Bursting the Auto Loan Bubble in the Wake of COVID-19

Pamela Foohey[*]

ABSTRACT: Before the COVID-19 pandemic, auto loans outstanding in the United States had soared to record highs. The boom in lending spanned new and used cars and traditional and subprime loans. With loan delinquencies also hitting new highs almost every quarter, predictions that the auto lending market could burst soon abounded. When the economy came to a grinding halt and unemployment skyrocketed in the wake of the pandemic, auto lenders knew they were facing a crisis. Throughout 2020, auto lenders granted more payment forbearances to consumers, while slashing interest rates on new loans. Auto manufacturers similarly made promises to buyers, such as the ability to return new cars for up to a year upon job loss. Combined with the CARES Act's relief rebates and moratoria, the bottom did not fall out of the auto loan market.

These measures, however, are temporary. The pandemic alone will not reduce people's need for cars, but it will burst the auto loan bubble. The economic fallout will require interventions in the auto sale and loan markets, which presents a moment to transform America's car economy. This symposium Essay details a range of financial and related measures that can be implemented in the near future to shift auto financing away from promoting economically unequal and environmentally unfriendly use and access to automobiles, and, more broadly, to shift the United States away from prioritizing automobiles as the primary means of personal transportation.

[*] Professor of Law, Benjamin N. Cardozo School of Law, Yeshiva University. My thanks to Gregory Shill for inviting me to participate in The Future of Law & Transportation symposium, and to Hayley Sherman, Dana Waterman, and the editors of the *Iowa Law Review* for providing excellent organizational and editing assistance.

I. INTRODUCTION

In most places in the United States, having an automobile is critical for everyday life, such as for getting to work and school, accessing healthcare and daycare, and shopping for essentials.[1] This makes the perception that people can choose to live "car free" largely inaccurate. For instance, households without cars have lower incomes, while having a car increases people's probability of employment.[2] People's reliance on cars traces to accumulated policy decisions by the federal, state, and local governments that have prioritized automobiles as *the* mode of transportation in the United States.[3] This reality has led roughly 85 percent of households in the United States to own at least one car.[4]

Because few households have enough money saved to purchase even very used cars, let alone gently used and new cars, more than two-thirds of people fund their car ownership with hefty auto loans.[5] Auto lenders have seized on this need for financing.[6] During the past decade, auto debt has skyrocketed, increasing nearly 40 percent overall, with the average auto loan for a new car

---

1. *See* Pamela Foohey, *Consumers' Declining Power in the Fintech Auto Loan Market*, 15 BROOK. J. CORP., FIN. & COM. L. (forthcoming 2021) (manuscript at 1), https://ssrn.com/abstract=3664136 [https://perma.cc/UQ5G-CLAX] (detailing the necessity of automobiles).

2. Pamela Foohey, Robert M. Lawless & Deborah Thorne, *Driven to Bankruptcy*, 55 WAKE FOREST L. REV. 287, 289–90 (2020) [hereinafter Foohey et al., *Driven to Bankruptcy*].

3. *See* Foohey, *supra* note 1 (manuscript at 1–2) (discussing how the United States' infrastructure supports car ownership); Gregory H. Shill, *Should Law Subsidize Driving?*, 95 N.Y.U. L. Rev. 498, 502–04 (2020) (explaining law has played a role in "cementing" America's car-centrism).

4. *See* Foohey et al., *Driven to Bankruptcy*, *supra* note 2, at 308 tbl.1 (reporting car ownership data from the Federal Reserve's 2016 Survey of Consumer Finances).

5. *See* CHERYL R. COOPER, CONG. RSCH. SERV., IF11192, THE AUTOMOBILE LENDING MARKET AND POLICY ISSUES (2019), https://fas.org/sgp/crs/misc/IF11192.pdf [https://perma.cc/2MFV-BYZQ] (noting that, "at the end of 2018, . . . roughly 45% of adult Americans . . . had an auto loan"); BD. GOVERNORS FED. RSRV. SYS., REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2015 42 (2016), https://www.federalreserve.gov/2015-report-economic-well-being-us-households-201605.pdf [https://perma.cc/UD44-7BLD] (reporting that in 2015, two-thirds of people who purchased automobiles, new or used, financed their purchase with a loan); Pamela Foohey, Dalié Jiménez & Christopher K. Odinet, *The Folly of Credit as Pandemic Relief*, 68 UCLA L. REV. DISCOURSE 126, 136 (2020) [hereinafter Foohey et al., *The Folly*] (noting "[a] study conducted in March 2020 found that more than half of all individuals do not have savings to cover three months of expenses").

6. *See generally* Adam J. Levitin, *The Fast and the Usurious: Putting the Brakes on Auto Lending Abuses*, 108 GEO. L.J. 1257 (2020) (detailing how the auto loan market is set up to disadvantage consumers and concluding that the market is "rife with consumer abuses"); Foohey, *supra* note 1 (detailing power dynamics in modern auto loan deals).

rising 11 percent.[7] Part of the growth stemmed from a flourishing subprime auto loan market, which now accounts for nearly one-quarter of the $1.33 trillion in auto loan debt outstanding.[8] Overall, as of the beginning of 2020, auto loans made up about nine percent of household debt,[9] making "[t]he auto loan market . . . the third-largest consumer credit market in the United States," behind home loans and student loans.[10]

More auto debt, combined with more expensive loans, has led to increased delinquencies and defaults in the past decade.[11] Auto loan deficiencies hit an all-time high at the end of 2019, with seven million Americans 90 or more days behind on their auto loan payments.[12] Before the COVID-19 pandemic, people with subprime auto loans were defaulting within the first few months of borrowing at rates rivaling those during the 2008 financial crisis.[13]

Prior to the pandemic, the build-up of auto loan debt outstanding and the growth in delinquencies and defaults led experts to classify the auto loan market as a bubble and to predict that the bubble would burst soon.[14] The

7. *See* AnnaMaria Andriotis, Ken Brown & Shane Shifflett, *Families Go Deep in Debt to Stay in the Middle Class*, WALL ST. J. (Aug. 1, 2019, 11:35 AM), https://www.wsj.com/articles/families-go-deep-in-debt-to-stay-in-the-middle-class-11564673734 [https://perma.cc/52N7-UUMW] (stating that both figures are inflation adjusted).

8. *See* Elisabeth Buchwald, *Outstanding Auto-Loan Balances Just Hit a New Record and Delinquencies Are on the Rise—Should You Be Concerned?*, MARKETWATCH (Feb. 25, 2020, 2:18 PM), https://www.marketwatch.com/story/outstanding-auto-loan-balances-just-hit-a-new-record-and-delinquencies-are-on-the-rise-should-you-be-concerned-2020-02-21 [https://perma.cc/ELQ2-XMME] (discussing the auto loan market as of the end of 2019); Joy Wiltermuth, *Cracks in the $1.3 Trillion Auto-Finance Market Aren't Curbing Investor Demand for Risky Debt*, MARKETWATCH (Feb. 20, 2020, 11:05 AM), https://www.marketwatch.com/story/cracks-in-the-13-trillion-auto-finance-market-arent-curbing-investor-demand-for-risky-debt-2020-02-19 [https://perma.cc/XAU2-T5JM] (same).

9. *See* CTR. FOR MICROECONOMIC DATA, FED. RSRV. BANK OF N.Y., QUARTERLY REPORT ON HOUSEHOLD DEBT AND CREDIT 3 (2020), https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2020Q1.pdf [https://perma.cc/R9M2-ZDVV].

10. *See* COOPER, *supra* note 5, at 1.

11. *See* CTR. FOR MICROECONOMIC DATA, *supra* note 9, at 26 (detailing "Transition into Serious Delinquency (90+) for Auto Loans by Age").

12. *See* Jeff Cox, *A Record Number of Americans Are 90 Days Behind on Their Car Payments*, CNBC (Feb. 13, 2019 6:05 PM), https://www.cnbc.com/2019/02/12/a-record-number-of-americans-are-90-days-behind-on-their-car-payments.html [https://perma.cc/CW3W-AG4P] (reporting on data from the New York Fed); Jessica Menton, *An Economic Slowdown Could Spell Trouble for the Rising Number of People Behind on Car Payments*, USA TODAY (Mar. 2, 2020, 8:06 AM), https://www.usatoday.com/story/money/personalfinance/2020/03/02/coronavirus-delinquent-borrowers-could-feel-more-pain-if-economy-slows/4897107002 [https://perma.cc/XAW5-SB2Y].

13. *See* Wolf Richter, *Auto Loan Delinquency Rates Are Worse Now than During the Financial Crisis*, BUS. INSIDER (Apr. 9, 2018, 4:16 PM), http://www.businessinsider.com/auto-loan-delinquency-rates-worse-now-than-during-the-financial-crisis-2018-4 [https://perma.cc/M9SL-RYPC] (noting that the 60+ day delinquency rate had risen to 5.8 percent and was "higher even than during the Financial Crisis").

14. *See, e.g.*, James Alford, *Are Subprime Auto Loans Driving the Next Financial Crisis?*, REGUL. REV. (Jan. 23, 2020), https://www.theregreview.org/2020/01/23/alford-subprime-auto-loans-driving-next-financial-crisis [https://perma.cc/X5QW-KKET]; Steven Pearlstein, *The Shadow Banks*

United States' strong pre-pandemic economy combined with a low unemployment rate likely were the leading reasons that the bubble did not burst at that time.[15] Yet, even then, multiple reports recognized that the rise in auto debt in the United States showed an unsustainable dependence on automobiles financed by households.[16] Commentators also pointed out that the market for securities backed by auto loans, particularly sub-prime auto loans, was "going gangbusters" and bore a striking resemblance to the home mortgage market before the Great Recession, albeit of a smaller scale.[17]

The economic conditions that continued to fuel the auto loan bubble while preventing its burst ended abruptly in March 2020 when the states across the country enacted various stay-at-home orders to try to control COVID-19's spread. Unemployment rates skyrocketed past their Great Recession highs as businesses closed their doors.[18] Uber and Lyft drivers, some

---

Are Back with Another Big Bad Credit Bubble, WASH. POST (May 31, 2019, 12:57 PM), https://www.washingtonpost.com/business/economy/the-shadow-banks-are-back-with-another-big-bad-credit-bubble/2019/05/31/a05184de-817a-11e9-95a9-e2c830afe24f_story.html [https://perma.cc/4CS6-YCRV] (linking auto loans with the growing "shadow" banking system); *Is a Subprime Auto Loan Crisis Brewing?*, KNOWLEDGE@WHARTON (Feb. 18, 2019), https://knowledge.wharton.upenn.edu/article/auto-loan-subprime-crisis [https://perma.cc/NBA5-V2EL] (discussing whether subprime auto loans present a crisis similar to homes loans during the Great Recession); *see also* R.J. CROSS, TONY DUTZIK, ED MIERZWINSKI & MATT CASALE, DRIVING INTO DEBT: THE HIDDEN COSTS OF RISKY AUTO LOANS TO CONSUMERS AND OUR COMMUNITIES 27–28 (2019), https://uspirg.org/sites/pirg/files/reports/WEB_USP_Driving-into-debt_Report_021219.pdf [https://perma.cc/X6ZY-HQL4] (detailing disparities in auto loan rates between communities of color and white borrowers and discussing how to protect consumers).

15. *See* Joseph Wildey, *Has the COVID-19 Crisis Popped the American Auto Loan Bubble?*, MEDIUM (Mar. 15, 2020), https://medium.com/@joseph.wildey/has-the-covid-19-crisis-popped-the-american-auto-loan-bubble-48818e55fec4 [https://perma.cc/G8MM-NGCS] (noting that the economy was staving off concerns about the auto loan market prior to the pandemic); Barb Rosewicz, Mike Maciag & Joe Fleming, *Every State Posted Economic Gains in Year Before the Pandemic*, PEW (Apr. 28, 2020), https://www.pewtrusts.org/en/research-and-analysis/articles/2020/04/28/every-state-posted-economic-gains-in-year-before-the-pandemic [https://perma.cc/76KL-VZZT] (noting that the end of 2019 boasted a record long economic expansion).

16. *See* Foohey et al., *Driven to Bankruptcy*, *supra* note 2, at 330–31 (predicting that if auto debt continues on its present course, more people will file bankruptcy to deal with auto loans); Laura Bliss, *If the Economy Is So Great, Why Are Car Loan Defaults at a Record High?*, BLOOMBERG CITYLAB (Feb. 15, 2019, 1:52 PM), https://www.bloomberg.com/news/articles/2019-02-15/why-so-many-americans-are-behind-on-car-loan-payments [https://perma.cc/A5TR-DZ67] (noting the "catch-22" of cars); CROSS ET AL., *supra* note 14, at 7–8 (proposing ideas to expand transportation options).

17. Robert Armstrong, *Yield-Crazed Investors Pile into US Subprime Car Loans*, FIN. TIMES (Nov. 25, 2019, 5:05 PM), https://www.ft.com/content/59f3a084-0d80-11ea-bb52-34c8d9dc6d84 [https://perma.cc/87EY-5HLH] (quoting analyst Jennifer Thomas of Loomis Sayles); *see also* Wiltermuth, *supra* note 8; Chris Taylor, *Why Some Experts Think Auto Loans Are the Next 'Red Flag' for the Economy*, FORTUNE (Jan. 16, 2020, 1:00 PM), https://fortune.com/2020/01/16/car-loans-default-us-economy-subprime-dangers [https://perma.cc/9AEV-MMQT] (noting that the auto loan market is about one-tenth of the size of the home mortgage market at its height).

18. *See* Rakesh Kochhar, *Unemployment Rose Higher in Three Months of COVID-19 than It Did in Two Years of the Great Recession*, PEW RSCH. CTR. (June 11, 2020), https://www.pewresearch.org/fact-tank/2020/06/11/unemployment-rose-higher-in-three-months-of-covid-19-than-it-did-in-two-

of whom had taken out loans to purchase vehicles, saw their ridership and income plummet.[19] Within weeks of the World Health Organization declaring a pandemic,[20] Congress stepped in to stabilize businesses' and households' financial situations with the Coronavirus Aid, Relief, and Economic Security ("CARES") Act.[21]

As detailed in Part II of this Essay, the CARES Act provided households with money and enforced pauses of other debt payments such that people were seemingly able to stay current on car loan payments through the fall of 2020.[22] A handful of states also legislated additional debt relief for households.[23] Auto dealers and lenders likewise struggled during the pandemic, and they focused on enticing people to become or remain customers, rather than repossessing cars.[24] Through these combined measures, auto loan defaults did not increase immediately.

---

years-of-the-great-recession [https://perma.cc/VB2U-SV4U] (reporting that the unemployment rate rose from 3.8 percent in February 2020 to 13 percent in May 2020, and that unemployment during the Great Recession peaked at 10.6 percent); *Unemployment Rate Rises to Record High 14.7 Percent in April 2020*, U.S. BUREAU OF LAB. STAT. (May 13, 2020), https://www.bls.gov/opub/ted/2020/unemployment-rate-rises-to-record-high-14-point-7-percent-in-april-2020.htm [https://perma.cc/YW3C-FR23].

19. *See* Nicu Calcea, *Uber and Lyft Are Cutting Even Further into the Taxi Market During the Pandemic*, CITY MONITOR (Aug. 21, 2020), https://www.citymetric.com/transport/uber-lyft-rides-during-coronavirus-pandemic-taxi-data-5232 [https://perma.cc/9JAC-UJJW] (detailing the decline in ridesharing usage in New York City); Sissi Cao, *The Great Rideshare Crash: Uber, Lyft, and More Plan Layoffs as Drivers Flounder*, OBSERVER (Apr. 30, 2020, 12:28 PM), https://observer.com/2020/04/uber-lyft-coronavirus-layoff-ride-sharing-plummet [https://perma.cc/CD3U-S9AG] (explaining that plummeting ridesharing demand led to planned layoffs at some of the industry's largest companies); Foohey, *supra* note 1 (manuscript at 5–6) (detailing Uber's (unsuccessful) program to provide auto loans to drivers).

20. The World Health Organization declared a pandemic on March 11, 2020. *Archived: WHO Timeline - COVID-19*, WORLD HEALTH ORG. (Apr. 27, 2020), https://www.who.int/news-room/detail/27-04-2020-who-timeline—covid-19 [https://perma.cc/G3UW-PKKQ].

21. Congress passed and the President signed the CARES Act into law on March 27, 2020. *See* CARES Act, Pub. L. No. 116-136, 134 Stat. 281 (2020) (codified at 15 U.S.C. §§ 9001–80); *The Treasury Department is Delivering COVID-19 Relief for All Americans*, U.S. DEP'T TREASURY, https://home.treasury.gov/policy-issues/cares [https://perma.cc/6766-KCZ4].

22. *See* Foohey et al., *The Folly*, *supra* note 5, at 129–40 (reviewing the primary relief offered by the CARES Act).

23. *See* Pamela Foohey, Dalié Jiménez & Christopher K. Odinet, *The Debt Collection Pandemic*, 11 CAL. L. REV. ONLINE 222, 229–35 (2020) [hereinafter Foohey et al., *Debt Collection Pandemic*] (reviewing states' efforts to combat debt collection after the CARES Act's passage); *infra* note 40 and accompanying text.

24. *See* Michael Wayland, *The Coronavirus Pandemic Has Upended Auto Sales and Buying a Car Will Never Be the Same*, CNBC (May 21, 2020, 1:57 PM), https://www.cnbc.com/2020/05/21/the-coronavirus-pandemic-has-upended-auto-sales-and-buying-a-car-will-never-be-the-same.html [https://perma.cc/GHN5-4MXG] (discussing some ways that auto sellers initially tried to adapt).

Nonetheless, the crisis exposed the cracks in the United States' economy.[25] The trifecta of a small cash infusion, moratoria on some debt collection, and auto lenders' incentives likely will merely hold off a crash in auto sales and lending. For auto loans, this warns of the bubble's eventual burst.

Part III assumes that in the coming years, the auto market will have to adjust more drastically to the pandemic's economic fallout. How people access and pay for cars will need to change in light of continued financial instability among households. Proceeding from this assumption, this Part presents a range of financial and related measures that federal and state governments could implement to reset the car industry, both in terms of how people shop for cars and car loans, and the specifications of vehicles on American roads.

More broadly, the convergence of the pandemic's unique economic shock with an already unstable auto loan market presents an opportunity for a deeper and more holistic consideration of the United States' transportation priorities. Part IV places auto loans within a broader federal, state, and local government urban planning agenda that could transform people's need for cars. As the United States necessarily crafts a large-scale agenda to revive the economy, now might offer an opportune moment to advocate for interventions that include measures to shift the country's transportation structure away from cars and towards a range of more sustainable and safer options.

II. STAVING OFF THE BUBBLE'S BURST

COVID-19's emergence ended the post-Great Recession economic expansion.[26] Employment losses between March 2020 and the end of August 2020 wiped out almost all of the job growth during the prior decade and GDP plummeted over 30 percent in those five months.[27] Retail spending also quickly dropped, particularly at brick-and-mortar stores and for discretionary items.[28] Although spending rebounded later in the summer of 2020, the pace

25. *See* David J. Lynch, *The Coronavirus Crisis Is Exposing how the Economy Was Not Strong as It Seemed*, WASH. POST (Mar. 28, 2020, 3:29 PM), https://www.washingtonpost.com/business/2020/03/28/recession-economy-coronavirus [https://perma.cc/32UU-3S5Q].

26. *See Chart Book: Tracking the Post-Great Recession Economy*, CTR. ON BUDGET & POL'Y PRIORITIES (Mar. 5, 2021), https://www.cbpp.org/research/economy/chart-book-tracking-the-post-great-recession-economy [https://perma.cc/Q7BF-MPZP] (reporting data from the Bureau of Economic Analysis and the Bureau of Labor Statistics).

27. *See id.* (reporting data from the Bureau of Economic Analysis).

28. *See* Michael Corkery & Sapna Maheshwari, *Retail Sales Rise for Third Month, Though Growth Slows*, N.Y. TIMES (Aug. 14, 2020), https://www.nytimes.com/2020/08/14/business/retail-sales-coronavirus.html [https://perma.cc/G3J9-QG76] (reporting data from the Commerce Department).

of its recovery was slowed by the coronavirus's continued spread.[29] Employment figures bounced back a bit as well, but the chair of the Federal Reserve viewed this growth with caution and commented that "so many people [are] in need."[30] Overall, as 2020 drew to a close, it was apparent that the United States' economic recovery would not be swift, particularly without additional government support.[31]

Given the state of the economy, it seems reasonable to have predicted that auto sales and lending also would have dropped quickly after March 2020 and that loan delinquencies would have risen, potentially significantly in the face of wide-spread unemployment.[32] Stated differently, the auto loan bubble should have at least shown signs of impending rupture. Yet the second and third quarters of 2020 saw decreases in auto loan delinquencies.[33] These declines coincided with decreases in delinquencies across non-mortgage consumer credit products, such as credit cards.[34] In contrast, mortgage

29. *See* Harriet Torry, *U.S. Retail Spending Grew at Slower Pace in August*, WALL ST. J. (Sept. 16, 2020, 1:52 PM), https://www.wsj.com/articles/us-economy-august-retail-sales-coronavirus-recovery-11600200513 [https://perma.cc/7LKB-2Z6Y] (reporting data from the Commerce Department).

30. Jim Tankersley, *Powell Says Rates Are Likely to Stay Low for Years*, N.Y. TIMES (Sept. 18, 2020, 8:39 AM), https://www.nytimes.com/live/2020/09/04/business/stock-market-today-coronavirus [https://perma.cc/DN54-3GAQ] (quoting Jerome H. Powell, the chair of the Federal Reserve).

31. *See* Jim Tankersley & Emily Cochrane, *Biden Team, Pushing Quick Stimulus Deal, Prepares for Renewed Recession*, N.Y. TIMES (Dec. 21, 2020), https://www.nytimes.com/2020/11/22/business/economy/biden-coronavirus-stimulus-recession.html [https://perma.cc/BC72-PU8A]; *Tracking America's Recovery*, CNN BUS., https://www.cnn.com/business/us-economic-recovery-coronavirus [https://perma.cc/GE4X-B978]; Anneken Tappe, *The Unemployment Rate Has Never Been This High Going into an Election*, CNN BUS. (Oct. 1, 2020, 7:24 AM), https://www.cnn.com/2020/10/01/economy/september-jobs-report-preview/index.html [https://perma.cc/8L45-BER7].

32. This prediction appeared frequently in popular media. *See, e.g.*, Wolf Richter, *Subprime Auto-Loan Delinquencies, Loan Deferrals & Stimulus Curdle into Curious Phenomenon*, WOLF ST. (Sept. 13, 2020), https://wolfstreet.com/2020/09/13/subprime-auto-loan-delinquencies-loan-deferrals-stimulus-curdle-into-curious-phenomenon [https://perma.cc/4WBX-DNDQ] (commenting that during the pandemic, "the [subprime auto loan] delinquency rates should have spiked . . . into the sky"); Jean Eaglesham & Ken Brown, *Auto-Lending Binge Threatens to Unwind When Stimulus Measures Ease*, WALL ST. J. (Aug. 7, 2020, 7:00 AM), https://www.wsj.com/articles/auto-lending-binge-threatens-to-unwind-when-stimulus-measures-ease-11596798003 [https://perma.cc/E3CB-9685] (noting "signs of trouble even before the crisis hit" in the auto loan market); Melissa Angell, *Credit Unions Are 'Going to See Auto Lending Die' Because of Coronavirus*, AM. BANKER (Apr. 6, 2020, 5:00 AM), https://www.americanbanker.com/creditunions/news/credit-unions-are-going-to-see-auto-lending-die-because-of-coronavirus [https://perma.cc/S9BN-QZDH] (quoting Bill Handel, a VP of Research at Raddon, as saying "people just aren't making those purchases").

33. *See* Press Release, Fed. Rsrv. Bank of N.Y., Total Household Debt Increased in Q3 2020, Led by Surge in New Credit Extensions; Mortgage Originations, Including Refinances, Continue to Soar (Nov. 17, 2020), https://www.newyorkfed.org/newsevents/news/research/2020/20201117 [https://perma.cc/JD9Z-UH2J]; Stefan Lembo Stolba, *Consumer Delinquencies Slow During Pandemic*, EXPERIAN (Aug. 25, 2020), https://www.experian.com/blogs/askexperian/research/consumer-delinquencies-slow-during-pandemic [https://perma.cc/PDX7-GGPB] (reporting based on Experian data).

34. *See* Press Release, Fed. Rsrv. Bank of N.Y., *supra* note 33 (noting declining credit card delinquencies); Stolba, *supra* note 33 (noting the same based on based on Experian data); *Charge-*

delinquencies increased, although the CARES Act's foreclosure moratorium provided homeowners the ability to defer payments.[35]

Consumer credit products, including auto loans, benefitted from the CARES Act's provisions designed to help households weather the economic fallout of stay-at-home orders.[36] The CARES Act's extra unemployment compensation and relief rebate payments, delivered primarily in April through the end of July, aided households in paying recurring expenses and allowed them to stay current on some debts.[37] Indeed, the CARES Act's payments "ke[pt] more than [ten] million people out of poverty" according to a report from the Urban Institute.[38]

The CARES Act also allowed people to prioritize auto debt over other debt by pausing payments on home loans, some rent payments, and student loans.[39] A handful of states legislated or decreed additional protections, such as eviction and debt collection moratoria.[40] Although very few states added protections such as halts on auto repossessions,[41] pausing the collection of

Off and Delinquency Rates on Loans and Leases at Commercial Banks, BD. GOVERNORS FED. RSRV. SYS. (Feb. 19, 2021), https://www.federalreserve.gov/releases/chargeoff/delallsa.htm [https://perma.cc/9SZE-Y6NM] (reporting delinquencies at commercial banks).

35. *See* Foohey et al., *The Folly*, *supra* note 5, at 129–35 (discussing the CARES Act's moratoria); FED. RSRV. BANK OF N.Y., *supra* note 33 (noting the CARES Act); Carmen Reinicke, *Mortgage Delinquencies Surge More Than 8% to a 9-Year High as the Coronavirus Pandemic Hits a Corner of the Housing Market*, MKTS. INSIDER (Aug. 17, 2020, 6:27 PM), https://markets.businessinsider.com/news/stocks/mortgage-delinquencies-spike-year-high-coronavirus-pandemic-housing-fha-payments-2020-8-1029509846 [https://perma.cc/WU5T-CFRY]; Kim Eng Ky & Ben Horowitz, *Ninth District Mortgage Delinquency Rates Surge; Other Rates Stable*, FED. RSRV. BANK OF MINNEAPOLIS (July 9, 2020), https://www.minneapolisfed.org/article/2020/ninth-district-mortgage-delinquency-rates-surge-other-rates-stable [https://perma.cc/X76Z-L6RS] (comparing mortgage and other consumer credit products delinquency rates).

36. *See* Sarah Mervosh, Denise Lu, & Vanessa Swales, *See Which States and Cities Have Told Residents to Stay at Home*, N.Y. TIMES (Apr. 20, 2020), https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html [https://perma.cc/Y9K6-CHUX] (detailing stay-at-home orders).

37. *See* Foohey et al., *The Folly*, *supra* note 5, at 135–40 (detailing CARES Act provisions designed to help households). "The Lost Wages Assistance program, created by a [Presidential] memorandum . . . in early August, provided some unemployed [individuals] with an additional $300" a week through the beginning of September 2020, although the program was "rolled out haphazardly." Jennifer Liu, *Scores of Workers Still Haven't Seen $300 Unemployment Boost—In Some States, It's Already Gone*, CNBC MAKE IT (Sept. 24, 2020, 12:04 PM), https://www.cnbc.com/2020/09/24/scores-of-workers-still-havent-seen-300-unemployment-boost.html [https://perma.cc/449D-8CC9].

38. LINDA GIANNARELLI, LAURA WHEATON & GREGORY ACS, URB. INST., 2020 POVERTY PROJECTIONS, 9 (2020), https://www.urban.org/sites/default/files/publication/102521/2020-poverty-projections_1_0.pdf [https://perma.cc/AB38-LFB3].

39. *See* Foohey et al., *The Folly*, *supra* note 5, at 129–35 (detailing CARES Act provisions that provided for moratoria on payment of debt).

40. *Id.* (detailing states' measures to stop debt collection).

41. *See* NAT'L CONSUMER L. CTR., STATE PROTECTIONS AGAINST VEHICLE REPOSSESSION DURING THE COVID-19 CRISIS (2020), https://docs.google.com/document/d/1JOy2enWm8C_qBk27oyMCxbhKbYrczaHj75IQV2OhJTc/edit [https://perma.cc/48AT-SDDA] (detailing

other delinquent debts likely further allowed people to focus on remaining current with their auto loans. As noted, besides homes (and housing costs generally) and student loans, cars constitute households' biggest expense.[42] Given that research shows that people continue to pay auto loans even as they fall behind on other debts,[43] with the other two big expenses temporarily taken care of, households likely allocated cash to keeping their cars. The pandemic also led people to avoid mass transit, which led to increased interest in purchasing older used cars, which presented a marginally more budget friendly option than purchasing new or slightly used vehicles.[44]

Possibly just as much as the CARES Act's and state's interventions to help people, auto dealerships and lenders played a key role in propping up the auto loan market. As the economy collapsed, banks, other lenders, and businesses, including auto dealers, also struggled.[45] To entice new customers and retain current customers, dealers heavily promoted sales, moved sales online, and otherwise went out of their way to accommodate people who could not or did not feel comfortable coming to physical locations.[46] Car dealerships also partnered with lenders to offer programs that provided people with assurances should their financial situations change. For instance, Ford launched the "Ford Promise," which allowed customers to "buy or lease an eligible Ford vehicle through Ford Credit. Then, if you face financial hardship due to loss of employment, you can return it within one year of purchase."[47] Similarly, other lenders offered people with good credit histories

---

examples of "state laws, executive orders, and guidance adopted in response to the COVID-19 crisis that protect consumers from repossession of vehicles").

42. *See supra* text accompanying note 10; COOPER, *supra* note 5, at 1.

43. *See* Foohey, *supra* note 1 (manuscript at 3–4).

44. *See* Eric Rosenbaum, *The Used Car Boom Is One of the Hottest, and Trickiest, Coronavirus Markets for Consumers*, CNBC (Oct. 15, 2020, 9:57 PM), https://www.cnbc.com/2020/10/15/used-car-boom-is-one-of-hottest-coronavirus-markets-for-consumers.html [https://perma.cc/Z73H-MY72].

45. *See* David Benoit, *What Banks Tell Us About Covid-Era Business: 'Everybody Is, Bluntly, Struggling*,*'* WALL ST. J. (July 18, 2020, 5:30 AM), https://www.wsj.com/articles/what-banks-tell-us-about-covid-era-business-everybody-is-bluntly-struggling-11595064600 [https://perma.cc/B7T2-UMVV].

46. *See* Rosenbaum, *supra* note 44 (noting that "dealers are accelerating digital efforts"); Neal E. Boudette, P*andemic Forces Car Dealers to Do the Unthinkable: Sell Online*, N.Y. TIMES (May 29, 2020), https://www.nytimes.com/2020/05/29/business/car-dealers-sell-online-coronavirus.html [https://perma.cc/T99G-TV6D] (discussing online car sales); Wayland, *supra* note 24 (detailing dealers' flexible purchase policies); Peter Campbell, Joe Miller, Claire Bushey & Kana Inagaki, *Time to Buy a Car? Industry Hopes for Coronavirus Silver Lining*, FIN. TIMES (May 19, 2020), https://www.ft.com/content/488d5886-c6af-4e80-a479-36aca26edd1d [https://perma.cc/4DXP-LCXH] (discussing the auto industry outlook worldwide).

47. *The Ford Promise*, SIMMONS-ROCKWELL FORD INC., https://www.simmonsrockwellford.com/the-ford-promise.htm [https://perma.cc/AQ7B-LH69].

loans with delayed payment starts and attractive, seemingly below-market interest rates.[48]

Along with trying to entice people to purchase cars with appealing financing, reports suggest that auto lenders made deals with current customers who were worried about falling behind on their loans.[49] According to data from TransUnion, the number of auto loans in deference or forbearance or which were granted similar relief "doubled to 7.3 million accounts" between April and May 2020.[50]

The increase in deferrals likely explains, at least in part, the decrease in auto loan delinquencies in the second and third quarters of 2020.[51] But these deferrals are merely that—delays. And they were only given to some customers. Based on the complaints that people lodged to the Consumer Financial Protection Bureau ("CFPB") during the pandemic about problems working with auto lenders to modify or pause payments, a subset of households did not receive relief.[52] These complaints reflect other research into disparities in who has received accommodations from lenders, with Black and lower-income households facing more troubles in obtaining deals from lenders or in taking out new loans, including for cars.[53]

Despite these stop-gap measures, at some point, possibly very soon, people will have to start paying all their loans again—auto, student, and home. Many people may not be able to do so. For instance, a survey conducted by the United States Census Bureau in September 2020 found that a third of respondents predicted that they would be evicted from their housing or have

48. *See* AnnaMaria Andriotis & Ben Eisen, *Auto Lenders Try to Lure Borrowers with Generous Terms—For Some*, WALL ST. J. (May 2, 2020, 5:30 AM), https://www.wsj.com/articles/auto-lenders-try-to-lure-borrowers-with-generous-termsfor-some-11588411801 [https://perma.cc/VA4V-HPGZ].

49. *See Auto Lenders Keep Market Afloat During Pandemic*, TODAY'S MOTOR VEHICLES (June 25, 2020), https://www.todaysmotorvehicles.com/article/auto-lenders-keep-market-afloat-during-pandemic [https://perma.cc/QB7Z-Y8NT] (reporting select data about auto loan modifications granted in the second quarter of 2020).

50. *See* AnnaMaria Andriotis, *Americans Skip Millions of Loan Payments as Coronavirus Takes Economic Toll*, WALL ST. J. (June 18, 2020, 5:30 AM), https://www.wsj.com/articles/americans-skip-millions-of-loan-payments-as-coronavirus-takes-economic-toll-11592472601 [https://perma.cc/JW43-QSKX].

51. *See supra* note 33 and accompanying text.

52. *See* GIDEON WEISSMAN, R.J. CROSS, ED MIERZWINSKI & LUCY BAKER, AUTO LOAN COMPLAINTS RISE: PANDEMIC WORSENS EXISTING CONSUMER PROBLEMS WITH CAR BUYING IN CFPB DATA 11 (2020), https://uspirgedfund.org/sites/pirg/files/reports/AutoLoanComplaintsRise/WEB_USP_CFPB-Auto-Loan_Report_1020_v1.pdf [https://perma.cc/3AQV-W2G9]; *see also* Pamela Foohey, *Calling on the CFPB for Help: Telling Stories and Consumer Protection*, 80 LAW & CONTEMP. PROBS. 177, 181–84 (2017) (detailing the CFPB's complaint function).

53. *See* Susan Tompor, *What It Takes for Risky Borrowers to Get a Car Loan*, DETROIT FREE PRESS (Oct. 7, 2020, 12:24 PM), https://www.freep.com/story/money/personal-finance/susan-tompor/2020/10/07/car-loans-covid/3517293001 [https://perma.cc/22E6-HME3]; Diana Olick, *A Troubling Tale of a Black Man Trying to Refinance His Mortgage*, CNBC (Aug. 19, 2020, 3:38 PM), https://www.cnbc.com/2020/08/19/lenders-deny-mortgages-for-blacks-at-a-rate-80percent-higher-than-whites.html [https://perma.cc/U9RH-97MQ].

their home foreclosed within the next 60 days, despite the CARES Act's protections.[54] This teed up the possibility of a "COVID cliff"—"as many as 6.4 million evictions filed in [2020] could take effect" at the beginning of 2021.[55] Likewise, two studies released in October 2020 found that although the CARES Act kept millions of families out of poverty at the beginning of the pandemic, households have exhausted their relief funds and poverty levels had surged to levels higher than prior to COVID-19's emergence.[56]

Similarly, and with the aid of the CARES Act and states' interventions to help families, auto lenders have merely propped up the market. But there is a limit to how long dealers and lenders will be able to steady the market. In the coming months, the cracks in the auto sales and lending industry will likely expand, prompting a crisis.

This crisis will hurt communities of color and lower-income households to a greater degree than other households because of long-standing disparities in auto sales and lending, including during the pandemic.[57] These communities always have been at the forefront of those that would be most affected by an auto loan bubble burst. Likewise, by the end of 2020, it had become abundantly clear that the pandemic's overall economic effects disproportionately fell on and would continue to fall on communities of color and lower-income households.[58] Which means that the auto loan market's reckoning will coincide with the pandemic's larger economic fallout. The silver lining of this timing is that it might provide a needed jolt to prompt discussions about putting into place longer-term, more comprehensive interventions in the auto sale and loan markets.

54. *See* Sylvan Lane, *Nearly One-Fourth of American Households Facing Layoffs or Pay Cuts: Census Bureau*, HILL (Oct. 7, 2020, 11:50 AM), https://thehill.com/policy/finance/519992-nearly-one-fourth-of-american-households-facing-layoffs-or-pay-cuts-census [https://perma.cc/6ZC2-DTXA].

55. Niv Elis, *US Economy Hurtles Toward 'COVID Cliff' with Programs Set to Expire*, HILL (Nov. 22, 2020, 7:30 AM), https://thehill.com/policy/finance/526964-us-economy-hurtles-toward-covid-cliff-with-programs-set-to-expire [https://perma.cc/GUL7-BZT4].

56. *See* Jason DeParle, *8 Million Have Slipped into Poverty Since May as Federal Aid Has Dried Up*, N.Y. TIMES (Oct. 15, 2020), https://www.nytimes.com/2020/10/15/us/politics/federal-aid-poverty-levels.html [https://perma.cc/8FHR-5PLA].

57. *See* Foohey, *supra* note 1 (manuscript at 9–10) (discussing disparities in auto sales and lending based on race, ethnicity, and income); WEISSMAN ET AL., *supra* note 52, at 9 (noting that people's complaints to the CFPB about auto loans reflected disparities in access existing prior to the pandemic); Tanvi Misra, *Mapping the Subprime Car Loan Crisis*, BLOOMBERG CITYLAB (Dec. 12, 2018, 12:04 PM), https://www.bloomberg.com/news/articles/2018-12-12/urban-institute-maps-u-s-car-loan-debt-and-delinquency [https://perma.cc/PE3L-JCBU] (discussing data from the Urban Institute about disparities in auto loan defaults in communities of color across the United States).

58. *See* Heather Long, Andrew Van Dam, Alyssa Fowers & Leslie Shapiro, *The Covid-19 Recession is the Most Unequal in Modern U.S. History*, WASH. POST (Sept. 30, 2020), https://www.washingtonpost.com/graphics/2020/business/coronavirus-recession-equality/ [https://perma.cc/F9XA-4W3H].

III. Picking Up After the Bubble's Burst

Even though the auto loan market has expanded significantly in the past decade—bringing increasing delinquencies and defaults with it—there has been little in-depth discussion about how to address the likely burst of the market's bubble. The literature that exists, however, highlights how auto sellers and lenders have benefitted from and exploited the lack of regulation of one of the most complex transactions that people will enter into during their lives. Understanding the dynamics that have allowed for the rapid rise in auto loans outstanding is an essential step in considering how to restructure the market for cars and auto loans. This Part begins with an overview of the auto sale and loan markets and then outlines a range of financial and related measures that could shift market dynamics.

A. *Auto Sales and Loans Today*

Auto loans stand apart from all other types of credit extended to consumers. Besides a home mortgage, an auto loan is the only secured debt that most people will incur.[59] Auto lenders, like mortgage lenders, almost always require that borrowers give rights in the financed vehicle to lenders that allow for repossession and sale upon borrowers' defaults.[60] Student loans, credit cards, medical debt, and most other consumer debts, in contrast, are unsecured.[61] These lenders cannot reach people's assets without going through at least some court proceedings.[62]

Even though auto loans are secured debts, people in danger of having their cars repossessed and sold have few legal protections that they can call upon, such as the waiting periods and right of reinstatement typically allowed by state law for home foreclosure.[63] Instead, auto repossession and sale can

59. *See* Jesse Bricker, et al., *Changes in U.S. Family Finances from 2013 to 2016: Evidence from the Survey of Consumer Finances*, FED. RSRV. BULL., Sept. 2017, at 1, 18 tbl.3, 22 tbl.4, https://www.federalreserve.gov/publications/files/scf17.pdf [https://perma.cc/C5W2-QKVE] (reporting based on the Survey of Consumer Finances that in 2016, 85.2 percent of households owned a car and that 63.7 percent of households owned a home and that most people's loans were home loans, student loans, car loans, and credit cards).

60. *See* Foohey et al., *Driven to Bankruptcy*, *supra* note 2, at 300–03 (discussing repossession and sale); *Vehicle Repossession*, FED. TRADE COMM'N (Nov. 2008), https://www.consumer.ftc.gov/articles/0144-vehicle-repossession [https://perma.cc/EA6D-9LH5] (same).

61. *See* Foohey, *supra* note 1 (manuscript at 4).

62. These proceedings are typically state court debt collection actions that can end with seizure of non-exempt assets (to the extent that the borrower has any non-exempt assets), with garnishment of bank accounts, or with wage garnishment. *See generally* PEW CHARITABLE TRUSTS, HOW DEBT COLLECTORS ARE TRANSFORMING THE BUSINESS OF STATE COURTS (2020), https://www.pewtrusts.org/-/media/assets/2020/06/debt-collectors-to-consumers.pdf [https://perma.cc/Q826-4E9E] (discussing debt collection proceedings); Foohey et al., *Debt Collection Pandemic*, *supra* note 23 (discussing how COVID-19 could increase debt collection).

63. *Cf. Vehicle Repossession*, FED. TRADE COMM'N (Nov. 2008), https://www.consumer.ftc.gov/articles/0144-vehicle-repossession [https://perma.cc/4M3J-NBME] ("In many states, your creditor can seize your vehicle as soon as you default on your loan or lease."). Some states give

happen quickly.[64] Indeed, repossession can happen instantaneously upon default if the lender has installed a starter interrupter device or other vehicle tracking and disabling tool in the financed vehicle.[65]

Auto loans also stand apart from other consumer credit, including home loans, because of the inter-twining of the lending process with vehicle sales. In *The Fast and the Usurious*, Adam Levitin detailed this inter-twining in the context of the typical auto loans, meaning those that people take out as part of their car purchases.[66] After people negotiate the vehicle purchase, which is a complicated and atypical purchase that includes the price of the car plus any selected upgrades, the value of trade-ins, the addition and deletion of warranties, and miscellaneous service contracts, they then must negotiate financing. Unless customers have arranged third-party financing in advance —for example, from a local credit union—people will get their auto loan through the dealer from which they are purchasing the vehicle.[67] This is the case if people purchase vehicles at auto company franchises, such as Ford or Toyota authorized dealerships, or independent used-car dealerships, such as "Buy Here Pay Here" car lots. Nearly ninety percent of buyers obtain their auto financing through dealerships.[68] Making the transaction even more confusing, the loan pricing itself might also be linked with the vehicle purchase terms, such as the value of trade-ins and selected warranty provisions.[69]

When people receive loans through auto dealerships, these loans typically come from banks and other lenders that partner with the dealerships. Auto sellers will make a loan to a customer only after they line up the customer's lender, to which the loan is immediately assigned.[70] Other dealerships, such as those authorized under a franchise agreement with Ford, use in-house lending arms, such as Ford Motor Credit.[71] Across these deals,

borrowers a short time period to reinstate auto loans after repossession. *See My Car Has Been Repossessed, and I Was Told It Will Be Sold. What Can I Do?*, CONSUMER FIN. PROT. BUREAU (Sept. 23, 2016), https://www.consumerfinance.gov/ask-cfpb/my-car-has-been-repossessed-and-i-was-told-it-will-be-sold-what-can-i-do-en-865 [https://perma.cc/A8NZ-HJSK].

64. *See* Foohey, *supra* note 1 (manuscript at 23–27) (detailing "the booming auto repossession industry").

65. *See id.* (manuscript at 24) (discussing starter interrupter devices, that "allow the lender or dealer that controls the device to disable the ignition switch of a vehicle, preventing it from starting").

66. *See generally* Levitin, *supra* note 6 (describing the potential abuses facing consumers stemming from the inter-twined nature of vehicle purchases and auto loan financing).

67. *Id.* at 1261–64.

68. *Id.* at 1262. Levitin also details "yo-yo" scams in which customers drive off with a vehicle only to be told a couple days later that they were not approved for the financing and must agree to a higher interest rate if they want to keep the vehicle. *Id.* at 1304–06.

69. *Id.* at 1261–62.

70. *See id.*

71. *See D&B Business Directory: Ford Motor Credit Company LLC*, DUN & BRADSTREET, https://www.dnb.com/business-directory/company-profiles.ford_motor_credit_company_

the business relationship initially is between the dealership and the lender, not the lender and the actual borrower. This exacerbates a sales and lending structure that already disadvantages customers.[72]

In addition, financial technology ("fintech") innovations in auto sales and lending continue to alter how people shop for cars by moving a portion of "traditional" car sales and loan deals effectuated wholly at dealerships to virtual marketplaces. In my recent article, *Consumers' Declining Power in the Fintech Auto Loan Market,* I detail the emergence, growth, and adaptation of website and applications designed for smartphones and tablets that promise to deliver cars and loans to people rapidly, such as Carvana and AutoGravity.[73] Like "traditional" auto dealerships, these platforms typically partner with banks and other lenders, similarly making the lender the platforms' customers, not the people who are purchasing or leasing cars.[74]

Overall, as I argue in my article, the auto loan origination market prioritizes the interests of lenders over those of customers, which has led and will continue to lead people to agree to loans with disadvantageous (and inflated) interest rates, fees, and terms.[75] That most people in America need a vehicle for their daily lives only adds to dealers' and lenders' leverage used to extract concessions from customers. Levitin likewise comes to the same conclusion, asserting that the inter-twining of auto sales and lending has cultivated an auto loan market "rife with opportunities for various forms of abuse and fraud."[76]

The potential for consumer abuses has come to pass, at least based on consumers' complaints and the Federal Trade Commission ("FTC")'s actions regarding auto loans. People's complaints and these actions take aim at tactics that may stem from the inter-twining of auto sales and lending: attempts to make people agree to expensive add-on products, such as service plans, perceived high-pressure sales methods generally, and "yo-yo financing" and changing loan terms.[77]

---

llc.cb3110fa6a44f57e2f2e6704cc273538.html.

72. *See* Foohey, *supra* note 1 (manuscript at 8–11) (detailing how the market disadvantages customers).

73. *See id.* (manuscript at 11–17).

74. *See id.* (manuscript at 15).

75. *See id.* (manuscript at 23–27).

76. Levitin, *supra* note 6, at 1330.

77. *See generally* WEISSMAN ET AL., *supra* note 52 (detailing people's reported problems); David Shepardson, *Santander Agrees to $550 Million U.S. Settlement over Subprime Auto Loans*, REUTERS (May 19, 2020, 11:21 AM), https://www.reuters.com/article/us-usa-autos-lending/santander-agrees-to-550-million-settlement-over-subprime-auto-loans-idUSKBN22V2GS [https://perma.cc/62HP-HCJ6] (detailing the FTC's settlement with Santander about its underwriting practices for subprime loans); Press Release, Fed. Trade Comm'n, FTC Returns More Than $3.5 Million to Consumers Subjected to Deceptive and Unfair Sales and Financing Tactics by Los Angeles-Area's Sage Auto Group (Dec. 6, 2018), https://www.ftc.gov/news-events/press-releases/2018/12/ftc-returns-more-35-million-consumers-subjected-deceptive-unfair [https://perma.cc/D5CN-988M]

These tactics add up to lots of money for auto sellers and lenders. One marker for how much profit the sales and lending structure yields is "marked up financing" paid by car buyers. Mark ups refer to amounts added to a loan by the dealer who arranges financing for a customer, including a commission known as the "dealer reserve" or "finance reserve," which adds one to two percent on the lender's interest rate, and extended warranties and other protection products.[78] In 2019, the typical car buyer paid roughly $1,860 in marked up financing.[79] As calculated by Levitin based on a prior study of auto loan overcharges, marked up financing amounted to over $54 billion in 2018.[80] This sum reflects about 10 percent of the total of $584 billion of auto loan originations in 2018.[81]

Over the past decade, the relative proportion of profit that auto dealers have made from car sales versus car financing has narrowed. For instance, in 2011, dealers made 66 percent of their profit from car sales versus 34 percent from car financing.[82] In 2018, this balance had flipped, with dealers making money from car loans than car sales.[83] Dealers should be increasingly more interested in selling auto loans than actual cars.

Part of the transition from an auto sales market that focuses on selling cars to one focused on selling car loans dates to the Great Recession and the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), which created the CFPB.[84] The Dodd-Frank Act explicitly excluded auto sellers from the CFPB's rulemaking, supervision, and enforcement authority.[85] This carveout accelerated the inter-twining of auto sales and auto loans.[86] Similarly, as noted by Edward Balleisen and Melissa Jacoby, car dealers have succeeded in lobbying at the state level, leading to the lack of state-level regulation of auto loans, and have a lobbying force that is ready to take on proposed regulations.[87]

(reporting on the FTC's settlement with Sage Auto Group for engaging in "'yo-yo' financing tactics"); *supra* text accompanying note 68 (discussing "yo-yo" scams).

78. *See Markup Index*, OUTSIDE FIN., https://www.outsidefinancial.com/auto-loan-markup-index [https://perma.cc/EN6P-Q6A9] (detailing auto loan markups).

79. *Id.*

80. Levitin, *supra* note 6, at 1292 n.140.

81. *See* Press Release, Fed. Rsrv. Bank of N.Y., Total Household Debt Rises as 2018 Marks the Ninth Year of Annual Growth in New Auto Loans (Feb. 12, 2019), https://www.newyorkfed.org/newsevents/news/research/2019/20190212 [https://perma.cc/3LCS-NP57].

82. *See Markup Index*, *supra* note 78.

83. *See id.*

84. *See* Dodd–Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1011, 124 Stat. 1376, 1964 (2010) (codified at 12 U.S.C. § 5491).

85. *See* Edward J. Balleisen & Melissa B. Jacoby, *Consumer Protection After the Global Financial Crisis*, 107 GEO. L.J. 813, 824–30 (2019) (discussing the lobbying that led to this carveout).

86. *See id.* at 829–30 (discussing the change in the auto loan market and its parallel to the mortgage market that played a significant role in the Great Recession).

87. *See id.* at 829.

The current structure of auto sales and lending has created an unsustainable sector in need of change, even before the adverse economic conditions brought by the pandemic. The pandemic's economic fallout might provide the necessary jolt to foster legislative change.

B. REFORMING AUTO SALES AND LOANS IN THE FUTURE

Going forward, to make any significant changes, car dealers and lenders will have to yield to regulators. The pre-pandemic growth in auto loans, coupled with the foreseeable spike in defaults and eventual crash in the auto loan market, might make now the moment to push for auto loan regulations. It also might be the time to advance broader ideas for changes to how and what type of automobiles are sold in the United States, which will affect the auto loan market.

Beginning with proposals to address problems in today's auto loan market, legislatively vesting a federal agency with the ability to regulate auto dealerships is a necessary first step. As the agency designed to protect consumers in financial transactions, the CFPB provides a natural place to put such authority.[88] Once given authority to regulate dealerships, the CFPB (or any agency vested with such authority) should aim to dismantle the key elements of car sales and loans that grant outsized power to dealerships.

As Levitin has identified persuasively, the current structure of car sales and loans taking place simultaneously, either in-person at dealerships or facilitated through online platforms, is the foremost barrier to consumer's ability to stand on equal footing with dealers and lenders.[89] Levitin proposes a three-day waiting period for people who buy cars with financing if they seek financing through the dealership and a penalty-free prepayment right if people obtain third-party financing during this waiting period.[90] The waiting period would apply to vehicle, trade-in, and loan pricing. The intuition behind this waiting period is to relieve people from pressure to accept the deal offered to them and to incentivize people to shop for financing apart from the car itself. Levitin projects that this disruption in the market will create competition among dealers to reduce markup financing and reduce opportunities for discrimination in sales and lending.[91]

Beyond uncoupling the timing of car sales from extension of auto loans, drawing from existing consumer credit regulations, other market

88. *See* Angela Littwin, *Why Process Complaints? Then and Now*, 87 TEMP. L. REV. 895, 895 (2015) ("The CFPB is the most important recent development in consumer law."). *See generally* Adam J. Levitin, *The Consumer Financial Protection Bureau: An Introduction*, 32 REV. BANKING & FIN. L. 321 (2013) (providing and overview of the CFPB).

89. *See* Levitin, *supra* note 6, at 1264–66.

90. *Id.* at 1319–26.

91. *See id.* (arguing that incentivizing consumers to secure financing for vehicle purchases before the transaction will shift the competition from third-party financial institutions to vehicle dealerships).

interventions might take two orientations: those aimed at informing buyers and those aimed at restricting sellers. Most prevalent among regulations of other consumer credit products are those that attempt to provide buyers with understandable information about these transactions, such as the Credit Card Accountability Responsibility and Disclosure Act of 2009 ("Credit CARD Act").[92] For auto sales, disclosures might include clear quotes for price elements, such as warranties, option packages, and the destination charge, and for the total sticker price. For auto loans, disclosures might include details about the credit score relied on by lenders.

In comparison, and also as included in the Credit CARD Act, regulations may restrict dealer and lender practices, such as limiting fees and other charges that come with a loan, including upon default, or mandating ability to pay standards.[93] In the context of automobiles, drawing on the above discussion about problems that people face purchasing cars, restrictions could include a cap on markup financing, caps on specific elements of financing, limiting the length of loans to match the predicted useful life of vehicles, and a prohibition on "yo-yo financing."[94] States also can legislate similar protections, as a handful of states already have done, such as Texas's motor vehicle installment sale form with informational language about markups.[95]

These various protections and proposals will be a step forward in imposing at least some constraints on the industry. Nonetheless, as I argue in my recent article, people's need for cars to survive day-to-day in most places in the United States is so great that these regulations likely will not significantly disrupt dealers' leverage against customers, and particularly those with the least ability to bargain.[96] As with payday loans and other fringe credit, the needs of the most vulnerable individuals transcend disclosures and regulations, and they will continue to agree to car sales and lending deals effectively regardless of their terms.[97] With the growth of fintech platforms, even if people try to shop around for auto loans, counter-intuitively, it may become harder for them to identify lenders who have not partnered with dealers and thus to find competitive deals. Indeed, within a few months, the

92. *See* Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734 (codified in relevant part at U.S.C. §§ 1601–1667(f), 1681, 1693).

93. *See id.*; Foohey, *supra* note 1 (manuscript at 36–42) (reviewing ideas taken from other consumer credit products that put people on similar footing with auto dealers and lenders).

94. *See supra* text accompanying note 68.

95. *See* Levitin, *supra* note 6, at 1313–14 (discussing potential disclosures); Foohey, *supra* note 1 (manuscript at 35) (same).

96. Foohey, *supra* note 1 (manuscript at 10–11).

97. *Id.* (manuscript at 5, 6 n.35) (noting research about the conditions under which people will take out payday loans and use other alternative financing). Of course, there always will be people who find a way to live "car free" while others take out and default on auto loans. But I argue that the United States' cumulative decisions to elevate driving and personal vehicles as the main mode of transportation in America has rendered cars and car loans necessities that set them apart from other consumer goods and credit productions. *See id.* (manuscript at 1–2).

COVID-19 pandemic had already transformed how auto sellers interact with customers such that dealerships moved more sales online and tried to offer a more "flexible" purchase process.[98]

In short, the United States' elevation of driving as *the* mode of personal transportation has the potential to negate regulations that will maintain the status quo regarding how people purchase cars. Something more is needed.

Besides fostering a rise in auto loans, the status quo has encouraged a proliferation of larger passenger vehicles, particularly sport utility vehicles ("SUVs") and pickup trucks, in the United States' market.[99] Today, SUVs and pickup trucks constitute 70 percent of all new vehicle sales.[100] Although manufacturers have advanced in making these vehicles more energy efficient and reducing their emissions levels, the vehicles themselves get worse gas mileage and have higher emissions than passenger cars and even smaller SUVs.[101] Being bigger, they also are more dangerous when involved in motor vehicle accidents.[102] But the prevalence of larger vehicles on American roads means that more people want to purchase similarly large vehicles for their and their family's safety.

Just as COVID-19 has disrupted the status quo in many Americans' lives, it presents an opportunity to disrupt the status quo in the American car market. The last time a similar disruption occurred was following the Great

---

98. *See* Todd C. Frankel, *No Handshakes. A Bad Economy. These Car Salesmen Shifted Tactics — and Succeeded.*, WASH. POST (Aug. 12, 2020, 5:00 AM), https://www.washingtonpost.com/road-to-recovery/2020/08/12/no-handshakes-bad-economy-these-car-salesmen-shifted-tactics-succeeded [https://perma.cc/J9CH-Z8QP]; Michael Wayland, *The Coronavirus Pandemic Has Upended Auto Sales and Buying a Car Will Never Be the Same*, CNBC (May 21, 2020, 1:57 PM), https://www.cnbc.com/2020/05/21/the-coronavirus-pandemic-has-upended-auto-sales-and-buying-a-car-will-never-be-the-same.html [https://perma.cc/6MP5-4UCW]; Benoit, *supra* note 45.

99. *See Highlights of the Automotive Trends Report*, EPA, https://www.epa.gov/automotive-trends/highlights-automotive-trends-report [https://perma.cc/9N95-NRBU] (detailing the production share and fuel economy of vehicles and showing the rise in truck SUVs, which are larger or 4WD vehicles).

100. *See* Lawrence Ulrich, *S.U.V. vs. Sedan, and Detroit vs. the World, in a Fight for the Future*, N.Y. TIMES (Sept. 15, 2019,), https://www.nytimes.com/2019/09/12/business/suv-sedan-detroit-fight.html [https://perma.cc/L9GD-FNK9].

101. *See id.*; Marianne Lavelle, *U.S. Automakers Double Down on Trucks & SUVs, Despite Talk of a Cleaner Future*, INSIDE CLIMATE NEWS (Oct. 15, 2018), https://insideclimatenews.org/news/15102018/automakers-gm-ford-pickup-suv-electric-vehicle-emissions-standards-climate-change-industry-bailout [https://perma.cc/CEB7-3ZJT].

102. *See* Shill, *supra* note 3, at 500–02 (discussing the costs of car accident injuries and fatalities); *SUVs More Deadly to Pedestrians than Cars: U.S. Insurance Study*, REUTERS (June 16, 2020, 9:16 AM), https://www.reuters.com/article/us-autos-safety-insurance/suvs-more-deadly-to-pedestrians-than-cars-u-s-insurance-study-idUSKBN23N297 [https://perma.cc/2DGE-RJ8G] (reporting on an Insurance Institute for Highway Safety ("IIHS") study); Mack Hogan, *SUVs Are 28 Percent More Likely to Kill Other Drivers in a Crash, Which Is Somehow a Massive Improvement*, JALOPNIK (Oct. 12, 2019, 11:40 AM), https://jalopnik.com/suvs-are-28-percent-more-likely-to-kill-other-drivers-i-1838994674 [https://perma.cc/JN9W-Y7PW]; Samuel S. Monfort & Joseph M. Nolan, *Trends in Aggressivity and Driver Risk for Cars, SUVs, and Pickups: Vehicle Incompatibility From 1989 to 2016*, 20 TRAFFIC INJ. PREVENTION S92, S95—S96 (2019).

Recession. At that time, in response to a drop in car sales, Congress enacted the Car Allowance Rebate System, colloquially known as "Cash for Clunkers," which allowed people to trade-in older cars for newer, more fuel-efficient vehicles.[103] The system essentially was a scrappage program, with the goals of rescuing struggling auto manufacturers and dealerships, to promote environmentally-friendly vehicles, and to reduce economic inequality.[104] Within a couple months after the pandemic's emergence, news stories about the potential enactment of a similar plan began appearing.[105]

As part of a larger strategy to tackle the pandemic's economic fallout, Congress could adapt and update the Cash for Clunkers program to promote safer and more equal access to automobiles. Also, any program that provides subsidies should restrict those subsidies to only electric vehicles. For example, people could receive a tax credit or cash toward the purchase of select electric vehicles. The program also could include dedicated funds for building electric charging infrastructure, which might incentivize auto manufacturers to allocate production capacity to electric vehicles. For instance, in summer 2020, as part of his Presidential campaign, Joe Biden announced an environmental plan with similar ideas, including tax subsidies for electric car purchases, incentives to trade-in fuel-inefficient vehicles, and building public electric charging stations across the country.[106]

States also can play a role in incentivizing the manufacture of electric vehicles. California Governor Gavin Newsom's September 2020 executive order requiring sales of all new passenger vehicles to be zero-emission by 2035 provides a first step and primer for other states.[107] The order's timeline also

---

103. *See* Alisa Priddle, *Potential Cash for Clunkers Revival Could Mean Big Car Deals Are Coming*, MOTORTREND (Apr. 21, 2020), https://www.motortrend.com/news/cash-for-clunkers-revival-2020-car-deals [https://perma.cc/B83R-9N7E] (detailing the Cash for Clunkers program); Christina Romer & Christopher Carroll, *Did 'Cash-for-Clunkers' Work as Intended?*, WHITE HOUSE: BLOG (Apr. 5, 2010, 8:42 PM), https://obamawhitehouse.archives.gov/blog/2010/04/05/did-cash-clunkers-work-intended [https://perma.cc/GQ3Q-ZTXY] (noting studies about the effects of Cash for Clunkers).

104. *See generally* Shanjun Li, Joshua Linn & Elisheba Spiller, *Evaluating "Cash-for-Clunkers": Program Effects on Auto Sales and the Environment*, 65 J. ENV'T ECON. & MGMT. 175 (2013) (discussing Cash for Clunkers).

105. *See, e.g.*, Kea Wilson, *Don't Bring Back Cash for Clunkers Because of COVID-19*, STREETSBLOG USA (May 13, 2020), https://usa.streetsblog.org/2020/05/13/dont-bring-back-cash-for-clunkers-because-of-covid-19 [https://perma.cc/36M8-ML88] (discussing issues with the first Cash for Clunkers program and arguing that the program should not be revived in a similar form); John M. Vincent, *Ready for Cash for Clunkers 2.0?*, U.S. NEWS & WORLD REP. (Apr. 23, 2020), https://cars.usnews.com/cars-trucks/cash-for-clunkers (projecting that the federal government will need to step in to support the auto industry); Priddle, *supra* note 103 (discussing Cash for Clunkers program and arguing that the previous program could serve as a template for a similar program).

106. *See* Tim Mullaney, *How Biden's $1.7 Trillion Climate Plan Would Change America After Trump's Big Oil Presidency*, CNBC (Oct. 1, 2020, 8:47 AM), https://www.cnbc.com/2020/10/01/bidens-1point7-trillion-climate-plan-would-be-blow-to-big-oil-.html [https://perma.cc/X27G6JLM].

107. *Governor Newsom Announces California Will Phase Out Gasoline-Powered Cars & Drastically Reduce Demand for Fossil Fuel in California's Fight Against Climate Change*, OFF. OF GOVERNOR GAVIN

demonstrates that federal and state programs must recognize that changes in auto manufacturing and sales will not be instantaneous—that is, they must play the long game. Nonetheless, within mere months of California's announcement, General Motors announced that it is transitioning to an all-electric portfolio.[108] This shows that the auto industry is willing to adapt to regulations aimed at vehicles.

In addition, any new program must prioritize the manufacture of safer and smaller vehicles, which is vital to improving not only energy efficiency and the environmental impact of the cars on American roads, but also the safety of drivers and pedestrians. As compared to other high-income countries, the United States trails far behind in reducing deaths and non-fatal injuries caused by crashes.[109] The types of cars on the road is one key factor in preventing accidents and serious injuries because of accidents.[110] Other factors include standards for safety, with an eye toward protecting motorists and pedestrians alike, even if that goal comes at the expense of speed,[111] and mandates for installation of technology that assists drivers, such as blind spot detection and collision avoidance.[112]

Finally, any program designed to improve the environmental impact and safety of cars also must account for the costs of such regulations, and those costs' impact on communities of colors' and lower-income individuals' already disparate access to vehicles. A primary criticism of the Cash for

NEWSOM (Sept. 23, 2020), https://www.gov.ca.gov/2020/09/23/governor-newsom-announces-california-will-phase-out-gasoline-powered-cars-drastically-reduce-demand-for-fossil-fuel-in-californias-fight-against-climate-change [https://perma.cc/Z8SV-CUNQ].

108. *See* Press Release, Gen. Motors, GM Boosts Investment, Grows Electric Portfolio to Lead in EV Race, (Nov. 19, 2020), https://investor.gm.com/static-files/66b83c73-17f3-426a-9618-393cea479c19 [https://perma.cc/B2NK-5H6X]. At the same time, General Motors dropped its support of President Trump's lawsuit seeking to nullify California's orders and regulations regarding vehicle emissions. *See* Coral Davenport, *G.M. Drops Its Support for Trump Climate Rollbacks and Aligns with Biden*, N.Y. TIMES (Nov. 30, 2020), https://www.nytimes.com/2020/11/23/climate/general-motors-trump.html [https://perma.cc/P3L8-X6FW].

109. *See* Sara C. Bronin, *Rules of the Road: The Struggle for Safety & the Unmet Promise of Federalism*, 106 IOWA L. REV. 2153, 2158–59 (2021) (discussing how auto standards prioritize passenger safety to the detriment of pedestrians and passengers in other vehicles); Erin K. Sauber-Schatz, David J. Ederer, Ann M. Dellinger & Grant T. Baldwin, *Vital Signs: Motor Vehicle Injury Prevention —United States and 19 Comparison Countries*, CDC (July 8, 2016), https://www.cdc.gov/mmwr/volumes/65/wr/mm6526e1.htm [https://perma.cc/Z8RU-ZBBY] (comparing injuries from motor vehicles in the United States with 19 other high-income countries).

110. *See* Laurel Wamsley, *Fatal Pedestrian Crashes Increasingly Involve SUVs, Study Finds*, NPR (May 14, 2018, 6:01 PM), https://www.npr.org/sections/thetwo-way/2018/05/14/611116451/fatal-pedestrian-crashes-increasingly-involve-suvs-study-finds [https://perma.cc/F7AH-9MA5]; *supra* note 102 and accompanying text.

111. *See* Shill, *supra* note 3, at 512.

112. *See Legislation to Make Cars in America Safer: Hearing Before the Subcomm. on Consumer Prot. & Com. of the H. Comm. on Energy & Com.*, 116th Cong. 5 (2019) (statement of Catherine Chase, President, Advocates for Highway & Auto Safety), https://docs.house.gov/meetings/IF/IF17/20190724/109842/HHRG-116-IF17-Wstate-ChaseC-20190724.pdf [https://perma.cc/JS2J-926V] (discussing this technology).

Clunkers program was that it increased these disparities by reducing the available stock of less expensive vehicles.[113] Now more than ever, any program that provides subsidies, funds infrastructure for vehicles, or imposes regulations on passenger cars must not only contend with how they will affect affordability, but also should seek to decrease the costs of vehicle ownership and usage, particularly given that such programs necessarily will perpetuate America's history of prioritizing driving.

IV. TRANSFORMING TRANSPORTATION IN AMERICA

Instead of augmenting America's car economy, the shock of the COVID-19 pandemic might present the opportunity to change the landscape of transportation in the United States. Federal, state, and local government decisions that have led to the prevalence and importance of having a car also have created sub-optimal investments in infrastructure to support other modes of transportation and, more broadly, of living.[114] Most people must drive to work and to meet their daily needs. People "driving alone accounts for 76 percent of all commuting trips" according to the Department of Transportation.[115] With the exception of select cities, using public transportation is extremely inefficient. Research has shown that ride-hailing services, such as Uber and Lyft, increase road congestion and miles traveled by vehicles, while decreasing other transit trips. This suggests that people replaced some of their trips on public transportation with these services, evidencing the inefficiencies of public transportation.[116] Many people also live far from where they work, because they moved to the suburbs or could not find affordable housing near employment opportunities.[117]

Re-orienting government policies and programs to diminish the United States' car-centricity would represent a revolutionary tactic to address the almost inevitable burst of the auto loan bubble. In recent years, scholars have detailed the faults in the United States' transportation policies.[118] As such, this

---

113. *See* Wilson, *supra* note 105 (discussing criticisms of Cash for Clunkers).

114. *See generally* Shill, *supra* note 3 (arguing that U.S. law incentivizes car ownership at the expense of non-drivers).

115. Kevin DeGood, *A Reform Agenda for the U.S. Department of Transportation*, CTR. FOR AM. PROGRESS (Sept. 9, 2020, 9:02 AM), https://www.americanprogress.org/issues/economy/reports/2020/09/09/490158/reform-agenda-u-s-department-transportation [https://perma.cc/A9GN-XKM6].

116. Michael Laris, *Uber and Lyft Concede They Play Role in Traffic Congestion in the District and Other Urban Areas*, WASH. POST (Aug. 6, 2019, 5:31 PM), https://www.washingtonpost.com/transportation/2019/08/06/uber-lyft-concede-they-play-role-traffic-congestion-district-other-urban-areas [https://perma.cc/A253-GHD4].

117. *See* DeGood, *supra* note 115.

118. *See, e.g.*, Shill, *supra* note 3, at 503–06; OWEN D. GUTFREUND, TWENTIETH-CENTURY SPRAWL: HIGHWAYS AND THE RESHAPING OF THE AMERICAN LANDSCAPE 5 (2004) (describing how the United States transportation landscape evolved to accommodate cars). *See generally* HIGHWAY ROBBERY: TRANSPORTATION RACISM & NEW ROUTES TO EQUITY (Robert D. Bullard, Glenn S. Johnson & Angel O. Torres eds., 2004) (analyzing the intersection of transportation and civil rights).

Part focuses on three key determinants of people's necessary reliance on cars to meet their daily needs and details how these changes to transportation and other infrastructure might affect the market for auto loans.

First, the existence of reliable and efficient mass transportation is perhaps the foremost determinant of whether people can realistically meet their needs day-to-day without having a car. At present, in many areas in the United States, even in most medium and larger cities, mass transportation is time-wasting and undependable.[119] Relying on buses often will turn what should be a quick commute into an hours-long saga.[120] Investing in mass transit infrastructure tailored to meet the needs of daily commuters and to foster mobility within cities promises to do the most to decrease people's need for cars and to allow them to truly live car-free. It also will remedy the wrongs of decades of underfunded and deteriorating transportation systems that leaves communities of color struggling to access reliable and safe mass transit, despite their much higher reliance on public transportation.[121]

States, cities, and towns (and their residents) seemingly have begun to recognize the value of investing in mass transit. During the 2020 election, 13 of 17 state and local transit measures on ballots passed, amounting to a total of $38 billion in funding for public transportation.[122] As noted by commentators, these measures might have passed, in part, because of the pandemic, not in spite of it.[123] Now is the moment to shift national, state, and local priorities away from building infrastructure for cars to fixing and creating infrastructure for mass transit. More and better mass transit options for getting people to work will relieve the urgency to own a car or more than one car.

---

119. *See* Jonathan English, *Why Did America Give Up on Mass Transit? (Don't Blame Cars.)*, BLOOMBERG CITYLAB (Aug. 31, 2018, 10:38 AM), https://www.bloomberg.com/news/features/2018-08-31/why-is-american-mass-transit-so-bad-it-s-a-long-story [https://perma.cc/6MLZ-Y3JJ] (arguing that the transit service times offered are not adequate to attract riders).

120. *See* Mike Maciag, *Riding Transit Takes Almost Twice as Long as Driving*, GOVERNING (Feb. 2017), https://www.governing.com/topics/transportation-infrastructure/gov-transit-driving-times.html [https://perma.cc/M9UY-ZCYG] (detailing the disparity in time it takes to drive versus to take public transit in large metropolitan areas).

121. *See generally* Deborah N. Archer, *Transportation Policy and the Underdevelopment of Black Communities*, 106 IOWA L. REV. 2125, 2141–45 (2021); Christof Spieler, *Racism Has Shaped Public Transit, and It's Riddled with Inequities*, KINDER INST. FOR URB. RSCH. (Aug. 24, 2020), https://kinder.rice.edu/urbanedge/2020/08/24/transportation-racism-has-shaped-public-transit-america-inequalities [https://perma.cc/LL6E-5ZJL].

122. *See* Kea Wilson, *State and Local Transit Won in a Landslide Yesterday*, STREETSBLOG USA (Nov. 4, 2020), https://usa.streetsblog.org/2020/11/04/state-and-local-transit-won-in-a-landslide-yesterday [https://perma.cc/5354-6SAB] (providing and overview of these ballot items).

123. *See id.* (quoting a tweet that read: "It says something that despite historic low transit ridership due to the pandemic (and all the associated doom and gloom), *people are still hopeful enough about the future to recognize that investing in transit is essential*"); Adele Peters, *Austin, Texas, Just Voted to Spend $7 Billion on a Transportation Revolution*, FAST CO. (Nov. 5, 2020), https://www.fastcompany.com/90572127/austin-texas-just-voted-for-a-transportation-revolution [https://perma.cc/M9X9-XYU9] (quoting an advocate, Adam Greenfield, as saying "[m]ore and more people, and more and more leaders, are realizing that we actually need transportation choices").

Making cars less of a necessity should benefit the most vulnerable individuals in the auto lending market by inuring to them the leverage necessary to consider a transaction and walk away if they find the terms of the deal disadvantageous.

Second, prioritizing roadway and transportation projects that include safety measures for pedestrians, bikers, and other non-vehicle transportation devices, such as scooters, is a natural and necessary complement to focusing on mass transit. America's streets and roadways are, simply stated, dangerous, and the effects of that danger fall disproportionately on communities of color.[124] Roadways' lanes are wide, which encourages speeding.[125] Traffic signals focus on the swift movement of vehicles to the detriment of bikers' and pedestrians' safety.[126] Sidewalks are too narrow, are in disrepair, or are entirely absent.[127] People will not be able to access improved buses, light rails, and other mass transit safely and efficiently if the journey on foot from where they live to the transit stops is treacherous.

In addition, upgrading roadway access for bikers and fixing and adding sidewalks for pedestrians alone—absent improvements in mass transit—might decrease the number of car trips people need to make.[128] In many areas, there presently are not sufficient sidewalks to access grocery stores, pharmacies, and other stores. This leads people to drive from store to store. Simply investing in upgrades to sidewalks, installing clear crosswalks and signage, and tearing down barriers that force people to walk in roads will allow access to stores without using a car and will allow people to car-pool and park once for essential shopping. What might look like subtle changes in accessibility could collectively lead many households to shift their transportation choices away from using cars every day. And this could ultimately allow households to become one-car or no-car households.

Third, and finally, changes to urban planning might do the most to encourage a shift in car usage. Over the past decades, retailers and city planners have traded investment in walkable urban squares and city downtowns for suburban shopping malls designed to cater to automobiles. This car-centric

124. *See* Bronin, *supra* note 109, at 2164 (discussing the role that the design of roads plays in everyday safety). *See generally* ANGIE SCHMITT, RIGHT OF WAY: RACE, CLASS, AND THE SILENT EPIDEMIC OF PEDESTRIAN DEATHS IN AMERICA (2020) (discussing the danger of roadways to pedestrians and that danger's intersection with systemic inequality).

125. *See* Chris McCahill, *More Evidence that Wider Roads Encourage Speeding*, STATE SMART TRANSP. INITIATIVE (Oct. 31, 2016), https://ssti.us/2016/10/31/more-evidence-that-wider-roads-encourage-speeding [https://perma.cc/2JSJ-4UA3] (reporting on a study in the *Journal of Transportation Engineering* that "found that drivers travel 2.2 mph faster, on average, in 12-foot lanes than in comparable 11-foot lanes").

126. *See* Bronin, *supra* note 109, at 2166.

127. *See* Vanessa Casado Perez, *Reclaiming the Streets*, 106 IOWA L. REV. 2185, 2188–89 (2021) (discussing sidewalks in the United States).

128. *See id.* at 2189–90 (noting the benefits of investing in "pedestrianization").

model has added to people's need to own cars.[129] It also has fostered a shopping culture in which people drive from location to location to access stores that might be a mere couple hundred feet from each other. In the last few years, a handful of retailers have returned to opening stores in downtown areas, in recognition that downtowns now are "under-retailed" and that more professionals are opting to live in cities.[130] Early reports find that creating walkable urban areas is both sustainable and profitable.[131]

In terms of chipping away at the supremacy of cars, construction projects that focus on building main street-like areas bring two main benefits. The smaller, more immediate benefit is to decrease the need for multiple cars and multiple trips to accomplish day-to-day shopping. Instead, households can carpool to an urban area, park once, and complete all their shopping without driving from store to store. This alone might allow families to shift from two to one vehicle or household groups to collectively own one vehicle. It also necessarily will make cities more pedestrian friendly, which should yield an outsized benefit to communities of color.

Such urban planning projects also bring a bigger, longer-term benefit by fostering the building of housing in the one area, which can eliminate the need to own a vehicle. Either this housing will be situated such that people can walk to work, school, daycare, and urban shopping areas, or, combined with improvements in mass transit, people will be able to easily go about their daily business without owning a car. Stated differently, construction projects that will reduce the distance between housing, work, access to food, necessities, childcare, and healthcare, might be the most expensive, but, in turn will do the most to move the United States away from its current car-centrality. By reducing the desperate need to own a vehicle, people will gain leverage in the auto sales and loan markets. The auto loan market, in particular, will have to adapt to people's newfound freedom in choosing among transportation options.

V. CONCLUSION

The COVID-19 pandemic brings an inflection point in the United States' car economy. Prior to the pandemic, the buildup in auto loans outstanding, and concomitant growth in auto loan delinquencies and defaults foreshadowed a burst of the auto loan bubble. Although the market has not collapsed as of

129. *See* Robert Steuteville, *Changes in Retail Encourage Walkable Urban Designs*, PUB. SQUARE (Dec. 4, 2019), https://www.cnu.org/publicsquare/2019/12/04/changes-retail-encourage-walkable-urban-designs [https://perma.cc/GEZ2-G6Z3] (discussing retail store design in the shift from urban downtowns to suburban shopping centers).

130. *Id.*

131. *See* Patrick Sisson, *Why Building Walkable Cities Is the Key to Economic Success*, CURBED (June 24, 2019, 4:51 PM), https://archive.curbed.com/2019/6/24/18715939/real-estate-development-walkable-urbanism (discussing a study by The Center for Real Estate and Urban Analysis, Smart Growth America/LOCUS, Cushman & Wakefield, and Yardi Matrix).

the end of 2020, in the coming years, the United States will have to handle the pandemic's economic fallout. One aspect of that fallout most likely will be an auto loan crisis. Given the deep-rooted disparities in the auto loan market, lower-income households and communities of color will bear the brunt of this coming crisis.[132] More broadly, the crisis will come at a time when other consumer credit markets also are collapsing,[133] creating a perfect storm of financial issues for households.

In the face of this storm, the United States will have the opportunity to change how people purchase cars and take out car loans. Accumulated decisions by federal, state, and local governments have created and perpetuated people's need to have access to vehicles to survive day-to-day. This has left people at a disadvantage when purchasing cars and seeking financing for those cars—a disadvantage so severe that typical consumer credit interventions might be insufficient to disrupt auto dealers' and lenders' hold over customers.

The appetite for more structural change in the wake of the pandemic might present legislators an opportunity to alter the dynamics of the auto loan market by attacking not auto loans themselves, but by encouraging changes in the types of vehicles that people can purchase. Even more broadly, the pandemic presents a critical moment for the federal government, states, cities, and towns to shift their priorities away from vehicle-centered infrastructure to building better mass transit, fixing and adding pedestrian-friendly infrastructure, and constructing walkable urban areas. Not only will these changes pick up after the burst of the auto loan bubble, but they also will offer people a lasting solution to the financial problems they currently face because of the primacy of driving in America.

132. *See supra* note 57 and accompanying text.

133. For instance, another collapse in the home mortgage market has been predicted. *See* Diana Olick, *Coronavirus Effect Could Be 'Far Deeper than the Subprime Crisis,' Says Mortgage Company CEO*, CNBC (Apr. 1, 2020, 12:44 PM), https://www.cnbc.com/2020/04/01/coronavirus-effect-could-be-far-deeper-than-the-subprime-crisis-says-mortgage-co-ceo.html [https://perma.cc/HV7N-BE7Z].