot about what is defective about the APR used, et cetera. You have had the experience of seeing it in practice with the military close up. In both the data you are aware of and your own impressions, has it caused the lack of access to credit? Has it denied servicemembers fair access in the marketplace?

Mrs. PETRAEUS. Again, as I said in my Statement, not that I can ascertain or not what the DoD, with tremendous access to data on the military, can ascertain.

I also want to mention the all-in APR, the MAPR. There was a reason for that. It was because, originally, lenders were again getting around the interest rate cap by piling on a ton of extra fees, services, and ancillary products, mandatory insurance policies, and some really creative ones where they were requiring you to sign up for an internet service deal as part of your loan or they were requiring you to order something from a catalog that they had.

I remember reading an article. A reporter actually went and said, can I see the catalog? Well, the store rooted around in the back cupboards for quite a while and finally produced this really beat-up catalog with things like pleather jackets and stuff in there. Nobody was actually going to ever order or receive those items, but that was another way that they were getting around the straight APR calculation.

So that was the reasoning behind the MAPR, that it would not allow creative lenders to evade the intent of the legislation by piling on a bunch of extra products and services.

So from my research and the 8 years of reports from the military aid societies, their requests for assistance and the amount given out has not gone up after the 2015 rule. It went down. I just feel that, yes, it has been a success. It is protecting our servicemembers.

Frankly, if you build it, they will come. You know? And they will not necessarily spend that money on what you might think. When I lived at Fort Belvoir Army Post, there were all sorts of ads that came in the mail from lenders, advertising cash for Christmas, cash for Easter, or one particularly interesting one, "Do not be the only person at the bachelor party without cash." So these are not, you know, people offering a helping hand in an emergency in many cases. They see a market, and they wanted to exploit it. And the military was a young, inexperienced population that for quite a while was a cash cow.

So I feel that the MLA has been a great success, and I would like to see it extended to veterans, retirees, and all Americans because I think they also deserve not to be trapped in the cycle of debt that they cannot get out of.

Senator REED. Thank you very much. Thank you, Mr. Chairman.

Chairman BROWN. You cannot say they are not creative.

I will recognize Senator Moran for 5 minutes. I need to step out and do a couple questions to Ag nominees. So after Senator Moran is Senator Warren and Senator Tillis and then Senator Smith if I am not back by then. So Senator Moran is recognized for 5 minutes.

Senator MORAN. Chairman, thank you. A few weeks ago, this Committee led an effort to overturn the True Lender Rule the OCC published last year, which gave some clarity to the personal loan marketplace in the context of a national banking framework that has existed for about 150 years. Some of my colleagues at that time were very concerned about State rights and the prerogative of each State to establish its own usury law. Yet, here we are today, just about 4 weeks later, considering a proposal to establish a Washington-knows-best, one-size-fits-all interest rate cap that could not be more inconsistent with States' rights and federalism.

Professor Miller, as you know, the last decade, many States have spent considerable time and energy modernizing their small-dollar lending rules, ensuring that they see—as they see fit for their residents, the safety of loan products, while not eliminating access to credit for lower credit score individuals. In your opinion, Professor, is an all-in 36 percent national cap rate consistent with States making the decisions and respect for the work of those States' reform efforts to ensure the availability of small-dollar lending?

Mr. MILLER. That is a great question, Senator. If we impose a Federal interest rate cap, that does ignore all the work at the State level. And the States know their own populations better than people in Washington, DC, frankly. So I think the States have every right to set interest rate caps and set lending rules and monitor the lenders that operate in their States.

Senator MORAN. Thank you for that answer. Let me turn to this question. The hearing is for the purpose of considering expanding the Military Lending Act to all consumer lending transactions—because the MLA has allegedly produced great benefits for the servicemember community over the last few years. I certainly care about that servicemember community. I live near one or in one. I have chaired and now the ranking Republican on the Veterans' Committee.

Where in the public record can I find hard data—I am directing this to Mr. Himpler. Where can I find hard data showing the impact of MLA's all-in cap rate—rate cap on the servicemembers community?

It is my understanding that DoD contractually prohibits the release of de-identified, aggregated credit bureau data in its administration of the MLL database. Why would we not first want to know how MLA has impacted the community to which it has been applied before we consider applying it to all consumers? Mr. Himpler.

Mr. HIMPLER. Thank you, Senator Moran. And the American Financial Services, as well as yours truly, cares about servicemembers as well. My father, who passed away last year, was a veteran of the Navy, and I think the proudest moment I ever saw from him was coming to D.C. on an honor flight after serving in Korea. We have got thousands of employees in our industry that are veterans, veterans' families, and the like.

With respect to contracting, I believe you are correct, but the prohibition that you are talking about I believe is specific to the institutions that are required to get the data on whether or not a potential borrower is a servicemember.

But to your base question as to where the data is, sir, I said it in my testimony; I will say it again. With all due respect to all of the testimony that we have heard, there is no data. I love the military. It is a small percentage of the population. I beg Members of the Committee that if you consider this legislation going forward please get the data from the DoD, the empirical data, on how the Military Lending Act is impacting servicemembers and their families.

And if I am wrong, I will come here and admit that I am wrong. But we cannot move from a small segment of the population, without data, to the entire financial services system. You are playing with fire.

Senator MORAN. Mr. Himpler, let me follow up with something in Mrs. Petraeus's testimony. At the end of her testimony, she has this assertion: "There are so many better ways to borrow money: a credit card, a bank or credit union, family, a relief society." Is there not a point to be made there that opposing a federally mandated price control because there are so many options, there is plenty of alternative credit available, or am I missing something?

Mr. HIMPLER. Great question, Senator. And again I have great respect for Mrs. Petraeus. We have known each other for a while now. The—I am not going to sit here today and say that my companies and other institutions that are not members of my association cannot loan at 36. We can, but the smallest loan size that you are going to see is \$3,000.

Mr. Williams testified that his credit union is offering loans at a smaller increment. He did indicate that these were loans offered to his members. He has access to their deposit accounts. If they do not make a payment, he can access their bank account. OK?

What we are talking about is providing access to credit to 53 million people that have no credit score or a thin file. I have members that have hundreds of thousands of new customers every year that come in with no credit score. They are not going to get a loan at a credit union. They are not going to get a loan from anywhere. But we put them in a loan, we take a chance on them, and within a month they have got a credit score.

Our chief competition, sir, is not the payday folks. It is the credit unions when our members graduate to being banked. And that is what we all want. Thank you, sir.

Senator MORAN. Thank you.

Senator WARREN. I think it goes to me. Thank you. So I appreciate the work that Chairman Brown and Senator Reed are doing to fight for consumers all across this country. Today's hearing is about protecting consumers from predatory lending, and this is a fight we cannot let up on. And that means finally banning the rent-a-bank schemes that allow payday and fintech leaders—lenders to escape State interest rate caps. It means cracking down on discriminatory lending. And it means holding bad actors accountable for unscrupulous behavior against consumers.

But I think it is worth taking a step back and thinking about who we are talking about when we focus on consumers and who we are not. Consumer loans, those taken out for personal, family, or general household use, are subject to a variety of Federal laws to ensure that consumers have the information that they need to make sound financial decisions and to protect them from deceptive and predatory practices. A lot of law around that.

So, Ms. Harrington, if I take out a \$25,000 loan from an online lender to take care of, let us say, some home repairs, what does my lender have to tell me about the loan?

Ms. HARRINGTON. Well, they have to tell you a lot of things. They have to disclose the APR, how it is calculated. They have to disclose, you know, the total repayment amount over the lifetime of the loan and things like that under the Truth in Lending Act.

Senator WARREN. OK. Now what about if I take out a \$25,000 loan to expand the small childcare business that I run out of my home, maybe to help me do accessibility improvements or to take

on another employee? Does my lender for this small business have to follow the same requirements and clearly disclose the APR and what my repayment amount is, Ms. Harrington?

Ms. HARRINGTON. No. So business loans are not generally covered by the same Federal consumer protections like the Truth in Lending Act as other—as consumer loans.

Senator WARREN. So here I have taken out two \$25,000 loans, but I did not get the same protection on small business loans as I did on my personal loan. The Government seems to assume that a small business owner will have the time and the legal expertise to uncover every trick in the fine print and the power to fight off every scam and that that small business owner does not need the protection that otherwise they would have had when they took out a personal loan.

But this is a very blurry distinction because most small business borrowing is based on the owner's personal credit. According to a survey by the Federal Reserve, 88 percent of small businesses rely on their owners personal credit score to obtain financing; 90 percent of owners put up a personal guarantee or on collateral that is collateral often like their home that they and their families live in.

Also, remember the majority of small businesses apply for loans of less than \$100,000. So we are not talking about giant businesses who come armed with a fancy legal team here.

So let me ask, Ms. Harrington, it seems to me that we should be thinking about a lot of small business borrowers in the same way that we think about consumer borrowers. How does the lack of consumer protection for these small business borrowers leave them vulnerable to predatory lending?

Ms. HARRINGTON. I think you are absolutely right, Senator. We absolutely have to be thinking about how we help small business owners in addition to consumers. CRL supports TILA for small businesses. We also support a strong CFPB small business lending data collection rule. Many small business owners are very vulnerable to unaffordable loans that will destroy their business and their credit.

But we should also keep in mind that many owners of the smallest businesses and business owners of color, as you mention, not just relying on their own personal scores, they also have to rely on personal loans. Many of them also have to rely on online vendors and fintech lenders because of the disparities in access to small business credit. And so because they are more likely to get credit through these entities, the VCFCA will provide some of that much-needed protection for them even as we work to ensure that there is more—there are even more protections for small business owners.

Senator WARREN. Well, thank you very much, Ms. Harrington.

We need to keep fighting to protect consumers from predatory lending, but we cannot leave out small businesses and simply leave them at the mercy of anyone who wants to scam them. That is why we need to take a close look at the gaps that exist in protections for small business owners and consider solutions like extending consumer credit protections to small business loans, enforcing interest rate caps for both consumers and small business loans, and

holding financial predators accountable, whether they are taking advantage of consumers or small businesses. Thank you very much, Mr. Chairman.

Chairman BROWN. Thank you, Senator Warren.

Senator Tillis of North Carolina is recognized.

Senator TILLIS. Thank you, Mr. Chairman. In North Carolina, we were the first State to outlaw payday lending in 2001. I think the Chairman referenced the fact that it was sunset after about a 3-year experiment. We also have a 30 percent APR cap on lending in North Carolina. To that end, I share my concerns that were expressed by Senator Moran over a Federal overreach of what I think can be managed within the States.

Mr. Himpler, I agree with you that we need to get hard data out of the DoD. Mrs. Petraeus said all indications are that it is working. But a Harris poll, I think it was conducted in 2019, published in 2020, before there would be any distortions that could have been caused by COVID, found that 51 percent of all military families reported they had been denied credit specifically due to the provisions in the MLA. That would be a nice statistic to get confirmed by the DoD.

They go on to say that between 2014 and 2019 the percentage of military families suffering financial distress doubled from 16 percent to 34 percent. To put that in individual terms, that is from 40,000 in 2014, before the MLA was implemented, to 200,000 in 2019, also a very interesting fact that needs to be substantiated, and I think the DoD is best positioned to do it.

The last one, in 2017, a West Point research study found evidence indicating access to payday loans, again illegal in North Carolina, decreased the probability of involuntary separation from the Army by 10 percent.

I think there is a lot of interesting information we need to get from the DoD to even understand if the MLA is working and whether or not we should scale it to the whole of the American economy.

Mrs. Petraeus, I know you served in the CFPB and thank you for your past and continued service. You may be aware the CFPB Taskforce on Federal Consumer Law issued their annual report earlier this year. There was one passage that struck me as interesting. I would like to get your view on it.

It read, "After reviewing millennia of history, centuries of economic theory, and decades of empirical analysis, the Taskforce concludes that the problem of providing small-dollar credit to wage-earners at what others consider to be 'reasonable' prices is not only a perennial problem but is probably also unsolvable. Either small-dollar credit can be provided at market prices that take into account its production costs, it can be provided by massive governmental intervention at a cost that has never yet been politically acceptable (and which still would have to contend with operating costs), or it will not be provided at all. Legislative or regulatory mandates to set different prices cannot change those realities." What is your opinion on that finding in the taskforce report?

Mrs. PETRAEUS. Senator, I am not aware of that particular taskforce. I did retire from the Bureau 4 years ago. I will say that the ideological bent that they took during the past 4 years was one

that I did not agree with in many cases. Again, I would have to see that in context to know what they were speaking about, but——

Senator TILLIS. If I would be—actually, if you do have the opportunity. I understand you may not have seen it, but I would be interested if I could perhaps get your reply for the record.

Ms. HARRINGTON. And, sir, if I could, on that particular point?

Senator TILLIS. Let me just finish one, and then I will make sure that the Chairman lets you add onto it.

I think the other thing that we are talking about when we talk about it is popular to set an interest rate at 36 percent, that we may not be fully informing those who have taken that position. Of course, you want to cap an interest rate, but I do think that we have to get into the distortion of the interest rate based on how it is calculated and get to a discussion of costs.

I wonder if Mr. Himpler's example, if it was laid out, if it would be as popular if you also understood the consequences of not being to provide a financial instrument to a population that will most likely be underbanked or unbanked if we overreach on this.

Ms. Harrington, go ahead and add your response. And, welcome. I hope you love my State. I hope you love the State as much as I do.

Ms. HARRINGTON. Oh, I am a Tar Heel through and through. Don't you worry.

I think we just have to be really concerned about that report. That taskforce was convened in a way that was not in compliance with all other Federal taskforces. It was very ideologically bent for that—for that reason. A lot of the—and a lot of the methods in there and the surveys that it used are not necessarily what I think researchers would call sound. There is a lot of concerns about the way some of that was conducted.

Senator TILLIS. Well, if you could for the record——

Ms. HARRINGTON. And I would also——

Senator TILLIS. If you could for the record get more specific about that, I would be interested in seeing that.

Mr. Himpler, I will let you.

Mr. HIMPLER. I would just like to say one thing, sir, about the taskforce. I take umbrage with characterizing the ideological bent of that taskforce. The taskforce had members on it that have over 100 years of consumer protection experience with the Federal Government as career employees. One of the members of that taskforce was a Federal Reserve economist who spans not only the commission's—the United States Commission's Report on Consumer Credit from 1968 to the present day. You cannot get any more stellar academic research than was put forward by these hardworking Government employees.

Senator TILLIS. Well, if perhaps you all—Mr. Chair, if perhaps all of you could provide me a response for the record—I see two who had a concern with it. Mr. Himpler, you did not—it would be very helpful so that I can get my own head around the report. Thank you, Mr. Chair.

Chairman BROWN. Thank you, Senator Tillis.

Senator Smith is recognized, from Minnesota.

Senator SMITH. Thank you, Chair Brown, and thank you so much for this hearing. You know, I am very glad to be a cosponsor of the Veterans and Consumers Fair Credit Act. I hear from Minnesotans all the time about how important this would be to help to protect people from predatory lending practices.

Ms. Harrington, I would like to start with you. According to Pew Charitable Trusts, in Minnesota, Black Minnesotans are twice as likely to have a payday lender near them in comparison to the rest of the population. And as we know, that in Minnesota, 8 of 10 payday loans are not repaid when they come due, trapping borrowers, as you described, in a cycle of debt that can end up costing them thousands and thousands of dollars.

And of course, this is not unique to Minnesota. Data from the Consumer Financial Protection Bureau shows payday lending debt traps are occurring at the same rate all over the country.

It is not an accident either that this is the case. According to new research from the University of Houston School of Law, payday lenders disproportionately target their ads to Blacks and Latinos.

So, Ms. Harrington, can you talk a little bit about what we have learned about specifically the effects of payday lending in communities of color, and is it true from your research and experience that these lenders often target Black and Brown borrowers?

Senator SMITH. That is exactly what they do. And we have seen how high-cost lending exacerbates and further entrenches racial wealth disparities. This is what we would call predatory inclusion, and what it leads to is financial exclusion. It pushes people even further out of the financial mainstream. Payday lenders set up shop in Black and Brown communities, communities that have historically been disinvested—have historic experience of disinvestment at every level, from the Federal level to the State level to the institutional level. And so we see that these are where the payday lenders set up, and they are more likely to locate in Black and Brown neighborhoods even when we control for income. So we see this play out, and we see how this pushes people who are already in a two-tiered financial system further into that lower tier.

Senator SMITH. I could not agree more. I think that is exactly what we see in communities in my State.

And I am wondering. Let me just follow up on that. Do you see a link between the systemic lack of access to credit and lending and financial services that we see in communities of color with these locations of these predatory lenders in the very same communities that often do not have access to so-called mainstream financial services?

Ms. HARRINGTON. I think that is absolutely true. We also see that they saturate these communities. Right? You can go to some Black and Brown communities, and there is a payday lender on every corner. They saturate them with their advertising. They spend millions of dollars on marketing, and they target Black and Brown consumers. And so in addition to passing the VCFCA, we should also look at how we make sure that all banking institutions best serve all communities.

Senator SMITH. Correct. I think I could not agree with you more.

I think that there is a direct link between this conversation and the deep wealth inequities that we see in our country. So many

times that opportunity to build wealth comes from the ability to buildup credit and, therefore, be able to qualify for a mortgage so that you can own your own home. In my home city of Minneapolis, the home ownership gap between Black families and White families is 52 points. I think that this is all part of the same challenge that we have.

Let me just follow up on some of the questions that have been asked a little earlier and see if I can get at this. There has been a question raised about why would we want a national interest rate cap, that somehow it is a better idea to let States be the laboratories of democracy. And, Ms. Harrington, could you tell me, is there a—I mean, why would we want a national rate cap, and do you think there is a difference in how predatory lending affects a family in, say, North Carolina compared to Minnesota?

Ms. HARRINGTON. Absolutely. And so I just want to point out the VCFCA extends the Military Lending Act, and it sets a floor, not a ceiling. So it absolutely enables States to have, and to continue pass, stronger protections. So in States that have better interest rate caps and lower limits, those are fine, and States can continue to do that. There is a long history in consumer protection law of the Federal Government doing just that, being that floor, so that States can have that—have their traditional opportunity of doing more.

Senator SMITH. Thank you very much. I agree with that.

And, Mrs. Petraeus, let me just quickly see if I can ask you, is there evidence to demonstrate the value of the MLA to protect servicemembers from predatory lending?

Mrs. PETRAEUS. I think the evidence is the absence of harm, really, which is again what the Department of Defense just a month or so ago reported on and again failed to see any harm as reflected through the military aid societies. In fact, gosh, a decade ago, the head of the Navy-Marine Corps Relief Society testified here very strongly in favor of limiting what he called access to the—I think, “the payday debt trap” and saying that he wished it were extended to retirees and veterans, which of course, is what you are considering today.

So I would like to also weigh in on the issue of the State laws. I think those States especially with a big military presence, which I have tended to look at, year after year have to fight back attacks on their State laws in their State legislatures. And if they did have the protection, frankly, of a national standard, I think imagine the time they would get back from not having to again fight challenges repeatedly. And frankly, military leaders in their States have often gone and weighed in year after year, saying, please keep these protections; they are valuable. So I just wanted to add my two cents.

Senator SMITH. Thank you for that clarification. I really appreciate it.

Thank you, Mr. Chair.

Chairman BROWN. Thank you, Senator Smith.

Senator Cortez Masto is recognized, from Nevada.

Senator CORTEZ MASTO. Thank you. Thank you, Mr. Chair. Thank you to the panelists for this great discussion.

I want to focus on one specific area to start with and this distinction as to why Federal credit unions should be exempted but not

State credit unions. And so let me start with that conversation, and Ms. Harrington, let me ask you this. When the NCUA created its payday alternative loan program in 2019, it was controversial, and the NCUA board passed it 2 to 1, with now Chairman Harper opposing it.

My question is there is more than 100 consumer and civil rights groups opposed to the PAL's proposal. The leader of the organization said he feared that consumers might end up with debt traps due to PAL's higher loans than the 15 to 18 percent usury standard. What has been the experience with these PAL's loans? Have there been complaints? I am curious what you are seeing now.

Ms. HARRINGTON. I think our experience has been, thus far, they just—they do not pose as high a risk of making predatory high-cost loans. There is a regulatory regime in place. So it is pretty—it is appropriate for us that they are excluded from the VCFCA. So as of right now, the harms that we are seeing in the payday lending and in the high-cost installment lending industry are not the—are not being seen with the PAL's program.

Senator CORTEZ MASTO. OK. Thank you. And then let me ask to all of the witnesses, can anyone point to a rent-a-credit-union scheme on payday installment loans so far? I am curious. Has anybody heard of any of that happening with credit unions?

Mr. HIMPLER. Senator? Senator, I was in a meeting with Director Cordray probably 6 or 7 years ago with a representative from the credit unions, and she told the Director that use of the PAL loans was not very widely spread.

Senator CORTEZ MASTO. OK. Thank you. And so I guess my question, Mr. Williams, let me ask you. Mr. Williams, why does the proposed bill exempt Federal credit unions?

Mr. WILLIAMS. Senator, I really cannot speak to why it exempts Federal credit unions at all. I cannot tell you the reason behind that. I can say that the program that we have in place that has been approved by NCUA has provided a lot of benefits to our members, and has allowed them to get out of these situations with payday lenders and car title lenders, and has actually improved their financial standing.

Senator CORTEZ MASTO. And so can I ask then, maybe Mrs. Petraeus and Ms. Harrington, should State-chartered credit unions receive an exemption as well?

Mrs. PETRAEUS. I am going to defer to Ms. Harrington. That is not an issue that I am particularly familiar with the qualities of.

Senator CORTEZ MASTO. Thank you.

Mrs. PETRAEUS. And it is nice to see you again after many years.

Senator CORTEZ MASTO. You as well. Thank you for all your good work.

Ms. Harrington.

Ms. HARRINGTON. First, we have not seen any rent-a-credit-union schemes, to answer your question. State-chartered credit unions should be in because again federally chartered credit unions already have a regulatory regime in place that—and they already have an interest rate cap in place. CRL is actually affiliated with a State-chartered credit union that is very much in support of the VCFCA.

Senator CORTEZ MASTO. OK. Thank you. And let me just—in general, I am so concerned about the debt traps, and I have to go back to this as my background and experience in my State of Nevada as attorney general. Mrs. Petraeus, thank you so much because your work out at Nellis with our military, all across the State, really was focused on how we protect our men and women in the military from these types of debt traps and being taken advantage because it is happening. It is happening.

And so, Mr. Himpler, let me ask you, do you think that financial institutions are creating some sort of—some are creating some sort of debt traps?

Mr. HIMPLER. Not all institutions are created equal.

Senator CORTEZ MASTO. But some are.

Mr. HIMPLER. Pardon?

Senator CORTEZ MASTO. But some are.

Mr. HIMPLER. Some are—no, no. They are not all created equal, so I am not going to—I cannot speak to all institutions.

Senator CORTEZ MASTO. Any of your member services—

Mr. HIMPLER. No, no.

Senator CORTEZ MASTO. Any of the members within your organization—

Mr. HIMPLER. Within our organization—

Senator CORTEZ MASTO. —created a debt trap?

Mr. HIMPLER. No. We have the oldest and safest form of consumer credit. We have been serving members, our customers, for over 100 years.

Senator CORTEZ MASTO. So what do you do to ensure that a member service is on good behavior and not creating some sort of debt trap and negative financial incentive for individuals? Do you push information out or talk about this and identify those bad players?

Mr. HIMPLER. By virtue of being a member of a national trade association, our members want to be good corporate citizens. You know, we—

Senator CORTEZ MASTO. But let me just say this. As somebody who was attorney general, and I worked with associations. There are good players and bad players. And there is a burden on the association as well, not just the enforcers, to take action and weed out the bad players. So what are you doing for your association to ensure that individual members are not engaging in those bad practices that really lead to debt traps?

Mr. HIMPLER. As part—as part of their membership, our members agree to best practices, where they work in the installment stage, where they work with customers to budget. They take into consideration income and expenses. They consider debt-to-income ratio, payment-to-income ratio, in terms of determining their ability to repay, and report to credit bureaus.

We have got 53 million adults in the United States that either have no credit profile or a thin credit profile.

Senator CORTEZ MASTO. Oh, no, you do not have to tell me that. I am from Nevada. I have the largest unbanked population, but I do not want them to be taken advantage of. And I want the good players to be there to help them, but I do not want the bad ones.

You know, this just frustrates me at times because it is the associations' responsibility as well. It is your responsibility, just as it is every enforcer and all of our responsibility, to hold those bad players accountable when they are engaging in bad practices, including "rent-a" schemes and rent-a-bank schemes.

But I do not hear you talking about, or even identifying, that it occurs, and that concerns me. That concerns me.

Mr. HIMPLER. Yeah, may I—

Senator CORTEZ MASTO. And my time is up. I appreciate the indulgence. Thank you.

Chairman BROWN. Thank you, Senator Cortez Masto.

Senator Van Hollen is recognized, from Maryland, for 5 minutes.

Senator VAN HOLLEN. Thank you, Mr. Chairman, Ranking Member Toomey, and to all of our witnesses. Thank you.

And I agree not all financial institutions are created equal or act equally. But it is also indisputable, I believe, from the evidence we have seen in this Committee, the testimony we have seen in this Committee, hearing from constituents around the country, that millions of Americans are bilked out and cheated out of lots of money by predatory lenders, payday lenders, and others, which is why many States have adopted these usury caps, including my State of Maryland, and adopted them when they are voted by referendum by large, large bipartisan majorities.

I think people understand what is—that people who are in great distress can be unfairly taken advantage of, and it is part of our job to make sure that that does not happen.

There was an effort that we saw under the previous administration to essentially allow rent-a-banks to circumvent those protections at State levels, and I was pleased to team up with Senator Brown and others and make sure that we overrode the effort to undermine those protections that are in place.

But what this bill is intended to do is provide nationwide, uniform protection. And speaking of uniforms, I do want to read for you from a May 2021 DoD report about the existing MLA, and I am quoting:

"The Department believes the MLA is currently working as intended and that servicemembers continue to have ample access to necessary credit. Survey results generally reflect decreased use of high-cost credit products and improved financial condition among servicemembers over time. Engagements with DoD financial educators and counselors indicate fewer seek assistance for financial challenges or debt resulting from high-cost credit markets. Military aid societies, which provide financial assistance, similarly report fewer requests for assistance related to high-cost credit products. To date, the Department has no indication that servicemembers and their families lack adequate access to necessary, responsible credit," May 2021.

Mr. Himpler, do you have any reason to dispute those findings by DoD with respect to the military credit?

Mr. HIMPLER. Senator, it is great to see you and thank you for the question. I appreciate it. As I said earlier in my testimony, I have the greatest respect for the military. My father served in Korea in the Navy.

That report that you cited, and every other report we have seen from the Defense Department since the enactment of the Military Lending Act in 2007, does not cite any empirical data. The survey that you mentioned in the question that you asked me references a survey. It does not even provide a reference to the data that is behind the survey itself.

If we are going to take legislation from a smaller segment of the population—I believe the military is about 1 percent of the population—and extend it to the entire population, sir, we need to see the data. All we are asking for is transparency, sir.

Senator VAN HOLLEN. So let me ask you this. Do you think that we should repeal the current protections for military, current enlisted military?

Mr. HIMPLER. I will answer this way, Senator. The National Foundation of Credit Counselors, folks that are the white hats that work with people who are in trouble, recently issued their own report that says that, in 2020, twice as many active servicemembers took out payday loans or cash advance—and I will admit I do not know how they got that because they are prohibited under the Military Lending Act. Twice as many in 2020 as they did in 2019.

Senator VAN HOLLEN. Well, all I—as you point out, whoever was providing those loans was breaking the law. Right?

Mr. HIMPLER. I cannot speak—

Senator VAN HOLLEN. Look, I am—you are disputing the findings in this report. We will definitely follow up. I can tell you I have not heard from enlisted—

Mr. HIMPLER. Senator?

Senator VAN HOLLEN. You are disputing the findings here, or you are saying they do not have the backup. We will pursue that. But I do not get complaints from active duty military, in Maryland or around the country, about the fact that they are not having access to credit. I think people have appreciated these protections.

And the idea behind the bill is very simple. If we agree, which apparently you do not or you may dispute, if we agree that this is important protection for active duty military, should we not extend that same protection to every other American? That is the idea behind this bill. Thank you, Mr. Chairman.

Chairman BROWN. Thank you, Senator Van Hollen.

Senator Warnock of Georgia is recognized for 5 minutes.

Senator WARNOCK. Thank you so much, Chairman Brown. As Chair of the Subcommittee on Financial Institutions and Consumer Protection, I am very concerned about predatory payday and car title lending that target our most vulnerable communities, contributing the wealth gap. I have witnessed the harms of these loans on families, first hand, as a pastor.

I am proud to say that Georgia has long been a national leader in the fight against predatory lending, imposing a strict 10 percent usury limit on small-dollar loans. In fact, Georgia has generally banned payday lending, and in 2004 Georgia lawmakers, on a bipartisan basis, closed loopholes used by payday lenders to charge triple-digit interest rates and reaffirmed their commitment to keeping payday lending out of the State, increasing fines and criminal penalties for lenders making small loans at illegal interest rates. These strong laws, supported both by Republicans and Democrats

in Georgia, protect Georgians from payday lending and saved Georgians over \$284 million annually, boosting our economy.

That is why I am proud to cosponsor this 36 percent rate cap bill introduced today by Senator Reed. This bill imposes the national interest cap rate already enjoyed by members of the military.

Ms. HARRINGTON, given Georgia's already strong consumer protection laws, how will this Federal rate cap bill further protect other consumers in Georgia?

Ms. HARRINGTON. Thank you for the question, Senator. I think Georgia absolutely has strong protections against payday lending, and we—and we are so glad—and we were so glad to be a part of many of those battles. But they do have a loophole, which is—which is true in a lot of States, and that loophole is for car title lenders. Car title lenders in Georgia can actually charge up to 300 percent interest, and this is stripping about 199—

Senator WARNOCK. You said 300 percent?

Ms. HARRINGTON. 300 percent interest. And this is stripping about \$199 million a year from Georgia residents.

And so this bill would actually close that loophole. We have seen this here. We have seen this in other States. We saw it in Maryland. Predatory lenders will find a loophole, and they will use it. So this is the most effective way of ending the debt trap while also protecting—while also ensuring that the States that do have better protections are still able to have those.

Senator WARNOCK. Ms. Harrington, a loan of 36 percent in my view still seems really high. Why 36 percent, and why not a lower interest rate cap? And also, can you say more about how these predatory loans perpetuate the racial wealth gap?

Ms. HARRINGTON. Yeah, absolutely. So I think the 36 percent has a long and well-recognized history in America, dating back 100 years. But we would agree with you. It is absolutely really high on anything but really small loans. When you are talking about the longer-term installment loans, which are for higher amounts, 36 percent is actually quite a bit.

I think we worked with a—there was a—we worked with a veteran out in California, who took out a \$5,000 loan, 115 percent interest, ended up paying back \$42,000 over 7 years. I think we would all agree that that is a predatory loan. And so we definitely agree with you, and we would—and we think there should be lower caps, and we should be thinking about how we protect even on those—on those higher loans.

And on the racial wealth gap, this absolutely is exacerbating and further entrenching racial wealth disparities. We have seen how these payday lender set up shop and target Black and Brown communities. They are feeding off of communities that have been resource-starved for decades, communities that have been redlined, communities that are now experiencing the worst of the COVID-19 crisis. And they compound those harms by putting them in this debt trap and pushing them even further out of the financial mainstream.

When you have a payday—when you—payday loan borrowers are more likely to go—to have delinquent bills, to have their accounts overdrawn and then closed, to experience bankruptcy. And that is disproportionately happening to Black and Brown borrowers, which

is even more confusing when we know that Black and Brown borrowers are the most—are even more likely to be unbanked and not even have checking accounts.

Senator WARNOCK. Thank you so much. And it is hard to overstate the importance of this work, particularly coming out of the pandemic.

I have one more brief question. Georgia is home to over 140,000 military servicemembers, who benefit every day from the Military Lending Act. Georgia is also home to almost one million veterans. That means that 1 in 10 Georgians is serving, or has served, our Nation in uniform. And I believe that every one of them and their families deserve the same level of protection from predatory lenders.

Mrs. Petraeus, first, thank you for your decades of service to our Nation and for your testimony. You noted the higher scale of suicide among veterans and it ties often to financial issues as well as higher rates of bankruptcy among veterans than the general population. If the Veterans and Consumers Fair Credit Act is enacted and this critical protection is expanded to all Americans, what do you believe the effect will be on the veteran population?

Mrs. PETRAEUS. Well, first of all, Senator, let me thank you for the fact that the very first public announcement you made after being elected mentioned the military community. As a lifetime member of that community, I appreciated that very much.

And I do extend that community to veterans. You know, they are all—they all served. And it is disturbing that they are more apt to declare bankruptcy. Their finances are not very good. I have some theories about that, including the fact that you do not get paid much in the military and your spouse does not really have an opportunity to develop a career.

And I am a great example. I actually started working in my 50s, after moving 24 times in 37 years. Most military spouses just are not going to earn a great income. So they will not have that to fall back on. And some of them will also be caregivers for that veteran.

So financial stress is definitely associated with suicide rates. I cannot help but think that providing these more robust protections would truly benefit the veteran community as well and just provide them a little bit of protection from when they have financial problems going out and signing up for a loan that is going to charge them an exorbitant amount of interest and make it very difficult for them to pay it back and basically make their situation even worse.

Senator WARNOCK. Thank you so much. You represent the human face of this work. You understand, first hand, it is important. I hope that we can work on a bipartisan basis, as we have done in Georgia, to protect all consumers. Thank you for your service and your testimony.

Chairman BROWN. Thank you, Senator Warnock.

Thanks to the witnesses, all six of you, three remote, three here. Thank you for providing testimony and answering questions.

A number of you mentioned the \$400, that huge numbers of Americans, high percentages, tens of millions of Americans, cannot afford \$400 for a car repair or some emergency. If we are concerned that too many people cannot afford a car repair or a medical bill

or another emergency, the solution is not to trap them in a cycle of debt; it is to raise their wages.

My colleagues who are so worried about America's lack of financial security I hope join us in the work we are doing to finally give workers some bargaining power so they can get paid more. The work we did in the American Rescue Plan, with President Biden, I think we are making progress raising people's pay. We have a long way to go.

For Senators who wish to submit questions for the record, those questions are due 1 week from today, Thursday, August 5th. To witnesses, you have 45 days to respond to any questions.

Thank you again to all six of you and to the three Members of Congress.

With that, the meeting is adjourned.

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

[Prepared statements, responses to written questions, and additional material supplied for the record follow:]

PREPARED STATEMENT OF CHAIRMAN SHERROD BROWN

Fifteen years ago, this Committee held a hearing looking for solutions to protect members of the military and their families from abusive lenders that went out of their way to target servicemembers.

Then-Chairman Shelby described these practices as “predatory lending schemes . . . that target financially inexperienced consumers and make loans without regard to the consumers’ ability to repay . . .”. Sen. Martinez of Florida described these high-interest loans as “unconscionable.” And Sen. Elizabeth Dole highlighted the efforts her home State of North Carolina had taken to shut down high-interest, payday lending.

Following that hearing, a bipartisan consensus emerged—and Congress passed the Military Lending Act, which President Bush signed into law in 2006.

That spurred action from members of both parties around the country—States of all sizes, in all regions passed laws protecting consumers from high-interest, predatory loans.

Since 2010, Montana, South Dakota, Colorado, Nebraska, California, and Illinois have all passed laws to cap interest rates on consumer loans at 36 percent.

And like the Military Lending Act, these State laws were passed with overwhelming bipartisan support:

- 72 percent of Montana voters,
- 75 percent of South Dakota voters,
- 77 percent of Colorado voters,
- And 83 percent of Nebraska voters all supported ballot initiatives to cap interest rates at 36 percent in their States.

Of course the payday lobby didn’t give up.

They’ve spent every day since then trying to come up with new schemes to evade these laws and exploit loopholes.

And they got an assist from the last Administration.

Fortunately, a bipartisan group of Senators—including Members from this Committee—worked to overturn that Administration’s giveaway to the payday lobby, the so-called true lender rule.

It would have allowed predatory lenders to evade State interest rate caps.

We put a stop to that specific scheme.

But we know this industry isn’t going to give in—not when their profits depend on tricking Americans out of their money.

We need national protections.

Now is the time for this Committee to again lead the country, by passing a Federal law establishing a 36 percent interest rate cap on all consumer loans.

That’s why I, and so many of our colleagues, joined Senator Reed, Chair of the Senate Armed Services Committee, to introduce the Veterans and Consumers Fair Credit Act.

Our legislation builds on the success of the Military Lending Act, and extends its 36 percent cap to everyone—including to the veterans and surviving family members left out of the original law.

The Veterans and Consumers Fair Credit Act is supported by more than 100 consumer, community, and civil rights organizations, as well as military and veterans’ service organizations.

The bill is also supported by a broad coalition of faith organizations, including:

- The Southern Baptist Ethics and Religious Liberty Commission;
- The National Association of Evangelicals;
- The National Baptist Convention;
- And the U.S. Conference of Catholic Bishops.

And like the Military Lending Act, it’s bipartisan—our bill’s lead sponsors in the House, Republican Glenn Grothman and Democrat Chuy García, are both here to testify before this Committee today.

We know the tired arguments against the bill—they’re the same ones we heard about the Military Lending Act.

During the 2006 Committee hearing, the payday industry claimed we would cut off access to credit to servicemembers.

That didn’t happen.

According to a May 2021 Department of Defense Report to Congress, the Military Lending Act is “currently working as intended and . . . Servicemembers continue to have ample access to necessary credit.”

We'll hear those talking points again today, I'm sure, because that's all the lobbyists have.

It's an argument we welcome: Yes, we do want to cut off access to loans at interest rates so high that they ruin people's lives. That's the whole point.

Payday lenders don't offer access to responsible credit that consumers can afford to repay.

They offer the opposite: products that trap consumers in a cycle of debt.

We've all heard the same stories: Consumers end up renewing their loans over and over, and paying more in fees than the original loan amount.

We know that more than 75 percent of loans go to borrowers who take out 11 or more loans each year.

Yesterday I spoke with Ohioan Gloria Olivencia, a mother from Lorain.

She took out a payday loan to pay her bills, and ended up trapped in a cycle of debt.

She paid \$1,200 in interest on a loan that was originally between \$500 and \$600. She also shared the story of her daughter, who took out a \$200 car title loan, and ended up living in fear that her car would be repossessed, and that she'd be unable to get to work to pay off the loan.

As she said: "it's easy to get a loan—it's not so easy to get out of it."

These Ohioans' experiences sound a lot like the business model laid out in this actual training manual, from payday lender ACE Cash Express.

Sure looks like a cycle of debt to me.

Another argument we hear from the payday lobby is that no one can be profitable offering loans at 36 percent interest.

Really? 36 percent is still pretty darn high, and will make any company plenty of money.

I'd ask my colleagues to think about their own credit cards or mortgages or loans they've taken out—I'm betting your rates were a whole lot lower than 36 percent.

Federal credit unions across the country offer payday alternative loans at rates between 18 and 28 percent. Some banks have begun to do the same.

Even the American Fintech Council supports our bill—their members offer short-term consumer loans at rates under 36 percent.

Fifteen years ago, Republicans on this Committee described high-interest payday loans as "predatory" and "unconscionable" when made to active duty servicemembers.

If these loans are "predatory" and "unconscionable" when made to servicemembers, then they're also predatory and unconscionable when made to anybody—

- to a veteran,
- to a surviving family member,
- or to a mother trying to get her car repaired so she can get to work.

Our Committee took bipartisan action to protect servicemembers.

I'm optimistic we can come together again to protect all the Americans we serve from debt traps.

I would like to enter into the record letters in support of the Veterans and Consumers Fair Credit Act from:

- Faith in Just Lending Coalition,
- American Fintech Council,
- Military and Veterans' service organizations,
- And a coalition of 188 community, consumer, civil rights, labor, and small business organizations.

PREPARED STATEMENT OF SENATOR PATRICK J. TOOMEY

Thank you Mr. Chairman. I'd like to thank all of our witnesses, especially Congressman Loudermilk, for speaking today to explain the significant damage this proposal would do.

It is a fundamental principle of economics that markets discover prices. Sellers compete until they reach the lowest prices that will let them stay in business. The only exceptions are under monopoly conditions, which generally only exist when the Government creates or facilitates them.

Nevertheless, history is littered with examples of Government planners' failed attempts to set prices. They fail because they generate huge unintended consequences, which inevitably harm the very people they are supposed to protect.

Proponents of a 36 percent interest rate cap seem to think it would result in borrowers getting cheaper credit, but that's just not the case. In fact, those most in need would simply lose access to credit. If a lender can't recoup its costs, it won't make the loan.

Studies have found a loan under \$2,600 is a money loser for the lender at 36 percent interest. That is because there are fixed costs to issuing a loan, regardless of its size.

The Bank Policy Institute has estimated that a issuing a 3-month, \$100 loan would cost a typical bank \$35 to issue. Expressed as an annual percentage rate, or APR, this is roughly 140 percent, meaning a 36 percent rate cap would make it impossible to offer.

Many would suffer if they lost access to small loans. A 2020 Federal Reserve study revealed that 35 percent of adults could not cover an unexpected \$400 expense using cash, savings, or the equivalent.

Who would be most at risk of losing access to credit? The 30 percent of U.S. consumers who have a subprime credit score, and the more than 1 in 10 Americans who are "credit invisible."

This particularly harms minorities. For example, in 2020 only 21 percent of Black households had a credit score above 700.

Moreover, while I am skeptical of the evidentiary value of unverified complaints, the fact that Personal loans, Payday loans, and Title loans each account for fewer than 1 percent of consumer complaints in the CFPB's database certainly suggests consumers are not dissatisfied with them.

Here's another example that highlights the inflexibility of an APR cap. Consider a renter who is \$100 short on rent on the first of the month, but will not be paid until the second. To avoid a \$50 late fee, she might opt to borrow \$100 at a cost of \$15 paid back any time over the next 3 months. That would be a 60 percent APR. This is a real product that a major American bank offers. But it appears that would be illegal under the proposed 36 percent APR rate cap. Therefore, instead of paying \$15 to the bank, the renter would be forced to pay \$50 to her landlord.

The effects would be far more severe using the "all-in" rate cap the Military Lending Act, known as the MLA, imposes. Even though it is called an APR, an "all-in" APR like this encompasses far more than interest. It includes fees, finance charges, and the cost of ancillary products like credit insurance.

As a result, a supposed 36 percent rate cap functions like a much lower limit. This is particularly evident for credit cards, including even a modest annual fee in the "all-in" APR calculations can cause a credit card to exceed 36 percent.

What's more, virtually all other Federal and State laws use a standard APR calculation. As a result, an "all-in" rate cap of 36 percent would preempt even those States that have interest caps that are seemingly set at a similar rate, with the sole exception of Illinois.

While some argue that the MLA should apply universally, servicemembers are not reflective of the general population. By definition they have a reliable income. And, different factors affect their readiness to deploy on a moment's notice than most people consider when ordering their finances.

What's more, research on the MLA's effects suggests that the MLA has had adverse effects on servicemembers. A survey of servicemembers showed that the percentage of servicemembers suffering financial distress more than doubled, from 16 percent before the MLA's passage to 34 percent five years later. Approximately 51 percent of all military families had been denied credit specifically because of the MLA. And, research by West Point professors found that payday lending had not adversely affected servicemembers.

Although proponents claim extending the MLA to all consumers would help veterans, veterans groups have disagreed. In 2019, a number of veterans' groups opposed legislation to extend the MLA, with several noting that veterans have more difficulty accessing capital than others.

Congress should not remove, but expand, access to credit. Regulators have made it very difficult for banks to offer small-dollar credit.

Although Federally chartered credit unions can offer Payday Alternative Loans, an NCUA-approved small-dollar product, fewer than 600 credit unions nationwide offer them, and in the first half of 2020 the "all-in" APR for these loans, including fees, actually exceeded 36 percent.

At the end of the day, taking choices away from consumers just doesn't work. Instead, it hurts the very people it's supposed to help.

PREPARED STATEMENT OF REPRESENTATIVE GLENN GROTHMAN OF WISCONSIN

Chairman Brown, Ranking Member Toomey, and distinguished Members of the Committee, thank you for inviting me to testify today in support of extending the Military Lending Act's 36 percent rate cap to all consumers. The history of usury prohibitions dates back to Biblical times. In the United States, it has been very common for individual States to put caps on interest.

It is hard to imagine a situation in which it is advisable to take out a loan greater than 36 percent. While I normally do not like the Federal Government regulating business, the fact that so many loans are provided online today leaves the Federal Government no choice but to act on this issue.

I am sure you will be contacted by lobbyists for the payday loan industry. They will tell you that they provide a necessary service. Congress passed the Military Lending Act in 2006. I am not aware of any problems with loan sharks abusing servicemembers because of the cap or military members unable to buy necessary goods. Currently, 18 States and the District of Columbia have rate caps.¹ They seem to get along just fine. Maybe this is why when Nebraska became the 17th State to adopt a rate cap in November 2020, it was passed by referendum with 83 percent support.² There are Libertarians who believe "let the buyer beware." But the Government regulates all sorts of transactions including insurance contracts, offers to purchase, and annuities. These are examples of legal documents that are regulated to prevent consumers from entering into foolish contracts.

In 2016, 76 percent of voters in the State of South Dakota supported lowering rates on payday loans, car-title loans, and other costly loans.³ Within the first 2 years of the rate cap, the number of unsecured and Payday Alternative Loans in the State rose by 11 percent, suggesting these borrowers do, in fact, have access to credit that is not attached to a predatory lender's pockets.⁴ The Center for Responsible Lending predicts the rate cap in South Dakota will save their people over \$81 million per year in interest and fees.⁵

Throughout my time in the Wisconsin legislature and now in Congress, I have been told borrowers typically take out these loans for a one-time emergency. But in reality, the data suggests these loans are taken out for ongoing issues. In 2012, the PEW Charitable Trusts released a report titled, "Payday Lending in America: Who Borrows, Where They Borrow, and Why". They asked "who borrowers are demographically; how people borrow; how much they spend; why they use payday loans; what other options they have; and whether State regulations reduce borrowing or simply drive borrowers online."⁶

I think their findings may be eye-opening to some of you. In their report, PEW provided these key findings:

1. Who Uses Payday Loans?

- 12 million Americans use payday loans annually.
- On average, a borrower takes out eight loans of \$375 each per year and spends \$520 on interest.
- Most payday loan borrowers are White, female, and 25–44 years old.
- 8 percent of home renters earning \$40,000 to \$100,000 have used payday loans, compared with 6 percent of homeowners earning \$15,000 to \$40,000.

2. Why Do Borrowers Use Payday Loans?

¹ Annie Millerbernd, "More States Pushing Interest Rate Caps on Payday Loans", July 27, 2021, <https://www.syracuse.com/business/2021/07/more-states-pushing-interest-rate-caps-on-payday-loans.html>.

² Megan Leonhardt, "Nebraska Becomes the Latest State To Cap Payday Loan Interest Rates", July 27, 2021, <https://www.cnn.com/2021/07/27/nebraska-becomes-the-latest-state-to-cap-payday-loan-interest-rates.html>.

³ Charla Rios, Diane Standaert, and Yasmin Farahi, "The Sky Doesn't Fall: Life After Payday Lending in South Dakota", July 27, 2021, <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crlthe-sky-doesnt-fall-jan2020-1.pdf>.

⁴ Charla Rios, Diane Standaert, and Yasmin Farahi, "The Sky Doesn't Fall: Life After Payday Lending in South Dakota", July 27, 2021, <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crlthe-sky-doesnt-fall-jan2020-1.pdf>.

⁵ Charla Rios, Diane Standaert, and Yasmin Farahi, "The Sky Doesn't Fall: Life After Payday Lending in South Dakota", July 27, 2021, <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crlthe-sky-doesnt-fall-jan2020-1.pdf>.

⁶ "Payday Lending in America: Who Borrows, Where They Borrow, and Why", July 27, 2021, <https://www.pewtrusts.org/en/research-and-analysis/reports/2012/07/19/who-borrows-where-they-borrow-and-why>.

- 69 percent used it to cover a recurring expense, such as utilities, credit card bills, rent or mortgage payments, or food.
- 16 percent dealt with an unexpected expense, such as a car repair or emergency medical expense.

3. Does Payday Lending Regulation Affect Usage?

- In States that enact strong legal protections, the result is a large net decrease in payday loan usage; borrowers are not driven to seek payday loans online or from other sources.⁷
- 2.9 percent of adults reported payday loan usage in States with the most stringent regulations, compared with 6.3 percent in moderately regulated States and 6.6 percent in States with the least regulation.⁸

I will leave you with this interesting anecdote. I am always reminded of my days as a State legislator when this issue comes up. One of my staffers doing research on this topic visited a payday loan store in Wisconsin. She was told by an employee, “Don’t tell your husband. It’s really not a very good deal.”

Thank you again for holding this important hearing today. I look forward to seeing the Senate advance legislation to cap rates and I urge my colleagues in the House to support this endeavor.

PREPARED STATEMENT OF REPRESENTATIVE JESÚS G. “CHUY” GARCÍA OF ILLINOIS

Good morning everyone, thank you for inviting me to speak here today. Special thanks to Chair Brown and Ranking Member Toomey for convening to discuss this important topic. And of course, thanks to all my fellow witnesses for testifying.

I applaud my colleagues in the Senate for introducing the Veterans and Consumers Fair Credit Act, and I look forward to reintroducing it in the House shortly.

Capping interest rates on consumer loans is important to me for a simple reason: my community needs it. I represent a working-class district in Chicago and suburban Cook County. My constituents are mostly Latino, and largely immigrants. They know all about the dangers of predatory lending.

Let me explain. Rents in my district have skyrocketed since the great recession. One neighborhood that I represent, Logan Square, has lost more than 10,000 Black families and 20,000 Latino families since 2010. Wages simply aren’t keeping up with the cost of living. All too often, working class families must turn to loans to fill the gaps. Families take out loans with double or triple-digit interest rates to pay for the necessities of life, and they quickly find themselves in a cycle of debt they can’t repay.

That’s what happened to Billie Aschmeller from Springfield, Illinois, who took out a loan for less than \$600 to buy a coat, crib, and car seat for her pregnant daughter, but ended up living in her car due to the 300 percent annual interest rate on the loan.¹

This is what we call debt traps—loans that trap working class people in a cycle of debt. And these lenders focus on Black and Brown communities like mine. They know we’re not paid what we’re worth. They know we don’t have as much access to credit.

This year a study in Houston found that payday and title-lending websites featured Latinos in more than 30 percent of their pictures, even though Latinos make up only 20 percent of their customers in Texas. Meanwhile, nearly 75 percent of mainstream banks did not feature a single picture of a Latino individual. That’s a pretty stark difference; and the communities I represent need relief from these debt traps.²

⁷“Payday Lending in America: Who Borrows, Where They Borrow, and Why”, July 27, 2021, <https://www.pewtrusts.org/en/research-and-analysis/reports/2012/07/19/who-borrows-where-they-borrow-and-why>.

⁸“Payday Lending in America: Who Borrows, Where They Borrow, and Why”, July 27, 2021, <https://www.pewtrusts.org/en/research-and-analysis/reports/2012/07/19/who-borrows-where-they-borrow-and-why>.

¹Editorial, “Hang Tough, Illinois, and Cap Interest Rates on Payday Loans at 36 Percent”, *Chicago Sun-Times*, 5/7/2021, <https://chicago.suntimes.com/2021/3/7/22315829/hang-tough-illinois-cap-interest-rates-payday-loans-36-percent>.

²David Lazarus, “Column: There’s a Racial Gap in Marketing by Banks and Payday Lenders, Study Finds”, *Los Angeles Times*, 4/9/2021, <https://www.latimes.com/business/story/2021-04-09/racist-marketing-banks-payday-lenders>.

The good news is: States are acting. I'm very proud that in my State of Illinois, Governor Pritzker signed an interest rate cap bill into law. This has been a key priority for my constituents as well as for consumer advocates, civil rights leaders, and religious organizations. It's already keeping people out of debt traps.³

And it's not a red-State/blue-State issue. Just last year, 82 percent of Nebraska voters passed a ballot measure to cap interest rates at 36 percent. They join States like Arkansas and South Dakota that put the interests of their citizens over the interests of predatory lenders.

It's an important step. And I'm proud that both the House and Senate passed my resolution to repeal the OCC's so-called "True Lender Rule" and allow States to protect their consumers. But we need a national standard that protects consumers across the country from getting trapped by mountains of debt they can't repay. It's time for Congress to act.

During the Obama administration the CFPB did great work to improve regulations around payday lenders. And I hope the Biden administration picks up where they left off. But only Congress has the power to step in and say: enough is enough. Our communities are suffocated by double- and triple-digit interest rates—it holds us back from prosperity and a full economic recovery. The time is now to act.

Before Congress passed the Military Lending Act in 2006, lenders trapped servicemembers in cycles of debt while they served our country. It's a shame it took so long to protect our men and women in uniform from triple digit interest rates. But Congress capped those loans at 36 percent—it worked, and it provided us with a robust model for regulating consumer loans. It's time to extend those same protections to veterans, servicemembers' families, and other consumers.

I applaud Senators Brown and Reed for introducing the Veterans and Consumers Fair Credit Act. I look forward to introducing it in the House.

Let's protect our communities from these high interest loans.

PREPARED STATEMENT OF REPRESENTATIVE BARRY LOUDERMILK OF GEORGIA

Chairman Brown, Ranking Member Toomey, and Members of the Committee, thank you for the opportunity to testify today.

My district is in northwest Georgia and is a snapshot of all different types of American life: urban and rural, high income and low income, families who have been in Georgia for five generations and immigrants who have just arrived in America for the first time. I am here to tell you that a national 36 percent interest rate cap would be devastating to my constituents and would harm the very people it is intended to help.

We often hear that a 36 percent interest rate cap would cause short term, small dollar consumer loans to disappear. That is not a hypothetical—that is reality. To break even on a \$2,600 loan, factoring in losses and the costs of producing the loan, lenders have to charge a 36 percent APR.¹ In other words, if the maximum APR is 36 percent, lenders will experience a net loss on loans under \$2,600 because the break-even APR for those loans is more than 36 percent. This would have wide-ranging consequences, none of which are good for consumers. Many lenders simply would not offer small loans anymore, or consumers would be forced to borrow more money than they need or have a longer term loan to get the APR under 36 percent. This theory has been proven correct in practice. When the State of Oregon established an interest rate cap in 2007, access to credit decreased dramatically, borrowers switched to inferior alternatives, and consumers on average were financially harmed more than they were helped.²

There is no question that consumers have significant need for small dollar credit. Current Federal Reserve data indicates that more than one third of American adults would not be able to pay for a \$400 emergency expense without having to borrow money,³ and tens of millions of Americans do not qualify for traditional bank loans.

A 36 percent interest rate may sound high, but that is because the annual percentage rate is an inappropriate and misleading way to measure the cost of a short term loan. The terms of these loans are usually much less than a year—so meas-

³"Will Illinois Borrowers Find Predatory Loan Alternatives? They Already Are, Says Capital Good Fund's Posner", Woodstock Institute, 7/23/2021, <https://woodstockinst.org/news/blog/will-il-borrowers-find-predatory-loan-alternatives/>.

¹<https://www.mercatus.org/system/files/mercatus-durkin-installment-cash-lending-v1.pdf>

²<https://papers.ssrn.com/sol3/papers.cfm?abstract-id=1335438>

³<https://www.federalreserve.gov/consumerscommunities/sheddataviz/unexpectedexpenses.html>

uring the cost in annual increments is like saying a \$100 a night hotel room is actually a \$36,500 a year hotel room.

Take for example a \$500 loan with a term of 3 months and a \$55 fee. That results in a 44 percent APR,⁴ and under this bill, that loan would be illegal nationwide. Furthermore, the military APR includes both interest and fees, which overstates and distorts the true cost. Under a 36 percent “all in” rate cap, credit cards with interest rates as low as 25 percent would be impacted, which risks eliminating access to credit cards for more than a quarter of subprime borrowers in Georgia⁵ and half of subprime borrowers nationwide.⁶

What do Americans frequently use small dollar installment loans to pay for? Funerals, weddings, emergency car repairs, and medical bills. Who are we to tell our constituents that they can no longer access credit to cover those expenses?

I should also take a moment to dispel the commonly stated myth that opposition to a national interest rate cap is rooted in a desire to protect payday lenders. Georgia has an outright ban on payday lending,⁷ so that has nothing to do with my opposition to this bill. Instead, my constituents have been fortunate to access affordable personal loans thanks to the growth of bank-fintech partnerships and nationwide online lending programs. But if this bill becomes law, my constituents will not have access to installment loans or any other type of short term, small dollar credit.

Finally, it is incredibly ironic that the majority is attempting to override State laws with this bill. Just a few weeks ago, they described the OCC true lender rule as “a shameful attack on States’ ability” to determine their own policies.⁸ It is disappointing to see my colleagues selectively pick and choose when they think State laws matter and when they do not. The States, the CFPB, and multiple other agencies regulate these loans rigorously, and there is no justification for legislating them out of existence.

Thank you again for the opportunity to testify, and I yield back.

PREPARED STATEMENT OF HOLLISTER K. PETRAEUS

FORMER ASSISTANT DIRECTOR FOR SERVICEMEMBER AFFAIRS, CONSUMER FINANCIAL PROTECTION BUREAU

JULY 29, 2021

Chairman Brown, Ranking Member Toomey, and other distinguished Members of the Committee, thank you for inviting me to speak to you today about the Veterans and Consumers Fair Credit Act. I first got interested in small-dollar, short-term lending over 15 years ago, when I was running a national military program for the Better Business Bureau. The payday lending industry, which was in its infancy in the 1980s, had exploded by the 1990s, and by the early 2000s it was hard to ignore the fact that payday loans shops were popping up everywhere—to include large numbers of them in military towns.

Two college professors, Chris Peterson and Steven Graves, published an academic study in 2005 of the geographic distribution of payday loan stores across the United States—and found a disproportionate number of them to be gathered outside the gates of military bases “like bears at a trout stream.”¹ And the impact that was having on the troops’ finances was becoming a military readiness issue—you can’t deploy if you’re in a financial quagmire, loaded up with multiple payday loans that you can’t repay.² Some military personnel were literally spending their paydays running from loan shop to loan shop, using what little money they had to pay fees to roll their loans over for another 2 weeks before starting the whole process again.

The National Defense Authorization Act (NDAA) of Fiscal Year 2006 required the Department of Defense (DoD) to report on the issue of predatory lending to the military. DoD’s report concluded that even “with the amount of outreach and education currently being conducted by the Military Services and through partner organiza-

⁴ <https://bpi.com/what-is-the-break-even-cost-of-small-dollar-loans>

⁵ <https://www.aba.com/-/media/documents/extranet/cpc/cpc-rate-caps-georgia-factsheet.pdf>

⁶ <https://www.aba.com/-/media/documents/extranet/cpc/cpc-rate-caps-georgia-factsheet.pdf>

⁷ <https://www.ncsl.org/research/financial-services-and-commerce/payday-lending-state-statutes.aspx>

⁸ <https://www.vanhollen.senate.gov/news/press-releases/van-hollen-brown-garcia-announce-congressional-review-act-legislation-to-repeal-trump-era-rent-a-bank-rule>

¹ Graves, Steven M., and Peterson, Christopher L., “Predatory Lending and the Military: The Law and Geography of ‘Payday’ Loans in Military Towns”, *Ohio State Law Journal*, Volume 66, p. 653, 2005, website: <https://papers.ssrn.com/sol3/papers.cfm?abstract-id=694141>.

² Bynum, Russ, “Military Declares War on Payday Lenders”, *L.A. Times*, Dec 21, 2003, website: <https://www.latimes.com/archives/la-xpm-2003-dec-21-adna-troopspay21-story.html>.

tions, there are hundreds of thousands of Servicemembers using predatory loan products . . . predatory lending to Servicemembers is best prevented by clear enforceable limitations that can be verified by financial regulators and understood by borrowers. Self regulation, fine print, opt-out provisions and cosmetic ‘protections’ are not effective.”³

Congress’s answer to DoD’s plea was the Military Lending Act of 2006 (MLA), which capped small-dollar, short-term loans to active-duty military and their dependents at a Military Annual Percentage Rate (MAPR) of 36 percent. The MAPR was broader than a simple annual percentage rate (APR) calculation in order to block off work-arounds that lenders had already developed in States that had interest-rate caps, such as: adding various processing fees to the loan; requiring the purchase of expensive loan insurance; and sometimes requiring the purchase of extra products, as well. Some of those products even included an internet service contract or mandatory purchases from a catalog associated with the business. I remember driving by an old abandoned service station out in the country near Fort Bragg, North Carolina, in 2001, and wondering why it had a hand-lettered sign out front that said: Catalog Store. Answer: it was a payday lender’s attempt to disguise its business in response to North Carolina’s 2001 payday lending law.

While it was great to see the MLA enacted in 2006, DoD had a short amount of time to implement it, and so chose to focus on what they considered the three most harmful products: (1) closed-end payday loans with terms of 91 days or fewer and for \$2,000 or less; (2) closed-end auto title loans with terms of 181 days or fewer; and (3) closed-end tax refund anticipation loans. While the 2007 MLA Rule largely worked when it came to those three specific products, it didn’t take lenders long to figure out that the Rule would be fairly easy to evade. For example, since auto title loans were defined as loans of 181 days or less, lenders simply had to make their loans 182 days and they were not covered by the law. Similarly, payday loans were defined as loans of 91 days or less, so—not surprisingly—lenders made their payday loans for a slightly longer term in order to escape coverage.

A Consumer Financial Protection Bureau (CFPB) report in 2014 detailed some egregious examples of legal loans that were designed to fall outside of MLA protections, to include: an installment loan to a servicemember in Texas with a 584.72 percent APR, where the borrower of \$485 was required to pay \$1,428.28 over a period of just less than 6 months; and an auto title loan in Illinois to the spouse of a servicemember for a 12-month term at an APR of 300 percent (the \$2,575 loan, including a \$95 lien fee, carried a finance charge of \$5,720.24).⁴

There also was no specific guidance as to who would actually enforce the MLA—which meant that, effectively, nobody did, allowing lenders who chose to flout the law to do so with impunity. So Congress through the 2013 NDAA made several amendments to the MLA, to include establishing that MLA enforcement authority would go to those Federal agencies that were already charged with enforcing the Truth in Lending Act. It also directed DoD to review the 2007 Rule with a view toward revising and improving it. The DoD MLA Rule of 2015 extended MLA coverage to almost all forms of consumer credit, with just a few exceptions, and closed off the loopholes that had been exploited by lenders.^{5 6}

I still remember the furious opposition from the payday lending industry in response to the proposed DoD rule. They submitted multiple comments on the Advance Notice of Proposed Rulemaking indicating that they were unwilling to lend at anything close to 36 percent APR and predicting dire financial outcomes for servicemembers who would no longer have access to their valuable services. According to them the MLA changes would spell disaster for large numbers of military families, who would be cast into financial ruin through the lack of short-term credit offerings. But did that happen?

³ Department of Defense, “Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents”, Washington, DC, August 3, 2006, website: <https://archive.defense.gov/pubs/pdfs/Report-to-Congress-final.pdf>.

⁴ Consumer Financial Protection Bureau Report: “The Extension of High-Cost Credit to Servicemembers and Their Families”, December 2014, website: <https://files.consumerfinance.gov/f/201412-cfpb-the-extension-of-high-cost-credit-to-servicemembers-and-their-families.pdf>.

⁵ Department of Defense, 32 CFR Part 232 “Limitations on Terms of Consumer Credit Extended to Service Members and Dependents; Final Rule”, *Federal Register* Vol. 80 Number 140, July 22, 2015, website: <https://www.govinfo.gov/content/pkg/FR-2015-07-22/pdf/2015-17480.pdf>.

⁶ Consumer Financial Protection Bureau factsheet, “What Is the Military Lending Act and What Are My Rights?”, April 2018, website: <https://files.consumerfinance.gov/f/documents/cfpb-military-lending-act-know-your-rights-handout.pdf>.

Per the DoD, as evidenced in a report they just published last month in response to a request in the 2021 NDAA, the answer appears to be “no.”⁷ I’ll let the report speak for itself: “The Department believes the MLA is currently working as intended and that Servicemembers continue to have ample access to necessary credit. Survey results generally reflect decreased use of high-cost credit products and improved financial condition among Servicemembers over time.” “In issuing its 2015 regulations, the Department recognized that some lenders may choose to no longer offer some of the now-broader scope of credit products to covered borrowers, while others may amend their terms and conditions to apply. Nevertheless, the Department believed such a step was necessary to protect Servicemembers and their families and that they would still have adequate access to credit. Several years after the implementation of those regulations, these borrowers continue to enjoy access to compliant credit products to meet their needs. They also have access to no-cost loans or grants from military aid societies that can address a number of financial needs.”

I also took a look at the annual reports of two military aid societies—Army Emergency Relief (AER) and the Navy-Marine Corps Relief Society (NMCRS)—for the last 8 years to see if they had experienced a big surge in aid applicants or in the amount of financial aid they granted, which could be indicators of post-MLA financial distress. AER stated in its 2015 report⁸ that it had given an average of \$77 million in assistance annually since 2008. Rather than increasing since then, that number was reported as \$70 million or less per year in 2016 through 2020, and the number of aid recipients served annually has not risen, declining from a high of 54,000 in 2013 to 40,000 in 2019.

The NMCRS annual reports show that their highest annual amount of financial aid was given in 2013 and 2014 (\$48.5 million each of those years), with a steady decline each year since, down to \$43.4 million in 2018. The number of aid applicants/recipients annually has also declined steadily, from a high of over 65,000 in 2013 to 51,085 in 2018. Certainly none of their reported statistics show a large increase in requests for aid after MLA implementation. When NMCRS President Admiral Steve Abbot (U.S. Navy, Retired) testified before this Committee almost 10 years ago, he spotlighted the success of the MLA at that time, as evidenced by the fact that NMCRS’s annual assistance specifically to those stuck in what he called “the payday loan trap” went from a high of \$1.4 million in 2006 to just \$168K in 2011.⁹ He expressed a desire that the provisions of the MLA be extended to retirees and veterans, which you are, of course, contemplating today.

And there is no evidence that I can find that military personnel have turned to loan sharks or the Mob for loans since the MLA took effect—another prediction from the lending industry. Instead they seem to have done what many borrowers have done in States that banned payday lending: found other sources for the money (family, nonprofits, credit unions with low-interest, short-term loans, etc.); worked out a delayed payment schedule with their creditors; or decided not to borrow, after all.

Since you are now considering a nationwide interest-rate cap on lending for all Americans, I’d like to talk a bit about the States’ efforts in that area. I’ve already mentioned North Carolina’s decision 20 years ago to ban payday lending in their State. There was a very interesting study by the University of North Carolina in 2007 that supported that decision. It concluded that “the absence of storefront payday lending has not made a significant impact on credit availability in North Carolina. The vast majority of households surveyed report being completely unaffected by the ban. We found that households have an array of options they use to manage financial shortfalls, and the absence of a single option—in this case, payday lending, has impacted only a few. For those impacted, over twice as many report that the absence of payday lending has had a positive effect on their household rather than a negative one.”¹⁰

Since 2001, 17 other States and the District of Columbia have followed North Carolina’s lead with strong protections against payday lending. Most recently, in November 2020 an extraordinary 83 percent of Nebraska voters approved a ballot

⁷ Department of Defense, Office of the Under Secretary of Defense for Personnel and Readiness, “Report on the Military Lending Act and the Effects of High Interest Rates on Readiness”, May 2021, website: <https://finred.usalearning.gov/assets/downloads/FINRED-MLA-ReportEffectsHighInterestRatesOnReadiness-May2021.pdf>.

⁸ <https://www.armyemergencyrelief.org/resource/2015-annual-report/>

⁹ Testimony of Admiral Steve Abbot, USN (Ret) President, Navy-Marine Corps Relief Society Before the Senate Committee On Banking, Housing, and Urban Affairs, November 3, 2011, website: <https://www.banking.senate.gov/imo/media/doc/AbbotTestimony11311.pdf>.

¹⁰ Ratcliffe, Janneke, and Manturuk, Kim R., “North Carolina Consumers After Payday Lending: Attitudes and Experiences With Credit Options”, University of North Carolina Center for Community Capital, November 2007, website: <https://communitycapital.unc.edu/wp-content/uploads/sites/340/2007/11/NC-After-Payday.pdf>.

measure putting a 36 percent APR limit on payday loans in their State.¹¹ And on March 23, 2021, the Governor of Illinois signed The Predatory Loan Prevention Act,¹² which was modeled on the Military Lending Act. The Act cited the fact that Illinois families were paying over \$500,000,000 per year in consumer installment, payday, and title loan fees, with an average APR of 297 percent.

It's worth noting that the sky-high interest rates that continue to be charged in those States which have not opted to limit payday loans certainly were not favored by the respondents to a national poll conducted by The Pew Trusts in 2017, where 70 percent of those surveyed were in favor of more regulation of payday loans.¹³

Short-term, high-interest lenders often portray themselves as good Samaritans offering a helping hand to those who need it during an emergency, but in reality their business is all about offering easy access to credit to anyone with a pay stub and a checking account, regardless of their ability to repay. The last time I went to Fort Campbell Army Post before implementation of the 2015 MLA Rule, I counted an astounding 22 fast-cash lenders in a 4-mile stretch on the road from Gate 1 down to Clarksville, Tennessee. Does anyone think all 22 of them were there because their owners were good Samaritans who had rushed to set up outside Fort Campbell in order to extend a helping hand to the soldiers stationed there? Of course not. They were there because they saw an opportunity to make money by offering instant, easy and expensive loans. And make money they did, under the theory of "if you build it they will come."

I also remember some of the direct-mail solicitations that came to mailboxes at Fort Belvoir, Virginia, when I was living there in 2005. They didn't talk about help for emergencies. Instead it was: "Need money for Christmas?"; "Need money for Easter?"; and, my personal favorite: "Don't be the only person at the bachelor party without cash!!" Although I'm sure some people borrow from short-term lenders because of an emergency car repair or family illness, many of them borrow for less compelling reasons and then find themselves trapped in a cycle of debt when they cannot repay on time.

So many of the "testimonials" sent to the CFPB from payday loan customers when the Bureau was looking at payday lending began with the words: "They gave me cash." That statement always disturbed me because the lenders weren't giving away cash! They were loaning it to those customers at a very high interest rate—and counting on them not being able to pay it back 2 weeks later. The business model that has made payday lenders rich is having customers pay fees repeatedly to rent the same money over and over again. A CFPB study in 2013 that looked at payday lending over a 12-month period through data on more than 15 million storefront payday loans found that the average payday loan borrower was indebted 199 days per year—certainly not the 2-week period that's advertised! Nearly half of the payday borrowers in the study had more than 10 transactions a year, while 14 percent had 20 or more. For the majority of payday borrowers, new loans were most frequently taken on the same day a previous loan closed, or shortly thereafter.¹⁴

Now with the introduction of the Veterans and Consumers Fair Credit Act some of you and your colleagues are asking: Why can't we do for all Americans what we're doing for active-duty military and their families? Don't veterans, military retirees, surviving spouses, and all other Americans deserve to be protected from a predatory lending model that charges outrageous interest rates and ensnares them in a debt trap? In 2019 I worked on a bill—the HAVEN Act—that assisted veterans to protect their disability pensions in bankruptcy, and one of the things that I learned doing research for that bill is that veterans are more likely to declare bankruptcy than the general population¹⁵—so yes, they do need protection from high-interest loans

¹¹ Leonhardt, Megan, "Nebraska Becomes the Latest State To Cap Payday Loan Interest Rates", CNBC.com, Nov 4, 2020, website: <https://www.cnbc.com/2020/11/04/nebraska-becomes-the-latest-state-to-cap-payday-loan-interest-rates.html>.

¹² Predatory Loan Prevention Act, State of Illinois, March 23, 2021, website: <https://www.ilga.gov/legislation/101/SB/PDF/10100SB1792ham003.pdf>.

¹³ The Pew Charitable Trusts, "Americans Want Payday Loan Reform, Support Lower-Cost Bank Loans—Results of a Nationally Representative Survey of U.S. Adults", April 19, 2017, website: <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/04/americans-want-payday-loan-reform-support-lower-cost-bank-loans>.

¹⁴ Consumer Financial Protection Bureau, "Payday Loans and Deposit Advance Products", April 24, 2013, website: <https://files.consumerfinance.gov/f/201304-cfpb-payday-dap-whitepaper.pdf>.

¹⁵ Fisher, Jonathan, "Who Files for Personal Bankruptcy in the United States?" Stanford University Center for Economic Studies 17-54, September, 2017, website: <https://www2.census.gov/ces/wp/2017/CES-WP-17-54.pdf>.

whose costs would eat away at their limited finances. And so do many of their fellow Americans.

I should add that veterans have a higher suicide rate than the general population, too, and financial stress is known as a major contributing factor in suicide. There is research on the topic of suicide specifically as it relates to payday lending. One academic study found that gaining access to payday loans increased suicide attempts by 10 percent.¹⁶ Another academic study, using the National Center for Health Statistics Multiple Cause of Death Files from 1999–2016, found that the converse can also be statistically shown: in States that banned payday lending, fatal suicide and drug overdose rates significantly decreased relative to those in States that had not banned payday lending. The author found that payday lending bans led to a reduction of 2.1 percent in suicides and 8.9 percent in fatal drug overdoses.¹⁷

I know the lenders can afford to hire the best talent to come to the Hill and persuade you that their products are helpful, not harmful. But I hope you'll listen to the nonprofits that work on consumer financial well-being, too. Ask the faith leaders in your State how they feel about the issue. Many of them will tell you of the terrible struggles of members of their congregation ensnared by short-term debt products. And, although it may embarrass them to admit it, some of your constituents will tell you directly how they have been impacted, too. If we judge by the 83 percent of Nebraska voters who chose last year to outlaw payday lending, or the 70 percent of respondents in the national Pew study who supported more regulation of the payday lending industry, you may well find that a large majority of the voters in your State have a decided opinion about high-interest, short-term lending that runs directly counter to the message you're hearing from the lending industry today.

If people truly used payday loans in the way they're touted, as a way to borrow money briefly for a couple of weeks in an emergency, we wouldn't be here having this conversation. But they don't. Many borrowers are using payday loans to cover ordinary living expenses or even discretionary spending, not unexpected emergencies. And as the CFPB study showed, the average borrower pays repeatedly to rent the same money, month after month, for over half the year.

There are so many better ways to borrow money: a credit card, a bank or credit union loan, family, a relief society. It's time for Congress to extend to all Americans the protections that they gave to the military that have worked so well, and set reasonable loan rates of 36 percent or less that will provide those who need credit a true helping hand and loans that they have the chance to pay off successfully.

¹⁶ Lee, Jaeyoon, "Credit Access and Household Well-being: Evidence From Payday Lending", *University of Chicago*, October 9, 2017, website: <http://www.apjfs.org/resource/global/cafm/2017-DSC2-3.pdf>.

¹⁷ Lu, Thanh, "The Effect of Payday Lending Restrictions on Suicide and Fatal Poisonings", *Temple University*, March 23, 2020.

PREPARED STATEMENT OF ASHLEY HARRINGTON
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LENDING
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Introduction

A borrower from California shared: *I currently have an installment loan in the amount of \$2600.00 from Speedy Cash . . . At the same time, I also have [x] \$300.00 payday loans from [x] different storefronts in my neighborhood, including Speedy Cash. So basically, I have both a \$300.00 payday loan from Speedy Cash and a \$2600.00 installment loan. Is that legal? I am drowning in debt and I can't handle it anymore. I need some relief. This is very stressful and expensive for me, and I don't know what to do I've been paying about \$140.00 every two weeks on the Speedy Cash installment loan, and I've already paid \$2200.00 . . . but my total balance is still \$2600.00! How is this even possible? Are all my payments going toward interest only? I can't keep paying on all these loans. I need to prioritize my rent (\$1100.00), car payment (\$320.00), insurance (\$180.00) and my other basic needs like food and utilities. After taxes, I only bring home about \$1800.00 a month. So this is really hurting me and I've reached my breaking point . . . I don't want to default on the loan, but at this point I'm not seeing another alternative. I recently received XXXX utility disconnection notices from my gas, water and light companies[.] To make matters worse, I'm also facing being laid off from work in the next few months. I need help.¹*

Kathy, from Springfield, Missouri, received a payday loan in 2014, ended up in a debt trap that lasted two years. She described the stress from her payday and title loans as "soul-crushing."

She says: "You are constantly worried about how to keep the loan and your necessary bills (rent, utilities, etc.) paid...You are stressed and it impacts everyone around you, children included. I want people to understand how devastating the effects of getting a payday loan really is on a family. The stress is unbearable. You are worried and upset all of the time. Your children get stressed out because the parents are worried about how to cover all the bills and a payday loan payment. It's a horrible way to live...Why will the government not pass laws to protect our most financially vulnerable citizens from these predatory lenders?"²

Good morning, Chairman Brown, Ranking Member Toomey, and members of the Committee. Thank you for the opportunity to provide testimony today. My name is Ashley Harrington, and I am the Federal Advocacy Director and a 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 borrower stories shared above demonstrates how predatory loans can devastate the financial well-being and health of families. Although, payday and other predatory lenders claim to provide consumers quick and easy access to cash, the evidence of harms to consumers from these loans is well established and vast. Nationally, payday and car title lenders charge annual percentage rates (APRs) averaging around 300%-400% and strip away around \$8 billion annually from people typically earning \$25,000 a year.³ The debt trap of unaffordable loans drives this business model, with 75% of fees generated by people stuck in more than 10 loans a year.⁴ Low-income borrowers face a cascade of consequences such as delinquency on other bills, bank account closures, and even bankruptcy. Policy trends at the

state and federal level for more than a decade have been to rein in the harms of the unsafe loans, ranging from Congress' 2006 passage of the 36% rate cap in the Military Lending Act to voter-enacted 36% rate caps in Nebraska, Colorado, and South Dakota in 2020, 2018, and 2016, respectively. In addition, state legislatures in Illinois and California have passed interest rate cap bills in 2021 and 2019, respectively. Since 2005, no new state has legalized payday lending.

Despite efforts by policymakers at all levels to rein in high-cost lending, there has been substantial growth in the issuance of larger loans with longer terms and with rates ranging from 100%-200% APR. The increase in longer-term high-cost installment lending is coming from brick-and-mortar payday lenders, and from lenders operating online. For example, one traditional payday loan company offers an installment loan product for \$1,000, repaid over 12 months with a monthly payment of \$305.96. By the time the consumer pays that loan back (if they are even able to do so on those terms), they will have paid \$3,660.96 – an APR of nearly 350%.⁵ Many of these online lenders seek to disguise their harmful lending practices under the guise of “fintech” while making excessively priced loans with direct access to a borrowers' bank account and no safeguards of affordability. The “fintech” label does not wipe away the underlying harms and consequences of these 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, result in high default rates and keep consumers trapped in a cycle of debt.

High default rates signal unaffordability but also significant harms to consumers. Defaults push struggling families into deeper financial distress, often including aggressive collection efforts, lawsuits, and wage garnishment, as well as increased difficulty meeting other expenses and obligations. They also make it harder for borrowers to obtain more affordable loans, thus reducing access to better credit and increasing reliance on more abusive products. This debt trap is the high-cost lender's chosen business model. This is especially poignant given the deep health and financial impacts of COVID-19 on American families. Namely, communities of color that have disproportionately suffered due to structural racism in health disparities, lower incomes, stagnant wages, lack of savings, lower credit scores, higher unemployment rates are also subject to the debt cycle these products initiate.

Auto or car title loans can be particularly devastating. In addition to inflicting the same harms caused by payday and other high-cost installment loans, auto title loans put borrowers at substantial risk of losing their car. The consequences of losing one's vehicle are dire—both the loss of a valuable asset and the serious disruption of a borrower's ability to get to work, earn income, and manage their lives. More than a third of auto title borrowers have reported that they pledged the only working car in their household as security for their auto title loan.⁶ Research has found that an astounding one in five auto title borrowers have their car repossessed.⁷ In Virginia, a state that allows longer-term car title loans, lenders seized over 70,000 cars between 2014 and 2017.⁸

Mere statistics on the loan performance of high-cost loans, staggering as they are, do not do justice to the brutal financial, emotional, and physical turmoil these toxic products inflict. The distress can pervade every facet of a person's life, often extending to the borrower's family members as well. Growing research also documents the links between high-cost loans and negative health impacts.⁹

As we continue to navigate the deep economic turmoil exacerbated by the ongoing COVID-19 pandemic, we need actionable policy solutions that protect consumers and help preclude further disparities in economic recovery. It is imperative that Congress act to ensure that all communities have a real chance

for an equitable recovery following the post-COVID recession. The policy choices made now will determine whether economic opportunity and financial stability are widely available to everyone.

It is past time that federal lawmakers took the steps needed to protect consumers across this country from the devastating impact of predatory, high-cost lending. Instituting a federal rate cap for consumer loans that also provides for states to provide greater protections for their residents is essential to stopping the debt trap.

My testimony today will:

- I. Describe how payday, car title, and other high-cost lenders have situated themselves to perpetuate our country's two-tiered financial services system;
- II. Discuss how the harms and consequences of payday, car title, and high-cost installment loans exacerbate racial wealth disparities and disproportionately burden communities of color and other vulnerable populations;
- III. Discuss how "rent-a-bank" schemes and predatory loans severely harm financially vulnerable consumers, disproportionately burden communities of color, and exacerbate racial wealth disparities;
- IV. Provide policy recommendations for addressing these abusive lending practices, both Rent-a-Bank and traditional payday, car title and high-cost installment lending.

I. Payday, Car Title, and High-Cost Installment Lenders Perpetuate a Financial System Rooted in a Legacy of Discrimination and Exclusion

The United States' two-tiered financial services system is rooted in a legacy of discrimination and perpetuates wide racial wealth disparities. Homeownership is a prime example, as it remains the single largest opportunity for people to build wealth in this country; yet, financial institutions and federal, state, and local housing policies have systematically excluded families of color, especially Black families, from this opportunity. Specifically, Black communities were redlined as not worthy of investment to deny access to federally insured mortgage loans, which denied them the opportunity to build home equity in the same manner as whites who have since passed on that wealth created across generations. Today, the Black homeownership rate predates its level at the passage of the Federal Fair Housing Act. As a result, white families now have twelve times the wealth of Black families based on unfair economic advantage, which enables them to better weather financial shocks.¹⁰

By 2008, the homeownership gap had begun to close. However, predatory lenders exploited these gains by targeting communities of color with dangerous mortgage loan products peddled by subprime lenders that swept in to take advantage of the equity borrowers of color had set aside. Subprime lenders made loans in communities of color at far greater rates than in white communities, even after accounting for income and credit risk—meaning that these borrowers could have qualified for more affordable, responsible loans that were crowded out by unfair and deceptive lending.¹¹

Payday lending in many ways is playing out the same way that the mortgage crisis did. Abusive lenders purport to provide access to credit in communities of color. However, lax regulation enables lenders to offer loans on predatory terms that are designed to strip wealth, rather than build it.

By turning a blind eye for far too long, regulators and legislators are enabling practices that increase and further entrench racial wealth disparities. Bottom line: high-cost lending disproportionately harms communities of color, exploiting and perpetuating the racial wealth gap. A legacy of racial discrimination in housing, lending, banking, policing, employment, and otherwise, has produced dramatically inequitable outcomes that persist today. Communities of color, often largely segregated due to the history of redlining and other federally operated or sanctioned racially exclusionary housing policies, experience higher rates of poverty, lower wages, and higher cost burdens to pay for basic living expenses. Payday lenders peddling unaffordable loans cause particular harm to these communities.¹²

Storefront lenders, which often offer both short-term and longer-term loans, target borrowers of color, in part by concentrating their locations in communities of color.¹³ Indeed, the communities most affected by redlining are the same who are saturated by payday lenders today. Multiple studies have found that payday lenders are more likely to locate in more affluent communities of color than in less affluent white communities.¹⁴ In light of this targeting, it is unsurprising that a disproportionate share of payday borrowers come from communities of color, even after controlling for income.¹⁵ Likewise, people of color are likely to both have lower wages and higher cost burdens just to pay for basic living expenses as the result of facing broad societal discrimination. Women of color have faced the double-whammy of racial and gender discrimination, resulting in even wider and more startling gaps in wages and employment. For example, Black women only earn 63 cents and Latinas only 55 cents for every dollar earned by a white male.¹⁶ These disparities mean that people of color are more likely to be financially distressed, more likely to struggle to make ends meet—and thus more vulnerable to predatory lenders.

Communities of color have historically been disproportionately excluded from the mainstream banking system due to discrimination. About 13.8% of Black and 12.2% of Latino households are unbanked, compared to 2.5% of white households.¹⁷ Generally, a bank account is required to obtain a payday loan, but because these loans cause significant debt, payday loans increase the likelihood that a borrower will have their bank account involuntarily closed, exacerbating the racial disparity between those with bank accounts and those without. Thus, the disparity in payday loan borrowing is especially significant given that Blacks and Latinos are much less likely to have checking accounts than whites.¹⁸ . Since a checking account is typically required to get a payday loan, one might expect the concentration of payday lenders in communities of color to be lower than in white neighborhoods.

The historical discrimination against communities of color is also reflected in credit scoring.¹⁹ Lenders that focus on subprime borrowers will inevitably disproportionately target borrowers of color. The algorithms and big data that “fintech” lenders use may also result in disparate impacts on these communities.²⁰

The history of racial discrimination and exclusion in our country’s banking system has produced racially inequitable outcomes which persist today. Payday and car title lenders are profiteers of this history of racial discrimination. Predatory lenders frequently promote their products as providing access to credit for emergencies, but in reality, they are exploiting chronic racial and economic disparities that cannot be solved or ameliorated with a 400% APR loan. As explained further below, these predatory products strip borrowers of hard-earned money and assets, leaving them worse off, while stifling the development of responsible products—a double-edged sword. Permitting their unfair and abusive practices unfettered entrenches the two-tier financial services system. One group of consumers has access to the

mainstream financial system, which is cheaper, while another is further marginalized, relegated to predatory lenders pushing costly debt trap products, reinforcing a history of financial exploitation.

II. The Harms of Payday Lending, Car-Title Lending, and High-Cost Installment Loans Perpetuate Income and Wealth Disparities for Consumers

"Payday lending is bad for many consumers, but like many predatory scams, it invariably ends up as a weapon against the disadvantaged communities that are least able to bear its terrible burden. It uses the lure of quick cash to trap struggling families in a cycle of debt and slowly drain them of what little money they have."

- Vanita Gupta, when serving as President and CEO of The Leadership Conference on Civil and Human Rights²¹

High-cost loans are debt traps by design. The lender takes control of a coercive payment device—access to the borrower's bank account or the title to their car. They make a loan, without any assessment of affordability in light of the borrower's income and expenses, and typically tie the loan payments to a borrower's payday. The borrower is typically unable to afford the payment, including the high fees. As a result, the borrower is left with three options, all of them harmful: take out a new (unaffordable) loan to repay the loan, default on the loan, or repay the loan and default on other obligations or expenses. The vast majority of the loans payday lenders make are made within 30 days of a prior loan, indicating the initial loan was unaffordable from the start. The payday and vehicle title business model, then, is not about providing access to productive credit or bridging a short-term financial shortfall. It is about flipping a borrower from one unaffordable loan to another for, the lenders hope, a very long time.

This debt trap is the core of the payday lenders' business model:

- The typical payday loan borrower is stuck in 10 loans a year, generally taken in rapid back-to-back succession.²²
- Over 75% of all payday loan fees are due to borrowers stuck in more than 10 loans a year.²³
- Only 2% of payday loans go to borrowers who take out one payday loan and do not come back for a year.²⁴

While this debt trap is extremely lucrative for the lenders, it is incredibly devastating for borrowers and for the communities in which payday lenders are situated. For borrowers, payday loans are associated with a cascade of financial consequences, such as increased likelihood of bankruptcy, bank penalty fees, delinquency on other bills like rent and medical bills, delinquency on child support payments, and involuntary bank account closures.²⁵

Car title loans likewise result in a debt trap followed by harmful consequences like the seizure of people's cars. The typical short-term car title loan is refinanced 8 times. And, an astounding one in five auto title loan borrowers have their vehicle seized.²⁶

The CFPB has quantified bank fees triggered when funds were insufficient on longer-term loans, as well as subsequent lost bank accounts. It found that about half of borrowers paid an NSF or overdraft fee. These borrowers paid an average of \$185 in such fees, while 10% paid at least \$432. It further found

that 36% of borrowers with a bounced payday payment later had their checking accounts closed involuntarily by the bank.

The debt treadmill becomes so unsustainable that eventually nearly 50% of borrowers default on payday loans, even though they have generally paid significant amounts in fees and interest.²⁷ Prior to enactment of South Dakota's rate cap, a borrower in that state who had received an original \$2,000 loan, was flipped 13 times in loans carrying 260% APR over the course of 2 years, paying over \$8,300 in interest and fees. Three years after her last payment, the payday lender filed a collection suit for \$5,300.²⁸ For another person, a \$200 loan resulted in seven flips, \$3,233 interest and fees paid before defaulting, and a debt collection suit of \$3,400.²⁹ Upon default, payday lenders employ aggressive debt collection tactics, such as contacting people at work or their friends and family. Once a payday loan debt goes into collection, it is often reported to the credit bureaus, thus further damaging their credit standing and increasing barriers to jobs, housing, insurance or other affordable products in the future.

While the bulk of payday and car title loans are due in full with a single payment in 14 or 30 days, many of these payday and car title lenders are now also making high-cost installment payday and car title loans. Lenders falsely argue that simply because a loan is an installment loan, it is a good loan. Despite their installment terms, these loans have the same troublesome characteristics as payday and car title loans: a lack of underwriting; access to a borrower's bank account or car as security; structures that prevent borrowers from making progress repaying; and excessive rates and fees that increase costs further when loans are flipped. Worse, these loans are for larger amounts and have longer repayment periods that make them even more expensive. For example, a California veteran was given a loan of \$5,125 with an interest rate of 116 percent, and a seven-year loan term that ended up costing her \$42,000.³⁰

The move to longer-term, high-cost installment loans is occurring in the traditional brick-and-mortar lenders, but also through lenders operating online. Many of these online lenders seek to disguise their harmful lending practices under the guise of "fintech" while making excessively priced loans with direct access to a borrowers' bank account and no safeguards of affordability. The "fintech" label does not wipe away the underlying harms and consequences of these unaffordable loans. One online lender that makes high-cost installment loans, Elevate, reported charged-off debt amounting to 52% of their domestic revenues in both 2016 and 2017, with no intent to drive those numbers down.³¹ In 2020, the net charge off rate dropped to a still staggering 41%.³²

When made a loan they cannot afford, the borrower experiences inescapable debt or loss of assets, while, thanks to some combination of the high cost and repeat reborrowing, the lender lines his pockets. That's the business model of predatory lenders: they succeed by setting up the borrower to fail. And this is true whether the loan is a high-cost, unaffordable balloon payment loan, car title loan, or a high-cost, unaffordable installment loan.

III. Communities of Color Disproportionately Bear the Burden of Predatory Payday Loans

“A drive through any low-income neighborhood clearly indicates people of color are a target market for legalized extortion...Visits to payday stores...are threatening the livelihoods of hardworking families and stripping equity from entire communities.”

- Julian Bond, former national chairman of the NAACP³³

In determining their locations, payday and car title lenders are able to exploit the compounding harms of residential racial segregation and the continuing effects of disinvestment due to redlining. Research has repeatedly found that payday lenders concentrate in communities of color. In other words, payday lenders engage in a type of reverse redlining, locating primarily in communities that have been historically and systematically deprived of mainstream financial services in order to extract fees on the false promise of access to credit.

These patterns are not new nor accidental. They have been found all over the country. Payday lenders in California are 2.4 times more concentrated in Black and Latino communities, even after controlling for income and a variety of other factors.³⁴ Payday lenders in Florida were also more concentrated in majority Black and Latino communities, even after controlling for income.³⁵ A 2018 analysis of storefront locations in Rhode Island, in which 26 of the state's 28 payday loan stores are owned by Advance America and Check 'N Go, shows similar patterns. **Among 80% to 120% area median income, neighborhoods with a significant population of Black and Latino residents have a 70% higher concentration of payday loan stores than those neighborhoods that are predominately white.**³⁶ There is only one payday loan store in any Rhode Island neighborhood that is upper-income and predominately white. Dating back to 2005, when the Center for Responsible Lending produced the first report of this kind, payday lenders still had shops in North Carolina, and the pattern was clear even then. At that time, Black neighborhoods had three times as many stores per capita as white neighborhoods.³⁷ This three-fold disparity remained unchanged even after controlling for the neighborhood characteristics of income, homeownership, poverty, unemployment rate, urban location, age, education, share of households with children, and gender.³⁸ Similar patterns are well-documented in many other states such as Michigan,³⁹ Louisiana,⁴⁰ Colorado,⁴¹ and Georgia.⁴²

Payday lenders publicly acknowledge that location of their stores is one of the most critical factors in their competitive edge among other payday lenders. Payday lenders compete on location and convenience, rather than price (as further evidenced by payday lenders' each charging the maximum rate under state law). Payday lenders aggressively market their loans in order to lure people into their doors for the first time, such as by offering their first loan free, a frequent borrower discount, or discounts for referring a friend, because lenders know that the typical borrower will cycle through the revolving door many more times.

A Pima County, Arizona, survey of payday borrowers, during the time it was legal in that state, found that 65% were Black, Latino, or Native American, compared to about 30% of the overall adult population.⁴³ In California, while Black, Latino, and Native American people make up about 35% of the adult population, they represent 56% of all payday borrowers.⁴⁴ Similarly, researchers with access to the records of one of the largest Texas-based payday lenders found that Black and Latino individuals make up over three-quarters (77%) of all payday borrowers, while they comprise 40% of the population.⁴⁵ A

survey by the Pew Charitable Trust found that African Americans were 105% more likely than other races/ethnicities to have had a payday loan in the last five years.⁴⁶

IV. Older Americans are Particularly Attractive to High-Cost Lenders and Especially Vulnerable to the Harms the Loans Cause.

Older Americans are particularly attractive to payday and vehicle lenders and especially vulnerable to the harm the loans cause. Coupled with recent dramatic declines in the value of their largest assets—homes and retirement assets—many older Americans also struggle with limited incomes. One in three all older Americans over age 65 are considered economically insecure, living on \$25,760 per year or less. Forty-three percent of single recipients of Social Security depend on it for 90% or more of their income.⁴⁷ Senior women in particular face diminished incomes because of lower lifetime earnings and Social Security and pension benefits. Not only are these incomes limited, but they are also fixed, meaning seniors are particularly unlikely to be able to address financial shortfalls by working extra hours or otherwise earning extra income.

Facing these financial hardships, older Americans are particularly vulnerable to payday and car title lenders' claims of quick cash. And older Americans are particularly attractive to lenders because Social Security benefits provide a steady source of repayment. As one payday lender described federal benefits recipients: *"These people always get paid, rain or shine . . . [They] will always have money, every 30 days."*

As another put it: *"[Borrowers receiving Social Security or disability] payments would come in for a small loan and write a check to the company dated the 3rd of the month, when their government checks would arrive. All the Advance America employees were required to come in early on that day, so we could quickly cash their checks and wipe out their checking accounts."*

Indeed, an analysis by one researcher found that payday lender storefronts cluster around government-subsidized housing for seniors and the disabled in a number of states across the country.

It is unsurprising, then, that significant numbers of older Americans become trapped in payday loans. Moreover, in recent years, trends have suggested that older Americans have comprised a growing share of payday borrowers. The share of payday borrowers in Florida age 65 and older more than doubled over the past decade, while the share of Florida's overall population comprised of that age group grew by only 9.7%. The share of older borrowers in California has also grown steadily in recent years.⁴⁸ The senior program manager at a community organization that aids lower-income people in Nevada has stated: *"I see about 80 to 100 seniors per week . . . at least half have taken out a payday loan."* Many go on to default and become victim to harassing phone calls.

One widow who relied on Social Security for her income testified before the Senate Committee on Aging that her \$500 bank payday loan from Wells Fargo (which Wells Fargo no longer offers) got her trapped for five years and ended up costing her nearly \$3,000.⁴⁹

Unaffordable payday loans made to seniors are particularly troubling because the Social Security funds the lenders routinely seize are protected from creditors in other contexts. Congress has long sought to protect Social Security funds and other public benefits intended for necessities from the unilateral reach

of creditors. The Social Security Act prohibits collection of Social Security benefits through assignment, garnishment, or other legal process. The policy underlying this legal protection is to ensure the debtor a minimum subsistence income—for essential needs like food, shelter, and medicine—and courts have repeatedly upheld it.

Payday lenders making loans to Social Security recipients who cannot afford to repay the loans grossly undermine this critical protection by requiring the borrowers to provide direct access to their bank accounts and immediately taking the Social Security income for repayment—even if that means that the borrower is left with no funds for essentials. CRL research found that bank payday lenders took an average of 33% of the recipient's next Social Security check to repay a bank payday loan. For Annette Smith, the borrower described above, they took more than half. The threat that unaffordable payday loans pose to Social Security recipients became more pronounced in 2013, when electronic distribution of government benefits became mandatory.

V. A federal interest limit will provide the surest protection against predatory high-cost lending

A. A federal interest limit will protect consumers from highly predatory “rent-a-bank” schemes used to evade state interest rate caps.

“Rent-a-bank” schemes were used in the 1990s to mid-2000s, when non-bank lenders partnered with banks, which are exempt from state interest rate laws, in an attempt to evade state interest rate caps and offer payday loans with outrageous interest rates. In response federal regulators—the FDIC, OCC, and Federal Reserve—cracked down on this practice.

In rent-a-bank schemes, the non-bank lender decides to offer loans at rates that are illegal under state law. Because national and federally-insured banks are generally exempted from state interest rate laws, the non-bank lender finds a bank willing to become the nominal “originator” of the loans the non-bank lender offers. The non-bank lender is the public face of the loan program. Neither the customers nor the general public are aware of the financial gymnastics behind the transaction that purport to legitimize a loan that would be illegal in the hands of the non-bank lender alone.

In 2002, the OCC strongly condemned “rent-a-bank” schemes. Former Comptroller of the Currency John D. Hawke Jr. called the schemes “an abuse of the national charter,”⁵⁰ noting that “[t]he preemption privileges of national banks derive from the Constitution and are not a commodity that can be transferred for a fee to non-bank lenders.”⁵¹ He criticized the payday lending industry, which “has expressly promoted such a ‘national bank strategy’ as a way of evading state and local laws. Typically, these arrangements are originated by the payday lender, which attempts to clothe itself with the status of an ‘agent’ of the national bank. Yet the predominant economic interest in the typical arrangement belongs to the payday lender, not the bank.”⁵²

Currently, 18 states and the District of Columbia have a rate cap of 36% or lower on payday loans, protecting over 115 million persons from these harms and saving residents over \$2 billion annually in fees that would otherwise be paid to payday lenders for high-cost loans.⁵³ The two most recent states to join these ranks were Illinois and Nebraska. In Nebraska, 83% of voters voted in favor of a 36% rate cap – more than those who voted for any other issue on the ballot, including President of the United

States.⁵⁴ These ballot initiatives, along with those in Colorado, South Dakota, Arizona, Montana and others have majority support every time they are brought before the public.⁵⁵ Even more states have some cap on installment loans – in total, 32 states plus the District of Columbia cap rates at 36% or less for a \$2,000 loan.⁵⁶

Unfortunately, this scheme has reemerged, and the regulators have only sought to enable it. In fact, rather than reaffirm the agencies' strong opposition to this abuse, the FDIC and OCC finalized rules in 2020 that make rent-a-bank schemes easier. Fortunately, the Senate, along with the House of Representatives, voted to overturn the OCC's disastrous so-called "true lender" rule, but another harmful rule -- the so-called "Madden fix" rule -- remains on the OCC's and FDIC's books, and a number of extremely predatory schemes are ongoing unchecked on the FDIC's watch:

Non-bank lender	Type of loan	APR	FDIC or OCC supervised bank
OppLoans	Consumer installment loans (\$500 to \$4,000)	160%	FinWise Bank, Utah (FDIC)
Elevate's "Rise" brand	Consumer installment loans (\$500 to \$5,000)	99% to 149%	FinWise Bank, Utah (FDIC)
Elevate's "Elastic" brand	Lines of credit (\$500 to \$4,500)	109%	Republic Bank & Trust, Kentucky (FDIC)
Enova's "NetCredit" brand	Consumer installment loans (\$1,000 to \$10,000)	99.9%	Republic Bank & Trust, Kentucky (FDIC)
LoanMart	Auto-title loans, typical loan is \$2,500	60-222%	Capital Community Bank, Utah (FDIC)

By setting a federal cap that applies to banks and non-banks alike, Congress could prevent schemes whereby banks enable non-banks to charge obscene interest rates in states whose laws prevent them.

B. Competition and Alternatives Do Not Address the Harm of Predatory Lending Practices

"We don't want our families in any way vulnerable to the abuse payday lenders carry out – trapping people with little money into cycles of debt that put them into ever worse situations."

- Lisa Hasegawa, former Executive Director of the National Coalition for Asian Pacific American Community Development⁵⁷

Payday lenders and their supporters deflect regulatory attention away from the lenders' inherently destructive business model by pointing to competition and other alternatives. Data show that neither will interrupt the debt trap of unaffordable, high-cost loans.

In support of its gutting of the 2017 payday loan rule, the CFPB under Director Kathy Kraninger suggested that substantive protections to ensure loans are affordable are not needed if additional products by banks and others also exist in the marketplace. There is no evidence to support this claim. In fact, the evidence points to the contrary – that additional high-cost, poorly underwritten products

push borrowers deeper into unsustainable debt, rather than substitute or drive down the cost of even higher-cost products.

Predatory subprime mortgages were prolific despite the availability of responsible mortgages. Only meaningful regulation could drive these products from the market, not competition. The time period in which six major banks made payday loan-like loans known as deposit advance loans is also informative. When six banks were making deposit advance loans at one-half to two-thirds the price of nonbank payday loans, their annual volume was about \$6.5 billion.⁵⁸ There is no evidence that this lending drove down the cost or volume of nonbank payday lending. Moreover, the Bureau's research suggested these loans did not substitute for high-cost overdraft fees, and that many bank payday borrowers were carrying loads of both bank payday and non-bank payday loan debt. Indeed, software developers love to tout that bank payday loans, as well as installment loans being considered currently by the National Credit Union Administration, will not "cannibalize" overdraft fee revenue. If these loans were truly substituting for higher-cost credit, they would drive down overdraft fees.

The introduction of high-double-digit APR loans from our nation's banks is a step in the wrong direction. Thus far, only US Bank, which rolled out a 70%+ APR loan, has taken this step. There is no evidence to support that this will draw borrowers away from payday loans, rather than compound their high-cost debt. Rather, this product undermines state usury limits and threatens a race to the bottom by bank and nonbank lenders alike.

Additionally, competition among payday and other high-cost lenders has abjectly failed to lower costs. The last annual financial report from Advance America (before it was bought by Grupo Elektra) notes about the market "the principal competitive factors are customer service, location, convenience, speed, and confidentiality."⁵⁹ Missing from that phrase is the word "price."

In hopes of turning attention to other products besides their debt traps, payday and car title lenders will claim there are no other options for low-income consumers. The experiences of states without these products show that this is not the case. Moreover, as discussed above, there is generally credit available for customers with the capacity to take on more credit. Just like pulling weeds from a garden allows the flowers to bloom, ridding the market of predatory loans clears space for responsible credit products to thrive.

The presence of these other alternatives is helpful to people as they are options that do not lead people into financial quicksand. However, their presence alone will not reduce the cost of 300% interest rate loans, nor otherwise address the harms flowing from payday and car title lenders' debt trap business mode. The best way to mitigate the harms of the debt trap is not to look elsewhere to other products, but rather to address the harms of the flawed products head on – such as their cost and inherent unaffordability.

IV. The Federal Government Must Act to Rein in Predatory Lending

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.

1. Congress should pass the Veterans and Consumers Fair Credit Act (VCFCA). In 2006, upon the finding by the U.S. Department of Defense that predatory lending "undermines the military readiness,"⁶⁰ Congress enacted with bi-partisan support a 36% rate cap for consumer credit, including payday loans, to active duty military. Importantly, today, this protection extends to high-cost loans of varying loan term and size.⁶¹ In order to reign in the predatory high-cost lending, Congress should extend the protections of the Military Lending Act to all consumers. With the protection of a rate cap of 36% or less in place, people have other options to navigate financial shortfalls that do not sink them into a spiraling debt trap.⁶² In this policy environment, households with lower credit scores pursue a range of credit and non-credit options; these include credit cards, as even subprime cards are far cheaper than a payday loan; pawn, which is typically cheaper than payday loans and offers an exit strategy (forfeiture of the item) if the borrower cannot repay; small loans from credit unions; and payment plans from utility companies. In fact, rather than providing a productive source of credit that meets consumers' credit needs, unaffordable payday loans generate their own demand—80% of payday loans are taken out to repay a prior payday loan. And the 100 million Americans living in states without payday lending deal with cash shortfalls without unaffordable payday loans and the harms they cause. Despite payday lenders' claim to the contrary, states with rate caps do not experience higher rates of online lending than those with payday loans.⁶³

2. Congress and regulators should continue the work of protecting American families: CRL and other consumer advocates applaud Congress for taking action to overturn the harmful 2020 OCC "True Lender" rule with bi-partisan support in the House and Senate – and acknowledge that there is still more to do. Federal agencies must take action to prevent the illegal preemption of state laws by non-banks. Regulators and Congress must also close the Industrial Loan Company (ILC) loophole that is expanding a shadow banking system with weakened protections.

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 economic 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 racial injustices, 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. The Center for Responsible lending urges federal policymakers to step up and protect all consumers from predatory loans, often with triple digit interest rates, that are devastating people lives.

¹ CFPB complaints database #1377341 (California borrower)

² Jackie Rehwald, Springfield News-Leader, "Payday loans are bad for your health, study says. Springfield residents share stories," March 24, 2019 <https://www.news-leader.com/story/news/local/ozarks/2019/03/24/researchers-link-payday-car-title-loans-poor-health-study/3228125002/>

³ Consumer Financial Protection Bureau. "Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings" (2013). [201304_cfpb_payday-dap-whitepaper.pdf \(consumerfinance.gov\)](https://www.consumerfinance.gov/2013/04/cfpb-payday-dap-whitepaper.pdf); Standaert, D., D. Davis and C. Rios. "Payday and Car-Title Lenders Drain Nearly \$8 Billion in Fees Every Year". [CRL Payday Car-Title PolBrief 4.22.19.indd \(responsiblelending.org\)](https://www.responsiblelending.org/4.22.19.indd)

⁴ Consumer Financial Protection Bureau. "Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings" (2013). [201304_cfpb_payday-dap-whitepaper.pdf \(consumerfinance.gov\)](https://www.consumerfinance.gov/2013/04/cfpb_payday-dap-whitepaper.pdf)

⁵ Advance America. Store Locations in South Carolina – Installment Loans. [South Carolina Payday Loans | Installment Loans | Title Loans | Advance America](https://www.advanceamerica.com/south-carolina-payday-loans)

⁶ CFPB Payday Rule, 82 Fed. Reg. at 54573 & n. 592 (internal citations omitted).

⁷ CFPB Single-Payment Vehicle Title Lending at 4 (2016). CRL estimates that approximately 340,000 auto title borrowers annually have their car repossessed, well exceeding the population of St. Louis. For calculation, see CRL, Public Citizen, NCLC et. al comments on CFPB's proposed repeal of the ability-to-repay provisions of the payday rule at 26, n.90 (May 15, 2019), <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/comment-cfpb-proposed-repeal-payday-rule-may2019.pdf>.

⁸ Virginia Bureau of Financial Institutions. "2017 Annual Report," page 57, <http://bit.ly/2UOkDj1>

⁹ One finds that access to payday loans substantially increased suicide risk—including by over 16% for those ages 25-44. Jaeyoon Lee, *Credit Access and Household Welfare: Evidence From Payday Lending* (SSRN Working Paper, 2017). Another finds that short-term loans, including payday loans, are associated with a range of negative health outcomes, even when controlling for potential confounders. 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>. These outcomes include symptoms of physical health, sexual health, and anxiety, as well as higher levels of C-reactive protein, which is an indicator of many long-term diseases, including cardiovascular disease, and an indicator of psychological stress. *Id.* Another study finds that restrictions on payday lending reduced liquor sales. Harold E. Cuffe & Christopher G. Gibbs, *The Effect of Payday Lending Restrictions on Liquor Sales*, 85(1) J. Banking & Fin. 132–45 (2017). In one study of qualitative data, respondents revealed symptoms of "allostatic load," a health psychology term that describes how compounding stress can lead to wear and tear on the body. Elizabeth Sweet et al., *Embodied Neoliberalism: Epidemiology and the Lived Experience of Consumer Debt*, 48(3) International Journal of Health Services (2018). The authors describe the respondents as having "embodied" their debt through idioms like "drowning in debt" and "keeping [their] head above water," which illustrated that the participants "experienced debt as a bodily sensation, not only a socioeconomic position or emotional stressor." *Id.* One payday borrower has reported that after being a "a pretty healthy young person," she "became physically sick, broke out in hives . . . [and] had to go to urgent care" as a result of her high-cost loan. Health Impact Partners and Missouri Faith Voices, *When Poverty Makes You Sick: The intersection of health and predatory lending in Missouri* (Feb. 2019), https://humanimpact.org/wp-content/uploads/2019/02/HIP-MFV_PayDayLending_2019.02fin1.pdf. Another expressed feeling, "[i]f I died, my debt would die with me. At least I could give my family that." *Id.*

¹⁰ CNN Business. "Whites have 12 times the wealth of blacks." (2015) [Whites have 12 times the wealth of blacks, 10 times that of Hispanics \(cnn.com\)](https://www.cnn.com/2015/09/08/wealth-gap/index.html)

¹¹ See, "Testimony: Home=Life: The State of Housing in America" (2021). Center for Responsible Lending.

[Testimony: Home = Life: The State of Housing in America | Center for Responsible Lending](https://www.responsiblelending.org/testimony-home-life-the-state-of-housing-in-america)

¹² See CFPB Payday Rule, 82 Fed. Reg. at 54556-57.

¹³ See, e.g., Delvin Davis, et al., *Race Matters: The Concentration of Payday Lenders in African-American Communities in North Carolina*, Center for Responsible Lending (2005), [http://www.responsiblelending.org/north-](https://www.responsiblelending.org/north-carolina)

carolina.nc-payday/research-analysis/racematters/rr006-Race_Matters_Payday_in_NC-0305.pdf (finding that, even when controlling for a variety of other factors, African-American neighborhoods had three times as many payday lending stores per capita as white neighborhoods in North Carolina in 2005); Assaf Oron, *Easy Prey: Evidence for Race and Military Related Targeting in the Distribution of Payday Loan Branches in Washington State*, Department of Statistics, University of Washington (2006) (concluding based on a study of Washington State payday lenders that “payday businesses do intentionally target localities with a high percentage of African Americans.”).

¹⁴ Li, et al., *Predatory Profiling: The Role of Race and Ethnicity in the Location of Payday Lenders in California*, Center for Responsible Lending (2009), <http://www.responsiblelending.org/payday-lending/research-analysis/predatory-profiling.pdf>; Brandon Coleman and Delvin Davis, *Perfect Storm: Payday Lenders Harm Florida Consumers Despite State Law*, Center for Responsible Lending at 7, Chart 2 (March 2016); Delvin Davis and Lisa Stifler, *Power Steering: Payday Lenders Targeting Vulnerable Michigan Communities*, Center for Responsible Lending (Aug. 2018), <https://www.responsiblelending.org/research-publication/power-steering-payday-lenders-targeting-vulnerable-michigan-communities>; Delvin Davis, *Mile High Money: Payday Stores Target Colorado Communities of Color*, Center for Responsible Lending (Aug. 2017; amended Feb. 2018), <https://www.responsiblelending.org/research-publication/mile-high-money-payday-stores-target-colorado-communities-color>.

¹⁵ CFPB Payday Rule, 82 Fed. Reg. at 54556. African-Americans are payday borrowers at three times the rate, and Hispanics at twice the rate, of non-Hispanic whites. 82 Fed. Reg. at 54556-57 (citing 2015 FDIC National Survey of Unbanked and Underbanked Households (calculations using custom data tool)). Vehicle title borrowers are also disproportionately African-American and Hispanic. *Id.*

¹⁶ National Women’s Law Center. The Wage Gap: The who, How, Why and What to do. (October 2020) [Who-Gap-Who-how.pdf \(nwlc.org\)](http://www.nwlc.org/who-how.pdf)

¹⁷ 2019 FDIC National Survey of Unbanked and Underbanked Households at 13, available at [FDIC_2019_SurveyReport-book \(economicinclusion.gov\)](https://www.fdic.gov/cebs/2019/SurveyReport-book/economicinclusion.gov)

¹⁸ *Id.*

¹⁹ See Chi Chi Wu, *Past Imperfect: How Credit Scores and Other Analytics “Bake In” and Perpetuate Past Discrimination*, National Consumer Law Center (May 2016), https://www.nclc.org/images/pdf/credit_discrimination/Past_Imperfect050616.pdf.

²⁰ See Testimony of Chi Chi Wu, National Consumer Law Center, Before the U.S. House Committee on Financial Services Task Force on Financial Technology Regarding “Examining the Use of Alternative Data in Underwriting and Credit Scoring to Expand Access to Credit” (July 25, 2019); Carol A. Evans, *Keeping Fintech Fair: Thinking about Fair Lending and UDAP Risks*, Consumer Compliance Outlook (2017), <https://consumercomplianceoutlook.org/2017/second-issue/keeping-fintech-fair-thinking-about-fair-lending-and-udap-risks/>.

²¹ Statement on CFPB’s Final Rule on Payday, Vehicle Title, and High-Cost Installment Loans, (October 5, 2017), <http://bit.ly/2Hulcge>

²² Consumer Financial Protection Bureau, *Payday loans and deposit advance products: A white paper of initial data findings* (2013), <http://1.usa.gov/1aX9ley>

²³ CFPB White Paper, *Payday Loans and Deposit Advance Products* at 22 (2013), https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf#page=22

²⁴ L. Parrish & U. King, *Phantom Demand: Short-term Due Date Generates Need for Repeat Payday Loans, Accounting for 76% of Total Loan Volume*, (2009), Center for Responsible Lending, <https://www.responsiblelending.org/payday-lending/research-analysis/phantom-demand-final.pdf>

²⁵ See following research papers: B. Melzer, *The Real Costs of Credit Access: Evidence from the Payday Lending Market*, (2011), Oxford University Press, <http://bit.ly/21G5fL>; B. Melzer, *Spillovers from Costly Credit* (2017), *The Review of Financial Studies*, Volume 31, Issue 9, September 2018, Pages 3568–3594, <https://doi.org/10.1093/rfs/hwx134>; Agarwal, S., Skiba, P. M., & Tobacman, J., *Payday loans and credit cards: New liquidity and credit scoring puzzles?* NBER Working Paper (2009), <http://bit.ly/2r3Lhnp>; See D. Campbell, A.S. Jerez, & P. Tufano, *Bouncing Out of the Banking System: An empirical analysis of involuntary bank account*

closures, Harvard Business School (2011), <http://bit.ly/2lwsBYK>

²⁶ Consumer Financial Protection Bureau, "Single-Payment Vehicle Title Lending," May 2016, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-one-five-auto-title-loan-borrowers-have-vehicle-seized-failing-repay-debt/>

²⁷ Susanna Montezemolo & Sarah Wolff, Payday Mayday: Visible and Invisible Payday Lending Defaults, Center for Responsible Lending (2015), at 4, <http://www.responsiblelending.org/research-publication/payday-mayday-visible-and> (based on N. Dakota data). Data from North Dakota show that a large proportion of borrowers ultimately default after taking out their first payday loan: 39% did so within one year of their first loan, and 46% did so within two years. For most borrowers, default did not signal the end of the cycle of debt: Two-thirds of defaulters ultimately paid back the debt in full, and 39% of defaulters re-borrowed at a later date. Of defaulters, one-third experienced a subsequent default. Nineteen percent of borrowers and 39% of defaulters had a loan charged off, i.e., taken off the books for being more than 60 days past due.

²⁸ Debt collection lawsuit and contract on file on with the Center for Responsible Lending.

²⁹ Id.

³⁰ Los Angeles Times, "Borrow \$5,000, repay \$42,000 – How super high-interest loans have boomed in California", <https://www.latimes.com/business/la-fi-installment-loans-20180119-htmistory.html>

³¹ Elevate Credit, Inc., 10-K at 39 (filed March 9, 2018), <http://bit.ly/2FmFdzc>

³² Elevate Credit, Inc., 2020 Annual Report [133771-PROOF-rev9 .pdf \(q4cdn.com\)](https://www.elevatecredit.com/2020-Annual-Report-133771-PROOF-rev9.pdf)

³³ Quoted in Dave Anderton, "Payday lending fees add up: \$3.4 billion" Deseret News (Dec. 13, 2003), <http://bit.ly/2vUMXt2>

³⁴ W. Li, L. Parrish, K. Ernst, and D. Davis, Center for Responsible Lending, *Predatory Profiling: The Role of Race and Ethnicity in the Location of Payday Lenders in California*, (2009), <http://bit.ly/2r4kVW6>

³⁵ B. Coleman and D. Davis, Center for Responsible Lending, *Perfect Storm: Payday Lenders Harm Florida Consumers Despite State Law*, (2016), <http://bit.ly/2vMPoxO>

³⁶ A CRL analysis of payday lending storefront locations in Rhode Island as of April 2018 revealed that neighborhoods with over 30% Black and Latino population and with a median household income 80 to 120% of Rhode Island's median income had 7.6 payday loan stores per 10,000 people, compared with neighborhoods in the same income bracket with less than 30% Black and Latino population had 4.5 stores per 10,000 people.

³⁷ U. King, D. Davis, W. Li., Center for Responsible Lending, *Race Matters: The Concentration of Payday Lenders in African-American Neighborhoods in North Carolina*, (2005), <http://bit.ly/2KkG72S>

³⁸ Id.

³⁹ D. Davis and L. Stifler, Center for Responsible Lending, *Power Steering: Payday Lenders Targeting Vulnerable Michigan Communities*, Aug. 2018, <https://www.responsiblelending.org/research-publication/power-steering-payday-lenders-targeting-vulnerable-michigan-communities>

⁴⁰ Louisiana Budget Project, *Payday Lenders: Trapping Louisiana's Working Families in a Cycle of Debt*, (2011), <https://www.labudget.org/2011/07/payday-lenders-trapping-louisianas-working-families-in-a-cycle-of-debt/>

⁴¹ D. Davis, Center for Responsible Lending, *Mile High Money: Payday Stores Target Colorado Communities of Color*, Aug. 2017, <https://www.responsiblelending.org/research-publication/mile-high-money-payday-stores-target-colorado-communities-color>

⁴² Maps on file with the Center for Responsible Lending.

⁴³ A survey of Pima County payday borrowers found that 54% were Latino, 7% were African American, and 2% were Native American. For more information see Amanda Sapir and Karin Uhlich, Payday Lending in Pima County Arizona. Southwest Center for Economic Integrity (December 2003).

⁴⁴ See 2007 Department of Corporations Payday Loan Study, Applied Management & Planning Group prepared for the California Department of Corporations, at page 65. California adult population by race is 2000 Census data.

⁴⁵ See Table 1 of Paige Skiba and Jeremy Tobacman. Do Payday Loans Cause Bankruptcy? Vanderbilt University (2008) and 2000 Census data for Texas population age 18 and older.

⁴⁶ The Pew Charitable Trusts, *Payday Lending in America: Who Borrowers, Where They Borrow, and Why* at 9 (2012), <http://bit.ly/2l2arvG>

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- ⁴⁷ National Council on Aging, "Get the Facts on Economic Security for Seniors" (2021). [Get the Facts on Economic Security for Seniors \(ncoa.org\)](#).
- ⁴⁸ In California in 2015, nearly a third of borrowers were age 52 and over; the portion of borrowers age 62 and over grew steadily from 12.8% in 2013, to 13.2% in 2014, to 13.9% in 2015.
- ⁴⁹ Testimony of Annette Smith before to the U.S. Senate Special Committee on Aging, July 24, 2013, https://www.youtube.com/watch?time_continue=50&v=UG7B3L3oDN8
- ⁵⁰ Remarks by John D. Hawke, Jr., Comptroller of the Currency, Before the Women in Housing and Finance at 10 (Feb. 12, 2002), <https://www.occ.treas.gov/news-issuances/speeches/2002/pub-speech-2002-10.pdf>.
- ⁵¹ <https://www.occ.treas.gov/news-issuances/news-releases/2002/nr-occ-2002-10.html>.
- ⁵² Remarks by John D. Hawke, Jr., Comptroller of the Currency, Before the Women in Housing and Finance at 10 (Washington, D.C. Feb. 12, 2002), <https://www.occ.treas.gov/news-issuances/speeches/2002/pub-speech-2002-10.pdf>.
- ⁵³ D. Davis, C. Rios, and D. Standaert, Center for Responsible Lending, *Payday and Car-Title Lenders Drain Nearly \$8 Billion in Fees Every Year*, updated April 2019, <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-statebystate-fee-drain-apr2019.pdf>.
- ⁵⁴ CNBC, "Nebraska becomes the latest state to cap payday loan interest rates." (2020). [Nebraska becomes the latest state to cap payday loan interest rates \(cnbc.com\)](#)
- ⁵⁵ Center for Responsible Lending, "Map of US Payday Interest Rates Calculated on a \$300 Loan". (2021). [Map of U.S. Payday Interest Rates | Center for Responsible Lending](#)
- ⁵⁶ National Consumer Law Center, "Predatory Installment Lending in the States". Map 2: APR's Allowed for a Two-Year \$2,000 Installment Loan. (2021) [Predatory Installment Lending in the States - National Consumer Law Center \(nclc.org\)](#)
- ⁵⁷ Press Release, "National Consumer and Civil Rights Organizations Make Final Push Urging CFPB to Strengthen Payday and Car Title Lending Rule," (2016), <http://bit.ly/2Hutepx>
- ⁵⁸ CFPB Final Payday Rule, 82 Fed. Reg. 54495).
- ⁵⁹ Advance America, SEC Filing Form 10-K for the year ending December 31, 2011, https://www.sec.gov/Archives/edgar/data/1299704/000104746912002758/a2208026z10-k.htm#bg75101a_main_toc
- ⁶⁰ U.S. Dep't of Defense, Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents (2006), https://archive.defense.gov/pubs/pdfs/report_to_congress_final.pdf
- ⁶¹ 80 Fed. Reg. 43560 (July 22, 2015)
- ⁶² R. Howarth, D. Davis, & S. Wolff, Shark-Free Waters: States Are Better Off without Payday Lending Center for Responsible Lending (Aug. 2016), <http://bit.ly/2KiklTM>
- ⁶³ Pew Charitable Trusts, How Borrowers Choose and Repay Payday Loans, (2013), [http://www.pewtrusts.org/-/media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-\(1\).pdf](http://www.pewtrusts.org/-/media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-(1).pdf)

PREPARED STATEMENT OF RICHARD WILLIAMS

PRESIDENT AND CEO, ESSENTIAL FEDERAL CREDIT UNION

JULY 29, 2021

Good morning Chairman Brown, Ranking Member Toomey, and Members of the Committee. My name is Richard Williams, and I am the President/CEG of Essential Federal Credit Union. Essential is a federally chartered credit union with a community field of membership serving the metropolitan area of Baton Rouge, Louisiana. We serve 40,000 plus members and have assets in excess of \$350 million.

We are a certified community development financial institution (CDFI) certified by the United States Treasury Department and a Low Income Designated (LIO) credit union by the National Credit Union Administration. We are also a proud member of Inclusiv. Inclusiv is a national network of 400 credit unions—member owned, regulated financial cooperatives—with a mission of helping low and moderate income people and communities achieve financial independence through credit unions providing access to safe and affordable financial products and community development services. Expanding access to financially vulnerable or formerly excluded individuals—that is, those who may have no other alternative than predatory lenders—is at the heart of what Inclusiv credit unions do. Collectively, these credit unions are reaching more than 14 million American households with safe and responsible products and services designed to help borrowers to succeed with their credit needs and financial lives.

Today, I will share with you the harm we see high-cost loans cause in our communities, the role we play as a credit union in addressing these harms, and why our communities will benefit from the enactment of Federal 36 percent interest rate cap as proposed by the Veterans and Consumers Fair Credit Act.

In 2019 we testified in support of House Bill 528 before the Louisiana House of Representatives to lower the maximum annual consumer loan interest to 36 percent (including fees and other charges). We were joined in our effort with support from a broad coalition of faith leaders, civil rights organizations, and social service providers. If the legislation had passed, Louisiana would have joined several other States in protecting its residents from harmful predatory loans.

We continue to believe that it is possible and reasonable to offer small dollar loans under 36 percent as proposed by this bill because we do this. Our current payday alternative loan provides members easy access to funds to meet a variety of emergency needs at a rate significantly less than the rates of payday lenders and with the ability to offer our loan in compliance with the proposed bill. In addition to extending the loan, we also provide the member a financial literacy component to assist them in making better financial decisions in their daily lives. We have found our program to be profitable and beneficial to our membership.

I would like to offer some testimonials from our members about our payday alternative loan product which is branded Ready Cash:

“The Ready Cash loan helped me by allowing me to utilize Essential instead of a finance company at much higher interest rates.” —Joseph C. Tilley

“The Ready Cash loan from Essential has helped me in more ways than one. It has provided the emergency funds to help me get back on track, as well as build my credit.” —Adrienne Hayes

“Having extended time to repay our Ready Cash loan back as compared to the shorter repayment window with the payday lender helped me get back on track sooner.” —Mellanee Nation

We hear from our members every day about the challenges they face in making ends meet. This means putting food on the table and paying recurring bills. They are experiencing financial distress that does not go away in 2 weeks and is certainly made harder when they are trapped in a payday loan that takes large payments every 2 weeks. Or by a car title lender which forces the borrower into even tougher situations of facing threats of having their car seized. These extractive loan mechanisms do not help people make progress in their journey to financial security; rather it's quite the opposite. Instead, what Essential is able to do with our small dollar loan, is not only to have it reasonably priced so that people can both pay it back and meet their other needs, but also build a relationship with us to build their credit and eventually have wealth building opportunities such as buying a car or a home.

States like Louisiana are grappling with the effects on their economies of predatory lenders, and successes in other States with a rate cap point a way forward. These lenders, many of whom are headquartered outside of our State, pump marketing dollars to convince Louisiana residents that they do not have other good alternatives. As I mentioned earlier, we joined with numerous voices across the State

to urge Louisiana to enact a rate cap of 36 percent. Despite the outcry from Louisianans, all across the State to rein in the harms of these loans, the legislature refused to do so, and as such, high-cost lenders continue drain our economies and the pocketbooks of people already working to simply get by.

It is not just us here in Louisiana that share these concerns. They permeate throughout the South and other communities. For example, from our neighbors in Mississippi, we hear stories of how these high cost loans disrupt the lives of the borrowers, but also their families and communities. This includes a mother whose car was repossessed by a car title lender, which in places like the rural South, results in the inability to get to work or to the store. Or an elderly woman on social security whose car title loan payments consumed nearly half of her \$1,300 monthly income. Or another stuck in 11 payday loans at a single time, causing tremendous anxiety and stress in addition to the financial strain. These stories could fill up pages, and underscore the need for a solution.

In conclusion, we join with other CDFIs and credit unions in supporting a national interest rate cap. Additionally, there are many community development credit unions ready to meet the small dollar borrowing needs of the consumer. I would like to thank the Committee for allowing me this time to speak.

PREPARED STATEMENT OF BILL HIMPLER
 PRESIDENT AND CEO, AMERICAN FINANCIAL SERVICES ASSOCIATION
 JULY 29, 2021



TESTIMONY OF WILLIAM M. HIMPLER, PRESIDENT AND CHIEF EXECUTIVE
 OFFICER, AMERICAN FINANCIAL SERVICES ASSOCIATION

Mr. Chairman, Ranking Member Toomey, and members of the Committee, my name is Bill Himpler, and I am the President and CEO of the American Financial Services Association (AFSA). AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. I thank you for allowing me to appear today to discuss the important role that traditional installment lenders serve in the lives of millions of American consumers.

My testimony emphasizes three points. *First*, American consumers need access to responsible and affordable small-dollar credit to meet their financial needs and protect them from harmful financial disruption. *Second*, legislation imposing the Military Lending Act's (MLA) 36% Military Annual Percentage Rate (MAPR) cap on all consumers would remove important credit options. *Third*, the Committee should ensure that traditional installment lenders can continue to meet the credit needs of their customers, as they have for over a century.

First and foremost, American consumers need access to credit. The economic and employment disruption that ensued from the pandemic over the past eighteen months highlighted, in the starkest possible ways, the need for consumers to have access to responsible and affordable small-dollar credit.

In its 2019 report on the economic well-being of U.S. households, the Federal Reserve found that many adults, particularly people of color and those who have had limited opportunities for education, are inadequately prepared to withstand even small financial disruptions.¹ The Federal Reserve's survey highlighted that nearly 40% of adults shared that they would have difficulty covering an unexpected \$400 expense. This is akin to the results of a survey performed by the Financial Health Network, which found that 43% of Americans turn to credit to make ends meet.²

Safe and responsible credit products, such as traditional installment loans, continue to provide a much-needed way for Americans, particularly those millions of consumers with non-prime credit scores, to cover these unexpected expenses. Just this week, *The Wall Street Journal* reported that some 53 million U.S. adults lack traditional credit scores because they have thin or nonexistent borrowing histories.³

Throughout the pandemic—indeed for more than one hundred years—traditional installment lenders have served customers with safe and affordable loans for those unexpected needs. In fact,

¹ Federal Reserve Board of Governors, Division of Consumer and Community Affairs, (2019, May) *Report on the Economic Well-Being of U.S. Households in 2018*. Retrieved from <https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-dealing-with-unexpected-expenses.htm>.

² Garon, Dunn, Golvala, Wilson (2018). *U.S. Financial Health Pulse*. Financial Health Network. Retrieved from https://s3.amazonaws.com/cfsi-innovation-files-2018/wp-content/uploads/2019/05/07151007/FHN-Pulse_Baseline_SurveyResults-web.pdf.

³ Andriotis, A. (2021, July 24). FICO Score's Hold on the Credit Market Is Slipping. *Wall Street Journal*. Retrieved from <https://www.wsj.com/articles/fico-scores-hold-on-the-credit-market-is-slipping-11627119003>.



consumer finance companies make more than three times as many personal loans to non-prime borrowers than credit unions, which are often cited as a small-dollar credit solution.

My second point is this—access to small-dollar credit would be dramatically hindered under a 36% MAPR cap on covered consumer loans. Experian recently estimated that nearly one in three Americans do not have a prime or excellent credit score, so the people most adversely affected would be those who need a financial lifeline on occasion.⁴ When reputable small-dollar lenders are unable to serve underbanked consumers or those with less than perfect credit, such consumers are left with few options other than unregulated or illegal predatory lenders.

The Federal Reserve, a Consumer Financial Protection Bureau (CFPB) taskforce, banks, non-bank lenders, and credit unions all say the same thing: Interest rate caps at 36% or below are unworkable for reputable lending institutions and harm the people these caps are intended to protect.

- The National Commission on Consumer Finance study confirmed it;⁵
- The CFPB's Taskforce on Federal Consumer Financial Law report confirmed it;⁶ and
- A Federal Reserve study on interest rate caps confirmed that few, if any, reputable lenders can afford to offer small-dollar loans capped at 36% Annual Percentage Rate (APR).⁷

More recently, the National Foundation for Credit Counseling's *2020 Military Financial Readiness Survey* of servicemembers found that active duty servicemembers were more than twice as likely to take out a cash advance or payday loan this year than in 2019, and that they used payday loans because there were few other options available to them.⁸

Even financial institutions such as credit unions, which the CFPB asserts⁹ might offer such small dollar loans when other lenders can no longer do so, say rate caps are harmful to consumers and limit access to credit. "[T]he establishment of a national all-in rate cap applicable to all creditors is an unproven one-size-fits-all policy, the consequences of which will likely include reduced

⁴ Stolba, Stefan. (2021, June 7). *Fewer Subprime Consumers Across U.S. in 2021*. Experian. Retrieved from <https://www.experian.com/blogs/ask-experian/research/subprime-study/>.

⁵ National Commission on Consumer Finance. *Consumer Credit in the United States*. Washington, DC: US Government Printing Office, 1972.

⁶ Consumer Financial Protection Bureau, Taskforce on Federal Consumer Financial Law [hereinafter CFPB Taskforce]. (2021, January). *Taskforce on Federal Consumer Financial Law Report*. Retrieved from https://www.consumerfinance.gov/documents/9449/cfpb_taskforce-federal-consumer-financial-law_report-volume-1_2021-01.pdf.

⁷ Chen, L., Elliehausen, G. Board of Governors of the Federal Reserve System (2020, August). *The Cost Structure of Consumer Finance Companies and Its Implications for Interest Rates: Evidence from the Federal Reserve Board's 2015 Survey of Finance Companies*. Retrieved from <https://www.federalreserve.gov/econres/notes/feds-notes/the-cost-structure-of-consumer-finance-companies-and-its-implications-for-interest-rates-20200812.htm>.

⁸ National Foundation for Credit Counseling (2021, May). *2020 Military Financial Readiness Survey*. Retrieved from <https://www.nfcc.org/resources/client-impact-and-research/2020-military-financial-readiness-survey/>.

⁹ Consumer Financial Protection Bureau. (2020, March 26). *Federal Agencies Encourage Banks, Savings Associations, and Credit Unions to Offer Responsible Small-Dollar Loans to Consumers and Small Businesses Affected by COVID-19* [Press Release]. Retrieved from <https://www.consumerfinance.gov/about-us/newsroom/federal-agencies-encourage-banks-savings-associations-credit-unions-to-offer-responsible-small-dollar-loans-consumers-small-businesses-affected-covid-19/>.



access to credit from reputable lenders,” said Credit Union National Association President and CEO Jim Nussle.¹⁰

Moreover, in states where aggressive APR limits have been imposed on small-dollar loans, the consequences are unequivocal: A rapid reduction in the availability of safe and affordable credit for people who rely on it, and an increased reliance on unsafe or illegal forms of credit, with a devastating effect on poverty levels, well-being, and financial mobility.

In most, if not all, states where policies hindered responsible lenders from offering small-dollar loans, such policies have acted as an effective ban on small-dollar consumer lending, with disastrous consequences for those affected. For example, after the imposition of APR caps in Georgia and North Carolina effectively banned small-dollar loans, a Federal Reserve Bank of New York study reported that people “bounced more checks, complained more about lenders and debt collectors and have filed for Chapter 7 (‘no asset’) bankruptcy at a higher rate.”¹¹ Moreover, the North Carolina Commissioner of Banks Consumer Finance Annual Report in 2018 reported that access to loans less than \$1,000 continued to decline because consumer finance lenders were withdrawing from the market.¹²

Because of concerns related to the availability of credit, veterans’ groups wrote to Congress in 2019 expressing hesitation with expanding the MLA. They wrote, “While anecdotal evidence sheds some light on the potential barriers to credit for the veteran community, systematic data collection has been limited. We see this as a major problem and believe that policymakers should first undertake an in-depth examination of the barriers that veterans face when looking to secure a loan before hastily taking action in a way that would lead to severe unintended consequences.” See the attached appendix for the letters.

The solution is not, as one consumer advocate said, “Borrow from people you care about, ask for more hours, take on a second job, sell your plasma...”¹³ Americans deserve choices for their consumer credit needs, and many of them turn to traditional installment loans, which are safe, smart options.

This brings me to my third point—traditional installment loans have, for more than a century, helped consumers of different races, backgrounds, and occupations cover necessities in a personal financial crunch, or unexpected expenses to purchase a new refrigerator or make emergency car

¹⁰ Credit Union National Association. (2021, July 15). *Proposed ‘all-in’ rate cap would reduce access to credit*. Retrieved from <https://news.cuna.org/articles/119673-proposed-all-in-rate-cap-would-reduce-access-to-credit>.

¹¹ Morgan, D., Strain, M. Federal Reserve Bank of New York (2007, November). *Payday Holiday: How Households Fare after Payday Credit Bans* (Report No. 309). Retrieved from https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr309.pdf.

¹² North Carolina Office of the Commissioner of Banks (2018). *Consumer Finance Annual Report*. Retrieved from https://www.ncob.gov/Public/docs/News/Pub%20And%20Research/2018_Annual_Report_Final.pdf.

¹³ Millerbernd, A. (2021, July 7). Are state interest-rate caps an automatic win for borrowers? *Star Tribune*. Retrieved from <https://www.startribune.com/are-state-interest-rate-caps-an-automatic-win-for-borrowers/600075690/>.

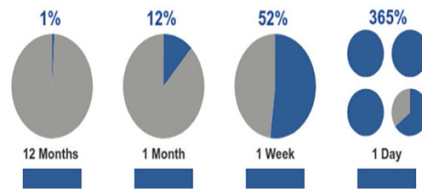


repairs. These lenders meet the small-dollar credit needs of American consumers in a responsible and affordable manner.

AFSA's traditional installment lenders offer fixed-rate, fully-amortizing, small-dollar loans repaid in equal monthly payments. The average loan amount is \$2,000, with no balloon payments or hidden costs. These loans have been some of the safest and most affordable forms of consumer credit in the United States for over a century. Lenders determine a borrower's ability to repay, and repayment history is reported to credit bureaus, which gives consumers the opportunity to build or strengthen their credit history. AFSA's traditional installment lenders adhere to the Consumer Bill of Rights, which is available on caseforcredit.com.¹⁴

The CFPB, under the leadership of Director Richard Cordray, recognized that traditional installment lenders assess their customers' ability to repay, and so their loans were exempt from the final Payday, Vehicle Title, and Certain High-Cost Installment Loans Rule.

For such small-dollar loans, the quality, affordability, and soundness of the loan is best judged by its length and monthly amount owed, not its interest rate. APRs are a function of time, rather than a measure of the cost of a loan. For example, say you borrow one hundred dollars today and are charged one dollar in interest. If you repay the loan in one year, the APR is 1%. Repay it in a month, the rate is 12%. If you repay the loan tomorrow, the APR is 365%. Same dollar in interest, vastly different APRs, as you can see in the chart below.



While the cost of credit remains exactly the same (\$1.00), the APR varies dramatically based on the duration (or term) of the loan. Thus, APR cannot be relied upon as an indicator of loan affordability.

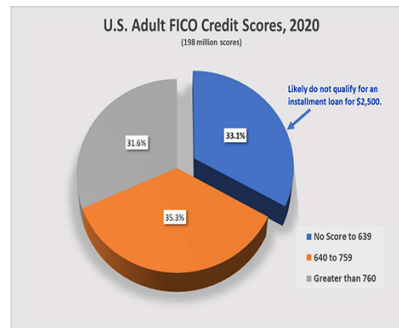
A 36% interest rate cap will harm consumers by restricting access to traditional installment loans. As referenced above, analysis based on a Federal Reserve study demonstrates that with a 36% rate cap, consumers would not be able to obtain a loan of less than \$3,000.¹⁵ Consumers will be forced to borrow higher amounts than they need or want, with higher costs and longer repayment periods, despite having a lower APR. That is, even if they qualify for the larger loan. The graph below

¹⁴ American Financial Services Association. (n.d.). *AFSA Traditional Installment Lenders' Consumer Bill of Rights*. Retrieved from <https://caseforcredit.com/wp-content/uploads/2021/07/21Memo-Consumer-Bill-of-Rights-72621.pdf>.

¹⁵ Chen, Ellichhausen, *Cost Structure, Consumer Finance Companies*.



highlights how many Americans would be left out of the credit system with a 36% rate cap in place.



A study by Federal Reserve economists, which was included in the CFPB's Taskforce on Federal Consumer Financial Law Report, demonstrated that consumers took out larger loans in states with rate caps than they did in states without caps:

"Durkin, Elliehausen, and Hwang provided examples. They found that in Pennsylvania, which has a low maximum permissible rate, there were few installment loans — just 1.5 per 1,000 population. Moreover, there are almost no loans for less than \$500 and only 1 percent of loans for under \$1000. Fifty-seven percent of loans had maturity lengths greater than two years. As a result of these larger loan amounts, 55 percent of loans had monthly payments in excess of \$150 per month.

"The authors compared experience in Pennsylvania to Texas, which allows higher APRs on small installment loans. In Texas, there are many more loans — 23.9 per 1,000 population. Forty-two percent of loans were for under \$500 and 70 percent were under \$1000. Finally, 99 percent of loans had maturity periods shorter than two years. Because of the smaller loan sizes, only 16 percent of borrowers had payment obligations of greater than \$150 per month. And smaller loans for shorter intervals reduce finance charges."¹⁶

In conclusion, access to reliable, transparent financial services is a cornerstone of the American way of life; for many consumers such access enables opportunities that might otherwise be out of reach. Credit access should not be a privilege reserved for the elite. When someone who is underbanked or has less than perfect credit is turned down or does not have access to a needed loan, it is not a consumer-protection victory. It is a civil rights loss. *All* consumers deserve access

¹⁶ CFPB Taskforce, *Fed. Consumer. Fin. Law Report*, (201-202).



to safe and reliable credit, and AFSA and its members stand ready to work with you to ensure that economic opportunity is accessible for all.

Thank you for the opportunity to appear before you today on this important issue, and I look forward to your questions.



APPENDIX



**SERVING
WITH
PRIDE**



AMVETS

NATIONAL
HEADQUARTERS
4647 Potomac Boulevard
Lanham, Maryland
20706-4380
TELEPHONE: 301-459-9600
FAX: 301-459-7924
E-MAIL: amvets@amvets.org

November 13, 2019

The Honorable Maxine Waters
Chairwoman
U.S. House Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Patrick McHenry
Ranking Member
U.S. House Committee of Financial Services
2004 Rayburn House Office Building
Washington, D.C. 20515

Re: Major Concerns Regarding the Veterans and Consumers Fair Credit Act

Dear Chairman Waters and Ranking Member McHenry:

Thank you for your continued efforts to meet the unique needs of military personnel, veterans, and their families relative to financial tools and credit. However, we do wish to express our concern with the current draft of the "Veterans and Consumers Fair Credit Act," as written. While we appreciate the Committee wishing to explore the unique requirements of veterans' access to fair credit, we do not see anything in this draft legislation which, in fact, addresses those unique needs of veterans.

Instead, it appears to address fair credit access from a national perspective and simply references veterans as part of that national population. Veterans are a segment of broader society and would therefore reap the same benefits, in terms of access to lower interest loans, as non-veterans under this bill. It is precisely for that reason that titling the bill in a manner that suggests veterans would benefit because of their status is specious, at best.

Adding insult to injury is the fact the bill, as written, is completely silent on actual loan issues that many veterans face. Veterans are more likely to suffer financing shortfalls for small businesses and disapprovals for loans, in part, because of perceived credit risks associated with a history of frequent changes of address, including overseas assignments. Absent an actual fix that specifically benefits veterans, the bill as presented is a missed opportunity to correct what amounts to a penalty for having served in the military.

We would be happy to work with you to develop programs which will improve veterans access to credit, and hope we can meet with you to discuss next steps. But in the interim, we request you delay consideration of this bill until we have a better understanding of veterans' unique credit requirements.

Sincerely,


Sherman Gillums Jr.
Chief Advocacy Officer



ENLISTED ASSOCIATION OF THE NATIONAL GUARD OF THE UNITED STATES

1 Massachusetts Avenue NW, Suite 880 • Washington, D.C. 20001-1401 • 800-234-EANG (3284) • Fax (703) 519-3849

November 15, 2019

Dear Chairman Waters and Representative McHenry:

Thank you for continuing to consider the unique interests of military personnel, military families, Veterans, and Veteran families in access to financial tools and credit. The Enlisted Association of the National Guard of the United States (EANGUS) looks forward to working with you and the Committee in properly addressing the unique adversities Veterans, Servicemembers and their families face with solutions unique to their circumstances.

However, we wish to express our concern with the possible consideration of HR 5050, the "*Veterans and Consumers Fair Credit Act*." While we appreciate the Sponsors wishing to explore the unique requirements of Veterans' access to fair credit, we believe that without further study Veterans might be placed in the same situation as many military members and families as they access non-prime financial solutions.

Furthermore, it appears that this legislation invokes the name of Veterans into a bill introduced in proximity to Veterans Day without substantial language to address or relieve the unique economic burdens military and Veteran families bear. We believe this borders on being gratuitous to Veterans and without any real substance to help Veterans.

While anecdotal evidence sheds some light on the potential barriers to credit access for the Veteran community, systematic data collection has been limited. We recognize this to be a serious problem, and believe that policymakers should first undertake an in-depth examination of the barriers that Veterans face when looking to secure a loan before taking action in a way that could lead to severe, unintended consequences. Considering this legislation without an accompanying study would seek to apply a one-size-fits-all approach that might result in Veterans losing capital access.

Of particular concern, our constituency is primarily National Guardsmen and women. Unfortunately, a good portion of these members who faithfully served our country are still not considered "Veterans" under Title 38 of United States Code. This legislation would have no effect on that demographic who are near and dear to us.

We request you delay consideration of this bill until further study provides better understanding of Veterans' unique credit requirements.

A handwritten signature in blue ink, appearing to read "Frank Yoakum".

Frank Yoakum
Sergeant Major
U.S. Army (Retired)
Executive Director
EANGUS



November 15, 2019

The Honorable Maxine Waters
U.S. House Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Patrick McHenry
U.S. House Committee on Financial Services
2004 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairwoman Waters and Representative McHenry:

Thank you for continuing to consider the unique interests of military personnel, military families, veterans, and veteran families in access to financial tools and credit. We look forward to working with you and the Committee in properly addressing the unique requirements of these populations with unique solutions, where appropriately tailored.

However, we do wish to express our concern with the possible consideration of the bill HR 5050 the "*Veterans and Consumers Fair Credit Act*", introduced earlier this week. While we appreciate the sponsors' wish to explore the unique requirements of veterans' access to fair credit, we do not see anything in this draft legislation which, in fact, addresses any unique needs of veterans. Instead, it appears to address fair credit access from a national perspective, and simply references veterans as part of that national population.

As you likely know, veterans may have more difficulty accessing capital than nonveteran consumers. While many consumers struggle to find a loan, especially when dealing with a sudden emergency, veterans as a community experience these hardships at higher rates. But this legislation does not appear to address the unique needs of veteran consumers.

Instead, it appears that this legislation simply invokes the name of veterans into the bill since its Congressional introduction and Committee consideration are happening around Veterans Day. Such involvement of veterans in what is not a veteran specific bill, to leverage the national attention on Veterans Day, borders on the exploitative and is not something we can support.

While anecdotal evidence sheds some light on the potential barriers to credit access for the veteran community, systematic data collection has been limited. We see this as a major problem and believe that policymakers should first undertake an in-depth examination of the barriers that veterans face when looking to secure a loan before hastily taking action in a way that would lead to severe unintended consequences. Considering this legislation without that comprehensive and thoughtful process would seek to apply a one size fits all approach that studies have shown results in a loss of capital access for the veterans community.

We would be happy to work with you to develop, collect, and analyze that systematic data collection on veterans access to consumer credit, and hope we can meet with you to discuss next steps. But in the interim, we request you delay consideration of this bill until we have a better understanding of veterans' unique credit requirements.

Sincerely,

Military Order of the Purple Heart National Defense Committee Valor Medical Service Dogs

PREPARED STATEMENT OF THOMAS W. MILLER, JR.

JACK LEE CHAIR IN FINANCIAL INSTITUTIONS AND CONSUMER FINANCE, MISSISSIPPI
STATE UNIVERSITY

JULY 29, 2021

Chairman Brown, Ranking Member Toomey, and Members of the Committee—thank you for the opportunity to appear before you today. The matter you are considering remains tremendously important for consumers, especially low-income consumers with poor credit.

The focus of my testimony is on the effects of a binding interest rate cap. An interest rate cap is binding when loan revenue is less than the cost of loan production. Thus, a binding interest rate cap reduces the supply of loans because lenders will not make unprofitable loans.

An interest rate cap does not make loans less expensive; it makes loans less available.

Because banks do not make small-dollar loans to borrowers with damaged credit, the marketplace has responded with an array of nonbank supplied loan products. Americans who rely on nonbank supplied small dollar loans are not wealthy, and many live from uncertain paycheck to uncertain paycheck. Today, few Americans have a rainy-day fund big enough to cover unexpected bills, paycheck shortfalls, or unplanned work absences.¹

Imposing a 36 percent interest rate cap eliminates the supply of much needed nonbank supplied small-dollar credit products. The demand for credit, however, will remain. If there is still demand for loans to cover some basic living expenses, but no available loans, what will low-income consumers do? How are they better off with fewer credit options? Imposing an interest rate cap is disastrous for the very people it allegedly protects.

Consider the tough, life-impacting decisions affected consumers must make if they do not have access to credit. Perhaps people will delay going to the doctor, or the dentist, or a taking a pet to the veterinarian. Perhaps they will not buy needed school supplies for their children. Perhaps they will defer necessary maintenance or repairs to their home or vehicle, or they might bounce a check to pay a utility bill. They might even seek the much-needed credit from illegal loan sharks. Proponents for interest rate caps deny these stark realities.

Small-dollar nonbank lenders not only provide consumers with much needed loans, but access to small-dollar nonbank supplied loan products also helps consumers build their credit rating. In this way, small-dollar credit products help subprime consumers build access to credit from banks. Every ladder has a lowest rung. If the lowest rung is missing, how can consumers climb the credit-building ladder?

Access to credit is a fundamental freedom for all Americans. Consumers are smart—they know their own financial situation better than others know it. Americans should be able to make their own decisions about credit matters.

The decision to take out a small-dollar loan does not involve a lot of money. The average payday loan, for example, is for about \$375.² Consumers routinely make decisions involving much higher dollar amounts. Consumers rent or buy a house. They buy vehicles. They take out student loans. We trust consumers to make these decisions.

It is incumbent on anyone legislating, regulating, advocating, or studying any small dollar credit product to understand and know the differences among these products. Small-dollar nonbank supplied credit products differ significantly in terms of loan size, length of loan, costs, repayment method, and their underwriting processes. As a result, they are not perfect substitutes for one another. I present an overview of four of these products in my freely available 2019 Primer, “How Do Small-Dollar, Nonbank Loans Work?”³

The CFPB’s 2021 Report of the Taskforce on Federal Consumer Financial Law contains detailed discussions of the demand for consumer credit (Chapter 3), the

¹See Annamaria Lusardi, Daniel Schneider, and Peter Tufano. “Financially Fragile Households: Evidence and Implications”, Brookings Papers on Economic Activity, Spring 2011.

²Bolen, J.B., G. Elliehausen, and T.W. Miller, Jr. 2020. “Do Consumers Need More Protection From Small-Dollar Lenders? Historical Evidence and a Roadmap for Future Research”, *Economic Inquiry* 58, pp. 1577–1613.

³<https://www.mercatus.org/publications/financial-markets/how-do-small-dollar-nonbank-loans-work>. Also see the effects of a 36 percent interest rate cap in Miller and Zywicki,(2020). <https://www.cato.org/commentary/wrong-kicks-route-36>

supply of consumer credit (Chapter 4), and the “perennial problem of small-dollar lending” (Chapter 5).⁴

My testimony contains three main points:

1. Interest rate caps reduce the supply of credit—resulting in consumer harm.
2. A high interest rate does not mean high dollar costs to the consumer.
3. Lawmakers should search for ways to expand access to credit for all Americans.

1. Interest Rate Caps Reduce the Supply of Credit—Resulting in Consumer Harm

Economic theory predicts that binding price ceilings create shortages, limit gains from trade, and impose costs on consumers.

Nobel prize winner Milton Friedman once said: “We economists don’t know much, but we do know how to create a shortage. If you want to create a shortage of tomatoes, for example, just pass a law that retailers can’t sell tomatoes for more than two cents per pound. Instantly you’ll have a tomato shortage.”⁵

In Professor Friedman’s example, the tomato shortage is created because revenue from selling tomatoes for two cents per pound does not cover the costs of producing tomatoes. Setting the price of tomatoes at two cents a pound does not make tomatoes less expensive; it makes tomatoes less available.

Loan Revenue Must Exceed the Cost of Producing the Loan

A commonly proposed interest rate cap is 36 Annual Percentage Rate (APR). How does a 36 APR render loans unprofitable? The same logic Professor Friedman used for tomatoes also applies to loans. Setting the rate lenders can charge for loans does not make loans less expensive; it makes loans less available. If the revenue received from a loan is less than the cost of producing the loan, lenders will not produce the loans.

The attached Figure 1 illustrates the problem of a binding rate cap.

The Progressives of the early 20th century teamed up with capitalists to create the Uniform Small Loan Law of 1916. This model legislation allowed licensed lenders to make loans at an APR of 36 percent. At the time, lenders could profit from making loans of \$100 at a 36 percent APR—loan revenue exceeded the costs of production.

The horizontal line in Figure 1 shows that the revenue from a \$100 loan made at 36 percent APR is the same today as it was in 1916. Costs of production have increased since 1916. I proxy these costs with the Consumer Price Index (CPI), which has increased by a factor of about 26 from 1916 to 2021. What do these two lines tell us? In 1916, revenue exceeded costs for a \$100 loan made at an APR of 36 percent. In 2021, the costs of making a \$100 loan far exceed the revenue.

Chen and Elliehausen (2020) show that a breakeven loan size at 36 percent APR is about \$2,500.⁶ But suppose a consumer only needs to borrow \$500? Access to \$500 loans is lost under a 36 percent interest rate cap. In Chapter 4 of the CFPB’s Taskforce report, a range of breakeven interest rates by loan size are presented.

Installment loans less than \$2,500 must have a higher APR than 36 percent. Revenue from the loan must cover production costs and generate a normal, competitive return for the lender. If rates cannot rise higher than 36 percent, access to credit levels less than \$2,500 is lost.

Extending the 36 percent interest rate cap to all consumers will be a disaster for millions of Americans with subprime credit histories. Why? Instead of lowering the cost of small-dollar loans, a 36 percent cap destroys small-dollar credit supply.

A Specific Example of How the MLA Interest Rate Cap Eliminates Supply

In a payday loan, the amount of interest paid equals the amount loaned, times the annual interest rate, times the amount of time the loan is held. So, under a 36 percent interest rate cap, if you borrow \$100 for two weeks, the interest you would pay is \$1.38 ($\$100 \times .36 \times 2/52$).

So, the revenue to the lender from this \$100 payday loan would be only \$1.38. A 2009 study by Ernst & Young, however, showed the cost of making a \$100 payday loan was \$13.89. The cost exceeds the loan revenue by \$12.51—probably more, since over a decade has passed since the E&Y study. Logically, lenders will not make un-

⁴ <https://files.consumerfinance.gov/f/documents/cfpb-taskforce-federal-consumer-financial-law-report-volume-1-2021-01.pdf>

⁵ <https://blog.acton.org/archives/80641-6-quotes-milton-friedman-on-freedom-and-economics.html>

⁶ <https://www.federalreserve.gov/econres/notes/feds-notes/the-cost-structure-of-consumer-finance-companies-and-its-implications-for-interest-rates-20200812.htm>

profitable loans. Under a 36 percent APR cap, consumer demand will continue to exist, but the legal supply will dry up.

While the MLA interest rate cap does not explicitly outlaw payday loans, it has the effect of eliminating this legal supply of credit.

2. A High Interest Rate Does Not Mean High Dollar Costs to the Consumer

Suppose a consumer has an emergency that costs \$300 now. Suppose the consumer does not have \$300 in cash or on a credit card or available from family or friends. This situation calls for a loan.

Consider Two Loans

The first one is for \$300, paid back in three equal monthly installments of \$106. This loan costs \$18 in interest.

The second loan is also for \$300 and is paid back in three equal monthly installments of \$120. This loan costs the consumer \$60 in interest.

Of course, consumers would rather pay \$18 instead of \$60. But here is the catch: The first loan is unprofitable, so lenders will not make this loan. This loan does not exist: It is a Unicorn.

The interest paid on the preferred, but unavailable, Unicorn loan is calculated at a 36 percent APR. The second loan that would be available from lenders, costs consumers \$14 more per month.

The APR on the second loan is 118 percent. The APR on this loan sounds “high” and “shocking,” but a cost of only \$14 more per month does not sound high, shocking, or unaffordable.⁷

It is important to remember that consumers spend dollars, they do not spend “percents.”

If the consumer needs a loan to cover an emergency, the consumer could very well be willing to pay \$60 interest over three months to get the needed money today.

3. Lawmakers Should Expand Access to Credit for All Americans

Helping Consumers

Small-dollar credit products serve millions of people. According to a banking regulator, nearly 33 million families have no or limited access to bank credit. A recent study by the Federal Reserve Bank of New York suggests millions more may be “credit insecure.” That is, they tend to max out their credit limit, have a low credit score, and a history of late payments. Also, 45 million primarily young, low-income, and minority Americans have poor or thin credit histories. They are ineligible for prime credit cards and bank loans.

Many consumers use small-dollar loans because they lack access to cheaper bank credit—they are “underbanked,” in the policy jargon. According to the FDIC, 18.7 percent of all U.S. households were classified as underbanked in 2017. For one in five households in America, small-dollar nonbank loans are vital.

More than a third of households making under \$50,000 experience month-to-month spikes and dips in their income. For these Americans, credit cards and consumer loans from banks are not a reliable option. Instead, small-dollar credit products help them deal with volatile incomes and unforeseen expenses. The choice for these consumers is between using small-dollar credit products, or simply going without needed goods and services.

So, what will consumers do if a binding interest rate cap causes lenders to stop making small-dollar loans? To my knowledge, there is no easy answer. I do know that if consumers face a need for money, they will meet it somehow. They will: bounce checks and incur an NSF fee; forego paying bills; avoid needed purchases; or turn to illegal lenders.

A Summary of Arguments Used by Interest Rate Cap Advocates

For a variety of reasons, since the beginning of recorded history, lawmakers have looked upon the ownership of money, and the charges for its use, differently from the ownership of other assets and the charges for their use. Consequently, setting interest rate caps on loans has long been a focus of religious leaders and Governments and their agents. A belief in the effectiveness of interest rate caps endures despite many empirical studies showing that not only are interest rate caps ineffective, but they actually harm their intended beneficiaries.

Fundamentally, because interest rate caps are a market-distorting action, imposing an interest rate cap or banning loan products reduces the well-being of parties

⁷For more details, see <https://x2u.731.myftupload.com/state-laws-can-give-consumers-more-loan-choices/>.

who would have otherwise engaged in trade. Nonetheless, advocates continue to argue for interest rate caps.

Professor Harold Black and I summarize a large body of rigorous, peer-reviewed academic research. We sort their arguments into four general categories.⁸

1. Borrowers are naive and simply do not understand the loan terms.
2. Groups thought to be most vulnerable to exploitation by lenders—namely minorities, women, and the poor—need even more protection from “predatory” lenders.
3. Even if consumers are willing to borrow at high interest rates, society should protect these consumers from themselves because they are making themselves worse off.
4. Lenders, especially small dollar lenders, make abnormally high profits from lending at high interest rates because they have considerable market power.

In our work, we find no published empirical evidence that supports any of these four arguments.

Supporters of interest rate caps say that interest-rate restrictions protect naive borrowers from so-called “predatory” lenders. Academic research shows, however, that small-dollar borrowers are not naive.⁹

Supporters of interest rate caps often claim that interest rate caps do not reduce the supply of credit. These claims are not supported by any predictions from economic theory or demonstrations of how loans made under a binding interest rate cap are still profitable.

Supporters of interest rate caps claim that lenders, especially small-dollar lenders, make enormous profits because desperate consumers will pay whatever interest rate lenders want to charge. This argument ignores the fact that competition from other lenders drives prices to a level where lenders make a risk-adjusted profit, and no more.

Questions About the MLA’s Performance

Extending the MLA’s 36 percent interest rate cap to all Americans kicks many consumers to the curb. Their option to use small-dollar credit products will not be outlawed, but there will be no legal supply of loans for amounts less than \$2,500.

Evidence has accumulated that the MLA has provided no benefit. In 2015, Carter and Skimmyhorn found that access to payday loans did not increase bad outcomes, like poor job performance, documented by previous Carrell and Zinman (2008). “Our analysis,” they conclude, “suggests no significant benefits to servicemembers from the MLA.” A 2016 study by Mary Zaki showed access to payday loans made it easier for military personnel to buy food and other goods before their biweekly paycheck.

Why extend the MLA? What evidence exists that the MLA has helped military personnel and their immediate family members? Is there evidence that it has harmed members? Why extend it now? Why not wait for a significant amount of research to inform such a crucial decision?

In science, the gap between beliefs and current research results drives further research. Before instituting a law with wretched outcomes for many borrowers, Congress should call for Government and independent researchers to build a mosaic of transparent and replicable research results on the effects of interest rate caps on consumers.

Concluding Thoughts

In my scholarly work on consumer credit, I study how small dollar loan markets work and how best to help lawmakers restructure laws to improve the welfare of borrowers.

Every day, consumers make choices based on the price of money—just as they respond to prices of other goods and services. Despite the age-old teeth gnashing and hand wringing by philosophers, advocates, reformers, legislators, and others, the market for loanable funds is not “special” or “different.” Simply stated, the market for credit obeys the laws of supply and demand. As in any market that obeys the

⁸Black, Harold, and Thomas W. Miller, Jr. 2016. “Examining Arguments Made by Interest Rate Cap Advocates”. Hester Peirce and Benjamin Klutsey, eds., *Reframing Financial Regulation: Enhancing Stability and Protecting Consumers*. Ch. 13. Arlington, VA: Mercatus Center at George Mason University. <https://www.mercatus.org/system/files/peirce-reframing-ch13.pdf>

⁹See, for example, Elliehausen, G., and E. Lawrence, 2008. “A Comparative Analysis of Payday Loan Customers”, *Contemporary Economic Policy* 28, pp. 299–316; and Allcott, H., J. Kim, D. Taubinsky, and J. Zinman, 2021. “Are High-Interest Loans Predatory? Theory and Evidence From Payday Lending”, *Review of Economic Studies*, forthcoming.

laws of supply and demand, letting the competitive market determine prices and quantities will greatly benefit the participants in the small dollar loan market.

Conversations about consumer credit often reflect utopian visions of the world. Many people simply imagine that a few tweaks to regulations would ensure that everyone had the money needed to feed, clothe, and shelter the family.

We can all afford low prices for any good. But will the good be supplied at a low price?

No matter how hard we all try, a well-crafted regulatory framework cannot bring us a credit utopia. Deliberate, empirically informed regulators, however, can do much to preserve and expand consumers' options along the nonbank supplied small-dollar loan landscape.

I urge Congress to read more about interest rate caps before making any decision on them. A particularly good place to begin is the 2021 Report of the CFPB's Taskforce on Federal Consumer Financial Law.

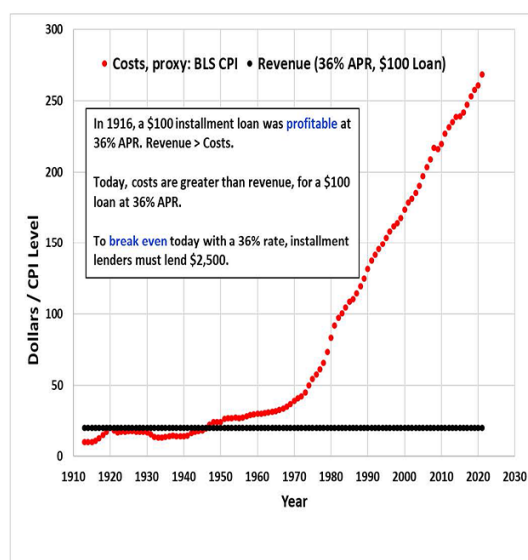
I also urge Congress to follow the scientific evidence on the impact of interest rate caps.

Finally, I urge Congress to heed the 1972 National Commission on Consumer Finance which concluded: ". . . competition is the best regulator of consumer credit markets." Competition breeds innovation. Innovation provides more choices. Consumers benefit with more choices. Rather than setting arbitrary caps on important financial products, law makers should increase competition by raising, or removing, interest rate caps.

Thank you. I stand ready to answer any questions.

Figure 1.

Then and now. Profits and losses from a 36% interest rate cap.



The revenue from a \$100 loan with a 36% interest rate cap is the same today as it was in 1916 (black line). Costs have increased (red line).¹⁰

1. At 36% rate, a profitable loan size is at least \$2,500.¹¹ But suppose a borrower only needs \$500 and has poor credit? Access to credit is lost.
2. Installment loans less than \$2,500 must have a higher interest rate attached, to generate a profitable level of income to the lender. Lenders will not make unprofitable loans. Access to credit is lost.

¹⁰ Think about wages, for example.

¹¹ Chen and Elliehausen (2020). <https://www.federalreserve.gov/econres/notes/feds-notes/the-cost-structure-of-consumer-finance-companies-and-its-implications-for-interest-rates-20200812.htm>

Appendix: A (Brief) History of the 36% Interest Rate Cap

- In the early 20th century, the Progressive Movement focused on major social reforms (i.e., Vote for Women, Temperance, Child Labor, Food Processing, and the Illegal Loan Shark Problem).
- In 1909, Reformers, spearheaded by Mr. Arthur Ham of the Russell Sage Foundation, sought ways to spread access to credit to workers. Reformers at the time recognized that lenders AND borrowers had to be satisfied for a sustainable market-based alternative to the illegal “loan shark problem.”
- After research and collaboration with Capitalists, these Reformers set out to pass state laws allowing specially licensed lenders to make small-dollar consumer loans at rates **six times above** usury rates at the time, 6% APR.
- Their collective efforts resulted in the Uniform Small Loan Law (USLL) of 1916. By 1940, all but nine states had adopted some version of it. When they wrote the model law, through rigorous study, it was determined that the costs and risks merited: 3.50% per month (for loans up to \$100), and 2.50% per month on amounts over \$100. The average is 36% APR.
- The Reformers noted: “...The rate is designed to attract aggressive competition by licensed lenders [when the law is enacted] to drive unlicensed lenders out of business...This rate should be reconsidered after *a reasonable period of experience with it...*”

PREPARED STATEMENT OF DAVID POMMEREHN

GENERAL COUNSEL AND SENIOR VICE PRESIDENT, CONSUMER BANKERS ASSOCIATION

JULY 29, 2021

Chairman Brown, Ranking Member Toomey, and Members of the Committee, I am David Pommerehn, General Counsel at the Consumer Bankers Association (CBA) and I appreciate the opportunity to testify at today's hearing. CBA is the voice of the retail banking industry whose products and services provide access to credit to millions of consumers and small businesses. Our members operate in all 50 States, serve more than 150 million Americans, and collectively hold two-thirds of the country's total depository assets.

Banks work diligently to provide access to safe and affordable loan products to consumers. A fundamental aspect of lending and a cornerstone to prudent banking practices is a bank's ability to accurately price risk. Expanding rate caps to all consumers and many important loan products will ultimately disrupt banks' ability to appropriately price risk, increase the cost of credit, and limit its availability. Borrowers with troubled credit histories will be most affected by any limitation on banks' ability to price risk, reducing the amount of available loan offerings that are tailored to meet their financial needs.

Access to Credit

While well-intentioned, capping interest rate is not an effective policy for protecting against debt traps or other negative outcomes for consumers. Banks are highly regulated entities that are obligated to carefully and appropriately price lending risk before extending credit to borrowers. Placing a cap on that price in the form of an all-in maximum annualized percentage rate (APR) does not mean consumers will get lower rates on their loan; it means in many cases consumers will not have access to loans at all. Research has shown interest rate caps reduce credit availability and create negative outcomes for the populations their proponents intend to benefit, often having the worst impact on credit access for low- and moderate-income communities, and those seeking small-dollar, emergency funds. Like any financial product, loans have fixed costs that a financial institution must justify or risk insolvency. A loan for even a small amount requires significant upfront investment by the lender in risk management, legal review, servicing, and technology. Lenders must have a reasonable opportunity to recoup these fixed costs before justifying the extension of a loan. Inflexible APR caps that incorporate fees as well as the risk-based interest rate available to the borrower make it exceedingly difficult for responsible lenders to extend short-term credit.

A Federal APR restriction may lead to less availability for certain popular credit cards and other products with annual rates. As in any normal market economy, reduced access is felt by those at the margins and is often not evenly distributed among consumers. Interest rate caps have little practical economic impact on higher-income individuals and those with ample access to sources of credit. However, borrowers with higher risk profiles or other financial challenges will not be able to find affordable credit options due to an APR cap, but instead will find fewer (or no) options among well-regulated lenders. Limited credit options in turn lead to more negative outcomes for individuals left with no recourse for their financial needs.

Small-Dollar, Emergency Liquidity

Today, the need for accessible small-dollar, emergency credit for consumers has never been greater. According to the Federal Reserve, nearly half of all American adults say they cannot cover an unexpected expense of \$400. Similarly, Bankrate states "63 percent of American adults say they are unable to pay an unexpected expense with their savings [. . .]" A Financial Health Network (formerly the Center for Financial Services Innovation) study found more than a third of all households say they frequently or occasionally run out of money before the end of the month. Further, more than four in ten households struggle to keep up with their bills and credit payments.

Our recovering economy has left consumers with less cushion for emergencies and reduced credit options, making access to reasonably priced small-dollar liquidity products even more important. While various entry-level credit products exist to meet a wide range of these needs, including traditional credit cards, personal loans, and other forms of credit, some consumers unfortunately cannot qualify for them.

Accordingly, policymakers have long been encouraging depository institutions to enter or remain in the small-dollar lending market. Banks worked with regulators to developed products carefully designed to ensure strong safeguards at reasonable prices. Consumer demand still exists for a short-term loan product, and if allowed,

highly regulated banks can make safe, affordable, and easy to access small-dollar loans to consumer in need.

A 36 percent rate cap will eliminate these products. For a loan product to be sustainable, depository institutions must be able to recover costs. Costs include not only the cost of funds for a loan, but also fixed costs related to compliance, customer service, IT, underwriting, administration, and defaults (including losses). For example, for a 3-month \$500 loan costs would generally amount to \$55, a seemingly reasonable amount which if charged to the consumer at cost—without any additional risk-based interest charge—would equate to a 44 percent rate and would be prohibited under this legislation. APR calculations for emergency loan products such as short-term, low-dollar loans are often high and are essentially misleading because they do not represent the value of these forms of credit to those who ultimately need them for emergencies.

Accordingly, under a 36 percent interest rate cap, depository institutions could choose to comply by not offering small dollar loans or by increasing minimum loan amounts to make the APR calculation meet the 36 percent threshold. Because of the construct of a short-term loan, the interest rate must go up to recoup the lender's costs in a shorter amount of time. Conversely, banks can usually afford to attach smaller rates to larger loans because risk and cost is spread out through a longer term. The simple math required under and APR cap results in shutting out marginal borrowers or borrowers seeking less credit amounts for shorter terms.

Mandating a maximum annualized rate of 36 percent would effectively eliminate small-dollar loans as a credit option for millions of financially vulnerable Americans pushing them out of the well-regulated, well-supervised depository industry and into inferior alternatives. This has been evidenced by rules promulgated by regulators which would require overly restrictive ability to pay requirements for small-dollar loans that exceed a 36 percent APR. In 2017, the Consumer Financial Protection Bureau (CFPB) finalized a strict and prescriptive rule that greatly restrained lenders from entering the small-dollar market. The rule created conditions for loans exceeding 36 percent by requiring compliance costs so great they negate depository lenders' ability to make small-dollar loans at reasonable cost to consumers. The hurdles reduced efficiencies, restricted flexibility, and reduced consumer options for small-dollar liquidity. While some of these burdensome provisions were later rescinded, current leadership at the CFPB has indicated they will once again revisit the rule to reinstate barriers for loans exceeding 36 percent, leaving banks without a clear path and little choice but to not participate in this market.

A reality many Americans and their families will face upon losing access to short-term credit will be the inability to meet an emergency financial need and incur more financial harm through unpaid bills, negative hits to credit histories, lost opportunities, and more.

Credit Cards

The consumer credit card market today offers a wide variety of products designed to meet the needs of different consumers at a variety of price points. Many customers choose cards with annual membership fees because such products offer non-credit-related features such as reward programs, travel and dining benefits, and insurance. Extending an all-in cap to all consumer loans will reduce the availability of these popular credit card rewards and benefits. The MAPR contemplated under this legislation is not simply a 36 percent cap on interest alone. Unlike the standard APR calculation under the Truth in Lending Act, the MAPR incorporates various fees that may be charged on the account, including the annual membership fee. Because the MAPR is calculated on an annualized basis, membership fees that are charged once a year are treated as though they were imposed every month. This means if a customer has a balance in the month in which the annual fee is assessed, even a small fee can cause the MAPR to exceed 36 percent.

The Department of Defense's implementing regulations do allow for the exclusion of annual membership fees (and certain other fees) from the MAPR calculation if they are "bona fide" and "reasonable for that type of fee." However, this standard is inherently subjective and difficult to prove: an issuer can show that its fee is "bona fide" and "reasonable" only by demonstrating other issuers charge a similar fee for a similar product. In practice, this precludes issuers from relying on the bona fide fee safe harbor if they offer new or unique products or services that their competitors do not. The bona fide fee exception therefore inhibits innovation and reduces the diversity of product offerings that customers prefer and priced for the value delivered. If the MAPR were expanded to all consumer credit cards, the result will be reduced rewards and benefits and fewer consumer choices as issuers would be forced to adjust their product offering to reduce the risk that annual fees would trigger the 36 percent MAPR threshold.

Credit-Related Ancillary Products

For all credit transactions (open-end and closed-end) the MAPR must include any fee/premium for credit insurance, including single premium credit insurance, and for debt cancellation or debt suspension agreements. These amounts must be included regardless of whether such fees/premiums are voluntary and could be excluded from the finance charge under Regulation Z. In addition, for open-end credit, these fees/premiums must be included in the MAPR even if the products are obtained after the account is opened. Second, the MAPR must include any fee for a “credit-related ancillary product sold in connection with” the credit (whether for closed-end or open-end credit), and even if sold after the account is opened, for open-end credit.

To date, there is virtually no guidance on what products are deemed “credit-related ancillary products sold in connection with” a transaction. This overapplication included in an all-in APR such as the MAPR is indicative of the compliance difficulties that will ultimately deprive consumers of the products and services that they have come to expect and enjoy.

Expansion of MLA

It is important to acknowledge that the Military Lending Act (MLA) applies to only active-duty military personnel and their dependents who together amount to less than 1 percent of the total financial services marketplace. The small number of consumers covered under the MLA present minimal risk to banks’ loss reserves when defaults occur. If the MLA is expanded to all consumers, the current expected credit loss methodology (CECL) which requires lenders to ensure any future loss is accounted for with a necessary capital offset, will further sideline needed capital and cause additional reductions in consumer lending.

There is very little data on the impact that MLA is having on credit accessibility for military personnel. Even with this protected class, who have a consistent annual income, there is evidence of constricted credit availability for military service men and women. The National Foundation for Credit Counseling (NFCC) reported in their 2020 Military Financial Readiness Survey that over a third (36 percent) of servicemembers say the pandemic has caused them to take out a payday loan/cash advance in the past year, something the MLA was intended to protect against. We strongly encourage a deeper study into the affects the MLA has had on credit availability to service men and women. It is imperative that before Congress considers any extension of MLA rate caps to all consumers extensive research is conducted to understand the real impact on consumers and financial institutions.

Conclusion

Banks provide access to safe, well regulated, high-quality consumer credit products and have invested significant resources toward innovating small-dollar, short-term lending options to encourage more consumers to enter into the banking system. An APR cap would prevent those most in need the ability to access small-dollar credit options. We encourage the Committee to further understand the full effects of a Federal 36 percent APR cap before considering any legislation.

CBA remains eager to work with you on our shared commitment to improve financial opportunities for all Americans.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR CRAPO
FROM HOLLISTER K. PETRAEUS**

Q.1. In your testimony, you stated that 36 percent short-term small dollar loans can be an effective alternative to the current private market loans that are available. If this is true and these loans can be offered profitably by private industry, why aren't lenders who compete for this business offering the 36 percent loans and capturing the market currently served by other, higher interest rate small dollar loans?

A.1. A Department of Defense report¹ issued in June 2021 provides a response to your question about whether or not lenders are willing to offer 36 percent loans, in this case once higher-interest loans to servicemembers on active duty and their dependents were prohibited by the Military Lending Act (MLA): "In issuing its 2015 regulations, the Department recognized that some lenders may choose to no longer offer some of the now-broader scope of credit products to covered borrowers, while others may amend their terms and conditions to apply. . . . Several years after the implementation of those regulations, these borrowers continue to enjoy access to compliant credit products to meet their needs." "To date, the Department has no indication that Servicemembers and their families lack adequate access to necessary, responsible credit. Regular consultation with Federal regulatory agencies similarly indicates continued access to compliant credit products." The report's conclusion that lenders are choosing to offer private market loans to servicemembers at a 36 percent or lower APR certainly implies that those lenders feel they can do so profitably.

Obviously, the profit on a loan offered at 36 percent APR is significantly smaller than the profit that can be earned by unregulated short-term small-dollar loans, many of which are offered by lenders that charge 390 percent APRs (and higher). As long as States permit high interest rates and there is no Federal regulation of APRs other than the MLA, many lenders will choose to make as large a profit as possible from their customers who are seeking small-dollar, short-term loans, and they will likely continue to charge high interest rates unless they are constrained by interest-rate caps such as the one proposed by Veterans and Consumers Fair Credit Act.

I would hope that, should this bill pass, lenders who have not done so thus far will choose to offer short-term, small-dollar loans at 36 percent APR rather than withdraw from small-dollar consumer lending. If the loan term needs to be lengthened slightly in order for the lender to consider it profitable, that would still be better for the consumer than the payday loan model, which often turns a short-term loan into a long-term transaction, anyway, as borrowers pay repeatedly, month after month, to rent the same cash they originally borrowed, and end up paying APRs in the thousand-percent range. I would propose that lenders take a long-term view: their customer who is offered a chance to borrow a small sum at a reasonable interest rate and build a better credit

¹Department of Defense, Office of the Under Secretary of Defense for Personnel and Readiness, "Report on the Military Lending Act and the Effects of High Interest Rates on Readiness", May 2021, website: <https://finred.usalearning.gov/assets/downloads/FINRED-MLA-ReportEffectsHighInterestRatesOnReadiness-May2021.pdf>.

score as they pay it back, is apt to be a loyal customer in the future.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR BROWN
FROM ASHLEY HARRINGTON**

Q.1. In May 2021, the Department of Defense (DOD) issued “Report on the Military Lending Act and the Effects of High Interest Rates on Readiness to Congress”.¹ That DOD’s Report concluded the following:

The Department believes the MLA, under current regulations issued in 2015, is working as intended. The MLA and MAPR support Servicemembers and families by ensuring they are not subject to unfair credit practices that can negatively impact financial readiness and, in turn, military readiness. The MAPR places a reasonable limit, with a long regulatory history, on the cost of credit that prevents covered borrowers from becoming trapped in a harmful cycle of debt resulting from egregious interest rates.

In issuing its 2015 regulations, the Department recognized that some lenders may choose to no longer offer some of the now-broader scope of credit products to covered borrowers, while others may amend their terms and conditions to apply. Nevertheless, the Department believed such a step was necessary to protect Servicemembers and their families and that they would still have adequate access to credit. Several years after the implementation of those regulations, these borrowers continue to enjoy access to compliant credit products to meet their needs. They also have access to no-cost loans or grants from military aid societies that can address a number of financial needs.

Despite the official position of the Department of Defense, some high-cost lender industry groups have argued that there is no evidence about the impact of a 36 percent usury cap on consumer loans, and also that Congress should wait until there is such evidence before moving forward with extending the Military Lending Act’s 36 percent APR cap to all consumers.

Is this accurate? If not, can you please describe any evidence of the impact of a 36 percent usury cap on consumer loans?

A.1. Holly Petraeus said it best: “The evidence is the absence of harm.” There are well documented harms of payday loans ranging from overdraft and NSF (nonsufficient fund) fees to bankruptcy. The impacts of those harms drain wealth of American families by trapping them in an ongoing cycle of debt. In fact, the Center for Responsible Lending (CRL) has found that payday and car title lenders drain nearly \$8 billion in fees every year.²

A limit of 36 percent on APRs is a fair solution that protects consumers. In 18 States and the District of Columbia, payday loans are capped at 36 percent or less. Even more States cap rates at 36 percent or less on installment loans. In fact, every time this initia-

¹ U.S. Department of Defense, “Report on the Military Lending Act and the Effects of High Interest Rates on Readiness” (May 2021), available at <https://finred.usalearning.gov/assets/downloads/FINREDMLA—ReportEffectsHighInterestRatesOnReadiness-May2021.pdf>.

² Diane Standaert, Delvin Davis, Charla Rios, “Payday and Car Title Lenders Drain Nearly \$8 Billion in Fees Every Year”, Center for Responsible Lending 2019, available at <https://www.responsiblelending.org/research-publication/payday-and-car-title-lenders-drain-8-billion-fees-every-year>.

tive has gone to the ballot, like in Montana, South Dakota, Nebraska, and other States, it has passed with strong bipartisan support illustrating that constituents want an interest rate cap. Lenders in these States have been able to offer loans to individuals even with these rate caps in place.

Congress passed the Military Lending Act after the Department of Defense found that predatory lending was harming servicemembers' finances, which was affecting security clearances and ultimately reducing the Nation's military readiness.³ The DoD then significantly strengthened these protections in 2015 to include all payday and car title loans, whether short- or longer-term, as well as, generally, all credit subject to TILA.⁴

As a result, the location of payday and car title storefronts have shifted away from military bases but continue to be concentrated in and marketed to communities of color.⁵ Indeed, the communities most affected by redlining are the same who are saturated by payday lenders today. Payday lenders in California were found 2.4 times more concentrated in African-American and Latino communities, even after controlling for income and a variety of other factors.⁶

Borrowers in States without payday loans employ a variety of strategies to address a cash flow shortfall at a fraction of the cost of payday loans. Indeed, setting a Federal ceiling to interest rates helps responsible lenders to thrive. For example, credit unions in Montana saw increases in lending after the State implemented its rate cap.⁷ Responsible lenders are better able to compete when people aren't trapped in heavily marketed promises of fast cash. Predatory lenders also create negative feedback loops for access to credit by driving responsible lenders out of the marketplace by putting themselves first in line for payment on unaffordable loans.

The experiences of borrowers in States with rate caps show that eliminating the debt trap does not force consumers to riskier products. Studies that look at what borrowers do in the absence of these high-interest loans reveals a host of strategies used to meet cash flow shortfalls at a fraction of the cost of payday loans.

One study by the NC Office of the Commissioner of Banks concluded that the absence of payday lending had no significant impact on the availability of credit and identified an array of financial options that low- and moderate-income consumers turned to during

³ U.S. Department of Defense, "Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents" (2006), available at <https://apps.dtic.mil/sti/pdfs/ADA521462.pdf>.

⁴ 80 FR 43560 (July 22, 2015).

⁵ See, e.g., Delvin Davis, et al., "Race Matters: The Concentration of Payday Lenders in African-American Communities in North Carolina", Center for Responsible Lending (2005), <https://www.responsiblelending.org/payday-lending/research-analysis/rr006-Race-Matters-Payday-in-NC-0305.pdf> (finding that, even when controlling for a variety of other factors, African-American neighborhoods had three times as many payday lending stores per capita as White neighborhoods in North Carolina in 2005); Assaf Oron, "Easy Prey: Evidence for Race and Military Related Targeting in the Distribution of Payday Loan Branches in Washington State", Department of Statistics, University of Washington (2006) (concluding based on a study of Washington State payday lenders that "payday businesses do intentionally target localities with a high percentage of African Americans.").

⁶ Li, et al., "Predatory Profiling: The Role of Race and Ethnicity in the Location of Payday Lenders in California", Center for Responsible Lending (2009), <http://www.responsiblelending.org/payday-lending/research-analysis/predatory-profiling.pdf>.

⁷ National Consumer Law Center (NCLC), "After Payday Loans: How Do Consumers Fare When States Restrict High-Cost Loans?" October, 2018. <https://www.nclc.org/images/pdf/high-cost-small-loans/payday-loans/ib-how-consumers-fare-restrict-highcost-loans-oct2018.pdf>

a shortfall. These included both formal options, for example the use of a credit card and/or cash advance (21 percent), and informal financial assistance such as help from friends and family (30 percent).⁸

Another State, Arkansas, began enforcing its usury cap of 17 percent against payday lenders to ensure that they could no longer charge the excessive 300 percent APR on payday loans. The Southern Bancorp Community Partners surveyed 100 former payday borrowers from 42 municipalities across Arkansas in 2015, seven years after the enforcement of the State's rate cap. These former payday borrowers reported that they now build savings and incomes, turn to friends and family, or use credit cards to meet financial emergencies as opposed to costly payday loans.⁹

For these and many other reasons, no State has opened its borders to high-cost payday or car title loans in the last 15 years, and many States have strengthened their protections by enacting rate caps. These State payday loan bans save consumers more than \$2.2 billion annually.¹⁰

When discussing the impact of these loans, we cannot understate the long-term harm to consumers themselves. These include increased difficulty paying bills, delayed medical spending, involuntary bank account closure, higher likelihood of filing for bankruptcy, and decreased job performance.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR CRAPO FROM ASHLEY HARRINGTON

Q.1. If 36 percent APR products can fill the space now served by higher interest private market loans, why are lenders not offering 36 percent APR products to those borrowers now and capturing the entire market?

A.1. Curbing predatory lending levels the playing field for lenders that offer affordable, responsible loans. They no longer have to compete with the aggressive promises of fast cash that only make potential borrowers less likely to be able to take on responsible credit.

For example, when Illinois' 36 percent APR cap on personal loans took effect, Andy Posner, the CEO of Capital Good Fund, reported that "within days, we saw an increase in Illinois' daily application volume of about 70 percent." Posner continued, "In short, more families are coming to us for affordable loans, both because they are seeking out alternatives and because it has become easier for

⁸ Center for Community Capital, University of North Carolina at Chapel Hill, "North Carolina Consumers After Payday Lending: Attitudes and Experiences With Credit Options", Prepared for the North Carolina Commissioner of Banks. <http://ccc.sites.unc.edu/files/2013/08/NC-After-Payday.pdf>

⁹ Covington, Meredith, and Jennifer Johnson, "Into the Light: A Survey of Arkansas Borrowers Seven Years After State Supreme Court Bans Usury Payday Lending Rates", Southern Bancorp Community Partners, April 2016. <http://southernpartners.org/assets/sbcp-policy-points-vol-43-payday-lending-20160628.pdf>

¹⁰ Davis, Delvin, and Susan Lupton, "States Without Payday and Car-Title Lending Save \$5 Billion in Fees Annually", Center for Responsible Lending, June 2016. <http://www.responsiblelending.org/sites/default/files/nodes/files/researchpublication/crl-payday-fee-savings-jun2016.pdf>. A chart from this report showing fee estimates by State is reproduced in the Appendix.

us to market our products. Put another way, the marketplace has been leveled, benefitting consumers and equitable lenders alike.”¹

Those predatory lenders that target and aggressively market minority communities now largely operate online or a mix of online and storefront. So, our concerns are amplified as they aim to market their products to a larger segment of the population, targeting households that are economically insecure.

Q.2. Can lenders offer short-term loans at the 36 percent APR rate to all types of consumers profitably? Are you able to provide a detailed analysis of the revenue and cost of offering these loans?

A.2. For credit to benefit consumers, it must be affordable. Unaffordable credit only leaves already financially distressed borrowers worse off. The higher the rate, the more likely the lender will disregard ability-to-repay; the business model can absorb high rates of repeat reborrowing and default—high rates of unaffordable loans—while the lender still profits. A rate cap of 36 percent provides a sensible guardrail and has strong Federal precedent in the Military Lending Act, which also minimizes compliance burden for lenders.

This bill will not unreasonably constrain access to small dollar credit. It is not expected to significantly impact credit cards, and even subprime credit cards are typically priced at 36 percent or below. Federal credit union loan products are exempt from the bill, and banks are a growing source of relatively low-cost small dollar loans that that this bill would not impact at all. Bank of America’s Balance Assist loan allows up to \$500 with a \$5 flat fee repayable over 3 months; U.S. Bank also offers a 3-month loan at under 36 percent; Huntington Bank is offering loans of up to \$1,000 over a 3-month term at no charge. Like the Capital Good Fund’s products, there are many other loan products from smaller banks and credit unions that are consistently priced at well under 36 percent.²

RESPONSES TO WRITTEN QUESTIONS OF SENATOR TILLIS FROM ASHLEY HARRINGTON

Q.1. Let me just finish one and then I’ll make sure that the Chairman lets you add on to it. I think the other thing that we’re talking about when we talk about it’s popular to set an interest rate at 36 percent, that we may not be fully informing those who have taken that position. Of course, you want to cap an interest rate, but I do think that we have to get into the distortion of the interest rate based on how it’s calculated and get to a discussion of cost.

I wonder if Mr. Himpler’s example, if it was laid out, if it would be as popular, if you also understood the consequences of not being able to provide a financial instrument to a population that will most likely be underbanked or unbanked if we overreach on this. Ms. Harrington—Ms. Harrington, go ahead and add your response.

¹ Woodstock Institute, “Will Illinois Borrowers Find Predatory Loan Alternatives? They Already Are, Says Capital Good Fund’s Andy Posner”, July, 2021. <https://woodstockinst.org/news/blog/will-il-borrowers-find-predatory-loan-alternatives/>

² Center for Responsible Lending, “Shark-Free Waters: States Are Better Off Without Payday Lending”, September 2017. <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-shark-free-waters-sep2017.pdf>

And welcome. I hope you love my State—I hope—I hope you love the State as much as I do.

A.1. I'm a Tar Heel through and through, don't you worry. I think we just have to be really concerned about that report. That task force was convened in a way that was not in compliance with all other Federal task forces. It was very ideologically bent for that—for that reason.

A lot of the—and a lot of the methods in there and the surveys that it used aren't necessarily what, I, researchers would call sound. There is a lot of concerns about the way some of that was conducted.

Q.2. Well, if you—if you could for the record—if you could for the record get more specific about that, I'd be interested in seeing that.

A.2. When the Consumer Financial Protection Bureau created the highly controversial Taskforce on Federal Consumer Financial Law, it breached ethical and legal standards expected from a regulator agency. The taskforce circumvented the Federal Advisory Committee Act entirely and was composed of individuals with longstanding ties and sympathies to the consumer finance industry.

The Task Force's ideological blinders caused it to overlook the weight of the evidence showing that high-cost loans are detrimental to the borrowers who use them as well as a wealth of evidence showing that responsible lenders have found ways to make affordable loans within a 36 percent APR cap.

This body's meetings and deliberations were done in secret allowing these representatives for industry to disguise themselves as full-time or permanent part-time Federal employees to draft recommendations on how their industries should be regulated by the Bureau. Indeed, the Taskforce's biased and secretive work caused two consumer advocacy organizations to challenge it in court.¹

The suit was led by Democracy Forward, the National Association of Consumer Advocates, U.S. Public Interest Research Group, and consumer law expert Professor Kathleen Engel.²

¹ See National Association of Consumer Advocates, et al., v. David Uejio; United States District Court for the District of Massachusetts No. 1:20-cv-11141 (JCB).

² See National Association of Consumer Advocates, et al., v. Kathleen Kraninger; United States District Court for the District of Massachusetts.

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

**LETTERS SUBMITTED IN SUPPORT OF THE VETERANS AND
CONSUMERS FAIR CREDIT ACT**



June 22, 2021

Senator Jack Reed
Chairman, U.S. Senate Committee on Armed Services
728 Hart Senate Office Building
Washington, DC 20510

Senator Sherrod Brown
Chairman, U.S. Senate Committee on Banking, Housing, And Urban Affairs
503 Hart Senate Office Building
Washington, DC 20510

RE: Reintroduction of the Support for Veterans and Consumers Fair Credit Act

Dear Chairman Reed & Chairman Brown:

The American Fintech Council (AFC) writes to endorse the reintroduction of the Support for Veterans and Consumers Fair Credit Act as proposed in the 116th Congress. The AFC supports the extension of Military Lending Act (MLA) protections to all American consumers.

AFC's mission is to promote an innovative, transparent, inclusive, and customer-centric financial system. To that end, AFC limits its membership to financial technology (fintech) companies that embrace consumer protection as a core component of their mission.

Among other requirements, AFC members must meet the following criteria:

- (i) No loan products above the 36% APR threshold laid out in the MLA; and
- (ii) Transparent and effective disclosure of Annual Percentage Rate ("APR") / annualized interest rates, penalties, and fees

The extension of MLA protections to all Americans would be consistent with the direction of the Congress and regulators over the past two decades to better balance access to credit with a consumer's ability to pay. Congress has restricted fees and prescribed ability to repay requirements in both the credit card and mortgage markets through the Home Ownership and Equity Protection Act of 1994 (HOEPA), the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act), and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). These protections have created a new equilibrium where resilient credit card and mortgage markets coexist with a decline in the consumer's cost of credit for these products.

As for small dollar credit, the OCC, FDIC, and NCUA have all issued small dollar lending guidance to banks and credit unions that reference a 36% APR. In 2017, the CFPB attempted to extend the ability to repay requirement to the small dollar lending market.



As online and mobile commerce continues to grow, consumers are increasingly turning to online, low-APR personal installment loans that are more transparent and affordable than legacy high-cost lenders. By using emerging techniques such as cash flow underwriting, alternative data, and machine learning, our member lenders have proven that they can lend responsibly to underserved borrowers below 36% APR. Fintech platforms, operating either via state licenses or through bank partnerships, have offered millions of consumer loans that meet the MLA standard and would continue to do so under this new legislation.

While opponents of this legislation will likely express concerns about consumers' access to much-needed credit, we believe that the risk of unmanageable debt burdens poses a much larger threat to the financial health of Americans.

Finally, our members stand ready to share our expertise, operational insight, and data to help in your efforts.

Sincerely,

A handwritten signature in black ink, appearing to read "Garry Reeder". The signature is fluid and cursive, with the first name "Garry" and last name "Reeder" clearly distinguishable.

Garry Reeder
Chief Executive Officer
American Fintech Council

Chairman Sherrod Brown
Committee on Banking, Housing, and Urban Affairs
503 Hart Senate Office Building
Washington, DC 20510

Ranking Member Patrick Toomey
Committee on Banking, Housing, and Urban Affairs
455 Dirksen Senate Office Building
Washington, DC 20510

July 29, 2021

Re: Support for Veterans and Consumers Fair Credit Act

Dear Chairman Brown and Ranking Member Toomey,

The undersigned 188 civil rights, community, consumer, faith, housing, labor, legal services, senior rights, small business, veterans organizations, and academics representing all 50 states and the District of Columbia write in strong support of the Veterans and Consumers Fair Credit Act, which would extend the Military Lending Act's 36% interest rate cap on consumer loans to all Americans, including veterans, Gold Star Families, and unactivated reservists. We write to express our support for the legislation and to urge its swift passage in the 117th Congress to protect all consumers from predatory lending.

The Veterans and Consumers Fair Credit Act addresses the problems caused by unaffordable, predatory payday, auto-title, and similar forms of loans by:

- **Reestablishing a simple, common sense limit on predatory lending** by extending the Department of Defense's 36% interest rate cap to all Americans. This would reestablish usury laws effective in virtually every state throughout most of the twentieth century.
- **Preventing hidden fees and loopholes.** The 36% rate cap is based on the Pentagon's successful rules that include not just periodic interest but fees and add-ons. Loopholes in the Truth in Lending Act's annual percentage rate have undermined cost transparency and emboldened evasions.
- **Maintaining low industry compliance costs from compromise rules already in effect.** Compliance costs for industry will be low because creditors *already* know how to comply for active-duty military and their families.
- **Upholding stronger state protections.** 36% is a relatively high rate and is appropriate only as an upper limit. States like Arkansas, Colorado, North Carolina, New Jersey, New York, and West Virginia already have strong interest rate caps lower than 36%, which will not be impacted because the bill does not preempt any provision of State law that provides greater protections to consumers. For larger loans, in particular, rates lower than 36% are appropriate.

Rate caps have long protected consumers from the harms of predatory lending. All major world religions oppose predatory lending, and rate caps actually originated in the Code of Hammurabi. In the United States, states have had the power to set rate caps since the American Revolution, and all thirteen original states had traditional usury limits capping interest rates.

High-cost predatory loans trap families in cycles of debt. These loans are marketed as a fix to meet immediate or emergency needs. But the vast majority of payday loan borrowers are unable to repay these triple-digit interest rate loans under the original terms, forcing them to refinance these loans repeatedly. Even in normal times, more than 80% of payday loans go toward covering prior payday loans. High-cost installment loans can be an even bigger and deeper unaffordable debt trap, stretching out for years and often leading to abusive refinancing. With high-cost longer term loans, borrower payments go heavily to interest, not repayment, allowing lenders to profit even if borrowers eventually default or if the loans lead to overdraft fees or inability to pay other expenses. During the COVID-19 pandemic and economic crisis, lenders marketed themselves as “here to help” and offered to waive fees on new loans. But as a rule, their business model is to make matters worse, not provide affordable access to credit. Currently, 45 states plus DC cap the interest rates on longer term loans, but many laws have loopholes. Eighteen states and DC have interest rate caps that prevent short-term payday loans, but residents of the remaining 32 states are at the mercy of these predatory lenders.

Predatory lenders target vulnerable consumers, including [veterans](#), [senior citizens](#), low-income consumers, [rural consumers](#), and [communities of color](#). These consumers have historically been excluded from mainstream financial services, and predatory lenders see that as an opportunity to target these communities. Several research studies have shown that payday lenders target communities of color, even when accounting for income. For example, Black consumers are about twice as likely as white consumers to live within a mile of a payday lender. One study found that 45% of veterans in Texas had taken out a payday or auto title loan, in comparison to just 7% of adult Texans overall in the same year. Predatory, high-cost lending will not make up for past discrimination or help achieve financial inclusion; instead, it exacerbates existing inequities by leaving vulnerable consumers with greater access to predatory lending and pushing responsible products further out of reach.

Rate caps work and work well. The Military Lending Act protects active-duty service members and their families and currently caps interest rates on consumer loans. In 2004, before it took effect, 1577 servicemembers sought help from the Navy-Marine Corps Relief Society for paying off predatory loans; by 2010 that number had [dropped](#) to 10. Currently, only 18 states plus DC have interest rate caps that prevent short-term payday loans, which leaves the remaining 32 states at the mercy of predatory lenders.

Veterans deserve better. While the Military Lending Act (MLA) currently caps interest rates on loans to active-duty service members and their families, Gold Star Families, veterans, and unactivated reservists are not protected. These members of the military community are especially susceptible to the financial and mental health problems associated with predatory payday loans. Predatory lenders target veterans and their families, using specialized marketing to appeal to

members of the military. The protections that applied to veterans when they were active duty no longer apply, leaving them particularly exposed to financial exploitation.

Usury limits have overwhelming bi-partisan, public support. Amid the COVID-19 crisis, Americans have expressed strong support for consumer protection measures, including limitations on interest rates. A [poll conducted](#) in 2020 found 81% of voters in support of prohibiting high-interest loans across parties and regions, and 69% in support of a 36% rate cap. (Other research has demonstrated that many Americans would like to see an even lower limit on rates.) Further, every ballot measure held on the subject in recent years has passed with broad support, including most recently, in Nebraska with 83% of the vote, joining states like Colorado, South Dakota, Arizona, and Montana.

Covers all lenders, including banks, preventing evasions. The vast majority of banks already keep their interest rates below 36%. However, since banks are almost entirely exempt from state rate caps, predatory lenders are starting to launder their loans through a few rogue banks so they can charge high rates in states where their loans are illegal. Congress needs to enact a national 36% rate cap on all lenders to protect consumers across the country.

Thank you for your leadership and we look forward to working with you to pass the Veterans and Consumers Fair Credit Act.

Yours very truly,

Accountable.US
 Americans for Financial Reform
 Association for Financial Counseling and Planning Education (AFCPE)
 CAARMA
 Capital Good Fund
 Center for Economic Justice
 Center for LGBTQ Economic Advancement & Research (CLEAR)
 Center for Responsible Lending
 Consumer Action
 Consumer Federation of America
 Consumer Reports
 Consumers for Auto Reliability and Safety
 Credit Builders Alliance
 Demos
 Faith in Action National Network
 Heartland Alliance
 Jesuit Social Research Institute
 The Leadership Conference on Civil and Human Rights
 Local Initiatives Support Corporation (LISC)
 Main Street Alliance
 Minority Veterans of America
 NAACP
 National Association for Latino Community Asset Builders

National Association of Consumer Advocates
 National Association of Consumer Bankruptcy Attorneys (NACBA)
 National Center for Law and Economic Justice
 National Community Reinvestment Coalition
 National Consumer Law Center (on behalf of its low income clients)
 National Consumers League
 National Fair Housing Alliance
 National Rural Social Work Caucus
 Public Citizen
 Public Good Law Center
 Public Justice
 United Church of Christ, Justice and Local Church Ministries
 U.S. PIRG
 Woodstock Institute

Alabama

Alabama Appleseed Center for Law & Justice
 Alabama Arise
 Community Foundation of Greater Birmingham
 The Worship Center Christian Church

Alaska

Alaska PIRG

Arizona

Arizona PIRG
 Center for Economic Integrity
 Primavera Foundation
 Southwest Fair Housing Council
 Tucson Diocesan Council, The Society of St. Vincent de Paul
 Wildfire: Igniting Community Action to End Poverty in Arizona
 William E. Morris Institute for Justice (Arizona)

Arkansas

Arkansans Against Abusive Payday Lending

California

California Asset Building Coalition
 California Low-Income Consumer Coalition (CLICC)
 California Reinvestment Coalition
 CALPIRG

Consumer Federation of California
 HOPE for All: Helping Others Prosper Economically
 Public Counsel
 Public Law Center
 CAMEO - California Association for Micro Enterprise Opportunity

Colorado

CoPIRG
 LaMedichi

Connecticut

Connecticut Legal Services, Inc.
 ConnPIRG

Annie H. Harper, Program for Recovery and Community Health, Yale School of Medicine
 Jeffrey Gentes, George W. and Sadella D. Crawford Visiting Clinical Lecturer, Yale Law School
 Peter Kochenburger, University of Connecticut School of Law

Delaware

Delaware Community Reinvestment Action Council, Inc.

District of Columbia

Tzedek DC

Arthur E. Wilmarth, Jr, George Washington University Law School
 Gary Peller, Georgetown University Law Center

Florida

Florida PIRG
 Jacksonville Area Legal Aid, Inc.

Georgia

Georgia PIRG
 Georgia Watch

Mark Budnitz, Professor of Law Emeritus, Georgia State University College of Law

Hawaii

Hawaii Appleseed Center for Law & Economic Justice

Idaho

United Vision for Idaho

Illinois

Catholic Conference of Illinois
Chicago Urban League
Housing Action Illinois
Illinois Asset Building Group
Illinois PIRG
New America Chicago

Colonel Paul E. Kantwill, USA (Ret.), Founding Executive Director, The Rule of Law Institute,
Loyola University Chicago School of Law

Indiana

Citizens Action Coalition of IN
Fair Housing Center of Central Indiana
HomesteadCS
Indiana Assets & Opportunities Network
Indiana Catholic Conference
Indiana Community Action Association, Inc.
Indiana Institute for Working Families
Indiana PIRG
Indiana United Ways
Lake Area United Way
MCCOY (Marion County Commission on Youth, Inc.)
Mother Hubbard's Cupboard
Northwest Indiana Community Action
Prosperity Indiana
Thrive Alliance
United Way of Allen County

Iowa

Iowa PIRG

Kansas

Andrea J. Boyack, Washburn University School of Law

Kentucky

Kentucky Equal Justice Center

Louisiana

Louisiana Budget Project
The Middleburg Institute

Maine

Maine Center for Economic Policy
Maine Equal Justice

Maryland

CASH Campaign of Maryland
Maryland Consumer Rights Coalition
Maryland PIRG
Public Justice Center

Massachusetts

Greater Boston Legal Services, on behalf of its low-income clients
MASSPIRG
The Consumer Assistance Council, Inc.

Kathleen Engel, Suffolk University Law School

Michigan

Community Economic Development Association of MI (CEDAM)
PIRG in Michigan (PIRGIM)

Minnesota

Exodus Lending
Minneapolis Area Synod, Evangelical Lutheran Church in America

Mississippi

Hope Policy Institute (Mississippi, Alabama, Arkansas, Tennessee, and Louisiana)

Missouri

Missouri Faith Voices
MoPIRG

Karen Tokarz, Washington University Civil Rights, Community Development & Mediation Clinic

Montana

MontPIRG

Nebraska

CUES Fund
Lending Link
Nebraska Appleseed
Voices for Children in Nebraska

Nevada

Keith A. Rowley, UNLV School of Law

New Hampshire

NHPIRG

New Jersey

New Jersey Citizen Action
NJPIRG

New Mexico

Independent Order of Odd Fellows, Santa Fe Lodge #2
New Mexico Center on Law & Poverty
New Mexico Working Families Party
NMPIRG
Prosperity Works

Nathalie Martin, University of New Mexico School of Law

New York

Empire Justice Center
Fordham Law School Feerick Center for Social Justice
Rural Law Center of New York, Inc.

Pamela Foohey, Benjamin N. Cardozo School of Law, Yeshiva University
Susan Block-Lieb, Fordham Law School

North Carolina

FIRST
NCPIRG
The Collaborative (NC)

Kate Sablosky Elengold, University of North Carolina School of Law

North Dakota

High Plains Fair Housing Center

Ohio

COHHIO
Ohio PIRG
Ohio Poverty Law Center

Cathy Lesser Mansfield, Case Western Reserve University School of Law
Creola Johnson, Moritz College of Law, The Ohio State University

Oklahoma

VOICE - OKC

Oregon

Oregon PIRG (OSPIRG)

Pennsylvania

PennPIRG
Pennsylvania Council of Chapters, Military Officers Association of America (MOAA)
Pennsylvania Council of Churches
The One Less Foundation (Pennsylvania and Colorado)

James J. Pierson, Business Chair, MBA Program Director & Assistant Professor, Chatham
University

Rhode Island

Economic Progress Institute
RIPIRG

South Carolina

Columbia Consumer Education Council

CommunityWorks
 South Carolina Appleseed Legal Justice Center
 South Carolina Association for Community Economic Development (SCACED)

South Dakota

National Association of Social Workers, South Dakota Chapter

Tennessee

Indivisible Tennessee
 Tennessee Justice Center

Texas

Family Pathfinders
 RAISE Texas
 Texas Appleseed
 United Way of Central Texas
 United Ways of Texas
 TexPIRG

Utah

Christopher Peterson, University of Utah, S.J. Quinney College of Law

Vermont

Vermont PIRG

Virginia

Virginia Citizens Consumer Council
 Virginia Organizing

Washington

Statewide Poverty Action Network
 WASHPIRG

West Virginia

Covenant House
 Mountain State Justice
 National Association of Social Workers - West Virginia Chapter
 Rise Up WV
 WV Citizen Action

Wisconsin

WISPIRG

Wyoming

Wyoming Trial Lawyers Association



United States Senate
 Committee on Banking, Housing, and Urban Affairs
 534 Dirksen Senate Office Building
 Washington, D.C. 20510

July 29, 2021

Re: Protecting Americans from Debt Traps by Extending the Military's 36% Interest Rate Cap to Everyone

Consumer Reports appreciates the Committee on Banking, Housing, and Urban Affairs holding a hearing regarding the need to protect consumers from predatory lending. We write today to express our support for the Veterans and Consumers Fair Credit Act. **We urge the Committee to rein-in predatory lending by passing the Veterans and Consumer Fair Credit Act and establishing a federal usury limit of 36%.**

Payday loans are marketed as lifelines to some of the most financially fragile Americans, yet are structured in a way that keep people trapped in cycles of debt. A typical payday loan is required to be paid back in full within two weeks, which is an unconventional and unreasonably short deadline for financially struggling consumers¹. The short payback period of these loans also results in triple digit APRs, with most borrowers unable to pay them off for four months.² Payday loans clearly aren't a lifeline at all - they're predatory debt traps.

Congress can put consumers first and directly address predatory lending by passing the Veterans and Consumers Fair Credit Act, a bipartisan bill which establishes a federal usury limit of 36%. The bill expands the existing rate cap for service members established under the Military Lending Act to apply to all consumers. In order to fit under the rate cap, small-dollar lenders would have to restructure their loans to have longer terms, making them more affordable and manageable for borrowers.

We strongly urge the Committee to rein-in predatory lending and pass the Veterans and Consumers Fair Credit Act.

¹ Lauren Saunders, *Why 36%? The History, Use, and Purpose of the 36% Interest Rate Cap*, National Consumer Law Center (NCLC), April 2013, available at: <https://www.nclc.org/images/pdf/pr-reports/why36pct.pdf>

² *Stopping the Payday Loan Trap: Alternatives That Work, Ones That Don't*, NCLC, June 2010, available at: https://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/report-stopping-payday-trap.pdf

Sincerely,

A handwritten signature in black ink, appearing to be 'Syed Ejaz', written in a cursive style.

Syed Ejaz
Policy Analyst



Communications Workers of America
Chris Shelton | President

Government Affairs Department
Dan Mauer | Director

July 29th, 2021

The Honorable Sherrod Brown
Chairman
U.S. Senate Banking, Housing and Urban Affairs Committee
503 Hart Building
Washington DC 20510

Dear Chairman Brown,

I am writing on behalf of the members and officers of the Communications Workers of America (CWA) to submit comments for the Committee's hearing on "Protecting Americans from Debt Traps by Extending the Military's 36% Interest Rate Cap to Everyone." Working families, who are struggling financially and have limited access to other forms of credit, are left vulnerable to predatory payday lenders who charge exorbitant interest rates. Extending the 36% interest rate cap to all consumers would assist working families by eliminating those predatory payday and auto-title loans.

Currently, the Military Lending Act (MLA) caps interest rates on loans to active duty service members and their families, however, it does not protect Veterans, Gold Star Families, or everyday consumers. As a result, our nation's Veterans and working families, who may be struggling financially and have limited access to other forms of credit, are left vulnerable to the predatory practices of these lenders. Research has shown that payday lenders target working class families and take advantage of financial distress by locating in communities with lower incomes, moderate poverty, residents with low or no credit scores and working-class families.

Additionally, payday lenders make service members and their families special targets of their predatory lending practices. In Texas, 82% of the zip codes that have a veterans' facility also have at least one payday or auto title storefront and nearly half have five or more payday loan storefronts. The annual percentage rates (APR) on many of these loans are as high as 500%. Extending the Military's 36% interest rate cap on consumer loans would do well to put a stop to that by not only capping the interest rates, but also by capping all additional fees or add-ons.

America's working families deserve to be protected against lenders that prey on them and create long-term debt traps that drain their bank accounts and cause significant financial harm. An extension of the Military's interest rate cap would facilitate a major step toward safeguarding our nation's working families from these predatory lenders.

Thank you in advance for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Daniel & Mauer".

Dan Mauer
Director of Government Affairs
Communications Workers of America (CWA)

Faith for Just Lending

a coalition to end predatory payday lending

May 21, 2021

United States Senate
Washington, DC 20515

Dear Senators,

Each year, many households face financial crises. Over the last several decades, high-cost lending to those in need has increased significantly. Nearly 16,000 payday and car title loan stores operate nationwide. Taking advantage of loopholes and a weakening of traditional usury laws, many of these lenders now offer loans at 300% APR and higher. Far too often, the result is families trapped in a cycle of debt with even less ability to pay the bills, keep food on the table, save for the next emergency, or provide for their children.

Scripture condemns usury and teaches us to respect the God-given dignity of each person and to love our neighbors rather than exploiting their financial vulnerability. Thus, just lending is a matter of Biblical morality and religious concern. Fairness and dignity are values that should be respected in all human relationships including business and financial relationships.

We urge churches, lenders, individuals and government to each do their part to teach stewardship, offer responsible products, use credit wisely, encourage just lending and put an end to predatory loans. We call for an end to the exploitation of households and families through the payday debt trap.

We call upon Congress to prohibit usury and predatory or deceptive lending practices and write to ask for your support of the Veterans and Consumers Fair Credit Act, legislation led by Senators Jack Reed (D-RI), Sherrod Brown (D-OH), and Jeff Merkley (D-OR). By establishing an interest rate cap of 36%, this bill is an important step toward preventing harm caused by predatory lending practices.

This rate cap has a proven track record. The Military Lending Act prohibits lenders from charging military servicemembers and their families more than 36% APR. This limit was proposed by the Defense Department after finding that high-interest loans were devastating troops' finances and harming force readiness. It was enacted with strong bipartisan support in 2006.

Currently, 19 states and the District of Columbia cap small dollar loan rates at 36% or lower. Their residents, around 100 million Americans, use various methods to address budgetary shortfalls – such as utility payment plans and credit cards – without the exorbitant cost or harm of high-interest credit. Strong interest rate caps are also popular across party lines. Voters in Arizona, Colorado, Montana, Nebraska, Ohio, and South Dakota have overwhelmingly approved them by ballot initiative.

We recognize that there will continue to be a need for access to short term credit options. However, this is not a reason for allowing predatory lenders to exploit borrowers. A free market ought to be a just market, and usurious lenders should not be permitted to flourish in the marketplace. In states with strong rate cap protections, credit unions, loan pools, and other innovative lending models have provided short term credit at reasonable interest rates based on ability to repay within the original loan period.

The Veterans and Consumers Fair Credit Act would extend the Military Lending Act's strong and successful interest rate cap to all Americans. It would not affect state rate caps that are lower and provide even greater consumer protection.

Faith for Just Lending

a coalition to end predatory payday lending

Collectively our organizations and denominations represent millions of Christians across the country. Our churches and charities are actively engaged in efforts to end poverty, alleviate suffering and promote opportunities for all people to flourish. We respectfully ask for your support of the Veterans and Consumers Fair Credit Act. Congress can and must end modern-day usury.

Sincerely,

Faith for Just Lending

Contact: Katie Thompson info@lendjustly.com 202-695-2667

Southern Baptist Ethics & Religious Liberty Commission
 United States Conference of Catholic Bishops, Committee on Domestic Justice and Human Development
 National Association of Evangelicals
 National Latino Evangelical Coalition
 National Baptist Convention, USA, Inc.
 Faith in Action
 Center for Public Justice
 The Episcopal Church
 Cooperative Baptist Fellowship



July 29, 2021

Chairman Sherrod Brown
 Ranking Member Patrick Toomey
 Committee on Banking, Housing, and Urban Affairs
 United States Senate
 Washington, DC 20510

Re: Support for Veterans and Consumers Fair Credit Act

Dear Chairman Brown and Ranking Member Toomey:

The undersigned Mississippi organizations write in support of the Veterans and Consumers Fair Credit Act, a consumer protection bill that would reduce annual interest rates on payday and car-title loans in our state from 500% to 36% annually.

Predatory lenders have created a financial stronghold in Mississippi. Under the guise of credit access, they set up shop primarily in low-income communities and disproportionately in communities of color.¹ Predatory lenders market their products as a quick and easy fix to financial stress, but in reality, they have designed products that ensnare borrowers in a vicious debt trap. Payday and car-title lenders offer products with triple digit interest rates. Here in Mississippi, payday lenders are charging annual percentage rates up to 500% APR. The resulting exorbitant payments threaten borrowers' ability to pay other obligations such as rent, medical expenses, and groceries. Payday lenders take access to a borrower's bank account, meaning they can stand first in line on a borrower's payday to seize the payment for the 500% APR loan. This leaves borrowers deeper in the hole, and so payday lenders make a new payday loan to fill the gap caused by the old payday loan. This is the trap.

This debt cycle is intentional. It is by design. More than 80% of payday loans are taken out within two weeks of the previous payday loan,² and the typical payday borrower is trapped in 10 loans a year.³ Predatory lenders collect enormous revenue from borrowers' inability to repay. Payday and car-title lenders extract half a billion dollars from Mississippi households annually, the bulk of which comes from people stuck in the debt trap.⁴ Data shows, nationally, that 75% of all payday loan fees are generated from borrowers with more than 10 loans a year.⁵ In addition to the inescapable debt cycle, payday loans lead to a range of additional harms: borrowers are likely to experience bank penalty fees, delinquency on bills or child support payments, and involuntary bank account closures.⁶

The debt trap is preventable, but Mississippi lawmakers have allowed predatory lenders to extract millions from vulnerable communities. Despite calls from faith leaders, veterans groups, civil rights organizations, seniors, women's advocacy groups and others, the Mississippi legislature has not only refused to enact a 36% rate cap, but in 2016, enacted a law which expanded the type of predatory lending allowed in our state. Mississippi, as a result, has the among the highest concentration of payday and car title lenders in the country, with over 1,000

lenders licensed to make these loans.⁷ Online lenders have also established a presence in the state with the help of out-of-state banks. This scheme presents an additional harm to Mississippi communities. Online lenders are making triple-digit loans in Mississippi, through this rent-a-bank scheme, adding to the burden of unaffordable predatory loans already saturating our communities.⁸

Because of the harm caused to Mississippians by these predatory loans, we support interest rate caps at both the state and federal level. An interest rate cap is the most effective way to stop the debt trap. Eighteen states and the District of Columbia have enacted an interest cap at about 36% or less. The more than 110 million people living states are protected from the harms of high-cost loans, and they save over \$2.2 billion annually that would have otherwise been paid towards payday loan fees.⁹ A federal interest cap would provide much-needed protection against predatory products here in Mississippi.

The Veterans and Consumers Fair Credit Act would extend the Military Lending Act's 36% interest cap to all Americans. It would ensure that all payday loans, online and in-store, offer products with annual percentage rates no higher than 36%. According to January 2020 poll, an overwhelming majority (71%) of Mississippians are in support of a "proposal to put a cap on interest rates that payday lenders may charge at 36% annual interest."¹⁰

Join us in supporting Veterans and Consumers Fair Credit Act to ensure that families in Mississippi have adequate protections and opportunity for financial stability.

Sincerely,

ACLU of Mississippi
 The African Methodist Episcopal Zion Church
 Center for Innovative Social Change, Inc.
 Cooperative Baptist Fellowship
 Hope Policy Institute
 Mississippi Center for Justice
 Mississippi Low Income Child Care Initiative
 Mississippi NAACP
 Mississippi Rising Coalition
 Mississippi Women's Economic Security Initiative
 Mississippi Black Women's Roundtable
 Shady Grove Missionary Baptist Church
 Steps Coalition

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- ¹ U. King, D. Davis, W. Li., Center for Responsible Lending, Race Matters: The Concentration of Payday Lenders in African-American Neighborhoods in North Carolina, (2005), <http://bit.ly/2KkG72S>; W. Li, L. Parrish, K. Ernst, and D. Davis, Center for Responsible Lending, Predatory Profiling: The Role of Race and Ethnicity in the Location of Payday Lenders in California, (2009), <http://bit.ly/2r4kVW6>; B. Coleman and D. Davis, Center for Responsible Lending, Perfect Storm: Payday Lenders Harm Florida Consumers Despite State Law, (2016), <http://bit.ly/2vMPoxO>
- ² Consumer Financial Protection Bureau. "CFPB Data Point: Payday Lending". March 2014, <https://bit.ly/2Vt8ic8>
- ³ Consumer Financial Protection Bureau, Payday Loans and Deposit Advance Products: A white paper of initial data findings (2013), <https://bit.ly/2PwG3S3>
- ⁴ Center for Responsible Lending. "Payday and Car-Title Lenders Drain Nearly \$8 Billion in Fees Every Year". April 2019, <https://bit.ly/2w8JisK>
- ⁵ Consumer Financial Protection Bureau, Payday Loans and Deposit Advance Products: A white paper of initial data findings (2013), pg. 22, <http://bit.ly/2GQJ77r>
- ⁶ See following research papers: B. Melzer, The Real Costs of Credit Access: Evidence from the Payday Lending Market, (2011), Oxford University Press, <http://bit.ly/21G5fL>; B. Melzer, Spillovers from Costly Credit (2017), The Review of Financial Studies, Volume 31, Issue 9, September 2018, Pages 3568–3594, <http://bit.ly/2vaX1Xz>; Agarwal, S., Skiba, P. M., & Tobacman, J., Payday loans and credit cards: New liquidity and credit scoring puzzles? NBER Working Paper (2009), <http://bit.ly/2r3Uhrp>; See D. Campbell, A.S. Jerez, & P. Tufano, Bouncing Out of the Banking System: An empirical analysis of involuntary bank account closures, Harvard Business School (2011), <http://bit.ly/2IwsBYK>
- ⁷ Mississippi Center for Justice. "Predatory Lending". Retrieved from <https://bit.ly/3ITdxW>
- ⁸ HOPE Policy Institute. "HOPE Submits Comments to OCC Rent-a-Bank Proposals," January 2020, <https://bit.ly/2wRvTox>; See also, Hope Policy Institute, "HOPE Submits Comments Opposing OCC True Lender," Sept. 2020, <https://bit.ly/3rCOmgM>
- ⁹ D. Davis, C. Rios, and D. Standaert, Center for Responsible Lending, Payday and Car-Title Lenders Drain Nearly \$8 Billion in Fees Every Year, updated April 2019, <http://bit.ly/2DG6fUg>
- ¹⁰ Center for Responsible Lending. "New Morning Consult Poll Shows Broad, Bipartisan Support among Voters for 36% Interest Rate Cap on Payday and Installment Loans." February 2020, <https://bit.ly/32EhCaD>