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Cities as a Source of Consumers' Financial Empowerment

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CITIES AS A SOURCE OF CONSUMERS' FINANCIAL EMPOWERMENT

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Cities have been overlooked as a source of consumer protection.[1] It is easy to see why. Cities are a poor place to situate consumer protection regulation, especially "top down" efforts to "command and control" lending decisions. This is especially true when lending occurs through national markets. As between federal, state and municipal regulators, and regulatory enforcement agents, cities come third in a field of three.

Although some municipalities may be authorized to regulate,[2] their regulatory jurisdiction is fragile because it is subject to reversal on two fronts: federal laws can pre-empt cities' efforts to legislate, but so too can state law block municipal regulation.[3] Moreover, regulation should only occur after extensive fact finding and opportunities for commentary are completed. Cities may not be well equipped to engage in the foundational work necessary as a precursor to regulation.[4]

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1 For notable exceptions to this statement, see Kathleen Engel, *Local Governments and Risky Home Loans*, 69 S.M.U. L. REV. 609 (2016); Kathleen Engel, *The State of Play in City Claims Against Financial Firms*, 40 FORDHAM URB. L.J. CITY SQUARE 82 (2014); Jonathan L. Entin, *City Governments and Predatory Lending Revisited*, 40 FORDHAM URB. L.J. CITY SQUARE 108 (2014); Jonathan L. Entin & Shadya Y. Yazback, *City Governments and Predatory Lending*, 34 FORDHAM URB. L.J. 757 (2007). In examining cities as a source of consumer protection, this essay presumes without further analysis an important foundational premise: that consumers should be protected in their financial decision making.

2 As one example, New York City regulates across a wide range of industries and practices. It does this through its licensing and certification power, but also by rulemaking. For New York City's consumer protection regulations, *see* CONSUMER PROTECTION LAW, N.Y.C. ADMIN. CODE, §§ 20-700 to 20-706, http://www1.nyc.gov/assets/dca/downloads/pdf/about/ConsumerProtectionLawPacket.pdf.

3 *See* Richard Briffault, *What About the "Ism"? Normative and Formal Concerns in Contemporary Federalism,* 47 VAND. L. REV. 1303, 1342 (1994) ("The gist of the difference between state and local lawmaking authority is that every local law is potentially subject to two challenges whereas state laws are only subject to one."); *see also* Nestor Davidson, *Localist Administrative Law,* 126 YALE L.J. 564 (2017) (developing administrative jurisprudence to address distinct local regulatory and administrative bodies); Daniel B. Rodriguez & Nadav Shoken, *Comparative Local Government Law in Motion: How Different Local Government Law Regimes Affect Global Cities' Bike Share Plans,* 42 FORDHAM URB. L.J. 123, 143–53 (2014) (in building case for comparative urban law, describing relationship between local and state governments).

4 Recent efforts in several cities to tax or otherwise regulate soda in an effort to combat obesity have been challenged, and in one notable instance reversed. In 2014, the New York Court of Appeals held invalid the New York City "Portion Cap Rule" as an illegitimate exercise of legislative authority by the New York City Board of Health. *See* N.Y. Statewide Coal. of Hispanic Chambers of Com. v. N.Y.C. Dep't of Health & Mental Hygiene, 23 N.Y.3d 681 (2014). In 2016, the City of Philadelphia became the first major U.S. city to pass a soda tax. Laura McCrystal, *Pa. Supreme Court to Hear Soda Tax Case*, PHILA. INQUIRER (Jan. 30, 2018),

Nor are cities likely to excel at the enforcement of federal or state consumer protection law.[5] Although city actors can commence litigation to enforce these laws, few cities create positions like New York City's Public Advocate,[6] San Francisco City Attorney's Office Affirmative Litigation Unit,[7] and Miami's Office of City Attorney.[8] Cities often employ lawyers, to be sure, but generally these municipal lawyers defend suits brought against the city rather than initiate suits looking to protect the interests of the cities' consumer residents. Cities' standing to litigate to recover for damage to local communities—and so to the municipal tax base—is clearer now after the Supreme Court's recent case in *Bank of America v. City of Miami*.[9] But cities' standing to bring suit has been

http://www.philly.com/philly/news/pennsylvania/soda-tax-supreme-court-philadelphia-appeal-20180130.html. The American Beverage Association has appealed a Commonwealth Court's decision to uphold the tax. *Id.* The Pennsylvania Supreme Court has yet to decide the appeal. *See* Williams v. City of Phila., Nos. 321 EAL 2017, No. 322 EAL 2017, 2018 Pa. LEXIS 639 (Jan. 30, 2018) (order granting Petition for Allowance of Appeal). By contrast, Chicago's sugar tax was short-lived, as the Cook County Board of Commissioners voted to repeal it just months after its enactment. Caitlin Dewey, *Why Chicago's Soda Tax Fizzled After Two Months—And What It Means for the Anti-Soda Movement*, WASH. POST (Oct. 10, 2017), https://www.washingtonpost.com/news/wonk/wp/2017/10/10/why-chicagos-soda-tax-fizzled-after-two-months-and-what-it-means-for-the-anti-soda-movement/?utm_term=.18c999de46f5.

[5] If invested with sufficient resources, cities could become vital sources for enforcement of the federal consumer laws, given their knowledge and experience with the immediate impacts of the failure of consumer financial protection and their incentives to prioritize the interests of city residents. *See, e.g.*, Kathleen Morris, *The Case for Local Constitutional Enforcement,* 47 HARV. C.R.- C.L. L. REV. 1 (2012) (contesting *Hunter v. City of Pittsburgh* and articulating and developing a post-Hunter theoretical framework for local government law and law enforcement). For one group's implementation of such advocacy, see Public Rights Project, https://www.publicrightsproject.org/ (last visited Mar. 19, 2018).

[6] The New York City Law Department houses an Affirmative Litigation division, which brings public interest lawsuits in the name of the City of New York, such as that recently commenced by NYC against the nation's largest opioid manufacturers. For a description of the Affirmative Litigation Division, see *Legal Divisions—Affirmative Litigation*, N.Y.C. L. DEP'T, http://www.nyc.gov/html/law/html/divisions/affirmative-litigation.shtml (last visited Mar. 19, 2018). For a description of the opioid suit, see Press Release, N.Y.C. Office of the Mayor, Mayor deBlasio Announces Lawsuit Against Nation's Largest Opioid Manufacturers and Distributors (Jan. 23, 2018), http://www1.nyc.gov/office-of-the-mayor/news/054-18/mayor-de-blasio-lawsuit-against-nation-s-largest-opioid-manufacturers-distributors#/0.

[7] The San Francisco Affirmative Litigation Unit pursues public interest causes of action under California law. For a description of the origins and work of the Unit, see *Affirmative Litigation*, CITY ATT'Y OF S.F., https://www.sfcityattorney.org/aboutus/teams/affirmative-litigation/ (last visited Mar. 19, 2018).

[8] For a description of the Office of the City Attorney in Miami and its work, see *Practice Areas*, City of MIAMI OFFICE OF CITY ATT'Y, http://www.miamigov.com/cityattorney/practiceAreas.html#litigation (last visited Mar. 19, 2018).

[9] Bank of America Corp. v. City of Miami, 137 S. Ct. 1296 (May 1, 2017).

narrowly cabined by the Court.[10] As a result, cities' abilities to protect residents through litigation remain limited.[11]

Cities should, nonetheless, be understood as an important source of consumer protection, especially as to efforts to protect consumers by "empowering" them. When cities protect through empowerment, they are neither regulating nor litigating.[12] Consumer empowerment might take the form of debt advice or education initiatives. Empowerment might also occur by enabling consumers to register complaints about lenders or other financial service providers' conduct. It might involve financial inclusion initiatives to encourage banks and other institutions to provide financial services that are affordable and convenient to consumer residents, and non-predatory.

Debt advice initiatives focus on strategies for resolving consumers' problems of access to information, comprehension, learning, and self-awareness.[13] Financial inclusion programs encourage banks and other financial actors to locate conventional financial services in previously underserved neighborhoods so underserved communities can more easily access them.[14] Complaint registers and mediation programs offer consumers low-cost options for dispute resolution.[15] Together, these sorts of empowerment initiatives assist in resolving a range of credit market failures by *enhancing consumers'* abilities

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[10] *Id.* at 1298–99, 1306 (finding that City of Miami was a "person aggrieved" within meaning of Fair Housing Act (FHA), and holding that FHA's proximate cause requirement demands "some direct relation between the injury asserted and the injurious conduct alleged" and directing lower courts articulate how "proximate cause" standard would apply to a city's claims for lost property-tax revenue and increased municipal expenses).

[11] For general commentary on the Supreme Court's decision in City of Miami, see *Fair Housing Act—Standing and Proximate Cause—*Bank of America Corp. v. City of Miami, 131 HARV. L. REV. 373 (2017). For industry reaction to the decision, see Debbie Hoffman and Alexandria Decatur, REWIRED, HOUSING WIRE, *Part 1, The fallout of the Bank of America vs. City of Miami decision: An overview of the case and other present litigation* (Sept. 26, 2017), available at https://www.housingwire.com/blogs/1-rewired/post/41394-part-1-the-fallout-of-the-bank-of-america-vs-city-of-miami-decision; Debbie Hoffman and Alexandria Decatur, REWIRED, HOUSING WIRE, *Part 2, The fallout of the Bank of America vs. City of Miami decision: An overview of the case and other present litigation* (Sept. 27, 2017), available at https://www.housingwire.com/blogs/1-rewired/post/41405-part-2-the-fallout-of-the-bank-of-america-vs-city-of-miami-decision.

[12] *See* Yoon-Ho A. Lee & K. Jeremy Ko, To Empower, Prohibit or Delegate? Regulatory Strategies for the Consumer Credit Market (Jan. 2011) (unpublished manuscript) (on file with author).

[13] For a description of debtor education and counseling initiatives (which together are referred to herein as "debt advice"), see text accompanying notes 18–25, *infra*; *see also* Lee & Ko, *supra* note 12, at 14 ("By empowerment, we refer to any category of solutions designed to aid consumers' decision-making so that they can maximize their economic welfare. It is one potential tool to remedy consumers' epistemic failures and can involve making it easy for consumers to search for, learn about, understand, compare products and their usage, to properly calculate the cost, or to properly predict their behavior.").

[14] *See infra* Part I.B.

[15] *See infra* Part I.C.

to make financial decisions rather than *restricting lenders'* conduct in lending markets.[16]

This is not to say, by any means, that empowerment strategies should be viewed as the most important form of consumer financial protection. Regulation and regulatory enforcement can be far more effective at resolving failures in consumer credit markets than are programs designed to enable consumers' self-help strategies. Empowerment strategies can, however, provide useful supplemental options in the consumer protection toolbox. And when empowerment options are relied on, cities are an especially good place to locate this sort of consumer protection because empowerment initiatives involve "bottom up" strategies of consumer engagement.

I support these claims in roughly three steps. Part I describes various efforts to enhance consumer financial empowerment, including initiatives to (i) provide debt advice to consumers, (ii) enhance consumers' financial inclusion, and (iii) enable consumers to register complaints about financial services and possibly to mediate those disputes. It also explores some of the limitations of each of these strategies for consumer financial protection. Part II, next, explains why cities can perform these particular sorts of consumer financial protection initiatives—that is, empowerment initiatives—better than other levels of government. This explanation is focused on cities' concentrated proximity to consumers, their existing infrastructures, and their uniquely pragmatic methods of work. Part III concludes by emphasizing the payoffs and limitations of emphasizing cities' expertise in providing empowerment initiatives to resident consumers.

I.

This section describes three sorts of consumer financial empowerment initiatives:[17] (i) debt advice; (ii) financial inclusion projects; and (iii) complaint collection, which is sometimes combined with mediation. Each of these initiatives aims to address some failure in the market for consumer credit. These market failures involve problems of access along three different fault lines:

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[16] For discussion of the distinction among consumer protection initiatives that empower, regulate and self-regulate, see Lee & Ko, *supra* note 12.

[17] Although cities provide consumer financial empowerment, so, too, do the federal and state governmental actors. For example, the Consumer Financial Protection Bureau includes a division of Consumer Education and Engagement, which is divided among six offices: consumer engagement; financial education; students and young consumers; older Americans; service member affairs; and financial empowerment. *See Bureau Structure*, CONSUMER FIN. PROTECTION BUREAU (Dec. 5, 2017), https://www.consumerfinance.gov/about-us/the-bureau/bureau-structure/. This essay is mostly focused on municipal financial empowerment programs.

access to information; access to conventional financial services; access to justice.

Empowerment initiatives try to provide consumers with do-it-yourself tools for tackling problems of access on their own. But remedies of consumer self-help are difficult to implement: first, consumers are a diffuse group and thus difficult to reach; moreover, consumers may be slow to implement the strategies offered to them. Critics often fault empowerment initiatives as less likely than regulation to alter behavior and resolve market failures. These criticisms are also discussed.

A. *Debt Advice*

Consumer borrowers often lack access to the information they need to make good financial decisions. Mandatory disclosure regulation aims to reduce informational asymmetries in financial decision-making. Disclosure mandates, like those found in the Truth in Lending Act, can help,[18] but disclosure mandates presume that consumer borrowers can access, comprehend, and actualize the information contained in them.[19]

In other words, mandatory disclosure regimes are premised on the leap of faith that access to information should be equated with learning.[20] In the same way that no one believes that a college education should consist of issuing a library card to incoming students and no more, many view disclosure mandates as a good starting point for answering consumers' questions about loans, credit cards, payments and other financial transactions, but no more.[21] Personal finance

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[18] Pub. L. No. 90-321, 82 Stat. 146 (codified as amended in scattered sections of 15 U.S.C.); *see also* THOMAS A. DURKIN & GREGORY ELLIEHAUSEN, TRUTH IN LENDING: THEORY, HISTORY, AND A WAY FORWARD (2011).

[19] DURKIN & ELLIEHAUSEN, *supra* note 18, at 24; *see also* Elizabeth Renuart & Diane E. Thompson, *The Truth, the Whole Truth, and Nothing but the Truth: Fulfilling the Promise of Truth in Lending*, 25 YALE J. REG. 181, 207–17 (2008) (discussing the need for financial disclosures to account for limitations of consumer comprehension).

[20] OMRI BEN-SHAHAR & CARL E. SCHNEIDER, MORE THAN YOU WANTED TO KNOW: THE FAILURE OF MANDATED DISCLOSURE (2014); Susan Block-Lieb & Edward J. Janger, *The Myth of the Rational Borrower: Rationality, Behaviorism, and the "Reform" of Bankruptcy Law*, 84 TEX. L. REV. 1481 (2006); Susan Block-Lieb, Richard Wiener, Jason A. Cantone & Michael Holtje, *Disclosure as an Imperfect Means to Address Overindebtedness: An Empirical Assessment of Comparative Approaches*, *in* CONSUMER CREDIT, DEBT, AND BANKRUPTCY: COMPARATIVE AND INTERNATIONAL PERSPECTIVES (Johanna Niemi, Iain Ramsay & William Whitford eds., 2009); Omri Ben-Shahar & Carl E. Schneider, *The Failure of Mandated Disclosure*, 149 PENN. L. REV. 647 (2011).

[21] *See, e.g.*, Matthew A. Edwards, *Empirical and Behavioral Critiques of Mandatory Disclosure: Socio-Economics and the Quest for Truth in Lending*, 15 CORNELL J.L. & PUB. POL'Y 199, 216–34 (2005); William N.

is not as complicated as abstract algebra or organic chemistry, but it may be hard for individuals to pick up on their own. Few want to share their personal financial details with others, making friends and family a poor source of advice.[22] Consumers may still have questions after mandatory disclosures are made available to them.

To help in getting answers, some cities offer debt advice programs to their residents, whether one-on-one counseling or group educational initiatives. Cities might mandate or offer financial education in their public schools.[23] Public libraries might host adult-ed classes and other opportunities for learning.[24] Cities might also offer financial counseling in face-to-face settings.[25] Whether it is offered on a one-on-one basis (counseling or coaching) or in a group setting (education), debt advice seeks to expand individuals' understanding and appreciation of complex consumer finance transactions.

In some settings, debt advice is mandatory.[26] Public school systems may require their students to learn about financial topics.[27] Before accessing federal bankruptcy jurisdiction, individual debtors have to demonstrate that they have participated in a "briefing" from an "approved nonprofit budget and credit

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Eskridge, Jr., *One Hundred Years of Ineptitude: The Need for Mortgage Rules Consonant with the Economic and Psychological Dynamics of the Home Sale and Loan Transaction*, 70 VA. L. REV. 1083, 1128–35 (1984).

22 Susan Block-Lieb, *Mandatory Protections as Veiled Punishments: Debtor Education in H.R. 975, The Bankruptcy Abuse and Consumer Protection Act of 2003*, 69 BROOKLYN L. REV. 425 (2003); Karen Gross, *Establishing Financial Literacy Programmes for Consumer Debtors: Complex Issues on the Platter*, *in* CONSUMER BANKRUPTCY IN GLOBAL PERSPECTIVE (Iain Ramsay, William Whitford, & Johanna Niemi-Kiesilainen eds., 2003).

23 National Conference of State Legislatures, List of Financial Literacy Legislation pending in 2017, available at http://www.ncsl.org/research/financial-services-and-commerce/financial-literacy-2017-legislation.aspx (last visited April 27, 2018).

24 *See, e.g.*, *Business & Career Services*, BROOKLYN PUB. LIBR., https://www.bklynlibrary.org/business (last visited Mar. 16, 2018); *Adult Education Classes by Subject*, PUB. LIBR. CINCINNATI & HAMILTON CTY., http://www.cincinnatilibrary.org/main/adultedclasses.asp (last visited Mar. 16, 2018); *Adult Basic Education*, ARLINGTON PUB. LIBR., http://arlingtonlibrary.org/adult-learning-programs/abe/ (last visited Mar. 16, 2018).

25 New York City offers financial counseling to its residents. *See Get Free Financial Counseling*, N.Y.C. CONSUMER AFF., (Mar. 6, 2018), https://www1.nyc.gov/site/dca/consumers/get-free-financial-counseling.page. Other major cities, such as Denver, Philadelphia, and San Antonio similarly provide free financial counseling to their residents. *See* Press Release, Denver Mayor's Office, Mayor Hancock Opens Seven Centers to Provide Free Financial Counseling Services to Low Income Residents (Mar. 18, 2013), https://www.denvergov.org/content/denvergov/en/mayors-office/newsroom/2013/mayor-hancock-opens-seven-centers-to-provide-free-financial-coun.html; City of Philadelphia, *Financial Empowerment*, http://www.phila.gov/fe/pages/default.aspx (last visited Mar. 16, 2018); City of San Antonio, *Financial Empowerment Center*, http://www.sanantonio.gov/humanservices/FinanceEmergency/financialempowerment (last visited Mar. 16, 2018).

26 Block-Lieb, *supra* note 22.

27 *See, e.g.*, Ann Carns, *Most States Don't Require Specific Financial Literacy Classes*, N.Y. TIMES (Jan. 19, 2018), https://www.nytimes.com/2018/01/19/your-money/states-financial-literacy-classes.html.

counseling agency;"[28] they also have to complete a separate "personal financial management" course as a condition of obtaining a discharge at the conclusion of their bankruptcy case.[29] Housing counseling may be required: when certain first-time homebuyers look to finance their purchase with a "high-cost" mortgage; when some elderly homeowners look to refinance their retirement with a "reverse" mortgage.[30]

If consumers voluntarily seek to obtain either counseling or education on financial topics they may find a paucity of providers, although to some degree this is changing. Some employers offer financial counseling—usually but not always focused on investing and insurance decisions—as a benefit to their employees.[31] Financial counseling is also offered by the armed forces to military personnel.[32] Increasingly, cities offer financial counseling and courses to their residents, sometimes modeled on New York City's Office of Financial Empowerment.[33]

Debt advice initiatives are surprisingly controversial. It may be unsurprising that mandatory counseling and mandatory education is controversial since at least some of the individuals subject to the mandate may view the requirement as unnecessary, expensive, and ineffective.[34] Mandatory anything is controversial in the United States. Voluntary financial counseling and education initiatives are also controversial, however.

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[28] 11 U.S.C. § 109(h)(1) (2012).

[29] *Id.* § 524.

[30] For the CFPB's Interpretive Rule on housing counseling relating to high-cost mortgages, see Consumer Financial Protection Bureau, Homeownership Counseling Organizations Lists and High-Cost Mortgage Counseling Interpretive Rule, 80 Fed. Reg. 22091 (Apr. 15, 2015), https://www.federalregister.gov/documents/2015/04/21/2015-09244/homeownership-counseling-organizations-lists-and-high-cost-mortgage-counseling-interpretive-rule. For HUD's Final Rule on reverse mortgages, see Department of Housing and Urban Development, Home Equity Conversion Mortgage Program, 82 Fed. Reg. 7094 (Jan. 19, 2017), https://www.gpo.gov/fdsys/pkg/FR-2017-01-19/pdf/2017-01044.pdf.

[31] *See, e.g.*, Stephen Miller, *Is 2017 the Year of Employee Financial Wellness Programs?*, SOC'Y FOR HUM. RESOURCE MGMT. (Jan. 17, 2017), https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/financial-wellness-trend.aspx (noting an increase in employer-provided financial education that focuses on retirement, student loan debt management, and day-to-day budgeting).

[32] *See Personal Finance*, MIL. ONESOURCE, http://www.militaryonesource.mil/web/mos/personal-finance (last visited Mar. 17, 2018); *see also CFPB Releases Updated Exam Procedures for Military Lending Act*, CONSUMER FIN. PROTECTION BUREAU (Sept. 30, 2016), https://www.consumerfinance.gov/about-us/newsroom/cfpb-releases-updated-exam-procedures-military-lending-act/ (noting regulatory efforts by the CFPB to promote fair and safe access to credit by U.S. service members).

[33] Susan Block-Lieb, *Consumer Financial Protection, Inclusion and Education: Connecting the Local to the Global*, *in* LAW BETWEEN BUILDINGS 82, 90 (Nestor Davidson & Nisha Mistry eds., 2017).

[34] *Id.*

To some, the most controversial aspect of credit counseling, debt settlement, budget planning, and similar efforts is that historically some of this debt advice has been extended either through non-profit entities hiding their for-profit backing and predilections, or for-profit entities engaging in predatory advice giving.[35] Moreover, financial literacy and financial wellness initiatives may be expensive, especially when considering the dynamic nature of the consumer lending markets and the need for consumer borrowers to revise their learning about these markets periodically and likely frequently.[36] Not every city government is able to finance or even offset the cost of these programs. The internet lowered the cost of providing financial education, but it might also have watered down its content.[37]

Some critics focus their concerns about these programs on the lack of sound empirical grounding for financial literacy initiatives.[38] Empirical analysis of counseling and educational offerings is hampered, to a large degree, by a failure to agree on goals and so on the metrics for measuring success in attaining these goals.[39] Empirical analysis is also made more difficult by the diversity of debt

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[35] *See generally* Susan Block-Lieb & David Friedman, *Indirect Regulation: The Political Economy of the Credit Counseling Industry* (on file with author); Tracie R. Porter, *The Field Between Lions and Zebras . . . Evening the Playing Field Between Lenders and Borrowers: Conflicts of Interest and Legal Obligations in the Residential Mortgage Transaction*, 30 QUINNIPIAC L. REV. 623 (2012). The IRS has responded to abuses by non-profit credit counseling organizations by revoking bad actors' tax-exempt status. *See* IRS News Release IR-2006-80 (May 15, 2006), https://www.irs.gov/newsroom/irs-takes-new-steps-on-credit-counseling-groups-following-widespread-abuse. Federal and state agencies have also brought actions against debt-settlement service providers and budget planners, which differ importantly from credit counseling entities, for abusive practices. *See CFPB Sues Freedom Debt Relief for Misleading Consumers About Its Debt-Settlement Services*, CONSUMER FIN. PROTECTION BUREAU (Nov. 8, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-freedom-debt-relief-misleading-consumers-about-its-debt-settlement-services/; Press Release, N.Y. Dep't of Fin. Servs., New York State Banking Department Issues Order Against CB Budget Planning Corp. (May 21, 2008), http://www.dfs.ny.gov/about/ea/ea080521.htm.

[36] Lee & Ko, *supra* note 12, at 19 (noting that educational initiatives "may be cost-ineffective where the content of the information to be delivered to consumers is constantly fluctuating and need perpetual updating").

[37] For discussion of the bankruptcy debt advice mandate for these programs to be offered over the Internet or telephones, see, e.g., Michael D. Sousa, *Just Punch My Bankruptcy Ticket: A Qualitative Study of Mandatory Debtor Financial Education*, 97 MARQ. L. REV. 391, 439 (2013) (noting that financial counselors believed in-person counseling sessions to be more successful than those over the phone or internet, as those sessions provided greater opportunity for those counselors to know and understand their clients); Katherine Porter, *Going Broke the Hard Way: The Economics of Rural Failure*, 2005 WIS. L. REV. 969, 1024 (2005) (discussing the illusory relief to debtors in rural communities from the internet or telephone-based financial education courses, as many such debtors are likely to discontinue their internet service to ease their financial burdens).

[38] *See, e.g.*, Robert S. Alder & R. David Pittle, *Cajolery or Command: Are Education Campaigns an Adequate Substitute for Regulation?*, 1 YALE J. REG. 159, 161 (1984); Lauren E. Willis, *Evidence and Ideology in Assessing the Effectiveness of Financial Literacy Education*, 46 SAN DIEGO L. REV. 415, 419 (2009).

[39] For discussion of the challenges of such empirical research, see, e.g., DOUGLAS J. LAMDIN, ED., CONSUMER KNOWLEDGE AND FINANCIAL DECISIONS (2012); Gene Amromin, Itzhak Ben-David, Sumit Agarwal, Souphala Chomsisengphet, & Douglas D. Evanof, *Financial Literacy and The Effectiveness of*

advice that gets offered: diversity in where the programs get offered and by whom; there is also a wide range in the content of these courses.

Oversight of financial literacy programs exists through the federal government, but national oversight does not unify the provision of debt advice in the United States. The Consumer Financial Protection Bureau collects and analyzes data and submits an annual report to Congress on financial literacy; it provides financial literacy materials to assist educators, military personnel, librarians, and other practitioners. But the CFPB is not the only federal initiative on financial education and counseling. Earlier, Congress tasked the Department of Treasury to create a Financial Literacy Education Commission. FLEC created a website and hosts conferences,[40] and these initiatives appear not to coordinate with those offered through the CFPB.[41] Together the CFPB and Treasury's FLEC provide lots of light touches and little in the way of convergence or unification of these programs.

My point here is not that debt advice programs ought to follow a single script. The diversity of debt advice initiatives may well be justified by the distinct needs that different consumers face, depending on their age, income level, and geographic location. But the diversity of these initiatives complicates any study of whether these initiatives can succeed and, if so, what elements enhance the likelihood for success.

Despite controversies about the effectiveness of financial education and counseling efforts, these programs have expanded in the past decade or so.[42]

Financial Education and Counseling: A Review of the Literature, in FINANCIAL LITERACY IMPLICATIONS FOR RETIREMENT SECURITY AND THE FINANCIAL MARKETPLACE (Olivia S. Mitchell and Annamaria Lusardi eds., 2012).

[40] For information about Treasury's FLEC, see *Resource Center*, U.S. DEP'T OF TREASURY (Jan. 16, 2018), https://www.treasury.gov/resource-center/financial-education/Pages/commission-index.aspx.

[41] FLEC originates out of Treasury. Although the CFPB does not appear to sit on this Commission, FLEC also includes the heads of 19 additional federal agencies: Office of the Comptroller of the Currency; Federal Reserve; the Federal Deposit Insurance Corporation; Federal Emergency Management Agency: National Credit Union Administration; Securities and Exchange Commission; Departments of Education; Agriculture; Defense; Health and Human Services; Housing and Urban Development; Interior, Labor, and Veterans Affairs; Federal Trade Commission; General Services Administration; Small Business Administration; Social Security Administration; Commodity Futures Trading Commission; Office of Personnel Management; White House Domestic Policy Council. *Id.*

[42] For example, between 2008 and 2018, Financial Empowerment Centers (FECs) have provided free, public counseling services to over 80,000 clients in twelve cities to assist with personal debt reduction, credit improvement, creation of safe bank accounts, and future personal savings. *See* Press Release, Cities for Financial Empowerment Fund, Wells Fargo and Cities for Financial Empowerment Fund Expand Access to Free Financial Counseling (Mar. 15, 2018), http://cfefund.org/wp-content/uploads/2018/03/CFE-Fund-FEC-Public-Wells-Fargo-Expansion-Final-Release.pdf.

Expansion has occurred at the federal level, to be sure, but not exclusively. Cities have, importantly, leapt into the fray.

In 2006, during Michael Bloomberg's first term as Mayor, New York City opened its Office of Financial Empowerment (OFE). Among the programs offered through New York City's OFE were a range of debt advice initiatives. These programs were popular and, by the time Bloomberg left office in 2013, OFE had opened numerous offices across the five boroughs of New York City.[43]

After leaving the office of mayor, Bloomberg funded a non-profit organization—Cities for Financial Empowerment (CFE)—that looked to carry on and also expand nationally on the work of OFE.[44] The longstanding head of New York City's OFE left the City's employ to head CFE, ensuring that the message and methods of OFE would get consistently implemented across the country through a network of similar municipal offices. CFE oversees a coalition of fifteen core city-members. CFE coalition members and additional cities have opened their own Offices of Financial Empowerment, with CFE's assistance and oversight.[45] There exist fifteen CFE programs in cities across North America.[46] CFE assists cities in creating and implementing these offices, as well as studying their programmatic success.[47]

B. Encouraging Greater Financial Inclusion

Huge numbers of consumers have trouble accessing conventional financial services, like checking and saving accounts, because bank branch offices aren't located in their neighborhoods.[48] As a result, residents in these "banking deserts"

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43 NYC DEPARTMENT OF CONSUMER AFFAIRS OFFICE OF FINANCIAL EMPOWERMENT: PROGRESS REPORT, 2010–2013 20 (2013), https://www1.nyc.gov/assets/dca/downloads/pdf/partners/Research-OFEProgressReport 20102013.pdf.

44 For information on the founding of CFE, see *About the Coalition*, CITIES FOR FINANCIAL EMPOWERMENT FUND, http://cfefund.org/coalition/ (last visited Mar. 17, 2018).

45 *Id.*

46 *Id.*

47 CITIES FOR FINANCIAL EMPOWERMENT FUND, AN EVALUATION OF FINANCIAL EMPOWERMENT CENTERS: BUILDING PEOPLE'S FINANCIAL STABILITY AS A PUBLIC SERVICE (2013), http://cfefund.org/wp-content/uploads/2017/07/FEC-Evaluation.pdf.

48 *See Increasing Economic Opportunity for African Americans: Local Initiatives that are Making a Difference: Hearing before the J. Econ. Comm.*, 113th Cong. 10, 22, 51 (2014); *see also* Federal Deposit Insurance Corporation, *FDIC 2015 National Survey Unbanked and Underbanked Households* (October 2016) (estimating that 7.0 % of households in U.S. were unbanked in 2015, or approximately 9.0 million households, and that an additional 19.9 % of U.S. households, that is 24.5 million, were underbanked), *available at* https://www.economicinclusion.gov/surveys/2015household/documents/2015_FDIC_Unbanked_HH_Survey_Report.pdf.

may turn to high-cost fringe providers—payday lenders, check cashers, pawnshops.

This is not a new problem, despite the shifting vocabulary aimed at diagnosing and resolving it. At the turn of the twentieth century, poor immigrants lived from paycheck to paycheck and turned to loan sharks for respite. They had no other place to turn for credit, at the time. Because low-income borrowers were more likely to default on personal loans than more affluent borrowers, banks closed their doors (and coffers) to them.[49] This lack of financial access was upended in the early twentieth-century when Progressive Era political pressure mounted at both the state[50] and federal level.[51] As a result of enabling legislation enacted in response to these pressures, lawful consumer credit markets arose in the early twentieth century.[52] By the late 1970s and early 1980s, consumer credit markets grew up: they extended nationally and as a result of technological developments.[53]

National consumer credit markets were still divided in the late twentieth century, to be sure, but they were no longer divided along state territorial borders. Instead, two new cleavages arose: First, mortgages, car loans, and credit-card lending divided between prime and sub-prime borrowers. Below this two-tiered market of consumers with credit ratings and access to conventional financial services (although not at a single price point) grew a third "fringe market" of borrowers who did not have access to conventional financial institutions and, thus, who would have had a "zero" credit rating (as distinct from a "low" rating).

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[49] *See* LOUIS HYMAN, DEBTOR NATION: THE HISTORY OF AMERICA IN RED INK 173–76 (2011); William C. Apgar & Allegra Calder, *The Dual Mortgage Market: The Persistence of Discrimination in Mortgage Lending*, *in* THE GEOGRAPHY OF OPPORTUNITY: RACE AND HOUSING CHOICE IN METROPOLITAN AMERICA 101, 102–03 (Xavier de Souza Briggs ed., 2005).

[50] I leave for another day discussion of the history of the development of consumer credit markets through the political entrepreneurship of the Russell Sage Foundation, which in an alliance with the American Association of Personal Finance Companies, successfully lobbied for the passage of the Uniform Small Loan Law in thirty-four state legislatures. *See* Elizabeth Anderson, Bruce G. Carruthers, and Timothy W. Guinnane, *An Unlikely Alliance: How Experts and Industry Transformed Consumer Credit Policy in the Early Twentieth Century United States*, 39 SOC. SCI. HIST. 581 (2015).

[51] I also leave aside the story of Progressive Era reform of federal banking laws that led to the creation of federally chartered industrial banks, credit unions, thrifts and savings and loan institutions. Others have explored this history in detail. *See* MEHRSA BARADARAN, HOW THE OTHER HALF BANKS: EXCLUSION, EXPLOITATION, AND THE THREAT TO DEMOCRACY (2015); MEHRSA BARADARAN, THE COLOR OF MONEY: BLACK BANKS AND THE RACIAL WEALTH GAP (2017).

[52] *See* HYMAN, *supra* note 49.

[53] *Id.*

These divisions in early twenty-first century consumer credit markets created two sorts of problems. One problem was a disparity in regulation. Fringe lending was not extended by (at least not directly by) financial institutions, and so fringe lenders were, for the most part, unregulated until the creation of the CFPB. Another problem existed, as well: a disparity in the price and non-price terms on which credit was offered. Prime borrowers paid the lowest interest rates across national consumer credit markets; sub-prime borrowers paid more than prime borrowers; fringe borrowers paid substantially more than even sub-prime borrowers and at this price could access only short-term, small dollar loans. Because the financial products offered to fringe and sub-prime borrowers were designed to ensure profit despite the potential for high default rates,[54] the terms on which this money was lent was not only more expensive (e.g., higher interest rates and more non-interest fees), these terms were also more onerous (i.e., harsher remedies on default). Regardless of whether consumer lenders were regulated financial institutions (i.e., banks), federal regulators mostly declined to regulate the harsh terms found in these credit contracts.

To some extent, local actors sought to fill this regulatory void. State legislators adopted statutes to address unfair and deceptive acts and practices.[55] Sometimes state legislators enacted laws to limit these practices and state attorneys general brought suits to enforce them.[56] Municipal actors also sought to protect resident consumers, but as noted above cities' abilities to regulate or enforce regulation are less than ideal.[57] Given that one problem with consumer credit markets is financial constraint, cities and other local actors supplemented regulations with financial inclusion programs aimed at enhancing financial access.

An increasing number of states, counties, and cities have gotten engaged in encouraging banks to provide financial services in underserved neighborhoods through a range of these financial inclusion initiatives.

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[54] Christopher L. Peterson, *Predatory Structured Finance*, 28 CARDOZO L. REV. 2185, 2186–88 (2007).

[55] *See generally* CAROLYN CARTER, NAT'L CONSUMER LAW CTR., CONSUMER PROTECTION IN THE STATES: A 50-STATE EVALUATION OF UNFAIR AND DECEPTIVE PRACTICES LAWS (2018) (comparing unfair and deceptive practices laws across all fifty states).

[56] *See, e.g.*, Millennium Commc'ns & Fulfillment, Inc. v. State of Fla., 761 So. 2d 1256 (Fla. Dist. Ct. App. 2000). Individual consumers have sued fringe lenders in private actions. *See, e.g.*, Clarence E. Boschma v. Home Loan Center, Inc. 198 Cal. App. 4th 230 (Cal. Ct. App. 2011). Private rights of action are limited, however, both in terms of the state law causes of action available for consumers to bring suit under and also because individuals may be bound by an arbitration clause that precludes litigation before any court, whether state or federal. For one of many Supreme Court decisions enforcing an arbitration/class waiver clause in a consumer contract, see AT&T Mobility LLC v. Concepcion, 563 U.S. 333 (2011).

[57] *See supra* notes 5–11 and accompanying text.

1. *Banking Development Districts*

Through its Banking Development District (BDD) program, the New York State Department of Financial Services committed to depositing state and municipal funds in state chartered banks if they opened branch offices in underserved communities, many of which were low-income neighborhoods in New York City.[58] Reporting on ten years of experience, the NYS Department of Financial Services described its BDD program as a qualified success, although modifying the program to require enhanced community outreach and debt advice initiatives.[59]

2. *Land Banks*

The Cook County Land Bank presents another example of a "partnership" between local government (Cook County and the City of Chicago) and private and non-profit actors to encourage the provision of conventional financial services to underserved neighborhoods.[60] The Land Bank acquires vacant properties left abandoned in the wake of the mortgage foreclosure crisis and, by extinguishing delinquent taxes and liens and, in some cases, demolishing buildings, prepares these properties for re-conveyance back to "the market."[61]

3. *Bank On and Related Initiatives*

Cities have also worked to encourage banks to provide convenient, affordable, non-predatory financial services to underserved residents through programs like Bank On San Francisco and Bank On Atlanta.[62] The goal of these

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[58] N.Y. BANKING LAW § 96-d (McKinney's 2017) (enabling creation of banking development district program. For more information about the BDD program, see *The Banking Development District (BDD) Program*, N.Y. DEP'T FIN. SERVS., http://www.dfs.ny.gov/banking/bdd.htm; *see also* Block-Lieb, *supra* note 33.

[59] *See* NEW YORK STATE BANKING DEPARTMENT, COMMUNITY AFFAIRS UNIT, CONSUMER SERVICES DIVISION, 10 YEARS IN: A REPORT ON THE BANKING DEVELOPMENT DISTRICT PROGRAM (May 2010), http://www.dfs.ny.gov/banking/bddreview.pdf.

[60] *Cook County Land Bank Authority Marks 200th Home Rehab Milestone in Communities Hit by Foreclosure Crisis*, COOK CTY. GOV'T (Nov. 20, 2017), https://www.cookcountyil.gov/news/cook-county-land-bank-authority-marks-200th-home-rehab-milestone-communities-hit-foreclosure. The Cook County Land Bank Authority, formed in 2013 pursuant to a Cook County ordinance, is a unit of Cook Country government, and works in partnership with the City of Chicago and other community stakeholders. *About Us*, CCLBA, http://www.cookcountylandbank.org/about/about-us/ (last visited Mar. 18, 2018).

[61] *See also Cook County Land Bank Authority Board of Directors Meeting*, CCLBA (May 7, 2015), http://www.cookcountylandbank.org/wp-content/uploads/2015/05/May-7-2015-Board-Packet.pdf.

[62] *See, e.g.*, Pamela Miller, *Mayor Kasim Reed Announces Bank On Atlanta Initiative*, AJC (Dec. 20, 2017), http://www.ajc.com/news/local/mayor-kasim-reed-announces-bank-atlanta-initiative/FwZl33wIxWhuoK6x4hz63I/ (describing initiation of Bank On Atlanta program and noting that Atlanta effort was inspired by 2006 Bank On San Francisco).

programs is to provide free or low-cost checking and savings accounts to unbanked residents; low cost financial services are often combined with access to free or low cost debt advice.

The success of Bank On programs has varied. For example, Bank On San Francisco reports that more than 10,000 Bay area residents have opened checking accounts annually through the initiative since it started in 2006.[63] Bank On Manhattan never reached a similar number of account openings;[64] by 2012, New York City abandoned its Bank On Manhattan initiative in favor of a similar program organized through its Office of Financial Empowerment. OFE's current program covers a broader geographic area than Bank On Manhattan did, in that it assists residents from all five boroughs of New York City, not just Manhattan. More importantly the OFE program enabled residents to open free NYC SafeStart (savings) and DirectDeposit (checking) accounts.[65]

C. Collecting and Mediating Consumers' Complaints

Some borrowers have legal and other problems with their financial obligations and yet face difficulties in obtaining access to justice or any sort of help with dispute resolution. Opening small claims courts to borrowers may help with this, but some of these disgruntled borrowers cannot access courts at all because they are already committed to arbitrating. Small claims courts do not provide access to justice for consumers hamstrung by arbitration clauses. Moreover, some borrowers' problems may not rise to the level of a legal problem requiring judicial resolution. Small claims court filing fees and the time involved in bringing such a suit might prompt disgruntled consumer borrowers to simply "lump it"—that is, ignore their financial concerns and, thus, fail to bring these concerns to the attention of other potential borrowers.

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[63] *See Bank On San Francisco*, S.F. OFFICE FIN. EMPOWERMENT, http://sfgov.org/ofe/ofe-bank-san-francisco (last visited Mar. 19, 2019).

[64] *See* Heidi Evans, *Bank On Manhattan Program Allows New Yorkers to Open Savings or Checking Accounts for $25*, N.Y. DAILY NEWS (Aug. 1, 2011), http://www.nydailynews.com/new-york/manhattan/bank-manhattan-program-new-yorkers-open-savings-checking-25-article-1.157412.

[65] For details about both of these programs, see *Manage Money*, N.Y.C. CONSUMER AFF., https://www1.nyc.gov/site/dca/consumers/manage-money.page (last visited Mar. 19, 2018). The SafeStart account charges no monthly or overdraft fees but requires depositors to a minimum monthly balance of $25.00. *See Opening a Savings Account*, N.Y.C. CONSUMER AFF., https://www1.nyc.gov/site/dca/consumers/open-savings-account.page (last visited Mar. 19, 2018). The DirectDeposit accounts provide free checking accounts for those NYC residents whose employers participate in the program by agreeing to deposit paychecks directly into the account. For details, see *NYC Direct Deposit for Employees*, N.Y.C. CONSUMER AFF., https://www1.nyc.gov/site/dca/consumers/checking-employees.page (last visited Mar. 19, 2018).

Dissatisfied consumer borrowers might guide others away from problematic lenders by means of a far cheaper medium: word of mouth. This "remedy" is also imperfect. Borrowers are sometimes unwilling to tell others about their experiences with default—their financial foibles may be too embarrassing or otherwise too private. Moreover, word of mouth does not spread easily in national lending markets.

Reputation intermediaries arise in some markets to assist with these sort of problems, but markets in reputation intermediation face their own distinct problems.[66] One is practical: until recently, complaints would have gotten collected in filing cabinets; this information was easily forgotten without resolution and difficult to share outside the neighborhood in which the complained-about lender is located. With the advent of the internet and advances in data collection and processing, consumers' complaints moved from filing cabinets to social media, largely resolving these practical problems.[67] The internet has not solved the second problem reputation intermediaries face—namely, their difficulties in building trust.[68] Reputation intermediaries collect and disseminate information about others' reputations, but also need to build their own reputations for trustworthiness. Generally, both sorts of problems can be resolved by creating a market for the information distributed by the reputation intermediary; but where the actor seeking information is not the entity paying for its collection and dissemination, conflicts of interest can arise.

The Better Business Bureau (BBB) is a good example of this sort of conflict of interest.[69] The BBB is a non-profit entity organized to act as a reputation intermediary in a wide range of markets for consumer goods and services, including financial services.[70] It accepts consumer complaints and mediates

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66 *See generally* Susan Block-Lieb, *E-Reputation: Building Trust in Electronic Commerce*, 62 LA. L. REV. 1199, 1201 (2002) (analyzing the role of online reputation intermediaries in electronic marketplaces).

67 The internet did not obviate the need for reputation intermediaries in this context. Consumers learned that they could complain about services and products over the internet and communicate their concerns directly to one another. Complaining about experiences in financial markets over the internet advanced consumers' interests to some degree. But unless individuals' concerns grew viral, they still were easily buried and ignored by the entities complained about. Collective action in this realm was, on its own, not enough because it bore no consequences.

68 *See* Block-Lieb, *supra* note 66, at 1216–19.

69 The Better Business Bureau is not the sole reputation intermediary in consumer markets. Consumers Union presents a competing model. *See Consumers Union*, http://consumersunion.org/ (last visited Mar. 18, 2018). So does the Business Consumer Alliance. *See Business Consumer Alliance,* https://www.checkbca.org/; *see also* https://www.ripoffreport.com/reports/company-b/internet/business-consumer-alliance-misrepresentation-extortion-and-slander-colton-california-1202622.

70 The Better Business Bureau was founded in 1912 as a nonprofit organization for advancing marketplace trust and consists of roughly 100 independently organizations located throughout the United States and Canada. These local BBBs are coordinated under the Council of Better Business Bureaus, which is a non-

these disputes;[71] it also "ranks" businesses and only allows certain businesses to brand themselves as BBB-approved.[72] Problematically, however, BBBs finance themselves by selling "memberships" to the Bureau. When it ranks businesses as "BBB Approved," the Better Business Bureau only ranks fee-paying members; although the BBB purports to engage in extensive research before accepting businesses as members and assigning BBB rankings to them, media reports question the worth of these rankings.[73] In a 2015 investigation, for example, reporters from CNN found that "the BBB's rating system is seriously flawed—resulting in grades that appear to be arbitrary and change erratically."[74]

To assist complaining consumers with the cluster of problems that prevent access to remedy or justice in the markets for consumer finance, governments got involved. With the Consumer Financial Protection Act, enacted as Title X of the Dodd-Frank Act, Congress directed the newly created CFPB to create a complaint section, to monitor the complaints it collects, and to respond to these complaints.[75] But federal assistance in collecting consumers' complaints and requiring banks and other entities to respond to these complaints in a timely fashion may be insufficient (and indeed is not designed) to resolve every complaint.[76] At very least, critics note, the success of the CFPB's complaint register will depend on the extent to which it devotes its scarce resources to it, as compared to the Bureau's taste for engaging in other sorts of consumer

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profit entity located in Arlington, Virginia. *See History and Traditions*, BETTER BUS. BUREAU, https://www.bbb.org/atlanta/get-to-know-us/history-and-traditions (last visited Mar. 18, 2018).

[71] *See File a Complaint*, BETTER BUS. BUREAU, https://www.bbb.org/consumer-complaints/file-a-complaint/get-started (last visited Mar. 19, 2018).

[72] *See Overview of BBB Rating*, BETTER BUS. BUREAU, https://www.bbb.org/council/overview-of-bbb-grade (last visited Mar. 19, 2018).

[73] *See, e.g.*, Joseph Rhee and Brian Ross, *Terror Group Gets A Rating from Better Business Bureau?*, ABCNEWS (Nov. 12, 2010), available at http://abcnews.go.com/Blotter/business-bureau-best-ratings-money-buy/story?id=12123843. Attorneys general have gotten involved in investigating the BBB. *See, e.g.*, *BBB=Bad for Business Bureau: Atty Genrl exposes the scam*, YOUTUBE, https://www.youtube.com/watch?v=vgXLc1cGhGU (Nov. 21, 2010) (Connecticut attorney general press conference).

[74] *See* Blake Ellis & Melanie Hicken, *Slammed by the Government, A-rated by the Better Business Bureau*, CNNMONEY (Sept. 30, 2015), http://money.cnn.com/2015/09/30/news/better-business-bureau/index.html.

[75] Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), Pub. L. No. 111-203, § 1013(b)(3)(A), 124 Stat. 1376, 1969 (2010); 12 U.S.C. § 5493(b)(3)(A).

[76] *See, e.g.*, Katherine Porter, *The Complaint Conundrum: Thoughts on the CFPB's Complaint Mechanism*, 7 BROOKLYN J. CORP. FIN. & COM. L. 57, 83, 85 (2012) ("The biggest weakness in the CFPB's complaint framework is that it will always fall well short of its goals" and "may erode the overall level of consumer protection."); Ian Ayres, Jeff Lingwall, & Sonia Steinway, *Skeletons in the Database: An Early Analysis of the CFPB's Consumer Complaints,* 19 FORDHAM J. CORP. & FIN. L. 343 (2014) (analyzing 110,000 consumer complaints to assess timeliness of company responses and other factors).

protection (such as regulation, enforcement, and supervision).[77] While there may be ways to proactively sort among the enormous amounts of data created by this complaint function, wading through the details will involve energy and creativity, as well as the expenditure of staff time.[78]

Cities have also gotten involved in collecting consumers' complaints about financial products and services.[79] Like that at the CFPB, these city-organized complaint functions can serve as a forum for venting and information sharing, including possibly with the federal government. Some, like that made available to Chicago residents through its municipal website, provide a mechanism for complaining to municipal civil servants.[80] Others, like San Francisco, do less: San Francisco simplifies for its residents the process of submitting a consumer complaint with the CFPB in that its municipal website serves as a "collection agent" or portal for accessing the CFPB's federal complaint register, but does not otherwise devote City of San Francisco resources to the task of collecting or resolving such complaints.[81] Other cities, like New York City, do more: New York combines its complaint registries with city-organized mediation of consumers' complaints and encourages residents to follow the progress on this mediation by means of its 311 hot line.[82]

II.

Cities are a superior location for providing financial empowerment programs, and for three reasons. First, cities enjoy greater proximity to consumer constituents than state or federal government actors, and in greater

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77 *See, e.g.*, Angela Littwin, *Why Process Complaints? Then and Now*, 87 TEMPLE L. REV. 895, 944–46 (2015) (drawing inspiration for her analysis from William Whitford's and Spencer Kimball's *Why Process Consumer Complaints? A Case Study of the Office of the Commissioner of Insurance of Wisconsin,* 1974 WIS. L. REV. 639 (1974)).

78 For description of a methodology for searching in the CFPB complaint register so that regulators sort between an expression of anger and frustration on one hand and sadness and fear on the other, and the analytical benefits of such sorting, see Pamela Foohey, *Calling on the CFPB for Help: Telling Stories and Consumer Protection*, 3 LAW & CONTEMP. PROBS. 177 (2017).

79 Importantly, these complaint registers are not precluded by arbitration clauses. Nor would even mandatory mediation options connected to complaint registers be precluded by most arbitration clauses.

80 For access to Chicago's general consumer complaint function, see City of Chicago, *File A Complaint With BACP,* https://www.cityofchicago.org/city/en/depts/bacp/supp_info/file_a_complaintwithbacp.html (last visited Mar. 22, 2018).

81 For the City of San Francisco's portal from its municipal website to the complaint registry hosted by the federal CFPB, see City and County of San Francisco, *Office of Financial Empowerment*, https://sfgov.org/ofe/submit-consumer/complaint (last visited Mar. 22, 2018).

82 For directions on how to file a complaint with the New York City Department of Consumer Affairs and to track progress on mediation of this complaint, see NYC Department of Consumer Affairs, *Resolve a Complaint*, https://www1.nyc.gov/site/dca/consumers/file-complaint.page (last visited Mar. 22, 2018).

concentrations. Second, cities are used to working pragmatically in tandem with private and nonprofit actors. These partnerships are often the keys to successfully empowering consumers' financial decisionmaking because the success of empowerment initiatives often depends on garnering the trust and confidence of the participants. Third, cities' existing municipal infrastructures, such as public schools, libraries, 311 call centers, and other social welfare services, also provide important programmatic advantages. Each of these benefits is detailed in the sections that follow.

A. Location, Location, Location

Cities are "concentrated," in that residents live in heavily populated settings. Moreover, cities are "local," which is to say that city governments are immediately proximate to their constituents. As a consequence of these physical realities, city governments face distinct political realities. Municipal governments exist to meet residents' demands for local infrastructure and local services.[83] Infrastructure and service demands are not uniquely local, but these demands are especially intense at the city level because concentrated living creates social frictions that residents look to city governments to alleviate.[84]

Historically, demands for local infrastructure and services have tended to focus on police power, land use, education, and public health and safety concerns. But cities and states have also long been used to providing consumer financial protection to their residents, as well.[85]

Before national markets for consumer finance arose in the late 1970s and early 1980s, this local consumer financial protection mostly took the form of usury laws and licensing regimes: both of these involve regulation.[86] As consumer finance markets grew to become national markets, this local consumer financial protection regulation got pushed aside. Congress enacted numerous federal consumer laws over the period. These federal laws preempted much local regulation. But in the early 2000s, predatory lending grew in these national consumer finance markets. Federal regulators resisted enforcing existing federal

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83 *See* Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416, 417–18 (1956).

84 *See* Edward L. Glaeser et al., *Consumer City*, 1 J. ECON. GEOGRAPHY 27 (2001)

85 *See* Adam J. Levitin, *Hydraulic Regulation: Regulating Credit Markets Upstream,* 26 YALE J. REG. 143 (2009).

86 LENDOL CALDER, FINANCING THE AMERICAN DREAM: A CULTURAL HISTORY OF CONSUMER CREDIT (1999); Lendol Calder, *The Meaning of Consumer Credit in the United States*, 20 AM. BANKR. INST. J. 52, 52 (2002); HYMAN, *supra* note 49; Adam J. Levitin, *The Consumer Financial Protection Bureau: An Introduction*, 32 REV. BANKING & FIN. L. 321, 323–24 (2013); Norman I. Silber, *Discovering That the Poor Pay More: Race Riots, Poverty, and the Rise of Consumer Law*, 44 FORDHAM URB. L.J. 1319, 1325 (2017).

laws to reduce predatory lending in national markets.[87] An interest in local consumer financial protection re-emerged. State and city agents moved to protect local residents with local initiatives.

Because this essay focuses neither on this second wave of local regulation to promote consumer financial protection nor on local enforcement of federal consumer protection laws, it leaves for another day the question of whether regulation of consumer finance markets should occur at a national, state, or local level. The claim here is simply that city governments are uniquely capable of implementing *empowerment* initiatives. Perhaps because of the narrowness of my claim in this essay, however, it is important to emphasize that federalism should play no part in comparative analysis of the location of programs aimed at consumer empowerment.

Consumer empowerment initiatives look to affect consumers' behaviors rather than the behaviors of lenders engaged in national markets. As a result, the logic that uniform, national implementation should always be preferred over locally-based strategies holds none of the same intuitive appeal it might enjoy when discussing consumers' protection through regulation or regulatory enforcement. Consumers' interests in empowerment initiatives are purely local ones. There is no particular need for empowerment strategies to be uniform across the country.

There are, to be sure, distinctions to be drawn between different sorts of empowerment initiatives. Debt advice programs are by nature locally focused because they often get provided face-to-face. Complaint functions usually do not work face-to-face. Still, complaint registers differ when implemented on a city rather than a federal basis because they can focus on complaints about local vendors and lenders and their local practices. Similarly, financial inclusion initiatives focus on financial deserts, and so too benefit from detailed familiarity with banks' neighborhood presence. Regulators' proximity to consumers matters to some degree with all sorts of empowerment programs.

B. Building on Existing Infrastructures

Cities' unique access to local infrastructures assists in the creation and implementation of these sorts of empowerment services.

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[87] KATHLEEN C. ENGEL & PATRICIA A. MCCOY, THE SUBPRIME VIRUS: RECKLESS CREDIT, REGULATORY FAILURE, AND NEXT STEPS 149–50 (2011).

As mentioned above, debt advice often gets provided face-to-face. Cities are uniquely equipped to provide face-to-face education and counseling services as a result of their close proximity to consumer residents. Cities' existing local infrastructures are also especially important when providing debt advice to residents through public schools and public libraries.

Even when consumer residents seek access to municipal financial empowerment programs over the internet or telephone, cities' provision of empowerment initiatives can be aided by modern municipal infrastructure, such as 311 hot lines and trusted municipal websites on the internet. Consumer residents can register complaints about financial service providers on internet websites. Some cities, like San Francisco, treat their municipal complaint register as a portal into the CFPB's federal complaint system. Others, like New York City, extend their city complaint function beyond anything offered by the federal government. Once a New Yorker's complaint is lodged over the internet, the complaining consumer can request mediation of the issue through NYC's Department of Consumer Affairs; consumers can also follow the progress of this mediation over 311 hot lines.[88] Consumers can also get information about bank branches in their neighborhoods from municipal websites, even though Google Maps might direct them elsewhere. These websites might also assist local consumers in comparing the cost of conventional saving and checking accounts to store-front check cashers with access to real-time information about local practices, again through trusted city websites.

C. Partnering Pragmatically

The success of empowerment initiatives often depends on building relationships of trust and familiarity. This is especially true where cities offer municipal agencies as reputation intermediaries. The physical proximity of (local) municipal civil servants to resident consumers can help in building these relationships of trust. So, too, can municipal civil servants' pragmatic methods of work assist in securing relationships of trust with city residents.

When city actors work together with pre-existing intermediaries, such as municipal housing authorities, libraries, and public schools, consumers' trust in empowerment services may be enhanced. Networks of private-nonprofit-and-public actors can also lever existing relationships of trust. Although the federal and state governments have struggled in implementing public-private

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88 *See* NYC Department of Consumer Affairs, *Resolve a Complaint*, https://www1.nyc.gov/site/dca/consumers/resolve-complaint.page (last visited Mar. 22, 2018).

partnerships, cities have long worked pragmatically through these sorts of relationship. This experience is critical to building out empowerment initiatives.

D. Networks of Cities

Cities have learned that working together and networking with other cities can assist them in protecting and empowering consumer residents. There may be no need to re-invent the wheel with these projects. Cities can help each other with their experiences and the lessons learned.

Cities for Financial Empowerment (CFE) connects cities looking to open Offices for Financial Empowerment like the OFE opened in New York City in 2006. So does Bank On, an entity that assists cities interested in replicating in their municipality a program like Bank On San Francisco.

III.

Cities' provision of consumer empowerment services aids the project of consumer financial protection in several distinct ways.

A. Highlighting Empowerment Programs

First, cities' work in this context highlights the extent to which empowerment strategies can and should be relied on to protect consumers in their financial decision-making. Empowerment strategies have been sidelined as the least important methodology in consumer regulators' toolboxes. Empowerment strategies are even sometimes characterized as a dangerously distracting placebo. But most of this criticism is best aimed at federally focused empowerment strategies. When empowerment occurs with the benefit of a more local perspective, its chances of success improve.

If I have convinced you that cities are a comparatively superior source of consumer empowerment, then perhaps I have also convinced you that we should not give up on empowerment initiatives. I am not saying that empowerment initiatives should replace regulation or enforcement. Definitely, they should not. At very least, however, in reviewing empowerment programs we should be careful to distinguish between critiques of federal empowerment initiatives and critiques of any sort of empowerment no matter the location of its provision.

Perhaps, as well, state and federal governments could do more to enable cities to fund the building and expansion of local infrastructures that assist in strengthening consumer empowerment programs. More federal funding could be made available for 311 hotlines, for example.

B. *Cities as a Source of Consumer Protection: Moving Beyond Empowerment*

There is also a second payoff that emerges from this analysis: In identifying cities' strengths as providers of empowerment services, I have also identified cities' strengths as a source of consumer financial protection more generally. Some of cities' strengths could be inculcated at other levels of government. Cities' proximity to consumers, existing infrastructures, and pragmatic methods of work could to some degree be replicated to assist state and also federal regulators in drafting, implementing, and enforcing regulation.

If state and federal regulators can supplement and strengthen each other's efforts with a belt-and-suspenders approach, then cities should be viewed as providing the elastic waistband that further supplements this consumer financial protection. In assisting federal and state regulators, cities can offer what *they* do best: closer access to local practices and market effects. City agents know better what's happening on the ground than distant state and federal actors.

C. *Bringing the Local to the Federal*

There's also a third potential payoff here: cities can "teach" federal and state actors to better regulate and enforce regulations with an eye on the "local." Cities' strengths as sources of consumer financial protection could be developed and built out at other levels of government. Of course, cities' proximity to their consumer residents cannot be replicated at the state or federal level, at least in any physical sense. State and federal regulators could, however, look at city practices and recognize that keeping their ears closer to the ground is a good strategy.

The Federal Reserve, FTC and SEC have long possessed regional offices and other forms of local connections to supplement their federal ones. The CFPB could do the same. Moreover, in setting up a regional presence, federal and state regulators should recognize that local presence does not need bricks and mortar or boots on the ground.

In addition, cities' unique infrastructure and pragmatic methods of work could get replicated at the state and federal level. State and federal actors do not need regional offices in order to benefit from information gleaned from cities' internet websites and 311 hot lines, for example. Cities could share this information with state and national actors. Some already do this. But federal websites could do more to improve themselves after studying cities' experiences.

Finally, federal and state actors could learn from cities' implementation of empowerment initiatives. For example, like New York and other cities, the CFPB empowers consumers through its complaint portal. There is not any mediation component to the federal complaint function. Cities, however, especially NYC, have learned that mediation initiatives marry well with these complaint functions. The federal government could learn from these and other concrete state and local initiatives aimed at encouraging greater financial inclusion, such as New York's Banking Development Districts, San Francisco's Bank On projects could become more effective if they had federal heft behind them.

CONCLUSION

Empowerment initiatives are a worthwhile tool when looking to provide consumers protection from various failures in markets for consumer credit and related services. Cities excel at providing empowerment initiatives. In explaining why it is I think cities are best at empowering consumers, I have also hinted at how cities can usefully play a role in regulating consumer financial protection and regulatory enforcement, as well.

Nothing in this essay alters the intuition I began with: Cities are an imperfect and incomplete source of consumer protection. But given current leadership at the CFPB, which is not very interested in using the belt that Congress gave the federal government, cities may want to tighten their elastic waistbands, doubly so when the city is located in a state that wears its suspenders loosely.