Financial Regulation and the New Social Safety Net

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Abstract

The traditional social safety net takes the form of direct government benefits like the earned income tax credit (EITC) and Medicaid. Access to benefits is explicitly limited by income and requires significant documentation, which limits access to the needy. Despite the success of these programs over the past fifty years, however, inequality has skyrocketed, and the middle and upper classes have expanded their wealth at much higher rates than the poor. This Article describes one reason for the divergence. Middle and upper classes have had access to a shadowy and growing set of safety net programs—direct and indirect subsidies provided by regulators through private financial markets. The resulting benefits do not always accrue to needy and vulnerable populations. Indeed, I provide novel evidence that financial regulation often helps the rich at the expense of the poor, in direct contrast to the goals of the tax and benefits system.

To begin, I study the mortgage and student loan payment pauses that supplemented traditional, means-tested stimulus payments during the COVID-19 pandemic. Payment pauses acted as loans to borrowers, increasing their spending power. Yet, they were inaccessible to those who rented or paid cash for their education. With original analysis of empirical data, I show that low-income, and Black and Hispanic, households were less likely to qualify for mortgage forbearance. I also show that richer households received the majority of the benefits of student loan payment pauses. In total, payment pauses provided nearly $1.6 trillion in emergency liquidity, with the richest half of the population receiving three times the benefits provided to the rest. Although they were hailed as economic successes, payment pauses transferred resources to those who needed them the least.

Examples of this phenomenon abound throughout the financial regulatory system as a whole. For example, the Federal Reserve subsidizes employment opportunities by carefully managing the money supply. The Securities and Exchange Commission requires disclosures and limits capital market participation to ensure high returns for retail investors. The Consumer Financial Protection Bureau regulates credit provision for purchasing a home or getting a payday loan, indirectly controlling which loans are available to which families. Each agency provides benefits only to certain subgroups, such as workers, investors, and borrowers, at the expense of those who do unpaid labor, save in bank accounts, or make most purchases with cash. Most recently, the second Trump administration has taken steps to limit traditional safety net programs like Medicaid and has instead expanded political power over the Federal

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Reserve and the Consumer Financial Protection Bureau, accelerating the existing trend toward disbursing government benefits through the financial markets. The result is that financial inclusion, which typically describes populations' access to private financial products, is now the determinant for access to government benefits.

There are both costs and benefits to disbursing government benefits through the financial markets. The costs include the possibility that implementing benefits through regulation could distort markets and create inefficiency. Historically, scholars studying redistribution have argued for benefits programs to remain limited and connected to the tax code. Modern voices calling for agencies to incorporate distributive justice into their decision-making have largely overlooked financial regulation. On the benefits side, however, are the unique forms of redistribution that financial regulation can provide, such as risk management, emergency liquidity, and subsidized returns. Moreover, financial regulators can provide benefits cheaply by offering implicit or explicit government guarantees, which spur private markets to step in at low cost to taxpayers.

To create a truly inclusive regulatory safety net, I propose that financial regulators should make their role in the social safety net more explicit and begin to evaluate the incidence of their policies. Borrowing from principles of effective redistribution established in tax law, I describe the tradeoff between progressive redistribution and internalizing externalities. I argue that state regulators can help hold federal agencies to account and help to implement effective policies. If the financial regulatory system acknowledges its important role in protecting the financial health of ordinary Americans, it can ensure that the vulnerable do not finance the prosperity of the privileged.

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Introduction

Poor, minority, and marginalized communities have become more reliant on financial markets in every aspect of their lives.[1] As a result, their welfare has been placed directly in the hands of financial regulators.[2] Deposits into a bank account are immediately loaned to another bank or to a neighbor for their mortgage.[3] Credit card companies pay for purchases, relying on a promise to repay next month. Contributions to retirement accounts are invested in the capital markets, earning positive returns for the lucky or savvy and negative returns for everyone else.[4] All participants rely on the soundness of financial institutions and markets to safeguard their hard-earned wealth until they are ready to spend it, possibly generations in the future.[5] Financial markets, and the legal systems that govern them, thereby provide some insurance against financial losses, and sources of money when times are tough.[6]

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[1] *See generally* Abbye Atkinson, *Rethinking Credit as Social Provision*, 71 Stan. L. Rev. 1093 (2019); Abbye Atkinson, *Borrowing Equality*, 120 Colum. L. Rev. 1403 (2020); Mehrsa Baradaran, The Color of Money (2017); Mehrsa Baradaran, How the Other Half Banks: Exclusion, Exploitation, and the Threat to Democracy (2015); Lisa Servon, The Unbanking of America: How the New Middle Class Survives (2017); Emily Winston, *Unequal Investment: A Regulatory Case Study*, 107 Cornell L. Rev. 781 (2022); Rory Van Loo, *Broadening Consumer Law: Competition, Protection, and Distribution*, 95 Notre Dame L. Rev. 211 (2019); Manisha Padi, *Contractual Inequality*, 120 Mich. L. Rev. 825 (2022); Vijay Raghavan, *Consumer Law's Equity Gap*, 2022 Utah L. Rev. 511 (2022).

[2] On banking, *see generally* Michael S. Barr, *Banking the Poor*, 21 Yale J. on Reg 121 (2004); Baradaran, The Color of Money, *supra* note 1; Baradaran, How the Other Half Banks, *supra* note 1; Servon, *supra* note 1; Christopher R. Leslie, *Banking Deserts, Structural Racism, and Merger Law*, 108 Minn. L. Rev. 695 (2023); Mehrsa Baradaran, *Banking on Democracy*, 98 Wash. U. L. Rev. 353 (2020); Christopher K. Odinet, *Predatory Fintech and the Politics of Banking*, 106 Iowa L. Rev. 1739 (2021). On access to finance, see generally J. Carter Braxton et al., *Intergenerational Mobility and Credit* (Nat'l Bureau of Econ. Rsch., Working Paper No. 32031, 2024), https://www.nber.org/papers/w32031 [https://perma.cc/JP4T-JA8A]; Roxana Mihet, *Financial Technology and the Inequality Gap*, (Swiss Fin. Inst., Research Paper No. 21-04, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3474720 [https://perma.cc/MLR7-97FP]; Abraham J. B. Cable, *Regulating Democratized Investing*, 83 Ohio State L.J. 671 (2022). On consumer law, *see generally* Brian Galle, *Is Local Consumer Protection Law a Better Retributive Mechanism than the Tax System*, 65 N.Y.U. Ann. Surv. Am. L. 525 (2009); Natasha Sarin, *Making Consumer Finance Work*, 119 Colum. L. Rev. 1519 (2019); Van Loo, *supra* note 1; Padi, *supra* note 1.

[3] *See* Adam J. Levitin, *Safe Banking: Finance and Democracy*, 83 U. Chi. L. Rev. 357, 367 (2016).

[4] Holger Spamann, *Indirect Investor Protection: The Investment Ecosystem and Its Legal Underpinnings*, 14 J. Legal Analysis 16, 17 (2022).

[5] *See generally* Saule T. Omarova, *The Too Big to Fail Problem*, 103 Minn. L. Rev. 2495 (2019) (describing the promise and perils of prioritizing the stability of the largest financial institutions during financial crises); Dan Awrey & Kathryn Judge, *Why Financial Regulation Keeps Falling Short*, 61 B.C. L. Rev. 2295 (2020) (showing how gaps in regulators knowledge prevent them from achieving long term stability).

[6] *See generally* Adam Feibelman, *Defining the Social Insurance Function of Consumer Bankruptcy*, 13 Am. Bankr. Inst. L. Rev. 129 (2005) (characterizing bankruptcy courts as a form of social insurance); Martin Feldstein, *Rethinking Social Insurance*, 95 Am. Econ. Rev. 1 (2005) (giving a general definition of social insurance and providing several examples); Atkinson, *Rethinking Credit*, *supra* note 1 (describing the growing role of private credit in providing social insurance).

Financial regulators, however, do not typically acknowledge their role in providing a safety net for households.[7] Calls for financial regulators to openly prioritize the underprivileged have even faced backlash. For example, in 2023, House Democrats introduced a bill that would expand the Federal Reserve's mandate to include minimizing racial disparities in economic well-being.[8] Despite support from President Biden, the proposed law was met with significant pushback.[9] The Consumer Financial Protection Bureau (CFPB) faced multiple challenges to its authority,[10] including a Texas court's ruling that the CFPB lacked the authority to bring disparate impact claims.[11] As a result, the general public has been led to believe that providing benefits to the underprivileged is outside the purview of financial regulators.

The second Trump administration has made the transition to financial markets as a safety net even more apparent than in the past. It has continued the fight against the CFPB,[12] expanded retail investment options for retail customers,[13] and attempted to wield unprecedented political power over the Federal Reserve.[14] At the same time, Trump has cut traditional safety net programs, such as Medicaid and the Supplemental Nutrition Assistance Program (SNAP).[15] The nation is therefore seeing, in real time, the replacement of government benefit programs with relatively unregulated financial markets.

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[7] This piece takes a broad view of financial regulation, including traditional bank supervisory regulators such as the Federal Reserve, as well as federal agencies who touch on any aspect of the financial markets, such as the Department of Education with student loans, the Consumer Financial Protection Bureau with mortgages and consumer credit, and the Securities and Exchange Commission with equity markets.

[8] *See Ranking Member Waters, Senator Warren Reintroduce Bill Requiring the Fed to Close Racial Employment and Wage Gaps*, U.S. House Comm. on Fin. l Servs. (June 22, 2023), https://democrats-financialservices.house.gov/news/documentsingle.aspx?DocumentID=410585 [https://perma.cc/6RXP-LREF].

[9] *See* Danielle Kurtzleben, *Biden Wants the Fed to Help Close Racial Economic Gaps. How Would That Work?*, NPR (Aug. 1, 2020), https://www.npr.org/2020/08/01/897911727/biden-wants-the-fed-to-help-close-racial-economic-gaps-how-would-that-work [https://perma.cc/DWF5-AUBA]; *A Woke Mandate for the Federal Reserve*, Wall St. J. (June 21, 2022), https://www.wsj.com/articles/a-woke-mandate-for-the-federal-reserve-racial-equity-congress-house-joe-biden-11655659047 [https://perma.cc/MMD5-M4A3]; James A. Dorn, *Racial Equity is Beyond the Fed's Scope*, CATO Inst. (July 6, 2022), https://www.cato.org/blog/racial-equity-beyond-feds-scope [https://perma.cc/WNG5-VDSQ].

[10] *See* Richard J. Andreano, Jr., *CFPB Suffers Significant Defeat in ECOA Lawsuit Against Townstone Mortgage*, Consumer Fin. Monitor (Feb. 6, 2023), https://www.consumerfinancemonitor.com/2023/02/06/cfpb-suffers-significant-defeat-in-ecoa-lawsuit-against-townstone-mortgage/ [https://perma.cc/9KT5-YPS9].

[11] Dan Ennis, *Texas Court Strikes Down CFPB's Anti-Discrimination Effort*, Banking Dive (Sept. 12, 2023), https://www.bankingdive.com/news/cfpb-court-discrimination-exam-manual-update-lawsuit-aba-cba-chamber-commerce-udaap/693435/ [https://perma.cc/WK9M-QZN7].

[12] *See The Trump Administration Is Hurting Consumers' Wallets by Kneecapping the CFPB*, Ctr. for Am. Progress (Mar. 20, 2025), https://www.americanprogress.org/article/the-trump-administration-is-hurting-consumers-wallets-by-kneecapping-the-cfpb/ [https://perma.cc/9VDU-MWMC].

[13] Executive Order No. 14300, 90 Fed. Reg. 38921 (Aug. 7, 2025).

[14] Colby Smith, *Fed's Independence Remains at Risk Despite Temporary Legal Victory*, N.Y. Times (Oct. 2, 2025), https://www.nytimes.com/2025/10/02/business/federal-reserve-independence-lisa-cook.html [https://perma.cc/882S-6TFR].

[15] Lauren Bauer & Diane Whitmore Schanzenbach, *SNAP Cuts in the One Big Beautiful Bill Act Will Significantly Impair Recession Response*, Brookings (Oct. 8, 2025), https://www.brookings.edu/articles/snap-cuts-in-the-one-big-beautiful-bill-act-will-significantly-impair-

In this Article, I show that financial regulation has long been used as a means of distributing subsidies via financial products at a large scale, albeit covertly and without public accountability. To do so, I introduce several case studies to show how financial regulation has created a secretive new safety net that benefits middle income and rich households. Traditionally, benefits were targeted to low-income groups through means-tested tax and benefits programs such as the Earned Income Tax Credit (EITC), SNAP, and Medicaid.[16] Despite the success of these programs, they have become less generous over time.[17] At the same time, inequality has grown, with the top 50 percent of the income distribution seeing much larger gains in wealth than the bottom 50 percent.[18]

I propose that these trends have been accelerated by a growing reliance on regulated and subsidized financial markets that provide funds to distressed households. Throughout the past fifty years, loan guarantees, direct grants, and regulations of financial institutions have encouraged more Americans to participate in the financial markets. Gaps in the social safety net for all except the most destitute have been filled with consumer credit products, regulated investment assets, and job opportunities funded by subsidized credit.[19] These have allowed households to consume more than they would have in a pure cash economy and give limited support in times of financial distress.[20]

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recession-response/ [https://www.brookings.edu/articles/snap-cuts-in-the-one-big-beautiful-bill-act-will-significantly-impair-recession-response/] (last visited Oct. 8, 2025); Amelia Coffey & Heather Hahn, *Medicaid Cuts in the One Big Beautiful Bill Act Leave 3 in 10 Young Adults Vulnerable to Losing Health Care Access*, Urban Inst. (Aug. 7, 2025), https://www.urban.org/urban-wire/medicaid-cuts-one-big-beautiful-bill-act-leave-3-10-young-adults-vulnerable-losing [https://perma.cc/GFU6-N87P].

[16] *See generally* Aanund Hylland & Richard Zeckhauser, *Distributional Objectives Should Affect Taxes But Not Program Choice or Design*, *in* Measurement in Public Choice 123 (Steinar Strøm ed., 1981) (introducing a formal economic model describing the efficiency benefits of limiting redistribution to the income tax system); Steven Shavell, *A Note of Efficiency vs. Distributional Equity in Legal Rulemaking: Should Distributional Equity Matter Given Optimal Income Taxation?*, 71 Am. Econ. Rev. 414 (1981) (providing the mathematical basis for Kaplow and Shavell's future work in the legal field arguing for the supremacy of efficiency in deciding legal rules); Louis Kaplow & Steven Shavell, *Why the Legal System Is Less Efficient than the Income Tax in Redistributing Income*, 23 J. Legal Stud. 667 (1994) (translating the intuitions of economics articles on redistribution to a law audience); Louis Kaplow & Steven Shavell, *Should Legal Rules Favor the Poor? Clarifying the Role of Legal Rules and the Income Tax in Redistributing Income*, 29 J. Legal Stud. 821 (2000) (following up on previous literature to respond to critiques by Sanchirico and others).

[17] Ali Zane & Cristina Toppin, *Research Note: Study Shows Why TANF Is Not the Success That Some Claim* Ctr. on Budget & Pol'y Priorities, (Aug. 9, 2022), https://www.cbpp.org/research/income-security/study-shows-why-tanf-is-not-the-success-that-some-claim [https://perma.cc/9RWK-23EB]; *see also* Alexandra Cawthorn Gaines et al., *How Weak Safety Net Policies Exacerbate Regional and Racial Inequality*, Ctr. for Am. Progress (Sep. 22, 2021), https://www.americanprogress.org/article/weak-safety-net-policies-exacerbate-regional-racial-inequality/ [https://perma.cc/MB2J-4R7Z] (showing less generous policies in different parts of the country).

[18] Thomas Blanchett et al., *Who Benefits from Income and Wealth Growth in the United States*, Realtime Inequality, https://realtimeinequality.org/ [https://perma.cc/E2NC-XF3C] (last visited Aug 8, 2024).

[19] *See* Atkinson, *Rethinking Credit*, *supra* note 1, at 1101–02; Johnna Montgomerie, *America's Debt Safety-Net*, 91 Pub. Admin. 871, 871–72 (2013).

[20] *See, e.g.*, Christine L. Dobridge, *High-Cost Credit and Consumption Smoothing*, 50 J. Money, Credit & Banking 407, 407–12 (2018).

Regulators help determine the supply and price of credit,[21] and who is included in financial markets.[22] Inclusion in the financial markets means the opportunity to receive significant subsidies from the government,[23] making financial regulators the gatekeepers of the new social safety net.

To demonstrate this phenomenon and its risks, I introduce four case studies of redistribution through financial regulation. To begin, I focus on the highest profile example of government benefits provided directly through the financial markets—the COVID-19 payment pauses.[24] The pauses, implemented by both the first Trump and Biden administrations, allowed mortgage borrowers up to eighteen months of relief from paying their housing costs and nearly two years without making student loan payments.[25] Individuals without student debt or mortgage debt did not receive these subsidies.[26] Using data from the Survey of Consumer Finances[27] and drawing on external research,[28] I provide novel evidence that these policies had eligibility rules with regressive distributional consequences.[29] Eligibility for mortgage forbearance disproportionately excluded Black and Latino households, as well as low- and middle-income households.[30] Additionally, richer borrowers had larger payments and received more of a benefit from the payment pause than low-income borrowers.[31] Student loan payment pauses also benefited the richest borrowers the most.[32] According to my novel estimates, the payment pauses together provided nearly $1.2 trillion in emergency liquidity to the rich, and less than $400 billion to low-income groups, none of which was accessible to non-borrowers.[33]

A plethora of other, albeit less explicit, examples abound of safety nets provided through financial regulation. I look to the Federal Reserve ("Fed"), the Securities and Exchange Commission (SEC), and the CFPB as examples

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[21] Jonathan Zinman, *Consumer Credit: Too Much or Too Little (or Just Right)?*, 43 J. Legal Stud. S209, S212–13 (2014).

[22] Atkinson, *supra* note 1, at 1105.

[23] *See infra* Parts II and III.

[24] *See* Alexandra Hegji, Cong. Rsch. Serv., Student Loans: A Timeline of Actions Taken in Light of the COVID-19 Pandemic, (2024), https://crsreports.congress.gov/product/pdf/IF/IF12136 [https://perma.cc/7D64-T23N]; Darryl E. Getter et al., Cong. Rsch. Serv., Housing Issues In the 116th Congress (2021), https://www.congress.gov/crs-product/R45710 [https://perma.cc/JT6H-7JGF].

[25] *Id.*

[26] *See id.*

[27] *See* Aditya Aladangady et al., Fed. Rsrv., Survey of Consumer Finances (2023) https://www.federalreserve.gov/publications/files/scf23.pdf [https://perma.cc/Y7GA-2TCQ].

[28] *See* Sarah Turner, *Student Loan Pause Has Benefitted Affluent Borrowers the Most, Others May Struggle When Payments Resume*, Brookings Inst. (April 13, 2023), https://www.brookings.edu/articles/student-loan-pause-has-benefitted-affluent-borrowers-the-most-others-may-struggle-when-payments-resume/ [https://perma.cc/8DJS-TZWN]; Kristopher Gerardi et al., Fed. Rsrv. Bank Bos., Racial Differences in Mortgage Refinancing, Distress, and Housing Wealth Accumulation During COVID-19 (2021), https://www.bostonfed.org/publications/current-policy-perspectives/2021/racial-differences-in-mortgage-refinancing-distress-and-housing-wealth-accumulation-during-covid-19.aspx [https://perma.cc/56SY-LFCH].

[29] *See infra* Part II.A.

[30] *See infra* Part II.A.

[31] *See infra* Part II.A.

[32] *See infra* Part II.A.

[33] *See infra* Part II.B.

of agencies that regularly distribute subsidies to average households. The Fed has broad-based power to set interest rates and expand or contract money supply, in service of a three-part mandate to maximize employment, keep prices stable, and ensure moderate interest rates.[34] By using language that requires the Fed to prioritize the needs of the unemployed over workers, the mandate implicitly requires the Fed to focus on disadvantaged citizens. This approach reflects the history of the Fed's full employment mandate, which was a key component of the civil rights movement,[35] and has continued to be enacted with an eye to racial justice.[36] Moreover, recent research in macroeconomics has identified that monetary policy has complex, disparate impacts across groups, meaning that all components of the Fed's mandate have implicit distributional aims.[37] I argue that the Fed is engaged in indirectly providing benefits to the needy, making it a tempting target for political oversight by the second Trump administration.[38]

The SEC is another agency with a broad focus on improving the function of capital markets as a whole, all while implicitly disbursing benefits to the vulnerable.[39] The SEC's mandate imposes a special duty to improve market efficiency for uninformed investors, ultimately increasing their returns.[40] Since large institutional investors are well-informed about market conditions, it follows that ordinary retail investors are a primary focus for the agency. SEC rulemaking and enforcement surrounding retail investors has pushed them away from high-risk investments, taking potentially high returns away from retail investors with high risk tolerance.[41] Moreover, their exclusive focus on

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[34] *Federal Open Market Committee Rules and Authorizations*, Fed. Rsrv., 4 (2023), https://www.federalreserve.gov/monetarypolicy/files/FOMC_RulesAuthPamphlet_202301.pdf [https://perma.cc/28NC-LJFX].

[35] *The Full Employment Mandate of the Reserve: Its Origins and Importance*, Popular Democracy in Action (Jul. 11, 2017), https://populardemocracyinaction.org/publication/news-publications-full-employment-mandate-reserve-its-origins-and-importance/ [https://perma.cc/963B-2Z49] (last visited Sep. 11, 2025); David Stein & Ira Regmi, *The Civil Rights Struggle for True Full Employment*, Roosevelt Inst. (Apr. 25, 2024), https://rooseveltinstitute.org/publications/civil-rights-full-employment/ [https://perma.cc/TPE2-DAYA].

[36] *See* Jerome H. Powell, Chair, Fed. Rsrv., New Economic Challenges and the Fed's Monetary Policy Review at Navigating the Decade Ahead: Implications for Monetary Policy (Aug. 27, 2020), https://www.federalreserve.gov/newsevents/speech/powell20200827a.htm [https://perma.cc/QL4M-EGB2]; Jerome H. Powell, Chair, Fed. Rsrv., Press Conference (Sept. 22, 2021), https://www.federalreserve.gov/mediacenter/files/FOMCpresconf20210922.pdf [https://perma.cc/HD5P-VDQS].

[37] *See* William M. Rodgers, *African American and White Differences in the Impacts of Monetary Policy on the Duration of Unemployment*, 98 Am. Econ. Rev. 382, 382–83 (2008); Alina K. Bartscher et al., *Monetary Policy and Racial Inequality*, 2022 Brookings Papers on Economic Activity 1, 4–6 (2022).

[38] *Infra* Part III.A.

[39] *See* Spamann, *supra* note 4, at 30–31.

[40] *Id.* at 25–26; Frank H. Easterbrook & Daniel R. Fischel, *Mandatory Disclosure and the Protection of Investors*, 70 Va. L. Rev. 669, 693–95 (1984); Stephen J. Choi & A. C. Pritchard, *Behavioral Economics and the SEC*, 56 Stan. L. Rev. 1, 3 (2003); Tom C. W. Lin, *Reasonable Investor(s)*, 95 B.U. L. Rev. 461, 466–68 (2015).

[41] *See* Winston, *supra* note 1, at 786 (2021); Jill E. Fisch & Tess Wilkinson-Ryan, *Why Do Retail Investors Make Costly Mistakes? An Experiment on Mutual Fund Choice*, 162 U. Pa. L. Rev. 605, 646–47 (2014); Sue S. Guan, *Meme Investors and Retail Risk*, 63 B.C. L. Rev. 2051, 2054–56 (2022); Joel Seligman, *Payment for Order Flow and the Great Missed Opportunity*, 18 Hastings Bus. L.J. 3, 26–27 (2021); Jonathan R. Macey & Maureen O'Hara, *The Law and Economics of Best Execution*, 6 J. Fin. Intermediation 188, 219–20 (1997).

investors means that no regulator is maximizing returns for people who are too risk averse to participate in the capital markets.[42] I argue that these rules subsidize investors with average levels of risk aversion to the detriment of those with higher or lower levels of risk aversion, which may have the opposite consequence of that intended by traditional benefits programs.[43]

Finally, the CFPB has been more explicit in its social mission since its founding.[44] It has made fair lending enforcement a priority and has taken steps to protect the most disadvantaged individuals from unsavory business practices at financial institutions.[45] Yet the CFPB still faces challenges as a financial regulator that intends to participate in the social safety net. I focus on the CFPB's rules on mortgage origination[46] and their proposed rules on payday loans[47] to show how regulations on borrowers' ability to repay can transform households' access to housing and credit. Requiring that income be used in mortgage underwriting limited lending to lower-income households facing the risk of volatility, which decreased access to credit among vulnerable households.[48] When the CFPB planned to extend similar rules to the payday loan context, it was rebuffed by the first Trump administration[49] and had its very existence threatened with lawsuits.[50] The second Trump administration has made every effort to shutter the agency,[51] despite its popularity across

[42] The Office of the Comptroller of the Currency (OCC), for instance, is focused on stability rather than maximizing returns. *See About Us,* Off. Compt. Currency (last visited January 13, 2025), https://www.occ.treas.gov/about/index-about.html [https://perma.cc/6MVD-S2PU] (showing the OCC's primary goal is stability, rather than maximizing yields to depositors).

[43] *Infra* Part III.B.

[44] *See* Atkinson, *Borrowing Equality*, *supra* note 1, at 1458.

[45] *See* Robert L. Clarke & Todd J. Zywicki, *Payday Lending, Bank Overdraft Protection, and Fair Competition at the Consumer Financial Protection Bureau*, 33 Rev. Banking & Fin. L. 235, 236–40 (2013); John L. Ropiequet & L. Jean Noonan, *Fair Lending Developments: Back to the First Step?*, 78 Bus. Law. 607, 616–18 (2023).

[46] 12 C.F.R. §§ 1026.1–61 (2024).

[47] *Executive Summary of the Payday, Vehicle Title, and Certain High-Cost Installment Loans Rule*, CFPB (Oct. 5, 2017), https://files.consumerfinance.gov/f/documents/201710_cfpb_executive-summary_payday-loans-rule.pdf [https://perma.cc/QV9K-2NWG].

[48] Andreas Fuster et al., *Does CFPB Oversight Crimp Credit?*, (CEPR Discussion Paper No. DP15681, 2021), https://papers.ssrn.com/abstract=3783896 [https://perma.cc/9UBM-BPLV]; Francesco D'Acunto & Alberto G Rossi, *Regressive Mortgage Credit Redistribution in the Post-Crisis Era*, 35 Rev. Fin. Stud. 482, 492 (2022).

[49] *See Executive Summary of the July 2020 Amendments to the 2017 Payday Lending Rule*, CFPB (July 7, 2020), https://files.consumerfinance.gov/f/documents/cfpb_executive-summary_payday-revocation-final-rule_2020-07.pdf [https://perma.cc/42HW-GLBX]; *see also* Nicholas Confessore & Stacy Cowley, *Trump Appointees Manipulated Agency's Payday Lending Research, Ex-Staffer Claims*, N.Y. Times (Apr. 19, 2020), https://www.nytimes.com/2020/04/29/business/cfpb-payday-loans-rules.html [https://perma.cc/U623-R4AN].

[50] Shaid Naeem & Joe Gaeta, *The War on the Consumer Financial Protection Bureau: CFPB v. Community Financial Services of America*, Am. Econ. Liberties Project (Aug. 31, 2023), https://www.economicliberties.us/our-work/the-war-on-the-consumer-financial-protection-bureau-community-financial-services-of-america-v-cfpb/ [https://perma.cc/M27Q-VZ6M].

[51] Alan S. Kaplinsky, Richard J. Andreano, Jr. , & John L. Culhane, Jr., *Plaintiffs ask for en banc rehearing in CFPB shutdown case*, Consumer Finance Monitor (Oct. 1, 2025), https://www.consumerfinancemonitor.com/2025/10/01/plaintiffs-ask-for-en-banc-rehearing-in-cfpb-shutdown-case/ [https://perma.cc/ZA24-PUET].

party lines,[52] suggesting that it is perceived as a threat to Trump's broader anti-"woke" agenda.[53] I argue that even the financial regulator most openly devoted to needy households, and punished for its explicitly redistributive mission, has made a series of missteps due to the challenges of implementing a safety net through private financial markets.[54]

These examples show that financial regulation has both disadvantages and advantages in administering these new benefits. Traditionally, the safety net has been implemented through means-tested tax and transfer programs.[55] Taxes have been recognized for centuries as an efficient mechanism for redistributing income from the wealthy to the poor.[56] A group of law and economics scholars developed a theory that went one step further and argued that taxation should be the unique distributive mechanism across all areas of law.[57] This theory, referred to below as the "tax supremacy" approach, suggested that legal rules outside the tax system, such as damages in tort law or fines imposed by agencies, create efficiency losses when they redistribute.[58] Widespread acceptance of the tax supremacy approach created a historical consensus that administrative agencies need not consider the distributional consequences of rules outside the tax system.[59] More recently, a movement of scholars and policymakers have fought back and proposed that non-tax rules have an important role to play in the distribution of benefits across social groups.[60] They show

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[52] Kevin Hanley, Cecilia Bisogno, & Lew Blank, *Voters Overwhelmingly Support the Consumer Financial Protection Bureau's Recent Actions*, Data For Progress (Nov. 21, 2024), https://www.dataforprogress.org/blog/2024/11/21/voters-overwhelmingly-support-the-consumer-financial-protection-bureaus-recent-actions [https://perma.cc/W7TC-GXSL].

[53] Kate Gibson, *Trump Has Subdued the Consumer Financial Protection Bureau. So What Does This Agency Do?*, CBS News (Apr. 21, 2025), https://www.cbsnews.com/news/trump-consumer-financial-protection-bureau-what-is-the-cfpb-refunds/ [https://perma.cc/C7XQ-XA5D].

[54] *Infra* Part III.C.

[55] *See* Richard A. Westin, *The Historical Origins of Progressive Taxation*, 23 J. Juris. 203, 205 (2014).

[56] *Id.* at 204.

[57] *See supra* note 16 and accompanying text.

[58] *See, e.g.*, Kaplow & Shavell, *Why the Legal System Is Less Efficient than the Income Tax in Redistributing Income*, *supra* note 16 at 667–68.

[59] Matthew D. Adler & Eric A. Posner, *Rethinking Cost-Benefit Analysis*, 109 Yale L.J. 165, 186 (1999) ("The purpose of CBA, as typically understood, is to separate out the distributional issue and isolate the efficiency issue, so that the agency will evaluate projects solely on the basis of their efficiency.").

[60] *See generally* Christine Jolls, *Behavioral Economics Analysis of Redistributive Legal Rules*, 51 Vand. L. Rev. 1653 (1998) (showing that replacing neoclassical economic assumptions with behavioral ones increases the importance of legal rules in redistribution); Chris William Sanchirico, *Taxes Versus Legal Rules as Instruments for Equity: A More Equitable View*, 29 J. Legal Stud. 797 (2000) (highlighting failures in the tax supremacy approach); Richard S. Markovits, *Why Kaplow and Shavell's Double-Distortion Argument Articles Are Wrong*, 13 Geo. Mason L. Rev. 511 (2004) (arguing that tax supremacy theory is inapplicable to most practical examples); Daphna Lewinsohn-Zamir, *In Defense of Redistribution through Private Law*, 91 Minn. L. Rev. 326 (2006) (using legal theory to argue against the tax supremacy approach); Ronen Avraham et al., *Revisiting the Roles of Legal Rules and Tax Rules in Income Redistribution: A Response to Kaplow & Shavell*, 89 Iowa L. Rev. 1125 (2004) (challenging the assumptions underpinning the tax supremacy approach); Aditi Bagchi, *Distributive Injustice and Private Law*, 60 Hastings L.J. 105 (2008) (providing a theoretical basis for considering distributive justice across private law disciplines); Lee Anne Fennell & Richard H. McAdams, *The Distributive Deficit in Law and Economics*, 100 Minn. L. Rev. 1051 (2016) (describing the missing role of redistribution in law and economics literature); Zachary Liscow, *Is Efficiency Biased*, 85 U. Chi. L. Rev. 1649 (2018) (showing the limitations of efficiency-only analysis of legal rules); Zachary Liscow,

that regulation has redistributive effects, and argue that redistribution outside the tax system could be valuable.[61] As a result, the Office of Management and Budget (OMB) issued guidance that that cost-benefit analyses should include consideration of the distributive impacts of regulation; but financial regulation was largely excluded from this process.[62]

In this Article, I show that financial regulation is an important exception to the tax supremacy theory, with significant advantages over traditional benefits programs that balance out the disadvantages.[63] Even if they are not collecting revenue and distributing cash, financial regulators can redistribute resources in other ways—by taking away or imposing risk, by providing liquidity, or by impacting returns on an investment. Moreover, financial regulators have access to mechanisms that are not available to benefits administrators. Instead of paying in cash for safety net policies, financial regulators can provide governmental guarantees that are either explicit, such as deposit insurance for banks, or implicit, such as bailouts. A carefully designed safety net, implemented through financial regulation, may be achieved at a lower cost than traditional benefits.

The modern social safety net requires households to access private financial markets to qualify for benefits provided through financial regulation. I contend that a successful regulatory system will aim for a holistic approach to financial inclusion.[64] Drawing from a long literature in tax law, I show how regulators may struggle to define coherent goals because of conflicts between progressivity and internalizing externalities.[65] I propose that state financial regulators should take the lead in gathering data on the impacts of regulatory changes on households, and provide some accountability to the public.[66] When financial regulators acknowledge their role in the social safety net, they can target subsidies to the neediest populations.

This paper proceeds as follows. Part I introduces the increasingly important role that financial markets play in the social safety net. Part II presents novel empirical analysis of the COVID-19 payment pauses, showing the regressive consequences of subsidies disbursed through financial markets. Part III discusses the fundamental role that three agencies—the Fed, SEC, and CFPB—play in providing benefits to the underprivileged. Part IV raises the primary theoretical challenge to regulators implementing a social safety net—the tax supremacy theory—and rebuts its primary arguments. Part V

Redistribution for Realists, 107 Iowa L. Rev. 495 (2022) (providing a framework for incorporating distributional analysis into the evaluation of legal rules).

[61] *See generally* Richard L. Revesz, *Regulation and Distribution*, 93 N.Y.U. L. Rev. 1489 (2018); Daniel Hemel, *Regulation and Redistribution with Lives in the Balance*, 89 U. Chi. L. Rev. 649 (2022).

[62] Zachary D. Liscow & Cass R. Sunstein, *Efficiency vs. Welfare in Benefit-Cost Analysis: The Case of Government Funding*, (Harv. Pub. L., Working Paper, 2023), https://papers.ssrn.com/abstract=4589563 [https://perma.cc/CT7B-62MB] (last visited Jan 24, 2024).

[63] *See infra* Part V.A.

[64] *See infra* Part V.A.

[65] *See infra* Part V.B.

[66] *See infra* Part V.C.

provides a path forward for aligning financial regulators with the goals of traditional government benefit programs.

I. Financial Markets as Safety Nets

Two contemporaneous economic trends have transformed the economy over the past fifty years. The poverty rate has decreased since the War on Poverty in the 1960s increased the generosity and stability of benefits programs.[67] At the same time, wealth and income inequality have increased significantly, suggesting that middle and upper class households are gaining wealth at a faster rate than low-income groups.[68] This Part provides one potential explanation for the increasing divergence between the poor and the rich—the growth of a "shadow" social safety net targeting the middle and upper classes.

Historically, Americans facing financial hardship received support in the form of cash or in-kind benefits directly from the government. Since the Social Security Act of 1935 introduced welfare for the poor, disabled, and needy, budgets for safety net programs have grown.[69] Throughout the 1960s and later, welfare programs expanded. The Clinton administration's 1996 welfare reform was the first major contraction in the welfare state in recent history.[70] Despite this, a large and growing fraction of the national budget has been devoted to government benefits, with the most recent estimates suggesting that nearly 15 percent of the country's GDP is spent on benefit programs.[71] These programs have been largely successful.[72] Severe poverty has decreased by more than 60 percent over the past fifty years.[73] The social safety net has disproportionately benefited Black and Hispanic households.[74]

Yet, current measures may not capture the hardships that low-income groups face, despite the gains members of these groups have made from social programs. First, poverty is measured based on income, relative to required expenditures on a basket of necessary goods like food.[75] These measures are arguably biased since they may embed assumptions such as a lack of childcare expenses, and don't account for the high debt burden that many low-income

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[67] Susannah Camic Tahk, *The New Welfare Rights*, 83 Brook. L. Rev. 875, 880–81 (2017).

[68] Emmanuel Saez & Gabriel Zucman, *The Rise of Income and Wealth Inequality in America: Evidence from Distributional Macroeconomic Accounts*, 34 J. Econ. Pers. 3, 5–12 (2020).

[69] *Origins of the State and Federal Public Welfare Programs (1932 – 1935)*, Soc. Welfare Hist. Project (2011), https://socialwelfare.library.vcu.edu/public-welfare/origins-of-the-state-federal-public-welfare-programs/ [https://perma.cc/85J4-A4PE].

[70] Zane & Toppin, *supra* note 17.

[71] Michael Tanner, *Poverty and Welfare*, Cato Inst. (2022), https://www.cato.org/cato-handbook-policymakers/cato-handbook-policymakers-9th-edition-2022/poverty-welfare [https://perma.cc/YDE3-W7P2].

[72] Danilo Trisi & Matt Saenz, *Economic Security Programs Reduce Overall Poverty, Racial and Ethnic Inequities*, Ctr. on Budget & Pol'y Priorities (July 1, 2021), https://www.cbpp.org/research/poverty-and-inequality/more-than-4-in-10-children-in-renter-households-face-food-andor [https://perma.cc/A3XD-S8N3].

[73] Zane & Toppin, *supra* note 17.

[74] *Id.*

[75] *How Is Poverty Measured?*, Inst. for Rsch. on Poverty, https://www.irp.wisc.edu/resources/how-is-poverty-measured/ [https://perma.cc/EZ36-L5ZA] (last visited Sep. 20, 2025).

households face.[76] Second, distributional harms may have actually increased during this time period since the higher quality of life for low-income groups has not been accompanied by less inequality.[77] Higher-income households have experienced staggering growth, with their wealth multiplying at a much higher rate than that of low-income groups.[78] A household in the bottom tenth percentile of the wealth distribution has seen their assets increase by only $500 between 1963 and 2022. In contrast, a household at the fiftieth percentile has gained nearly $150,000 in wealth during the same time. The ninetieth percentile has gained nearly $1.6 million.[79] Growth in wealth is also lowest for minorities and women, suggesting that inequality along multiple dimensions is worsening over time.[80] Traditional safety net programs have failed to bridge the wealth gap between the poor and rich, suggesting that other factors have accelerated the growth in wealth of middle- and high-income households.

I propose that this divergence is explained in part by significant and growing support from the government in the form of credit access and a regulated financial sector focused on expanding markets for financial products to include moderately wealthy households.[81] Policies enacted in the second half of the twentieth century, such as the expansion of the Government Sponsored Enterprises (GSEs) supporting mortgage markets,[82] the expansion of student loan availability through the Department of Education (DoE),[83] and the Community Reinvestment Act (CRA) that expanded bank activity in underserved communities,[84] were accompanied by deregulatory financial policy[85] that increased financial institutions' reach. As the financial industry grew, more households began to depend heavily on financial products and the regulation of financial institutions began to impact a broad swath of the American

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[76] Jill Rosen, *New Measurement Suggests U.S. Undercounts People in Poverty*, Hub, Johns Hopkins Univ. (Mar. 22, 2025), https://hub.jhu.edu/2022/03/25/supplemental-expenditure-poverty-measurement-robert-moffitt/ [https://perma.cc/CY42-QX9L] (last visited Sep. 20, 2025); *Developing a Child Care-Inclusive Poverty Measure*, U.S. Census Bureau (Aug. 7 2025), https://www.census.gov/library/working-papers/2025/demo/sehsd-wp2025-11.html [https://perma.cc/QHE4-EUSW] (last visited Sep. 20, 2025).

[77] Gaines et al., *supra* note 17.

[78] *Nine Charts about Wealth Inequality in America,* Urban Inst. (Apr. 25, 2024), https://apps.urban.org/features/wealth-inequality-charts/ [https://perma.cc/CJ9U-2HXF].

[79] *Id.*

[80] *Id.*

[81] Rowena Olegario, *The History of Credit in America,* Oxford Rsch. Encyc. of Am. Hist. 1 (May 23, 2019), https://oxfordre.com/americanhistory/display/10.1093/acrefore/9780199329175.001.0001/acrefore-9780199329175-e-625 [https://perma.cc/QT9P-ZMHR]; Montgomerie, *supra* note 19, at 871–72.

[82] Ronel Elul, *The Government-Sponsored Enterprises: Past and Future*, Fed. Rsrv. Bank of Phila. (2015), https://www.philadelphiafed.org/the-economy/banking-and-financial-markets/the-government-sponsored-enterprises-past-and-future [https://perma.cc/UYT2-3CDJ].

[83] *A Brief History of Student Loans*, FAIR Student Loans, https://www.bu.edu/fairstudentloans/a-brief-history-of-student-loans/ [https://perma.cc/3X95-N5PE] (last visited Jan 10, 2025).

[84] *Community Reinvestment Act (CRA*), Fed. Rsrv., https://www.federalreserve.gov/consumerscommunities/cra_about.htm [https://perma.cc/WLG8-HA7E] (last visited May 11, 2025).

[85] *Financial Industry Deregulation in the 1980s*, Fed. Rsrv. Bank of Chi, https://www.chicagofed.org/publications/economic-perspectives/1985/september-october-evanoff-1 [https://perma.cc/8DR6-VZC3] (last visited Jan 10, 2025).

public.[86] Yet these institutions have largely excluded the poorest Americans, who did not have wealth to store in banks or brokerage accounts, and could not afford to take on debt.[87] Inclusion in the financial system has become a key marker for a household's ability to thrive in the American economy.[88]

A. The Insurance Value of Financial Markets

In this subpart, I argue that access to the private financial markets has created a safety net for middle- and high-income households. The argument may appear radical, since private financial markets look quite different from public social insurance programs at first glance. However, private financial markets and public social insurance programs share a similar core value: They provide extra resources, such as spending power or protection against further harm, when times are tough. For example, consider a household that takes on debt to finance a home purchase. If the household later experiences financial distress, such as job loss, they can ask their mortgage servicer for forbearance or a loan modification to lower their payment.[89] Servicers are required to pause the foreclosure process to consider these requests under guidelines promulgated by the GSEs that pool and insure a majority of US loans,[90] as well as under rules promulgated by the CFPB.[91] Renters, in contrast, have fewer protections from eviction threats by landlords as soon as they cannot make payments.[92] Financial regulation therefore provides protection to homeowners with a mortgage that is not afforded to those with other financial arrangements.

This pattern is repeated across a swath of financial products and regulators. As Abbye Atkinson characterized it in her seminal article, debt has been repurposed as a form of social provision.[93] To be specific, private financial markets provide alternative methods by which households in distress can continue consuming goods when they don't have cash on hand. Consumer credit is the most well-described example.[94] During a temporary loss of income,

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[86] *See* Robin Greenwood & David Scharfstein, *The Growth of Finance*, 27 J. Econ. Persps. 3, 5–6 (2013).

[87] *2023 FDIC National Survey of Unbanked and Underbanked Households*, Federal Deposit Insurance Corporation (Nov. 14, 2024), https://www.fdic.gov/household-survey [https://perma.cc/QVR2-4YZZ].

[88] Miguel Ampudia & Michael Ehrmann, *Financial Inclusion: What's It Worth?*, (Eur. Cent. Bank, Working Paper No. 1990, 2017), https://www.econstor.eu/handle/10419/154423 [https://perma.cc/3Y6U-NZVG].

[89] Darren J. Aiello, *Financially Constrained Mortgage Servicers*, 144 J. Fin. Econ. 590, 590 (2022); Naser Hamdi et al., *Capital Regulation and Asset Allocation Amidst Agency Conflicts: Evidence From Mortgage Servicing* 7 (Olin Business School Ctr. for Fin. & Accounting, Research Paper No. 2023/08, 2023), https://papers.ssrn.com/abstract=4550175 [https://perma.cc/WAA7-YV8P].

[90] *Servicing Loss Mitigation*, Fannie Mae,, https://singlefamily.fanniemae.com/servicing/loss-mitigation [https://perma.cc/AYA9-LDGH] (last visited May 11, 2025).

[91] 12 C.F.R. § 1024.41 (2025).

[92] *See* Philip ME Garboden & Eva Rosen, *Serial Filing: How Landlords Use the Threat of Eviction*, 18 City & Community 638, 642–43 (2019).

[93] Atkinson, *Rethinking Credit*, *supra* note 1, at 1093.

[94] *Id.* at 1098.

households can use credit cards and other loans to pay for expenses until they begin earning again.[95] Credit is therefore a source of "self-insurance," since it allows borrowers to shift their costs across time and make payments when they are best able to afford it.[96] Regulatory actions that support access to credit, which is part of the CFPB's mandate,[97] are implicitly creating a safety net for creditworthy households.

Outside of debt, other financial markets provide similar alternatives to social insurance. The most obvious example is private insurance, such as health insurance, which allows households to pre-pay for health expenses and share risk with others in their insurance pool.[98] Job and investment opportunities are likewise based in the financial markets. Companies with cheap access to credit can hire more employees[99] and can solicit more investment in their stock.[100] Households with more job opportunities are less likely to experience long term distress[101] and those with more investment opportunities can earn higher returns to maximize their wealth.[102] Regulation that supports job creation and high investment returns help protect only those that are targeted.

Financial regulators therefore have an important role to play in social safety nets. They set rules that determine the price and availability of credit, both directly to consumers and to companies that then provide jobs and investment opportunities.[103] They also specifically help determine which households have access to which financial products, often in the name of consumer protection.[104] Moreover, regulators make decisions that are intended to increase stability or supervise financial institutions that alter the safety net unexpectedly.[105] Return, for instance, to the example of a homeowner with a mortgage. When the household experiences job loss, their servicer can offer forbearance or other forms of loss mitigation, but the amount of help the servicer offers depends on the servicer's own financial solvency.[106] Servicers that

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[95] *Id.* at 1097.

[96] Dobridge, *supra* note 20, at 407–12.

[97] *See* 12 U.S.C § 5511.

[98] *See* Linda J. Blumberg & John Holahan, *Don't Le the Talking Points Fool You: It's All About the Risk Pool*, Health Affs. (Mar. 15, 2016), https://www.healthaffairs.org/content/forefront/don-t-let-talking-points-fool-you-s-all-risk-pool [https://perma.cc/TCT4-R223].

[99] *How Does the Federal Reserve Affect Inflation and Employment?*, Fed. Rsrv., https://www.federalreserve.gov/faqs/money_12856.htm [https://perma.cc/DVS9-WX6G] (last visited Aug 9, 2024).

[100] Mark R. Hake, *How Interest Rates Impact Stock Prices*, Kiplinger (Sept. 19, 2024), https://www.kiplinger.com/investing/how-interest-rates-impact-stock-prices [https://perma.cc/A8W5-FS4A].

[101] Caterina Giannetti et al., *Job Insecurity and Financial Distress*, 24 Applied Fin. Econ. 219, 219 (2014).

[102] Richard A. Booth, *How I Stopped Worrying and Learned to Love Index Funds*, Cato Inst. (Spring 2025), https://www.cato.org/regulation/spring-2025/how-i-stopped-worrying-learned-love-index-funds [https://perma.cc/PQC4-S893]; Larry Fink, *The Democratization of Investing: Expanding Prosperity in More Places, for More People*, Harv. L. Sch. F. on Corp. Gov. (Apr. 14, 2025), https://corpgov.law.harvard.edu/2025/04/14/the-democratization-of-investing-expanding-prosperity-in-more-places-for-more-people/ [https://perma.cc/A5HY-A6WF].

[103] Zinman, *supra* note 21.

[104] Howell E. Jackson & Paul Rothstein, *The Analysis of Benefits in Consumer Protection Regulations*, 9 Harv. Bus. L. Rev. 197, 231–33 (2019)

[105] Hamdi et al., *supra* note 89, at 36–39.

[106] Aiello, *supra* note 89, at 608–09.

are non-depository institutions, or non-banks, are less financially stable than bank servicers, and are less likely to support distressed borrowers.[107] The identity of a loan's servicer doesn't depend on the borrower at all; instead, rules such as Basel III's mortgage servicing provisions help determine how many loans are serviced by non-banks.[108] Empirical data shows that financial regulation has pushed low credit score borrowers toward strict servicers aggressively pursuing foreclosure.[109] Ultimately, regulators implicitly or explicitly redistribute resources across social groups, and therefore have similar impacts as government benefit administrators and tax authorities.

B. The Impact of Financial Regulation on Inequality

There is one key difference between the tax and transfer system and financial regulation: The first has an explicitly progressive agenda served by means testing while the second has little accountability for the distributional effects of its policies and includes no recourse when it redistributes regressively. Prior scholarship has shown that financial products tend to benefit more privileged populations, while the costs of indebtedness and bankruptcy hurt the least privileged the most.[110] When combined with decreasing generosity of government benefits to the very poor,[111] the growing reliance of American households on financial products has likely exacerbated social inequality. Existing data supports this view, since the wealth and income of the richest people has grown many times more quickly than that of low-income groups.[112]

The following Parts reconstruct the financial regulatory system as an underinclusive but highly effective social safety net, relying on case studies and theoretical discussion. They bring together several literatures that have already begun to discuss the role of financial regulation in influencing inequality and poverty. First, a large literature on financial inclusion and the unbanked has demonstrated how the financial services industry failed the neediest members of society.[113] Second, discussion of a market movement towards democratizing finance that have resulted in ordinary individuals receiving access to risky investments previously reserved for sophisticated parties.[114] Third, the work of scholars and policymakers who have highlighted market inequities in retail products such as mortgages, credit cards and bank accounts to motivate rulemaking by the CFPB and other regulators.[115]

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[107] *Id.* at 592–95.
[108] Hamdi et al., *supra* note 89, at 8–10.
[109] *Id.*
[110] Atkinson, *Rethinking Credit*, *supra* note 1, at 1154–57.
[111] Trisi & Saenz, *supra* note 72.
[112] Saez & Zucman, *supra* note 68, at 5–12.
[113] *See generally* Baradaran, The Color of Money, *supra* note 1; Baradaran, How the Other Half Banks, *supra* note 1; Servon, *supra* note 1; Leslie, *supra* note 2; Baradaran, *supra* note 2; Odinet, *supra* note 2.
[114] J. Carter Braxton et al., *supra* note 2; Mihet, *supra* note 2; Cable, *supra* note 2, at 672–75.
[115] *See generally* Galle, *supra* note 2; Sarin, *supra* note 2; Van Loo, *supra* note 1; Padi, *supra* note 1.

The literature on financial inclusion has focused on the financial habits of low-income and disadvantaged individuals. Scholars have documented how exclusion from formal banking—including savings accounts, checking accounts, and bundled products like credit cards and mortgage loans—kept minority families from building wealth over the last century.[116] Though less than 10 percent of US citizens are unbanked, the number rises to over 30 percent for low-income citizens, and likely much higher for undocumented and underdocumented immigrants.[117] These populations are more likely to use alternative financial services such as check cashing and payday lending, which come with high fees and risk.[118] At least part of these patterns can be explained by differential availability of traditional and alternative banking services in low-income communities of color.[119] Bank branches have been closing in increasing numbers, with closures concentrated in low-income neighborhoods,[120] and those that remain open create barriers to access with short business hours and identification requirements.[121] In contrast, check cashers and payday lenders are available to provide liquidity to night shift workers, and bundle their services with wire transactions so immigrants can send money to family overseas.[122] The result is a two-tiered financial services system, with the most disadvantaged individuals being shut out from the high-quality offerings of traditional banks.[123] Ultimately, these disparities can be traced back to a long history of discrimination in access to wealth-building, such as redlining.[124] Indeed, even when historically disadvantaged communities are now welcomed into traditional financial services, they are provided lower-quality products with higher fees, low returns, and more risk borne by the consumer—a practice termed "predatory inclusion."[125]

Separately, a grassroots movement towards "democratizing finance" has attempted to capture the high investment returns enjoyed by institutional

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[116] Baradaran, *How the Other Half Banks*, *supra* note 1.

[117] *Id.* at 139–61.

[118] Baradaran, The Color of Money, *supra* note 1, at 101–03; Servon, *supra* note 1, at 103–05.

[119] Leslie, *supra* note 2, at 744.

[120] Alaina Barca & Harry Hou, *U.S. Bank Branch Closures and Banking Deserts*, Fed. Rsrv. Bank of Phila. (Feb. 2024), https://www.philadelphiafed.org/community-development/credit-and-capital/u-s-bank-branch-closures-and-banking-deserts [https://perma.cc/4ZTT-CR6C] (last visited Sep. 20, 2025); Melissa Hellmann, *Bank branch closure rate doubled during pandemic*, Ctr. for Pub. Integrity (Feb. 17, 2022), https://publicintegrity.org/inequality-poverty-opportunity/bank-branch-closure-rate-doubled-during-pandemic/ [https://perma.cc/233J-6H9Z].

[121] Paul Calem, Chris Henderson, & Jenna Wang, *Who Remains Unbanked in the United States and Why?* (Fed. Reserve Bank of Phila. Working Paper No. 25-02, Jan. 2025), https://www.philadelphiafed.org/-/media/frbp/assets/working-papers/2025/wp25-02.pdf [https://perma.cc/WYY3-98PN].

[122] Servon, *supra* note 1, at 120–25.

[123] Baradaran, *The Color of Money*, *supra* note 1, at 250–51.

[124] Keeanga-Yamahtta Taylor, Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership 3–4 (2019).

[125] *Id.* at 5.

investors and distribute them to smaller retail investors.[126] Ordinary people have become increasingly likely to participate in the capital markets, with retail trading volume doubling since 2014.[127] This growth has coincided with several changes in the retail investment markets. Brokerage accounts have increasingly offered low fee or commission-free trading options.[128] Further, fractional investments became widely available, allowing retail traders to buy a small slice of an expensive security.[129] Capitalizing on these trends, financial technology companies such as Robinhood entered the marketplace, offering retail investors access to options and other complex investment vehicles that were previously available only to sophisticated investors.[130] Technological innovations introduced a new class of crypto investments to the retail sector.[131] Social media trends and easy communication across investors on forums such as Reddit allowed for retail investors to take coordinated action, giving rise to high profile stock market events like the GameStop short squeeze.[132] Taken together, these market mechanisms helped retail investors access new markets that were previously off limits to them. Since retail investors are more likely to be young and low-income, the SEC and other regulators have taken an increased interest in protecting these investors through aggressive enforcement and targeted new regulation.[133]

In the aftermath of the 2008 financial crisis, a group of scholars and policymakers highlighted how distributional concerns can motivate consumer-facing financial regulation. The increased attention to consumer finance after the crisis was driven by the impulse to protect uninformed and behaviorally

[126] John Detrixhe, *The Dark Side of the Democratization of Trading*, Quartz (Jan. 29, 2021), https://qz.com/1966363/gamestop-shows-the-dark-side-of-financial-democratization [https://perma.cc/S83P-MM8Q].

[127] Pallavi Rao, *Charted: U.S. Retail Investors Inflows* (2014-2023), Visual Capitalist (Nov. 5, 2023), https://www.visualcapitalist.com/charted-u-s-retail-investor-inflows-2014-2023/ [https://perma.cc/W4BT-B4QN].

[128] Lisa Beilfuss & Alexander Osipovich, *The Race to Zero Commissions*, Wall St. J. (Oct. 5, 2019), https://www.wsj.com/articles/the-race-to-zero-commissions-11570267802 [https://perma.cc/3E6P-YUUE].

[129] Thomas Heath, *Shares By the Slice: Fractional Investing Sparks a Stock Market Stampede*, Washington Post (Jul. 10, 2020), https://www.washingtonpost.com/business/2020/07/10/shares-by-slice-fractional-investing-sparks-stock-market-stampede/ [https://perma.cc/DTQ7-7Z68].

[130] John Divine, *How Robinhood Changed an Industry,* U.S. News (Oct. 17, 2019), https://money.usnews.com/investing/investing-101/articles/how-robinhood-changed-an-industry [https://perma.cc/G49L-2YL8].

[131] Inbar Preiss, *Majority of Bitcoin Retail Investors Lost Money in the Last Seven Years*, The Block (Feb. 20, 2023), https://www.theblock.co/post/213372/majority-of-bitcoin-retail-investors-lost-money-in-the-last-seven-years-bis [https://perma.cc/2MZ2-877X].

[132] Allan M. Malz, *The GameStop Episode: What Happened and What Does It Mean?* CATO Inst. (2021), https://www.cato.org/cato-journal/fall-2021/gamestop-episode-what-happened-what-does-it-mean [https://perma.cc/SHR9-8WSN].

[133] *Crypto Assets and Cyber Enforcement Actions*, SEC, https://www.sec.gov/spotlight/cybersecurity-enforcement-actions [https://perma.cc/7VP2-LL7G]; Cable, *supra* note 2, at 699 (2022).

biased consumers from making financial mistakes.[134] The crisis was partly exacerbated by the willingness of consumers to take on excessively risky mortgages, with these mortgages going disproportionately to low-income and minority borrowers.[135] In response, scholars and policymakers pointed out that financial markets regularly impose disproportionate costs on disadvantaged consumers.[136] Credit cards are more expensive for poor and unsophisticated users.[137] Mortgages have higher interest rates and result in worse outcomes for low-income borrowers.[138] Low-income consumers are pushed towards high risk credit products such as payday loans instead of being provided with stronger social safety nets.[139]

Despite the widespread acknowledgement that financial markets have disparate impacts on disadvantaged populations, financial regulation has not openly claimed its role as a provider of social safety nets.[140] In the following Parts, I discuss several modern examples of direct and indirect safety net programs instituted through financial regulation.

II. Direct Benefits through Debt Relief

During the COVID-19 crisis, financial regulators began directly providing subsidies to the American people. When many businesses shut down in March 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act.[141] The CARES Act authorized direct payments to American citizens to provide them with economic relief, as well as other forms of emergency assistance.[142] Two loan products were given special treatment in the CARES Act: student loans and mortgages.[143] Student loan payments owed to the federal government were automatically paused, without any negative consequences to the borrower's credit report.[144] Mortgage borrowers could request forbearance status on their loans, which relieved them of the obligation

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[134] John Y. Campbell et al., *The Regulation of Consumer Financial Products: An Introductory Essay with Four Case Studies* (Harvard Kennedy School, Working Paper No. RWP10-40, 2010), https://papers.ssrn.com/abstract=1649647 [https://perma.cc/6ZMZ-JU7A].

[135] Jackson & Rothstein, *supra* note 104, at 256–65 (2019); Oren Bar-Gill & Elizabeth Warren, *Making Credit Safer*, 157 U. Pa. L. Rev. 1, 64, 98–100 (2008).

[136] *See generally,* Rory Van Loo, *The Public Stakes of Consumer Law: The Environment, the Economy, Health, Disinformation, and Beyond* 107 Minn. L. Rev. 2039 (2022); Atkinson, *Rethinking Credit*, *supra* note 1; Raghavan, *supra* note 1, at 511; Sarin, *supra* note 2, at 1519; Padi, *supra* note 1, at 825; Van Loo, *supra* note 1.

[137] Sarin, *supra* note 2, at 1519.

[138] Padi, *supra* note 1, at 825.

[139] Atkinson, *Rethinking Credit*, *supra* note 1, at 1112.

[140] Raghavan, *supra* note 1, at 511.

[141] Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116–136 (as Amended Through Pub. L. No. 117–328) (2024) (hereinafter "CARES Act").

[142] *Id.*

[143] *See id.* at §§ 3501–3519.

[144] *COVID-19 Emergency Relief and Federal Student Aid*, Fed. Student Aid, https://studentaid.gov/announcements-events/covid-19#resources [https://perma.cc/7DRU-QW9E] (last visited May 11, 2025); *see also* CARES Act § 4021.

to pay for at least six months.[145] When these payment pauses were set to expire, they were extended by executive order, resulting in a maximum pause of twenty-two months for student loans and eighteen months for mortgages.[146]

The stated purpose of these pauses was to provide emergency liquidity to borrowers experiencing "hardship" due to COVID-19.[147] By definition, however, non-borrowers did not qualify for these programs. Payment pauses conferred benefits on a subset of the American population, without any discussion as to why debt financing was prioritized over the sector of the population that rented their homes or paid for schooling in cash.[148] In contrast, the stimulus payments that the CARES Act authorized were carefully graduated on the basis of income, reflecting the structure of the tax code.[149] The distinction makes clear that the stimulus payments were explicitly redistributive subsidies modeled on traditional safety net programs like the EITC, unlike payment pauses.[150] In this Part, I show that the payment pauses acted as highly regressive subsidies, with a potentially larger impact than cash stimulus payments, using novel analysis of publicly available economic data.

A. Data and Analysis

To shed light on who was eligible for payment pauses and how much they stood to benefit, a dataset must be representative of the US population and include information about mortgage and student loan borrowing. The Survey of Consumer Finances (SCF) is a cross-sectional survey conducted by the Federal Reserve Board, in conjunction with the Department of the Treasury.[151] Data is collected every three years by the National Opinion Research Council, which randomly samples the US and uses voluntary structured interviews to construct a dataset about the financial health of US households.[152] Many official publications about the nation's economic health released by federal agencies, as well as scholarly academic research, have been

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[145] CARES Act § 4022; *see also What is Mortgage Forbearance?* CFPB (Oct. 19, 2023), https://www.consumerfinance.gov/ask-cfpb/what-is-mortgage-forbearance-en-289/ [https://perma.cc/682D-BEV6].

[146] Hegji, *supra* note 24 (providing a timeline of the several extensions on student loan payments announced by the Executive Department); *Learn About Forbearance*, CFPB (describing eligibility for mortgage forbearance), https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/help-for-homeowners/learn-about-forbearance/ [https://perma.cc/J54R-NGM8].

[147] CARES Act § 4022.

[148] *Id.*

[149] *Economic Impact Payments,* U.S. Dept. of Treasury, https://home.treasury.gov/policy-issues/coronavirus/assistance-for-american-families-and-workers/economic-impact-payments/ [https://perma.cc/S9RF-HQ62].

[150] *Id.*

[151] *Survey of Consumer Finances*, Fed. Rsrv. (2022), https://www.federalreserve.gov/econres/scfindex.htm [https://perma.cc/U9KG-5PEJ].

[152] *Survey of Consumer Finances*, Nat'l Opinion Rsch. Council, https://www.norc.org/research/projects/survey-of-consumer-finances.html [https://perma.cc/Q4JJ-D8AS].

based on the SCF.[153] The data is both comprehensive and representative, including information about a household's demographics, financial choices, and outcomes.[154]

I analyzed subsamples of publicly available SCF data that provide the most accurate information possible about payment pauses. To do so, I limited my analysis to data collected in 2022, which was the closest in time to the payment pauses in 2020 and 2021. I then created two subsamples of data—one for analyzing mortgage policy and the other for student loan policy. The mortgage policy sample restricted the data to households who reported making either a mortgage payment or a rent payment in the previous year. The goal was to compare the difference in benefits provided to homebuyers relative to their closest comparison group, renters. This mortgage policy subsample included nearly 16,000 surveyed households. The student loan policy sample restricted the data to households who reported having at least one year of education past high school. The goal was to compare households who financed their education with debt to those who paid in cash or already paid off their loans by the time they were surveyed. The student loan policy subsample included a different set of 16,000 households.

The method of analysis was weighted least squares.[155] It is similar to the standard linear regression, which estimates the relationship between a dependent and independent variable within a sample, holding fixed other controls. Relative to linear regression, weighted least squares uses a small sample of nationwide data, re-weights it, and estimates the population-wide relationship between variables. I performed four separate regression analyses. First, I regressed an indicator for mortgage forbearance eligibility for the full mortgage sample on controls for race, income, and age. In Figure 1 below, I show the marginal effect of race on mortgage eligibility. In other words, holding income and age fixed, the plot shows the estimated fraction of households of a particular race that are eligible for mortgage forbearance. Surrounding the estimated mean is a confidence interval that shows how much error exists in the estimation. Figure 1 demonstrates that among White households, 57 percent were eligible for forbearance. In contrast, 48 percent of Black and 49 percent of Hispanic households were eligible. Because the confidence intervals around these estimates are small, the results show that Black and Hispanic households were less likely than White households to be eligible for mortgage forbearance.

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[153] Suzanne Lindamood, Sherman D. Hanna, & Lan Bi, *Using the Survey of Consumer Finances: Some Methodological Considerations and Issues*, 41 J. Consumer Affs. 195, 195–96 (2007).

[154] *Survey of Consumer Finances (SCF), About*, Bd. of Governors of the Fed. Rsrv. Sys. (Oct. 10, 2024), https://www.federalreserve.gov/econres/aboutscf.htm [https://perma.cc/8S28-8JNL] (last visited Sep. 20, 2025); *Survey of Consumer Finances*, NORC at the Univ. of Chi. (2025), https://www.norc.org/research/projects/survey-of-consumer-finances.html [https://perma.cc/LMW7-9GHE] (last visited Sep. 20, 2025).

[155] *Weighted Least Squares*, Penn State College of Sci., https://online.stat.psu.edu/stat501/lesson/13/13.1 [https://perma.cc/5WEJ-6GBR] (last visited May 11, 2025).

Figure 1: The Marginal Effect of Race of Mortgage Eligibility

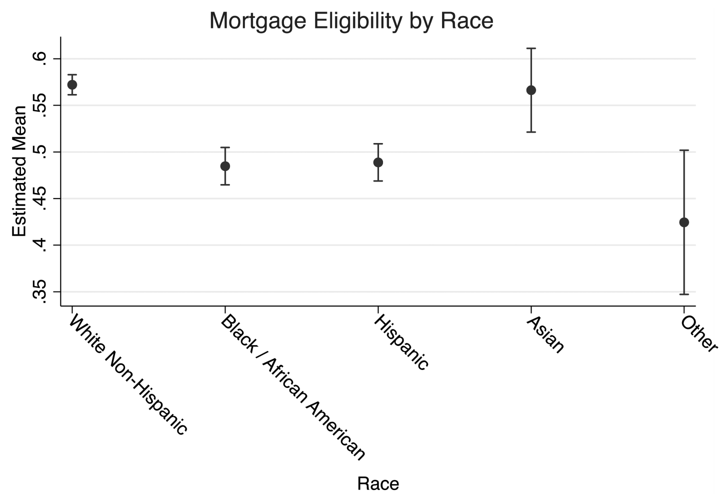
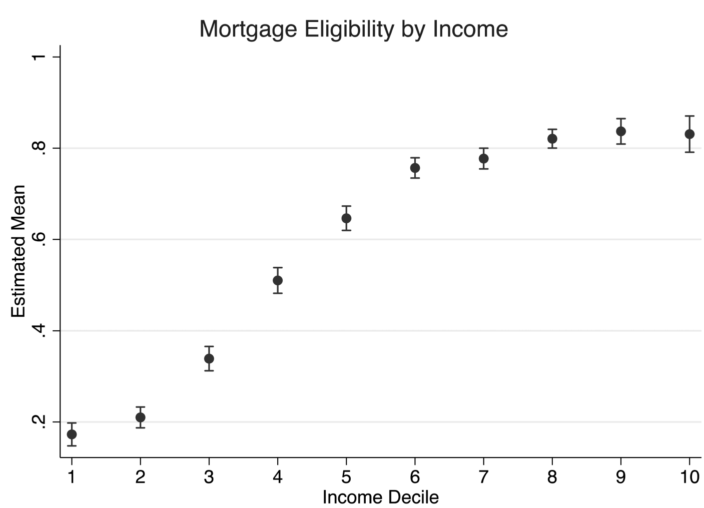


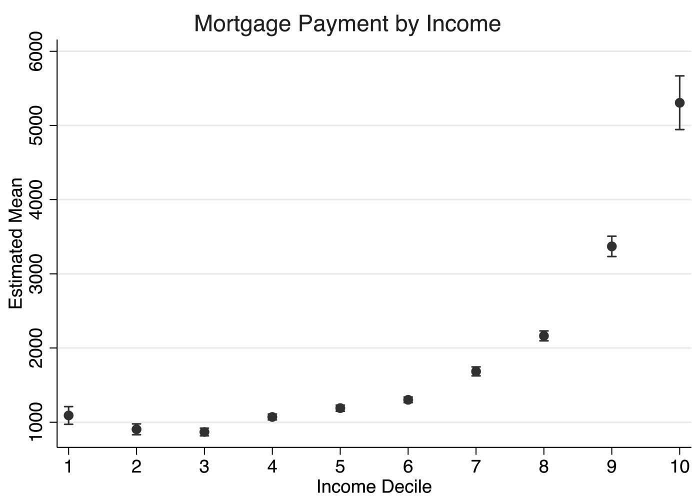
Figure 2 also reports results from the same regression. This time, the plot holds fixed race and age and plots the estimated probability of eligibility for mortgage forbearance by each income decile. Within the lowest decile of income, less than 20 percent of households classified for mortgage forbearance. Meanwhile, about 80 percent of the top four deciles were eligible for forbearance. In other words, the wealthiest 40 percent of people were four times as likely to qualify. The confidence intervals once again show how precise these estimates are. The results demonstrate that the mortgage forbearance program disproportionately benefited middle- and upper-class households.

Figure 2: The Marginal Effect of Income on Mortgage Eligibility



The next regression restricts the sample to mortgage borrowers and compares the value of mortgage payments across demographic groups. I ran the same weighted least squares regression with the size of mortgage payment as the dependent variable. Figure 3 shows the difference in average mortgage payments across income deciles. Borrowers in the lowest deciles paid about $1000 per month in mortgage payments. In the top half of earners, this amount increased sharply. The top two income deciles made mortgage payments of $3400 and $5400 per month, respectively. Within mortgage borrowers, the top income deciles stand to gain the most from forbearance.

Figure 3: The Marginal Effect of Income on Mortgage Payment



Next, I turned to the student loan sample to analyze borrowing eligibility and the amount of student loan payments. To begin, I regressed an indicator for having a student loan based on race, income, and age. In other words, I estimate how the likelihood of having a student loan varies with race, income, and age. Figure 4 plots the results, showing how likely each racial group is to have a student loan, holding fixed income and age, which in turn results in differential eligibility for the student loan payment pause. In contrast to the mortgage payment pause, eligibility was highest among Black households, with more than 40 percent being eligible for the student loan payment pause. Figure 5 shows the difference by income decile. Middle income deciles were most likely to have student debt, with one third of households being eligible for the payment pause. In the richest and poorest deciles, only 20 percent of borrowers were eligible for the pause. The distributional impact of student loan payment pause eligibility is mixed. Middle income and Black households benefited significantly while low-income and Hispanic households were disproportionately left out of the program.

Figure 4: The Marginal Effect of Race on Student Loan Eligibility

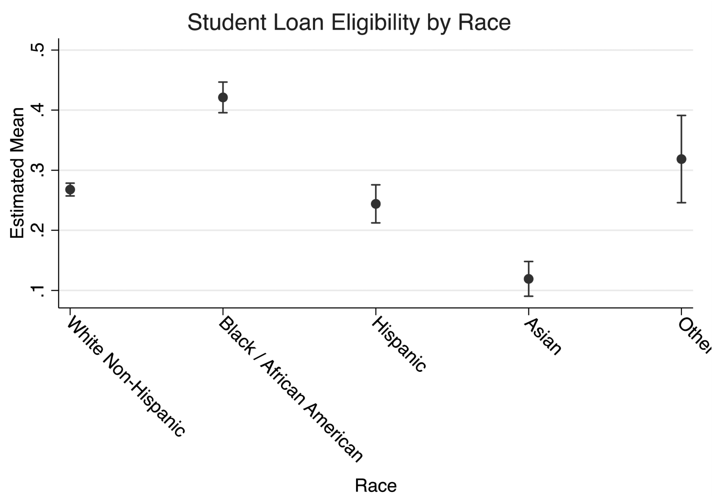
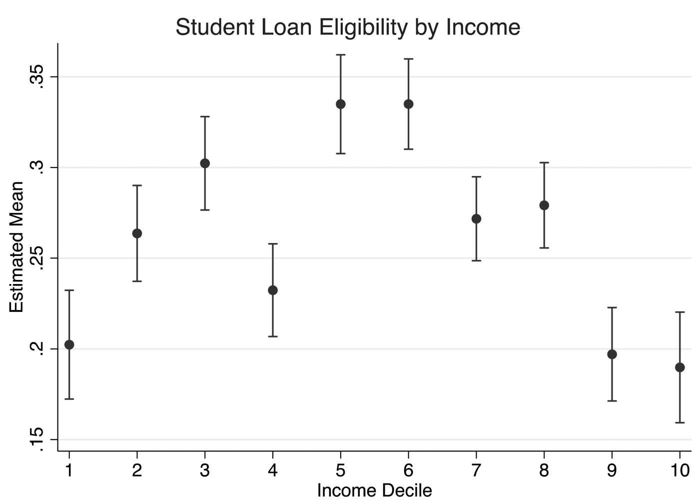
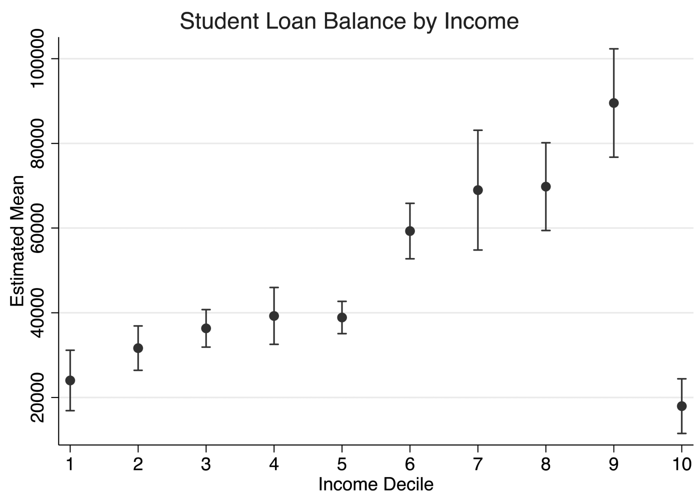


Figure 5: The Marginal Effect of Income on Student Loan Eligibility



Finally, the last regression estimated the effect of race, income, and age on total student loan balance. Figure 6 shows the marginal effect of income on student loan balances, holding age and income constant. The lowest income decile has an average loan balance of around $25,000. Loan balances increased steadily with income until the second highest decile, which had an average loan balance of $100,000. The trend reversed for the highest decile, which had the lowest average student loan balance. Since student loan payments scale with total balances, these results show that higher-income people received more benefits from payment pauses than low-income groups. Although eligibility for the payment pause had a mixed distributional impact at the highest level, higher-income borrowers overall received nearly four times the benefit from the payment pause as low-income borrowers.

Figure 6: The Marginal Effect of Income on Student Loan Balance



B. Discussion

Empirical results above demonstrate quantitatively how the new social safety net prioritized the middle and upper classes for benefits during economic upheaval. The rich were disproportionately eligible for mortgage forbearance. Black and Hispanic households were significantly less likely to be eligible than White Non-Hispanic households. Among eligible households, the richest received the largest benefits from forbearance. In contrast, eligibility for student loan payment pauses was highest for Black borrowers, relative to White and Hispanic borrowers. Middle income households were more likely to be eligible than rich or poor households. But, similar to the case of mortgages, higher income student loan borrowers also have the highest outstanding balances.[156] Taken together, the results suggest that payment pauses did not target the vulnerable and, therefore, diverged significantly from traditional safety net programs.

How exactly did eligibility for payment pauses and the size of the paused payment impact borrowers? One way to characterize payment pauses is as

[156] The only exception is the highest income decile, which evidently pays for education largely in cash.

a form of government lending. The government relieved borrowers of their obligation to pay in exchange for a promise that the borrower would repay that money after the pause ended. Payment pauses are therefore contractual in nature and ultimately require borrowers to pay back their benefits, with the entire paused balance coming due at the end of the pause.[157] In contrast, traditional safety net programs have long been recognized as a form of property, entrenching them more firmly in the legal system.[158] Research has shown that the pauses had some of the same impacts as loans—they increased households' solvency, increased consumption and investment, and lowered signs of financial distress such as bank overdrafts.[159] Note that the analysis in this paper focuses on eligibility for pauses, not actual usage of pauses. Mortgage borrowers had to opt in to receive forbearance, and borrowers who opted in were largely low-income and minority borrowers.[160] In contrast, student loan pauses were automatic, but only covered loans from the federal government.[161] Ultimately, the distributional impact was likely more complex than characterized in this analysis. Nevertheless, payment pauses provided a safety net for the middle and upper classes without the transparency and accountability of comparable tax and transfer programs.

Based on the results, I can quantify how much money was provided to borrowers that was inaccessible to non-borrowers and low-balance borrowers. For the mortgage payment pause, the total number of months paused was eighteen at most.[162] Renters, in comparison, could get fifteen months of eviction protections if they had incomes below $99,000.[163] Renters with higher

[157] Payment pauses are most closely related to contract modifications, since they change some terms of the contract without always requiring separate consideration. Debates rage over the enforceability and fairness of such changes, *see*, *e.g.*, David Horton, *The Shadow Terms: Contract Procedure and Unilateral Amendments*, 57 UCLA L. Rev. 605 (2009).

[158] For a helpful discussion of government benefits as property over the past few decades, *see* Andrew Hammond, *Litigating Welfare Rights: Medicaid, SNAP, and the Legacy of the New Property*, 115 Nw. U. L. Rev. 361 (2020).

[159] Ben Lourie et al., *The Impact of Debt Forbearance on Borrowers' Financial Behavior and Labor Outcomes: Evidence from Student Loans*, 57 Fin. Rsrch. Letters 104265, 1–2 (2023).

[160] Xudong An et al., *Inequality in the Time of COVID-19: Evidence from Mortgage Delinquency and Forbearance*, 21 (Fed. Rsrv. Bank of Phila., Working Paper 21-09, 2021), https://www.philadelphiafed.org/-/media/frbp/assets/working-papers/2021/wp21-09.pdf [https://perma.cc/N8XQ-EJ9G]; Lan Shi, *Heterogeneity in the Effect of COVID-19 Mortgage Forbearance: Evidence from Large Bank Servicers*, 24 Cityscape 21 (2022).

[161] *COVID-19 Emergency Relief and Federal Student Aid*, Fed. Student Aid, https://studentaid.gov/announcements-events/covid-19 [https://perma.cc/N42E-ZDUM] (last visited May 11, 2025).

[162] *CARES Act Forbearance Fact Sheet for Mortgagees and Servicers of FHA, VA, or USDA Loans*, U.S. Dep't of Agric., https://www.rd.usda.gov/sites/default/files/Interagency_COVID19_Housing_Forbearance_FS_Lenders.pdf [https://perma.cc/P2WQ-UPET] (last accessed September 12, 2025).

[163] *Federal Moratorium for Nonpayment of Rent*, Nat. Housing L. Project (Aug. 2021), https://nlihc.org/sites/default/files/Overview-of-National-Eviction-Moratorium.pdf [https://perma.cc/ZFR3-MCF9]; Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs., 594 U.S. 758, 760 (2021).

incomes received about six months of such protection.[164] Having a mortgage with an income below $99,000 in the SCF data translates to payments of about $1270 per month.[165] Three additional months without paying for housing translates to $3810 per low-income mortgage borrower.[166]

In higher-income populations, the average monthly payment is $3,060.[167] A full year of housing without payment, which is the additional generosity offered to homeowners over renters, amounts to an interest-free loan of $36,720.[168] SCF data shows that half of mortgage borrowers have incomes above $99,000, meaning that the average mortgage borrower received $19,890 of value from payment pauses.[169] However, given that the distribution of income nationwide is skewed towards very high incomes for very few and assuming that about fifty million mortgages were outstanding in the US,[170] the top 50 percent of the income distribution received 89 percent of the benefits of mortgage forbearance.[171] That is, out of the total of $995 billion in liquidity provided by the program, the top 50 percent of the income distribution received $885 billion.[172]

To quantify the magnitude of the student loan payment pause, I estimate a borrower's monthly payment based on their loan balance. The average student loan balance is about $49,400.[173] This translates to a monthly payment of about $520.[174] Over the twenty-two months of payment pauses, this translates to an additional $11,440 in liquidity per person. Given that there are 43.6 million student borrowers in the United States, the total size of the student loan pause provided nearly $500 billion in liquidity nationwide.[175] Though middle income and Black borrowers were most likely to be eligible, higher-income individuals received a disproportionately large share of the benefits. The top 50 percent of the student loan borrower income distribution had an average total balance of $63,530, or $663 per month in payments. This means the wealthier half of the population received $317 billion of the $500 billion

[164] *See* Data Appendix (SCF Analysis), available at https://manishapadi.com/workingpapers/ *and* https://www.dropbox.com/scl/fi/dh6ztrdj212e9tjp1m4bm/FinRegSafetyNet_Data-Appendix_small.zip?rlkey=mkppiicf9qg8rr766hu6wfe8w&e=2&st=9p4cldoy&dl=0 [https://perma.cc/J6QJ-ZVNL].

[165] *Id.*

[166] *Id.*

[167] *Id.*

[168] *Id.*

[169] *See Economic Well-Being of U.S. Households (SHED)*, Fed. Rsrv. (2022), https://www.federalreserve.gov/publications/2022-economic-well-being-of-us-households-in-2021-income.htm [https://perma.cc/2JER-XM76].

[170] *Homeowners Equity Remains High*, FHFA (Aug. 31, 2023), https://www.fhfa.gov/Media/Blog/Pages/Homeowners-Equity-Remains-High.aspx [https://perma.cc/6Z4W-R9AZ].

[171] This calculation is based on data showing that only the top 32 percent of the income distribution has an income over $99,000. Therefore, the remainder of the top 50 percent of the income distribution received approximately $3,810, with the proportion of the benefits accruing to the top 50 percent of the population being calculated as (3060*.18+36720*.32)/(3060*.68+36720*.32).

[172] *See* Data Appendix, *supra* note 164.

[173] *Id.*

[174] *Id.*

[175] Matt Schulz & Dan Shepard, *Student Loan Debt Statistics*, Lending Tree (Aug. 10, 2023), https://www.lendingtree.com/student/student-loan-debt-statistics/ [https://perma.cc/8M9R-37KJ].

(63.4 percent) in liquidity created by the pause.[176] These results are consistent with a line of research showing that the student loan payment pause was regressive.[177] Combined with mortgage forbearance, the payment pauses extended nearly $1.6 trillion in additional liquidity to households.[178] More than 75 percent of these benefits accrued to the top half of the income distribution. In comparison, direct stimulus payments, which the richest households were prevented from receiving, paid out only $814 billion nationwide.[179]

The legacy of the COVID-19 payment pauses is likely to be mixed. Experts in financial stability have lauded the pauses for helping the US economy to avoid recession, unlike in 2008.[180] As such, they may recur as a policy lever in future nationwide emergencies. Detractors have argued, however, that payment pauses drove inflation and encouraged profligate spending.[181] Inflation itself has regressive consequences, which may have reinforced the regressive design of the payment pause policy. More research is needed to determine whether pandemic policy could have been better designed. Regardless, payment pauses made borrowing to finance housing or education the key factor in eligibility for emergency liquidity. This new form of protection during an economic downturn was therefore disproportionately available to high income groups.

III. Indirect Benefits through Regulation

Payment pauses during COVID-19 made explicit a long-standing, but previously hidden, history of privileging households who could access financial markets. They were the latest in a long history of safety net policies implemented in secret by financial regulators. In this Part, I argue that typical regulatory actions—made purportedly to remedy market failures, increase

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[176] *See* Data Appendix, *supra* note 164.

[177] Diego Briones et al., *Student Loan Payment Pause Benefits High-Income Households the Most*, Education Next (Jan. 17, 2023), https://www.educationnext.org/student-loan-payment-pause-benefits-high-income-households-most-borrowers-unprotected-from-risk/ [https://perma.cc/XL24-7U6E]; Turner, *supra* note 28.

[178] The bottom 50 percent of income received $14 billion from mortgage forbearance and $283 billion from student loan payment pauses. The top 50 percent received $980 billion from mortgage forbearance and $317 billion from student loan payment pauses. The total across both programs for the entire population is $1.59 trillion. Data Appendix, *supra* note 164.

[179] *Update: Three Rounds of Stimulus Checks. See How Many Went out and for How Much*, Pandemic Oversight (Feb. 17, 2022), https://www.pandemicoversight.gov/data-interactive-tools/data-stories/update-three-rounds-stimulus-checks-see-how-many-went-out-and [https://perma.cc/8P7U-K5RB].

[180] Mark A. Calabria, *Pandemic Mortgage Forbearance Design: A Practitioner's Perspective*, CATO Inst. (2023) https://www.cato.org/regulation/spring-2023/pandemic-mortgage-forbearance-design-practitioners-perspective [https://perma.cc/H3MZ-5SB6].

[181] *Extending the Student Loan Payment Pause is Bad Policy,* CRFB (Jul. 28, 2022), https://www.crfb.org/blogs/extending-student-loan-payment-pause-bad-policy [https://perma.cc/XRT2-4M2B]; Allysia Finley, *How the Student-Loan Payment Pause Hurt Borrowers,* WAll St. J. (Aug. 20, 2023), https://www.wsj.com/articles/how-the-student-loan-payment-pause-hurt-borrowers-personal-finance-politics-4b07b360 [https://perma.cc/Q638-R9BU]. *Contra* Ben Kaufman, *No, the Student Loan Pause is Not Driving Inflation*, SBPC (April 21, 2022), https://protectborrowers.org/no-the-student-loan-pause-is-not-driving-inflation/ [https://perma.cc/3DL4-UC86].

efficiency, or improve macroeconomic health—impact households' access to safety nets. Moreover, I demonstrate that regulators often have an implicitly redistributive mandate and must make policy with an eye to spreading resources across social groups. Yet there is little awareness among regulators or accountability to the public for the potentially regressive consequences of rulemaking.

A. The Federal Reserve and Monetary Policy

The Fed has many policy responsibilities, but its most high-profile choices surround monetary policy decisions made by the Federal Open Market Committee (FOMC).[182] The FOMC sets a target federal funds rate, or the interest rate at which commercial banks lend to each other.[183] To achieve this rate, the Fed engages in open market operations such as buying or selling securities at scale.[184] When the Fed buys securities and injects money into the market, commercial banks have more cash on hand to lend and interest rates in the market decrease. The opposite occurs when the Fed sells securities to increase interest rates. The Fed can also use other levers, such as changing the discount rate at which commercial banks can borrow from the Fed,[185] and reserve requirements that mandate banks to deposit cash reserves with the Fed for macroprudential stability.[186] The power the Fed wields over the economy is difficult to overstate; not only is it the most independent federal agency, but any public statements by Fed officials can also shift public sentiment and make waves in the capital markets.[187]

It is illuminating, therefore, to start by understanding the Fed's mandate. The FOMC releases policy directives each year that describe the goals of monetary policymakers.[188] In 2023, it articulated a three-part mandate of "promoting maximum employment, stable prices, and moderate long-term interest rates."[189] These stated goals do not overtly mention social insurance, safety nets, or redistribution. Instead, employment, inflation, and interest rates are key macroeconomic indicators which can be used to evaluate whether an economy is growing sustainably.[190] Within these goals, however, lurk distributional considerations.

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[182] *Policy Tools*, Fed. Rsrv. (last updated May 20, 2024), https://www.federalreserve.gov/monetarypolicy/policytools.htm [https://perma.cc/C45M-234K].

[183] *Id.*; *Policy Tools: Open Market Operations*, Fed. Rsrv. (last updated Dec. 18, 2024), https://www.federalreserve.gov/monetarypolicy/openmarket.htm [https://perma.cc/4ZD7-CZL5].

[184] *Id.*

[185] *Policy Tools: The Discount Window and Discount Rate*, Fed. Rsrv. (), https://www.federalreserve.gov/monetarypolicy/discountrate.htm [https://perma.cc/2HGW-44P9] (last updated May 20, 2024).

[186] *Policy Tools: Reserve Requirements*, Fed. Rsrv., https://www.federalreserve.gov/monetarypolicy/reservereq.htm [https://perma.cc/QU6V-RTD6] (last updated Nov. 26, 2024).

[187] *See generally* Peter Conti-Brown et al., *Towards an Administrative Law of Central Banking*, 38 Yale J. Reg. 1 (2021).

[188] *Open Market Committee Rules*, *supra* note 34.

[189] *Id.* at 2.

[190] J. Lindé, F. Smets & R. Wouters, *Challenges for Central Banks' Macro Models*, *in* 2 Handbook of Macroeconomics 2185 (John B. Taylor & Harald Uhlig eds., 2016).

First, the definition of maximum employment impacts who is most affected by Fed policy. The FOMC describes maximum employment as "broad-based and inclusive."[191] Chairman Powell noted that this language was included to highlight the Fed's focus on "low- and moderate-income communities."[192] Chairman Powell has further clarified that this means the Fed looks at "unemployment rates and participation rates and wages for different demographic and age groups."[193] Indeed, the full employment mandate was historically tied to the civil rights movement.[194] Racial justice advocates have long recognized the power of monetary policy tools in impacting inequality.[195] Just as important is what the mandate does not say—no mention is made of maximizing incomes or replacing employment with an indicator that captures the overall productivity of the labor sector.[196] If the purpose of Fed policy was purely to maximize efficiency, the Fed should pursue policies that maximize overall income, paired with tax policy that would redistribute the income earned by the wealthy to low-income groups or unemployed.[197] By pursuing the goal of maximum employment, the Fed is attempting to get every worker an income, no matter how small.

This closely mirrors the goal of a government benefits program or universal basic income.[198] Although this is a progressive goal in many ways, the focus on *employment*, referring to formal paid labor, can also have regressive consequences for stay-at-home parents and other workers who do not receive monetary compensation.[199] The first part of the Fed's mandate takes a strong stance on redistribution, and this has already been partially acknowledged by the Fed.[200]

Second, the Fed's goal of achieving stable prices also has distributional impacts on ordinary households. The opposite of stable prices is inflation, which has been recognized in economics as having distributional consequences for over seventy-five years. As early as the 1950s, inflation was shown to decrease returns to creditors and benefit debtors making fixed payments.[201]

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[191] *Open Market Committee Rules*, *supra* note 34, at 4.

[192] Powell, *supra* note 36.

[193] *Id.*

[194] *The Full Employment Mandate*, *supra* note 35; Stein & Regmi, *supra* note 35.

[195] *Id.*

[196] For example, the labor share of income has been decreasing even though employment levels have been high. *See* Michael W. L. Elsby, Bart Hobijn & Ayşegül Şahin, *The Decline of the U.S. Labor Share*, 2013 Brookings Papers on Econ. Activity 1 (2013).

[197] This policy would follow the proposals made by Kaplow and Shavell in several papers. *See, e.g.*, Kaplow & Shavell *Should Legal Rules Favor the Poor?*, *supra* note 16.

[198] *Guaranteed Income Pilot Program*, CA Dept. of Soc. Servs., https://www.cdss.ca.gov/inforesources/guaranteed-basic-income-projects [https://perma.cc/S8XX-L82P] (last visited Apr. 12, 2025).

[199] Charges that the Fed redistributes away from stay-at-home parents and towards formal sector workers reached the national news when the Fed implemented credit card rules that favored workers with documented individual income. Robert Schmidt, *Why Stay-at-Home Moms Are Mad at the Fed,* NBC News (Feb. 28, 2011, 2:45 PM), https://www.nbcnews.com/id/wbna41784394 [https://perma.cc/GTR3-7VH9].

[200] *Open Market Committee Rules*, *supra* note 34, at 4.

[201] Reuben A. Kessel, *Inflation-Caused Wealth Redistribution: A Test of a Hypothesis*, 46 Am. Econ. Rev. 128, 128–29 (1956).

Since debt is issued in nominal dollars, a debtor making payments of $100 per month finds those payments to be a smaller part of their overall costs in an inflationary environment. In contrast, the creditor receiving payments of $100 a month finds that their resulting purchasing power is lower in an inflationary environment. Further early work showed other dimensions along which inflation redistributes.[202] People whose incomes were rising higher than inflation benefited relative to those with slow income growth. Investors with higher-return assets did better than investors with low-risk, low-return portfolios. Modern empirical research showed that on average, this resulted in redistribution away from wealthy, older individuals towards young middle-class households with growing incomes and high indebtedness.[203] Counteracting this somewhat progressive result is the finding that inflation redistributed from foreigners to citizens.[204] Extrapolating from these results, it is likely that low-income individuals without debt, with low income growth, and with few high-growth assets are hurt the most by inflation—they face decreasing purchasing power without any countervailing benefits. Despite implicit redistribution resulting from the Fed's inflation policy, Chairman Powell and the FOMC have not discussed these economic principles in their public addresses.

Third, the Fed is tasked with maintaining moderate long-term interest rates. The impact of interest rates on redistribution is difficult to ascertain, but a spate of new research in macroeconomics has made headway on this issue.[205] Since high interest rates are associated with a contraction of credit and less economic activity, they benefit households with low marginal propensities to consume (MPC).[206] Low-income households are estimated to have high MPC, meaning that a larger share of any raise they might recive would go towards consumption.[207] Therefore, they are less likely to benefit from high interest rates. Moreover, high interest rates benefit households with low marginal propensities for risk taking.[208] That is, households that would allocate an increase in wealth to a low-risk asset, rather than a high-risk asset, benefit from high interest rates. Populations with these preferences include retirees and other wealthy, but risk-averse, individuals.[209] Note that these models refer to unexpected increases in interest rates, while the Fed aims for no unexpected changes. Therefore, the beneficiaries of Fed policy would likely be the opposite of the populations described above. Individuals with stronger preferences to consume and take risk, including both low-income and wealthy households with high risk tolerance, benefit from long-term stability and moderately low

[202] G. L. Bach & Albert Ando, *The Redistributional Effects of Inflation*, 39 Rev. Econ. and Stat. 1, 2 (1957).

[203] Matthias Doepke & Martin Schneider, *Inflation and the Redistribution of Nominal Wealth*, 114 J. Pol. Econ. 1069, 1071 (2006).

[204] *Id.*

[205] *See generally* Rohan Kekre & Moritz Lenel, *Monetary Policy, Redistribution, and Risk Premia*, 90 Econometrica 2249 (2022); Adrien Auclert, *Monetary Policy and the Redistribution Channel*, 109 Am. Econ. Rev. 2333 (2019).

[206] Auclert, *supra* note 205. The term MPC refers to what share of an increase in income a household would spend on consuming goods rather than saving or investing.

[207] *Id.*

[208] Kekre & Lenel, *supra* note 205.

[209] *Id.*

interest rates. Of course, the meaning of the term moderate is subjective and may also be taken to mean moderately high.[210] Regardless of the precise impacts, the Fed's interest rate policy will have significant distributional consequences, which are likely to be shrouded from the public by rhetoric that focuses on average impacts across the economy, rather than separately analyzing subgroups.

Taken together, the Fed's mandate implicitly creates a weighting over individuals' welfare. That is, by satisfying the conditions specified in their mandate, Fed officials generate winners and losers among sectors of the populace. Retrospective studies have provided empirical evidence to support these differential impacts by income and wealth.[211] Low-interest-rate environments have been shown to harm risk-averse savers investing in treasury bills and similar vehicles.[212] Low-income groups and unbanked people are likely to be most harmed by inflation.[213] High unemployment rates tend to hurt low-income populations the most.[214]

A growing literature has also documented disparities in the effects of monetary policy by race. Monetary policy has differential effects on Black unemployment rates.[215] Unexpected increases in interest rates decrease Black employment disproportionately, and result in longer durations of unemployment with slower recovery for Black workers.[216] Low interest rates and increased money supply, on the other hand, have complex impacts on the racial wealth gap.[217] Black households get larger gains in employment, but not in income.[218] In contrast, wealth increases less for Black households due to fewer high-return investments such as real estate.[219] Theoretical models calibrated using real-world data suggest that expansionary monetary policy with low interest rates may ultimately benefit Black and Hispanic populations the most.[220] Given the tremendous complexity of this type of policymaking, however, a lot remains to be understood in order to quantify the redistributive effects of monetary policy.

Despite the growing interest among academics in documenting the distributive effects of Fed policy choices, politicians and the public seem to be largely unaware of the Fed's redistributive role. Members of Congress proposed adding an explicit redistributive component to the Fed's mandate in

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[210] Kelly Evans, *The Fed Has Three Mandates,* CNBC (Oct. 20, 2023, 11:27 AM), https://www.cnbc.com/2023/10/20/kelly-evans-the-fed-has-three-mandates.html [https://perma.cc/V533-F48F].

[211] Renee Haltom, *Winners and Losers from Monetary Policy*, Richmond Fed (2012), https://www.richmondfed.org/-/media/richmondfedorg/publications/research/econ_focus/2012/q2-3/pdf/federal_reserve.pdf [https://perma.cc/9EE9-JFFQ].

[212] *Id.* at 6.

[213] *Id.* at 8.

[214] *Id.* at 9.

[215] *See generally* Rodgers, *supra* note 37.

[216] *Id.*

[217] Bartscher, *supra* note 37.

[218] *Id.*

[219] *Id.*

[220] Makoto Nakajima, *Monetary Policy with Racial Inequality* (Fed. Rsrv. Bank of Phila., Working Paper No. 23-9, 2023), https://papers.ssrn.com/abstract=4475084 [https://perma.cc/AH7U-VG76].

2021 and again in 2023.[221] If passed, the bill would require the Fed's actions to "foster the elimination of disparities across racial and ethnic groups with respect to employment, income, wealth, and access to affordable credit."[222] President Biden was in support of the bill, and had even mentioned an explicitly redistributive Fed mandate as a policy proposal in his original presidential campaign in 2020.[223] On the other hand, critical commentators branded this the "woke mandate" that would "politicize monetary policy" and require Fed policymakers to decide which economic outcomes are fair.[224]

The second Trump administration has moved in the opposite direction by taking unprecedented steps to decrease Fed independence.[225] One key move in this direction is Trump's attempt to remove Fed Governor Lisa Cook from her position, based on allegations of mortgage fraud.[226] In attacking central bank independence and, in particular, a respected Black female economist studying segregation and inequality, Trump has implicitly acknowledged that an independent Fed has the power to support a "woke" agenda that would clash with his political base.[227] Ultimately, the Fed plays many important roles in influencing the American economy, but both parties have separately acknowledged its power to redistribute income and wealth.

B. SEC Rules on Retail Investors

The Securities and Exchange Commission (SEC) is the primary regulator of the capital markets. The SEC engages in rulemaking, supervision and enforcement against financial institutions devoted to trading and investment. Though most participants in the capital markets are large firms, the actions taken by the SEC have significant impacts on ordinary people who have invested their savings in stocks or other financial assets.[228] This population, known as retail investors, is a significant focus of SEC rulemaking and

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[221] *See* Federal Reserve Racial and Economic Equity Act, H.R. 2543, 117th Cong. (2021); *Ranking Member Waters, supra* note 8.

[222] Federal Reserve Racial and Economic Equity Act, H.R. 4194, 118th Cong. (2023).

[223] Kurtzleben, *supra* note 9.

[224] *A Woke Mandate*, *supra* note 9; *see also* Dorn, *supra* note 9.

[225] Alexandra Thornton, *The Trump Administration's Interference With Federal Reserve Independence Carries Significant Risks*, Ctr. for Am. Progress (Sep. 25, 2025), https://www.americanprogress.org/article/the-trump-administrations-interference-with-federal-reserve-independence-carries-significant-risks/ [https://perma.cc/9ZZL-KYSC].

[226] Steven Greenhouse, *Why Trump's attacks on the Fed's independence are so dangerous*, The Guardian (Sep. 21, 2025), https://www.theguardian.com/global/commentisfree/2025/sep/21/trumps-fed-attacks-independence-dangerous [https://perma.cc/6MS8-CVMY].

[227] Curtis Bunn & Steve Kopack, *Lisa Cook's path to Fed governor prepared her for a fight in the spotlight*, NBC News (Aug. 28, 2025), https://www.nbcnews.com/news/nbcblk/lisa-cook-bio-federal-reserve-governor-trump-mortgage-fraud-rcna227565 [https://perma.cc/V4LV-BADU]; Bryan Fair, *Trump's effort to terminate Lisa Cook is a 'shameful abuse of executive power'*, S. Poverty L. Ctr. (Aug. 29, 2025), https://www.splcenter.org/resources/hopewatch/trump-lisa-cook-federal-reserve-board-governors/ [https://perma.cc/G67T-6QCW]; *Firing Federal Reserve Governor Lisa Cook*, Econ. Pol'y Inst. (Oct. 1, 2025), https://www.epi.org/policywatch/firing-federal-reserve-governor-lisa-cook/ [https://perma.cc/HKH6-JUB2] (last visited Oct. 7, 2025).

[228] Khrishan Arora, *The Rise of the Retail Investor*, Forbes (Nov. 4, 2022, 7:30 AM), https://www.forbes.com/sites/forbesagencycouncil/2022/11/04/the-rise-of-the-retail-investor/ [https://perma.cc/P5ZB-HYCX].

enforcement.[229] Retail investors' returns depend on the smooth functioning of capital markets.[230] Retirees and upwardly mobile workers can have their entire lives upended if they make the wrong investment.[231] Despite the SEC having responsibility for managing markets for the benefits of all participants, their policies have the disproportionate impacts on unsophisticated investors who are least able to bear losses in risky financial ventures.[232]

At its core, the SEC's regulatory focus is ensuring that information and investment returns flow from the sophisticated and wealthy institutional market participants to small retail investors. Its redistributive mission is evident in the three-part mandate: protecting investors; maintaining fair, orderly, and efficient markets; and facilitating capital formation.[233] Commentators have noted that the first part of the SEC's mandate has long focused on retail investors.[234] Indeed, the goal of introducing securities laws after the Great Depression was motivated by a desire to avoid a repeat of the stock market crash, with a focus on protecting the most vulnerable investors, who were too uninformed to protect themselves from loss.[235] Moreover, the second part of the mandate introduces an explicit reference to redistribution—maintaining *fair* markets requires weighing concerns for equity against any benefits for efficiency.[236] Debates around high-frequency trading,[237] insider trading,[238] and mandatory disclosure[239] have centered around equitable concerns created by lack of regulation. Finally, the goal of facilitating capital formation has made the SEC's mission special among agencies. In its role as regulator, the SEC is required to help the industries it targets to grow.[240] Part of this mission involves helping small enterprises and underrepresented minorities to raise money.[241] The SEC

[229] *See* Donald C. Langevoort, *The SEC, Retail Investors, and the Institutionalization of the Securities Markets*, 95 Va. L. Rev. 1025, 1029–35 (2009).

[230] *See generally* Spamann, *supra* note 4.

[231] *See generally* Fisch & Wilkinson-Ryan, *supra* note 41.

[232] Winston, *supra* note 1, at 786.

[233] *Mission*, SEC, https://www.sec.gov/about/mission [https://perma.cc/ZR6S-CYNX] (last updated Dec. 29, 2023).

[234] Langevoort, *supra* note 229 at 1025.

[235] *See generally* Joel Seligman, The Transformation of Wall Street: A History of the Securities and Exchange Commission and Modern Corporate Finance (3d ed. 2003).

[236] Janet Austin, *What Exactly Is Market Integrity: An Analysis of One of the Core Objectives of Securities Regulation*, 8 Wm. & Mary Bus. L. Rev. 215, 220 (2016).

[237] *Id.*

[238] Kimberly D. Krawiec, *Fairness, Efficiency, and Insider Trading: Deconstructing the Coin to the Realm in the Information Age*, 95 Nw. U. L. Rev. 443, 444 (2000).

[239] Jeff Schwartz, *Fairness, Utility, and Market Risk*, 89 Or. L. Rev. 175, 177 (2010); *see also* Adam O. Emmerich et al., *Fair Markets and Fair Disclosure: Some Thoughts on the Law and Economics of Blockholder Disclosure, and the Use and Abuse of Shareholder Power*, 3 Harv. Bus. L. Rev. 135, 139 (2013).

[240] *See generally* David S. Ruder, *Balancing Investor Protection with Capital Formation Needs After the SEC Chamber of Commerce Case -- Investors Rights Symposium*, 26 Pace L. Rev. 39 (2005).

[241] *Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets,* SEC (Nov. 30, 2022), https://www.sec.gov/corpfin/facilitating-capital-formation-secg [https://perma.cc/F8SL-JVXX]; *SEC Adopts Rules to Facilitate Smaller Companies' Access to Capital*, SEC (March 25, 2015), https://www.sec.gov/news/press-release/2015-49#:~:text=The%20Securities%20and%20Exchange%20Commission,for%20smaller%20issuers%20of%20securities [https://perma.cc/AM9L-P2NJ]; Caroline A. Crenshaw,

would not be satisfying its mandate if it did not prioritize the disadvantaged participants in the financial markets.

Three examples of SEC rulemaking and enforcement in recent years have demonstrated the distributional consequences of capital markets regulation. First, the accredited investors rule has limited risk-taking among unsophisticated investors.[242] Typically, retail investors have access to securities sold by public companies and registered with the SEC. Registration means that companies must disclose information about the potential risks and returns associated with an investment opportunity, to the benefit of uninformed investors. Private investment opportunities that do not satisfy these rules, such as early stage private companies raising venture capital and hedge funds engaging in short selling, are typically available only to accredited investors.[243] Investors are deemed "accredited" if they have more than $200,000 a year in income consistently, or over $1 million in non-housing wealth, or alternatively if they passed exams to qualify as a financial advisor.[244] The justification for restricting investment opportunities to wealthy or educated investors was that these groups could best avoid or absorb the potential losses associated with high-risk investments.[245] Nevertheless, the high risks of these investment opportunities are also associated with high rewards. During the 2008 financial crisis, private investments provided valuable returns when the public markets were suffering from serious losses.[246] Moreover, accreditation disproportionately prevents low-income and minority investors from receiving the high returns available to more wealthy investors, perpetuating existing patterns of income and wealth inequality.[247] Although the rule was recently updated to expand access, the SEC's conception of appropriate risk-taking favors the wealthy.

Second, another recent SEC rule, Regulation Best Interest (Reg BI), has also influenced retail investors' access to non-traditional investments. In 2019, the SEC passed Reg BI, which was intended to harmonize rules applying to financial advisors.[248] Historically, there were two types of financial advisors in the US market: registered investment advisors (RIAs) and broker-dealers (BDs).[249] RIAs had a fiduciary duty to their clients to recommend the best

Remarks to Small Business Capital Formation Advisory Committee (Nov. 29, 2023), https://www.sec.gov/news/speech/crenshaw-remarks-sbcfac-112923 [https://perma.cc/H6GM-YDFN].

[242] Winston, *supra* note 1, at 801–02 (2021).

[243] *Accredited Investors: Updated Investor Bulletin,* SEC, (April 14, 2021), https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-bulletins/updated-3 [https://perma.cc/R7TW-FJ7Z].

[244] 17 C.F.R. § 230.501 (2011).

[245] *Accredited Investors: Updated Investor Bulletin, supra* note 243.

[246] Mauro Pfister & Philippe Jost, *Private Equity During the Global Financial Crisis: Investing in the Next Generation*, Capital Dynamics (Sept. 2017), https://www.capdyn.com/Customer-Content/www/news/PDFs/privateequityfinancialcrisis_nextgeneration15sep17.pdf [https://perma.cc/H7NF-RC39].

[247] Mariah Lichtenstern, *Investors Still Engage in Racist Redlining. Why Haven't We Done Something About It?* Fortune (Jan. 6, 2021, 7:00 PM), https://fortune.com/2021/01/06/redlining-black-latinx-entrepreneurship-investment-sec/ [https://perma.cc/8NLH-JQX5]; Winston, *supra* note 1.

[248] Vivek Bhattacharya et al., *Fiduciary Duty and the Market for Financial Advice*, (Nat. Bureau of Econ. Rsch., Working Paper No. 25861 2023), https://www.nber.org/papers/w25861 [https://perma.cc/24ED-3KJ2].

[249] *Id.* at 4.

products to customers and were typically paid a fraction of the total portfolio size to manage all the customers' investments.[250] BDs were considered order-takers who often were paid by commissions that created conflicts of interest between them and the client.[251] Over time, the function of BDs and RIAs converged, with both types of advisors making product recommendations and serving retail clientele.[252] The law did not change, resulting in a two-tiered market in which BDs with conflicts of interest served lower-wealth populations.[253] In and of itself, this distinction creates distributional consequences for investors at different wealth levels. Reg BI was intended to level the playing field by requiring all advisors to disclose conflicts of interest to investors and to document that their investment recommendations matched the needs and wants of their clients.[254]

The success of Reg BI has been debated, however. Proponents have argued that it has revolutionized investment recommendations and advisor compensation.[255] Criticisms have included the broad emphasis on disclosure over substantive direction to advisors, with new terms being used that are hard to interpret.[256] SEC officials noted that these issues with Reg BI would particularly hurt vulnerable investors.[257] Moreover, the SEC's enforcement of Reg BI has created uncertainty over how many high-risk investments an advisor can recommend, even with appropriate disclosure.[258] The SEC sued investors for violating Reg BI when they recommended high-risk assets to risk-averse retirees.[259] This conflicts with the SEC's own advice that investors diversify their investments, with both high- and low-risk assets having a place in a risk-averse investor's portfolio.[260] In response, the Department of Labor is currently introducing additional regulation aimed at protecting the most

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[250] *Id.* at 5.

[251] *Id.*

[252] Michael Kitces, *The Great Convergence And The Death Of Fiduciary Differentiation (For RIAs)*, Kitces (Jul. 15, 2019), https://www.kitces.com/blog/great-convergence-ria-fiduciary-marketing-differentiation-broker-dealer-regulation-best-interest/ [https://perma.cc/QG6Q-SE6R].

[253] U.S. Sec. & Exch. Comm'n, *Study on Investment Advisers and Broker-Dealers* 154 (Jan. 2011), https://www.sec.gov/news/studies/2011/913studyfinal.pdf [https://perma.cc/5JJ7-LK7L] (describing how removing the broker-dealer exception may limit access to financial advice for low wealth consumers, implying that low wealth consumers rely heavily on BDs).

[254] *Regulation Best Interest, Form CRS and Related Interpretations,* SEC (Dec. 8, 2023), https://www.sec.gov/regulation-best-interest [https://perma.cc/BG45-YFMN].

[255] Mark Schoeff Jr., *Reg BI Turns 2, But Not Everyone Is Celebrating,* Investment News (May 16, 2022), https://www.investmentnews.com/regulation-and-legislation/reg-bi-turns-2-but-not-everyone-is-celebrating/221445 [https://perma.cc/6BMD-UGSZ].

[256] *Id.*

[257] Robert J. Jackson Jr, *Statement on Final Rules Governing Investment Advice,* SEC (June 5, 2019), https://www.sec.gov/news/public-statement/statement-jackson-060519-iabd [https://perma.cc/A98U-F5AS].

[258] Complaint & Jury Demand, SEC v. Western International Securities, No. 2:22-cv-04119, 4 (C.D. Cal. June 15, 2022), https://www.sec.gov/files/litigation/complaints/2022/comp-pr2022-110.pdf [https://perma.cc/225R-BVP8].

[259] Pete S. Michaels et al.,, *High Risk, No Reward: SEC's First Reg BI Enforcement Action,* Mintz (June 21, 2022), https://www.mintz.com/insights-center/viewpoints/2161/2022-06-21-high-risk-no-reward-secs-first-reg-bi-enforcement-action [https://perma.cc/X875-R9BP].

[260] *Beginners' Guide to Asset Allocation, Diversification, and Rebalancing,* SEC (Aug. 27, 2009), https://www.sec.gov/about/reports-publications/investor-publications/investor-pubs-asset-allocation [https://perma.cc/F5FF-ATWC].

vulnerable investors: retirees.[261] Not only has the SEC's regulation of financial advice re-allocated returns across investors with different levels of wealth, it has also restricted vulnerable investors to moderately risky investments.

Third, enforcement actions against Robinhood and other companies serving "ultra retail" investors have shined light on the distributive consequences of capital market regulation.[262] Robinhood revolutionized the brokerage marketplace by providing no-fee accounts with little to no minimum balance to young, tech savvy investors. Their clients were encouraged to invest in fractional shares of big companies, as well as in complex structured investments like options and derivatives. Robinhood's stated mission was to democratize finance, meaning that retail investors would have access to the same assets as wealthy institutional investors.[263] Its business model relied on Robinhood being paid for routing their orders through specific trading firms.[264] The execution prices of these trades were lower than they would have been if completed on regulated exchanges, essentially decreasing Robinhood's investors' returns.[265] Regulatory attention promptly focused on Robinhood, with state regulators, FINRA, and the SEC suing the company on a variety of bases. Among other claims, the SEC contended that Robinhood misled its clients about the cost of trading through the app, potentially letting investors believe they were receiving the same net returns as they would have using a more traditional brokerage service.[266] Other research has shown how Robinhood's user interface, which resembles social media, causes investors to overestimate their knowledge and ability, with disparate impacts on minority investors who ultimately absorb more losses.[267] Robinhood's stock price plummeted after its initial public offering in 2021, and the company has continued to struggle with regulators.[268] The SEC has used its strategic enforcement actions to send

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[261] *U.S. Department of Labor Announces Proposed Rule to Protect Retirement Savers' Interests by Updating Definition of Investment Advise Fiduciary*, U.S. Dept. of Labor (Oct. 31, 2023), https://www.dol.gov/newsroom/releases/ebsa/ebsa20231031 [https://perma.cc/77ZD-XUCK].

[262] Cable, *supra* note 2, at 701.

[263] *About Us,* Robinhood, https://robinhood.com/us/en/about-us/ [https://perma.cc/T35G-4AZR].

[264] Cable, *supra* note 2, at 686; Dennis M. Kelleher et al.,, *Securities - Democratizing Equity Markets With and Without Exploitation: Robinhood, GameStop, Hedge Funds, Gamification, High Frequency Trading, and More*, 44 W. New Eng. L. Rev. 51, 74 (2022).

[265] Christopher Schwarz et al., *The "Actual Retail Price" of Equity Trades*, 35 (Aug. 17, 2022), https://papers.ssrn.com/abstract=4557302 [https://perma.cc/9RS4-8UFG]; Stanislav Dolgopolov, *Off-Exchange Market Makers and Their Best Execution Obligations: An Evolving Mixture of Market Reform, Regulatory Enforcement, and Litigation*, 17 N.Y.U. J.L. & Bus. 477, 479 (2021).

[266] *See* Khristopher J. Brooks, *Robinhood Financial Fined $65 Million by SEC for Misleading Users*, CBS (Dec. 17, 2020), https://www.cbsnews.com/news/robinhood-sec-fine-65-million/ [https://perma.cc/8SUC-JRBJ]; Michael J. de la Merced & Erin Griffith, *Robinhood is Fined $70 Million Over Misleading Customers & System Outages*, N.Y. Times (June 30, 2021), https://www.nytimes.com/2021/06/30/technology/robinhood-fined-misleading-customers.html [https://perma.cc/7YXT-F5EJ].

[267] Andrew Ridgeway & Noah Wason, *From the Poor to the Rich: Predatory Inclusion and the Robinhood App*, 70 Technical Commc'n 60, 62–68 (2023).

[268] *See California Joins Multiple States in $10 Million Settlement with Robinhood for Failing Investors,* Calif. Dept. of Fin. Prot. and Innovation (Apr. 6, 2023), https://dfpi.ca.gov/press_release/california-joins-multiple-states-in-10-million-settlement-with-robinhood-for-failing-investors [https://perma.cc/TQ2L-DKYY].

a strong message: Services diversifying access to high risk assets may raise the ire of regulators, limiting future profits.

Taken together, these three actions have steered investors with low wealth towards low-risk assets, while those with high wealth are free to take bigger risks and potentially receive bigger rewards. This approach prioritizes the investor protection mandate over that of capital formation, since retail investors with high risk tolerance are discouraged from matching their preferences to their investment profile.[269] Therefore, SEC retail investor rules make it impossible or costly for risk-loving investors to match their preferences, limiting them to lower average returns than their ideal portfolio. In contrast, investors with moderate risk tolerance are implicitly subsidized by regulations that maximize liquidity and returns on assets like stock market indices. This would be progressive if risk-loving investors were predominantly wealthy, but empirical research suggests that this is not the case.[270] Rich investors are often older, with many responsibilities and potential spending needs, such as retirees. On the other hand, young and low-wealth people may have a higher tolerance for speculative investment as they try to build wealth without as many liquidity needs.[271] It is likely that the SEC engages in some regressive redistribution across investors.

More broadly, the limits of the SEC's mandates create inequalities between investors and savers. Low-income, low-wealth individuals who do not participate in the capital markets, but save in bank accounts, do not receive the benefits of the SEC's capital formation mandate. Fair prices and relatively high returns are some of the primary benefits the SEC offers.[272] A significant difference exists between average returns offered by FDIC-insured savings accounts and even the most basic brokerage accounts.[273] Bank regulators, unlike the SEC, do not have a mandate to increase returns on deposits.[274] Ultimately, the SEC benefits savers who want to pull money out of a savings account and put it into a brokerage account to invest in a moderately risky portfolio. Individuals with very high and very low risk tolerance, both of whom may be in the bottom of the wealth distribution, subsidize moderate risk takers. In return, the SEC helps ensure that ordinary investors with small portfolios receive moderate returns at relatively low risk.

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[269] Michaels et al., *supra* note 259.; Lichtenstern, *supra* note 247; Brooks, *supra* note 266.

[270] Daniel Paravisini et al., *Risk Aversion and Wealth: Evidence from Person-to-Person Lending Portfolios*, 63 Mgmt. Sci. 279, 281 (2017).

[271] *Id.* at 285.

[272] *See generally* Spamann, *supra* note 4.

[273] Alice Holbrook & Ruth Sarreal, *Saving vs. Investing: Know the Differences and How to Choose*, NerdWallet (June 9, 2023), https://www.nerdwallet.com/article/banking/saving-vs-investing-when-to-choose-how-to-do-it [https://perma.cc/R9XZ-5YNL]; *Oversight of Financial Regulators: Protecting Main Street, Not Wall Street: Hearing Before the S. Comm. on Banking, Housing, and Urban Affs.*, 118th Cong. (2023) (statement of Martin J. Gruenberg, Chairman, FDIC), https://www.fdic.gov/news/speeches/2023/spnov1423.html [https://perma.cc/Z9EC-7ZGF].

[274] *FDIC Annual Report (*2020), https://www.fdic.gov/about/financial-reports/reports/2020annualreport/ar20mission.pdf [https://perma.cc/2SL7-5PET].

C. CFPB Loan Regulations

The CFPB is one of the youngest federal agencies and has been focused specifically on consumer-facing financial services companies. Since its inception, it has been more vocal about its focus on distributive justice than the other agencies discussed above.[275] Part of this comes from the history of the CFPB, introduced by Senator Elizabeth Warren as part of her broader interest in issues of redistribution.[276] It is also the agency tasked with supervision of fair lending, scrutinizing racial differences in lending and other financial services.[277] The CFPB has aggressively fought historical redlining in mortgage lending, as well as other credit lines.[278] Unlike other financial regulators, the CFPB has broadcast its role in the social safety net and in ensuring equity across groups, and has been willing to take the political consequences.[279] The agency has had to face continuous challenges to its authority both on procedural and substantive grounds.[280] With a majority of the detractors coming from the right of the political spectrum, the CFPB has a reputation as a left-leaning, progressive agency.[281]

Nevertheless, CFPB rulemaking has had unintended consequences that do not match the agency's reputation. Pursuant to the agency's mandate, the CFPB promulgated final rules in 2013 requiring mortgage lenders to consider a borrower's ability to repay their mortgage in underwriting.[282] These rules, referred to collectively as Ability-to-Repay/Qualified Mortgage (ATR/QM), were intended to discourage risky lending. They were designed with a two-part structure. First, loans were required to be underwritten based on seven repayment factors, which would require lenders to gather information about income, savings and expenses.[283] Second, a safe harbor from

[275] Ashley Hutto-Schults & Michael Buckalew, *Far-Ranging CFPB Action Expected in Support of Racial Equity Priorities* Davis Wright Tremaine (June 30, 2021), https://www.dwt.com/blogs/financial-services-law-advisor/2021/06/cfpb-racial-equity-priorities [https://perma.cc/7CQB-7DJ8].

[276] *Testimony of Elizabeth Warren Before the House Financial Services Committee*, CFPB (Mar. 16, 2011), https://www.consumerfinance.gov/about-us/newsroom/testimony-of-elizabeth-warren-before-the-house-financial-services-committee/ [https://perma.cc/DXV9-A9US].

[277] 12 CFR § 1002.1(a) (2011).

[278] Abigail M. Lyle & Nicole Skolnekovich, *Navigating Fair Lending and Redlining Considerations under the Biden Administration*, 139 Banking L.J. 138, 138–39 (2022); Nanci L. Weissgold et al., *Modern-Day Redlining Enforcement: A New Baseline*, 139 Banking L.J. 86, 89–90 (2022).

[279] Aaron Nicodemus, *CFPB under Biden will likely get new director, new direction.*, 17 Compliance Week 30 (2020).

[280] *See* Seila L. LLC v. Consumer Fin. Prot. Bureau, 591 U.S. 197 (2020); Consumer Fin. Prot. Bureau v. Credit Acceptance Corp., No. 23-CV-00038 (JHR), 2023 WL 5013303 (S.D.N.Y. Aug. 7, 2023); Bureau of Consumer Fin. Prot. v. Townstone Fin., Inc., No. 20-CV-4176, 2023 WL 1766484 (N.D. Ill. Feb. 3, 2023); *Hurting Consumers' Wallets*, *supra* note 12.

[281] Jackie Wattles & Matt Egan, *Why Wall Street and Republicans Hate the CFPB*, CNN (Nov. 27, 2017), https://www.cnn.com/2017/11/25/news/wall-street-elizabeth-warren-consumer-financial-protection-bureau/index.html [https://perma.cc/2CTV-SCTE].

[282] 15 U.S.C. § 1639 ("A creditor shall not engage in a pattern or practice of extending credit to consumers . . . based on the consumers' collateral without regard to the consumers' repayment ability, including the consumers' current and expected income, current obligations, and employment.").

[283] 12 C.F.R § 1026 (2014).

stringent underwriting requirements was created for mortgages with safe features, including no exotic features like balloons or negative amortization, and which would result in a debt-to-income ratio below 43 percent.[284] The goal of this structure was to allow exotic mortgages to continue being originated when necessary and prudent, while providing a fast track through regulatory quagmire for low-risk loans.[285]

In practice, low-income borrowers who couldn't afford traditional mortgages but wanted to buy a home were now at a significant disadvantage in the mortgage market. Loans targeted to risky borrowers became very difficult to access, with qualified mortgages comprising the vast majority of loans originated after the rule was implemented.[286] Overall lending volume dropped, eliminating 15 percent of loans and decreasing loan amounts for 20 percent of riskier borrowers.[287] The resulting drop in originations particularly impacted middle income households, while the rich were relatively unaffected.[288] The CFPB recognized the unintended regressive consequences of its rule by 2020, when it promulgated amended definitions of "qualified mortgages."[289] The most significant change was that the debt-to-income ratio cap was lifted in favor of price-based restrictions that favored low-interest-rate loans.[290] At the same time, the housing market boomed, making 2021 a significant growth year for homebuyers.[291]

More recently, the CFPB attempted rulemaking around payday loans with a similar structure to the QM rules. The first version of the rule included provisions that would mandate underwriting on the basis of ability to repay.[292] Lenders were required to verify income and expenses from a credit reporting agency and check that enough disposable income would remain to pay off the loan within three rollover cycles.[293] The rule would cover short term loans with a maturity of forty-five days or fewer, as well as longer-term loans with a balloon payment. The purpose was to cover payday loans, vehicle title loans,

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[284] *Id.*

[285] David Reiss, *Message in a Mortgage: What Dodd-Frank's Qualified Mortgage Tells Us about Ourselves*, 31 Rev. Banking & Fin. L. 717, 725–26 (2012).

[286] *See generally* Anthony A Defusco et al., *Regulating Household Leverage*, 87 Rev. Econ. Stud. 914 (2020).

[287] *Id.* at 917.

[288] D'Acunto & Rossi, *supra* note 48 at 485; *see also* Fuster, *supra* note 48 at 1; Patricia A. McCoy & Susan M. Wachter, *The Macroprudential Implications of the Qualified Mortgage Debate: Law and Macroeconomics*, 83 Law & Contemp. Probs. 21, 23 (2020).

[289] *Consumer Financial Protection Bureau Issues Two Final Rules to Promote Access to Responsible, Affordable Mortgage Credit*, CFPB (Dec. 10, 2020), https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-issues-two-final-rules-promote-access-responsible-affordable-mortgage-credit/ [https://perma.cc/Z8D9-65LG].

[290] *Id.*

[291] Richard Fry, *Amid a Pandemic and a Recession, Americans Go On a Near-Record Homebuying Spree,* Pew Rsch. Ctr. (Mar. 8, 2021), https://www.pewresearch.org/short-reads/2021/03/08/amid-a-pandemic-and-a-recession-americans-go-on-a-near-record-homebuying-spree/ [https://perma.cc/VHU8-QD63].

[292] *Executive Summary*, *supra* note 47.

[293] *Id.*

and alternatives that were widely perceived as "debt traps" that encouraged nonpayment, rollovers, and ever-mounting fees.[294]

Research into payday loan usage does not suggest that such a rule would universally benefit borrowers. Bans and restrictions on payday lending have been shown to have significant negative impacts on borrowers, either pushing them to use even riskier credit products or causing worse financial distress.[295] Theoretically, pricing payday loans in such a way that would limit rollovers could help payday borrowers balance the need for liquidity with a way out from a debt trap.[296] In practice, however, the cost of implementing such underwriting standards could wipe out access to short-term loans altogether.[297] Just as in the QM/ATR rule case, critics were concerned about the shutdown of a market that predominantly benefited minority and low-income communities.

In 2019, after pushback from industry and a change in CFPB leadership, the ability-to-repay portion of the payday rule—originally promulgated in 2017—was delayed.[298] The underwriting procedures were revoked in 2020, though other provisions limiting collection attempts remained in place.[299] Moreover, the second Trump administration has made it a priority to reduce much of the CFPB's regulatory authority and activity throughout 2025.[300] Layoffs, budget cuts, and orders to stop long-standing work have limited the oversight the CFPB can provide across much of its portfolio, and legal challenges are unlikely to fully reverse these changes during the remainder of Trump's term.[301] Ultimately, this financial regulator, like others, has been an arbiter of *who* can and should use credit to smooth their consumption over time, laying out the boundaries of the credit-based safety net.[302] The Trump administration's aggression against the CFPB is therefore consistent with other policy changes intended to decrease the size of the safety net, including

[294] Susanna Montezemolo, *Payday Lending Abuses and Predatory Practices*, 2 (Ctr. for Responsible Lending, 2013), https://papers.ssrn.com/abstract=2391403 [https://perma.cc/46H9-Y7VY].

[295] Paige Marta Skiba, *Regulation of Payday Loans: Misguided Regulation in the Fringe Economy Symposium*, 69 Wash. & Lee L. Rev. 1023, 1038 (2012); Neil Bhutta at al., *Consumer Borrowing after Payday Loan Bans*, 59 J. L. and Econ. 225, 227 (2016); Donald P. Morgan & Michael R. Strain, *Payday Holiday: How Households Fare After Payday Credit Bans*, 24 (Fed. Rsrv. Bank of N.Y., Staff Report No. 309, 2010), https://papers.ssrn.com/abstract=1032621 [https://perma.cc/NUE8-H9NQ] (last revised June 10, 2010); Chintal A. Desai & Gregory Elliehausen, *The Effect of State Bans of Payday Lending on Consumer Credit Delinquencies*, 64 Q. Rev. Econ. and Fin. 94, 104 (2017).

[296] Hunt Allcott et al., *Are High-Interest Loans Predatory? Theory and Evidence from Payday Lending*, 89 Rev. Econ. Stud. 1041, 1070 (2022).

[297] Chris Daniel et al., C*FPB Payday Rule: A Ban or a Blueprint for the Future of Short-Term Consumer Lending?*, Paul Hastings (Oct. 19, 2017), https://www.paulhastings.com/insights/client-alerts/cfpb-payday-rule-a-ban-or-a-blueprint-for-the-future-of-short-term-consumer-lending [https://perma.cc/W6HA-6DWJ].

[298] Kelsey Ramirez, *Kraninger Releases Plan to Gut CFPB Payday Lending Rule,* Housing Wire (Feb. 6, 2019), https://www.housingwire.com/articles/48121-kraninger-releases-plan-to-gut-cfpb-payday-lending-rule/ [https://perma.cc/FS7B-YHSP].

[299] *Executive Summary of the July 2020 Amendments*, *supra* note 49.

[300] Eric Katz, *Trump may proceed with dismantling and mass layoffs at CFPB, court rules*, Gov. Exec. (Aug. 15, 2025), https://www.govexec.com/management/2025/08/trump-may-proceed-dismantling-and-mass-layoffs-cfpb-court-rules/407486/ [https://perma.cc/Y4J8-8H34].

[301] Kaplinsky, Andreano, & Culhane, *supra* note 51.

[302] Atkinson, *Rethinking Credit*, *supra* note 1.

cuts to Medicaid and SNAP in the One Big Beautiful Bill.[303] Through his naked hostility to the CFPB, Trump has solidified its reputation as a financial regulator with unique powers to redistribute to the needy.

IV. Disadvantages and Advantages of Regulatory Safety Nets

In the examples above, I have shown that financial regulators like the Fed, the SEC, and the CFPB are key participants in the new social safety net and are often required to pursue redistributive goals by their mandates. New policy instruments like the COVID-19 payment pauses utilize financial regulation to directly provide government benefits and redistribute across individuals. So, why don't regulators acknowledge that they are part of the social safety net?

Conceptualizing financial regulation as a part of the social safety net would require challenging fundamental assumptions that scholars and policymakers have espoused over the last thirty years. In this Part, I describe influential arguments made by law and economics scholars that describe the disadvantages of using laws outside the tax code to redistribute and provide safety nets. New scholarship has challenged the supremacy of this view, but financial regulation has been largely excluded from the conversation.

I then document how financial regulation has two key advantages in providing an effective safety net. First, regulatory safety nets can redistribute resources outside cash by redistributing risk, providing emergency liquidity, and subsidizing returns on investments. Second, safety nets implemented through regulation are cheaper to finance, since they can be paid for through implicit or explicit government guarantees.

A. Efficiency and the Tax Supremacy Theory

The tax and transfer system has long been the primary source of redistribution. Although many forms of taxation were used to redistribute, progressive income taxes were both theoretically and practically popular throughout history. Progressive taxation was described by ancient Greek philosophers, justified by the difference in value of additional goods to the rich, who value them very little, as opposed to the poor, who value them highly.[304] These were implemented by wealth taxes, in which wealthy residents were forced to contribute to public programs that benefited all classes.[305] Later, when preparing for the Napoleonic wars in 1799, Britain implemented a progressive income tax where tax rates were less than 1 percent for lower incomes and up to 10 percent on higher incomes.[306] Utilitarian philosophers formulated

[303] Jacob Wendler, *Republicans are making changes to SNAP and Medicaid. County officials say they're not prepared to handle it.*, Politico (Sep. 27, 2025), https://www.politico.com/news/2025/09/27/trump-snap-medicaid-county-cuts-00582624 [https://perma.cc/XHF8-62KR].

[304] Westin, *supra* note 55, 207–08.

[305] *Id.* at 210.

[306] *Id.* at 215.

theoretical justifications for progressive income tax, which intended to maximize the welfare, or well-being, of the maximum number of people. To do so, resources had to be redistributed from the wealthy to low-income groups, whether through a wealth tax, income tax, or estate tax.[307] Utilitarian ideas spread in popularity throughout the first half of the nineteenth century.

The first progressive income tax in the US was implemented shortly thereafter, in 1862, to fund the government during the Civil War.[308] Though this was in large part an emergency measure, the Sixteenth Amendment and the Revenue Act of 1913 solidified the important role income taxes would play in financing the federal government.[309] The Sixteenth Amendment granted the federal government the power to levy taxes of any design.[310] The Revenue Act specified six tax brackets, which were taxed between 1 and 6 percent.[311] Congressional debates prior to the passage of the Act suggested that fairness was a key motivating factor in the implementation of an income tax, as opposed to the more common excise tax.[312] Since excise taxes required low-income groups to pay a larger fraction of their income or wealth towards taxes than the rich, legislators were motivated to implement a system that would more fairly distribute the cost of taxes across individuals.[313] The goal was not necessarily to redistribute *income*, but instead to assign tax rates on the basis of ability to pay. Implicitly, income tax was a mechanism used to achieve the ultimate goal of redistributing welfare, or well-being, across individuals in a fair way. Nevertheless, progressive income tax became entrenched throughout the twentieth century in the US, overcoming objections that progressivity contradicted the principles of proportionate taxation that had motivated the American Revolution.[314]

The modern tradition of law and economics approach has used newer models of economic thought to justify the supremacy of progressive income tax as a mechanism for redistribution.[315] Kaplow and Shavell are credited with the seminal contributions to this literature in a series of highly cited pieces.[316]

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[307] *Id.* at 218–19.
[308] *Id.* at 223.
[309] *Id.* at 224.
[310] *Id.*
[311] *Id.*
[312] *Id.*
[313] *Id* at 225.
[314] Walter J. Blum & Harry Kalven Jr., *The Uneasy Case for Progressive Taxation*, 19 U. Chi. L. Rev. 417, 418–19 (1952).
[315] *See, e.g.*, Hylland & Zeckhauser, *supra* note 16 (introducing a formal economic model describing the efficiency benefits of limiting redistribution to the income tax system); Shavell, *A Note of Efficiency*, *supra* note 16 (providing the mathematical basis for Kaplow and Shavell's future work in the legal field arguing for the supremacy of efficiency in deciding legal rules); Kaplow & Shavell, *Why the Legal System Is Less Efficient*, *supra* note 16 (translating the intuitions of economics articles on redistribution to a law audience); Kaplow & Shavell, *Should Legal Rules Favor the Poor?*, *supra* note 16 (following up on previous literature to respond to critiques by Sanchirico and others).
[316] *See generally* Shavell, *A Note of Efficiency*, *supra* note 16; Kaplow & Shavell, *Why the Legal System Is Less Efficient*, *supra* note 16; Kaplow & Shavell, *Should Legal Rules Favor the Poor?*, *supra* note 16.

They argue that redistributing cash from high- to low-income groups cannot be done efficiently through redistributive legal rules outside the tax code.[317] Their argument is based on economic theory, which suggests that maximizing overall welfare across individuals would increase the size of the "pie" from which redistributive slices are cut.[318] Any legal rule that shrinks the size of the pie should be replaced with an efficient alternative. Kaplow and Shavell focus on the distortion in incentives to work created by progressive income tax, and compare it to the incentives created by other progressive legal rules.[319] Taxes alone are distortive, because they shift the incentive for individuals to work, a phenomenon known as the tax elasticity of income. That is, a higher tax rate on the rich gives them less incentive to work an additional hour, since the government will collect a larger fraction of that wage in taxes. In essence, Kaplow and Shavell's argument is that legal rules should maximize potential tax revenue.[320] The larger the pot of government revenue, the greater the potential benefits of redistribution through the tax code.

Kaplow and Shavell's ideas have endured in popularity among law and economics scholars because they create a compelling and simple guideline for lawmakers.[321] Moreover, Kaplow and Shavell's ideas stamp modern economists' approval on the long-standing historical consensus around progressive taxation.[322] However, Kaplow and Shavell's insistence that tax law should be the exclusive domain of redistribution is more controversial. Their work may have given lawmakers outside the tax system a justification for ignoring the distributive consequences of their actions.[323] For example, administrative agencies engaging in complex rulemaking face the daunting task of trading off the well-being of many stakeholders in the cost-benefit analysis process. They have largely overlooked the distributional consequences of their rulemaking, justified by the primacy of efficiency in legal rules.[324]

In addition, Kaplow and Shavell have spurred a large literature of scholarly articles and policy research that contradicts their findings. A chorus of scholarly voices has encouraged lawmakers to push against the tax supremacy approach by incorporating distributional concerns into the crafting of legal rules.[325] The arguments raised by these dissenting voices have focused on three objections. First, they note that there are differences across people within the same income bracket that may result in progressive legal rules targeting different subpopulations than an income tax.[326] Second, they argue that other values

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[317] Kaplow & Shavell, *Should Legal Rules Favor the Poor?*, *supra* note 16, at 822.
[318] *Id.*
[319] *Id.*
[320] *Id.*
[321] *See* Adler & Posner, *supra* note 59, at 186.
[322] Westin, *supra* note 55 at 213–14.
[323] Revesz, *supra* note 61 at 1510–11.
[324] Adler & Posner, *supra* note 59, at 186 (1999) ("The purpose of CBA, as typically understood, is to separate out the distributional issue and isolate the efficiency issue, so that the agency will evaluate projects solely on the basis of their efficiency.").
[325] *See generally* Sanchirico, *supra* note 60; Lewinsohn-Zamir, *supra* note 60; Ronen, *supra* note 60; Bagchi, *supra* note 60; Fennell & McAdams, *supra* note 60; Liscow, *Is Efficiency Biased?*, *supra* note 60; Liscow, *Redistribution for Realists*, *supra* note 60.
[326] *See generally* Sanchirico, *supra* note 60; Avraham et al., *supra* note 60.

are at play, such as a philosophical commitment to fairness or democratic accountability, that would constrain legal rules from pursuing only efficiency.[327] Third, they argue that policymaking frictions make the implementation of Kaplow and Shavell's ideas implausible, while progressive legal rules have a higher chance of successfully remedying inequality.[328]

The first argument—discussed by Sanchirico, Avraham, Fortus, and Logue[329]—has to do with a key simplification made by Kaplow and Shavell that underpins their final results. The literature points out that Kaplow and Shavell implicitly assume that there is no difference in response to legal rules across social groups, meaning that when a particular fine is imposed on dangerous driving, for example, every driver is equally deterred from unsafe action.[330] This "homogeneity" in response to a fine means that scaling fines by income is distortive, since changing the level of the fine is not related the likelihood of taking care. If driving skill is correlated with income, this work argues, it may be optimal to impose different fines on rich and poor drivers.[331] Moreover, progressive fines create a unique outcome that an income tax cannot – they can redistribute from bad drivers to good drivers within income level. Therefore, progressive legal rules have an important role to play when the individual's key features are not their income, but instead a correlated characteristic.[332]

The second argument uses principles from philosophy and legal theory to establish alternative bases for redistribution. This literature does not take issue with the important role that progressive income taxes play in redistribution. Instead, it argues against the strong tax exclusivity that Kaplow and Shavell demonstrate, and instead provides a justification for considering distributive justice in all forms of lawmaking. Each piece provides different justifications for the inclusion of distributive justice in private law. Lewinsohn-Zamir suggests that a successful system of redistribution should do more than allocate money to the needy.[333] Instead, it should confer a sense of well-being on the needy, and the resources should be disbursed in a way that all participants in the system perceive as fair.[334] Lewinsohn-Zamir suggests that progressive income taxation may not provide the type of resources that the needy require and may cause humiliation, rather than satisfaction, upon receiving a subsidy.[335] Other forms of redistribution that avoid these pitfalls may be preferable. Bagchi also takes issue with Kaplow and Shavell's idea that private law should not take distributive justice into account.[336] She argues that a private

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[327] *See generally* Lewinsohn-Zamir, *supra* note 60; Bagchi, *supra* note 60; Liscow, *Redistribution for Realists*, *supra* note 60.

[328] *See generally* Jolls, *supra* note 60; Fennell & McAdams, *supra* note 60; Liscow, *Is Efficiency Biased?*, *supra* note 60.

[329] *See generally* Sanchirico, *supra* note 60; Avraham, et al., *supra* note 60.

[330] Sanchirico, *supra* note 60, at 800.

[331] *Id.*

[332] *Id.*

[333] Lewinsohn-Zamir, *supra* note 60, at 330.

[334] *Id.*

[335] *Id.* at 394–95.

[336] Bagchi, *supra* note 60, at 107–08.

law system that consistently results in distributive injustice destabilizes those legal institutions.[337] Therefore, a less efficient but more fair outcome in contract or tort cases may be preferable in order to maintain the stability of these institutions.[338]

The third argument focuses on Kaplow and Shavell's claim that any redistributive legal rule can be replaced with a more efficient tax. Jolls uses behavioral reasoning to argue that taxes may be more salient to individuals than legal rules.[339] If that is true, redistribution through legal rules will distort work incentives less than redistribution through taxation. Ultimately, the implication of Jolls' argument is that a realistic estimate of responsiveness to incentives created by redistribution may render legal rules more efficient than taxes.[340] Fennell and McAdams introduce political costs that make changes to the tax system costly.[341] In such a case, legal rules that maximize efficiency may increase the size of the pie, but the cost to change the tax code to compensate may be prohibitively high. Once political costs are included in the calculation, Fennell and McAdams show that legal rules dominate the tax code as a source of redistribution in a variety of applications.[342] Liscow shows that Kaldor-Hicks efficiency, the criteria which supports efficiency as the primary goal of legal rules, is fundamentally flawed if resources are "sticky."[343] That is, if only part of a re-allocation of resources due to one legal rule can be undone by another, the lost transaction cost can be enough to overturn Kaplow and Shavell's conclusions.[344] In many ways, Liscow generalizes the idea introduced by Fennell and McAdams, showing how any source of allocative stickiness could result in the need for redistributive legal rules.[345]

The practical implication of deviating from the tax supremacy theory is that regulators must acknowledge, measure, and account for the distributional consequences of policy choices. To do so, scholars of regulation have argued that cost-benefit analysis should incorporate distributional consequences. Revesz proposes that alongside traditional cost-benefit analysis, agencies should report differential effects of a rule on subpopulations of special interest.[346] The process of cost-benefit analysis is itself a complex and technical process of identifying, monetizing, and aggregating. Making separate calculations for each subpopulation can come with subtle technical challenges, including accurately valuing a statistical life.[347] Despite these challenges, the Biden administration revised OMB Circulars A-94 and A-4

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[337] *Id.*
[338] *Id.*
[339] Jolls, *supra* note 60, at 1658.
[340] *Id.*
[341] Fennel & McAdams, *supra* note 60, at 1052–53.
[342] *Id.*
[343] Liscow, *Is Efficiency Biased?*, *supra* note 60.
[344] *Id.* at 1664–68.
[345] *Id.*
[346] Revesz, *supra* note 61, at 1570–71.
[347] Hemel, *supra* note 61, at 652.

in 2023 to specify that cost-benefit analysis must incorporate distributional concerns in future.[348]

Though scholars and policymakers are beginning to recognize that regulation has redistributive effects, financial regulation has been largely excluded from this discussion. The reason is simple: Most financial regulations are excluded from traditional cost-benefit analysis, and many are promulgated by highly independent agencies such as the Fed.[349]

B. Redistributing Risk, Liquidity, and Returns For Less

In this Part, I argue that financial regulation can provide a safety net with features that cannot be replaced by the tax system. Primarily, this is because the tax and transfer system works with cash as its currency, while regulators use alternative financial instruments. Financial regulators can redistribute risk, provide emergency liquidity, and shift returns across subsets of the population. Moreover, I argue that financial regulation can do two things that an income tax cannot do. It can improve the function of regulated markets, increasing overall welfare and maximizing efficiency. It can also provide more help when individuals are in a bad state of the world, such as during times of financial distress. In contrast, I argue that income tax cannot by itself increase the efficiency of the economy, nor can it provide targeted relief during bad times. Finally, financial regulation is able to finance the new social safety net more cheaply than traditional benefits administrators. Regulators can provide government guarantees that are either explicit or implicit to boost private financial markets.

Regulators have access to three types of redistributive tools that are not available to tax authorities. The first is shifting risk across parties. Many agencies and quasi-governmental entities were created with the explicit mandate of redistributing risk. For example, GSEs, including Fannie Mae and Freddie Mac, re-insure residential mortgages and remove risk from mortgage investors and borrowers. The Federal Deposit Insurance Corporation (FDIC) removes risk from banks and depositors. Bank regulators impose rules that limit risk-taking by systemically important financial institutions. By shifting risk away

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[348] Off. of Mgmt. & Budget, Exec. Off. of the President, OMB Circular No. A-94, Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs (2023), https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-94.pdf [https://perma.cc/V3WJ-EDZ8]; Off. of Mgmt. & Budget, Exec. Off. of the President, OMB Circular No. A-4, Regulatory Analysis (2023), https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf [https://perma.cc/5Q68-G4CC].

[349] *See generally,* Eric A. Posner & E. Glen Weyl, *Benefit-Cost Paradigms in Financial Regulation*, 43 J. Legal Stud. S1 (2014); Eric A. Posner & E. Glen Weyl, *Benefit-Cost Analysis for Financial Regulation*, 103 Am. Econ. Rev. 393 (2013); John H. Cochrane, *Challenges for Cost-Benefit Analysis of Financial Regulation*, 43 J. Legal Stud. S63 (2014); John C. Coates IV, *Cost-Benefit Analysis of Financial Regulation: Case Studies and Implications*, 124 Yale L. J. 882 (2014); Cass R. Sunstein, *Financial Regulation and Cost-Benefit Analysis Collection: Cost-Benefit Analysis of Financial Regulation*, 124 Yale L. J. F. 263 (2014); Jeffrey N. Gordon, *The Empty Call for Benefit-Cost Analysis in Financial Regulation*, 43 J. Legal Stud. S351 (2014); Omri Ben-Shahar & Carl E. Schneider, *The Futility of Cost-Benefit Analysis in Financial Disclosure Regulation*, 43 J. Legal Stud. S253 (2014).

from individual borrowers, investors, and depositors, these rules expand the market for financial products and distribute those benefits among market participants. The redistributive impact of these regulations would be difficult to replicate through standard taxation. First, income taxes provide some benefits to borrowers, but not to investors in particular assets or depositors with bank accounts. Targeting the same population would be challenging. Moreover, there would be no market expansion achieved by taxation, and tax revenue would have to fully fund tax payments to the subsidized population. Since risk shifting provides insurance, the size of these markets expand, making the subsidies cheaper to provide.

The second mechanism for redistribution through financial regulation is liquidity provision. The federal government has grown significantly in its capacity as a lender over the past century. Direct lending programs include the historical role of the Home Owners' Loan Corporation (HOLC), federal student loans from the Department of Education, and some loans provided by the Small Business Administration (SBA). The Fed regularly engages in emergency lending during crises.[350] The COVID-19 payment pauses also fell into this category—though the government did not directly provide liquidity through the pauses, the restriction on creditors collecting payments meant that the federal government played a causal role in individuals' liquidity access. Many other indirect lending programs exist, including SBA-backed private loans.[351] Each of these programs have redistributive impacts because qualifying for a direct or subsidized loan opens doors to investment in a home, education, or business. Without these loans, many would not be able to go to college or realize high returns on investment opportunities. Replacing a loan with a tax credit would be challenging in two ways. First, in the absence of a lending program, it would be difficult for the government to identify which individuals would be willing to take these risks. Second, to compensate for not being able to make this investment, the tax code would have to pay the taxpayer the full potential value of their future earnings. This is prohibitively costly, especially compared to the social value resulting from simply financing the investment directly.

The third means by which regulators redistribute is shifting returns to investment across assets. Capital markets regulations, including disclosure rules[352] and limits on insider trading,[353] ensure that market participants share information. The result is fewer returns to insiders and more returns to outsiders without material non-public information. Bank capital requirements also implicitly limit the types of investments banks can make, shifting equilibria in

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[350] *Responding to Financial System Emergencies*, Fed. Rsrv., https://www.federalreserve.gov/financial-stability/responding-to-financial-system-emergencies.htm [https://perma.cc/2E3A-8JU3] (last visited Feb 12, 2024).

[351] *Loans*, U.S. Small Bus. Admin., https://www.sba.gov/funding-programs/loans [https://perma.cc/P94L-4DNZ] (last visited Feb 12, 2024).

[352] *Disclosure Guidance*, SEC, https://www.sec.gov/corpfin/cfdisclosure [https://perma.cc/55GG-LYAQ] (last visited Feb 12, 2024).

[353] Katherine D. Ashley et al., *What the SEC's New Insider Trading Rules Mean for Directors*, Skadden (Jan. 26, 2023) https://www.skadden.com/insights/publications/2023/01/what-the-secs-new-insider-trading-rules-mean [https://perma.cc/6YTM-ESWW].

markets for riskier assets like mortgage-backed securities.[354] The federal government also creates investment opportunities that may not have otherwise existed, such as relatively low-risk investment in Fannie Mae and Freddie Mac mortgages.[355] The fair allocation of returns across investors has a redistributive impact that is again difficult to replicate using tax law. Investors who would have received returns if regulation had been in place would be difficult to identify if regulation was removed and replaced with a tax. Moreover, the existence of information-sharing rules ensures fair markets that attract more investment and generate returns to society as a whole.[356]

Many of the policies discussed here can be implemented at relatively low cost, since only rulemaking is required and the private market steps in to provide the rest. Financial regulators do have a cheap source of funding available that traditional benefit programs do not have, however. When private financial markets are sluggish, regulators have historically offered government insurance or guarantees, whether explicit or implicit, to help reduce risk and entice private market participation. The classic example is the explicit provision of insurance to banks through the establishment of the FDIC.[357] Created in the aftermath of the Great Depression in 1933, the goal of the FDIC was to prevent bank runs by insuring depositors.[358] In many ways, this was the foundation of the modern regulatory safety net. Depositors enjoyed the benefits of insurance, but only if they sacrificed liquidity to store their money in a bank account. Non-depositors who preferred to keep cash or other valuable assets were denied the benefits of FDIC protection.

Examples of implicit guarantees are those provided to the GSEs[359] and financial institutions that receive "bailout" money in times of potential failure.[360] GSEs and other institutions that receive emergency liquidity in times of distress play an important role in the financial system. Letting these institutions become insolvent may have systemic consequences. As a result, these institutions are seen to have a preferred status in the eyes of the government, and are able to profit from this status.

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[354] *Risk-Weighting of MBS and Sovereign Debt Under Financial Regulations*, Brookings Inst. (Dec. 5, 2011), https://www.brookings.edu/articles/risk-weighting-of-mbs-and-sovereign-debt-under-financial-regulations/ [https://www.brookings.edu/articles/risk-weighting-of-mbs-and-sovereign-debt-under-financial-regulations/] (describing Basel rules around capital requirements that weight assets by risk, which caused significant shifts in banks holding MBS when post-crisis reforms increased MBS risk weights).

[355] *See* Bre Bradham, *A Trump Reelection Is Seen as Boosting Fannie, Freddie Shares*, Bloomberg (Jan. 18, 2024), https://www.bloomberg.com/news/articles/2024-01-18/a-trump-reelection-seen-as-bullish-for-fannie-freddie-shares [https://perma.cc/WJ7K-K3KK].

[356] Spamann, *supra* note 4 (demonstrating the benefits of fair prices generated by mandated disclosures in securities regulation).

[357] Stephen A. Buser et al., *Federal Deposit Insurance, Regulatory Policy, and Optimal Bank Capital*, 36 J. Fin. 51, 51–52 (1981).

[358] *Id.*

[359] Wayne Passmore & Alexander H. von Hafften, *GSE Guarantees, Financial Stability, and Home Equity Accumulation*, 24 Fed. Rsrv. Bank N.Y. Econ. Pol. Rev. 11, 11 (2018).

[360] Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, 122 Stat. 3765 (2008); *Bailout Tracker*, ProPublica, https://projects.propublica.org/bailout/list [https://perma.cc/NHW9-TZWT].

Perhaps the biggest advantage of these guarantees provided by financial regulators, however, is the relative low cost in cash to the government. Explicit insurance is paid for by premiums, while implicit insurance is often provided in the form of a loan that is then repaid with interest. Each of these options rarely cost as much as a cash grant would. For instance, the FDIC charges premiums to member banks, who pay whether or not they experience a run. Then, the FDIC pays out to depositors in the case of a bank failure. Premiums are sufficient to cover the FDIC's costs, and no taxpayer money is needed to fund the FDIC.[361] Even bailouts to banks did not cost taxpayers as much as they would have in cash because much of the funding to restore financial health was provided in loans. According to some calculations, the government profited from providing bailouts.[362] When the GSEs failed during the 2008 financial crisis, they were put into conservatorship. Taxpayer money was channeled into a new regulatory regime that would lessen risk-taking by GSEs.[363] Since then, however, the Treasury has been recovering money from GSEs on each loan they purchase and pool.[364] By raising this payment slightly, the government can continue to offer guarantees that subsidize homeownership for those who can access the market for private loans.

V. Towards an Effective Regulatory Safety Net

In order to align financial regulation with the tax and benefits system, a new theoretical and institutional framework is needed. The first step is to define an efficient baseline for redistribution through financial regulation. To do so, I expand the definition of financial inclusion, based on the principal of minimizing distortions. Then, I describe two possibly conflicting goals of redistribution in this context, drawing on examples from the tax system. Regulation may attempt to redistribute progressively, mirroring the goals of the income tax system, or help internalize externalities, reflecting the goals of "sin" taxes such as the cigarette tax. Conflicts between these goals may arise, and regulators would have valid justification for regressive regulatory policy: the need to aggressively combat negative externalities. I argue that multiple regulators across federal and state agencies are well positioned to evaluate the

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[361] *How Does the FDIC Protect Consumers?*, FDIC (Feb. 2020), https://www.fdic.gov/consumers/consumer/news/february2020.html [https://perma.cc/PGZ8-GBS6].

[362] Tim Habert, *Here's How Much the 2008 Bailouts Really Cost*, MIT Sloan School of Mgmt. (Feb. 21, 2019), https://mitsloan.mit.edu/ideas-made-to-matter/heres-how-much-2008-bailouts-really-cost [https://perma.cc/ZWD2-PNP4]; *Bailout Tracker*, *supra* note 364.

[363] *The GSE Conservatorships: Fifteen Years Old, With No End in Sight*, The Stoop (Sept. 5, 2023), https://furmancenter.org/thestoop/entry/the-gse-conservatorships-fifteen-years-old-with-no-end-in-sight [https://perma.cc/EQS2-FMQ3]; Thomas Aiello & Peter Klensch, *The Taxpayer's Perspective: An Analysis of the Administration's Housing Finance Reform Proposa*l, Citizens Against Gov't Waste, https://www.cagw.org/taxpayers-perspective/ [https://perma.cc/H6GH-THCY] (last visited May 3, 2025).

[364] *Raise Fannie Mae's and Freddie Mac's Guarantee Fees and Decrease Their Eligible Loan Limits*, Cong. Budget Off. (Dec. 12, 2024), https://www.cbo.gov/budget-options/60894 [https://perma.cc/2AHE-X4FM].

safety net created by financial regulation and to propose reforms that benefit vulnerable populations.

A. Redefining Financial Inclusion

If financial regulators have a key role to play in redistribution, it is important that they define a goal that the regulatory system can feasibly achieve. Previous scholarship has advocated for fair treatment of disadvantaged populations by the financial system,[365] but has stopped short of wholeheartedly embracing the term "financial inclusion" that other fields have embraced.[366] This is because the financial system has been both under- and over-inclusive of low-income groups throughout its history. On one hand, a long line of research has shown that unbanked and underbanked Americans suffer from exclusion relative to those participating in the formal banking sector.[367] On the other hand, another line of research has shown evidence of "predatory inclusion" in debt, which suggests some populations would be better off with more exclusion from the financial system.[368] Each of these hint at a broader phenomenon created by the financial system's shadow redistribution. The regulatory system subsidizes the use of traditional banking services and high household debt, to the detriment to those who opt out of the system or to those who opt into unsustainable financial arrangements.

I argue that true financial inclusion does not necessarily require all households to use formal banks or to either borrow or opt out of the financial system. Instead, a truly inclusive financial system should be defined as one where government policy distorts all households' financial choices minimally. This definition reflects the goals of optimal taxation.[369] An inclusive regulatory regime would provide the same oversight and opportunities for growth regardless of whether someone chooses to rent or own their home, whether their work creates highly variable or steady income, whether they use banks or alternative financial services, whether they invest in capital markets or save

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[365] *See, generally*, Baradaran, The Color of Money, *supra* note 1; Baradaran, How the Other Half Banks, *supra* note 1; Servon, *supra* note 1.

[366] *Compare* Taylor, *supra* note 124, *with Financial Inclusion*, World Bank (Jan. 27, 2025), https://www.worldbank.org/en/topic/financialinclusion/overview [https://perma.cc/E3AB-RBSG] (last visited Oct. 8, 2025); *Inclusive Financial Systems*, Gates Found., https://www.gatesfoundation.org/our-work/programs/global-growth-and-opportunity/inclusive-financial-systems [https://perma.cc/GUS5-5QM8] (last visited Oct. 8, 2025).

[367] Baradaran, The Color of Money, *supra* note 1; Baradaran, How the Other Half Banks, *supra* note 1; Servon, *supra* note 1.

[368] Atkinson, *Rethinking Credit*, *supra* note 1, at 1099 (2019) ("Credit is fundamentally incompatible with the entrenched intergenerational poverty that plagues low-income Americans."); Atkinson, *Borrowing Equality*, *supra* note 1, at 1405–06 (2020) ("[T]he increased ability to borrow money, cast as a mechanism of positive social change, may function in some ways as a Trojan horse, wheeling in the unique dangers of indebtedness to the front gates of marginalized communities and threatening their already tenuous socioeconomic existence."); Taylor, *supra* note 124 at 5.

[369] Joost Haddinga, *Does the Optimal Tax System Exist?*, Tax Foundation (May 8, 2023), https://taxfoundation.org/blog/does-the-optimal-tax-system-exist/ [https://perma.cc/7UDG-V8U8] ("Economic optimality asserts that taxes should limit economic distortions and not drastically alter people's decision-making.").

in bank accounts, whether they buy commercial insurance or choose to self-insure, or whether they finance their purchases with debt or cash.

Minimizing distortion is the primary goal of economists studying optimal taxation.[370] Income taxes distort the incentive to work by decreasing the returns to increasing income. Higher taxes mean less incentive to work more hours, invest in your career, or move to a job with higher earning potential. At the same time, high taxes collect more revenue. This tradeoff doesn't exist in a theoretical world where taxes can be assessed on the basis of immutable characteristics. Called "lump sum transfers," this theoretical tax system assesses an individualized payment simply based on identity, with no room for taxpayers to manipulate the amount they owe.[371] Such a system is optimal because it does not distort decision-making—people will owe the same amount no matter how much they work. However, it is both impossible to implement and may be normatively undesirable.[372] Therefore, optimal tax theory suggests that higher taxes are levied on populations that are most sensitive to tax rates in their work choices.[373] This preserves incentives to work while raising the maximum amount of revenue for the government.

Regulatory redistribution shares similarities and differences with the tax example. Just as in taxation, regulation can distort choices. But those distortions can operate along multiple dimensions. Rules that incorporate consideration of income, such as the CFPB ability to repay rule and the SEC accredited investor rule, may distort the choice of how much to work. The effect is likely to be much smaller than the impact of income tax, however, since these rules are less salient and therefore less likely to change behavior than the tax code.[374] Of greater concern are distortions in households' financial choices. An aggressively expansionary Fed policy, such as the low interest rates that prevailed before the COVID-19 crisis, may have pushed households to take on more debt than they would have if the Fed had been promoting moderate interest rates. Now that interest rates are higher, households that borrowed heavily may see their payments increase unexpectedly or feel locked in to a fixed, low interest loan, restricting their ability to move.[375] SEC regulations such as accredited investor requirements may have forced middle-income households to invest in only public markets prior to the 2008 crisis, without

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[370] Joel Slemrod, *Optimal Taxation and Optimal Tax Systems*, 4 J. Econ. Persp. 157, 158 (1990) ("The spirit of the optimal tax literature is that the efficiency costs of taxation are potentially large, and therefore it is worthwhile to focus attention on how to minimize these costs").

[371] *See generally* Henry Tam, *The Humean Critique of Lump Sum Taxation (or the Implausibility of Pure Lump Sum Taxes in Autocracy)*, 118 Public Choice 61 (2004) (summarizing the concept of lump sum transfers as economically optimal but legally and sociologically non-credible due to arbitrariness); Francesco Parisi, The Oxford Handbook of Law and Economics: Volume 1: Methodology and Concepts (2017).

[372] Tam, *supra* note 375 at 63–64.

[373] Slemrod, *supra* note 374, at 165–66.

[374] Jolls, *supra* note 60, at 1658–60.

[375] Jessica Dickler, *"Borrowers are feeling the squeeze" as interest rates climb while inflation remains high, chief financial analyst says*, CNBC (Oct. 27, 2022), https://www.cnbc.com/2022/10/27/how-federal-reserve-interest-rate-hikes-impact-your-borrowing-costs.html [https://perma.cc/LC52-WZAS].

exposure to private markets that were less affected by the downturn.[376] As a result, middle-income households experienced larger drops in wealth in 2008 than high-income households with more private market exposure.[377] The CFPB's mortgage rules may have limited the options of households with low credit scores by forcing them to rent, rather than own, their homes. During the COVID payment pause, this resulted in fewer benefits accruing to renters than buyers.[378]

The impact of distortionary regulation is also different than that of distortionary taxation. Regulation does not raise revenue, so there is no direct cost to the government from distortion. Instead, it impacts households' economic welfare, which can in turn impact growth and the nation's economic welfare. Therefore, the goal of an optimal regulatory system has to incorporate the long-term well-being of all households. As discussed below, this can include a weighting function to focus on the neediest households, as recent research has begun to do in the tax context.[379]

Drawing from the tax example, I develop by analogy a principle of optimal regulatory redistribution. Stringent regulation that can distort household choices should be imposed on populations whose choices are not sensitive to the changes regulation will bring. Each regulation should assess and weigh the effect on households that substitute away from the regulated product, and should include other provisions mitigating any negative effects on those populations. Implementing this policy will likely differ significantly based on context. For example, future iterations of mortgage lending regulations should coordinate across agencies to minimize overall impacts. If some potential homebuyers can no longer afford a mortgage, for instance, the CFPB would work with the Department of Housing and Urban Development (HUD) and other regulators to increase affordability for renters. In contrast, the Fed's choice of interest rate targets would need to account for differential impacts of the same policy across groups. If high interest rates disproportionately hurt lower-income individuals with low levels of debt, the Fed should work with bank regulators to maximize the benefits of high interest rates to savers and work with Treasury to maximize takeup of the EITC. To do so, the Fed could use supervisory discretion to encourage banks to automatically enroll customers in high-yield savings accounts, rather than traditional accounts, while Treasury could increase the salience of the EITC by funding community outreach.

A completely non-distortionary system of financial regulation is likely impossible to achieve, just as it is in the tax code. By making a principled effort to identify distortive policy choices and to remedy their negative effects, however, regulators can create a coherent distributive goal. Current conceptions

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[376] Shai Bernstein, Josh Lerner, & Filippo Mezzanotti, *Private Equity and Financial Fragility during the Crisis*, 32 Rev. Fin. Stud. 1309, 1315–16 (2019).

[377] Fabian T. Pfeffer et al., *Wealth Disparities before and after the Great Recession*, 650 Ann. Am. Acad. Pol. Soc. Sci. 98, 101–02 (2013).

[378] *See supra* Part III.

[379] Emmanuel Saez & Stefanie Stantcheva, *Generalized Social Marginal Welfare Weights for Optimal Tax Theory*, 106 Am. Econ. Rev. 24 (2016).

of "financial inclusion" should be expanded to mean development of a financial system that is non-distortionary and respects the preferences of a diverse population.

B. Progressivity vs. Externalities

How exactly should regulators pursue financial inclusion? Minimizing distortion in a redistributive system requires understanding individuals' behavioral responses to policy. Drawing on the tax system as an analogy, I identify two considerations regulators must weigh in determining how best to target regulation. First is the difference in sensitivity to policy across income or wealth levels. If low-income groups have a smaller behavioral response, or a lower "elasticity," to regulation than high-income groups, low-income groups should be targeted for more stringent regulation.[380] In the study of taxation, this draws on baseline work on optimal taxation by Mirrlees—extended by Piketty and Saez—to determine optimal progressivity of an income tax.[381] Second is internalizing externalities, where privately optimal choices with negative social consequences are penalized to encourage pro-social behavior.[382] In tax, this approach is widely credited to Marshall and Pigou and used to design taxes on pollution and other social ills.[383] Later, this approach was utilized by behavioral economists to craft "sin taxes" that help correct externalities and internalities resulting from costly behavior like smoking.[384] In the financial regulation context, both types of goals can coexist and create internal conflicts in policy.

Progressive redistribution in the theory of optimal taxation does not necessarily arise from a policymaker highly weighting the welfare of low-income groups.[385] Instead, efficiency may necessitate a high marginal tax on high incomes if the rich do not change their effort in response to taxes.[386] Mirrlees, who established the canonical optimal tax model widely used by modern economists, made the assumption that the wealthy were more sensitive to tax rates than low-income groups.[387] This can happen in reality through both changes in effort—meaning that the rich work fewer hours or decrease their income when they are taxed more—or through tax avoidance, where income

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[380] Blum & Kalven, *supra* note 314, at 437–39; David Splinter, *U.S. Tax Progressivity and Redistribution*, 73 Nat. Tax J. 1005, 1013 (2020).

[381] Thomas Piketty & Emmanuel Saez, *Optimal Labor Income Taxation*, *in* 5 Handbook of Public Economics 391 (Alan J. Auerbach et al. eds., 2013).

[382] Agnar Sandmo, *Optimal Taxation in the Presence of Externalities*, 77 Swedish J. Econ. 86, 86 (1975); William J. Baumol, *On Taxation and the Control of Externalities*, 62 Am. Econ. Rev. 307, 307–08 (1972).

[383] Katia Caldari & Fabio Masini, *Pigouvian versus Marshallian Tax: Market Failure, Public Intervention and the Problem of Externalities*, 18 Eur. J. Hist. Econ. Thought 715, 716–23 (2011).

[384] Ted O'Donoghue & Matthew Rabin, *Optimal Sin Taxes*, 90 J. Pub. Econ. 1825, 1827–30 (2006).

[385] Peter Diamond & Emmanuel Saez, *The Case for a Progressive Tax: From Basic Research to Policy Recommendations*, 25 J. Econ. Persp. 165, 171–73 (2011).

[386] *Id.*

[387] *Id.*

is recharacterized, moved overseas, or simply shrouded by taking advantage of legal loopholes.[388] Regardless of the mechanism, if the wealthy are sensitive to tax rates, it is most efficient to impose a lower marginal tax rate on the wealthy than on low-income groups. Then, only a policymaker with a strong preference for redistribution at the expense of efficiency would impose a high tax on the wealthy—by increasing the top marginal tax rate, policymakers would be losing a great deal of tax revenue as top incomes decrease. The lost tax revenue would mean fewer subsidies available for low-income groups, ultimately harming the progressivity of the tax system.

Recent research has shown, however, that high incomes are not highly sensitive to income tax changes.[389] Careful study reveals that the ultra-rich do not usually adjust their labor income or time worked in response to tax changes. Instead, they avail themselves of legal loopholes to make it appear as if they make less income.[390] Moreover, incomes can vary, and any uncertainty over total income in a particular year attenuates the behavioral response to a change in tax rate. For example, a CEO receiving equity compensation will try to maximize stock returns even if tax rates are high since less effort may result in large losses. Based on these results, Piketty, Saez, and Stantcheva, along with a generation of progressive tax economists, have argued that high earners should be taxed at high rates while the government separately closes avenues for legal tax avoidance or illegal tax evasion.[391] Moreover, policymakers with a preference for progressive redistribution could multiply this effect, choosing very high tax rates that reflect their social welfare function.[392]

These concepts can be applied to regulatory redistribution as well. The first task is to assess how responsive different individuals are to the incentives created by financial regulation. For example, some households may be more responsive to the Fed's changing interest rates than others.[393] The rich may be unaffected by the SEC's retail investor regulations or the CFPB's income underwriting, but low-income groups are more responsive.[394] These patterns would guide regulators on targeting more stringent or permissive regulatory policy. Unlike the tax scenario, there is no revenue collected through the regulatory process. Instead, regulators should design regulations to provide the largest benefits to the groups with the highest social welfare weights. Consider the CFPB's underwriting rules, for example. The CFPB's mandate asks the agency to maximize credit access while protecting consumers from risky products. If using income in underwriting would decrease credit access among

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[388] Daniel J Hemel & David A Weisbach, *The Behavioral Elasticity of Tax Revenue*, 13 J. Legal Analysis 381, 383 (2021).

[389] Thomas Piketty et al., *Optimal Taxation of Top Labor Incomes: A Tale of Three Elasticities*, 6 Am. Econ. J.: Econ. Pol'y 230, 231–32 (2014).

[390] *Id.* at 231.

[391] *Id.*

[392] *See* Stefanie Stantcheva, *Tax Reform: An Optimal Equation,* Stan. Inst. for Econ. Pol'y Rsch. (Dec. 2017), https://siepr.stanford.edu/publications/policy-brief/tax-reform-optimal-equation [https://perma.cc/4UPT-4EEN].

[393] Auclert, *supra* note 205, at 2333–34; Kekre & Lenel, *supra* note 205, at 2258.

[394] Winston*, supra* note 1, at 784; Fuster et al., *supra* note 48, at 1–3.

the poorest consumers who receive the highest welfare weights, the CFPB should provide an alternative underwriting criterion that is income-neutral or benefits low-income populations disproportionately.

The goal of progressivity may directly conflict with the Pigouvian principle of corrective redistribution. In the tax context, these are taxes imposed to give taxpayers incentives to do social good, even if that is not privately optimal.[395] For example, factories are taxed when they release higher quantities of harmful compounds in order to give firms the incentive to redesign their production processes for the benefit of local communities. Similar reasoning lies behind smoking taxes, soda taxes, and plastic bag taxes that are intended to give taxpayers better incentives in their choices.[396] Usually, these taxes are imposed on individual goods, services, and actions, and can coexist with a separate progressive income tax.

In the financial regulation context, however, internalizing externalities must be done using the same types of regulatory choices that impact the progressivity of regulators' choices. For example, the SEC cannot make one set of rules around retail investors that optimally subsidizes returns to low-wealth individuals while making another set of rules that forces investors to internalize negative externalities. Therefore, regulators may need to weigh the potential positive externalities created by a regulatory regime against its negative distributional consequences. This direct conflict is less common in the tax context. For instance, the EITC provides cash to individuals regardless of whether that cash is spent on cigarettes or plastic bags. However, means-tested benefits programs do incorporate restrictions that encourage pro-social choices.[397] In both benefits programs and financial regulation, policymakers must confront the difficult choice between progressivity and internalizing externalities.[398]

The primary externality that financial regulators are concerned with is the impact of their policy choices on the stability of the financial system and on macroeconomic growth.[399] This concern can justify many of the regressive policies described above. The Fed's primary purpose is to maintain widespread economic health.[400] Retail investors, especially acting in a coordinated fashion, can destabilize the capital markets, providing an impetus for highly protective SEC rulemaking.[401] The CFPB's underwriting rules were promulgated pursuant to Dodd-Frank, which was intended to minimize systemic risk during a crisis.[402] The CARES Act's payment pauses were intended to

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[395] Baumol, *supra* note 386, at 307–08; Sandmo, *supra* note 386, at 87.

[396] O'Donoghue & Rabin, *supra* note 388, at 1825–27.

[397] David Adam Friedman, *Public Health Regulation and the Limits of Paternalism*, 46 Conn. L. Rev. 1687, 1688–90 (2013).

[398] Hunt Allcott et al., *Regressive Sin Taxes, with an Application to the Optimal Soda Tax*, 134 Q. J. Econ. 1557, 1557–80 (2019).

[399] Awrey & Judge, *supra* note 5, at 2296–2301.

[400] *See* Carmen M. Reinhart & Kenneth S. Rogoff, *Shifting Mandates: The Federal Reserve's First Centennial*, 103 Am. Econ. Rev. 48, 48 (2013).

[401] Guan, *supra* note 41, at 2055 (2022).

[402] D'Acunto & Rossi, *supra* note 48, at 486–87.

prevent the economy from falling into a longer term recession.[403] If there are regressive consequences from these actions, those impacts may be justified by the benefits they created for the macroeconomy. If this is part of policymakers' reasoning, however, it should be explicitly discussed and weighed to improve public accountability. In particular, there should be a government entity whose mandate is to investigate policies and determine whether there was a more progressive policy that would create the same macroeconomic benefits.

C. Implementation: A State-Federal Partnership

I propose that state financial regulators take the lead in evaluating the impact of financial regulation on the social safety net. Each financial regulator making relevant policy choices is not equipped with the data or authority to oversee the entire process. Instead, state financial regulators can provide data and insight about their key constituents to federal actors. Agencies can then be held accountable for the impacts of their rulemaking and make modifications to their policies, or states can themselves fill gaps in federal policy that exclude their citizens.

The states' role would be to retrospectively analyze the distributive consequences of financial regulation and identify demographic groups who are negatively impacted. To do so, state regulators would bring together data on individual outcomes derived from federal reporting and private sources, including lending data such as consumer credit report data, Home Mortgage Disclosure Act (HMDA) data, financial institution data from bank call reports, and trading data in securities markets. States could then fill gaps in the social safety net that particularly impact their citizens, or pressure federal agencies to revise their policies.

This structure provides a workable alternative to Senator Warren's proposal that the Fed's mandate be amended to incorporate redistribution.[404] The Fed alone would face both practical and legal challenges in decreasing the racial wealth gap. The tools the Fed uses are often too blunt to provide targeted relief to a specific subgroup. Moreover, even if monetary policy tools could be neatly categorized into increasing or decreasing inequality, it is not obvious that decreasing inequality would be worth a significant cost to the economy as a whole.[405] The tradeoff between progressivity and externalities

[403] Sean Chanwook Lee & Omeed Maghzian, *Household Liquidity and Macroeconomic Stabilization: Evidence from Mortgage Forbearance* 2 (Fed. Rsrv. Bank of Boston, Working Paper No. 23-12, 2023), https://www.bostonfed.org/publications/research-department-working-paper/2023/household-liquidity-and-macroeconomic-stabilization-evidence-from-mortgage-forbearance.aspx [https://perma.cc/9HMT-E72E].

[404] *See* Dylan Matthews, *How the Fed ended the last great American inflation — and how much it* hurt, Vox (July 13, 2022), https://www.vox.com/future-perfect/2022/7/13/23188455/inflation-paul-volcker-shock-recession-1970s [https://perma.cc/UT2X-SZR4] (describing the Volcker-induced recession that decreased inflation in the 80s to the detriment of ordinary households' wealth).

[405] *See generally* Daniel J. Hemel, *Redistributive Regulations and Deadweight Loss*, 14 J. Benefit-Cost Analysis 407 (2023) (describing the losses to social welfare when inequality is lowered through redistributive taxation).

is particularly challenging for the Fed, whose primary goal since its founding has been achieving stability—even at tremendous cost to the general public.[406] States are better situated to assess the impacts of monetary policy on their citizens and coordinate change.

Examples of this structure at work occurred in California during the pandemic. The Golden Gate Stimulus payment was offered to California residents who did not qualify for federal stimulus, filling an important gap that federal policy created.[407] The City of Los Angeles took a further step to fill the gap between protections offered to mortgage borrowers and those offered to renters. The City limited rental evictions until March 2023, allowing LA renters to get nearly as much emergency liquidity as mortgage borrowers would.[408] States have historically taken a backseat in financial regulation, but recent developments such as increased politicization of finance have increased their importance.[409]

It is essential that policymakers dedicate public attention to the incidence and effectiveness of regulatory safety nets. Shedding light on this system of shadow redistribution, even if no reforms are made, will benefit the public. Households have a right to know which financial decisions will be rewarded by the government, just as they have a right to know how they will be taxed and under what circumstances they would qualify for traditional government benefits.

Conclusion

The modern financial system is tremendously complex but provides its participants with some irreplaceable benefits. Ordinary households who buy, borrow, deposit, and invest in these markets are provided with insurance against financial distress and may receive subsidies as regulation redistributes across social groups. In this Article, I demonstrate how financial regulation lays out the boundaries of the new social safety net and redistributes primarily to groups that do not receive traditional government benefits.

Creating a safety net that is administered through financial regulation is usually indirect, highly opaque, and often regressive. Examples of actions taken by the Fed, the SEC, and the CFPB have complex impacts that are hidden from public view. Looking at the mandates of these agencies shows that regulators are often required to prioritize the needy to do their jobs. Their missions are implicit, however, and attempts to make distributive justice an explicit aim of the financial regulatory system have been met with widespread pushback.

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[406] William Poole, *President's Message: Volcker's Handling of the Great Inflation Taught Us Much*, Fed. Rsrv. Bank of St. Louis (Jan. 1, 2005), https://www.stlouisfed.org/publications/regional-economist/january-2005/volckers-handling-of-the-great-inflation-taught-us-much [https://perma.cc/JF23-ZDY4].

[407] *COVID-19 Relief and Assistance for Individuals and Families*, Cal. State Controller's Off. (Jan. 22, 2022), https://www.sco.ca.gov/covid19ReliefAndAssitanceIF.html [https://perma.cc/YC4Q-LVR6].

[408] *About L.A. County's COVID-19 Tenant Protections Resolution*, L.A. Cnty. Consumer & Bus. Affs., https://dcba.lacounty.gov/noevictions/ [https://perma.cc/U6DY-S2NZ].

[409] Stavros Gadinis, *From Independence to Politics in Financial Regulation*, 101 Calif. L. Rev. 327, 332–34 (April 2013).

In contrast, when payments on mortgages and student loans were paused in response to COVID-19, the role of financial regulation in defining the new social safety net was made explicit. In novel empirical work, I have shown that these payment pauses had widespread regressive consequences. Eligibility for the benefits these pauses provided was largely restricted to the rich, and often excluded underrepresented minorities. Ultimately, the pauses provided $1.2 trillion in emergency liquidity to rich borrowers. In contrast, only $400 billion was provided to lower-income borrowers. Non-borrowers received nothing.

The social safety net created by financial regulation has both advantages and disadvantages. Regulation may generally be more distortive than tax changes in allocating resources away from the rich and toward low-income groups. At the same time, financial regulation provides a non-cash form of benefits that are paid for cheaply through government guarantee programs.

Regulators urgently need a structure to help create a more equitable financial system. In this Article, I have taken the first steps in developing that structure by defining the goal of the system as implementing broad principles of financial inclusion. Financial regulation faces tradeoffs between macroeconomic growth and progressive redistribution. I propose that state financial regulators take the lead in assessing the distributional consequences of policy choices made by federal financial regulators, thereby facilitating accountability. Financial regulators' power over the modern social safety net must be brought out of the shadows and restructured to benefit a financially diverse swath of citizens.