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

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I. Introduction

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

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

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

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

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

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

II. Ensuring Equity in Small Business Lending

A. Small Businesses of Color Entered the Pandemic Credit Starved

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

B. The Paycheck Protection Program was not implemented equitably

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

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[3] Small Business Credit Survey: Report on Employer Firms (2020).

[4] National Community Reinvestment Coalition. (2019). "Disinvestment, Discouragement and Inequity in Small Business Lending." Available at https://ncrc.org/wp-content/uploads/2019/09/NCRC-Small-Business-Research-FINAL.pdf.

[5] *Ibid.*

[6] *See* McManus, 2016. ("Research also finds that minority business owners are more likely to feel discouraged from seeking private loans. In a Census survey, only 16% of nonminorities felt discouraged from seeking a loan, while almost 30% of minorities felt the same way. These, in combination with other reasons, may be why minority business owners have a heavier reliance on personal finances.") (citing Christine Kymn, U.S. Small Business Administration, Office of Advocacy, Access to Capital for Women- and Minority-owned Businesses: Revisiting Key Variables, January 2014, https://www.sba.gov/sites/default/files/Issue%20Brief%203%20Access%20to%20Capital.pdf)

[7] Federal Reserve (2019) "Small Business Credit Survey: Report on Minority-Owned Firms." Available at https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/20191211-ced-minority-owned-firms-report.pdf.

[8] Small Business Administration, SBA Business Loan Approval Activity Comparisons for Fiscal Years 2012 to 2019, for the Period Ending 08-30-2019. Available at https://www.sba.gov/sites/default/files/aboutsbaarticle/WebsiteReport_asof_20190830.pdf.

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

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

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

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

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

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

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

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

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

1. Ongoing failures to equitably serve the smallest businesses

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

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

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

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

[13] "2018 Small Business Profile." Small Business Administration Office of Advocacy, 2018. Available at https://www.sba.gov/sites/default/files/advocacy/2018-Small-Business-Profiles-US.pdf?fbclid=IwAR2mlIFIyWGX0RwJtDR6CDT21cpreCyXtS15N2XJgHNlJ7n8SVYKBcxfd7U.

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

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

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

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

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

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

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

2. Lack of data and transparency in small business lending

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

[17] CRL analysis of SBA PPP data.

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

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

III. Helping Struggling Homeowners Stay in Their Homes

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

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

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

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[18] *See* Alan Gomez, et al, '*An Unbelievable Chain of Oppression': America's History of Racism Was a Preexisting Condition for COVID-19*, USA Today, Oct. 12, 2020, https://www.usatoday.com/in-depth/news/nation/2020/10/12/coronavirus-deaths-reveal-systemic-racism-united-states/5770952002/; Andre M. Perry, Black Americans Were Forced Into 'Social Distancing' Long Before the Coronavirus, The Brookings Institution (March 20, 2020), https://www.brookings.edu/blog/the-avenue/2020/03/20/black-americans-were-forced-into-social-distancing-long-before-the-coronavirus/.

[19] Jason Richardson, Bruce C. Mitchell, Helen C.S. Meier, Emily Lynch, Jad Edlebi, *Redlining and Neighborhood Health*, NCRC, September 2020, https://ncrc.org/holc-health/.

[20] *Ibid.*

[21] Yixia Cai and Dean Baker (March 2021) *Masking Real Unemployment: The Overall and Racial Impact of Survey Non-Response on Measured Labor Market Outcomes*, Center for Economic and Policy Research, https://www.ineteconomics.org/research/research-papers/masking-real-unemployment-the-overall-and-racial-impact-of-survey-non-response-on-measured-labor-market-outcomes.

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

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

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

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

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

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

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

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

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

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

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

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

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[23] David Low, *Mortgage Default with Positive Equity,* Working Paper (2018), Andrew F. Haughwout and Ebiere Okah, *Below the Line: Estimates of Negative Equity Among Nonprime Mortgage Borrowers,* Economic Policy Review, Vol. 15, No. 1, pp. 32-43 (2009), and Anthony Pennington-Cross, *Subprime and Prime Mortgages – Loss Distributions*, FHFA Staff Working Papers 03-01, Federal Housing Finance Agency (2003).
[24] United States Department of Housing and Urban Development, *Economic Impact Analysis of the FHA Refinance Program for Borrowers in Negative Equity Positions* (2010) and U.S. Congress Joint Economic Committee, *Report of the Joint Economic Committee Congress of the United States on the 2007 Economic Report of the President Together With Minority Views,* U.S. Government Printing Office (2007).
[25] Rebecca Diamond, Adam Guren, and Rose Tan, *The Effects of Foreclosures on Homeowners, Tenants, and Landlords*, Working Paper (2020).
[26] Janet Currie and Erdal Tekin, *Is There a Link between Foreclosure and Health?*, American Economic Journal: Economic Policy, 7 (1): 63-94 (2015).
[27] Alexander C. Tsai, *Home Foreclosure, Health, and Mental Health: A Systematic Review of Individual, Aggregate, and Contextual Associations*." *PLoS ONE* 10(4): e0123182 (2015).
[28] Arpit Gupta, *Foreclosure Contagion and the Neighborhood Spillover Effects of Mortgage Defaults*, Journal of Finance *74*, 2249–2301 (2019).
[29] Urban Institute (2020), "Why it's Harder to Offer Mortgage Assistance to 3 Million Borrowers with Private Loans". Available at Why It's Harder to Offer Mortgage Assistance to 3 Million Borrowers with Private Loans | Urban Institute

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

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

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

Consumer Financial Protection Bureau

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

Federal Housing Finance Agency

The modification provided by the GSEs, called the Flex Mod, is commendable. It is streamlined for borrowers 90 days or more delinquent, which reduces frictions and increases take-up rates, and provides substantial payment relief for borrowers with loan-to-value (LTV) ratios above 80%. When the Flex Mod was developed, the expectation was that if there were another crisis, it would look like the last one and housing values would fall, which would push up borrowers' LTVs over 80% and most would get this payment relief. However, the current crisis is accompanied by continued rapid house price appreciation in many communities, and so roughly 75 percent of GSE borrowers exiting forbearance will

have LTVs **below** 80 percent.[30] As a result, the only modification step these borrowers are eligible for under the Flex Mod is extension of the mortgage term to 40 years. The GSEs target 20 percent reduction in principal and interest (P&I) payments, which equates to about a 14 percent reduction in the overall monthly payment. After receiving the term extension, some borrowers below 80% LTV will receive this level of payment relief, but some others will not, depending largely on how old the loan was. However, even if they receive this amount of payment relief, it will not be enough for many borrowers given the economic dislocations they face and they will lose their house to foreclosure, or in the best case, through a forced sale.

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

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

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

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[30] Black Knight (https://cdn.blackknightinc.com/wp-content/uploads/2020/10/BKI_MM_Aug2020_Report.pdf) indicates that 84% of homeowners with a GSE-backed mortgage have a current CLTV below 80%. After capitalizing arrearages, roughly 75% of homeowners with a GSE-backed mortgage have a current CLTV below 80%.

[31] Peter Ganong and Pascal Noel, *Liquidity Versus Wealth in Household Debt Obligations: Evidence from Housing Policy in the Great Recession*, American Economic Review, 110(10): 3100-3138 (2020).

[32] Sumit Agarwal, Souphala Chomsisengphet, Hua Kiefer, Leonard C. Kiefer, and Paolina C. Medina, *Inequality During the COVID-19 Pandemic: The Case of Savings from Mortgage Refinancing*, Working Paper (2020) and Kristopher Gerardi, Paul Willen, and David Hao Zhang, *Mortgage Prepayment, Race, and Monetary Policy*, Working Paper 20-7. Boston: Federal Reserve Bank of Boston (2020).

[33] Urban Institute, Housing Finance At a Glance: A Monthly Chartbook (February 2021), https://www.urban.org/sites/default/files/publication/103746/housing-finance-at-a-glance-a-monthly-chartbook-february-2021_0.pdf. See pages 17 and 23.

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

Federal Housing Administration

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

IV. Protecting Student Borrowers

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

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

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

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[34] Mitchell, M.; Leachman, M.; & Masterson, K. 2016. Funding Down, Tuition Up: State Cuts to Higher Education Threaten Quality and Affordability at Public Colleges. *Center on Budget and Policy Priorities*. Available at https://www.cbpp.org/sites/default/files/atoms/files/5-19-16sfp.pdf.

[35] *Ibid.*

[36] Center for Responsible Lending. August 2013. *2013 Update: The Spillover Effects of Foreclosures*. Available at https:// www.responsiblelending.org/sites/default/files/nodes/files/research-publication/2013-crl-research-update-foreclosurespillover-effects-final-aug-19-docx.pdf.

[37] Center for Responsible Lending, UnidosUS, the National Association for the Advancement of Colored People, the National Urban League, and the Leadership Conference Education Fund. September 2019. Quicksand: Borrowers of Color and the Student Debt Crisis. Available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-quicksand-student-debt-crisis-jul2019.pdf.

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

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

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

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

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[39] Board of Governors of the Federal Reserve System. January 2021. *Consumer Credit – G.19*. Available at https://www.federalreserve.gov/releases/g19/current/default.htm.

[40] Center for Responsible Lending et. al. September 2019.

[41] *Ibid.*

[42] Kaufman, B. 2020, April 30. "Private Student Loans: New Report Sheds Light on the Need for Borrower Protection in an Opaque $130 Billion Market." *Student Borrower Protection Center*. Available at https://protectborrowers.org/130-billion-psl-market/.

[43] The Institute for College Access & Success. April 2019. *Private Student Loans: Facts and Trends*. Available at https://ticas.org/wp-content/uploads/2019/08/pl_facts_trends.pdf.

[44] The Institute for College Access & Success April 2019.

[45] Consumer Financial Protection Bureau. 2015, June 18. *CFPB Finds 90 Percent of Private Student Loan Borrowers Who Applied for Co-Signer Release Were Rejected*. Available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-90-percent-of-private-student-loan-borrowers-who-applied-for-co-signer-release-were-rejected/.

[46] Student Borrower Protection Center. July 2020. *Shadow Student Debt*. Available at https://protectborrowers.org/wp-content/uploads/2020/12/Shadow-Student-Debt.pdf.

[47] Student Borrower Protection Center July 2020.

[48] Consumer Financial Protection Bureau. 2015, October 28. *CFPB Wins Default Judgment Against Corinthian Colleges for Engaging in a Predatory Lending Scheme*. Available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-wins-default-judgment-against-corinthian-colleges-for-engaging-in-a-predatory-lending-scheme/.

[49] *Ibid.*

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

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

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

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

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[50] Kaufman 2020.

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

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

[53] *Ibid.*

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

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

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

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

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

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

B. Other forms of risky private education debt are emerging

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V. Protecting Consumers from Predatory Small Dollar Loans

A. High-Cost Lending During COVID-19

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

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

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

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

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

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

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

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

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

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[69] The Pew Charitable Trust. July 2012. "Payday Lending in America: Who Borrows, Where they Borrow, and Why." Available at Payday Lending in America: Who Borrows, Where They Borrow, and Why (pewtrusts.org)

[70] Ibid.

[71] Davis, D. and Stifler, L. August 2018. "Power Steering: Payday Lenders Targeting Vulnerable Michigan Communities." Available at Power Steering: Payday Lenders Targeting Vulnerable Michigan Communities | Center for Responsible Lending; David, D. and Coleman, B. March 2016. " Perfect Storm: Payday Lenders Harm Florida Consumers Despite State Law." Available at Microsoft Word - crl_perfect_storm_florida_mar2016.doc (responsiblelending.org); Alabama Appleseed Center for Law and Justice and Alabama Arise. 2019. *Broke: How Payday Lenders Crush Alabama Communities.* Available at Broke: How payday lenders crush Alabama communities – Alabama Appleseed

[72] Veritec Solutions, LLC. July 2020. "COVID-19 Impact Study On Small Dollar Lending." Available at Veritec_COVID_study_rev (veritecs.com)

[73] Pardue, L. January 2021. *The COVID Pandemic is Pushing Small Business Workers Deeper into Debt – Here's How To Help Change that.* Available at The COVID Pandemic is Pushing Small Business Workers Deeper Into Debt—Here's How To Help Change That | Gusto

[74] Consumer Financial Protection Bureau. Consumer Complaint Database. Search of Top Issues by product and issue/sub-issue from March 7, 2020 -March 7, 2021. Available at https://www.consumerfinance.gov/data-research/consumer-complaints/search/?dataNormalization=None&dateRange=1y&date_received_max=2021-03-07&date_received_min=2020-03-07&issue=Struggling%20to%20pay%20your%20loan&issue=Charged%20fees%20or%20interest%20you%20didn%27t%20expect&product=Payday%20loan%2C%20title%20loan%2C%20or%20personal%20loan&searchField=all&tab=Map

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Curbing Widespread Abusive Debt Collection Practices

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

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

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

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

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

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

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

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

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

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

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

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

[86] Saunders, L. and Saunders, M. May 6, 2020. "Protecting Against Creditor Seizure of Stimulus Checks." Available at https://library.nclc.org/protecting-against-creditor-seizure-stimulus-checks -- including CA, DC, IL, IN, MD, MA, MN, NE, NV, NY, OR, RI, TX, VA, WA.
[87] CNBC. "Do you need more than 3 to 6 months' worth of expenses saved during the COVID-19 pandemic? Here's what experts say." Available at *https://www.cnbc.com/2020/03/27/howbig-*your-emergency-fund-should-be-during-the-covid-19-pandemic.htm; Financial Health Network. *U.S. Financial Health Pulse – 2020 Trends Report* https://s3.amazonaws.com/cfsi-innovation-files-2018/wp-content/uploads/2019/05/07151007/FHN-Pulse_Baseline_SurveyResults-web.pdf.
[88] Baradaran, M. The Color of Money: Black Banks and the Racial Wealth Gap. 2017. Boston, MA: Belknap Press.
[89] McIntosh, K.; Moss, E.; Nunn, R.; & Shambaugh, J. February 2020. "Examining the Black-white wealth gap." Brookings Institution. Available at https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/.

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

B. Addressing Abusive Overdraft Fees

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

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

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

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

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

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

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

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

II. Credit Reporting Protections Are Essential

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

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

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

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

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

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

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

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

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

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

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

III. Conclusion

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

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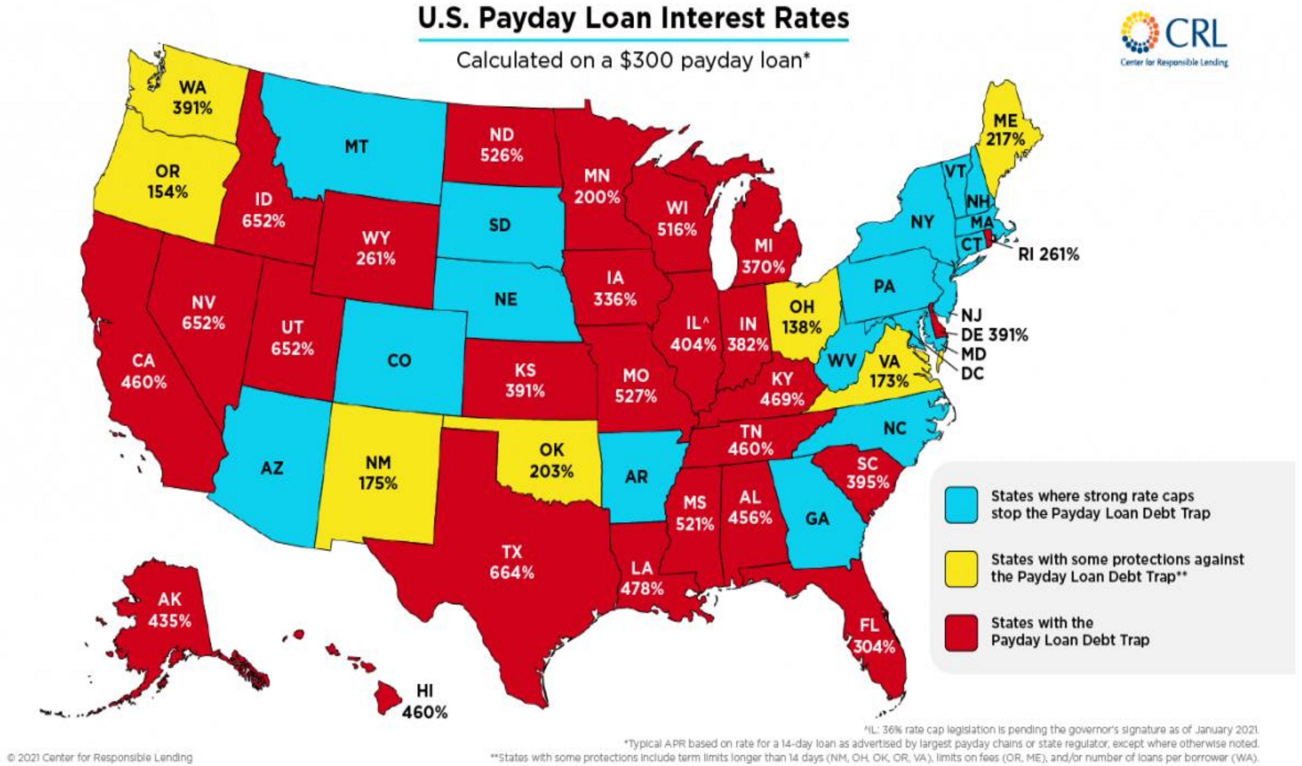
[99] U.S. PIRG (2021), *Consumers in Peril,* Available at https://uspirgedfund.org/sites/pirg/files/reports/USP_CFPB_Report_%20Consumers%20in%20Peril.pdf

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



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

AdvanceAmerica

Available Loans Rates & Terms Find a Store FAQs Login Apply

Home › COVID-19 Information

COVID-19 RESPONSE

As we go through these uncertain times, you can remain certain that we'll be here for you.

Stores & Online Options	Customer Care	FAQs

Stores & Online Options

Our teams are following best practices for the health and safety of our customers, employees and communities.

- **Our stores remain open to service your existing loan or open a new loan.** Keep in mind store hours may vary. Find a store.
- **We have implemented additional cleaning procedures in our stores,** provided masks, and are counseling employees on social distancing steps to protect their health and yours.

Our online self-service channels and Customer Care Team are equipped to meet your needs and manage inquiries.

- **Debit card payments are accepted via phone.** To make a payment or for any questions, contact our Customer Care Team at (844) 562-6480, Monday through Friday from 8 am – 9 pm ET, and Saturday from 9 am – 6 pm ET.
- **Online loan applications and servicing** capabilities are available in many states. Check online availability in your state.

Customer Care

First, and foremost, we want you to take care of yourself. Follow the recommendations for common-sense prevention, including washing your hands frequently, staying home, avoiding touching your face and contact with sick people.

Texas Car Title & Payday Loan

About Loan Types Locations Careers **Apply Now**

1 (800) 227-4707

Make A Payment

Worried About Coronavirus? How Title Loans Could Bring Relief

March 9, 2020 | Peyton Sawyer

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Keyword

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

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

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

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

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