

United States House of Representatives  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, D.C. 20515

March 8, 2021

## Memorandum

**To:** Members, Committee on Financial Services  
**From:** FSC Majority Staff  
**Subject:** March 11, 2021, Subcommittee on Consumer Protection and Financial Institutions hearing entitled, “Slipping Through the Cracks: Policy Options to Help America’s Consumers During the Pandemic”

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The Subcommittee on Consumer Protection and Financial Institutions will hold a virtual hearing entitled, “Slipping through the Cracks: Policy Options to Help America’s Consumers during the Pandemic” on March 11, 2021 at 10:00 a.m., on the virtual meeting platform Cisco Webex. This single-panel hearing will have the following witnesses:

- **Ashley Harrington**, Federal Advocacy Director and Senior Counsel, Center for Responsible Lending (CRL)
- **Robert E. James, II**, President, Carver Development CDE, and Chairman, National Bankers Association
- **Carla Sanchez-Adams**, Attorney, Team Manager of Survivor-Centered Economic Advocacy Team, Texas RioGrande Legal Aid
- **Valarie Shultz-Wilson**, Managing Partner, Shultz&Co Non-Profit Management Consultants
- **Joel Griffith**, Research Fellow, Financial Regulations, The Roe Institute for Economic Policy Studies, The Heritage Foundation

### Overview

In the United States, the COVID-19 pandemic (pandemic) continues to be a health and economic crisis. COVID-19-related deaths have surpassed more than 522,000 and there have been nearly 29 million infections.<sup>1</sup> As the virus forced the closure of many businesses, workers were faced with historic levels of unemployment, and the February unemployment level remained elevated at 6.2 percent while the labor force participation rate has declined.<sup>2</sup> Small businesses are facing more bankruptcies and worse financial conditions than the worst quarter during the fallout of the 2008 financial crisis.<sup>3</sup> Through the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the Coronavirus Response and Relief Supplemental Appropriations Act of 2021 (Response and Relief Act), and other legislation and executive actions, Congress is working to provide relief to consumers faced with adverse financial conditions resulting from the pandemic. Most recently, the House of Representatives approved H.R. 1319, the American Rescue Plan Act of 2021, to provide, in part, additional support for consumers, workers, and small businesses.<sup>4</sup> However, some consumers have been unable to access support, or relief measures have

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<sup>1</sup> Centers for Disease Control and Prevention (CDC), [COVID Data Tracker](#) (Accessed Mar. 8, 2021).

<sup>2</sup> Congressional Research Service (CRS), [Unemployment Rates During the COVID-19 Pandemic: In Brief](#) (Jan. 12, 2021); See also Bureau of Labor and Statistics, [Employment Situation Summary](#) (Mar. 5, 2021).

<sup>3</sup> Sloan School of Management, [The coming wave of COVID-19 bankruptcies and how to mitigate them](#) (Dec. 15, 2020).

<sup>4</sup> Financial Services Committee, [Fact Sheet: House Budget Reconciliation & President Biden’s COVID-19 American Rescue Plan](#) (Feb. 26, 2021).

not addressed their specific financial needs. This hearing will explore gaps in consumer protections during the pandemic and evaluate possible policy responses to ensure all consumers and small business owners can get through this period of uncertainty and share in the economic recovery. This hearing will also address existing racial and economic disparities that have been dangerously exacerbated by this pandemic.

## Background

The CARES Act was signed into law on March 27, 2020, and created many consumer protections aimed at helping individuals, families, and small businesses get through the health and economic crisis.<sup>5</sup> While the law and subsequent agency actions established consumer rights to be granted certain terms of forbearance for federally insured mortgages, the same consumer rights were not extended to privately held, non-federally insured mortgages.<sup>6</sup> The CARES Act also affects credit reporting. This law requires credit furnishers to report to the credit bureaus that consumers are current on their credit obligations if they have entered into a forbearance agreement, or other payment relief program, and are meeting the terms of such an agreement with their lender.<sup>7</sup> However, the only consumers eligible to take advantage of this provision had to be current on their accounts before the emergency pandemic period. There is not a prohibition on creditors reporting information that negatively affects a consumer's credit score, even if the reason a consumer missed a payment is directly related to a pandemic hardship, leaving many people unprotected.<sup>8</sup> The CARES Act also requires federal banking regulators to allow lenders to suspend certain accounting requirements related to loan modifications and Troubled Debt Restructuring (TDR) classification, giving lenders more flexibility to work with borrowers who may find themselves unable to keep up with payments, without requiring the lender to hold more capital against possible losses.<sup>9</sup> This provision was extended through December 31, 2021 in the Response and Relief Act.<sup>10</sup> While this accounting flexibility may incentivize lenders to provide forbearance or payment flexibility to customers, it does not require lenders to grant such relief.

In addition, the CARES Act created the Paycheck Protection Program (PPP), which provides forgivable loans to small businesses and certain non-profit organizations through Small Business Administration (SBA) certified lenders, including banks and credit unions. Subsequent legislation has modified the terms of PPP loans, broadened eligibility, and replenished the loan fund.<sup>11</sup> The program is currently open for applications for both first and second loan draws.<sup>12</sup> Small business owners have reported problems understanding and accessing the program, and many have reported feeling shut out of the process.<sup>13</sup> Both the CARES Act and the Response and Relief Act provided Economic Impact Payments (EIPs) to individuals and families. The CARES Act authorized payments of up to \$1,200 per adult with income less

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<sup>5</sup> CARES Act, [Pub. L. No. 116-136](#) (2020), e.g. § 4022(b)(1).

<sup>6</sup> CRS, [COVID-19: Consumer Loan Forbearance and Other Relief Options](#), CRS-R46356 (Updated October 23, 2020).

<sup>7</sup> CRS, [Consumer Credit Reporting, Credit Bureaus, Credit Scoring, and Related Policy Issues](#), CRS-R44125 (Updated October 15, 2020).

<sup>8</sup> [Here's how covid-19 may impact your credit score](#), Washington Post, (Aug, 25, 2020).

<sup>9</sup> OCC, Federal Reserve, OCC, FDIC, CFPB, CSBS, [Agencies Issue Revised Interagency Statement on Loan Modifications by Financial Institutions Working with Customers Affected by the Coronavirus](#) (Apr. 7, 2020).

<sup>10</sup> Consolidated Appropriations Act, 2021, [Pub. L. No. 116-260](#) § 541 (2020).

<sup>11</sup> CRS, [COVID-19 Relief Assistance to Small Businesses: Issues and Policy Options](#), CRS-R46284 (Updated Feb. 23, 2021).

<sup>12</sup> Small Business Administration, [SBA Re-Opening Paycheck Protection Program to Small Lenders on Friday, January 15 and All Lenders on Tuesday, January 19](#) (Jan. 13, 2020).

<sup>13</sup> [Fraud Checks and Errors Slow Small Business Relief Loans](#), New York Times (Feb. 22, 2021).

than \$99,000 and \$500 for each child under 17 years old,<sup>14</sup> and the Response and Relief Act provided EIPs up to \$600 per adult with income less than \$75,000 and \$600 per child.<sup>15</sup>

### Debt Collection

Some debt collection companies are seeing record profits in the pandemic.<sup>16</sup> As courts reopened around the country, debt collectors returned to filing collections suits, and in many cases, collecting from consumers who had recently received enhanced unemployment benefits and EIPs.<sup>17</sup> Twenty-five percent of recipients (or individuals expecting to be recipients) of EIPs reported using the funds to make payments on debts, in addition to buying food and other essential items.<sup>18</sup>

In addition to forcing consumers to choose between making essential purchases and settling debts, collections suits can have long-lasting negative consequences for an individual, even when they are settled out of court.<sup>19</sup> To make matters more difficult for struggling consumers, unemployment benefits have also been slow to reach individuals and families who have experienced a disruption in work. Due to millions of new claims, overwhelmed state unemployment offices, and high attempts of fraud, workers seeking unemployment benefits have experienced delays ranging from weeks to months, potentially leaving consumers vulnerable to being unable to make payments on personal loans, auto loans, credit cards, or other obligations.<sup>20</sup>

### Credit Reporting

Consumer Financial Protection Bureau (CFPB) complaints regarding credit reporting surged 50 percent in 2020 and reached 48,558 complaints in December alone, an all-time high.<sup>21</sup> When consumers dispute credit information, credit bureaus and furnishers are required to investigate the issue, review information provided by the consumer, and provide a response.<sup>22</sup> The CFPB found that pandemic-related staffing challenges at credit bureaus and furnishers led to untimely investigations and responses in the early months of the pandemic, but most bureaus and furnishers have reportedly addressed the issue.<sup>23</sup>

Average credit scores have risen slightly during the pandemic with the average FICO score being 711 as of October 2020, up from 706 in 2019.<sup>24</sup> The rise in the average credit score may be explained by several factors. As previously noted, many consumers reported using EIPs to pay down debts which would have a positive effect on a credit score.<sup>25</sup> Additionally, with many businesses closed or partially closed, consumers had fewer places to spend and more opportunities to save or pay down debt. Perhaps most importantly, this continued rise in credit scores is consistent with a “K-shaped recovery” in which many well-off workers have experienced less economic disruption while workers in the service industry, retail,

<sup>14</sup>CARES Act, [Pub. L. No. 116-136](#), § 2201 (2020).

<sup>15</sup> CARES Act, [Pub. L. No. 116-136](#), § 2201 (2020); See also Consolidated Appropriations Act, 2021, [Pub. L. No. 116-260](#), § 272 (2020).

<sup>16</sup> [Debt Collectors Have Made a Fortune This Year. Now They're Coming for More](#), ProPublica (Oct. 5, 2020).

<sup>17</sup> *Id.*

<sup>18</sup> Bureau of Labor and Statistics, [Receipt and use of stimulus payments in the time of the Covid-19 pandemic](#) (Aug. 2020).

<sup>19</sup> Review of Financial Studies, [How do consumers fare when dealing with debt collectors? Evidence from out-of-court settlements](#) (Jan. 24, 2019).

<sup>20</sup> Pew Charitable Trusts, [Unemployment Payments Weeks Late in Nearly Every State](#) (Dec. 2, 2020).

<sup>21</sup> U.S. PIRG Education Fund, [Consumers in Peril: CFPB Data Shows Consumer Problems in Year of COVID-19](#) (Mar. 2021); See also CFPB, Consumer Complaint Database (Accessed Feb. 23, 2021).

<sup>22</sup> [15 U.S.C. § 1681i\(a\)](#); See also [15 U.S.C. § 1681s-2\(b\)\(1\)](#).

<sup>23</sup> CFPB, [Supervisory Highlights COVID-19 Prioritized Assessments Special Edition](#), at p. 19 (Jan. 19, 2021).

<sup>24</sup> FICO, [Average U.S. FICO Score at 711, But Uncertainty Abounds](#) (Oct. 19, 2020).

<sup>25</sup> Bureau of Labor and Statistics, [Receipt and use of stimulus payments in the time of the Covid-19 pandemic](#) (Aug. 2020).

or other affected industries have faced devastating economic conditions.<sup>26</sup> The rising numbers for unaffected workers may be balancing out the falling scores for workers who have missed payments or taken on more debt. Furthermore, credit score averages do not capture the estimated one of every ten consumers who do not have a credit file, a portion of the population more likely to have lower incomes and be vulnerable to current economic conditions.<sup>27</sup>

### **Private Student Loans**

While the CARES Act (and subsequent executive actions) suspended payments and paused interest on federal student loans, the relief was not extended to private student loans.<sup>28</sup> These loans are typically held by banks, credit unions, or other private lenders, and as of 2020, the private student loan market was an estimated \$128 billion in size, representing a significant portion of consumer debt.<sup>29</sup> There are important distinctions between the private and federal student loan markets in terms of demographic usage and borrower success in repaying. According to a study by the Student Borrower Protection Center, “Black students are less than half as likely to take out private student loans as their White peers (7.5 percent versus 17.0 percent, respectively) but are four times more likely to face distress in repayment (26.5 percent versus 6.7 percent, respectively).”<sup>30</sup>

Additionally, falling behind on these loans may prove problematic for not only the student borrower, but also cosigners of the loan. Up to 93 percent of private student loans are cosigned, for example, by the student’s parents, and the CFPB estimates that 57 percent of all cosigners are 55 or older.<sup>31</sup> In its 2017 Annual report of the CFPB Student Loan Ombudsman, the Consumer Bureau found private student loan borrowers “may face additional struggles during times of economic hardship. [P]rivate student loan borrowers complained that when they experienced short-term inability to pay, such as unpaid parental leave or employment furloughs, they struggled to temporarily modify their payments until their income was restored due to lack of available options.”<sup>32</sup>

### **Non-Agency Backed Mortgages**

Mortgages not backed by a federal agency account for about 30 percent of the U.S. mortgage market, totaling 14.5 million loans.<sup>33</sup> For these mortgages, there is no requirement for financial institutions or loan servicers to offer forbearance or other forms of relief to borrowers. However, even in the absence of such a requirement, many loan servicers have voluntarily provided forbearance or other relief to their customers, though not in all cases, and for the financial institutions that are offering forbearance, the terms and repayment varied significantly.<sup>34</sup> As of February, loans not backed by the federal government saw a higher rate of forbearance. For example, nearly nine percent of non-agency mortgages are in forbearance, compared to 5.22 percent in the total mortgage market.<sup>35</sup> However, a lack in standardization and

<sup>26</sup> National Consumer Law Center, *The Credit Score Pandemic Paradox and Credit Invisibility* (Feb. 2021).

<sup>27</sup> Urban Institute, *Americans’ Credit Health Improved during the Pandemic, but There’s More to the Story* (Feb. 17, 2021).

See also CFPB Office of Research, *Data Point: Credit Invisibles* (May 2015).

<sup>28</sup> Office of Federal Student Aid, *Dept. of Education, Coronavirus and Forbearance Info for Students, Borrowers, and Parents* (Accessed Feb. 2, 2020).

<sup>29</sup> Student Borrower Protection Center, *Private Student Lending*, at p. 7 (April 2020).

<sup>30</sup> *Id.* at p. 10.

<sup>31</sup> *Id.* at p. 12.

<sup>32</sup> CFPB Student Loan Ombudsman, *Annual report of the CFPB Student Loan Ombudsman* (Oct. 2017).

<sup>33</sup> National Housing Law Project, *Foreclosure Protection and Mortgage Payment Relief for Homeowners* (Updated Nov. 5, 2020).

<sup>34</sup> *Millions of Americans have their mortgages in forbearance programs—here’s why those using private lenders may face bigger challenges*. CNBC (July 15, 2020).

<sup>35</sup> Mortgage Bankers Association, *Share of Mortgage Loans in Forbearance Declines to 5.22 Percent* (Feb. 22, 2021).

specificity of forbearance terms, and concerns about contractual obligations between the servicer and investors can all lead to additional economic and legal obstacles for consumers seeking relief.<sup>36</sup>

### **Small Businesses and Commercial Rent**

Many small businesses continue to struggle with making commercial rent or keeping up with other payments.<sup>37</sup> In some sectors of the economy, more small businesses and nonprofits are seeking bankruptcy protections after failing to keep up with debt. According to a survey from by Alignable, a social network for small businesses, 25 percent of small business respondents reported having fallen behind on rent since the start of the pandemic, and 78 percent reported they were unable to negotiate their rent lower with their landlord.<sup>38</sup> Additionally, the pandemic has been particularly damaging to minority-owned businesses. According to the National Bureau of Economic Research, “the number of African-American business owners plummeted from 1.1 million in February 2020 to 640,000 in April.”<sup>39</sup>

In addition, a survey conducted by Color of Change and the Main Street Alliance found about one third of small businesses said they would be forced to close in less than six months, and African-American, Latinx, and Asian-American owners were more likely to feel at risk of closure.<sup>40</sup> Access to federal small business relief programs was also more difficult for minority-led businesses. According to analysis of PPP loan data by the Brookings Metropolitan Policy Program, “Black business owners were more likely to be denied PPP loans compared to white business owners with similar application profiles due to outright lending discrimination.”<sup>41</sup> Among other challenges, small businesses are reporting concerns associated with the rising costs of credit and debit card interchange, or “swipe” fees, which are expected to increase in April from at least two major credit card companies.<sup>42</sup>

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<sup>36</sup> Urban Institute, [Why It's Harder to Offer Mortgage Assistance to 3 Million Borrowers with Private Loans](#) (Aug. 13, 2020).

<sup>37</sup> [Unable to Pay Rent, Small Businesses Hope for a Deal With Their Landlord](#), New York Times (Sept. 23, 2020).

<sup>38</sup> Alignable, [Alignable: Only 8% Of SMBs Negotiated Reduced Rent During The Age Of COVID](#) (Sept. 10, 2020).

<sup>39</sup> National Bureau of Economic Research, [The Impact of Covid-19 on Small Business Owners: Evidence of Early Stage Losses Form the April 2020 Current Population Survey](#) (June 2020).

<sup>40</sup> Main Street Alliance, [NEW Poll: Nearly Half of Black-Owned Small Businesses Closed Permanently Or Will Soon Shutter Due to Insufficient Federal COVID Relief](#) (Oct. 2020).

<sup>41</sup> Brookings Metropolitan Policy Program, [New data shows small businesses in communities of color had unequal access to federal COVID-19 relief](#) (September 2020).

<sup>42</sup> Wall Street Journal, [Covid-19 Shopping Makes Card Fees a Bigger Burden for Merchants](#) (Feb. 24, 2021).

## Appendix: Legislation

- **H.R. \_\_\_, the “Relief for Consumers During COVID-19 Act” (Beatty)** would provide a temporary debt collection moratorium and sustainable repayment plans for consumers, as well as creditor access to Federal Reserve (Fed) loans during the pandemic, and for 120 days thereafter. Similar provisions were included in H.R. 925, the Heroes Act in the 116th Congress.
- **H.R. \_\_\_, the “Relief for Small Businesses and Nonprofits Act” (Perlmutter)** would provide a temporary debt collection moratorium and sustainable repayment plans for small businesses and nonprofits, as well as creditor access to Fed loans during the pandemic, and for 120 days thereafter. Similar provisions were included in H.R. 925, the Heroes Act in the 116th Congress.
- **H.R. \_\_\_, the “Disaster Protection for Workers' Credit Act” (Sherman)** would suspend negative consumer credit reporting and prohibit credit score furnishers from implementing new credit score models that would lower existing consumer credit scores during the pandemic and other declared major disasters plus 120 days. Similar provisions were included in H.R. 925, the Heroes Act in the 116<sup>th</sup> Congress.
- **H.R. \_\_\_, the “Emergency Relief for Student Borrowers Act” (Dean)** would extend CARES Act protections for Federal student loan borrowers, such as credit reporting and debt collection prohibitions, to private student loan borrowers and provides for monthly loan payments from the Treasury Department through the pandemic and 6 months thereafter. Federal and private student loan borrowers would receive up to \$10,000 in relief. Similar provisions were included in H.R. 925, the Heroes Act, the Heroes Act in the 116<sup>th</sup> Congress.
- **H.R. \_\_\_, the “COVID-19 Mortgage Relief Act” (Garcia-TX)** extends foreclosure and forbearance protections in the CARES Act to provide more relief for all homeowners, rental property owners, and mortgage servicers in part by extending the “GSE patch” until at least June 1, 2022 to help ensure market stability. Similar provisions were included in H.R. 925, the Heroes Act, the Heroes Act in the 116<sup>th</sup> Congress.
- **H.R. 618, the “Promoting Access to Credit for Homebuyers Act,” (Vargas)** would promote access to credit for homebuyers during the COVID-19 pandemic by preventing Fannie Mae, Freddie Mac, and the Federal Housing Administration from imposing additional restrictions or costs on borrowers who have inquired about, requested, or received forbearance.
- **H.R. \_\_\_, the “Financial Compensation for CFPB Whistleblowers Act” (Green)** would establish a whistleblower program incentivizing the reporting of consumer fraud and abuse to the Consumer Bureau, while protecting the confidentiality of the whistleblower’s identity.
- **H.R. \_\_\_, the “Senior Investor Pandemic and Fraud Protection Act” (Gottheimer)** would authorize grants by the CFPB to States to protect seniors and vulnerable adults from fraudulent marketing or sales practices related to the COVID–19 pandemic and other unlawful scams.
- **H.R. \_\_\_ the “COVID-19 Fraud Prevention Act” (Axne)** would establish a joint CFPB and Security and Exchange Commission (SEC) fraud working group to better protect consumers and investors against fraudulent consumer and investment schemes during the pandemic.
- **H.R. \_\_\_, the “Fair Debt Collection for Servicemembers Act” (Dean)** would prohibit debt collectors from threatening a servicemember with reducing their rank, having their security clearance revoked, or prosecuting them under the Uniform Code of Military Justice regarding an outstanding debt.
- **H.R. \_\_\_, the “Stop Debt Collection Abuse Act” (Cleaver)** would extend the Fair Debt Collection Practices Act’s (FDCPA) protections as it relates to debt owed to a Federal agency, and it would limit the fees debt collectors can charge.

- **H.R. \_\_\_\_\_, the “Debt Collection Practices Harmonization Act” (Meeks)** would extend FDCPA’s protections relating to debts owed to a State or local government, and adds other consumer protections, including clarifying that courts can award injunctive relief.
- **H.R. \_\_\_\_\_, the “Small Business Lending Fairness Act” (Velazquez)** would restrict the use of confessions of judgment for debts owed by small business owners, a key problem in the taxi medallion crisis.
- **H.R. \_\_\_\_\_, “Non-Judicial Foreclosure Debt Collection Clarification Act” (Auchincloss)** would clarify that entities in non-judicial foreclosure proceedings are covered under FDCPA to reverse the recent Supreme Court decision in *Obduskey v. McCarthy and Holthus LLP*.
- **H.R. \_\_\_\_\_, “Private Loan Disability Discharge Act of 2019” (Dean)** would require discharge of private student debt in the case of a permanent disability.
- **H.R. \_\_\_\_\_, “Ending Debt Collection Harassment Act of 2019” (Pressley)** would prohibit debt collectors from contacting consumers by e-mail or text without consent.
- **H.R. \_\_\_\_\_, “Consumer Protection for Medical Debt Collections Act” (Tlaib)** would prevent collection of medical debt for two years and prohibit any credit reporting on medically necessary procedures.
- **H.J. Res. \_\_\_\_\_, Resolution of Disapproval on the OCC’s National Banks and Federal Savings Associations as Lenders Final Rule.** This bill would nullify the OCC’s problematic final rule on “True Lender” bank partnerships.