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Before the United States Senate Committee on Banking, Housing and Urban Affairs

"Protecting Americans from Debt Traps by Extending the Military's 36% Interest Rate Cap to Everyone"

Thursday, July 29, 2021

Introduction

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

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

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

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

The borrower stories shared above demonstrates how predatory loans can devastate the financial well-being and health of families. Although, payday and other predatory lenders claim to provide consumers quick and easy access to cash, the evidence of harms to consumers from these loans is well established and vast. Nationally, payday and car title lenders charge annual percentage rates (APRs) averaging around 300%-400% and strip away around $8 billion annually from people typically earning $25,000 a year.[3] The debt trap of unaffordable loans drives this business model, with 75% of fees generated by people stuck in more than 10 loans a year.[4] Low-income borrowers face a cascade of consequences such as delinquency on other bills, bank account closures, and even bankruptcy. Policy trends at the

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

Despite efforts by policymakers at all levels to rein in high-cost lending, there has been substantial growth in the issuance of larger loans with longer terms and with rates ranging from 100%-200% APR. The increase in longer-term high-cost installment lending is coming from brick-and-mortar payday lenders, and from lenders operating online. For example, one traditional payday loan company offers an installment loan product for $1,000, repaid over 12 months with a monthly payment of $305.96. By the time the consumer pays that loan back (if they are even able to do so on those terms), they will have paid $3,660.96 – an APR of nearly 350%.[5] Many of these online lenders seek to disguise their harmful lending practices under the guise of "fintech" while making excessively priced loans with direct access to a borrowers' bank account and no safeguards of affordability. The "fintech" label does not wipe away the underlying harms and consequences of these unaffordable loans. Regardless of whether the loan is made through an "app" or a storefront, high-cost loans, made without regard to the borrower's ability to afford them, result in high default rates and keep consumers trapped in a cycle of debt.

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

Auto or car title loans can be particularly devastating. In addition to inflicting the same harms caused by payday and other high-cost installment loans, auto title loans put borrowers at substantial risk of losing their car. The consequences of losing one's vehicle are dire—both the loss of a valuable asset and the serious disruption of a borrower's ability to get to work, earn income, and manage their lives. More than a third of auto title borrowers have reported that they pledged the only working car in their household as security for their auto title loan.[6] Research has found that an astounding one in five auto title borrowers have their car repossessed.[7] In Virginia, a state that allows longer-term car title loans, lenders seized over 70,000 cars between 2014 and 2017.[8]

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

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

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

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

My testimony today will:

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

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

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

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

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

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

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

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

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

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

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

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

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

- Vanita Gupta, when serving as President and CEO of The Leadership Conference on Civil and Human Rights[21]

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

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

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

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

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

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

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

The debt treadmill becomes so unsustainable that eventually nearly 50% of borrowers default on payday loans, even though they have generally paid significant amounts in fees and interest.[27] Prior to enactment of South Dakota's rate cap, a borrower in that state who had received an original $2,000 loan, was flipped 13 times in loans carrying 260% APR over the course of 2 years, paying over $8,300 in interest and fees. Three years after her last payment, the payday lender filed a collection suit for $5,300.[28] For another person, a $200 loan resulted in seven flips, $3,233 interest and fees paid before defaulting, and a debt collection suit of $3,400.[29] Upon default, payday lenders employ aggressive debt collection tactics, such as contacting people at work or their friends and family. Once a payday loan debt goes into collection, it is often reported to the credit bureaus, thus further damaging their credit standing and increasing barriers to jobs, housing, insurance or other affordable products in the future.

While the bulk of payday and car title loans are due in full with a single payment in 14 or 30 days, many of these payday and car title lenders are now also making high-cost installment payday and car title loans. Lenders falsely argue that simply because a loan is an installment loan, it is a good loan. Despite their installment terms, these loans have the same troublesome characteristics as payday and car title loans: a lack of underwriting; access to a borrower's bank account or car as security; structures that prevent borrowers from making progress repaying; and excessive rates and fees that increase costs further when loans are flipped. Worse, these loans are for larger amounts and have longer repayment periods that make them even more expensive. For example, a California veteran was given a loan of $5,125 with an interest rate of 116 percent, and a seven-year loan term that ended up costing her $42,000.[30]

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

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

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

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

- Julian Bond, former national chairman of the NAACP[33]

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

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

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

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

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

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

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

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

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

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

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

One widow who relied on Social Security for her income testified before the Senate Committee on Aging that her $500 bank payday loan from Wells Fargo (which Wells Fargo no longer offers) got her trapped for five years and ended up costing her nearly $3,000.[49]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- *Lisa Hasegawa, former Executive Director of the National Coalition for Asian Pacific American Community Development*[57]

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

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

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

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

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

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

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

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

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

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

and financial harms.

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

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

Conclusion

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

[1] CFPB complaints database #1377341 (California borrower)

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

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

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

[5] Advance America. Store Locations in South Carolina – Installment Loans. South Carolina Payday Loans | Installment Loans | Title Loans | Advance America

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

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

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

[9] One finds that access to payday loans substantially increased suicide risk—including by over 16% for those ages 25-44. Jaeyoon Lee, *Credit Access and Household Welfare: Evidence From Payday Lending* (SSRN Working Paper, 2017. Another finds that short-term loans, including payday loans, are associated with a range of negative health outcomes, even when controlling for potential confounders. Elizabeth Sweet et al., *Short-term lending: Payday loans as risk factors for anxiety, inflammation and poor health,* 5 SSM—Population Health, 114–121 (2018), *https://doi.org/10.1016/j.ssmph.2018.05.009.* These outcomes include symptoms of physical health, sexual health, and anxiety, as well as higher levels of C-reactive protein, which is an indicator of many long-term diseases, including cardiovascular disease, and an indicator of psychological stress. *Id.* Another study finds that restrictions on payday lending reduced liquor sales. Harold E. Cuffe & Christopher G. Gibbs, *The Effect of Payday Lending Restrictions on Liquor Sales,* 85(1) J. Banking & Fin. 132–45 (2017). In one study of qualitative data, respondents revealed symptoms of "allostatic load," a health psychology term that describes how compounding stress can lead to wear and tear on the body. Elizabeth Sweet et al., *Embodied Neoliberalism: Epidemiology and the Lived Experience of Consumer Debt*, 48(3) International Journal of Health Services (2018). The authors describe the respondents as having "embodied" their debt through idioms like "drowning in debt" and "keeping [their] head above water," which illustrated that the participants "experienced debt as a bodily sensation, not only a socioeconomic position or emotional stressor." *Id.* One payday borrower has reported that after being a "a pretty healthy young person," she "became physically sick, broke out in hives . . . [and] had to go to urgent care" as a result of her high-cost loan. Health Impact Partners and Missouri Faith Voices, *When Poverty Makes You Sick: The intersection of health and predatory lending in Missouri* (Feb. 2019), https://humanimpact.org/wp-content/uploads/2019/02/HIP-MFV_PayDayLending_2019.02fin1.pdf. Another expressed feeling, "[i]f I died, my debt would die with me. At least I could give my family that." *Id.*

[10] CNN Business. "Whites have 12 times the wealth of blacks." (2015) Whites have 12 times the wealth of blacks, 10 times that of Hispanics (cnn.com)

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

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

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

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

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

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

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

[17] 2019 FDIC National Survey of Unbanked and Underbanked Households at 13, available at FDIC_2019_SurveyReport-book (economicinclusion.gov)

[18] Id.

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

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

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

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

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

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

[25] See following research papers: B. Melzer, The Real Costs of Credit Access: Evidence from the Payday Lending Market, (2011), Oxford University Press, http://bit.ly/2I1G5fL ; B. Melzer, Spillovers from Costly Credit (2017), *The Review of Financial Studies*, Volume 31, Issue 9, September 2018, Pages 3568–3594,https://doi.org/10.1093/rfs/hhx134 ; Agarwal, S., Skiba, P. M., & Tobacman, J., Payday loans and credit cards: New liquidity and credit scoring puzzles? NBER Working Paper (2009), http://bit.ly/2r3Lhrp ; See D. Campbell, A.S. Jerez, & P. Tufano , Bouncing Out of the Banking System: An empirical analysis of involuntary bank account

closures, Harvard Business School (2011), http://bit.ly/2JwsBYK

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

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

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

[29] Id.

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

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

[32]Elevate Credit, Inc., 2020 Annual Report 133771_PROOF_rev9_.pdf (q4cdn.com)

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

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

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

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

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

[38] Id.

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

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

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

[42] Maps on file with the Center for Responsible Lending.

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

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

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

[46] The Pew Charitable Trusts, *Payday Lending in America: Who Borrowers, Where They Borrow, and Why* at 9 (2012), http://bit.ly/2I2aryG .

[47] National Council on Aging. "Get the Facts on Economic Security for Seniors" (2021). Get the Facts on Economic Security for Seniors (ncoa.org).
[48] In California in 2015, nearly a third of borrowers were age 52 and over; the portion of borrowers age 62 and over grew steadily from 12.8% in 2013, to 13.2% in 2014, to 13.9% in 2015.
[49] Testimony of Annette Smith before to the U.S. Senate Special Committee on Aging, July 24, 2013, https://www.youtube.com/watch?time_continue=50&v=UG7B3L3oDN8
[50] Remarks by John D. Hawke, Jr., Comptroller of the Currency, Before the Women in Housing and Finance at 10 (Feb. 12, 2002), https://www.occ.treas.gov/news-issuances/speeches/2002/pub-speech-2002-10.pdf.
[51] https://www.occ.treas.gov/news-issuances/news-releases/2002/nr-occ-2002-10.html.
[52] Remarks by John D. Hawke, Jr., Comptroller of the Currency, Before the Women in Housing and Finance at 10 (Washington, D.C. Feb. 12, 2002), https://www.occ.treas.gov/news-issuances/speeches/2002/pub-speech-2002-10.pdf.
[53] D. Davis, C. Rios, and D. Standaert, Center for Responsible Lending, *Payday and Car-Title Lenders Drain Nearly $8 Billion in Fees Every Year*, updated April 2019, https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-statebystate-fee-drain-apr2019.pdf.
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[61] 80 Fed. Reg. 43560 (July 22, 2015)
[62] R. Howarth, D. Davis, & S. Wolff, Shark-Free Waters: States Are Better Off without Payday Lending Center for Responsible Lending (Aug. 2016), http://bit.ly/2KjkLTM
[63] Pew Charitable Trusts, How Borrowers Choose and Repay Payday Loans, (2013), http://www.pewtrusts.org/~/media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-(1).pdf