Communities of Color Cannot Afford a Weakened CFPB

By Joe Valenti and Danyelle Solomon March 28, 2017

The Trump administration recently announced that it would review all financial regulations and, in the president's own words, "be doing a big number on Dodd-Frank."[1] One of the likely targets of the president and Congress is the Consumer Financial Protection Bureau, or CFPB, the independent federal agency created after the financial crisis of 2008 with the sole mission of protecting consumers in the financial marketplace.[2] Since opening its doors in 2011, the CFPB has had an impressive track record, returning nearly $12 billion to 29 million victims of financial wrongdoing and encouraging better practices across the financial system.[3] Yet the House and Senate have repeatedly introduced bills that would either eliminate the agency or change its structure, funding, or operations in ways that would greatly weaken its effectiveness.[4] A number of conservative congressional members, including House Financial Services Committee Chairman Jeb Hensarling (R-TX) and Sens. Mike Lee (R-UT) and Ben Sasse (R-NE) have spoken openly about firing the CFPB's director, Richard Cordray.[5]

Crippling the CFPB would be dangerous for American families still struggling to recover from the Great Recession and facing stagnant incomes and lost wealth. But weakening the agency would be particularly catastrophic for communities of color. Decades of segregation and discrimination created a wealth gap that, despite advances toward opportunity, remains entirely too large. In 2013, the median African American family held one-twelfth the wealth of the median white family.[6] And the median Latino family had only one-tenth the wealth of the median white family.[7] Meanwhile, while on average the wealth of Asian Americans and Pacific Islanders, or AAPIs, is relatively similar to that of whites, this masks significant disparities within the AAPI community: The poorest and wealthiest AAPI households typically have lower and higher wealth, respectively, than similarly situated whites.[8]

In light of both historical practices that prevented people of color from fully participating in the financial mainstream and current-day disparities in banking and lending practices, the CFPB plays a key role in protecting communities of color from wealth-stripping financial products. The agency's enforcement actions have rooted out discrimination in auto lending, mortgages, and credit cards, and rules it has introduced

address the harms posed by products such as payday loans and prepaid cards that are more commonly found in these communities. The CFPB has vigorously defended the economically vulnerable and marginalized by addressing forced arbitration, a process in which the fine print in financial contracts blocks victims from court.[9] And it has persisted despite constant opposition from special interests in the financial industry that seek to limit its independence and authority—and that donated $2.7 million per day to members of Congress during the past two years.[10]

The CFPB is essential in protecting vulnerable communities from discriminatory financial practices that have led to the current racial wealth gap.

Why Americans need the CFPB

This country's history of discriminatory and harmful financial practices is not a historical relic. Just as in the past, millions of Americans today remain excluded from the financial system, relying on costly and risky alternatives. The consequence of discriminatory financial practices is a growing racial wealth gap that holds back opportunity not just for communities of color but for everyone.

Financial exclusion and predatory practices

Sixteen million adults in America lack even a bank account, with African Americans and Latinos being five times as likely to be unbanked as whites, according to the Federal Deposit Insurance Corporation.[11] When relying on cash, people often face additional costs: There are check-cashing fees that may be as high as 3 percent to 5 percent of each check, as well as the cost of purchasing money orders or other tools that individuals use to convert cash into bill payments.[12] Overall, this can add up to hundreds or even thousands of dollars per year. A full-time, minimum wage worker may easily lose one or more weeks of pay each year just to pay for banking services.[13] This is particularly problematic for African Americans and Latinos, who are more likely to have lower earnings to begin with: The median wage for African Americans was $14.22 per hour in 2015; it was $13.48 per hour for Latinos, while the median white wage was $19.01 per hour.[14] And while prepaid debit cards have grown as a way for people who cannot get, or do not want, a bank account to have access to the same financial tools, these can also carry high fees.[15]

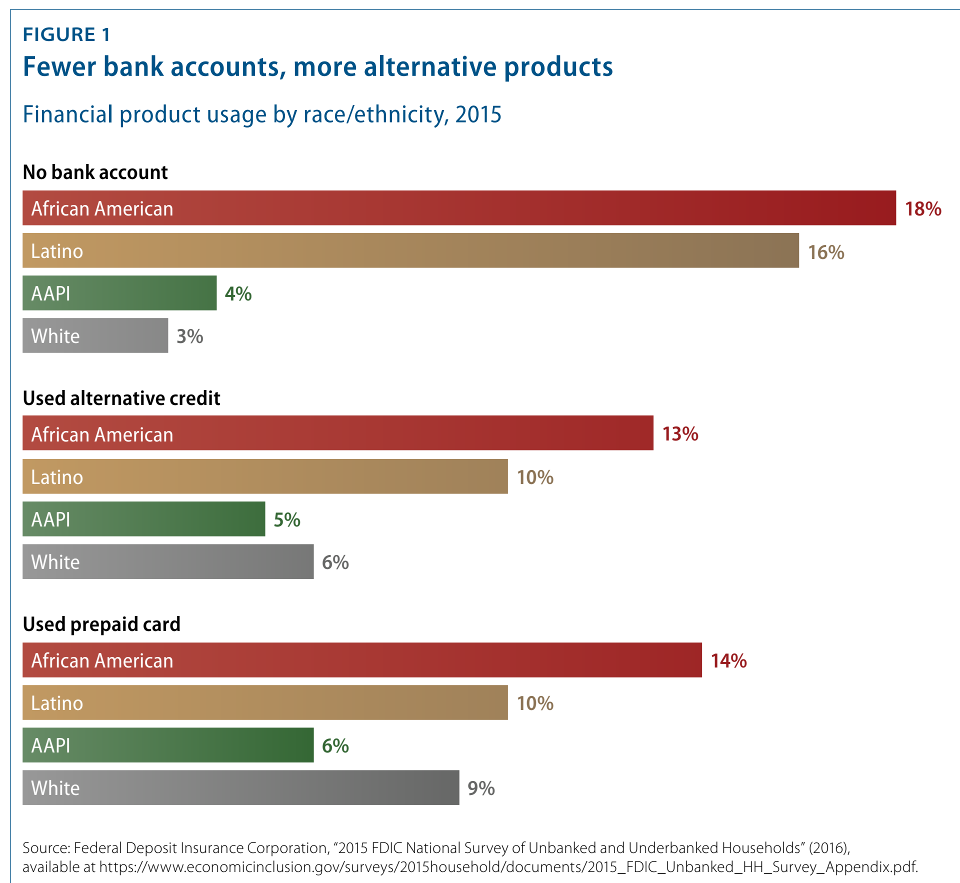
Ultimately, families with less wealth and poorer financial options end up highly vulnerable to financial shocks. A situation that a family with wealth could handle relatively easily—such as a medical emergency or an unexpected car repair—can be catastrophic for less financially well-off families. Fewer than 4 in 10 African American and Latino households would be able to come up with $400 without borrowing or selling something, according to the Federal Reserve, compared with 6 in 10 white households.[16] As

a result, too many families resort to costly credit instead. In 2015, 13 percent of African Americans and 10 percent of Latinos used a form of alternative credit, such as a payday loan, car title loan, or pawn shop, compared with only 6 percent of whites.[17] For most payday loan borrowers, a single loan at 400 percent annual interest is unaffordable, forcing the customer to borrow over and over again to the point where a $1,000 loan can turn into a $40,000 debt.[18] The majority of these borrowers, despite taking out a two-week loan, spend more than six months in debt.[19] For auto title loan borrowers—who effectively hand over their car title and a spare key in exchange for quick cash—the results can be even more catastrophic. One out of five title loan borrowers loses their car to repossession, making it difficult or even impossible to get to work, run errands, and provide for one's family.[20] These types of financial products can make it impossible to get by, let alone get ahead. Figure 1 shows financial access gaps by race and ethnicity.

FIGURE 1

Fewer bank accounts, more alternative products

Financial product usage by race/ethnicity, 2015



Source: Federal Deposit Insurance Corporation, "2015 FDIC National Survey of Unbanked and Underbanked Households" (2016), available at https://www.economicinclusion.gov/surveys/2015household/documents/2015_FDIC_Unbanked_HH_Survey_Appendix.pdf.

Racial wealth gap

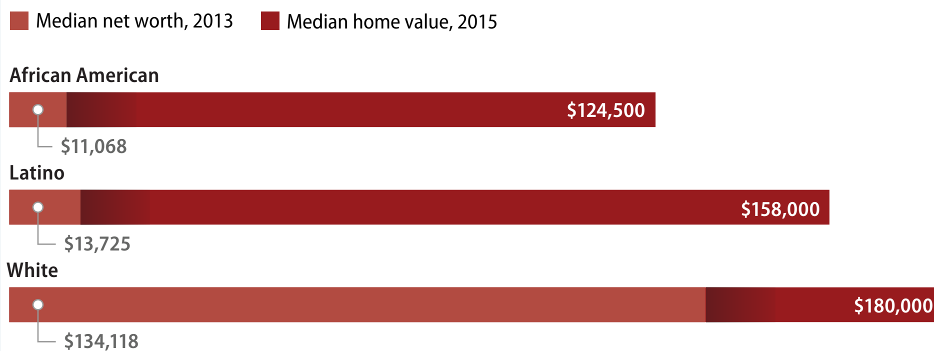
The racial wealth gap remains stark, with white families having 10 times the net worth of Latinos and 12 times the net worth of African Americans in 2013, according to the most recent data available.[21] In dollar amounts, the median net worth—what the median family owns minus what it owes—was $134,118 for white families, $13,725 for Latino families, and $11,068 for African American families.[22] The racial wealth gap has persisted over decades but narrowed in the 1990s as the economy strengthened. In 1989, the Survey of Consumer Finances reported that whites held 18 times the net worth of African Americans and 14 times the net worth of Latinos, and yet this narrowed to 6 times the wealth of Latinos in 1995 and 6 times the wealth of African Americans in 1998 before growing again.[23]

Overwhelmingly, people of color gain wealth through home equity. For black families, homeownership accounts for 53 percent of their wealth, while homeownership only accounts for 39 percent of wealth for white families.[24] Yet fewer than half of households of color own their homes, compared with approximately 72 percent of white households.[25] Furthermore, homeowners of color tend to deal with lower home values as well. The median value of an owner-occupied home by a white household is $180,000, compared with $124,500 for African American households and $158,000 for Latino households, according to the 2015 American Housing Survey.[26] Figure 2 shows the racial wealth gap today as measured in both net worth and housing values.

FIGURE 2

The racial wealth gap persists

Median net worth and home values by race/ethnicity



Note: Because of difficulties measuring the wealth of Asian American and Pacific Islander households, they have not been included in this chart.

Sources: Median net worths from Jeffrey P. Thompson and Gustavo A. Suarez "Exploring the Racial Wealth Gap Using the Survey of Consumer Finances" (Washington: Board of Governors of the Federal Reserve System, 2015), available at http://dx.doi.org/10.17016/FEDS.2015.076. Median home values from U.S. Census Bureau, "American Housing Survey: National, 2015 National - Value, Purchase Price, and Source of Down Payment - Owner-occupied Units," available at https://www.census.gov/programs-surveys/ahs/data/interactive/ahstablecreator.html#?s_areas=a00000&s_year=n2015&s_tableName=Table13&s_byGroup1=a9&s_byGroup2=a8&s_filterGroup1=t1&s_filterGroup2=g1 (last accessed March 2017).

Meanwhile, discriminatory practices also exclude families of color from the same financial opportunities as whites—and these practices are nothing new. From the New Deal until the 1960s, federal housing programs greatly increased the nation's homeownership rate, from 44 percent in 1940 to 62 percent by 1960.[27] Yet these programs largely excluded borrowers and communities of color. Instead, privately financed installment contracts were pitched as an alternative to mortgage lending in which buyers could, in theory, rent to own their properties—yet these often overpriced contracts instead typically resulted in making years of payments without any gains.[28]

Predatory financial practices that help drive the racial wealth gap result in the nation's economy not firing on all cylinders. Dollars spent on costly alternative financial services or on predatory lending are dollars that cannot be spent in the community or saved for the future. When borrowers of color lack affordable credit and capital, they are unable to buy homes and start businesses that would grow the economy. Only 5.7 percent of African American households and 6.2 percent of Latino households own their own businesses, compared with 14.7 percent of whites.[29] The housing and credit markets must evolve to ensure that these opportunities are both widely available and offered under responsible, affordable terms.

The CFPB provides oversight across the financial industry

The Consumer Financial Protection Bureau has addressed discriminatory practices in the financial system head-on. Its enforcement actions have tackled discriminatory lending practices, returning more than $450 million to approximately 1 million victims of fair lending abuses alone.[30] This year, its fair lending agenda includes actions to address redlining in communities of color, potential disparities in how delinquent borrowers are treated in the mortgage and student loan markets, and whether small-business borrowers face discrimination when applying for loans.[31] Other CFPB actions will also increase market transparency and accountability for communities of color. The CFPB has developed a Language Access Plan to serve communities where English may not be the primary language.[32] As directed by the Dodd-Frank Wall Street Reform and Consumer Protection Act, it is also developing processes to collect data about small-business loans, including the race, ethnicity, and gender of the business owner.[33] Similar to the use of Home Mortgage Disclosure Act, or HMDA, data to identify discrimination in mortgage lending, this database could track unfair practices facing women-owned-business borrowers and borrowers of color—yet even the use of data tools to identify discriminatory practices is under attack by Congress.[34]

Auto loans

In 2013, the CFPB filed a $98 million order against Ally Bank for overcharging 235,000 car loan borrowers of color over a three-year period.[35] It took similar actions against the financing arms of Honda[36] in 2015 and Toyota[37] in 2016 for charging higher interest rates to African American, Latino, and Asian American and Pacific Islander borrowers regardless of their credit scores, raising $46 million in restitution to customers in addition to requiring companies to change their lending practices.

Home loans

The CFPB has filed complaints against several banks for overcharging similarly qualified African American and Latino homebuyers and for redlining practices that led to denying mortgage loans to qualified borrowers of color in certain neighborhoods. BancorpSouth was penalized for overcharging African American homebuyers in the Memphis metropolitan area, or in some cases outright denying them loans despite them being otherwise eligible for credit.[38] Hudson City Savings Bank was fined for excluding African American and Latino neighborhoods in the New York metropolitan area from its expansion of bank branches and its mortgage offerings.[39] Both were required to support lending in underserved communities moving forward as a condition of their settlement agreements.

Credit cards

The CFPB has also targeted discriminatory and unfair credit card practices. Synchrony Bank, then known as GE Capital, was required to return $169 million to consumers for offering to reduce balances owed for a select group of customers, while excluding anyone otherwise eligible who had indicated that they would prefer to communicate with the bank in Spanish or who had a mailing address in Puerto Rico associated with their account.[40] So-called credit card add-on products have also been examined for deceptive sales pitches. Fifth Third Bank was ordered to return $3 million to consumers who paid for "debt protection" features that the bank misrepresented.[41]

Prepaid cards

In October 2015, a technical glitch left 132,000 prepaid RushCard users without access to the money on their debit cards for days or even weeks, making it impossible for them to pay bills and meet expenses.[42] The card, marketed by Russell Simmons as a symbol of empowerment, was known for high fees but was popular as an alternative to tradi-

tional bank accounts. In January 2017, the CFPB fined MasterCard and UniRush LLC, RushCard's parent company, $3 million and ordered $10 million in restitution to victims of the outage.[43] It also recently finalized new regulations to bring stronger protections to prepaid card products.[44]

Abusive settlement payments

Many of the predatory practices addressed by CFPB enforcement actions are particularly concentrated among the most vulnerable. Perhaps the most horrific practice that the Consumer Financial Protection Bureau has addressed involves deceiving victims out of settlement payments. Last November, it filed a complaint against Access Funding LLC for using a sham advisor to encourage victims of lead-paint poisoning to sign away their future payments for a small, immediate lump sum—typically only 30 percent of the funds they were likely to receive.[45]

The CFPB continues to write better rules of the road

More than an enforcement agency, the CFPB has the power to write rules governing financial products as well, and it has used this authority to create fairer and more transparent markets—as seen by its final rules on mortgages and prepaid cards and its upcoming activities on debt traps and arbitration. The CFPB is continuing to tackle serious abuses in the financial marketplace this year—achievements at risk of being blocked or overturned by Congress or the Trump administration.

New rules for prepaid cards

Long before the RushCard incident, the CFPB looked at prepaid card abuses, including the practice of forcing workers to receive their wages on these cards even if they had existing bank accounts.[46] New rules released last fall and awaiting implementation would finally bring order to this market.[47] After the rule goes into effect, people potentially receiving wages or benefits on cards must receive information about other ways to access their funds and make a meaningful choice, such as direct deposit to their own bank account. Prepaid card fees and features will be required to be prominently displayed on the packaging so that users will be able to make meaningful comparisons. Card users will not be on the hook for unauthorized or fraudulent activity in these accounts, just as users of other debit cards and credit cards are already protected. And these cards will need to live up to their name—that is to say, customers will not be able to overdraw their cards the way bank accounts are sometimes overdrawn, racking up hundreds of dollars in fees. Credit features will need to be separate and optional so that customers are assured that their dollars are safe.

New rules for payday lending

Payday loan stores have expanded dramatically in the past 25 years, claiming to offer credit to underserved communities such as communities of color. By 2006, an industry that barely existed in 1993 grew to include approximately 25,000 locations nationwide.[48] Yet instead of being a financial lifeline, payday loans and auto title loans often leave borrowers deeper and deeper in debt. As stagnant wages and an insufficient safety net make it harder for families to make ends meet, these high-cost lenders fill the gap for millions, with devastating effects.[49] Both of these products are overwhelmingly located in African American and Latino neighborhoods, and, not surprisingly, people of color are more likely to take out these loans as a result.[50]

More than 90 million Americans live in the 15 states and the District of Columbia[51] where high-cost payday loans are banned through caps on the interest rates that can be charged, and former President George W. Bush signed into law a bipartisan measure limiting interest rates on military service members and their families to 36 percent annually.[52] Yet predatory lending has largely remained a state issue, and activists have often faced an uphill battle. Last year, the CFPB proposed the first comprehensive federal rules to deal with these debt traps that cost consumers $8 billion per year in fees.[53] These rules would require lenders to verify whether borrowers would truly be able to pay back a loan, restrict the ability of balances to spiral out of control, and make it more difficult for lenders to repeatedly drain borrowers' bank accounts.[54]

New rules on arbitration clauses

The CFPB is also working to ensure that people wronged by a financial institution can have their day in court. Over the past three decades, the U.S. Supreme Court has validated the use of arbitration instead of a jury trial for cases involving consumers and workers.[55] Arbitration, a practice dating back to the 1920s for business-to-business disputes, involves waiving one's right to the courts in favor of a private decision by an arbiter.[56] While forced arbitration may make sense for two parties that are comparable, such provisions inserted by companies and hidden in contracts stack the deck against individual victims who are unable to go to court.

For example, thousands of RushCard users affected by the outage that denied them access to their funds had signed away their right to sue, even though none could have anticipated being locked out of their accounts for weeks.[57] Ultimately, in 2016, they were able to reach a $20 million settlement and the company waived its arbitration clause, but only this rare act of corporate goodwill could make consumers whole.[58] Similarly, after opening as many as 2 million unauthorized accounts, Wells Fargo executives claimed

that the arbitration clauses in accounts that customers had signed up for also applied to the accounts fraudulently opened in their names.[59] Above all, by making it harder for victims to sue and controlling the terms of dispute resolution, arbitration gives companies a free pass for low-quality products and deceptive practices.[60]

The CFPB studied arbitration at Congress' request and found that arbitration clauses are widespread, particularly in products used by lower-income and more vulnerable consumers, such as prepaid cards and payday loans.[61] The CFPB is currently in the process of finalizing a rule that would, as proposed, limit the ability of financial companies to block class actions by mandating arbitration and would collect data on arbitrations as they occur.[62]

Across all these product areas, the CFPB has stood up for fairness and transparency in the financial marketplace and stood against predatory practices. Efforts to oppose the agency or block its work are short-sighted and would allow harmful financial practices to continue unabated.

Conclusion

Risky financial practices and predatory products have long ravaged communities of color, leading to a persistent and growing wealth gap. Since it opened its doors in 2011, the Consumer Financial Protection Bureau has worked to narrow this gap and restore faith in the financial system by enforcing fair lending and consumer protection laws and by moving forward on rules to ensure that in the future, banking and lending practices work for everyone. As the Trump administration and Congress look to undo financial regulations enacted after the financial crisis, communities of color and their allies must be vigilant against attacks on the CFPB that would lead to a return to predatory practices.

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