Consumer Federation of America

WOODSTOCK INSTITUTE

Advancing Economic Security and Community Prosperity

Report:
Alternatives to High-Cost Loans and Policy Solutions to Expand Affordable Options

About the Organizations

The **Consumer Federation of America (CFA)** is a nonprofit association of more than 250 national, state, and local consumer groups that was founded in 1968 to advance the consumer interest through research, advocacy, and education. For over 50 years, CFA has been at the forefront of consumer protection with a broad portfolio of issues including financial services, banking, product safety, telecommunications, investor protection, energy, housing, insurance, privacy and saving. CFA's non-profit members range from large organizations such as Consumer Reports and AARP, to small state and local advocacy groups and include unions, coops, and public power companies.

Woodstock Institute is a leading policy and research nonprofit that advocates for consumer financial protection and community economic development. Our work seeks to combat structural inequities and to improve the quality of life in lower-income neighborhoods and communities of color. Among our areas of focus are predatory lending, access to banking, debt collection, and municipal fines and fees.

About the Authors

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INTRODUCTION

Rate caps are the simplest and most effective way that state governments and Congress can protect consumers from the harms of high-cost loans. A growing number of states have capped rates at 36 percent, and Congress is considering a national 36 percent rate cap.

As federal and state policymakers states consider rate caps to eliminate predatory high-cost loans, debates arise about what alternatives consumers have without these loans. This report provides an overview and analysis of the many alternative products and strategies employed by consumers when high-cost credit is unavailable. In addition, this report spotlights initiatives, products, and resources from throughout the country.

Usury rates have long been engrained in the American experience. Massachusetts was the first colony to adopt a usury law (at 8 percent) in 1641. At the time of the American Revolution, all 13 states had a usury cap, with the most common limit being 6 percent per annum.[1]

By the turn of the twentieth century, as the American economy transitioned toward greater reliance on the purchase of personal goods, a black market for illegal usurious small loans began to thrive and would often charge quadruple-digit interest rates for their services.[2] Partially as a response to this black market activity, nearly every state began to adopt Universal Small Loan Laws, which allowed licensed lenders to charge interest rates of between 18 percent and 42 percent, with 36 percent per annum rates being typical.[3]

However, over time, financial lobbying efforts succeeded in introducing a variety of special usury limits for different types of credit in many states. By the late 1970's, this deregulatory agenda had carved holes in the previous usury rate framework in some states and paved the way for predatory lenders to realize unconscionable profits.

Today, millions of Americans lose nearly $8 billion each year in payday and car title loan fees.[4] These loans typically carry annual percentage rates of at least 300 percent, and the high cost and balloon-payment structure trap consumers into cycles of debt.[5] The Consumer Financial Protection Bureau (CFPB) found that 75 percent of payday loan fees come from borrowers who are stuck in 10 loans per year.[6] Payday lenders thrive off the unaffordability and predatory nature of these loans.

Payday lenders market their loans as short-term credit designed to assist borrowers with financial emergencies, but 69 percent of payday loan borrowers use these loans to cover recurring living

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[1] James M. Ackerman, *Interest Rates and the Law: A History of Usury*, 1981 ARIZ. ST. L.J. 61, 85 (1981), https://arizonastatelawjournal.org/wp-content/uploads/2020/03/JamesMAckermanInterestRat.pdf.

[2] Lauren K. Saunders, National Consumer Law Center, *Why 36 percent The History, Use, and Purpose of the 36 percent Interest Rate Cap* (Apr. 2013), https://www.nclc.org/images/pdf/pr-reports/why36pct.pdf.

[3] *See* DEE PRIDGEN, JEFF SOVERN & CHRISTOPHER L. PETERSON, CONSUMER LAW: CASES AND MATERIALS 935 (2020), *supra* note 1, [Hereinafter Consumer Law Textbook].

[4] Diane Standaert, Delvin Davis, Charla Rios, Center for Responsible Lending, *Payday and Car-Title Lenders Drain Nearly $8 Billion in Fees Every Year* (April 2019), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-statebystate-fee-drain-apr2019.pdf.

[5] CFPB, Report, *Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings* (2013), https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf [Hereinafter CFPB, Payday Loans (2013)].

[6] *Id.*

expenses.[7] Most borrowers use payday loans to cover ordinary living expenses over the course of months, not unexpected financial emergencies over the course of weeks, as lenders often claim in their marketing. In fact, the average payday loan borrower uses eight loans and is indebted about five months of the year.[8] Further, payday loan borrowers have an average annual income of approximately $25,000.[9] The chronic gap they face between income and expenses is a problem that credit cannot solve and is the consequence of many contributing factors, including increasing inequality,[10] stagnating wages,[11] and the rising costs of common goods.[12]

Further, high-cost lenders disproportionately target low-income and consumers of color and may even charge higher prices in communities of color.[13] These consumers have largely been left out of traditional banking and asset building due to centuries of systemic discrimination and racism, and lenders exploit this vulnerability.

Payday lenders and other online lenders have also increasingly shifted to larger and longer-term high-cost installment loans, at rates of 100 percent to 200 percent. Due to the length and size of these loans, they create even bigger, deeper debt traps and can be more expensive and harder to escape than short-term payday loans. Like short-term payday loans, these high-cost installment loans are designed so that the lender can successfully make healthy profits while many borrowers struggle and default.[14] Through marketing and the targeting of consumers with lower credit scores, high-cost online lending also disproportionately impacts communities of color.[15]

High-cost loans are a costly option when consumers are faced with budget shortfall, and there are both immediate and long-term harms associated with predatory, high-cost loans. The debt trap created by the unaffordability of these loans can have a lasting impact on a consumer's financial well-being and can even lead to poor health outcomes, including high blood pressure, anxiety, and increased risk of suicide.[16]

Faced with the harms of high-cost loans, a growing number of states have capped rates. For small loans, 36 percent is viewed as the dividing line between whether or not borrowers have a

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[7] Pew Charitable Trusts, Payday Lending in America: Who Borrows, Where They Borrow, and Why (July 2012), https://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf [Hereinafter Pew, Payday Lending (2012)].
[8] *Id.*
[9] *See* CFPB, Payday Loans (2013).
[10] Economic Policy Institute, The State of Working America, Average Family Income Growth, by Income Group, 1947-2013 (accessed Sept. 1, 2021), http://www.stateofworkingamerica.org/index.html percent3Fp=31204.html.
[11] Elise Gould Economic Policy Institute, State of Working America Wages 2019 (September 20, 2020) https://www.epi.org/publication/swa-wages-2019/.
[12] Christopher Rugaber, *US Consumer Prices Surge in June by the Most Since 2008*, AP NEWS (July 13, 2021), https://apnews.com/article/business-prices-consumer-prices-7c0dceffdbd50a8b1b888af5d3b922ed.
[13] S. Ilan Guedj, Bates White Economic Consulting, Report Reviewing Research of Payday, Vehicle Title, and Installment Loans (May 2019), https://lawyerscommittee.org/wp-content/uploads/2019/05/Report-reviewing-research-on-payday-vehicle-title-and-high-cost-installment-loans.pdf. [Guedj, Review of Payday Research]
[14] *See* Lauren Saunders et al, National Consumer Law Center, *Misaligned Incentives: Why High-Rate Installment Lenders Want Borrowers Who Will Default* (July 21, 2016), https://www.nclc.org/issues/misaligned-incentives.html.
[15] Jim Hawkins & Tiffany C. Penner, *Advertising Injustices: Marketing Race and Credit in America*, 70 EMORY L. J. 1619 (2021), https://scholarlycommons.law.emory.edu/elj/vol70/iss7/7.
[16] Elizabeth Sweet, Christopher Kuzawa, and Thomas McDade, *Short-Term Lending: Payday Loans as Risk Factors for Anxiety, Inflammation and Poor Health*, *SSM-Population Health* 5, 114–21(2018); Jerzy Eisenberg-Guyot, Caislin Firth, Marieka Klawitter, and Anjum Hajat, *From Payday Loans to Pawnshops: Fringe Banking, the Unbanked, and Health*, *Health Affairs* 37, 429–37 (2018); and Jaeyoon Lee, *Credit Access and Household Well-Being: Evidence from Payday Lending* (working paper, Fudan University, 2019).

decent chance of being able to afford payments,[17] though states tend to impose lower rate caps for larger loans.[18]

Polling indicates that roughly 75 percent of the American public favor usury limits of no more than 36 percent per annum.[19] In states that have capped rates, consumers are able to look to other financial strategies and other forms of small dollar credit when faced with budget shortfalls.[20] Beyond additional sources of credit, 81 percent of payday loan borrowers said they would cut back on expenses when asked what they would do if faced with a cash shortfall and payday loans were unavailable.[21]

Illinois is one of the most recent states to cap rates,[22] and consumers there have saved $200 million in fees for high cost loans since the law was passed.[23] Since the PLPA became law, the Illinois Department of Financial & Professional Regulation has granted 168 new lending licenses. [24] Another poll showed consumers employed a variety of strategies to address emergency cash needs. The top three strategies were (1) credit card (24%), (2) tapping into personal savings (23%), and (3) borrowing money or getting assistance from a church, charity, friends, or family (21%).[25]

In addition, when rates are capped, the millions in wealth previously extracted from communities in the form of payday fees is saved and can be used on goods and services that contribute to local economies instead, which in turn leads to job creation.[26] Plus, former payday storefronts in states that have established rate caps have been revitalized as restaurants, churches, credit unions, and other community contributing businesses.[27]

This report provides an overview and analysis of the many alternative products and strategies employed by consumers when high-cost credit is unavailable. In addition, this report spotlights initiatives, products, and resources implemented and available from throughout the country.

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[17] *See* Lauren Saunders, National Consumer Law Center, *The History, Use, and Purpose of the 36 percent Rate Cap* (April 2013), https://www.nclc.org/images/pdf/pr-reports/why36pct.pdf.
See also National Consumer Law Center, *Why Cap Interest Rates at 36%?* (August 2021), https://www.nclc.org/images/pdf/high_cost_small_loans/IB_Why_36.pdf.

[18] *See* National Consumer Law Center, *Predatory Installment Lending in the States 2022* (June 2022), https://www.nclc.org/uncategorized/predatory-installment-lending-in-the-states-2022.html?print=pdf.
See also Carolyn Carter, Lauren Saunders, & Margot Saunders, National Consumer Law Center, *A Larger and Longer Debt Trap: Analysis of States APR Caps for a $10,000 Five-Year Installment Loan,* https://www.nclc.org/images/pdf/pr-reports/installment-loans/installment-loans-report-2018.pdf.

[19] *See* Center for Responsible Lending, Congress Should Cap Interest Rates: Survey Confirms Public Support for Cracking Down on High-Cost Lending (Mar. 2009), https://www.responsiblelending.org/research-publication/interest-rate-survey.

[20] *See* National Consumer Law Center, *After Payday Loans: Consumers Find Better Ways to Cope with Financial Challenges* (updated March 2022), https://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/IB_After_Payday_Loans.pdf.

[21] *See* Pew, Payday Lending (2012), *supra* note 7.

[22] New Mexico is the most recent state to cap rates.

[23] Woodstock Institute, The PLPA's 36% rate cap is working – and the data proves it (January 11, 2022), https://woodstockinst.org/news/blog/36-rate-cap-is-working/.

[24] Data provided pursuant to FOIA request.

[25] Lake Research Partners, Memo, Re: New Polling Shows Overwhelming Public Support for Rate Cap and Continued Access to Credit (September 27, 2022), https://woodstockinst.org/wp-content/uploads/2022/09/memo.summary.Woodstock.revised.race_.f.2022.09.26.pdf, [Hereinafter Lake Research Partners, (2022)].

[26] Woodstock Institute, Economic Impact and Job Creation: How the Predatory Loan Prevention Act in Illinois Benefits Communities and Increases Equity (March 2021), https://woodstockinst.org/wp-content/uploads/2021/03/WoodstockEconomicImpactPLPA-March21.pdf.

[27] Charla Rios, Diane Standaert, Yasmin Farahi, Center for Responsible Lending, *The Sky Doesn't Fall: Life After Payday Lending in South Dakota* (Jan. 2020), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-the-sky-doesnt-fall-jan2020_1.pdf.

Alternatives discussed in this report will provide both resources for an individual's immediate budget shortfall and strategies for planning ahead for the next emergency. The resources and alternatives discussed in this report fall into three categories: lower cost loans and credit; strategies to lower expenses; and additional income sources.

Each section discusses where to find these resources, the benefits of the alternative, any pitfalls to be aware of, and any policy or regulatory changes that can improve the alternative.

While this report mentions specific services, it is not meant to promote any of the organizations, programs, or services that are specifically mentioned. As noted, some alternatives have their own downsides. Rather, this report gives examples of alternatives to high cost credit, cost-saving techniques, and cash assistance programs and shows that there are other options for meeting shortfalls beyond high cost lending.

Finally, although this report seeks to outline alternatives to high cost loans, it does not address the systemic inequities and rising unaffordability of basic needs that keep people in poverty. For example, this report discusses employer offered financial wellness solutions, but does not address the critical need to pay consumers a living wage. It discusses the many increasing credit offerings provided by banks, but it does not discuss the historic exclusion of communities of color from and high cost of mainstream financial services that have often led consumers to resort to high cost loans in the first place. And, it discusses the many strategies and programs consumers have employed in states that have capped rates but does not address the chronic gap between income and bills created by stagnant wages and the increasing unaffordability of basic human needs, including housing, transportation, healthcare, and food. This report seeks only to outline alternatives used by consumers when payday and high cost loans are no longer able to exploit consumers, but the need for these alternatives is caused by many systemic inequities and issues that cannot be addressed here.

1. LOWER COST LOANS AND CREDIT

a. Bank Offerings

Background

A super majority of former payday loan borrowers (81 percent) say they would prefer to borrow from a bank or credit union over a payday lender if the option were available to them.[28] As noted in the spotlights below, national and regional banks are starting to offer small-dollar loan products that are below 36 percent APR to help existing customers build credit and increase their financial stability. However, affordable, small-dollar loan bank products are still limited, and many are only available to consumers who meet particular screening requirements.

There is more that federal banking regulators could do to encourage affordable small-dollar loan products and warn borrowers against the harms of high-cost balloon payment loans. One federal

[28] Pew Charitable Trusts, *Payday Loan Customers Want More Protections, Access to Lower-Cost Credit From Banks* (April 2017), https://www.pewtrusts.org/~/media/assets/2017/04/payday-loan-customers-want-more-protections.

banking regulator, the Federal Deposit Insurance Corporation (FDIC), previously issued guidelines for responsible small-dollar loans that would have protected consumers from high cost, bank payday loans over 36 percent. However, the FDIC rescinded this guidance in May 2020, right after the onset of the COVID-19 pandemic.[29]

In its place, the FDIC and three other federal banking regulators, the Office of Comptroller of the Currency (OCC), Federal Reserve Board, and the National Credit Union Association (NCUA) issued joint lending principles for banks setting up responsible small-dollar loans.[30] These lending principles are still in effect today. The principles emphasize underwriting for ability to repay, loan structures that support borrower affordability, and loan pricing that reflects overall returns reasonably related to the financial institution's product risks and costs. But the principles otherwise essentially leave interest pricing up to the banks to decide.[31] Further, these new principles suggest that banks may offer single-payment loans, which can be unaffordable and trigger reborrowing,[32] though single-payment loans would have a hard time meeting other elements of the principles, such as loan structures that support successful repayment of principal and interest/fees in a reasonable time frame rather than reborrowing, rollovers, or immediate collectability in the event of default. In short, these lending principles have positive features, but they have elements or gaps that do not ensure consumers are protected.

In conclusion, a small-dollar installment loan offered at an affordable interest rate can be an incredible opportunity for both the bank and the borrower. By offering affordable small-dollar loans to their customers, banks can help meet the financial needs of their customers and keep them away from predatory lenders in the process. Additionally, these small-dollar loan offerings can help the bank bring in and retain new customers, giving them a profit incentive to make their small-dollar loans available at a financially sustainable rate.

Policy Recommendations

- The federal banking regulators should revise their small dollar loan principles to explicitly highlight fair lending practices with sub-36 percent rates and to remove the reference to single-payment loans.
- The lending principles should suggest that banks offer small-dollar loan products which can be repaid in installments over a period of months so as to increase their affordability and avoid triggering cycles of reborrowing.

[29] National Consumer Law Center, Press Release, *New Bank Regulator Guidance Could Permit Balloon-Payment loans but Emphasizes Responsible Lending* (May 20, 2020), https://www.nclc.org/media-center/fdic-to-repeal-36-rate-cap-and-bank-payday-loan-limits-but-banks-should-not-take-the-bait.html.

[30] Federal Reserve, Press Release, Interagency Lending Principles for Offering Responsible Small-Dollar Loans (May 2020), https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20200520a1.pdf

[31] *See id.* (showing that the guidelines simply suggest that loan pricing should comply with applicable state laws. However, because most banks are exempt from state usury laws, there is little law to comply with and no real limitation against the bank from offering higher interest small-dollar loans.); Such regulatory inaction can have disastrous effects. For example, during the last economic recession, a handful of banks provided customers with balloon-payment bank payday loans or "deposit advance products," which put borrowers in an average of 19 loans per year at over 200 percent APR. *See* Press Release, National Consumer Law Center, FDIC to Repeal 36 percent Rate Cap and Bank Payday Loan Guidance, but Banks Should Not Take the Bait (May 20, 2020), https://www.nclc.org/media-center/fdic-to-repeal-36-rate-cap-and-bank-payday-loan-limits-but-banks-should-not-take-the-bait.html.

[32] CFPB, Report, *Payday Loans and Advance Deposit Products* (Apr. 24, 2013), https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.

- All banks should offer small-dollar loan products with underwriting for ability to repay. Bank customers should be permitted to apply for these products regardless of the type of deposit account they hold, including Bank On, low-cost, or free account holders.

Product Spotlights

1. Bank of America Balance Assist Program

Bank of America offers its clients small dollar loans through its 'Balance Assist' program.[33] To be eligible for Balance Assist, the borrower must have been a customer of Bank of America for at least one year and have a qualified checking account with the bank.[34] Further, as a way to mitigate the debt cycle, the program limits the amount of short-term loans a borrower can receive in a year to six loans, and the borrower cannot have multiple Balance Assist loans open at the same time.[35] Some of the consumer-friendly benefits of a Balance Assist loan are that it has a cap of $500; is repayable with three installments over a period of 90 days; and has a set flat fee of $5 (which is equivalent to an APR of 5.99 percent to 29.76 percent, depending on the amount borrowed).

2. US Bank Simple Loan

US Bank provides its checking customers short-term, small-dollar lending options through its 'Simple Loan' program.[36] The Simple Loan program allows borrowers to receive a loan up to $1,000, paid in $100 increments for a flat fee of $6 per $100 borrowed. The total loan repayment period is three months. Under this model, a $400 loan repaid in four months would have an APR of 35.26 percent, while a $100 loan repaid in one month would have an APR of 76.83 percent.

3. Huntington Bank Standby Cash

Huntington Bank offers its 'Standby Cash' program to customers who have submitted at least $750 of monthly deposits into a Huntington checking account for three consecutive months.[37] The program offers a $100-$1,000 line of credit to checking customers, repayable in three months, with no interest or fees as long as the customer sets up automatic payments. Huntington Bank won't overdraft on a borrower's account should there be insufficient funds at the time of the payment. Instead, they automatically take the payment once sufficient funds come into the account. However, a borrower's failure to pay can result in account default and closure, as well as a negative report to credit bureaus. If the customer does not set up automatic payments, then there is a 1 percent monthly interest charge (12 percent APR). If the borrower meets eligibility requirements, then they can utilize the program as often as they want with no penalty.

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[33] Bank of America, Press Release, Bank of America Introduces Balance Assist, a Revolutionary New Short-Term, Low-Cost Loan (Oct. 8, 2020), https://newsroom.bankofamerica.com/press-releases/bank-america-introduces-balance-assist-revolutionary-new-short-term-low-cost-loan.
[34] *See* BANK ON, https://joinbankon.org/accounts/ (last visited May 17, 2022) (noting that as of early 2022, Balance Assist products were not available to Bank of America Advantage SafeBalance account holders, which is the Bank On certified account).
[35] *Balance Assist*, BANK OF AMERICA, https://promotions.bankofamerica.com/deposits/balance-assist.
[36] *Simple Loan*, U.S. BANK, https://www.usbank.com/loans-credit-lines/personal-loans-and-lines-of-credit/simple-loan.html.
[37] *Standby Cash*, HUNTINGTON BANK, https://www.huntington.com/Personal/checking/standby-cash.

4. Boston Builds Credit

'Boston Builds Credit' is a credit building initiative created by the United Way of Massachusetts Bay and Merrimack Valley, the City of Boston, and LISC Boston. In collaboration with Bank On, Boston Builds Credit has created guidelines and standards for credit builder loans which they use to certify different credit builder loans. The standards include both core features, like an APR of 18 percent or lower, no prepayment penalties, and reporting to the major credit reporting bureaus, as well as highly recommended features, like flexibility in product size and term, and adjustable payment deadlines. In addition, they have created an interactive tool to help consumers compare certified loan products alongside other personal, secured, and credit builder loans.

Policy Spotlight

1. Illinois Predatory Loan Prevention Act (PLPA)

In March of 2021, Illinois Governor J.B. Pritzker signed the Predatory Loan Protection Act (PLPA) into law, which established a 36 percent APR cap on consumer loans offered in the state.[38] While the cap is still in its infancy, so far, the results have been overwhelmingly positive and changes to the market have benefitted consumer borrowers immensely. For example, comparing a 5-month period in 2019, before the PLPA passed to the same period in 2021, after the PLPA went into effect, Illinois consumers saved over $200 million in fees for high-cost loans.[39] Further, loan applications with sub-36 percent APR lenders in the area skyrocketed in just the first few days after the cap was passed.[40] According to a statewide poll conducted in July 2022, 86 percent of Illinoisans support the rate cap.[41]

b. Low-Cost CDFI Loans or Federal Credit Union Loans

Background

Community Development Financial Institutions (CDFIs) are lenders with a certification given by the U.S. Treasury Department's CDFI Fund to specialized organizations that provide financial services in low-income communities and to people who lack access to financing.[42] The Treasury Department certifies CDFIs and provides them resources through the CDFI Fund.[43] The CDFI Fund also has specific funding available for programs offering affordable small dollar loans.[44]

[38] Woodstock Institute, Press Release, Predatory Loan Prevention Act Signed Into Law (Mar. 23, 2022), https://woodstockinst.org/news/press-release/plpa-signed-into-law/.
[39] Woodstock Institute, Blog, The PLPA's 36 percent rate cap is working—and the Data Proves It (Jan. 11, 2022), https://woodstockinst.org/news/blog/36-rate-cap-is-working/.
[40] Woodstock Institute, Blog, Will Illinois Borrowers Find Predatory Loan Alternatives? They Already Are, Says Capital Good Fund's Andy Posner (July 21, 2022), https://woodstockinst.org/news/blog/will-il-borrowers-find-predatory-loan-alternatives/.
[41] Lake Research Partners, (2022).
[42] *CDFI Certification*, CDFI FUND, https://www.cdfifund.gov/programs-training/certification/cdfi (last visited May 18, 2022) [Hereinafter CDFI Fund Certification (2022)].
[43] *About*, CDFI FUND, https://www.cdfifund.gov/about (last visited May 18, 2022).
[44] Community Development Financial Institutions Fund Notice of Funds Availability (NOFA) Inviting Applications for the Fiscal Year (FY) 2022 Funding Round of the Small Dollar Loan Program (SDLP), 87 Fed. Reg. 30001 (May 17, 2022).

The CDFI eligibility criteria are primarily based on each institution's mission and market, and there are no explicit interest rate caps.[45] However, the Treasury Department has proposed[46] CDFI certification revisions including a revised application form that asks whether the applicant has any loan products allowing for an APR in excess of 36 percent.[47] For those that do have higher rate loans, a series of additional questions were proposed, including whether the applicant underwrites for ability to repay, has any loan products with a default rate over five percent, offers deferred presentment or deferred deposit loans, among other questions.[48] It appears that an affirmative answer might be disqualifying. The revised application has not yet been finalized.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 created a program to help CDFIs defray the cost of establishing and maintaining a small-dollar loan program. The program was not initially funded, but the inaugural round of awards were made in September 2021.[49] The funding is only available for safe and affordable small dollar loan programs that do not engage in any of the following prohibited practices:

- High-rate loans that exceed the lower of an all-inclusive 36 percent APR or the rate set by state law governing the institution;
- Coerced automated repayments;
- Excessive refinancing before at least 80 percent of the principal has been repaid;
- Loan insurance or credit card add-ons;
- Security interests in household goods, vehicles, or deposit accounts other than a savings account component or credit builder loans;
- More than one late fee per late payment;
- Abusive overdraft practices;
- Aggressive debt collection practices;
- Forced arbitration clause or class action ban.[50]

Even outside of the CDFI Fund's small dollar loan program, many CDFIs offer affordable small-dollar loan products and most CDFIs stay away from harmful products and instead offer responsible loans at 36 percent APR or less. A few, however, have engaged in high-rate lending or abusive debt collection practices,[51] and advocates have urged changes to both the certification process and programs to ensure that criteria exclude high-cost loans or loans with high-risk features.[52] To curb this abuse, and to get the CDFI fund to realize its mission of expanding "economic opportunity for underserved people and communities,"[53] the fund would benefit from including the policy recommendations listed below in its certification process.

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[45] CDFI Fund Certification (2022).

[46] The background information and request for comments can be found at CDFI Fund, Notice of Information Collection and Request for Public Comment, 85 Fed. Reg. 27275 (May 7, 2020). The proposed application form and other materials related to the proposed revisions are at https://www.cdfifund.gov/programs-training/certification/cdfi/certification-pra.

[47] CDFI Certification Application for PRA 2018 at 38 https://www.cdfifund.gov/sites/cdfi/files/documents/cdfi-certification-application-for-comment-may-2020.pdf.

[48] *Id.* at 39-40.

[49] *Small Dollar Loan Program*, CDFI FUND, https://www.cdfifund.gov/programs-training/programs/sdlp (last visited May 22, 2022).

[50] CDFI Fund Notice of Funds Availability (NOFA) Inviting Applications for the Fiscal Year (FY) 2022 Funding Round of the Small Dollar Loan Program (SDLP), 87 Fed. Reg. 30001, 30003 (May 17, 2022).

[51] Consumer Federation of America, Comment, Request for Information on Small Dollar Loan Program (Sept. 10, 2020), https://consumerfed.org/wp-content/uploads/2020/09/Comment-to-CDFI-Fund-on-Small-Dollar-Loan-Grant-RFI_Sept2020_FINAL.pdf.

[52] Consumer Federation of America, Comment, re Proposed CDFI Program--Certification Application (Nov. 5, 2020), https://consumerfed.org/wp-content/uploads/2020/11/Comment-on-CDFI-Certification.pdf.

[53] *About*, CDFI FUND, https://www.cdfifund.gov/about.

In addition to CDFIs, federal credit unions are covered by the Federal Credit Union Act's (FCUA) rate caps. Some states cap the interest rates for their state-chartered credit unions, but not all do. Some credit unions are CDFIs as well.

The FCUA generally caps the interest rates of federal credit union loans at 18 percent APR. Many credit unions offer small dollar loans under the general 18 percent APR cap. In addition, to encourage credit unions to make small dollar loans, rules authorizing Payday Alternative Loans (PALs) were approved by the National Credit Union Association (NCUA).[54] PALs are relatively inexpensive installment loans as an alternative to predatory loans up to $2,000 with an interest rate of 28 percent and a capped $20 application fee. The PAL regulations require underwriting for ability to repay.[55] Further, because these are overseen and regulated by the NCUA, these are much safer products that are widely available to borrowers who become members of a federal credit union.

Policy Recommendations

- Congress should provide additional support to the CDFI Small Dollar Loan Program. With this program still in its infancy, it is crucial that it continue to receive adequate funding to support small-dollar lenders.
- CDFI certification should be limited to institutions that commit to limit their rates, including fees, to 36 percent APR and that do not operate high-cost overdraft programs.

Product Spotlights

1. *Hope Credit Union & Black Clergy Collaborative of Memphis Borrow and Save Loan Fund*

Hope Credit Union and the Black Clergy Collaborative of Memphis (BCCM) (a coalition of majority-Black churches in Memphis) launched the 'BCCM/Hope Borrow and Save Loan Fund' in August 2021. The fund offers a variety of affordable financial products that can serve as an alternative to predatory high-cost loans.[56] Under this program, the loan amount is $500-$1,000, the payment period is up to 12 months, and the APR ranges from 6-18 percent depending on the borrower.[57] The small-dollar loan has some additional fees, such as a $10 loan application fee, and the consumer must be a member of Hope Credit Union, which requires a $10 membership fee, a $15 share deposit, and residence in one of the states served, Alabama, Arkansas, Louisiana, Mississippi, or Tennessee.[58] However, even with these additional fees, a $500 loan, at the highest possible 18 percent APR and repayable in the 12 month period, would still only have an all-in rate of 25 percent.

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[54] The PAL I program was adopted in 2010. The somewhat expanded PAL II program became effective in 2019. The enacting rules for PALs can be found here: https://www.ecfr.gov/current/title-12/chapter-VII/subchapter-A/part-701#701.21.

[55] *See* NCLC, Federal ability-to-repay requirements for small dollar loans and other forms of non-mortgage lending (Nov. 2021), https://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/IB_ability_to_pay.pdf.

[56] Hope Credit Union Enterprise Corporation, Press Release, The Black Clergy Collaborative of Memphis and Hope Credit Union Launch Partnership to Tackle Predatory Lending (Aug. 18, 2021), https://hopecu.org/2021/08/the-black-clergy-collaborative-of-memphis-and-hope-credit-union-launch-partnership-to-tackle-predatory-lending/.

[57] *Loan Application*, BLACK CLERGY COLLABORATIVE OF MEMPHIS, https://www.blackclergycollaborative.org/copy-of-d-free-initiative (last visited May 15, 2022).

[58] *Id.*

2. Self-Help Credit Union

Self-Help Credit Union—which operates branches in North Carolina, South Carolina, Florida and Virginia while its federal credit union operates in California, Wisconsin and Illinois—offers a share-secured loan, in which borrowers can borrow up to 100 percent of their savings, using their savings as collateral, for a loan with a minimal interest rate.[59] This allows borrowers the opportunity to build capital, with little risk, and increase their credit score. Additionally, Self-Help offers a signature-unsecured small-dollar loan to its members with "strong credit history." The loan period can be up to 48 months, and has a 9-16 percent interest rate, depending on the strength of the borrower's credit.[60] Self-Help also offers a WealthBuilder Loan, which allows members with a high interest personal loan or credit card to refinance into a lower rate loan, and a Credit Builder Loan, which allows members to establish or build positive credit history while earning dividends as they pay off the loan. Self Help Credit Union membership is available for consumers who live, work, worship, or attend school in an eligible county or who have a family or employer affiliation with them, and more information about eligibility can be found here. Personal checking accounts are available for a $5 monthly fee, with multiple ways to waive the fee.

3. Capital Good Fund (CGF)

'Capital Good Fund' provides equitable loans to low-income families for a variety of key needs. In states such as Colorado, Delaware, Florida, Illinois, Massachusetts, Rhode Island, and Texas, CGF offers crisis relief loans ranging from $300-$1500, with a 90-day deferment period and a 15-month term, at 5 percent APR.[61] Further, CGF provides emergency loans ($300-$500 loans) at 10 percent APR. Under this program, a $300, 12-month loan, would cost a total of $26.37 per month. The total overall cost of that $300 loan would be $316.44 for the borrower.

These offerings from CGF provide real support for consumers, as evidenced in Illinois just days after Illinois adopted its 36 percent rate cap. Once the PLPA went into effect, CGF reported a daily application increase of 70 percent and a similar increase in loan originations.[62] Such an increase shows that, after the shuttering of predatory lenders, Illinois consumers took the opportunity to turn towards lenders offering sustainable lending options focused on getting consumers back on the right track rather than turning a gratuitous profit.[63]

4. Inclusiv

Inclusiv is the largest national trade group representing community development credit unions, many of which are also CDFIs. Inclusiv's membership directory can be a good place to find credit unions that are committed to financial inclusion and empowerment, and "removing the barriers in financial opportunities for distressed and underserved communities by providing

[59] *Rates & Disclosures*, SELF-HELP CREDIT UNION, https://www.self-help.org/rates (last visited Feb. 7, 2022) (showing that the rate for secured-loans is the account rate—dependent on the borrower—plus 4 percent).
[60] *Id.*
[61] *Crisis Loans*, CAPITAL GOOD FUND, https://capitalgoodfund.org/loans/crisisloan (last visited Apr. 22, 2022).
[62] *See supra*, note 43.
[63] *See* CAPITAL GOOD FUND, https://capitalgoodfund.org/en/ (last visited May 13, 2022) (describing the mission statement of CGF as creating "pathways out of poverty and advance a green economy through inclusive financial services).

capital, making connections and building capacity."

5. Certified CDFI programs and Federal Credit Unions

As discussed above, federal credit unions and certified CDFIs are often options for lower cost financial services and loans. Both the CDFI Fund and the NCUA provide easy-to-use directories of providers, where consumers can find information about nearby financial institutions and the services they provide.

c. Use of Traditional and Secured Credit Cards

Background

Many consumers who rely on high-cost loans have credit cards, but they are often maxed out. Some borrowers, however, might have a good enough credit history to receive a credit card but view a payday loan as a safer option than adding to their credit card debt. This intuition can be misleading. Even though credit cards can be predatory in their lending practices, in many circumstances they can be a better alternative for borrowers than payday loans.

The interest rate for credit cards is a fraction of the interest of a high-cost loan, and credit card borrowers who are not carrying a revolving monthly balance are entitled to a no-cost grace period each month. Further, consumers may be eligible for a credit card cash advance; while advances do charge a fee and carry higher interest rates than purchases, they are still often less expensive than a high-cost loan.

Additionally, credit card borrowers have further protection through the Credit Card Accountability, Responsibility and Disclosure Act of 2009 (Credit CARD Act). For example, the Credit CARD Act protects the borrower against rate increases applied to existing balances; caps fees charged during the first year of an account to 25 percent of the credit limit; caps late fees (albeit at a high amount) and requires the lender to assess the borrower's ability to repay the debt. These protections give the borrower more of a safety net when using a credit card; however, credit cards are still debt and can pose a substantial financial risk to the borrower.

While credit cards can be safer lending options than a high-cost loan, they can still be predatory, particularly "subprime specialist" credit cards which target borrowers with poor credit. These subprime credit cards generally come with expensive fees, high interest rates, low credit limits, and may lure consumers into paying for unnecessary products such as "payment protection."[64] Subprime borrowers are more likely to be charged with additional expenses, such as late fees. Cardholders with subprime (less than 600) and deep subprime (less than 550) credit scores are far more likely to incur repeat late fees in a given year than those in higher credit score tiers.[65] Further, these late fees have been shown to be particularly harmful to low-income and majority-

[64] *See* NCLC, Report, Advice for Older Consumers About Credit Cards (Dec. 2014), https://www.nclc.org/images/pdf/older_consumers/consumer_concerns/cc_advice_for_older_consumers_about_credit_cards.pdf.
[65] CFPB, Report, Credit Card Late Fees (March 2022), https://files.consumerfinance.gov/f/documents/cfpb_credit-card-late-fees_report_2022-03.pdf.

Black neighborhoods. The CFPB is currently examining whether current limits on credit card late fees are reasonable and proportional and will hopefully address these problems.

Policy Recommendations

- The CFPB should consider late fees and pre-account opening fees in its overall calculation of the fees subject to the Credit CARD Act's cap at 25 percent of the credit limit. Currently, credit card issuers, particularly subprime credit card issuers, are bolstering their bottom line with these additional fees. These fees have a disproportionate impact on low-income, low credit score individuals, and are predatory.
- The CFPB should set the "safe harbor" or effective limit for late fees to be much lower than the current $30 for the first late payment and $41 for subsequent late payments in the next 6 months. The CFPB should also tailor late fees to the amount of the debt owed so that low balance accounts (which are typically held by subprime and lower-income consumers) pay less. Additional recommendations are available in comments by consumer groups to the CFPB.[66]

Product Spotlight

1. *Boston Builds Credit (BBC)*

BBC is a credit building-initiative serving the greater Boston, Massachusetts community that works with individuals to build their credit scores.[67] As part of their services, BBC has a number of useful resources readily available to help potential credit consumers pick a credit option that works best for them and their financial situation. For example, BBC provides a checklist for consumers to reference when applying for secured credit to help identify safe and affordable credit options. Additionally, BBC provides guidelines for financial institutions to use when considering offering a credit building product or evaluating whether their credit building product is serving consumers effectively.

d. Newer Forms of Credit

Background

1. Buy Now Pay Later

Buy now, pay later credit ("BNPL") is a type of financing that generally allows the consumer to split a purchase into smaller installments, typically four or less, often with a down payment of 25

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[66] National Consumer Law Center, Consumer Federation of America, Americans for Financial Reform Education Fund, Comment, *Advanced Notice of Proposed Rulemaking: Credit Card Late Fees and Late Payments, Docket No. CFPB–2022–0039* (August 1, 2022), https://consumerfed.org/wp-content/uploads/2022/08/Consumer-Groups-Submit-Comments-to-CFPB-on-Credit-Card-Late-Fees-and-Late-Payments-8.1.22.pdf.

[67] ABOUT US, *Boston Builds Credit*, https://www.bostonbuildscredit.org/about-us/ (last visited May 8, 2022).

percent due at checkout.[68] BNPL popularity and usage is growing dramatically, with 45 percent of American consumers having reported using BNPL at least once per month.[69]

While BNPL may be a straightforward, convenient financing option for some consumers, the service does pose risks. In particular, BNPL products may: lack meaningful underwriting and assessment of a consumer's ability to repay; have hidden fees without clear disclosures; lack dispute or refund rights should a consumer be unsatisfied with their purchase; create an incentive that could lead consumers into taking on unmanageable amounts of debt; have a negative impact on credit reports; and lead to debt collection issues for consumers.[70] The protections that apply to credit cards, which include chargeback rights if the consumer does not get what they paid for, ability to repay requirements, limits on penalty fees, and clear disclosures to help consumers make educated financial decisions, compare costs, and understand the consequences of failing to repay, do not currently apply to BNPL users.[71]

Currently, California is leading all states in its regulation and enforcement of BNPL products. Beginning in 2019, the California Department of Business Oversight – later reorganized and renamed as the California Department of Financial Protection and Innovation (DFPI) – entered into a sweep of settlements involving Sezzle, Zip (formerly known as QuadPay), Klarna, and Afterpay, for lending without a license.[72] In addition to paying modest civil penalties, these companies were ordered to refund or credit fees paid to them by California residents and were prohibited from providing loans or extensions of credit except pursuant to a license.[73] These enforcement actions were the first actions taken to hold BNPL providers to the standards of other lenders, applying similar lending requirements in a uniform manner across the board. DFPI has now issued licenses to several BNPL lenders, which now must comply with the laws that apply to other lenders, including consideration of the ability of borrowers to repay the loan.[74]

BNPL loans, if affordable and truly free to the consumer, may help consumers manage larger purchases without the long-term debt and high costs of credit cards. But there is still work to be done to ensure that BNPL loans are a safe way to handle those expenses.

2. Employer Earned Wage Advance

A growing number of employers partner with third parties to offer advances on pay through earned wage advance ("EWA") programs. EWA companies provide the technological platform and support for advances ahead of payday based on wages they have already earned but are not

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[68] CFPB, Press Release, Consumer Financial Protection Bureau Opens Inquiry into "Buy Now Pay Later" Credit (Dec. 16, 2021), https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-opens-inquiry-into-buy-now-pay-later-credit/?_gl=1*4yp4gi*_ga*Njg4MDQxMDg1LjE2MjMwMzgwMzU.*_ga_DBYJL30CHS*MTY0Njc4NTA3OC4xMTMuMS4xNjQ2Nzg1MDg5LjA.

[69] C + R Research, Report, Buy Now, Pay Later Statistics and User Habits, https://www.crresearch.com/blog/buy_now_pay_later_statistics (last visited May 22, 2022).

[70] Eversheds Sutherland, Report, Focus on Fintech: The CFPB is scrutinizing Buy Now Pay Later Products—Is Rulemaking Next? (Jan. 25, 2022), https://us.eversheds-sutherland.com/NewsCommentary/Legal-Alerts/247856/Focus-on-Fintech-The-CFPB-is-Scrutinizing-Buy-Now-Pay-Later-Products-is-Rulemaking-Next.

[71] JD Supra, Report, Buy-Now-Pay-Later: A 360 Degree Overview (Jan. 28, 2022), https://www.jdsupra.com/legalnews/buy-now-pay-later-a-360-degree-overview-6362328/.

[72] National Consumer Law Center, Consumer Federation of America, Center for Responsible Lending, Comment, Notice and Request for Comment Regarding the CFPB's Inquiry into Buy-Now-Pay-Later (BNPL) Providers 87 FR 3511 Docket No.: CFPB-2022-0002 (March 25, 2022), https://consumerfed.org/wp-content/uploads/2022/03/Joint-BNPL-comments-3.25.22.pdf , at pg. 8 and 40.

[73] *Id.*

[74] *Id.*

yet due. These platforms allow the programs to access time-and-attendance records to determine earned wages.[75] The advance is then repaid on payday either through a payroll deduction or a debit from a direct deposit to an account offered through the EWA provider.

Most EWA programs charge fees to employees. In addition to the fee for the advance, most also charge extra fees if the employee wants instant access to the wages – which almost all do.[76] Most employees who use EWAs do so nearly every pay cycle, so small fees can add up. The EWAs also may provide little to no additional liquidity, as they are merely repaying the hole in the paycheck from the previous advance.

However, some employers cover the cost and offer EWAs for free to the employee. Even employer-subsidized models, though, sometimes charge the employees fees for instant access.

Despite the growing number of workers who utilize these platforms,[77] very little oversight has been provided by state and federal regulators. Without adequate regulation, these providers have the potential to serve as payday lenders in disguise and continue the ongoing issue of debt entrapment of underbanked individuals.[78]

3. Non-Employer Earned Wage Advance Providers and Other "Tips" Based Loans

The only true earned wage advance programs are those that are offered in partnership with the employer and the employer's time and attendance system. However, some companies offer EWA's that bypass the employer completely and instead offer loans directly to consumers through internet or mobile applications.[79] In addition, a number of other fintech apps offer balloon-payment loans styled as cash advances or as overdraft protection, often in connection with a banking app with a deposit account.[80]

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[75] *See* NCLC, *supra* note 77.

[76] National Consumer Law Center, Consumer Federation of America, Center for Responsible Lending, Americans for Financial Reform, Comment, *Request for Information Regarding Junk Fees Imposed by Providers of Consumer Financial Products and Services* (May 2, 2022), https://www.nclc.org/images/pdf/banking_and_payment_systems/NCLC-comments-on-CFPB-Junk-Fees-RFI-87-FR-58015.2.22.pdf [Hereinafter NCLC, CFA, et al Junk Fee Comment (2022)].

[77] For example, Even Responsible Finance ("Even") offers its services to over 1.2 million employees, including 100,000 Walmart employees. *See* Jeff Kauflin, *VCs Bet $40 Million on Money App for Those Living Paycheck to Paycheck*, FORBES (July 19, 2018, 11:00 AM), https://www.forbes.com/sites/jeffkauflin/2018/07/19/payday-loans-be-gone-a-growing-set-of-startups-are-gunning-to-unseatthem/#7c93689d6850; FinFit, another FinTech player, offers its services to over 125,000 employers and 1 million employees. *See* Briana Adhikusuma, *Virginia Beach-Based Finfit's Financial Wellness Is Catching* On, INSIDE BUS (Apr. 3, 2018, 11:53 AM), https://www.pilotonline.com/inside-business/article_317f2c14-3757-11e8-9118-2bafla272819.html (describing FinFit' s growth and estimating that between 30 percent and 40 percent of employees begin using service within one year of employer's adoption); PayActiv partnered with payroll giant Automatic Data processing (ADP) to make its EWA product available to over 600,000 employers. *See* James Rufus Koren, *Need a Loan? Forget the Corner Payday lender — Your Boss Has You Covered,* LA TIMES (Aug. 5, 2018), https://www.latimes.com/business/la-fi-trueconnect-comcast-20180805-story.html; As of September 2021, Earnin has performed more than 125 million transactions. *New Study: Earned Wage Access Puts Consumer in Control of Finances, and Life,* BUSINESSWIRE (Sept. 30, 2021 11:00 AM), https://www.businesswire.com/news/home/20210930005702/en/New-Study-Earned-Wage-Access-Puts-Consumers-in-Control-of-Finances-and-Life.

[78] *See, e.g.*, NCLC, Report, Early Wage Access: A Good Option for Workers or a Fintech Payday Loan? (Mar. 2020), https://www.nclc.org/images/pdf/banking_and_payment_systems/pb-early-wage-access.pdf (explaining that "[a] $100 advance taken out five days before payday with a $5 fee or "tip" is equivalent to an annual percentage rate of 365 percent.") [Hereinafter, NCLC, Report, Early Wage Access (2020)].

[79] *See Nakita Q. Cuttino, The Rise of "FringeTech": Regulatory Risks in Earned-Wage Access, 115 Nw. U. L. Rev. 1505, 1511 (2021) supra* note 76, at 1511.

[80] NCLC, CFA, et al Junk Fee Comment (2022), at 41.

Instead of charging an explicit interest rate or fee, these fintech loans ask the consumer to pay a "tip," and if the consumer does not opt out, "tips" can reach triple-digit APRs like other payday loans.

Applications that charge "tips" can be tricky to navigate – they try to make the consumer pay a "tip" when they borrow and make it difficult to opt out of the tip, and many charge a fee to receive the money immediately. [81]

In addition, many of these loans are often offered without regard to ability to repay and have a balloon-payment structure that can lead to reborrowing and mounting costs. Although repayments are timed with payday, they run the risk of triggering nonsufficient funds ("NSFs") or overdraft fees when the timing of the transfer or estimate of the paycheck is off.[82]

Consumers who opt to use these applications should set their tip to $0 and, if at all possible, skip the optional fee for an immediate payment. If the consumer pays no tip and no "immediate deposit" fee, they can obtain free payday advances from these applications. However, because the advances are repaid at the beginning of the next pay period, they may cause a cycle of re-borrowing and trigger NSF and overdraft fees.

Policy Recommendations

Many of these newer fintech credit products claim not to be covered by the laws that cover credit, and some even deny being credit. Currently, there is limited market oversight of these newer fintech credit products and even less understanding of consumer use and issues consumers may encounter. For example, because BNPL credit isn't consistently reported to the credit reporting bureaus, there is limited data on how much debt consumers have with BNPL credit, how often these installments are being paid off, or the delinquency rate on these types of debt. Newer forms of credit need to be covered by basic consumer protections, including interest rate limits, underwriting for ability-to-repay, cost transparency, dispute rights, and fair lending laws. It is also important that they be examined for unfair, deceptive, or abusive practices independently of compliance with credit laws.

- The CFPB should clarify that BNPL products are a form of charge card covered by credit card rules.[83]
- The CFPB should clarify that earned wage advances, non-employer earned wage advances, and other fintech cash advance and overdraft protection products are credit, and hidden forms of interest or fees are finance charges, bringing these products within the scope of the Truth in Lending Act.[84]
- The CFPB should enact a larger participant rule to bring all of these new credit products within its supervision. The CFPB should examine the lending patterns of consumers to assess whether these types of products are leading to unmanageable debt loads or cycles of debt due

[81] *See id.* at 44.
[82] Cuttino, *supra* note 76, at 1511 *Id.*; *see also* NCLC, Report, Early Wage Access (2020).
[83] *See id.* (noting that BNPL providers are "card issuers" within the meaning of TILA and should be subject to the TILA requirements for credit cards).
[84] *See id.* at 51.

to the products' lack of meaningful underwriting. The CFPB should also look for inappropriate use of consumer data and disparate impacts in this industry.
- The CFPB should ensure that all new forms of credit are abiding by the Military Lending Act (MLA) for active-duty military members and their families.
- States should bring new forms of credit within the scope of their lending laws, including interest rate limits, licensing requirements and other protections.

e. Other Employer and Paycheck Programs

A growing number of employers partner with third party providers that offer emergency savings programs, affordable small dollar loans, and other cash assistance programs to their employees. These programs vary in cost to the employees. However, providing these programs for free may make employees more willing to work for an organization that offers the added benefit. Further, employers also benefit from having employees that are not in financial crisis. Employees can better focus on work and wouldn't run into transportation issues from, say, a car being repossessed by a predatory auto title lender.

In addition, an increasing number of banks and financial institutions offer a service where members can receive their paycheck or any other regular direct deposit, such as pension, military income, or Social Security, earlier than the anticipated deposit date. For example, if a consumer's paycheck is regularly deposited on Friday, they may be able to receive it up to two days early through their bank.

These employer benefits and bank offerings can help consumers bridge the gap between pay periods, can smooth consumer incomes, especially for those consumers with unstable incomes or irregular expenses, and can make the employer or bank more attractive to prospective employees and consumers.

Product Spotlights

1. Huntington Bank Early Pay

Huntington Bank offers EarlyPay, a program through which its customers can receive an early paycheck (or other deposit such as military income, pension, or social security) up to two days before the pay period.[85] In order to qualify for Early Pay, users must be a customer of Huntington Bank and have a checking account with direct deposit set up through the bank. Early Pay is a free service for Huntington customer and only requires that the direct deposit be set up directly through the bank.[86]

2. FINRA Foundation Employer-Sponsored Small-Dollar Loan

FINRA Foundation's 'Employer-Sponsored Small-Dollar Loan' program ("ESSDL") helps credit unions, employers, and other community partners work collaboratively to help employees

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[85] Tom Auchterlonie, *Huntington Adds to its Customer Safety Net with Early Paycheck Access*, INSIDER INTELLIGENCE (July 1, 2021), https://www.emarketer.com/content/huntington-customer-safety-net-early-paycheck-access.
[86] *Introducing Early Pay*, HUNTINGTON BANK, https://www.huntington.com/Personal/checking/early-pay### (last visited May 23, 2022).

meet immediate financial needs and improve individual and family financial stability. Through the ESSDL program, loans of up to $2,000 are made available to the employees of participating companies based on the length of employment in good standing.[87] The application process is relatively simple, and the money is typically ready within 24–48 hours. Loans are repaid through payroll deduction and repayment is reported monthly to credit bureaus. After the loan is repaid, a deduction in the amount of the loan installment continues on an opt-out basis and is deposited into the participant's savings account to help establish savings habits. Borrowers may have only one loan at a time, with terms that range from 90 days to 12 months, and interest that ranges from 15.99 percent to 17.99 percent APR.[88]

Further, the FINRA Foundation's 'Financial Wellness at Work' project helps community-based nonprofits provide workplace financial wellness services for lower-income employees across industry sectors.[89] In particular, this project conducts live training institutes to help organizations identify the processes and partnerships to implement a successful workplace financial wellness program. Further, organizations that participate in the live Financial Wellness at Work training institutes are eligible to apply for funding to help underwrite start-up costs for sustainable workplace programs.[90]

5. TrueConnect

TrueConnect works with other businesses to provide a variety of employee financial wellness offerings, including an employee loan[91] that allows employees, without using a credit score, to apply for small loans of $1,000 to $5,000 from an FDIC insured federal bank (Sunrise Banks, a CDFI and certified B Corp).[92] A typical $1,000 loan has an APR of 19.99 percent with semi-monthly payments of approximately $46.50 deducted from each paycheck for a one year term. While TrueConnect does not use a credit score to underwrite the loans, repayment of the loans is reported to the credit agencies to help employees build credit.

f. Churches and Other Charitable Organizations

The Old Testament condemns the practice of charging interest on a poor person because a loan should be an act of compassion and taking care of one's neighbor and teaches that making a profit off a loan to a poor person is exploiting that person:

> If you lend money to any of my people with you who is poor, you shall not be like a moneylender to him, and you shall not exact interest from him. If ever you take your neighbor's cloak in pledge, you shall return it to him before the sun goes

[87] FINRA Foundation, Report, Employer-Sponsored Small-Dollar Loan, https://www.finrafoundation.org/sites/finrafoundation/files/Fin-Wellness-at-Work-Implementation-Guide-Employer-Sponsored-Small-Dollar-Loan_0_0_0_0_0_0.pdf (last visited May 23, 2022).
[88] *Id.*
[89] *Financial Wellness at Work Training*, FINRA FOUNDATION, https://www.finrafoundation.org/people-we-help/financial-wellness-work (last visited May 23, 2022).
[90] *Id.*
[91] *TrueConnect*, PROSPERITY NOW, https://prosperitynow.org/workplace-financial-wellness-services-directory/trueconnect (last visited May 8, 2022).
[92] *Frequently Asked Questions*, TRUECONNECT, https://trueconnectloan.com/faqs/ (last visited May 8, 2022).

> down, for that is his only covering, and it is his cloak for his body; in what else shall he sleep?[93]

As such, many faith-based organizations and local charities have programs specifically designed to provide cash assistance for people facing a financial emergency. These types of services can be one of the best alternative options to small-dollar loans because they are often offered with little to no interest rates and no hidden fees.

A number of different organizations offer low interest rate loans such as The Center for Public Justice, US Conference of Catholic Bishops, Salvation Army, National Baptist Convention, Catholic Charities, Hebrew Free Loan New York and many others.[94] While these loans are an extremely appealing option, a borrower should keep an eye out for organizations offering a 'quid-pro-quo' for cash assistance. In particular, some religious organizations have been found to condition providing financing on church membership or requiring the borrower to follow the practices of the church.[95] However, this practice is fairly rare, and most organizations give assistance to any individual, regardless of their religious affiliations or marital status.

Product Spotlights

1. Hebrew Free Loan New York

There are nonprofits in many areas that are affiliated with the Jewish faith that provide zero interest loans to families in need – regardless of families' religion. One of the oldest is Hebrew Free Loan New York.

h. Friends and/or Family Members

A loan from a friend or family member can help a borrower facing a difficult financial situation avoid predatory lenders. Since Illinois' adoption of a rate cap in April 2021, nearly three in ten low-income adults in Illinois have needed extra cash for an emergency or to pay for household necessities.[96] The third most common strategy for dealing with emergency cash needs among these consumers was borrowing money or getting assistance from a church, charity, friends, or family (21%).[97]

While people who chronically have trouble making ends meet, or who have not repaid prior loans, may have exhausted their community options, borrowing from friends or family is a common way of meeting unexpected shortfalls. This type of lending occurs frequently, with over

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93 Exodus 22:25–27
94 *Churches Issue Low Cost Loans and Assist with Predatory Lenders*, NEED HELP PAYING BILLS, https://www.needhelppayingbills.com/html/loans_from_churches.html (last visited May 23, 2022).
95 Eli Hager, *Utah Makes Welfare So Hard to Get, Some Feel They Must Join the LDS Church to Get Aid*, PROPUBLICA (Dec. 2, 2021), https://www.propublica.org/article/utahs-social-safety-net-is-the-church-of-jesus-christ-of-latter-day-saints-what-does-that-mean-if-youre-not-one.
96 Lake Research Partners, (2022).
97 *Id.*

one in four Americans reporting they have provided financial assistance to individuals outside their immediate family.[98]

However, a system of racial and ethnic inequities has created a growing gap in generational wealth between white consumers and consumers of color. Therefore, borrowing from friends and family may be a less viable option for consumers of color, who are likely to have lower incomes and less generational wealth than White consumers.

The benefit to this kind of loan is that a friend or family member is less likely to prey on a borrower's financial circumstances and won't offer high interest rates or require a house or car to be put down as collateral. However, while this kind of assistance can be beneficial, the intimate relationship between the borrower and lender can present its own unique set of issues and can have detrimental effects on a close relationship. Every circumstance is different.

Product Spotlights

1. *Mission Asset Fund Lending Circles*

Mission Asset Fund is a non-profit organization that provides programs to help individuals with their credit access. For example, their Lending Circles program offers a platform to its users so they can organize their friends and family members for the purpose of forming a lending pool. These lending pools are comprised of 6-12 members and provide small-dollar loans in the amount of $300-$2,400 to a member who needs financial assistance. Typical monthly payments for these lending circles range from $50-$200. Each circle can decide repayment terms, and work with the member to create a repayment plan that takes the borrowers financial situation into account. Further, these payments are reported to credit bureaus and can help build a borrowers credit history.

2. Exodus Lending

Exodus Lending is a unique type of non-profit, debt-buying alternative whose mission is to buy a debtor's accumulated debts and have the debtor repay them in a one-year period at a 0 percent interest rate.[99] Under their business model, Exodus will buy up to $1,500 of a debtor's payment obligations and then have a financial counselor work with the debtor to create a manageable, one-year repayment plan. Additionally, the financial counselor will build a wealth plan for the debtor, with the goal of giving them firm financial footing and getting them away from continuous debt cycles.

The requirements for potential borrowers are that the individual: lives in the state of Minnesota, has a consistent income (this includes unearned income), has had the debt for over 30 days, and that the debt is over $1,500. Altogether, Exodus has helped over 350 individuals with their debts and has awarded over $412,000 in refinancing relief in the six years it has been in operation.

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[98] Pew Charitable Trusts, Extended Family Support and Household Balance Sheets (Mar. 2, 2016), https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/03/extended-family-support-and-household-balance-sheets.
[99] EXODUS LENDING, https://exoduslending.org/ (last visited May 8, 2022).

i. Other Options for Lower Cost Loans and Credit

The lower-cost loan alternatives mentioned above are not a borrower's only options. There are other solutions a borrower can look to which can be a better financial option than a predatory loan:

- *Taking a loan out against retirement savings*. Some retirement savings plans allow people to borrow their own money, paying the interest to themselves rather than a lender, with the loan repaid through payroll deduction. A loan is preferable to an early withdrawal because it is less likely to risk retirement savings and does not come with tax consequences. A financial planner (discussed in sections below) can help a borrower determine whether taking a loan against their retirement savings is the right financial solution for them.

2. LOWERING BILLS

Instead of or in addition to borrowing money, sometimes the best solution to a shortfall is to cut expenses, if that is feasible. Even though some of these options may take some time to implement, it is always important to plan ahead for the next emergency before it arrives.

a. Rent/Mortgage Assistance

Background

Rent and mortgage payments are often a consumer's largest and most important monthly expense. Research shows that the burden of housing expenses has grown with the COVID-19 economic environment. For example, a recent study conducted by National Consumer Law Center (NCLC) shows that the vast majority (71 percent) of attorneys who represented consumers with rental debt pre-pandemic reported an increase in the number of consumers with alleged rental debt from June to August 2021 compared to their caseload pre-pandemic.[100]

Federal COVID-emergency relief programs helped alleviate some of this debt, and some of this relief may still be accessible. In addition, other non-COVID programs may be available to help homeowners and tenants have access to financial relief to help them avoid evictions and foreclosures. Some states and federal models effectively highlight how the government can help assist both landlords and lenders as well as tenants and homeowners.

Policy Recommendations

- State rental assistance programs should prohibit evictions while applications are pending and should continue to provide support to tenants who are behind on their rent and facing eviction.
- States should ensure that homeowners' assistance programs expedite the review of applications by homeowners who are facing foreclosure.

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[100] NCLC, Press Release, Advocates Urge CFPB to Prevent Rental Debt From Becoming a Barrier to Housing (Dec. 14, 2021), https://www.nclc.org/media-center/advocates-urge-cfpb-to-prevent-rental-debt-from-becoming-a-barrier-to-housing.html.

- Federal agencies and the CFPB should ensure that mortgage servicers review homeowners for all available loss mitigation options, including Homeowner Assistance Funds, before initiating foreclosure.

Policy Spotlights

1. *U.S. Department of Housing and Urban Development Search Tools*

The U.S. Department of Housing and Urban Development (HUD) has a useful tool on its website which allows tenants and homeowners to see all of the different housing assistance programs available in their state. These programs tend to be state and city specific, so a resource like this which lists all the potential avenues for support can be an extremely helpful resource for a consumer in need of emergency relief.

Additionally, there is a search tool on HUD's website to find local agencies and local housing counselors who have an in-depth knowledge of what local programs are open, what eligibility requirements are, and how to help consumers navigate the process. They can also help homeowners communicate or deal with their mortgage servicer, and often have counseling programs specifically for foreclosure prevention. Foreclosure prevention counseling and homeless counseling services are available free of charge through HUD's Housing Counseling Program. However, housing counseling agencies may charge reasonable and customary fees for other forms of housing counseling and education services, including pre-purchase, reverse mortgage, rental, and non-delinquency post-purchase counseling services.

Finally, HUD has a number of resources for consumers who are homeless or at risk of becoming homeless including information about affordable units; tenants rights and responsibilities; a database of city, state, and nonprofit organizations that provide homeless assistance to consumers; and food, health and safety, employment and job training resources.

2. CFPB Help for Renters and Help for Homeowners Resources

The CFPB has useful resource guides for both renters and homeowners. For homeowners, the CFPB offers information about forbearance, including entering, exiting, and extending forbearance; protections for servicemembers and veterans; tips to avoid foreclosure; protections for reverse mortgage borrowers; and details about homeowners assistance funds. In addition, there are resources for consumers to find HUD-approved housing counseling agencies or free legal assistance in their area.

Renters can find information on eviction prevention; how to negotiate repayment plans; tenant and debt collection rights; and federal rental assistance. In addition, the CFPB hosts a database of state and local organizations that provide rental assistance. Finally, there is a resource guide for consumers who have lost housing, including information on subsidized housing; links to HUD's database of homeless assistance programs; and further resources about staying on top of bills, building credit, and more.

Product Spotlights

1. Rent Relief Utah

Utah currently offers funding for renters who were unable to pay their rent and utilities during the pandemic. To be eligible for the program, a renter must: have a combined household income less than 80 percent of the median area income; be eligible for unemployment or have experienced a significant reduction in income; and have experienced some kind of housing instability since the beginning of the pandemic (March 13, 2020).[101] These funds can be used to pay a renter's current rent plus 3 months of prospective rent, as well as cover past-due rent. Since its enactment, this program has provided almost $170 million in relief to renters.[102]

2. Housing Initiatives of Princeton

Housing Initiatives of Princeton (HIP) is a New Jersey-based non-profit organization that helps low-income families in the Princeton, New Jersey community find and maintain safe and secure housing. HIP focuses on two main initiatives to help low-income families: providing 12-24 month transitional housing for families who have already been evicted or whose homes have already been foreclosed, and offering rental assistance funds to maintain or obtain housing.[103] The program also provides housing counselors to those seeking financial assistance, and these counselors work with the families to come up with a payment model that gives them a realistic home payment plan, so the family has no need to resort to predatory lenders. Additionally, during COVID-19, the program has served as a useful resource for people looking for information on how they can receive COVID-19 related housing assistance, such as funds through the federal Emergency Rental Assistance Program ("ERAP").

3. National Low Income Housing Coalition Resource Map

The National Low Income Housing Coalition (NLIHC) is a non-profit organization dedicated to expanding and preserving housing for people with extremely low incomes. In support of their mission, NLIHC provides a state resource map which lists the state level members of the organization and can serve as a good reference point for any person experiencing a housing crisis.

b. Utility Assistance Programs

Background

Basic household access to heating and cooling is a critical need. However, while middle- and upper-income households spend, on average, 5 percent or less of their total household income on energy services, low-income householders spend 10 percent or more of their income on their

[101] RENT RELIEF UTAH, https://rentrelief.utah.gov/ (last visited May 23, 2022).
[102] *Emergency Rental Assistance Payments*, RELIEF UTAH, https://experience.arcgis.com/experience/285c8572fddd41a7b2221e731bf23ace/ (last visited May 23, 2022).
[103] *Rental Assistance*, HOUSING INITIATIVES OF PRINCETON, https://housinginitiativesofprinceton.org/rental-assistance (last visited May 5, 2022).

energy expenses.[104] The burden is even greater among the very poor, who are likely to spend upwards of 35 percent on energy expenses.[105] The threshold beyond which experts believe energy ceases to be "affordable" is 6 percent of a household's income,[106] but high energy costs make this number a pipe dream for many low-income households. Further, low-income homes are disproportionately less energy efficient compared to non-poor households, particularly in urban areas where the housing stock is older.[107]

While not all utility companies are willing to recognize the financial situation of consumers and alleviate their payments, some do recognize this hardship and will work with the customer to develop a sustainable payment plan.[108] Further, all states offer some form of utilities benefits to low-income individuals. Some of these utility reduction options are highlighted below.

Policy Recommendations

- Legislators and advocates should support and grow utility assistance programs to keep these funds flowing and reflective of increasing utility costs.
- Utilities should not engage in full-file regular reporting of non-payment or late payment of utility expenses to credit reporting bureaus. The people in default tend to be low-income individuals, the reporting is inconsistent with programs that require consumers to be in default before they can receive assistance, and negative credit reporting only serves to hurt the credit scores, and future financial capacity and borrowing ability of these individuals.
- States should allow those receiving other means-tested benefits (e.g., Medicaid, SNAP) to be automatically enrolled in the Low-Income Home Energy Assistance Program (LIHEAP), so as to reduce the operational costs and administrative burden of the programs.
- States should utilize COVID-19 funding to expand utility assistance to water utilities, weatherization programs, and other utilities. Energy assistance is a useful start, but there are other monthly utility expenses that are necessities for many Americans and should be similarly affordable to all.
- At the bare minimum, states should offer a percentage of income payment plan (PIPP), or tiered discount utility assistance program, to help individuals who fall into arrearage with energy and other utility bills.
- States should offer 12-month arrearage management programs to give customers the ability to cancel their utility-debt, while not punishing them with higher monthly payments.

Policy Spotlights

1. *Low Income Household Energy Assistance Program*

[104] Diana Hernandez & Stephen Bird, *Energy Burden and the Need for Low-Income Housing and Energy Policy*, POVERTY PUBLIC POLICY (Apr. 2016), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4819257/#FN3.
[105] Mark Kaiser and Allan Pulsipher, *Concerns over the Allocation Methods Employed in the US Low-Income Home Energy Assistance Program*, INTERFACES 36 (4) (2006), at 344-358.
[106] Adam Chandler, *Where the Poor Spend More than 10 Percent of Their Income on Energy*, ATLANTIC (June 8, 2016), https://www.theatlantic.com/business/archive/2016/06/energy-poverty-low-income-households/486197/.
[107] Rick Nevin, *Energy-Efficient Housing Stimulus That Pays for Itself*, ENERGY POLICY 38 (2010), at 4-11.
[108] Taylor Moore, *Utility Bill Deferments are Ending. Here's a State-by-State List of Programs That Can Help*, NEXTADVISOR (Aug. 30, 2021), https://time.com/nextadvisor/in-the-news/utility-bill-deferment-ending/.

All states offer Low Income Household Energy Assistance Program (LIHEAP) benefits, which assist eligible low-income households with their heating and cooling energy costs, bill payment assistance, energy crisis assistance, weatherization, and energy-related home repairs.[109] LIHEAP benefits will not fully cover yearly heating and cooling expenses, but can help alleviate overwhelming payments from a particular bill.[110] While the benefits extend to different utilities, they only cover those related to heating and cooling, and they do not cover utility expenses such as water and sewage.[111] These programs offer assistance to those who may find themselves in need of tightening their budget and should be utilized by low-income individuals to help them lower costly everyday expenses. A useful guide for state-by-state LIHEAP benefit comparisons can be found here.

2. Weatherization Assistance Program

Federal and state Weatherization Assistance Programs (WAP) help income-eligible families and individuals reduce their heating/cooling costs and improve the safety of their homes through energy efficiency measures. WAP grant funding is conducted by the Department of Energy (DOE) and is offered to all 50 states. Once DOE awards the grants, the states contract with local organizations nationwide such as community action agencies, other nonprofits, and local governments. These organizations use in-house crews and private contractors to perform the weatherization services for low-income families. Through weatherization improvements and upgrades, households that utilize WAP save on average $372 or more every year on their energy costs.[112]

3. Straight Percentage Discount Electricity Affordability Programs

Percentage discount plans, offered in Massachusetts and California, offer discounts of up to 30 percent on monthly energy costs.[113] The benefit of these programs is that, because they offer a straight percentage discount across the board, the operational costs of the programs are low, and benefits can be distributed quickly. The drawback is that there is not much differentiation between the income level of the recipients. As an illustrative example, in Massachusetts, an individual who is 50 percent below the poverty line would receive the same percentage discount as someone who is at the poverty line.

4. Percentage of Income Payment Plan Electricity Affordability Programs

Percentage of Income Payment Plan (PIPP) programs differ from the straight percentage discount model in that PIPP programs are more focused on the individual's, rather than the group's, income level. These electricity affordability programs are offered in Colorado, Illinois, Maine, New Jersey, Ohio, and Pennsylvania. Under PIPP, a qualifying individual pays a predetermined "affordable" percentage of income for energy costs.[114] This "affordable"

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[109] *LIHEAP*, BENEFITS.GOV, https://www.benefits.gov/benefit/623 (last visited May 23, 2022); *Office of Community Services*, ACF, https://www.acf.hhs.gov/ocs/map/liheap-map-state-and-territory-contact-listing (contact information for state and local LIHEAP programs).
[110] *LIHEAP FAQs*, ACF, https://www.acf.hhs.gov/ocs/faq/liheap-faqs-consumers (last visited May 23, 2022).
[111] *See id.*
[112] *Weatherization Assistance Program*, OFFICE OF ENERGY EFFICIENCY & RENEWABLE ENERGY, https://www.energy.gov/eere/wap/weatherization-assistance-program (last visited May 23, 2022).
[113] *See id.*
[114] *Id.*

percentage is typically 6 percent or less of the total household's income. An example of this implementation comes from Illinois, where investor-led utilities have implemented PIPP.[115] Under the Illinois model, the state subsidizes private utility companies providing natural gas, propane, and electricity services. Customers who are at or below 200 percent of the federal poverty level are eligible to be placed on a Budget Billing plan that is subsidized by a monthly PIPP benefit amount, determined by a percentage of their household income. Each month, they receive a PIPP benefit towards a portion of their Budget Bill amount. If an on-time and in-full payment is received, the customer may also receive a monthly arrearage credit.[116]

5. Tiered Discount Electricity Affordability Programs

Tiered discount electricity affordability programs are a "hybrid" version of the percentage discount and PIPP programs and are utilized in New Hampshire and Indiana.[117] Under a tiered discount approach, individuals are placed into "tiers" based on their overall income, and depending on what tier they are placed in, they receive a particular percentage discount on their energy bills.[118]

6. Affordable Connectivity Program

The Affordable Connectivity Program is a federal program offered by the Federal Communications Commission to help ensure low-income households can afford broadband internet service. The program offers a discount of up to $30 per month for internet service, and up to $75 per month for households on qualifying Tribal lands. In addition, through the program, eligible families can receive a one-time discount of up to $100 to help purchase a laptop, desktop computer, or tablet.

Product Spotlights

1. New Jersey Universal Service Fund

New Jersey offers a state service called the Universal Service Fund (USF), which provides home energy utility assistance for low/middle-income individuals in two key ways. First, the program gives monthly credits (based on a percentage of income) on residential and monthly gas bills. To be eligible, a household's gross income must be at or below 400 percent of the Federal Poverty Level and pay more than 2 percent of its annual income for natural gas. If a household has electric heat, it must spend more than 4 percent of its annual income on electricity to be eligible.[119] Second, the program offers 1/12 arrearage credit forgiveness of an overdue balance every time a full bill is paid by the customer. This allows a customer to pay off an overdue balance in one year with no adverse effect on their credit score. This arrearage program allows customers to get back on track with their utility payments and does not penalize individuals who

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[115] *Id.*

[116] PN Editor, *Dupage County Offering Energy Assistance*, POSITIVELY NAPERVILLE (Sept. 23, 2021), https://www.positivelynaperville.com/2021/09/23/dupage-county-offering-energy-assistance/123176.

[117] *See* John Huwat, NCLC, Electric Service Discount and Arrearage Management Program Design Template (April 2020), https://www.nclc.org/images/pdf/special_projects/covid-19/WP_Program_Design_Template.pdf.

[118] *Id.*

[119] New Jersey Energy Assistance, Fact Sheet, Low Income Energy Assistance Program (May 23, 2022), https://www.nj.gov/dca/divisions/dhcr/offices/docs/usfhea_fact_sheet.pdf.

have fallen into difficult financial situations. Critically, this arrangement does not make the customer add to their current utility bill to pay off prior debts and does not add to their monthly expenses.

2. Pennsylvania Utility Aid Program

Pennsylvania runs a utility information program that serves as a resource for consumers should they run into utility payment issues. Through its Pennsylvania Utility Law Program (PULP), Pennsylvania provides information, assistance, and advice about residential utility and energy matters affecting low-income consumers. Specifically, PULP offers training and support to legal aid, non-profit community groups and low-income individuals to assist with access to LIHEAP and other utility expense programs. PULP is a good example of a state program which proactively offers consumers assistance in navigating utility benefits and counseling.

c. Student Loan Debt Alleviation

Background

Rising student loan debt is a major financial obligation for many Americans. Today, 45 million Americans collectively owe $1.7 trillion in student loans,[120] and the vast majority of student loans are federal loans held by the Department of Education. Two-thirds of students graduate with debt, and the average student loan debt has ballooned to a historic high of nearly $33,000 per borrower.[121] Approximately one-third of borrowers have debt without a degree—and another significant portion have only a short-term vocational certificate or two-year degree—and face particular difficulty in repayment.[122] The CFPB recently estimated that one-fourth of all student loan borrowers are, collectively, delinquent or in default on more than $175 billion in student debt.[123]

This accumulation of student debt has a disparate impact on Black and Brown borrowers. 90 percent of Black students take out loans to attend college, compared to 72 percent of Latino/a students and 66 percent of white students. Black students also take on nearly 50 percent more debt, on average, for a bachelor's degree than their white peers.[124] For Black and Brown borrowers, the dual effects of being forced to borrow at greater amounts and of systemic discrimination that cause these borrowers to earn less throughout their careers compound to exacerbate an already-crippling student debt. Further, while student loans continue to grow to

[120] Student Borrower Protection Center, Report, Disparate Debts, https://protectborrowers.org/wp-content/uploads/2020/06/SBPC-Disparate-Debts.pdf.
[121] Student Borrower Protection Center, Report, Data Point: The Secret Price of Hidden Debt, https://protectborrowers.org/wp-content/uploads/2020/05/The-Secret-Price-of-Student-Debt.pdf.
[122] White House Fact Sheet on Student Loan Relief (Aug. 24, 2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/24/fact-sheet-president-biden-announces-student-loan-relief-for-borrowers-who-need-it-most/.
[123] CFPB, Report, Student Loan Servicing, https://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf.
[124] *See supra*, note 128.

keep up with rising tuition,[125] student debt as a share of income is highest—and growing the fastest—in the lowest income communities.[126]

However, programs offering student debt relief have grown in recent years.

Policy Spotlights:

1. *Newly Announced Debt Cancellation for Most Borrowers*

In August 2022, President Biden announced that the Department of Education would cancel up to $10,000 in eligible federal student loan debt for all people making less than $125,000 annually (individuals) or less than $250,000 (head of households or married couples). For people below those income caps who received Pell Grants as students, the President will cancel up to $20,000 in federal student loan debt. Although the Student Loan Debt Relief has been blocked by courts, the Administration is seeking to overturn those orders and move forward with cancellation. More information about the announcement is available here, details about eligibility and the cancellation process are available here, and borrowers can sign up for application notifications here. Note that for most federal student loan types, payment obligations and interest accrual has been suspended until the U.S. Department of Education is permitted to implement the cancellation or through June 30, 2023 due to the pandemic. Payments will begin 60 days after whichever date occurs sooner.

2. *Public Service Loan Forgiveness Program and Temporary Waiver of Restrictions*

In 2007, Congress created the Public Service Loan Forgiveness ("PSLF") program as a way to provide student loan relief to those performing public service roles in their communities, with a promise that any remaining balance on eligible borrowers' loans would be forgiven after ten years of repayment while working in public service. Unfortunately, complex program rules and servicing problems meant that few public service workers got the expected benefits of this program. In 2021, the Biden Administration announced a temporary waiver of many of the complex PSLF requirements that had led borrowers to have their relief applications denied in full or in part. Federal student loan borrowers who took advantage of the waiver may reach loan forgiveness years sooner than they would have otherwise, and some have had their full balances cancelled. Although that waiver program closed in October 2022, the Biden Administration announced another one-time Income-Driven Repayment adjustment which may impact PSLF. This adjustment will take place in July 2023.

3. *Additional Relief Opportunities*

In addition to the two time-limited student loan relief opportunities discussed above, there are a number of other relief opportunities in the federal student loan program. For example, there are a number of targeted debt cancellation programs that provide borrowers with loan discharge rights

[125] Briana Boyington, Emma Kerr & Sarah Wood, *20 Years of Tuition Growth at National Universities,* US News (Sept. 21, 2021), https://www.usnews.com/education/best-colleges/paying-for-college/articles/2017-09-20/see-20-years-of-tuition-growth-at-national-universities (highlighting that in the past twenty years, tuition and fees have risen 144 percent at private Universities, and jumped 171 percent at public Universities).

[126] *See supra*, note 128.

based on specific eligibility criteria, such as a borrower's long-term disability ("total and permanent disability discharge"), their school's abrupt closure ("closed school discharge"), school misrepresentations or other misconduct in inducing a student to enroll or take out loans ("borrower defense"), or school false certification of a student's eligibility to borrow federal student loans ("false certification"). In July 2022, the Department of Education proposed new rules that would expand eligibility for these discharge programs and provide more opportunities for the Department to provide automatic relief to eligible borrowers without requiring applications, though in many cases borrowers still need to apply.[127]

Additionally, borrowers struggling to afford their student loan payments may enroll in one of several 'income-driven repayment' (IDR) programs.[128] Under these programs, monthly loan payments are reset at a percentage of the borrower's "discretionary income" every year, and after 20 to 25 years in repayment (depending on the program), any remaining balance is forgiven. Like PSLF, the IDR programs have been beset by program complexity, administrative burdens, and servicing failures that have limited uptake, retention, and forgiveness through the program, but changes are afoot.[129] The Department of Education announced new actions to address IDR program failures in April 2022, including conducting a one-time recount of IDR payments that will give many borrowers more credit for their time in repayment.[130] And President Biden announced in August 2022 that the Department will soon release a proposed rule to create a new income-driven repayment plan that will substantially reduce future monthly payments for eligible borrowers, stop negative amortization in the program, and is working to implement a data-matching law that would reduce the paperwork barriers that lead many to miss out on the benefits of IDR.[131] Consumers can learn more information about existing IDR programs and how to apply here.

d. Bankruptcy

Background:

As of June 2022, 26 percent of consumers with a credit report had some type of debt in collection.[132] The share of consumers of color with some type of debt in collection is disproportionately higher than the share of white consumers, with 35 percent of communities of color with any debt in collection as opposed to 22 percent of white communities.

[127] U.S. Department of Education, Education Department Releases Proposed Regulations to Expand and Improve Targeted Relief Programs (July 6, 2022) https://www.ed.gov/news/press-releases/education-department-releases-proposed-regulations-expand-and-improve-targeted-relief-programs.
[128] *Income Driven Payment Plans*, FEDERAL STUDENT AID, https://studentaid.gov/manage-loans/repayment/plans/income-driven (last visited May 23, 2022).
[129] NCLC, Restoring the Promise of Income-Driven Repayment: An IDR Waiver Program Proposal (January 12, 2022); https://www.nclc.org/images/pdf/student_loans/Final-SBPC-NCLC-CRL-IDR-Waiver-Proposal.pdf.
[130] U.S. Department of Education, Department of Education Announces Actions to Fix Longstanding Failures in the Student Loan Programs (April 19, 2022), https://www.ed.gov/news/press-releases/department-education-announces-actions-fix-longstanding-failures-student-loan-programs.
[131] The White House, FACT SHEET: President Biden Announces Student Loan Relief for Borrowers Who Need It Most (August 24, 2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/24/fact-sheet-president-biden-announces-student-loan-relief-for-borrowers-who-need-it-most/.
[132] Urban Institute, *Debt in America: An Interactive Map*, (June 22, 2022), https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=totcoll.

One option for debt relief is bankruptcy, which gives borrowers the ability to discharge many of their existing debts. There are two main bankruptcy filings: Chapter 7 and Chapter 13. In a chapter 7 bankruptcy, the borrower eliminates most of their debts, but may lose property other than their "exempt" property—property the law says creditors cannot reach unless they take that property as collateral.[133] In a chapter 13 case, the borrower can keep all of their property and pay a portion or all of their debts in installments over a period of three to five years.[134] When a bankruptcy is successfully completed, there is a "discharge" of many of the borrower's unsecured debts, such as medical bills and credit card obligations, which eliminates all debt collection and other actions concerning those debts. However, secured debts—such as home mortgages or car loans—often cannot be discharged. A borrower can force secured creditors to take payments over time in the bankruptcy process, but the borrower generally cannot keep the collateral unless they continue to pay the debt. Due to the complexity of the bankruptcy process, legal counseling can be a helpful resource to guide a borrower in their debt management. Student loans are more difficult to discharge in bankruptcy, but it is sometimes possible.

Policy Recommendations

- Congress should amend the bankruptcy code to reduce barriers to access, such as the pre-filing credit counseling requirement and documentary requirements to show a borrower is below the requisite income-level for means-test screening in bankruptcy.[135] Compliance with these requirements imposes substantial burdens on debtors and their attorneys and has increased the cost of filing bankruptcy for consumer debtors. A reduction of these requirements would make the process more affordable for debtors and thus increase access.

Program Spotlight

1. *Legal Services Corporation*

Legal Services Corporation (LSC) is an independent nonprofit established by Congress in 1974 to provide financial support for civil legal aid to low-income Americans and has offices in all states across the country.[136] LSC currently provides funding to 132 independent nonprofit legal aid organizations in every state, the District of Columbia, and U.S. Territories. These state legal services can provide legal advice on how to approach bankruptcy, view credit reports, rights regarding debt collection, and other consumer-related legal issues.[137] Further, LSC provides individuals with free resources to help if the individual chooses to represent themselves pro se.[138]

h. Eliminating Overdraft Fees through Safe Bank Accounts

Safe bank accounts that eliminate overdraft and nonsufficient funds (NSF) fees can save many struggling consumers hundreds of dollars per year in fees, freeing up income that can be used to

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[133] *Understanding the Difference Between a Chapter 7 and a Chapter 13 Bankruptcy*, NCLC DIGITAL LIBRARY, https://library.nclc.org/sd/2403 (last visited May 23, 2022).
[134] *Id.*
[135] American Bankruptcy Institute, Final Report of the ABI Commission on Consumer Bankruptcy (2019), https://consumercommission.abi.org/commission-report.
[136] *About*, LEGAL SERVICES CORPORATION, https://www.lsc.gov/about-lsc/what-legal-aid/get-legal-help (last visited May 23, 2022).
[137] *See, e.g.*, UTAH LEGAL SERVICES, https://www.utahlegalservices.org/topics/5/consumer (last visited May 23, 2022).
[138] *See, e.g.*, LAWHELP, https://www.lawhelp.org/ (last visited May 23, 2022).

avoid high-cost loans. So-called "courtesy" overdraft services claim to offer overdraft protection, but instead they make matters worse. Like payday loans, overdraft services are essentially balloon-payment loans that lead to a cycle of debt and cascading fees.

Further, since most payday, auto-title, and high cost installment lenders have access to a borrower's bank account, either by requiring this access or by customers opting in, lenders will immediately debit incoming funds. [139] The CFPB found that consumers using deposit advance products incurred overdraft and NSF items at considerably higher rates than those who did not.[140] Similar patterns exist for payday (both online and storefront) and auto title borrowers as well.[141] Relentless overdraft fees, like the ones caused by high-cost lenders, can even cause a consumer's checking account to be closed, effectively forcing them out of mainstream banking, given that the reentry process is difficult.[142]

These fees disproportionately burden low-income consumers and consumers of color. Lower-income individuals have lower account balances and are more susceptible to overdraft fees because their balances are likely to drop to lower levels than other accountholders with greater financial safety nets. Nearly 80 percent of annual overdraft fee revenue comes from 9 percent of consumer accounts, which have an average account balance of approximately $350.[143] These common overdrafters average over 10 overdraft fees annually, meaning these individuals pay an average of $380 in overdraft fees per year.[144]

In addition, Black and Brown consumers are also disproportionately harmed by overdraft and NSF fees. Black and Hispanic consumers each represent around 19 percent of those who paid three or more overdraft-related fees annually, while representing only 12 percent and 17 percent respectively, of the U.S. population as a whole.[145] This disparity illustrates how harmful practices such as charging excessive overdraft fees can contribute to the financial exclusion of communities of color as well as low-income communities and can have devastating generational impacts on their wealth accumulation.

Overdraft fees make it difficult for individuals with low balances to keep their money with the bank, thus causing the bank to lose potential customers, and leaving unbanked individuals to find other cash assistance alternatives.

Safe bank accounts that completely eliminate overdraft and NSF fees, and policies that target abusive overdraft fee practices, can help low-income borrowers manage their finances and save critical resources.

Policy Recommendations

[139] *CFPB, Report, Supplemental Findings on Payday, Pay Installment, and Vehicle Title Loans, and Deposit Advance Products (Oct. 5, 2017),* https://files.consumerfinance.gov/f/documents/Supplemental_Report_060116.pdf.
[140] *Id.*
[141] *Id.*
[142] *Center for Responsible Lending, Report, Overdraft Fees: Banks Must Stop Gouging Consumers During the COVID-19 Crisis (June 2020),* https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-overdraft-covid19-jun2019.pdf.
[143] CFPB, *Data Point: Checking Account Overdraft* (July 2014), https://files.consumerfinance.gov/f/201407_cfpb_report_datapoint_overdrafts.pdf.
[144] *Id.*
[145] Pew Trusts, Heavy Overdrafters: A Financial Profile (April 2016), https://www.pewtrusts.org/- /media/assets/2016/04/heavyoverdrafters.pdf.

- Congress should pass legislation or federal financial regulators including the CFPB, FDIC, OCC, and NCUA should issue a rulemaking or take other actions on overdraft fees as follows:
    - Cap the number of overdraft fees at one per month and six, or no more than $200 total, per year. Additional overdrafts can be covered through affordable overdraft lines of credit or transfers from linked accounts.
    - Prohibit overdraft and NSF fees on debit and ATM card transactions, as well as on real-time payment systems like Zelle.
    - Limit any overdraft and NSF fees to amounts that are reasonable and proportional to financial institutions' costs in the overdraft coverage.
    - Prohibit overdraft or NSF fees on transactions that were authorized when the balance was positive.
    - Prohibit reordering transactions in a manner that increases overdraft or NSF fees.
    - Require consumers to opt in to any overdraft coverage and give them clear up-front information about their options for covering overdrafts.
- All banks should be required to offer Bank On accounts or equivalent safe and affordable accounts without overdraft or NSF fees. The Bank On National Account Standards were inspired by the 2012 Federal Deposit Insurance Corporation's Model Safe Accounts Template and include both core and recommended features to ensure all consumers have access to safe and affordable bank accounts.

Product Spotlights

1. Bank On

Powered by the work of Cities for Financial Empowerment, Bank On's National Account Standards set a baseline standard for safe and affordable accounts that meet the needs of low-income consumers, particularly those outside of the financial mainstream. Bank On accounts are a low or no-cost banking option for consumers that prohibit overdraft or NSF fees. There are currently more than 240 certified Bank On accounts. Reasonable monthly bank account fees, like those permitted by the Bank On National Account Standards, are more transparent and easier for consumers to compare than high back-end overdraft and NSF fees, which are extremely difficult to predict.

2. Capital One

In 2021, Capital One announced it would be eliminating all overdraft and NSF fees, and that the institution would not necessarily reject transactions when a consumer overdraws their account.[146] Instead, if a consumer overdraws their account, they have three options for coverage: free transfer, where funds are automatically transferred from the consumer's savings or money market account to cover the overdraft; no fee overdraft, where certain transactions that overdraw a consumer's account are approved and covered without a fee, including electronic payments,

[146] "All customers currently enrolled in overdraft protection will be automatically converted to No-Fee Overdraft on the launch date in early 2022." Press Release, CAPITAL ONE, Capital One Eliminates Overdraft Fees for Customers (December 2022), https://www.capitalone.com/about/newsroom/eliminating-overdraft-fees/.

recurring debit card payments, ATM withdrawals, and certain other debit card transactions; or auto decline, where the transaction is declined.

3. *Ally*

Ally Bank similarly ended overdraft and NSF fees in 2021 and provides consumers with two options should they overdraft, which can be used separately or in tandem. Overdraft transfer service allows consumers to link their savings or money market account with their checking account. Should the consumer overdraw their checking account, Ally transfers money between the accounts rounded up to the nearest $100 and reimburses any excessive transaction fees that may be incurred by the transfer. In addition, Ally offers CoverDraft℠ Service, which provides consumers with up to $250 in coverage for common transactions that overdraw their account. Consumers qualify for this service with direct deposit or if they have deposited $100 in their account more than 30 days ago. Under the CoverDraft℠ Service, the overdrawn amount is covered by the next deposit, and the consumer has 14 days to cure their account.

4. *Citi*

In early 2022, Citi announced that it would eliminate all overdraft fees, returned item fees, and overdraft protection transfer fees. Even prior to this announcement, Citi had announced that it would only process checks from lowest dollar amount to highest (the opposite maximizes the number of overdraft fees that can be incurred) and would not authorize ATM or point-of-sale debit transactions that overdraw an account.[147] If a consumer overdraws their account, they have two options: Safety Check, which allows a free transfer from a linked savings account to the consumer's checking account to cover the overdrawn amount; or Checking Plus, which is a line of credit from which consumers can transfer funds to their checking account to cover the overdrawn amount. In addition, Citi offers low balance alerts via the online and mobile app to help consumer manage their finances.

Policy Spotlight

1. *New York Department of Financial Services*

In July 2022, the New York Department of Financial Services issued guidance that informed all regulated depository institutions to avoid certain unfair and deceptive overdraft and NSF fee practices. The guidance addressed three such practices: authorize positive, settle negative transactions, when a consumer is charged an overdraft fee even though they had enough money to cover the transaction when it was authorized by the institution; double fees arising from futile overdraft protection transfers, when a consumer is charged an overdraft fee for transfer from one account with insufficient funds to another, thus being charged both an overdraft fee and a fee for the "overdraft protection" transfer; and re-presentment fees, when a consumer is charged more than one NSF fee for the same declined transaction.

[147] Dan Avery, CNET, The Biggest Bank Yet Has Announced It's Eliminating Overdraft Fees (March 1, 2022), https://www.cnet.com/personal-finance/banking/citibank-eliminating-overdraft-fees/.

In addition, the New York Department of Financial Services issued guidance in April 2020 that encouraged all state-regulated banks to offer Bank On certified accounts. The guidance determines that Bank On accounts, as well as the previously instituted New York Basic Banking account, fulfill the state's affordable banking requirements.

Although these are important steps towards stopping the harm caused by overdraft and NSF fees and expanding low or no-cost banking options to all New Yorkers, they are not as far reaching as the aforementioned policy reforms.

i. Cutting Expenses

When surveyed about what they would do when facing a financial emergency, former payday borrowers have most commonly said they would cut back on expenses. Cutting spending can be difficult, but unaffordable debt tends to only make things worse, and to force more painful cuts later on. Several options are available to consumers to tighten their budget:

- *Credit counselors can help people manage unexpected expenses and identify options when faced with limited financial resources.* While these counselors can serve as a valuable resource for consumers, there are many credit repair or counseling scams that make an individual's financial situation worse. Because of the prevalence of scams in the industry, it is best to seek out a nonprofit agency from a reputable source. The National Foundation for Credit Counseling (NFCC) provides a network of vetted member agencies and is a good place to start the credit counselor search.[148] Additionally, the CFPB and Department of Justice both provide useful information on how to avoid credit counseling scams, as well as lists of approved and vetted counselors.[149]
- *Cancelling recurring memberships or entertainment bills*. Budget monitoring apps offer free services to track spending and cancel unwanted subscriptions.[150]
- *Inquire with a recurring subscription provider to see if you can be reimbursed for an unwanted recurring payment*. Some services offer customer support for receiving an unexpected recurring bill.[151]
- *Cut the cable bill*. Consumers who cut their video cable bill save an average of $217.14 per month.[152] However, cutting the cable bill early can lead to aggressive early termination fees and other unfavorable charges.[153]
- *Use a food bank*. An online search can retrieve local food pantries in a particular area.[154]

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[148] National Foundation of Credit Counseling, https://www.nfcc.org/credit-counseling/?gclid=CjwKCAjwqeWKBhBFEiwABo_XBsuwiORQE_6BSasQWAJye8qP2GMhzDJKqXxFZIHBqSgfybIw_5yYaxoCiBsQAvD_BwE (last visited May 2, 2022).

[149] CFPB, Report, How Can I Tell a Credit Scam From a Reputable Credit Counselor?, https://www.consumerfinance.gov/ask-cfpb/how-can-i-tell-a-credit-repair-scam-from-a-reputable-credit-counselor-en-1343/; *see also List of Credit Counseling Agencies Approved Pursuant to 11 U.S.C. §111*, DEPARTMENT OF JUSTICE, https://www.justice.gov/ust/list-credit-counseling-agencies-approved-pursuant-11-usc-111 (last visited May 23, 2022).

[150] Elizabeth Gravier, *Here are the Best Subscription Trackers to Help You Stay on Top of Recurring Payments*, CNBC (Dec. 20, 2021). https://www.cnbc.com/select/best-subscription-trackers/.

[151] *How to Request a Refund*, APPLE, https://support.apple.com/en-us/HT204084; *Dispute, Report, or Cancel a Payment*, GOOGLE PAY, https://support.google.com/googlepay/answer/10195115?hl=en&visit_id=637688963637394590-447895860&rd=1.

[152] DecisionData.org, report, The Average Cable Bill Now Exceeds All Other Household Utility Bills Combines (June 22, 2020), https://decisiondata.org/news/report-the-average-cable-bill-now-exceeds-all-other-household-utility-bills-combined/.

[153] Jonathan Schwantes, Consumer Reports, *How Cable Companies Use Hidden Fees to Raise Prices and Disguise the True Cost of Service* (Oct. 2019), https://advocacy.consumerreports.org/wp-content/uploads/2019/10/CR-Cable-Bill-Report-2019.pdf p.12 (describing how in one state, a cable service provider charged up to $240 for early termination).

[154] *Find Food Pantries*, FOODPANTRIES.ORG, https://www.foodpantries.org/ (last visited May 23, 2022).

- *Sell off any clothes or unused household furniture/ appliances*. Online platforms can be a useful resource for cash-strapped individuals looking to increase demand for their unused items.[155]
- *Look into shared housing options*. Some states offer home sharing programs which help lower the rent cost for a tenant.[156]

Product Spotlights

1. *WeProsper Illinois*

WeProsper Illinois is a joint initiative of Woodstock Institute, New America Chicago, and the Chicago Urban League to help protect and assist those vulnerable to predatory financial practices.[157] The initiative offers free educational resources for lawmakers and the public with a special focus on communities of color. It's feature publication is a Resource Guide that provides up-to-date, succinct, and practical strategies for folks struggling to make ends meet. Further, WeProsper also supports efforts to create alternative wealth-building strategies in low-income communities through its research and provides this research to consumers and organizations free of charge so they can utilize the information to help benefit themselves and their community.

2. LaMedichi

LaMedichi is a Colorado-based non-profit organization that provides educational programs to low-income families in an effort to form a habit of savings and wealth building. The LaMedichi programs differ from other alternatives in that they integrate digital platforms so users can easily access their financial planning information.[158] Further, the programs are catered towards immigrant-Americans, and its learning modules come in multiple languages and cater towards unique cultural circumstances. This customization is an important tool for financial counseling, and this cultural inclusiveness allows for LaMedichi clients to better understand and implement the lesson plans.

3. Local Initiatives Support Corporation

Local Initiatives Support Corporation (LISC) is a nonprofit organization with over 38 partner offices, serving residents in 42 states. Through their financial stability initiatives, LISC provides financial counseling services to low- to moderate-income families which tackle all the facets of financial life—earning a steady paycheck, budgeting, building good credit and saving for education and retirement. Further, LISC provides grants through their local offices that help community organizations establish financial coaching service centers which help their clients build effective money habits and focus on their financial bottom line. These grants cover everything from the center's start-up costs to its operating costs.[159]

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155 Rebecca Safier, *Best Places for Selling Clothes Online*, STUDENT LOAN HERO (Dec. 23, 2021), https://studentloanhero.com/featured/sell-clothes-online-make-serious-cash/.
156 *Homesharing Directory Program*, NATIONAL SHARED HOUSING RESOURCE CENTER, https://nationalsharedhousing.org/program-directory/ (last visited May 23, 2022).
157 *About*, WEPROSPER, https://www.newamerica.org/chicago/weprosper/about (last visited May 28, 2022).
158 *Education*, LAMEDICHI, https://www.lamedichi.info/education/ (last visited May 23, 2022).
159 *Financial Opportunity Centers*, LISC, https://www.lisc.org/our-initiatives/financial-stability/financial-opportunity-centers/ (last visited May 8, 2022).

4. Tax Assistance

Many low-income families will need help at tax time, either to file a tax return in order to claim the earned income tax credit, or to deal with back taxes.

Some organizations—like the Michigan Economic Impact Coalition (MEIC)—have dedicated themselves to increasing a low-income individual's access to free tax assistance. These organizations can help clarify tax responsibilities and create a repayment schedule that works with an individual's current financial situation. In addition, the Internal Revenue Service manages two programs, the Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE), which offer free basic tax return preparation for low-income, older Americans, and limited English proficient (LEP) consumers. Consumers can find VITA/TCE locations here. In addition, AARP Foundation Tax-Aide is nationwide service that helps people over 50 and low to moderate-income consumers file their taxes for free. During tax season, Tax-Aide has live volunteers available to help with tax filings, and after tax season, they have a free online tool to file taxes.

5. Association for Financial Counseling & Planning Education

The Association for Financial Counseling & Planning Education (AFCPE) provides a database of Accredited Financial Counselors (AFCs) who financially educate and advise borrowers and give guidance specific to their unique situation, goals, and needs. AFC-certified financial counselors must adhere to a consumer-focused code of ethics and have a primary focus of helping their clients overcome financial indebtedness.[160]

3. ADDITIONAL INCOME SOURCES

While each financial circumstance is unique, there are further options for a consumer to consider that can increase their income when they come across a financial difficulty.

- *The Earned Income Tax Credit*. The Earned Income Tax Credit (EITC) is a frequently overlooked means of increasing income when an individual is employed. This program helps low- to moderate-income workers and families get a cash payment in particular circumstances.[161] An individual can be eligible for the program if they have had a change in income or a recent job lay-off.
- *Tax refunds.* For a lot of lower income filers, their tax refund is the largest infusion of cash they receive during a year. If an individual doesn't owe income taxes, then there's no penalty for filing late. Tax assistance can help maximize this one-time boost in income.
- *Temporary Assistance for Needy Families ("TANF")* federal grant program provides financial assistance to qualifying low-income families to ensure that children are cared

[160] Accredited Financial Counselor, AFCPE, https://www.afcpe.org/certification/accredited-financial-counselor/ (last visited May 8, 2022).
[161] *Earned Income Tax Credit*, IRS.GOV, https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit-eitc (last visited May 23, 2022).

for in their own homes or in the home of relatives.[162] The program is funded by a federal grant, but ultimately states have broad authority to implement the benefits as they see fit. As a result, state TANF benefits vary widely. Twenty states have recently increased their TANF funds and used the additional benefits for a variety of services and support, including income assistance (including wage supplements for working-poor families), childcare, education and job training, transportation, aid to children at risk of abuse and neglect, and a variety of other services to help low-income families.[163]

- *Supplemental Security Income (SSI)* is a federal program funded by U.S. Treasury general funds and provides financial help to disabled or blind adults and children who have limited income and resources.[164] Under this program, cash assistance is provided to individuals who meet the disabled or blind criteria. The disabled criteria can be complex, but a useful guide to what qualifies as a disability under SSI can be found here. In general, to qualify, the impairment or combination of impairments has to have lasted or be expected to last a year or more or result in death, and also prevent the individual from engaging in substantial gainful activity in light of their age, education, and work experience.[165] Individuals who qualify for SSI can earn up to $841 for an individual, and $1,261 for an individual with an eligible spouse.[166]
- Medicaid: All states have a Medicaid program, which assists low-income individuals with medical expenses. Thirty-nine states (including Washington D.C.) have expanded Medicaid coverage to cover individuals with an income up to 138 percent of the federal poverty line ($26,500).[167] Eleven states (Alabama, Florida, Georgia, Kansas, Mississippi, North Carolina, South Carolina, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming) have not adopted the Affordable Care Act expansion, but still have some form of Medicaid to low-income individuals.[168]
- *Unemployment insurance* is a joint state-federal program run through the U.S. Department of Labor that provides cash benefits to eligible workers. Each state administers a separate unemployment insurance program under guidelines established by federal law. Because these state benefits can vary, this guide provides a look at state-specific employment benefits. In general, the U.S. Department of Labor's unemployment insurance programs provide unemployment benefits to eligible workers who become unemployed through no fault of their own and meet certain other eligibility requirements.[169]
- *The Supplemental Nutrition Assistance Program (SNAP)* is a federal nutrition assistance program which provides benefits to eligible low-income individuals and families via an

[162] *What is TANF?*, U.S. Department of Health and Human Services, https://www.hhs.gov/answers/programs-for-families-and-children/what-is-tanf/index.html (last visited May 24, 2022).
[163] Ali Safawi & Cindy Reyes, Center on Budget and Policy Priorities, *States Must Continue Recent Momentum to Further Improve TANF Benefit Levels* (Dec. 2, 2021), https://www.cbpp.org/research/family-income-support/states-must-continue-recent-momentum-to-further-improve-tanf-benefit.
[164] *Supplemental Security Income*, Benefits.Gov, https://www.benefits.gov/benefit/4412#:~:text=Supplemental percent20Security percent20Income percent20(SSI) percent20is,have percent20limited percent20income percent20and percent20resources (last visited May 23, 2022).
[165] *Income Assistance Loans*, NCLC DIGITAL LIBRARY, https://library.nclc.org/sd/0902 (last visited May 23, 2022).
[166] *SSI Federal Payment Amounts for 2022*, Social Security Administration, https://www.ssa.gov/oact/cola/SSI.html (last visited May 23, 2022).
[167] *Medicaid Program*, Benfeits.Gov, https://www.benefits.gov/benefit/606 (last visited May 23, 2022).
[168] Kaiser Family Foundation, Report, Status of State Medicaid Expansion Decisions (Apr. 26, 2022), https://www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/.
[169] *How do I File for Unemployment Insurance?*, U.S. Department of Labor, https://www.dol.gov/general/topic/unemployment-insurance#:~:text=Unemployment percent20insurance percent20is percent20a percent20joint,guidelines percent20established percent20by percent20federal percent20law (last visited May 23, 2022).

Electronic Benefits Transfer (EBT) card.[170] To qualify for SNAP, income must be below a gross income threshold that varies by state and depends on household size. Because of the state variability, the income threshold and work requirements can vary. Here is a useful guide to help make preliminary determinations of whether an individual is eligible for SNAP benefits. While the state benefits are not uniform, an individual with no other persons in their household can expect an average benefit of $175 per month, and a maximum benefit amount of $250 per month.[171]

- *Guaranteed income programs:* Since many public benefits programs are difficult to apply for, have strict eligibility requirements, and can be restricted to specific uses, there is a growing movement to offer no-strings-attached programs for low-income families. The monthly advance Child Tax Credit (CTC) payments enacted during the COVID-19 pandemic were an example of this kind of model. A new report published jointly by Brookings Institution and researchers at the Social Policy Institute at Washington University in St. Louis and Appalachian State University found that CTC-eligible consumers were 1.7 times more likely to stop taking out short-term payday loans and 1.8 times more likely to stop using pawnshop loans than non-eligible consumers.[172] Federal advocacy efforts to extend the CTC are underway. Chicago is launching a pilot guaranteed income program, which will provide 5,000 participants chosen via lottery with monthly $500 cash payments for one year. In addition, Cook County (Illinois) is launching a guaranteed income program using COVID-19 relief funds, which will be the largest guaranteed income program in the country when launched. Finally, Mayors for a Guaranteed Income is a coalition of advocates for municipal guaranteed income and universal basic income programs, and their coalition provides a guide to other pilot programs across the country.
- *Renting out additional living space*. With the rise of rental services, it is fairly easy to rent out an additional living space temporarily.
- *Taking on a second job or gig work*. Supplemental income can help avoid high-cost loans. This guide provides resources for individuals who are looking for additional work, or who are struggling to find work due to an unforeseen circumstance. There are also an increasing number of on-demand platforms that help people earn money for a variety of types of work on their own schedule.

CONCLUSION

It is not fair to subject the most financially vulnerable individuals in this country to the triple-digit interest rates charged by predatory lenders who reap enormous profits by exploiting a borrower's financial instability. By extending the 36 percent rate cape established by the Military Lending Act to all Americans, the Veterans and Consumers Fair Credit Act would reestablish a simple, common-sense limit on predatory lending that would protect consumers from predatory debt traps.

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[170] *Supplemental Nutrition Assistance Program*, Benefits.Gov, https://www.benefits.gov/benefit/361 (last visited December 19, 2022).
[171] Center on Budget and Policy Priorities, Report, A Quick Guide to SNAP Eligibility and Benefits (Jan. 6, 2022) https://www.cbpp.org/research/food-assistance/a-quick-guide-to-snap-eligibility-and-benefits.
[172] Leah Hamilton, Stephen Roll, Mathieu Despard, Elaine Maag, Yung Chun, Laura Brugger, and Michal Grinstein-Weiss, Brookings Institute, The impacts of the 2021 expanded child tax credit on family employment, nutrition, and financial well-being (April 13, 2022), https://www.brookings.edu/research/the-impacts-of-the-2021-expanded-child-tax-credit-on-family-employment-nutrition-and-financial-well-being/.

A wide variety of options are available to consumers once triple-digit interest rate loans are gone. There are no easy answers to not having enough money, but a long list of alternatives can help address the needs that drive people to high-cost loans without plunging them further in debt. Cash-assistance programs and services already in place can help families in a post-36 percent cap world address shortfalls through strategies that don't involve taking on more debt, such as payment plans with utilities. Responsible credit from banks, credit unions, finance companies, and fintech companies also can meet cash needs in an affordable manner.

Advocates and governments should encourage more companies and organizations to replicate programs across the country that expand consumers' access to safe, affordable alternatives to high-cost loans. Policymakers must also do more to eliminate harmful practices, maximize the availability of helpful alternatives, and make sure that new, innovative programs and services do not become predatory lenders in disguise.

The first step, however, is to cap interest rates in order to eliminate predatory lending. Eliminating destructive products is the best way to encourage a broad array of better alternatives to flourish.