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THE BOOTSTRAP TRAP

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ABSTRACT

In the mid-1990s, Congress fundamentally altered the public safety net when it passed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, otherwise known as welfare reform. Under the PRWORA, cash assistance was no longer an entitlement for income-qualifying families; instead, recipients faced work requirements and lifetime limits on receiving benefits. Bipartisan reformers sought to transform welfare from a program believed to trap poor mothers in a "culture of dependence" into a program that would promote a culture of "self-sufficiency" and "personal responsibility." This shift in culture, it was argued, would ultimately lead to upward mobility. This Article shows how, ironically, over twenty years after welfare reform, the private safety net that many struggling families rely on—the credit system—disincentivizes the very self-sufficient behavior that welfare reformers had hoped to promote. Using the sociological concept of narratives, the Article shows how parents who have most internalized narratives of self-sufficiency are particularly at risk of financial ruin under the new regime. On a broader scale, this Article argues that, to better understand the relationship between law,

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inequality, and poverty, we need to further investigate how people experience and internalize structural conditions and how these structural conditions become sources of personal meaning and determinants of behavior. Such inquiries can lead to unexpected connections between seemingly disparate areas of law and policy, and ultimately to innovative policy interventions.

Finally, this Article moves to the prescriptive. It argues for a public financial services program, Financial Services for Family Security (FSFS). FSFS would provide services such as financial advising, no-interest small loans, and debt management help, all aimed at increasing the financial resilience of struggling families.

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INTRODUCTION

In 1996, public benefits law was transformed, fundamentally altering the safety net for poor parents in the United States.[1] Congress

1. *See* David A. Super, *Offering an Invisible Hand: The Rise of the Personal Choice Model for Rationing Public Benefits*, 113 YALE L.J. 815, 818 (2004) ("The widespread embrace of the personal choice model represents a sea change in American public benefits law. . . . This personal choice model of public benefits law differs fundamentally from any that came before it."); *see also* KATHRYN J. EDIN & H. LUKE SHAEFER, $2.00 A DAY: LIVING ON ALMOST NOTHING IN AMERICA 33 (2015) ("What is known, though, is that the way things turned out, the 1996 reformers didn't merely 'replace' welfare. They killed it."); Monica Potts, *The American Social Safety Net Does Not Exist*, NATION (Oct. 13, 2016), https://www.thenation.com/article/the-american-social-safety-net-does-not-exist/ [https://perma.cc/CL2T-P4H6] (arguing that since welfare reform the public safety net has largely disappeared).

passed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996,[2] which ended a sixty-year-old program that had entitled qualifying families to cash assistance. Despite debate about the specifics of the PRWORA, there was widespread, bipartisan agreement that change was needed because the existing welfare program's structure unintentionally disincentivized work and promoted dependency.[3] President Bill Clinton said when he announced the welfare reform bill, "Today the Congress will vote on legislation that gives us a chance . . . to transform a broken system that traps too many people in a cycle of dependence to one that emphasizes work and independence, to give people on welfare a chance to draw a paycheck, not a welfare check."[4] Indeed, one of the four stated statutory goals of the PRWORA was to "end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage."[5]

The new program designed to meet this and other statutory goals, Temporary Assistance for Needy Families (TANF), imposed lifetime limits on receiving aid, subjected able-bodied participants to work requirements, incentivized states to cut welfare rolls, and transformed welfare into a block grant program that gave states wide flexibility in how they spend welfare funds.[6] By 2016, the number of welfare

2. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified in scattered sections of 42 U.S.C.).

3. *See* Anne L. Alstott, *The Earned Income Tax Credit and the Limitations of Tax-Based Welfare Reform*, 108 HARV. L. REV. 533, 537–38 (1995) (describing "bipartisan consensus on work-based welfare reform," "widespread dissatisfaction with traditional welfare administration," and "an apparent political consensus in support of reforms that in some way link welfare and work"). Alstott also notes that a "common criticism" of the existing welfare system was that it "rewards the 'dependent' poor but provides too little assistance to the working poor." *Id.* at 538. Research had found that single mothers who chose to work instead of receive welfare experienced more material hardship than their counterparts who remained on welfare. *See* KATHRYN EDIN & LAURA LEIN, MAKING ENDS MEET: HOW SINGLE MOTHERS SURVIVE WELFARE AND LOW-WAGE WORK, at xix, 220 (1997) (describing research supporting the proposition that mothers who worked and received low wages were generally worse off than their counterparts who received welfare).

4. President William J. Clinton, Remarks on Welfare Reform Legislation and an Exchange with Reporters (July 31, 1996), *in* 32 WEEKLY COMP. PRES. DOC. 1379, 1379 (1996).

5. 42 U.S.C. § 601(a) (2012).

6. *See* Alana Semuels, The End of Welfare as We Know It, ATLANTIC (Apr. 1, 2016), https://www.theatlantic.com/business/archive/2016/04/the-end-of-welfare-as-we-know-it/476322/ [https://perma.cc/3477-GHKE] (describing the changes the TANF program brought to welfare); *see also* EDIN & SHAEFER, *supra* note 1, at 25 (describing how the new block-granting structure "essentially capped funding for the program"); Liz Schott, Ladonna Pavetti & Ife Finch, *How States Have Spent Federal and State Funds Under the TANF Block Grant*, CTR. ON BUDGET & POL'Y PRIORITIES *passim* (Aug. 7, 2012), https://www.cbpp.org/sites/default/files/atoms/files/8-7-

recipients had fallen to only 2.7 million[7] from a peak of 14.2 million recipients in 1994,[8] a drop of 81 percent. Now, twenty years after welfare was reformed, the public safety net is by many accounts dead.[9]

The idea behind TANF was that parents would work and, if their income was below a specified level,[10] their earnings would be supplemented by the Earned Income Tax Credit (EITC).[11] Thus, a robust cash assistance program for people who were not working would no longer be needed.[12] When President Clinton signed the welfare reform bill into law, he said "The best antipoverty program is still a job."[13] He promised that welfare reform would "reward the work of millions of working poor Americans by realizing the principle that if you work 40 hours a week and you've got a child in the house, you will no longer be in poverty."[14]

But whether or not parents found a job, periods of financial

12tanf.pdf [https://perma.cc/QN7U-AFNZ] (providing an overview of how states have used their TANF block grants).

7. *TANF Caseload Data 2016*, OFF. FAM. ASSISTANCE (Jan. 12, 2016), https://www.acf.hhs.gov/ofa/resource/tanf-caseload-data-2016 [https://perma.cc/U7XK-FDLP].

8. *Caseload Data 1994 (AFDC Total)*, OFF. FAM. ASSISTANCE (Dec. 19, 2004), https://www.acf.hhs.gov/ofa/resource/caseload-data-afdc-1994-total [https://perma.cc/7VC8-PQCA].

9. *See* EDIN & SHAEFER, *supra* note 1, at 33 ("What is known, though, is that the way things turned out, the 1996 reformers didn't merely 'replace' welfare. They killed it."); Potts, *supra* note 1. Reports of localities actively discouraging parents from applying for and receiving public benefits are common, and have even been the subject of litigation. In *Reynolds v. Giuliani*, 118 F. Supp. 2d 352 (S.D.N.Y. 2000), the plaintiffs attacked so-called "diversion" tactics of New York's welfare agencies, contending that the policies and practices of agencies associated with distributing cash assistance programs like TANF and other federal benefits wrongfully denied eligible people of these benefits.

10. In 2016, for a person with two children filing as "Single, Head of Household or Widowed," the earnings cutoff for the EITC was $44,648. For a person with two children filing as "Married, Filing Jointly," the earnings cutoff for the EITC was $50,198. *2016 EITC Income Limits, Maximum Credit Amounts and Tax Law Updates*, INTERNAL REVENUE SERV. (Sept. 18, 2017), https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/eitc-income-limits-maximum-credit-amounts [https://perma.cc/TDP3-9VVM].

11. The EITC is a refundable tax credit that supplements earnings of low-income workers. It is the "largest cash-transfer program for low-income workers with children." Anne L. Alstott, *Why the EITC Doesn't Make Work Pay*, 73 LAW & CONTEMP. PROBS. 285, 285 (2010). Additionally, the EITC has been called the "largest federal anti-poverty program." Lawrence Zelenak, *Redesigning the Earned Income Tax Credit as a Family-Size Adjustment to the Minimum Wage*, 57 TAX L. REV. 301, 301 (2004). The EITC is only available to people who work.

12. *See supra* note 11.

13. President William J. Clinton, Statement on Signing the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Aug. 22, 1996), *in* WEEKLY COMP. PRES. DOC., *supra* note 4, at 1487, 1489.

14. President William J. Clinton, Address Before a Joint Session of Congress on Administration Goals (Feb. 17, 1993), *in* 29 WEEKLY COMP. PRES. DOC. 215, 220 (1993).

distress were common,[15] and parents were left to find alternative forms of support. For many parents, this alternative support was credit.[16] Just as welfare was reformed and the public safety net diminished, credit cards were becoming newly available to low-income families. Changes in state usury laws[17] allowed lenders to extend credit to riskier borrowers while utilizing higher interest rates to make up for the increased risk.[18] Credit card companies then began targeting low-income consumers who just a decade before would not have qualified for credit cards.[19]

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15. While work certainly provides some stability for families, the assumption that families can weather life events causing economic insecurity without an alternative safety net ignores two key issues. First, even if a person works forty hours per week, the wages former welfare recipients earn are not, by and large, enough to cover any unexpected life event such as a needed car repair, dental problem, or medical condition. For example, one study found that only 23.9 percent of families earning less than $20,000 per year and only 32.6 percent of families earning between $20,000 and $29,999 per year reported that they would certainly be able to or probably be able to come up with $2,000 in 30 days to cover an emergency expense. Annamaria Lusardi, Daniel Schneider & Peter Tufano, FINANCIALLY FRAGILE HOUSEHOLDS: EVIDENCE AND IMPLICATIONS, Brooking Papers on Econ. Activity, Spring 2011, at 83, 93 (2011), https://www.brookings.edu/wp-content/uploads/2011/ 03/2011a_bpea_lusardi.pdf [https://perma.cc/8AYA-YK5T]; *see also* Sara Sternberg Greene, *The Broken Safety Net: A Study of Earned Income Tax Credit Recipients and a Proposal for Repair*, 88 N.Y.U. L. REV. 515, 545–47 (2013) (reporting a study of families receiving the EITC and documenting their difficulties covering unexpected financial emergencies). Second, during the booming economy of the 1990s, many former welfare recipients were able to find work. However, once the economy slumped during the economic downturn that started in 2007, the unemployment rates among families increased, as did the number of families in poverty and deep poverty. *Policy Basics: And Introduction to TANF*, CTR. ON BUDGET & POL'Y PRIORITIES 5–7 (June 15, 2012), https://www.cbpp.org/sites/default/files/atoms/files/7-22-10tanf2.pdf [https://perma.cc/5F7Z-AJQV]. However, TANF rates responded only modestly to these changes in unemployment. *Id.* The bottom line is that TANF was created with the idea that almost anyone who wants a job can get one, but this is not the case during economic downturns. TANF does little to respond to changes in the economy and thus rates of unemployment and poverty. For example, between 2006 and 2015 the number of families in poverty nationwide rose by 7 percent, but the national TANF caseload fell by 21 percent. Ife Floyd, LaDonna Pavetti & Liz Schott, *Policy Brief: TANF Reaching Few Poor Families*, CTR. ON BUDGET & POL'Y PRIORITIES 2 (Apr. 5, 2017), https://www.cbpp.org/sites/default/files/atoms/files/4-5-17tanf.pdf [https://perma.cc/7WDH-TRZV].

16. *See* Greene, *supra* note 15, at 547; *see also* Angela Littwin, *Beyond Usury: A Study of Credit-Card Use and Preference Among Low-Income Consumers*, 86 TEX. L. REV. 451, 457–59 (2008) ("The most common explanation study participants gave for wanting to maintain access to credit cards was their usefulness in emergencies.").

17. State usury laws that protected borrowers by regulating high interest rates were weakened. Katherine Porter, *Driven by Debt, Bankruptcy and Financial Failure in American Families*, *in* BROKE: HOW DEBT BANKRUPTS THE MIDDLE CLASS 1, 4 (Katherine Porter ed., 2012).

18. David A. Lander, *"It 'Is' the Best of Times, It 'Is' the Worst of Times": A Short Essay on Consumer Bankruptcy After the Revolution*, 78 AM. BANKR. L.J. 201, 204–05 (2004).

19. Littwin, *supra* note 16, at 453. As Katherine Porter notes, these changes in credit

Credit has become a lifeline for poor families, but many of them also find themselves in an enduring cycle of unmanageable debt.[20] These cycles of debt can wreak havoc on credit histories and scores.[21] And though credit histories were once tools used primarily by the financial industry to decide whether and how much money to loan consumers, they have taken on a new importance. In 2017, an increasing number of industries use credit histories to aid in their decisions about whether to grant access to a wide range of economic resources: rental housing, insurance, utilities, and jobs.[22] A low credit score and flawed report can mean restricted access to institutions necessary for economic stability, and thus, the collateral consequences

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regulation also meant substantially increased debt for middle-class Americans. Porter, *supra* note 17, at 4–5.

20. *See* J. Michael Collins, *Paying for the Unexpected: Making the Case for a New Generation of Strategies to Boost Emergency Savings, Affording Contingencies, and Liquid Resources for Low-Income Families*, *in* A FRAGILE BALANCE: EMERGENCY SAVINGS AND LIQUID RESOURCES FOR LOW-INCOME CONSUMERS 1, 2 (J. Michael Collins ed., 2015) ("Without savings, low-income households may have no choice but to turn to credit to make ends meet. . . . In theory, this sort of borrowing is a reasonable substitute for savings. However, emerging research suggests that using high-cost credit could make families worse off overall . . . ."); Greene, *supra* note 15, at 547–57 (discussing the benefits and drawbacks of the use of credit by financially struggling families); Ronald J. Mann, *Patterns of Credit Card Use Among Low- and Moderate-Income Households*, *in* INSUFFICIENT FUNDS: SAVINGS, ASSETS, CREDIT, AND BANKING AMONG LOW-INCOME HOUSEHOLDS 257, 263–78 (Rebecca M. Blank & Michael S. Barr eds., 2009) ("The credit card also provides a remarkably flexible safety net that can be deployed in response to unexpected financial crises. That protection is particularly important in the United States, where the public safety net is more porous than it is in many peer nations." (citations omitted) (first citing RONALD J. MANN, CHARGING AHEAD: THE GROWTH AND REGULATION OF PAYMENT CARD MARKETS (2006); then citing Jacob S. Hacker, THE DIVIDED WELFARE STATE: THE BATTLE OVER PUBLIC AND PRIVATE SOCIAL BENEFITS IN THE UNITED STATES (2002); and citing CHRISTOPHER HOWARD, THE WELFARE STATE NOBODY KNOWS: DEBUNKING MYTHS ABOUT U.S. SOCIAL POLICY (2007)).

21. For a description of how credit scores are determined and what information is included in credit reports, see *infra* Part II.

22. CATHY O'NEIL, WEAPONS OF MATH DESTRUCTION: HOW BIG DATA INCREASES INEQUALITY AND THREATENS DEMOCRACY 147–50, 164–66 (2016); *see also* SHAWN FREMSTAD & AMY TRAUB, DISCREDITING AMERICA: THE URGENT NEED TO REFORM THE NATION'S CREDIT REPORTING INDUSTRY 2–3 (2011) (noting that insurance agencies, employers, and other actors increasingly consider credit reports in their decisionmaking). Credit reporting is an expanding, multimillion-dollar industry. In 2011, Nationwide Consumer Reporting Agencies (NCRAs) generated U.S. revenues of about 4 billion dollars. CONSUMER FIN. PROT. BUREAU, KEY DIMENSIONS OF PROCESSES IN THE U.S. CREDIT REPORTING SYSTEM 7 (2011). In 2012, almost half of employers conducted credit checks on job candidates at some point in the hiring process. *SHRM Survey Findings: Background Checking–The Use of Credit Background Checks in Hiring Decisions*, SOC'Y FOR HUM. RESOURCE MGMT. (July 19, 2012), https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/Pages/creditbackgroundchecks.aspx [https://perma.cc/GB7F-6VPH].

of bad credit are profound.[23]

This Article utilizes data from in-depth, semistructured interviews to unpack a previously undetected conflict in what remains of the safety net: the conflict between the goal of self-sufficiency and the risks that adhere when low-income families realize that goal. The post-welfare reform public safety net promotes and even requires one type of behavior—self-sufficiency—but the new private safety net, which encompasses the credit reporting and scoring systems and accompanying regulations, is a danger to those who are both financially unstable and attempting to be self-sufficient. Those families that best adhere to the very behavior encouraged by the public safety net, then, end up at particular risk for long-term economic hardship.

President Clinton promised that welfare reform would "give[] us a better chance to give those on welfare what we want for all families in America, the opportunity to succeed at home and at work."[24] This Article's first contribution is detailing how welfare reform policy has interacted in a surprising way with our credit reporting system to deny many families who have "succeeded" in climbing out of a "culture of dependence," "the opportunity to succeed at home and at work." Unpacking the conflicts between the behavior promoted by the public safety net and the behavior necessary to succeed in the private credit market—the new private safety net—ideally will lead to new insights about what kind of safety net structure might be necessary to support families, rather than thwart them in their journeys toward self-sufficiency and financial resilience. The tension in the existing safety net ultimately leads to the conclusion that a new public safety net program is needed. From a public policy perspective, the existing safety net penalizes the very behavior many policymakers across the political spectrum say that they want to encourage and incentivize.[25] And from an equality standpoint, the current safety net works to exacerbate poverty and inequality, rather than to reduce it.

To that end, this Article's second contribution is the exploration

23. *See* FREMSTAD & TRAUB, *supra* note 22, at 2–3 (noting that insurance agencies, employers, and other actors increasingly consider credit reports in their decisionmaking, with negative effects for those with negative credit history); Amy Traub, *Discredited: How Employment Credit Checks Keep Qualified Workers out of a Job*, DĒMOS 3–4 (2013), http://www.demos.org/sites/default/files/publications/Discredited-Demos.pdf [https://perma.cc/BF3H-SU4J] (describing how poor credit can negatively affect one's employment prospects). For examples of the collateral consequences of bad credit, see Part III.B.

24. Clinton, *supra* note 4, at 1379.

25. EDIN & SHAEFER, *supra* note 1, at 21; Alstott, *supra* note 3, at 537–38.

of how a public safety net program might be designed to promote financial resilience in families by helping them to avoid the pitfalls of the punishing credit system. This Article argues that the existing safety net fails many families and that a new program is needed—one that allows families to adhere to their desire to be self-sufficient, but also provides families with the financial guidance and tools necessary to weather financial instability. This Article proposes a program called Financial Services for Family Security (FSFS), which would embrace the reality of rising financial instability for families in the United States[26] and equip parents with a comprehensive set of tools to overcome financial emergencies and continue on their road to upward mobility.

Finally, this Article and the methods employed provide a useful case study to help define a broader research agenda for scholars of law, poverty, and inequality. Recently, there has been a renewed focus among legal scholars on the connection between law, inequality, and poverty.[27] Much of this work has fallen into two distinct categories. Several scholars have made great strides in theorizing the role of the Constitution as it relates to economic inequality, often from a historical perspective.[28] Other scholars have paid a great deal of attention to the ways in which structural conditions related to specific legal rules and systems can worsen or accentuate some of the vicious cycles of

26. *See* Collins, *supra* note 20, at 4–5 (describing increased volatility in both income and expenditures for low-income households and describing studies that support this proposition).

27. As Professor Olatunde C.A. Johnson wrote, the "new economic inequality discourse has preoccupied economists, garnered its own 'beat' in leading publications, led to bestselling books, transfixed current political debates, and now (finally) seduced legal academia." Olatunde C.A. Johnson, *Inclusion, Exclusion, and the "New" Economic Inequality*, 94 TEX. L. REV. 1647, 1648 (2016). For examples of work from legal scholars that is focused on law, poverty, and inequality, see *infra* notes 28–29.

28. *See generally* GANESH SITARAMAN, THE CRISIS OF THE MIDDLE CLASS CONSTITUTION (2017) (arguing that rising economic inequality in the United States threatens democracy in part because the Constitution was designed under the assumption that inequality would not be as significant as it is in the contemporary United States); Cynthia Estlund, *The "Constitution of Opportunity" in Politics and in the Courts*, 94 TEX. L. REV. 1447 (2016) (arguing that the future prospects of the democracy of opportunity tradition are threatened by the political and economic forces that divide economically struggling whites and racial minorities); Mark Graber, *The Second Freedmen's Bureau Bill's Constitution*, 94 TEX. L. REV. 1361 (2016) (exploring the partisan nature of the Thirteenth Amendment, which was viewed as necessary to unwind the economic order of slavery and provide for the equal citizenship of both blacks and whites); James Gray Pope, *Why Is There No Socialism in the United States? Law and the Racial Divide in the American Working Class, 1676–1964*, 94 TEX. L. REV. 1555 (2016) (explicating the central role played by law in creating and enforcing racial divisions by focusing on the suppressive effects of a series of the Supreme Court's decisions on the black vote and interracial cooperation).

disempowerment associated with poverty and inequality.[29] These lines of research are important and contribute to our understanding of law's relationship to inequality and poverty. What is often absent from these existing accounts, however, is what we can glean only by engaging in in-depth interviews with those directly affected by the legal rules, systems, and processes we study: an understanding of how, in their actual social contexts, these actors experience, understand, and internalize the relevant legal rules and structures, and how these structures become sources of personal meaning and determinants of behavior.

Indeed, by employing these methods, researchers are able to engage in "process tracking," which helps to "discern how processes emerge and evolve."[30] These methods also allow researchers to understand how changes in structural conditions can interact with cultural mores to lead to unexpected outcomes. Such projects can, in turn, provide fruitful areas for further inquiry, large-scale data collection efforts, and ultimately innovative policy solutions.[31]

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29. *See generally* MEHRSA BARADARAN, HOW THE OTHER HALF BANKS: EXCLUSION, EXPLOITATION, AND THE THREAT TO DEMOCRACY (2015) (documenting the role banks have played in widening economic exclusion and inequality for poor Americans); Michelle Wilde Anderson, *Colorblind Segregation: Equal Protection as a Bar to Neighborhood Integration*, 92 CALIF. R. REV. 841 (2004) (discussing the structure and potential consequences of a colorblind segregation regime in public housing); Johnson, *supra* note 27 (arguing from empirical data that geography is the key to class-based and race-based inequality).

30. Michele Lamont & Patricia White, *Workshop on Interdisciplinary Standards for Systematic Qualitative Research*, NAT'L SCI. FOUND. 10 (2005), https://www.nsf.gov/sbe/ses/soc/ISSQR_workshop_rpt.pdf [https://perma.cc/BW2K-5DSE].

31. Sociologists regularly engage in in-depth, semistructured qualitative studies and ethnographies in their study of poverty and inequality. *See* EDIN & LEIN, *supra* note 3, at 220; *see generally* MARIO LUIS SMALL, VILLA VICTORIA: THE TRANSFORMATION OF SOCIAL CAPITAL IN A BOSTON BARRIO (2004) (analyzing how poorer residents of a subsidized housing complex in Boston maintained social capital); MARY C. WATERS, BLACK IDENTITIES: WEST INDIAN IMMIGRANT DREAMS AND AMERICAN REALITIES (1999) (studying West Indian immigrants and how their culture and identities are "changed by conditions in America"). However, sociologists rarely focus on laws and legal systems as their primary area of inquiry. Qualitative methods are not new to legal academia, and indeed, there have been several influential law review articles and books based on qualitative methods. *See generally* ROBERT C. ELLICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES (1991) (studying ranchers and farmers in rural California and finding that they settle disputes completely ignorant of their legal rights because most people in the area find the costs of learning about the law and submitting to formal resolution procedures so high that it is easier to fall back on norms); Stewart Macaulay, *Non-Contractual Relations in Business: A Preliminary Study*, 28 AM. SOCIOLOGICAL REV. 55 (1963) (studying businessmen in contractual relations and finding that they frequently settle their disputes with neither regard for the original contract nor reference to potential legal sanctions because they believe that they can settle disputes better than their lawyers). My argument is that these methods should be incorporated into the renewed focus on studying the relationship

This Article proceeds as follows. Part I explores the history of public benefits and welfare in the United States. It describes the cultural and accompanying policy shift in American society that emphasized personal responsibility and work as the basis for a reduced safety net. This Part not only shows how this ideology influenced policy and law surrounding safety net programs, but also shows how these programs were designed to penetrate the value systems of poor families. Finally, this Part explores existing research about how families have fared post-welfare reform. Part II discusses the rise of credit scores and credit reports in America. It begins by telling an often neglected, but vitally important, history of credit reporting in America. It then discusses how credit histories act as the new gatekeepers to many economic resources in the United States.

Part III uses original data to show how the interaction of the culture prescribed by welfare reform and the rules of the credit system work together to produce counterproductive results: those families who have most internalized the culture promoted by welfare reformers are also at particular risk of financial failure under the new safety net. This Part explores the features of the current credit reporting system that perpetuate this counterproductive reality. Part IV discusses existing policy proposals that may help alleviate this counterproductive safety net structure and details some of the limitations of these proposals. Finally, Part V discusses the contours of the new program proposed, FSFS. FSFS is a government financial services agency that would provide families with tools to increase their financial resilience and stability, allowing them to continue on the road to upward mobility, rather than be thwarted by small emergencies.

I. WELFARE'S END: THE ERA OF PERSONAL RESPONSIBILITY AND SELF-SUFFICIENCY

In the 1980s, the existing welfare regime offered more stability for poor families than did most work available to them.[32] However, the financial and cultural landscape for poor Americans changed dramatically over the next fifteen or so years, concluding with the

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between law and inequality.

32. *See* EDIN & LEIN, *supra* note 3, at 220 ("The real problem with the federal welfare system . . . was a labor-market problem . . . .[T]he kind of jobs [the interviewees] could get paid too little, offered little security in the short term, and provided few opportunities over time. Meanwhile, mothers who chose to work were even worse off . . . than their welfare counterparts.").

PRWORA, a major transformation in public benefits law.[33] This Part details a brief history of aid to poor families in America, highlighting the cultural shifts that culminated in the passage of the PRWORA in 1996. It then provides an overview of what existing research reveals about the current state of former welfare recipients and poor parents.

A. Welfare Reform, Dependency, and Responsibility

Just over twenty years ago, "welfare as we [knew] it"[34] ended. The 1996 welfare reform bill, the PRWORA, replaced the program known as Aid to Families with Dependent Children (AFDC) with a new program, TANF. AFDC was a cash assistance entitlement program.[35] Poor women with children received a monthly stipend meant to provide children with "assistance at least great enough to provide, when added to the income of the family, a reasonable subsistence compatible with decency and health."[36] AFDC recipients were generally eligible for the cash benefits indefinitely, so long as they continued to have minor children and their incomes remained below a certain amount each month. TANF, on the other hand, has strict time limits that, once reached, make families ineligible for further aid.[37] At the heart of TANF is an emphasis on "personal responsibility" and "self-sufficiency"—the goal is for parents to work and provide for themselves, rather than rely on the government to help keep their families afloat.[38]

Welfare reform represented a major shift in American social welfare policy—a shift that was decades in the making.[39] The complete

33. *See* Super, *supra* note 1, at 818 ("The widespread embrace of the personal choice model represents a sea change in American public benefits law. . . . This personal choice model of public benefits law differs fundamentally from any that came before it.").

34. When President Clinton enacted welfare reform by signing TANF into law, he said "[t]oday, we are ending welfare as we know it." Barbara Vobejda, *Clinton Signs Welfare Bill Amid Division*, WASH. POST, Aug. 23, 1996, at A1.

35. Stephen B. Page & Mary B. Larner, *Introduction to the AFDC Program*, 7 FUTURE OF CHILDREN 20, 21 (1997), https://www.princeton.edu/futureofchildren/publications/docs/07_01_01.pdf [https://perma.cc/W99Z-99A2] ("AFDC was a federally mandated program that guaranteed cash assistance to families with needy children.").

36. Susan W. Blank & Barbara B. Blum, *A Brief History of Work Expectations for Welfare Mothers*, 7 FUTURE CHILD. 28, 30 (1997).

37. *TANF-ACF-IM-2005-01 (Adherence to the Federal Five-Year Time Limit Provisions for FY 2003) for FY 2003 (2005)*, OFF. FAM. ASSISTANCE (Jan. 24, 2005), https://www.acf.hhs.gov/ofa/resource/policy/im-ofa/2005/im-2005-01 [https://perma.cc/L9BX-X6KW].

38. Clinton, *supra* note 13, at 1487–88 (discussing the goals of TANF, including self-sufficiency rather than reliance on the government for monthly income).

39. Super, *supra* note 1, at 818.

political story of welfare reform has been ably told elsewhere.[40] However, to understand the changing economic landscape that contributed to the importance of credit for the poor, it is vital to understand both the cultural and structural changes promoted by welfare reform.

Welfare began as mostly state-run programs for widowed mothers who had lost their husbands to the Civil War.[41] Many states created mothers' aid programs, which were designed to allow these mothers to take care of their children in their homes rather than put them in orphanages.[42] During the Progressive Era of the 1930s, local mothers' pension programs expanded and became part of an emerging national policy for women-led families.[43] During the Great Depression, though, localities ran out of money to support such programs and the federal government stepped in to fill the void.[44] In 1935, Aid to Dependent Children (then called ADC) was created as a federal solution to provide for the mothers who had previously been supported by localities.[45] It was one of many social welfare programs created under the new Social Security Act of 1935,[46] and the goal was to provide for children whose fathers were deceased, absent, or unable to work.[47]

ADC was celebrated because it would allow poor single mothers to take care of their children full-time, rather than feel pressured to work.[48] As enacted, the program was not limited to children of widows,[49] but the focus was on families who had tragically lost a

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40. *See generally* REBECCA M. BLANK, IT TAKES A NATION: A NEW AGENDA FOR FIGHTING POVERTY (1997) (describing in detail the story of welfare reform); Alstott, *supra* note 3 (explaining the history of the EITC reforms); EDIN & SCHAEFER, *supra* note 1, at 1–33 (discussing the hsitory of welfare and welfare reform); Vicki Lens, *Public Voices and Public Policy: Changing the Social Discourse on "Welfare,"* 39 J. SOC. & SOC. WELFARE 137 (2002) (discussing the politicized language that comprised the discourse on welfare reform);

41. *See* EDIN & SHAEFER, *supra* note 1, at 11; GWENDOLYN MINK, WELFARE'S END 1 (1998) ("During the second decade of the twentieth century, progressive women activists invented welfare to provide mothers and their children a means to survive when breadwinning fathers either died or abandoned their families.").

42. EDIN & SHAEFER, *supra* note 1, at 11.

43. MINK, *supra* note 41, at 1.

44. EDIN & SHAEFER, *supra* note 1, at 11.

45. *Id.*

46. Social Security Act of 1935, Pub. L. No. 74-271, §§ 401–405, 49 Stat. 620, 627–29 (1935) (codified as amended at 42 U.S.C.).

47. Blank & Blum, *supra* note 36, at 29.

48. MINK, *supra* note 41, at 1.

49. The original ADC plan was written by the previous directors of the U.S. Children's Bureau in the Department of Labor. The goal of these original drafters was to provide aid to all

breadwinner, with the idea that the mother should not be forced into paid work due to bad luck or tragedy. At the time, the overarching belief was that mothers belonged at home with their children.[50] ADC's designers believed that the program would be temporary for most families, and that once male breadwinners paid into Social Security—a program created at about the same time as ADC—their widows would receive these benefits rather than welfare benefits and the program could slowly dissolve.[51]

After Survivors Benefits were added to mainstream Social Security in 1939, there was a sense that the most "deserving" mothers (widows) were taken care of, leaving the second-class single mothers to the ADC caseload.[52] In the early years of ADC, states had wide discretion to determine ADC eligibility, and they could, for example, decide that only children living in "suitable homes" would receive benefits.[53] Some states used these requirements to exclude families deemed "undesirable," such as black families or children of never-married mothers.[54] Indeed, by the 1950s, nineteen states had moved to deny eligibility to any child born to an unwed mother.[55] Caseworkers had the power to investigate clients and cut off families they deemed undeserving for any number of reasons.[56] Potential recipients were evaluated based on their child-rearing and housekeeping abilities and their children's attendance at church and school.[57] There was great variation by state regarding who was able to receive benefits and the

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children, with no restriction on how their household ended up without a breadwinner, and no restriction on the race of the families who received aid. Further, the program was originally designed to operate with the "highest social work standards," providing mothers with personal casework in addition to cash stipends. The original crafters wanted to reduce any stigma associated with receiving help and to provide families headed only by a mother with guidance, since they believed those families were at risk. Linda Gordon & Felice Batlan, *Aid to Dependent Children: The Legal History*, SOC. WELFARE HIST. PROJECT: VCU LIBR. (2011), http://socialwelfare.library.vcu.edu/public-welfare/aid-to-dependent-children-the-legal-history [https://perma.cc/LKU5-87VQ].

50. EDIN & SHAEFER, *supra* note 1, at 11; Blank & Blum, *supra* note 36, at 29–30.

51. EDIN & SHAEFER, *supra* note 1, at 11.

52. *See* CHRISTOPHER SANDY JENCKS, RETHINKING SOCIAL POLICY: RACE, POVERTY, AND THE UNDERCLASS 2–3 (1992).

53. Blank & Blum, *supra* note 36, at 30.

54. *Id.*

55. *Id.*

56. *Id.*

57. Suzanne Mettler, *Social Security Act of 1935*, *in* 2 POVERTY IN THE UNITED STATES: AN ENCYCLOPEDIA OF HISTORY, POLITICS AND POLICY 676, 683 (Gwendolyn Mink & Alice O'Connor eds., 2004).

amount of the benefit they received.[58] In states with large black populations, the cash benefits single mothers received were significantly less than in largely white states.[59]

By 1962, the ADC caseload had grown from only a few hundred cases in the late 1930s to 3.6 million.[60] In 1964, President Lyndon Johnson announced his "War on Poverty," and called for increased federal oversight and programs aimed at overcoming poverty. Following President Johnson's announcement, ADC rolls continued to expand and increase.[61]

At the same time, however, other cultural, demographic, and policy shifts were taking place.[62] An increasing number of women had entered the paid workforce during World War II, placing their children in childcare while they were away at work.[63] The number of women in the paid workforce with children in childcare had continued to grow during the 1950s and 1960s, bringing about a larger cultural shift in beliefs about women, work, childcare, and whether the government should be in the business of helping mothers stay home with their children.[64] These changes led to legislation at the federal level aimed at encouraging mothers to work, such as the Work Incentive Program established in 1967.[65] However, funding for such programs was tight, and the programs were implemented only on a limited basis.[66]

Also impacting mainstream perceptions of welfare was the increasing number of unmarried women having children. In 1960, about 5 percent of births were by unmarried women; by the 1970s this percentage doubled, and in the next decade, the number doubled again.[67] Public commentary on this issue largely blamed welfare for this upward trend, reasoning that mothers were choosing to receive welfare

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58. EDIN & SHAEFER, *supra* note 1, at 11.

59. *Id.*

60. *Id.*

61. *Id.* at 12–13.

62. *See* Blank & Blum, *supra* note 36, at 31.

63. *Id.*

64. *Id.* at 30.

65. Act of Jan. 2, 1968, Pub. L. No. 90-248, § 204, 81 Stat. 821, 884–92, *amending* 42 U.S.C. § 602(a) (1964) (codified at 42 U.S.C. §§ 602(a)(8), (19) (Supp. V. 1970)). Although enacted on Jan. 2, 1968, the Act is entitled the "Social Security Amendments of 1967."

66. *See* Blank & Blum, *supra* note 36, at 31 ("[A]s would often be the case for federal welfare-to-work programs, limited resources permitted only partial translation of the mandate into practice.").

67. EDIN & SHAEFER, *supra* note 1, at 15.

rather than choosing to have a husband.[68] Even though no mainstream social science study supported this conclusion, welfare critics capitalized on this suggestion and sold it to the public.[69]

President Ronald Reagan made welfare reform a major campaign issue when he began his campaign for the presidency in the mid-1970s. Reagan brought the infamous, though disproven, image of the welfare queen into the American consciousness. During a 1976 stump speech, Reagan described the welfare queen as follows:

> She has eighty names, thirty addresses, twelve Social Security cards and is collecting veterans' benefits on four non-existing deceased husbands. And she's collecting Social Security on her cards. She's got Medicaid, getting food stamps and she is collecting welfare under each of her names. Her tax-free cash income is over $150,000.[70]

Welfare queens were also primarily portrayed as black (even though the majority of welfare recipients were white), and this image of welfare became embedded in the American consciousness through a combination of political speeches and media representations.[71] When Reagan became President, he was not, ultimately, successful in making major changes to the welfare system, despite his calls for significant reform.[72] However, his campaign against welfare was not lost, and it surfaced repeatedly before welfare was finally reformed in 1996.[73]

By the 1990s, Bill Clinton, who had long been a proponent of changing the welfare system, once again made welfare reform a prime campaign issue. By the time he became President, there was bipartisan support for a work-based welfare program and little support for continuing welfare as an entitlement program.[74] Senator Daniel Moynihan said, "Just as unemployment was the defining issue of industrialism, dependency is becoming the defining issue of post-

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68. *Id.*

69. *Id.*

70. JULIET M. BRODIE, CLARE PASTORE, EZRA ROSSER & JEFFREY SELBIN, POVERTY LAW, POLICY, AND PRACTICE 89 (2014).

71. *See* EDIN & SHAEFER, *supra* note 1, at 15; MARTIN GILENS, WHY AMERICANS HATE WELFARE: RACE, MEDIA, AND THE POLITICS OF ANTIPOVERTY POLICY 1–32 (2000) (detailing how the media contributed to the negative public perception of welfare).

72. EDIN & SHAEFER, *supra* note 1, at 17.

73. *Id.*

74. *See* MINK, *supra* note 41, at 2 ("Both parties championed wage work and marriage as alternatives to welfare. . . . Both parties equated welfare use with welfare abuse, justifying increasingly punitive 'reforms.'"); *see also* Alstott, *supra* note 3, at 537–38 (noting widespread support for promoting work, rather than entitlement, for welfare programs).

industrial society."[75] Scholar and public intellectual Charles Murray proclaimed, "'I know how' to eliminate the problem of dependency: 'You just rip away every kind of government support there is.'"[76] Meanwhile, the press, which had helped publicize the image of the welfare queen,[77] was reporting that "dependency" had reached "epidemic proportions."[78]

Indefinite entitlement programs such as welfare were deemed failures, and "personal responsibility" and "economic self-sufficiency" were key terms of the rhetoric surrounding federal antipoverty programs.[79] Welfare was a prime topic of the 1992 presidential campaign, with both candidates arguing that they were the best candidate to do away with welfare and its perverse disincentives.[80] Clinton proposed a time limit to receive welfare: "[T]wo Years and Off to Work," was one of his campaign slogans.[81]

Ultimately, TANF imposed a strict five-year time limit on receiving aid, incentivized states to cut welfare rolls, and changed the way welfare was delivered.[82] TANF funds are delivered to states in block grants, which are supposed to give states greater flexibility to

75. Jason DeParle, *Washington Memo; In New Social Era, Moynihan Sees 'New' Social Ills*, N.Y. TIMES (Dec. 9, 1991), http://www.nytimes.com/1991/12/09/us/washington-memo-in-new-social-era-moynihan-sees-new-social-ills.html [https://perma.cc/9WA5-CVYK].

76. FRANCES FOX PIVENS & RICHARD A. CLOWARD, REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE 397 (2d ed. 1993) (quoting David Whitman, *Welfare:An Agenda for Change*, U.S. NEWS & WORLD REPORT, Oct. 5, 1992, at 38).

77. GILENS, *supra* note 71, at 1–32 (detailing how the media contributed to the negative public perception of welfare).

78. PIVENS & CLOWARD, *supra* note 76, at 397.

79. *See* Vicki Lens, *Public Voices and Public Policy: Changing the Societal Discourse on "Welfare*,*"* 39 J. SOC. & SOC. WELFARE 137, 144–46 (2002) (discussing how political elites used morally charged language to frame the ideological debate on welfare reform); *see also* MINK, *supra* note 41, at 4 (discussing the view that poverty is a result of "moral failing"); Alstott, *supra* note 3, at 538–39 ("In the current political climate, then, work and responsibility are 'in' and traditional welfare is 'out.'").

80. *See generally* JASON DEPARLE, AMERICAN DREAM: THREE WOMEN, TEN KIDS, AND A NATION'S DRIVE TO END WELFARE (2004) (discussing welfare as a campaign issue for all presidential candidates and detailing the lives of certain welfare recipients); Jason DeParle, *The 1992 Campaign: Issues—Welfare; Talk of Cutting Welfare Rolls Sounds Good, but Progress is Far From Sure*, N.Y. TIMES (Oct. 17, 1992), http://www.nytimes.com/1992/10/17/us/1992-campaign-issues-welfare-talk-cutting-welfare-rolls-sounds-good-but-progress.html?pagewanted=1 [https://perma.cc/CY3V-HYQM] (explaining the specifics of the presidential candidates' plans).

81. Frances Fox Piven, *The Culture of Work Enforcement*, *in* WOMEN AND THE UNITED STATES CONSTITUTION 93, 93–107 (Sibyl A. Schwarzenback & Patricia Smith eds., 2003).

82. *An Introduction to TANF*, CTR. ON BUDGET & POL'Y PRIORITIES 1 (July 22, 2010), http://www.cbpp.org/sites/default/files/atoms/files/7-22-10tanf2.pdf [https://perma.cc/6R8F-ZSA2].

help cash assistance recipients find and maintain work.[83] Though the public conversation around TANF at the time of enactment focused on work, TANF allows states to spend welfare money on anything that falls under four broad goals: first, assisting needy families with children; second, promoting job preparation and work; third, preventing out-of-wedlock pregnancies; and fourth, encouraging the formation of two-parent families.[84]

The change in the delivery method of welfare funds meant a tremendous change in the program that perhaps few predicted: rather than spending the bulk of their TANF funds on direct cash assistance to families or even work support for families, states instead spend most of the money on programs quite outside of these realms. Figure 1, below, details the average state distribution of TANF funds in 2015. As the Figure shows, even though the key stated goals of welfare reform were to provide a temporary safety net to families and to prepare recipients for work, states spent only half of their TANF funds on core welfare reform areas such as basic cash assistance, work-related activities and supports, and child care. Twelve states spent less than 30 percent of their TANF funds on such core activities.[85]

Prior to welfare reform, basic assistance was the single largest use of federal and state AFDC funds.[86] By 2014, only 25 percent of TANF funds went to direct cash assistance, which was the core of the former AFDC welfare program. Seven states spent less than 10 percent of TANF funds on direct cash assistance to families in need.[87] Further, the numbers related to helping recipients find work, the heart of welfare reform, are notable—only 10 percent of TANF funds were used for work-related activities.[88] Most states do not direct significant money to job training programs. In fact, the federal government offers additional funding to states that pledge to provide job training or workforce slots for every person facing the welfare time limit. However, only five states

83. *Chart Book: TANF at 20*, CTR. ON BUDGET & POL'Y PRIORITIES 1 (Aug. 15, 2016), http://www.cbpp.org/research/family-income-support/chart-book-tanf-at-20 [https://perma.cc/77H3-6DG2].

84. 42 U.S.C. § 601(a) (2012).

85. Liz Schott & Ife Floyd, *How States Use Funds Under the TANF Block Grant*, CTR. ON BUDGET & POL'Y PRIORITIES 7–9 (Jan. 5, 2017), http://www.cbpp.org/sites/default/files/atoms/files/1-5-17tanf.pdf [https://perma.cc/S8D7-UUGL].

86. Liz Schott, LaDonna Pavetti & Ife Floyd, *How States Use Federal and State Funds Under the TANF Block Grant*, CTR. ON BUDGET & POL'Y PRIORITIES 5 (Oct. 15, 2015), https://www.cbpp.org/sites/default/files/atoms/files/4-8-15tanf_0.pdf [https://perma.cc/QH4V-SQ2R].

87. *Id.* at 2.

88. Schott & Floyd, *supra* note 85, at 7–9.

have taken the pledge.[89]

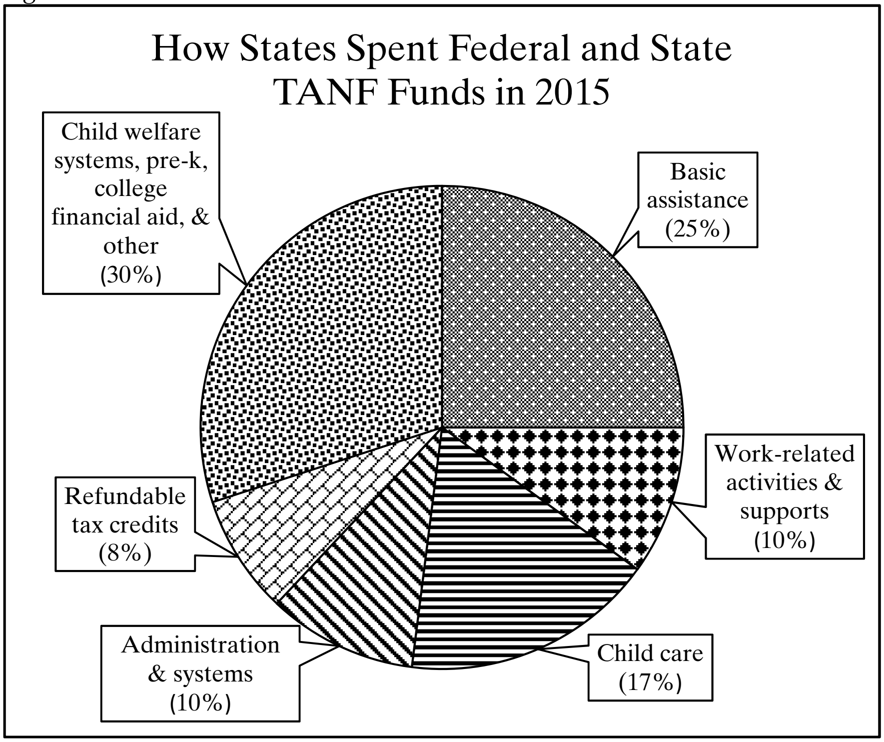
Instead of using TANF funds to further the key stated goals of welfare reform, states spent almost a third of their 2015 TANF funds on services such as child welfare, which includes the organizations that run the foster care system and charge parents with child abuse and neglect; early education; afterschool programs; and college financial aid, in some cases for women who do not have children.[90] It is hard to argue that, for example, the child welfare system somehow promotes job readiness—it is an often-punishing system for poor parents that can actually result in parents *losing* their jobs when their names appear on child abuse registries.[91] These shifts in spending have meant a fundamental change for families who qualify for welfare. Post-reform, families are forced to find an alternative safety net.

89. Delphine D'Amora, *Welfare Reform Is 20 Years Old and It's Worse Than You Can Imagine*, MOTHER JONES (Aug. 22, 2016, 10:00 AM), http://www.motherjones.com/politics/2016/08/welfare-reform-20-years-old-and-its-worse-you-can-imagine [https://perma.cc/NK2Z-8PTF].

90. Schott & Floyd, *supra* note 85, at 2.

91. Michelle Goldberg, *Has Child Protective Services Gone Too Far?*, NATION (Sept. 30, 2015), https://www.thenation.com/article/has-child-protective-services-gone-too-far [https://perma.cc/LGL7-RZW4] (describing a story of a woman who lost her job after being cited with inadequate supervision when her son ran into the street with his scooter during a fight over it with his cousin).

Figure 1.[92]



B. Where Are They Now?

If the goal was to reduce the number of families on the welfare rolls, welfare reform was wildly successful. On the eve of welfare reform, roughly seven in ten poor families received welfare. Now, only about two in ten do so.[93] Over the last roughly twenty years, TANF rolls are down to about 2.7 million total recipients including children,[94] which is an 81 percent decline from 1994.[95]

President Clinton and House Republicans were encouraged by the drop in welfare rolls and a steady increase in the number of low-income

92. The data for Figure 1 were collected by the Department of Health and Human Services and presented graphically by Liz Schott and Ife Floyd in Schott & Floyd, *supra* note 85. Figure 1 is a slightly modified recreation of Schott and Floyd's graph.

93. Kathryn Edin & H. Luke Shaefer, *20 Years Since Welfare 'Reform,'* ATLANTIC (Aug. 20, 2016), https://www.theatlantic.com/business/archive/2016/08/20-years-welfare-reform/496730 [https://perma.cc/MBW4-SKXA].

94. *TANF Caseload Data 2016*, OFF. FAM. ASSISTANCE (Jan. 12, 2017), https://www.acf.hhs.gov/ofa/resource/tanf-caseload-data-2016 [https://perma.cc/7SUT-GLDG].

95. *Caseload Data 1994 (AFDC Total)*, OFF. FAM. ASSISTANCE (Dec. 19, 2004), https://www.acf.hhs.gov/ofa/resource/caseload-data-afdc-1994-total [https://perma.cc/78TB-EZ6Y].

single mothers who worked.[96] A year after he signed the welfare reform bill, Clinton told an audience, "[I]t's fair to say the debate is over—we now know that welfare reform works."[97] In 2006, ten years later, Clinton wrote an op-ed for the New York Times entitled *How We Ended Welfare, Together.*[98] In this op-ed, after describing encouraging statistics about the drop in welfare rolls and simultaneous increase in employment of women who had left welfare, Clinton declared "[w]elfare reform has proved a great success."[99]

Welfare as we knew it did end. However, poverty as we knew it did not. The poverty rate for children in 2015 was 19.7 percent.[100] Roughly four out of every ten children in the United States, 38.8 percent, are poor for at least one year before they reach their eighteenth birthday, and for black children, 75.4 percent are poor for at least one year of their childhood. Additionally, 10.5 percent of all children and 38.5 percent of black children are poor for at least half of their childhoods.[101]

Despite these numbers, initial results for welfare reform did look promising, as Clinton suggested. In 1993, 58 percent of low-income single mothers were employed, and this number rose to almost 75 percent by 2000.[102] At the time welfare reform hit, the economy was booming and jobs were more readily available than in the 2000s, when the Great Recession hit and rates of employment for mothers dropped significantly.[103] Even before the Great Recession, there were two primary groups of welfare mothers: those who worked and those who were neither receiving welfare nor working. One in five single mothers did not work during the mid-2000s.[104] For many years, this group of mothers fell under the radar, but a recent study has shed much light on those in deep poverty—living on roughly $2 per day.[105] This Article,

96. EDIN & SHAEFER, *supra* note 1, at 29–30.

97. Clyde Haberman, *20 Years Later, Welfare Overhaul Resonates for Families and Candidates*, N.Y. TIMES (May 1, 2016), https://www.nytimes.com/2016/05/02/us/20-years-later-welfare-overhaul-resonates-for-families-and-candidates.html [https://perma.cc/JGU4-UBLM].

98. Bill Clinton, Opinion, *How We Ended Welfare, Together*, N.Y. TIMES, Aug. 22, 2006, at A19.

99. *Id.*

100. BERNADETTE D. PROCTOR, JESSICA L. SEMEGA & MELISSA A. KOLLAR, CENSUS BUREAU, INCOME AND POVERTY IN THE UNITED STATES: 2015, at 12 (2016).

101. *Id.*

102. EDIN & SHAEFER, *supra* note 1, at 29–30.

103. *Id.*

104. *Id.* at 30.

105. *Id.*

however, focuses on another group of mothers—those who have been able to obtain a job that pays above the poverty line at some point post-welfare reform, but who have also experienced financial troubles at some point along the way. For this group of mothers, income volatility is commonplace, and small shocks that derail years of hard work are the norm.[106]

II. THE INCREASING IMPORTANCE OF CREDIT

Just as welfare reform took effect in the mid-1990s, credit scores and reports were gaining increased importance as gatekeepers to some of the most important economic institutions in the American economy. The history of credit reporting is often neglected, but it is key to understanding why some of the current proposals to regulate the use of credit reports may fall short. After briefly discussing the history of credit scores and reports, this Part provides a short primer on the mechanics of credit reports and scores, and then takes a detailed look at the expanding importance of credit in providing access to mainstream economic institutions. Finally, this Part discusses the role of credit in the lives of low-income families in a post-welfare-reform era.

A. The Surprising History of Credit Reports and Scores

Civil rights groups in the twenty-first century have advocated for curbing the use of credit reports in hiring and other contexts.[107] In the

106. Lily L. Batchelder, *Taxing the Poor: Income Averaging Reconsidered*, 40 HARV. J. ON LEGIS. 395, 397 (2003) ("[L]ow-income families experience higher income volatility from year to year than middle- and high-income families . . . ."); Greene, *supra* note 15, at 518 ("While insecurity has increased for all Americans, levels of insecurity are higher among those with low incomes . . . and single parents."); Jacob S. Hacker et al., *Economic Insecurity and the Great Recession: Findings from the Economic Security Index*, ECON. SECURITY INDEX 16–17 (Nov. 2011), http://economicsecurityindex.org/assets/ESI%20Full%20Report%202011.pdf [https://perma.cc/6JHB-LN7J]; Jacob S. Hacker et al., *Econ. Security Index, Economic Security at Risk: Findings from the Economic Security Index*, ECON. SECURITY INDEX, at iv (July 2010), http://economicsecurityindex.org/upload/media/Economic_Security_Index_Full_Report.pdf [https://perma.cc/2XMM-NM4W] (noting that the amount of insecurity varies across the population and that the less affluent face the most insecurity).

107. In 2009, the Lawyers' Committee for Civil Rights Under Law issued a letter in support of the Equal Employment for All Act, which would ban employers from seeking credit reports as a screening tool in most hiring contexts. The letter was joined by thirteen other groups, including the Asian American Justice Center; Communications Workers of America; AFL-CIO; Leadership Conference on Civil and Human Rights; International Union, United Automobile, Aerospace & Agricultural Implement Workers of America; NAACP; NAACP Legal Defense and Education Fund; National Community Reinvestment Coalition; National Council of La Raza;

mid-twentieth century, however, civil rights and women's rights groups were behind the push to mandate uniform standards of credit.[108] The history of credit in the United States helps to explain why.

Credit has long been tied to a promise to repay, and timely repayment is considered a sign of trustworthiness.[109] Long before credit bureaus existed, lenders relied on a potential borrower's personal reputation within a community to decide whether or not to trust the individual with money.[110] In the early twentieth century, consumer financing of goods became increasingly popular, and families who once would have been ashamed to use consumer credit instead came to believe that buying items on credit was financially savvy.[111] Indeed, by the late 1920s, most durable goods were bought on installment plans: 65 to 70 percent of automobiles, over 70 percent of furniture, and 80 percent of household appliances.[112]

Credit and loan-making decisions during this time were almost entirely subjective. As credit expanded, department stores established specialized credit offices that were charged with managing credit applications in a systematic and ordered fashion. Applicants were "interviewed, and assessments of their creditworthiness were made on the basis of the perceived physical demeanor of the applicant—how 'shifty,' 'evasive,' 'seedy,' or 'flashy' they looked."[113] Credit analysts followed their own judgments when deciding whether to grant or deny

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National Employment Lawyers Association; National Fair Housing Alliance; National Partnership for Women and Families; National Women's Law Center; and Women Employed. Letter from the Lawyers' Committee for Civil Rights under Law to Congressman Steve Cohen (July 17, 2009), http://lawyerscommittee.org/wp-content/uploads/2015/07/Equal-Employment-for-All-Support-Letter.pdf [https://perma.cc/76Y6-9MLM].

108. *See generally* LOUIS HYMAN, DEBTOR NATION (2011) (discussing the role of the NAACP and other groups in pressuring the Federal Housing Administration to curb their discriminatory mortgage practices); *see also* Louis Hyman, *Ending Discrimination, Legitimating Debt: The Political Economy of Race, Gender, and Credit Access in the 1960s and 1970s*, 12 ENTERPRISE & SOC'Y. 200, 202 (2011) (describing the role of activists in negotiating a series of laws in the late 1960s and early 1970s intended to promote credit fairness for all Americans).

109. *See, e.g.*, Bruce G. Carruthers & Jeong-Chul Kim, *The Sociology of Finance*, 37 ANN. REV. SOC. 239, 240–41 (2011).

110. Bruce Carruthers & Wendy Espeland, *Money, Meaning, and Morality*, 41 AM. BEHAV. SCI. 1384, 1393 (1998) (describing how, throughout history, lenders used personal characteristics and reputations of borrowers in order to decide whether to loan the potential borrower money).

111. *See generally* Martha L. Olney, Spendthrift, or Sophisticated Borrower? (Nov. 14, 2002) (unpublished manuscript) (on file with the *Duke Law Journal*) (describing the increasing use of consumer credit in the early twentieth century).

112. *Id.*

113. Donncha Marron, *"Lending by Numbers": Credit Scoring and the Constitution of Risk Within American Consumer Credit*, 36 ECON. & SOC'Y. 103, 106 (2007).

requests, and discrimination based on age, sex, marital status, social class, and ethnicity was rampant, making traditional credit unavailable to many.[114]

During the 1930s and beyond, the availability of credit continued to expand for most Americans, but poor and minority communities were explicitly excluded from access to low-cost government and other mainstream loans.[115] The Home Owners Loan Corporation (HOLC) used an explicitly discriminatory rating system and "residential security maps" to label black communities as "high risk."[116] These practices were continued into the 1950s and 1960s by the Federal Housing Authority, the Veterans Administration, banks, real estate agents, appraisers, and others.[117] After World War II, the growth of credit markets for middle-class white Americans exploded—availability went well beyond the installment department store credit of the 1920s.[118] Credit was interwoven into the everyday fabric of life—homes, cars, even clothing was financed. Credit access was the road to the American Dream.

Poor and minority Americans, however, were relegated to fringe lending and paid much more than they would have otherwise.[119] Retailers in poor, mostly minority neighborhoods kept their accounts in leather-bound books (a relic of the past), going door-to-door to collect on debts, unlike suburban retailers.[120] The prices were much higher in these poor neighborhoods, too. The same exact model of General Electric dryer that cost $238 in more affluent areas cost $270 in poorer areas of Washington, D.C.[121] Particularly after World War II, installment credit gave way to revolving credit for durable goods for most of America,[122] but in poor neighborhoods, installment credit was

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114. *Id.*

115. Lisa Rice & Deidre Swensik, *Discriminatory Effects of Credit Scoring on Communities of Color*, 46 SUFFOLK U.L. REV. 935, 936 (2013).

116. *Id.*

117. *Id.*

118. HYMAN, *supra* note 108, at 135–37 (describing the prevalence of different types of credit for white middle-class Americans in the Postwar suburbs).

119. *Id.*

120. Hyman, *supra* note 108, at 201.

121. *Id.* at 205.

122. Revolving credit is credit that does not have a specific number of payments attached to it and is usually used on an as-needed basis. Credit cards and home-equity loans tend to be revolving lines of credit. Installment credit is credit that has a specific, finite number of payments attached to it. It often comes in the form of a loan that is paid back in set increments for a set number of months.

the only way of life, with high interest rates and one-sided terms.[123] There was no access to credit cards in these poor neighborhoods and only extremely limited access to mortgages that would allow for mobility.[124] Black residents knew they need not apply—even in the early 1970s, a Federal Trade Commission (FTC) report about the practices of a major consumer finance company found that applicants' race was noted and given point scores on every application. White borrowers got seven points, a "person of Spanish origin" four points, and a black borrower no points at all.[125]

It was in this context that advocates for disadvantaged groups argued that instead of relying on one loan officer's individual judgment and biases, universal automated systems would decrease the potential for discrimination because they would be "transparent, consistent, uniform, unbiased, less labor intensive and automatable."[126] As credit historian Louis Hyman wrote, advocates believed the key to eliminating discrimination was in "increasing automation of decision making, in moving credit evaluation out of the hands of discriminatory loan officers and into the algorithms of objective quantitative credit lending models."[127] Both civil rights groups and women's rights groups got involved. For example, the National Organization of Women (NOW) issued a press release that called on "Congress [to] amend the fair credit reporting act to require such [credit bureau] agencies to maintain individual files on all consumers without regard to sex or marital status."[128]

Congress eventually responded, and beginning in 1974, it passed legislation and a series of targeted amendments that sought to end discrimination in credit evaluations and lending. When President Gerald Ford signed the amendment that targeted racial discrimination, he noted the shared commitment of Congress and his administration to "achieve goals of fairness and equality in a broad range of business transactions [which] millions of American consumers engage in every day of every year."[129]

By the late 1970s, creditors were committed to eliminating any

123. Hyman, *supra* note 108, at 205.

124. *Id.*

125. *Id.* at 224.

126. Marron, *supra* note 113, at 113.

127. Hyman, *supra* note 108, at 223–24.

128. *Id.* at 225.

129. *Id.* at 226.

possibility of a lawsuit, and thus many of them completely eliminated the role of loan officers in evaluating applicants and accelerated the transition to computer-based credit models.[130] Richard Cremer, a credit executive at Montgomery Ward, said that "traditional credit manager[s] . . . emphasized [their] face-to-face contact with the credit applicant,"[131] which clouded judgment. "Biases, prejudices, and even mood" could affect the loan officers' evaluations—and ultimately hurt profits.[132] Thus, Cremer reasoned, credit scoring "encourage[d] a decision motivated by economics alone" and was the "only available method that meets the criterion of fairness."[133] Explicitly discriminatory categories were removed from models' variables, and thus, the computer models and reports allegedly eliminated human prejudice and replaced it with consistent and "fair" reports that were no longer subject to the whims of individual loan officers.[134]

Today, FICO scores, which are derived from credit reports and range from 300 to 850, are the basis for most credit scores.[135] FICO was founded in 1956 as Fair, Isaac and Company by the engineer William Fair and the mathematician Earl Isaac.[136] The two worked together to devise a model to evaluate the risk that an individual would default on a loan, based only on a borrower's finances. Thus, the score was to be race, sex, and even socioeconomic-status neutral.[137] FICO went public in 1986, the first general-purpose FICO score was released in 1989, and mortgage companies such as Fannie Mae and Freddie Mac began using FICO scores to help determine mortgage qualification in 1995.[138] Currently, the three main credit-reporting agencies use FICO scores as a basis for their credit score models.[139]

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130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.* at 226–27.

135. *Our History*, FICO, http://www.fico.com/en/about-us#our_history [https://perma.cc/6XDG-7HFA].

136. *Id.*

137. O'NEIL, *supra* note 22, at 142.

138. *Our History*, *supra* note 135.

139. *See The Impact of Differences Between Consumer- and Creditor-Purchased Credit Scores*, CONSUMER FIN. PROTECTION BUREAU 5–6 (July 19, 2011), https://s3.amazonaws.com/files.consumerfinance.gov/f/2011/07/Report_20110719_CreditScores.pdf [https://perma.cc/M73D-9Z9E].

B. A Brief Primer on Current Credit Report and Score Mechanics

FICO scores analyze information collected from credit reporting agencies in order to predict likely outcomes for lending money. FICO scores take five main factors into consideration. First, payment history, which considers whether bills were paid on time, accounts for roughly 35 percent of FICO a score. Second, credit utilization, which refers to the amount of credit a person is using compared to the amount of available credit the person has, accounts for about 30 percent of a FICO score. Third, the age of credit accounts makes up roughly 15 percent of a FICO score, with longer histories of on-time payments rewarded. Fourth, recent credit inquiries, which take into account when and how many credit inquiries were made, makes up about 10 percent of a FICO score. It is theorized that recent credit inquiries are a relevant factor because someone who has a lot of recent inquiries is more likely to be in a financial hole and in need of credit, making the person a more risky debtor. Finally, the types of credit a person has determine the remaining 10 percent of a FICO score: FICO scores are helped when a debtor has a variety of credit, including a mix of borrowing and repayment.[140] Simultaneously having a student loan, a credit card, and a mortgage payment, for example, would generally help a person's credit score, while having just one credit card or just one student loan can bring a score down.[141]

There are three main credit reporting bureaus: TransUnion, Experian, and Equifax.[142] All three of these separate bureaus report roughly the same information, with some variation. Each bureau will report a slightly different score because each bureau uses a slightly different model for its calculations.[143]

Credit reports are distinct from credit scores. They are complex documents, often many pages long.[144] They contain basic credit card history—cards opened, cards closed, payment history, etc.—as well as

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140. *What's in My FICO Scores*, MYFICO, http://www.myfico.com/credit-education/whats-in-your-credit-score/ [https://perma.cc/Y2B9-FWZG].

141. *Id.*

142. *See, e.g.*, *Analysis of Differences Between Consumer- and Creditor-Purchased Credit Scores*, CONSUMER FIN. PROTECTION BUREAU 4 (Sept. 2012), http://files.consumerfinance.gov/f/201209_Analysis_Differences_Consumer_Credit.pdf [https://perma.cc/GJ33-6Z5N].

143. *Id.*

144. *See, e.g.*, Barbara Kiviat, Capability, Character, Credential: The Multiple Meanings-and Consequences-of Credit Reports in Hiring 5 (Apr. 16, 2016) (unpublished manuscript) (on file with the *Duke Law Journal*).

payment history on mortgages, car loans, and student loans.[145] There are certain types of delinquencies—such as overdue utility bills, unpaid medical expenses, and owed rent—that show up on a credit report only if they are reported to a debt collector. Positive payment histories in these three areas are not included on a credit report.[146]

Ultimately, the basic functions of credit reporting and scores described in this Section form the basis for inclusion in, and exclusion from, important economic resources, as described below.

C. Credit Histories as Gatekeepers

On the surface, modern credit scoring appears to be an impartial and fair system for evaluating consumer risk. However, there is an important and growing literature that articulates why the current system may continue to harm disadvantaged groups by potentially replacing explicit discrimination with implicit discrimination. Some have described the potential for algorithms used in systems such as credit scoring to be inherently biased and thus cause disparate impacts on certain groups, despite all appearances of impartiality.[147] While not the focus of this Article, these concerns are important when

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145. *Id.*

146. *Id.*

147. EXEC. OFFICE OF THE PRESIDENT, BIG DATA: A REPORT ON ALGORITHMIC SYSTEMS, OPPORTUNITY, AND CIVIL RIGHTS 11 (2016) (noting that about 30 percent of consumers in low-income neighborhoods are credit invisible, meaning they do not have enough credit history to have a credit score, and thus are ineligible for credit that requires a credit score). This same report also argues that big data can lead to discriminatory results based on poorly selected data, incomplete, incorrect, or outdated data, selection bias, and unintentional perpetuation and promotion of historical biases. *Id.* at 7–8. Scholars have aired nearly identical concerns. *See, e.g.*, Solon Barocas & Andrew D. Selbst, *Big Data's Disparate Impact*, 104 CALIF. L. REV. 671, 671, 679 (2016) (discussing the potential of big data to deny historically disadvantaged and vulnerable groups full participation in society because the data algorithms use are frequently imperfect in ways that allows algorithms to inherit the prejudices of prior decision makers); *id.* at 679 (noting that, in regards to credit scores, "there is no way to directly measure creditworthiness because the very notion of creditworthiness is a function of the particular way the credit industry has constructed the credit issuing and repayment system"); Danielle Keats Citron & Frank Pasquale, *The Scored Society: Due Process for Automated Predictions*, 89 WASH. L. REV. 1, 4 (2014) (arguing that though automated systems are designed to avoid discrimination by rating people in the same way, this is misleading because "human beings program predictive algorithms, [and] their biases and values are embedded into the software's instructions, known as the source code and predictive algorithms," and thus, that the scoring process can prove discriminatory, have a disparate impact, and even allow for "systemizing" discrimination); Rice & Swensik, *supra* note 115, at 937 (arguing that credit scoring systems used today rely upon the dual credit market that discriminates, and has historically discriminated, against people of color). *See generally* Tal Z. Zarsky, *Understanding Discrimination in the Scored Society*, 89 WASH . L. REV. 1375 (2014) (describing discrimination-based concerns that result from big data).

considering just how expansive the use of credit histories has become.

In the case of employment decisions, employers do not even have a potentially objective measure such as a credit score on which to judge potential employees. Employers are not given access to credit *scores*;[148] instead, employers are given credit reports—complicated documents with multiple data points—and then are left to interpret these data points themselves. As discussed previously, credit reports include an individual's personal information, including their name, address, previous address, social security number, and information about credit card accounts, including balances, credit limits, monthly payments, and tardy payments; mortgage debt and payment history; bankruptcy records; judgments in civil actions; data on student loans; amounts of car payments; bills that are in collection, including medical debts; tax liens; and inquiries regarding credit status.[149] Little is known about exactly how employers interpret credit reports and the information contained in them,[150] but a survey by the Society of Human Resources found that almost half of their member employers do consider credit reports in hiring decisions.[151] It would not be hard to surmise that some amount of implicit or explicit bias goes into how employers interpret credit reports and the vast amount of data contained in them.

Employment is just one of many new domains where the credit report or score is a factor in gaining access. A study by TransUnion found that almost half of all landlords surveyed performed a credit check as part of their leasing process.[152] In the case of landlords, they are provided with credit scores as well as full credit reports. Of those landlords in the TransUnion study who performed a credit check, almost half reported that it was among the top three factors used when

148. *See* Leslie Callaway & Mark Kruhm, *Servicemember Disclosure a Must on All Mortgages*, 102 AM. BANKERS ASS'N BANKING J. 64, 64 (2010) ("Equifax, Experian, and TransUnion all decline to provide credit scores to employers for employment screening.").

149. FED. RESERVE BULLETIN, AN OVERVIEW OF CONSUMER DATA AND CREDIT REPORTING 47 (Feb. 2003); Traub, *supra* note 23, at 1.

150. I am currently in the early stages of surveying and interviewing employers to learn how they interpret credit reports and what, if any, formal policies or trainings are in place in larger companies to teach people who make hiring decisions how to interpret and factor in credit reports.

151. *SHRM Survey Findings: Background Checking–The Use of Credit Background Checks in Hiring Decisions*, *supra* note 22.

152. *TransUnion Reveals Almost Half of Landlords Consider Renters' Credit Health as a Key Factor in Leasing Decision*, TRANSUNION (May 12, 2014), http://newsroom.transunion.com/transunion-reveals-almost-half-of-landlords-consider-renters-credit-health-as-a-key-factor-in-leasing-decision [https://perma.cc/LW4Q-9HRJ].

deciding whether to accept a tenant's lease application.[153] Additionally, over 92 percent of car insurance companies conduct credit checks and set rates based on credit history.[154] For families whose providers need a car in order to get to work, a prohibitively high rate can be disastrous. Even utility companies have begun conducting credit checks, and requiring those with low scores to either provide significant "deposits" before the utility is hooked up, or to get a guarantee-to-pay letter from someone else.[155] For many poor families living paycheck to paycheck, this security deposit is prohibitive.[156]

D. Credit as a Safety Net

At the same time that credit scores and reports are becoming increasingly important gatekeepers to economic resources, the use of credit—and thus the accumulation of debt—has seen a significant increase among low-income parents. This increase is due both to deregulation of the lending industry that allowed lenders to engage in higher-risk consumer lending[157] and to the necessity of a private safety net for low-income families post-welfare reform. Several studies have found that, post-welfare reform, low-income parents increasingly rely on credit to weather emergencies.[158] The reasons are multidimensional. For one, credit cards provide "a fast, easy, stigma-free" way of coping with most financial emergencies.[159] Credit cards are particularly useful

153. *Id.*

154. *Geico's Credit Use–Frequently Asked Questions*, GEICO, https://www.geico.com/information/credit-use-faq [https://perma.cc/G2DE-SX6R].

155. FED. TRADE COMM'N, UTILITY SERVICES (2012), https://www.consumer.ftc.gov/articles/0220-utility-services [https://perma.cc/MG79-FGND].

156. For a detailed account of a family struggling because of the need to provide a down payment or guarantor for an electricity hook-up, see *infra* note 183 and accompanying text.

157. *See supra* note 19 and accompanying text.

158. *See* Greene, *supra* note 15, at 549; Littwin, *supra* note 16, at 457–58; Mann, *supra* note 20, at 257–58.

159. Littwin, *supra* note 16, at 458; *see also* RONALD J. MANN, CHARGING AHEAD: THE GROWTH AND REGULATION OF PAYMENT CARD MARKETS 63 (2006) ("[D]ata suggest that many families use credit cards to meet crisis-level medical expenses, and the special features of credit card borrowing might have eased the difficulty. . . . [T]he credit card can be the lifeline by which the families pull themselves out of distress." (citations omitted) (citing Adam J. Levitin, *America's Payment Systems, No-Surcharge Rules, and the Hidden Costs of Credit*, 3 BERKELEY BUS. L.J. 69 (2006); then citing Alan S. Frankel, *Monopoly and Competition in the Supply and Exchange of Money*, 66 ANTITRUST L.J. 313 (1998))); Kevin T. Leicht, *Borrowing to the Brink: Consumer Debt in America*, *in* BROKE: HOW DEBT BANKRUPTS THE MIDDLE CLASS, *supra* note 17, at 195, 205 ("Credit card debt is a particularly useful substitute for wages because it can be used to meet everyday or large-ticket expenses."); Mann, *supra* note 20, at 257–58 ("The credit card also provides a remarkably flexible safety net that can be deployed in response to unexpected

for emergencies that require immediate action. Further, family and friend networks are generally less reliable than credit cards because networks of low-income workers tend to be low-income themselves, and thus are often resource deprived.[160] Studies also indicate that people sometimes hesitate to ask family and friends for help during an emergency because it means admitting to the family member or friend that one is in need and cannot provide for oneself, resulting in feelings of shame and embarrassment.[161] Relatedly, people sometimes feel guilty asking to borrow money because they know that borrowing the money would cause a financial strain on their network member.[162] Credit cards, on the other hand, do not come with these problems.

But when families are struggling financially and are in need of a safety net, how do they make decisions about whether to try to access public benefits, to utilize credit, and to enlist tools to relieve debt? How might these decisions be related to the culture of welfare reform, and how might these decisions affect the long-term trajectory of a family's financial stability, and poverty and inequality more generally? The next Part turns to these questions.

III. PERVERSE DISINCENTIVES AND DOWNWARD MOBILITY: THE ACCIDENTAL INTERACTION OF CREDIT HISTORIES AND SELF-SUFFICIENCY

This Part uses real-world illustrations from qualitative data to explain how the current safety net for financially struggling families is flawed. From a public policy standpoint, the safety net is ineffective because it does not adequately enable low-income families to become self-sufficient. From an equity standpoint, it is likewise ineffective because it does not provide enough tools to reduce inequality and poverty.

The first Section of this Part briefly describes the data I collected through interviews with families who have struggled financially. The second Section utilizes the sociological concept of narratives to show how the current safety net punishes families who have embraced the self-sufficiency narrative by using credit, rather than public assistance, as a safety net. The third Section describes how, ironically, those who attempt to repair their debt and credit history through privately

financial crises.").

160. Littwin, *supra* note 16, at 460.

161. *See* Greene, *supra* note 15, at 549.

162. *See id.*

advertised forms of repair ultimately may experience more downward mobility than those who seek out public forms of support such as bankruptcy. This is just one example of the perverse incentives inherent in the current safety net: those who have internalized the self-sufficiency narrative may end up worse off than those who are inclined to seek help from public programs.

The fourth Section shows how families who have resisted a self-sufficiency narrative—and have instead embraced what this Article calls "deserving recipient" narratives—are often rewarded by the current safety net system. Though these narratives are counter to the self-sufficiency narrative welfare reformers might hope for, they sometimes protect these respondents from the pitfalls of the punishing credit system. The illustrations in this Section ultimately lead to an imagining of a new program for the safety net that could better serve the needs of vulnerable families, which is highlighted in Part V.

A. Data

The data utilized in this study were collected in 2016 and 2017. I conducted in-depth, semistructured interviews with seventy-one parents in North Carolina who self-identified as having earned at least $3000 in gross monthly income for six months or more in the past two years, having struggled to pay a bill at some point in the past two years, and having at least one minor child.[163]

The study's initial purposes were to better understand how parents who had struggled financially experienced and understood credit, credit reports, and credit scores, and to investigate the role of credit as a safety net more generally. I recruited families from two sources: local online school and parent resource groups and Legal Aid of North

163. Since I was particularly interested in the role of credit as it related to financial volatility of families with children, my goal was to interview parents who had struggled financially in the past two years, but who had also earned income well above the federal poverty line for at least a few months in the past two years. In 2016, a family of four who earned $36,375 was earning 150 percent of the federal poverty line. *See* DEP'T HEALTH & HUMAN SERVS., *2016 Federal Poverty Level Chart*, https://www.parkviewmc.com/app/files/public/1484/2016-Poverty-Level-Chart.pdf [https://perma.cc/KX57-QGAH]. Monthly, such a family would earn $3,031. I rounded to $3,000 for ease and clarity. There was of course variation in the number of children each family had, and whether there was a second adult earner in the household, but the purpose of the study was not to create a strict sample based on income. Instead, the focus of the study was on how families with at least one parent who had worked at a job that paid well, relative to the poverty line, coped with financial emergencies. Thus, I conducted interviews with parents who had earned well above the federal poverty line (over $3,000 in a given month) at some point in time during the last two years (for at least 6 months), but who also had, despite these earnings, struggled to pay a bill in the past two years.

Carolina webinars, which contained a slide advertising this study. Once a family contacted me expressing interest in being part of the study, I conducted a screening call over the phone to ensure the family qualified for the study before conducting a full interview in-person. All but ten of the interviews were conducted in the respondents' homes. The other ten interviews were conducted in alternate private and semiprivate spaces chosen to ensure the respondents felt comfortable discussing intimate aspects of their finances and personal lives. Each respondent received $40.00 for an approximately two-hour-long interview. At the beginning of each interview, respondents signed a consent form that, among other things, summarized the study and potential risks and benefits to the respondent, detailed the confidentiality measures taken to protect respondent identity, and allowed the interview to be recorded.[164]

The data are not meant to be representative, as I am not making quantitative claims about the commonality of the varying outcomes for families.[165] We already know that the credit reporting system works such that those who borrow money they cannot pay back are penalized on their credit reports and scores. Qualitative data are not needed to verify this point—it is the mechanics of how credit scoring and reporting work. The contribution of the qualitative data, however, is to illustrate how existing functions of the credit system can interact with varying cultural adoptions of self-sufficiency and personal responsibility to create perverse incentives for financially struggling families similar to those welfare reformers were trying to combat. The data also illustrate how the existing safety net for financially struggling families does little to allow for independent financial resilience, another goal of welfare reformers and a goal many respondents articulated as important for themselves.

Indeed, in-depth interviews are particularly useful when

164. This study was approved by the Institutional Review Board (IRB) of Duke University. In line with the requirements of the IRB and the confidentiality agreement that respondents signed, I made every effort to protect the identity of respondents. At the stage of initial contact, each respondent was assigned a unique identification number, which was included on their transcripts and data file. A name (not associated with the respondent's actual name) was assigned to each unique code number to ease data presentation and eliminate potential confusion. I omitted potentially identifying information from all data presentation, such as exact addresses and exact places of employment. I also replaced actual names of family and friends with alternate names.

165. For more information about qualitative research methodology and sampling, see Mario Luis Small, '*How Many Cases Do I Need?': On Science and the Logic of Case Selection in Field-Based Research*, 10 ETHNOGRAPHY 5, 24–27 (2009), and Lamont & White, *supra* note 30, at 10.

researchers are attempting to understand "the experience[s] of individuals within social contexts"[166] and to include subjective experiences.[167] In-depth interviews enable researchers to gather data about "the cultural understandings actors bring to social experience, interactions, and institutions."[168] The aim of the study and sampling strategy is to illuminate and understand rather than to predict or determine causation.[169] This is the dominant strategy used among analytical sociologists.[170]

In qualitative analysis, presentation of exact numbers can lead to a false sense of precision of the data.[171] Further, these percentages do not take into account the strength of people's statements. Thus, in general, I refrained from reporting exact percentages or proportions of respondents because of the limitations and potential for misunderstanding such presentation of qualitative data can promote.

Accordingly, this Article primarily uses adjectives such as "most," "many," and "some" to convey the prevalence of a theme across interviews, rather than reporting exact percentages of prevalence.[172] This Article uses the word "most" when the vast majority of respondents in a given group indicated a specific viewpoint or theme. The word "many" is used when roughly half of the group in question referred to a position or theme, and the word "some" when a theme or idea was not representative of a group as a whole but was shared by several people and thus suggested a potentially important pattern. All findings presented in this Article were supported by multiple respondents, and no outlier viewpoints are presented, unless indicated as such.

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166. Lamont & White, *supra* note 30, at 10.

167. *Id.* ("Qualitative approaches allow for the inclusion of subjective experience and cultural sense making that play a vital role in understanding all facets of social life.").

168. *Id.*

169. JULIET CORBIN & ANSELM STRAUSS, BASICS OF QUALITATIVE RESEARCH: TECHNIQUES AND PROCEDURES FOR DEVELOPING GROUNDED THEORY 48, 159–60 (3d ed. 2008).

170. *See* Mario Luis Small, *Causal Thinking and Ethnographic Research*, 119 AM. J. SOC. 597, 599 (2013).

171. *See* SUSAN STURM & KINGA MAKOVI, FULL PARTICIPATION IN THE *YALE LAW JOURNAL* 30 (2015), http://www.yalelawjournal.org/files/FullParticipationintheYaleLawJournal_e929dpx1.pdf [https://perma.cc/QT9F-R9BM].

172. For another example of this reporting technique for qualitative data, see *id.*

B. Broken Bootstraps: When Self-Sufficiency Fails

When Latisha Jones[173] was in her 20s, she lived on welfare, which was AFDC at that time. Between AFDC and a few side jobs,[174] she had just enough money for the necessities for herself and her son. Now in her mid-forties, twenty years after welfare reform, Latisha is struggling. She is over $10,000 in debt, a consequence of using credit to get by during tough economic times. She is currently without a job—she said she had a "good" one, but her employer downsized—and she is using the little credit she has available to keep afloat.

Latisha's days consist of searching for a job, but, as she said, "it's just not coming." She was brought in for two different job interviews, but one employer told her she did not get the position because of her "troubling" credit report, and the other never got back to her. With no job in sight, Latisha tried to move to a less expensive apartment, but her application was denied because her credit "did not check out." As Latisha put it, "That freaking score . . . I can't win with it. I need to fix it. It needs to be better. Find a way, God lead me to find a way. You see that Charlie and the Chocolate movie? Well, a good score, well, it's my very own golden ticket."

The irony of Latisha's situation is that, despite her failure to improve her credit history, she is in some regards a poster child for welfare reform. When she talks about her time on welfare, she says she "hated it because [she] was needing a handout." She makes sure to distinguish herself from "those lazies who sat around getting fat, eating Doritos . . . I was stuck because my son had bad, bad asthma and was always home sick." During our interview, she said, "I take care of myself. I teach my boy that too. You gotta figure things out for yourself. Don't be asking for a handout. It's about Jesus. You give not take." This is exactly the "self-sufficient" rhetoric that bipartisan welfare reformers hoped for. Indeed, when Latisha was asked whether she had sought help from welfare given her trouble finding a job, she replied, "No way no how. I'm done with that. I said no more handouts."

Latisha's resistance to seeking out cash welfare through TANF,

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173. All names of respondents are pseudonyms.

174. Many women who received AFDC took on unreported side jobs such as housecleaning and caring for other people's children in order to have enough income for necessities. *See* EDIN & LEIN, *supra* note 3, at 172, 174 ("The urban economies of all four sites provided various forms of unreported work in the informal economy, such as housecleaning, babysitting, laundry, yard work, house painting, apartment-building maintenance, operating neighborhood taxis, cooking meals for others, and sewing. These occupations provided crucial supplemental income for welfare recipients . . . .").

even though she likely qualifies, is not uncommon.[175] Indeed, the take-up rate for TANF is only 30.7 percent.[176] In other words, only 30.7 percent of families who qualify to receive TANF are actually receiving it. Latisha's use of credit to smooth financial difficulties, rather than turning public assistance, is also not uncommon.[177] However, as Latisha's situation demonstrates, when someone uses a credit card but then cannot or does not pay back the debt, the consequences can multiply and result not only in cycles of endless debt, but also in trouble getting a job, housing, or other economic resources that promote mobility. And the absence of these economic resources can lead to downward mobility and the reproduction of poverty and inequality.

When Latisha lost her job, the rational decision from an economic perspective may have been to seek whatever type of public assistance she could get. But many respondents expressed the same sentiment as Latisha—they did not, under any circumstances, want to seek public benefits. Even more striking was that most of the respondents who expressed this view seemed to understand that relying on credit might produce more financial hardship than seeking public benefits. All respondents were asked whether they had considered seeking TANF when they first experienced a financial emergency. Many respondents said they did not consider TANF, and when asked why, many answers were similar to Laurie's:

> Honey, I sure was struggling. I was. But you may not know it, but TANF is welfare. Welfare. My mommy was on welfare and it was the worst thing. Those workers would come knocking on our door, judging her, judging us, treating us like scum. I'm better than

175. *See, e.g.*, Greene, *supra* note 15, at 541–43.

176. Gilbert Crouse & Suzanne Macartney, *Welfare Indicators and Risk Factors*, U.S. DEP'T HEALTH & HUM. SERVS. 20 (2014), https://aspe.hhs.gov/sites/default/files/pdf/206736/WelfareIndicators15thReport.pdf [https://perma.cc/S4HP-PW8V].

177. *See, e.g.*, José A. García, *Borrowing to Make Ends Meet: the Rapid Growth of Credit Card Debt in America*, DĒMOS 1 (2007), http://www.demos.org/sites/default/files/publications/Demos_BorrowingEndsMeet.pdf [https://perma.cc/Q9SD-48KX]; MANN, *supra* note 159, at 12–13; Miles Rapoport & Jennifer Wheary, *Running in Place: Where the Middle Class and the Poor Meet*, D MOS 1, 8 (2013), http://www.demos.org/sites/default/files/publications/RunningInPlace0.pdf [https://perma.cc/AYC5-7GVM]; Catherine Ruetschlin & Dedrick Asante-Muhammad, *The Challenge of Credit Card Debt for the African American Middle Class*, D MOS 1 (2013), http://www.demos.org/sites/default/files/publications/CreditCardDebt-Demos_NAACP_0.pdf [https://perma.cc/DM77-AFS8]; Amy Traub & Catherine Ruetschlin, *The Plastic Safety Net: Findings from the 2012 National Survey on Credit Card Debt of Low- and Middle-Income Households*, DĒMOS 1–2 (2012), http://www.demos.org/sites/default/files/publications/PlasticSafetyNet-Demos.pdf [https://perma.cc/Y9RJ-V57E]; Greene, *supra* note 15, at 549–52; Mann, *supra* note 20, at 263–78; Littwin, *supra* note 16, at 457–59.

> that . . . . So my credit might be screwed, but let them come after me. I have nothing to give them. Nothing. I'd rather talk to the damn collector than walk into social services any day.

How might we make sense of Latisha, Laurie, and other respondents' seemingly irrational behavior? The sociological theory of narratives can help.[178] The concept of narratives indicates that people develop an understanding of themselves and their surroundings that can be observed in the personal narratives, or stories, they tell. Their actions are then shaped by these narratives.[179] The narrative identity theory argues that when people are faced with two courses of action, they will pursue the path that is most consistent with their personal narratives and self-conceptions, rather than the path that might seem most rational to an outsider.[180] Indeed, the narrative identity theory can be understood as an alternative to theories that predict peoples' actions in response to rational calculations or cognitive biases.[181]

In this study, we see parents taking actions regarding public benefits and credit that support the identities they have developed. The in-depth interviews allow us to observe conceptions of self-sufficiency

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178. The concept of narratives has been used to understand a diverse array of actions related to social mobility and poverty. For examples of narratives used to understand social mobility and poverty, see generally ALEJANDRO PORTES & RUBEN G. RUMBAUT, LEGACIES: THE STORY OF THE IMMIGRANT SECOND GENERATION (2001); ALFORD YOUNG, THE MINDS OF MARGINALIZED BLACK MEN: MAKING SENSE OF MOBILITY, OPPORTUNITY, AND FUTURE LIFE CHANCES (2004); and Eva Rosen, *Horizontal Immobility: How Narratives of Neighborhood Violence Shape Housing Decisions*, 82 AM. SOC. REV. 270 (2017).

179. For examples of how actions may be shaped by personal narratives, see generally FRANCESCA POLLETTA, IT WAS LIKE A FEVER: STORYTELLING IN PROTEST AND POLITICS (2006); Margaret Somers & Gloria D. Gibson, *Reclaiming the Epistemological Other: Narratives and the Social Constitution of Identity*, *in* SOCIAL THEORY AND THE POLITICS OF IDENTITY 37 (C. Calhoun ed.,1994); Patricia Ewick & Susan Silbey, *Narrating Social Structure: Stories of Resistance to Legal Authority*, 108 AM. J. OF SOC. 1328 (2003).

180. Michelle Lamont & Mario Luis Small, *How Culture Matters: Enriching our Understanding of Poverty*, *in* THE COLORS OF POVERTY: WHY RACIAL AND ETHNIC DISPARITIES EXIST 76, 76–102 (A.C. Lin & D.R. Harris eds., 2008).

181. *See generally* RICHARD THALER & CASS SUNSTEIN, NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS 19–39 (2008) (discussing the psychological errors people typically make when making financial decisions and more generally explaining the psychological error strand of behavioral economics); Collins, *supra* note 20, at 8 (discussing theories of borrowing that involve cognitive biases that result in people mistakenly expecting to be able to pay off debt at a later date); Sendhil Mullainathan & Eldar Shafir, *Savings Policy and Decision-Making in Low-Income Households*, *in* INSUFFICIENT FUNDS: SAVINGS, ASSETS, CREDIT, AND BANKING AMONG LOW-INCOME HOUSEHOLDS, *supra* note 20, at 121 (noting the traditional rational actor model of behavior posits that individuals are "highly rational, hold coherent, well-informed, and justified beliefs, and pursue their goals effectively, with little systematic error and no need for help").

through the personal narratives that respondents recounted about their decisions regarding public benefits and credit. Many respondents like Laurie and Latisha track their existing narratives to their time off welfare, a time during which they created narratives of self-sufficiency and they do not want to rupture these narratives. Utilizing credit is a way for them to avoid doing so, at least in the short term.

Tori's story highlights how loyalty to the self-sufficiency narrative can ultimately lead to significant downward mobility, particularly in light of the punishing credit system. Tori was plagued by dental problems for years, but she could not afford to go to a dentist, so she "just brushed [her teeth] real good." One day, she woke up with excruciating pain in her mouth and went to the emergency room. She had an infection from a rotting tooth, but she was only given antibiotics, painkillers, and advice to see a dentist. She tried to ignore the problem again because the antibiotics seemed to help, but within a month, she again woke up in extreme pain. When Tori finally went to a dentist, she needed $735 worth of work done. She maxed out her credit card in order to pay for this dental work, but was hit with a second blow when, two weeks later, her car would not start when she tried to go to work. Tori learned that her car needed at least $500 worth of parts. She did not have the money or the available credit to pay for these parts, so she applied for a few new credit cards but was denied.

Meanwhile, Tori continued to miss work. She was a receptionist at a hair salon about thirty minutes from her house. She described loving her job, saying "it was so much fun. Sometimes the girls would do my hair for free or give me tips on color. Everyone was nice." Tori tried hard to get to work—advertising on Craigslist for a ride and asking friends to drive her. A few times, a friend said he would drive her but never showed up, and eventually, the owner of the salon lost her patience. Tori was fired over email, and was surprised at the impersonal and callous nature of the message, which informed her that she was being let go due to her "sporadic attendance."[182] Tori said she was "depressed" after the job loss. When asked if, at that point, she considered even temporarily seeking TANF, she said, "No, no, I wanted to solve my problem myself. I couldn't believe I was fired, and I needed to take charge of me and my family. I had been making it. Really making it, all myself, and I really thought I would figure things out."

182. During the interview, Tori even pulled the email up on her phone and read it out loud to me, exclaiming "[c]an you believe it? Just like that. She always faked that she was nice."

Quickly, things deteriorated for Tori and her family: she got behind on her rent, her utilities, and on paying off credit card bills. Her landlord was accommodating and willing to accept IOUs and late rent for several months, but eventually asked her to voluntarily move out before she was evicted. Tori and her family spent some time in the homes of relatives, but their houses were too small for so many people and tensions rose. With the help of a teacher at her daughter's school, Tori and her family moved into a homeless shelter.

Tori stayed in the shelter for several months. Initially, she had trouble finding a job, but she eventually found one with an employer who did not conduct credit checks. However, the shelter had strict time limits for families, and families had to leave whether or not they had found another housing option. Tori was forced to relocate again. The first night out of the shelter, Tori and her children stayed at a hotel, one of many in the area that often housed families who could not get an apartment for one reason or another.

The conditions in the hotel were subpar, and Tori had been hopeful that she would find an apartment since she had a job. She heard through the grapevine of other hotel inhabitants about a landlord who did not conduct credit checks, and Tori applied for and was approved for an apartment. Tori's problem, however, was utilities. She needed to give the electric company a security deposit to connect service, and if not, needed a guarantor on her account, one who was in good standing with the energy company and had good credit.[183] Since she could not provide either of these things, she was stuck in the hotel for the time being. I asked Tori whether the shelter provided any services to help with her credit, and her answer was the same as every other respondent who had lived in a shelter: a resounding "no."

Tori's story is a worst-case scenario for people who try to make it on their own. Most respondents did not end up homeless as a result of their debt, but Tori's situation is a useful illustration of how problems can pile up quickly, and, without financial help, can spiral out of control. Once this happens, even as a family attempts to rebuild, the collateral consequences of bad credit can make recovery almost impossible. At the time of an emergency, using credit to weather the

183. Several respondents reported that they could not obtain housing because of the credit policy of the electric company. The website of the main electric company in Durham, North Carolina, Duke Energy, states the same credit/security deposit/guarantor policy respondents had been reporting. *See Start, Stop, & Move*, DUKE ENERGY, https://www.duke-energy.com/home/start-stop-move [https://perma.cc/G6W4-RSY5].

problem made sense—respondents did not have to put anyone else out and they were able to feel like self-sufficient citizens. However, if they were unable to pay off their credit card bills right away, the interest and fees started to compile quickly. Or, if they did pay off the credit cards, then they were usually robbing Peter to pay Paul, and thus they then did not pay utility bills, rent, or whatever else had previously been part of their monthly budget. Thus, their payment histories, which make up roughly 35 percent of a FICO score, took a hit. This, in turn, would lead to more credit use, often maxing out cards, and thus, their credit utilization took a hit, affecting another roughly 30 percent of their FICO score. Further, once they maxed out cards, like Tori, it made sense to seek out more credit. But then, applying for credit leads to more credit inquiries, and that part of their score—about 10 percent of a FICO score—would take a hit. Scores would go down and reports would have more negative information. This, in turn, would make it hard to find a job, hard to find an apartment or house, and even hard to get utilities.

C. A Surprising Catalyst of Downward Mobility and the Reproduction of Poverty and Inequality: Repairing Credit Through Self-Sufficiency

The repeated use of credit cards by respondents, often in situations in which it seemed unlikely a respondent would be able to pay back the money borrowed, may lead one to conclude that respondents simply did not understand the importance of credit scores and reports; if they did understand the gravity of credit history, they would act rationally and seek help in any and all ways before utilizing credit. Most respondents, however, did seem to have a clear understanding of the importance of credit histories and scores. In fact, most respondents with credit problems were strikingly focused on their credit scores, with a deep intent to improve them. I asked respondents what their most important financial goal was for the next year, and many said improving their credit score.[184] As Makayla said:

> I need to improve my score. It sucks right now, because I hit on hard times. . . . If only I can get a good report, I can bring my family up. We can move to a nice house, in a nice area. I try so hard. Heck, sometimes I eat baby food I get free so I don't charge anything else

184. In some cases, in fact, respondents seemed to attach a perhaps overly optimistic picture of what their life would be like if they had a better credit score/report.

on my credit card.

Other respondents referred to their credit reports or scores as "the most important thing in my life, right now, well besides my babies," as "that darned thing that is destroying my life," and as "my ticket to good neighborhoods and good schools for my kids." Many respondents believed that a "good" credit score was the key to financial stability.

One respondent, Maria, told a story about a friend who was able to improve his score. She said, "He figured out some way to get it up. Way up. I wish I knew what he did there, because I would do it. Because after that, everything was easy as pie for him. Got himself a better job, a better place to live, everything better." Maria went to great lengths[185] to try to improve her score so that she, too, could live a life where everything was "easy as pie."

Not only did many respondents see their credit report as an important passport to economic security, but they also viewed it as a potential source of pride, a symbol of making it—or not—in America. Just as they rejected welfare and other public benefits because accepting help was a sign they had failed and was inconsistent with their narratives as self-sufficient citizens, a good credit score had moral worth and a low score had to be excused. Some respondents who said they currently had low scores made a point of noting that their score was not always low, and before they came upon bad luck, they were actually one of the successful ones. For example, Inez said:

> [I]t's low right now, and I gotta get it up. But you know what? I bet you'd never believe it but it was over 700! Over 700, you hear? Is yours even that high? I always fulfill my obligations. I'm not a deadbeat, I can promise you that. But then my baby got sick and all hell broke loose. It's just not fair because everyone thinks I'm a deadbeat and my score probably looks like I am. But it's bad luck. You know some people are bad luck magnets and some people are good luck magnets and I'm a bad luck magnet, I think.

Another respondent, Christine, said in reference to her score:

> It's so low, so low. I'm embarrassed to admit it, but it's so low. It makes me feel low. I've got lots of bad stuff on my report. That's why it's so low. And I just got behind that one time because of that one root canal. I know it's hard to believe. You probably think I'm like everyone else who just goes to Walmart and buys fancy sheets and

185. Maria tried saving money to pay off her debt, and eventually tried working with a private debt repair company in order to improve her credit score.

> fancy utensils. I'm not. I go to the [thrift store]. My sheets COME with stains, and my score is too low. I don't buy fancy things. Never have. I'm not wasteful and let me tell you, so many people are. So many people are, and then they whine about their scores when they're charging up 400 thread count sheets!

Inez, Christine, and other respondents engaged in what sociologists call symbolic boundary work[186]—they sought to distinguish themselves, as moral citizens, from other people with low scores, people they deemed to be taking advantage of the system. These boundaries are similar to those that former welfare recipients like Latisha made between themselves as moral citizens and their perceptions of fellow welfare recipients as immoral citizens taking advantage of the system. But this boundary work also gave them hope. They considered themselves hard workers and felt that at some point the system must reward that work. Despite being employed, Iris was living in a hotel because her credit score was so low that she had not been able to find an apartment. She expressed some optimism, saying:

> I show up to work at five a.m. every day. I might be behind on my bills, my score is so low, but somehow I will find a way to catch up and I'll have a good score again. I can feel that someday I will. All I do is eat and sleep and work and help Jack with his homework. Day after day. Some way I will catch up and my score will catch up and we'll get out of this hellhole and have a real home again, a real home for Jack, Chris, and Al. I work hard. Take care of myself. It's gotta pay off some day.

Many respondents understood the importance of good credit, yet they held onto the belief—indeed, the belief welfare reformers would want them to hold onto—that if they work hard, they will eventually "make it." As welfare reformers said, the respondents believed that the system should, and would, "make work pay."[187]

In order to speed up the process, many respondents looked into ways to free themselves of the negative debt cycles in which they were trapped. The consumer bankruptcy system is designed to help relieve debt, and, going into the interviews, I assumed bankruptcy would be front and center on the minds of respondents who were trapped in debt cycles. I thought their concern might be how to pay for a bankruptcy

186. Michèle Lamont & Virág Molnár, *The Study of Boundaries in the Social Sciences*, 28 ANN. REV. SOC. 167, 167–68 (2002) (discussing the importance of the role of boundaries as a theoretical concept in social science scholarship).

187. *See* Alstott, *supra* note 11, at 287.

lawyer. What I learned when I asked respondents a series of questions about their perceptions of bankruptcy and those who filed for it was that many respondents viewed bankruptcy as just another failure—similar to having to rely on welfare. For these respondents, bankruptcy was inconsistent with their narratives as self-sufficient citizens. Ellen, one respondent, said, "really, bankruptcy is for, well, the scum, because they're stealing other people's money. Never in a million years would I do it. It's worse than welfare. I mean it's bad. Really bad. . . ." Alternatively, though, many respondents who were seeking help with their debt saw debt settlement as a potential moral answer to their problems.

Another respondent, Carmen, was trapped in debt due to a needed car repair. She said:

> I'm about to get things under control. You know I saw an ad for a company who does it for you. I can't explain it, but you give them some money, and then they talk to all the companies, everyone, and whoosh! Your debt goes away! And your credit goes up because no more debt!

She went on to say:

> I'm no Donald Trump, and the man even said to me how he was so impressed I'm taking care of this myself, not asking the government to give me money in bankruptcy. That's just wrong. I'm no crook like Trump. But here I give the company money. I pay them. It is a service and then somehow they just take care of it for me. They are very connected. They are lawyers, actually. People of the law. They know people. They get it done. I was very impressed.

Debt settlement and debt consolidation[188] are consistent with a

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188. Most respondents used the terms debt settlement and debt consolidation interchangeably, or were confused about which process they were actually enrolled in or looking at. Sometimes, companies even use the terms interchangeably. There are many different debt consolidation plans available, but debt consolidation companies often offer one large loan to the consumer that is then used to pay off several smaller loans. *See I've Seen a lot of Advertisements for Companies that Consolidate Credit Card Debt. Are These Legitimate?*, CONSUMER FIN. PROTECTION BUREAU (Apr. 15, 2016), http://www.consumerfinance.gov/askcfpb/1859/ive-seen-lot-advertisements-companies-consolidate-credit-card-debt-are-these-legitimate.html [https://perma.cc/P249-HW4B]. Like debt settlement companies, debt consolidation companies typically claim "that their services will reduce the consumer's monthly payment or total debt" and "improve [consumers'] credit rating[s]." Press Release, Fed. Trade Comm'n, National Debt Consolidation Scheme Misleads Consumers About Costs, Benefits, and Nonprofit Status (Jan. 8, 2007), https://www.ftc.gov/news-events/press-releases/2007/01/national-debt-consolidation-scheme-misleads-consumers-about-costs [https://perma.cc/C4XU-DRT9]. And like debt settlement, debt consolidation has many risks and can result in higher interest rates and monthly

self-sufficiency narrative because the companies charge a fee for their services (typically 20–25 percent of enrolled debt)[189] while promising to reduce a consumer's debt by negotiating with their creditors. Many companies advertise that consumers see "over 50 percent of their debt written off . . ." and that consumers are typically "debt free in as little as 36 months."[190] Ellen, who was so critical of bankruptcy, had a very different tune when she talked about debt settlement. She said, "Well, debt settlement is like, you pay for what you get. It's fair to everyone and everyone gets things. I'm just starting the process but it's a big, huge relief." Another respondent said she preferred debt settlement to bankruptcy because, "it's not asking for a handout. I paid to try to solve my problem."

Some respondents said that industry representatives specifically sold themselves as a moral alternative to bankruptcy and government "handouts," and that this was appealing to them. This is consistent with how some debt settlement companies advertise their services on the internet. For example, under the heading "Moral Debt Settlement," one company's website says:

> The great thing about using a trustworthy debt relief company is that by using the debt settlement program you will repay your creditors the honorable way. You are not choosing to use bankruptcy as an option to eliminate credit card debt. You are choosing the honorable path so creditors will be paid.[191]

Theoretically, debt settlement appears to be a desirable alternative to consumers filing for bankruptcy. It prevents our bankruptcy system from being flooded with debtors, and it diminishes the adversarial part of the bankruptcy process between debtors and creditors. Instead, the two sides come to an "agreement." The problem, however, is that the credit relief industry is risky for consumers.[192]

payments than consumers started with. ELLEN HARNICK & LESLIE PARRISH, CTR. FOR RESPONSIBLE LENDING, A ROLL OF THE DICE: DEBT SETTLEMENT STILL A RISKY STRATEGY FOR DEBT-BURDENED HOUSEHOLDS 7 (2013). For the purposes of this Part, I have used the term debt settlement because that is the term that was more frequently used by respondents.

189. LESLIE PARRISH & ELLEN HARNICK, CTR. FOR RESPONSIBLE LENDING, STATE OF LENDING: DEBT SETTLEMENT 3 (2014).

190. *Id.* at 2.

191. *Is-Debt-Settlement-Moral*, DEBT SETTLEMENT GROUP, INC., https://debtsettlementgroup.com/is-debt-settlement-moral [https://perma.cc/SZK6-8N6K].

192. *See Debt Settlement: Fraudulent, Abusive, and Deceptive Practices Pose Risk to Consumers: Hearing Before the Comm. on Commerce, Sci., and Transp., U.S. Senate* (Statement of Gregory D. Kutz, Managing Dir. Forensic Audits & Special Investigations) (2010); HARNICK & PARRISH, *supra* note 188, at 2; Justin P. Nelson, Note, *Federal Oversight of the Debt Relief*

Debt-settlement programs typically require consumers to stop paying their debts and instead make regular payments into a dedicated third-party account, though this of course causes the client to default on their debts and accrue late charges and fees. Once the third-party account holds adequate funds, the settlement company negotiates with the client's creditors, asking that the client have to pay only a percentage of the total amount owed.

Debt settlement is risky for consumers because many consumers are unable to settle enough debts to experience a positive change in financial position relative to their condition at the time of enrollment.[193] Defaulting on debts can have negative consequences because it can trigger collection activity to occur. A study of one debt-settlement company found that one-third of the customers enrolled with the company faced lawsuits from their creditors, and many of the customers were not aware this had happened until their wages were garnished.[194] Ultimately, many debt settlement arrangements leave consumers with more debt and less money, since consumers pay high fees to settlement companies, often with no ultimate payoff.[195]

The FTC was concerned enough about the potential abusive nature of debt settlement arrangements that it investigated the debt settlement industry and ultimately promulgated new rules regarding the industry in 2010.[196] The most significant change was an advance-fee ban, which allowed firms to collect fees only when a settlement agreement was reached and at least one payment was made by the consumer to a creditor.[197] However, there are many loopholes that allow companies to continue to charge upfront fees.[198] Additionally, many firms have simply defied the new FTC rules, and as a result, the

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Industry: A More Effective Means of Deterring Illegal Debt Settlement Schemes, 75 OHIO STATE L.J. 41, 42–43 (2014).

193. HARNICK & PARRISH, *supra* note 188, at 5–6, 11.

194. *Id.* at 5.

195. *Debt Settlement: Fraudulent, Abusive, and Deceptive Practices Pose Risk to Consumers: Hearing Before the Comm. on Commerce, Sci., and Transp.*, *supra* note 192.

196. HARNICK & PARRISH, *supra* note 188, at 6.

197. *Id.*

198. Firms quickly found a way around this rule because it and other state laws exempted attorneys from debt settlement regulations. Now, firms loosely associate with attorneys, even though the attorneys often do not actually perform much, if any, debt settlement work. The company can then charge high up-front fees free from regulation, often leaving consumers worse off than before they engaged the company. *Id.* at 7. Further, the FTC's jurisdiction is limited by the scope of the Telemarketing Sales Rule, and thus, debt settlement companies that provide for certain face-to-face transactions are excluded, as are any programs in which all of the activity is conducted online. *Id.*

FTC has brought scores of suits against such companies.[199]

The relationship of many respondents to bankruptcy and the debt settlement industry underscores the concern that, in some cases, respondents who have most internalized a self-sufficiency narrative can end up worse off financially than those who are willing to seek swift help from the government, in this case through bankruptcy. As stated by the Supreme Court, the purpose of consumer bankruptcy is to give the "honest but unfortunate debtor . . . a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt."[200] While the long-term utility of bankruptcy for debtors is unresolved, recent research shows that people who file for bankruptcy end up better off financially across a host of indicators.[201] Yet some respondents see bankruptcy as a moral failing counter to their self-perceived notions of self-sufficiency, and they are instead attracted to an industry that the FTC has called abusive to consumers.[202] They behave counter to what appears to be the rational economic decision because they act in the manner most consistent with their self-sufficiency narrative[203]—in this case paying for a service that promises to help relieve debt in a way similar to

199. *Debt Relief and Credit Repair Scams*, FED. TRADE COMMISSION, https://www.ftc.gov/news-events/media-resources/consumer-finance/debt-relief-credit-repair-scams [https://perma.cc/MBV8-ES8J] ("The FTC has brought scores of law enforcement actions against these bogus credit-related services, and the agency has partnered with the states to bring hundreds of additional lawsuits.").

200. Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934).

201. Will Dobbie, Paul Goldsmith-Pinkham & Crystal Yang, Consumer Bankruptcy and Financial Health (Mar. 2016) (unpublished manuscript), https://www.princeton.edu/~wdobbie/files/dgy_bankruptcy.pdf [https://perma.cc/CN3B-R6CQ].

202. *Debt Relief and Credit Repair Scams*, *supra* note 199.

203. Anecdotally, I have been informed that consumer bankruptcy attorneys are aware of this problem and actively work to dispel consumers of their notion that debt settlement is a productive moral alternative to bankruptcy. In a conversation with Ed Boltz, a consumer bankruptcy attorney in Durham, North Carolina and former president of the National Association of Consumer Bankruptcy Attorneys, he told me that after he initially meets with clients, they routinely decide that they do not want to file for bankruptcy and instead seek out debt settlement, only to come back to him a year or two later, in a much worse financial position. Interview with Ed Boltz, Partner, The Law Offices of John T. Orcutt (June 29, 2016). Additionally, law firms often address the issue of morality and bankruptcy versus debt settlement issue on their websites, warning consumers about some of the pitfalls of debt settlement. *See, e.g.*, Fred Nix & Laura Margulies, *Are Debt Settlement Programs an Alternative to Filing for Bankruptcy?*, LAURA MARGULIES & ASSOCIATES LLC, https://law-margulies.com/settlement-alternative-bankruptcy/ [https://perma.cc/W7M9-753U] ("Many people view this [debt settlement] as the 'moral' thing to do because they are at least trying to repay their debts. But instead, they have made themselves vulnerable to further financial harm. . . . After a great deal of lost time and money [having tried debt settlement], our clients find themselves in the position of filing for bankruptcy anyway.").

consumer bankruptcy.[204] As the next Section discusses, respondents who were willing to file for bankruptcy often found it a quick and relatively easy way to relieve debt.

D. Seeking out Lifelines: The Deserving Recipient Narrative

Belinda, a single mother of three children, is too young to remember life before TANF. Before I interviewed her, she had worked for several years at a fast food restaurant in Durham, North Carolina. She had started as a part-time worker, and was quickly promoted to franchise manager. Her promotion gave her just enough money to get by, with the help, at times, of the Supplemental Nutritional Assistance Program (SNAP), commonly known as food stamps.[205] This all changed when her seven-year-old's asthma flared uncontrollably for several months. He was in and out of hospitals, getting admitted for nights at a time because standard breathing treatments did not work, and Belinda called in sick one too many times and lost her job. When she learned she was "let go," she immediately filed for unemployment benefits. She also went to the Department of Social Services' office and learned that she might qualify for TANF, so she applied for that too. Meanwhile, she inquired about increasing a rent subsidy she had been receiving—she was not sure it was possible because she thought work might be tied to the subsidy—and also about receiving more food stamps. Belinda explained:

> I needed all the help I could get. I looked into everything. Shane was so sick. So sick. I asked everyone, what kind of programs are available for us? I thought there must be more help. And it took so long to get. That was the problem. So that's where my sisters came in. My uncles, anyone I could ask. I needed help before the government decided it was going to step in. And we support each other, so I got that help. The last thing I wanted to do was use my emergency card. I know how that goes. I've been down that road. If I had to I would have, but my

204. Some respondents who were relatively far along in the debt settlement process had begun to realize the problems with the industry. One respondent, Wendy, said, "I was dumb. Tricked really. I saw an ad on the computer and I clicked on it and it sounded too good to be true. But I was struggling, but at that time my credit was still pretty good. It was getting out of hand after all those problems and when I saw the ad I thought this is it. I can't even tell you what they promised me. But now I know it's BS. It's so messy I don't even understand it all, and I've been on hold for hours at a time with no answers. No answers and shot credit and still so many debts. My tax return was screwed. Everything was screwed."

205. The food stamps program was replaced with SNAP in 2008. However, SNAP recipients usually refer to the program as food stamps, and thus, this Article refers to the program as food stamps.

> uncle stepped up. . . . One worker, a food stamps girl, was a bitch and a half. But I have a sick child, so what's her problem? It's not like I wanted this. My babies have to eat, and my uncle couldn't cover us forever. He has his own problems.

Shane's asthma finally got under control when the weather began to warm up. He was back to attending school regularly, and Belinda knew it was time to seriously look for a new job. Belinda had been successful in getting some benefits she had applied for, and between those benefits and help from her family, she was able to stay afloat. She never did use her "emergency" credit card. She was able to pay most of her bills on time, and was able to obtain work at another restaurant, also as a manager, relatively quickly.

For Belinda, what could have been a catastrophic financial event with long-term credit history consequences turned out to be a stressful but manageable time in her life. There were few long-term financial consequences, largely because Belinda sought out help right away and received it.[206] Her credit history was not affected because her payment history, her credit utilization, the age of her credit accounts, and the types of credit under her name did not change.

About a quarter of the parents interviewed also recounted times they immediately sought help after struggling with unanticipated financial hardship. Woven into their stories was an acknowledgement that they needed help to stay afloat, but there was much variation in where the help was sought: family, friends, church or other religious institutions, unemployment benefits, food stamp benefits, food pantries, school clothing drives, TANF, housing vouchers, nonprofits, and even bankruptcy—the list went on, depending on the problem and individual circumstances.

These parents who sought help primarily employed what I call the "deserving recipient" narrative. Several of these parents expressed the belief that public benefits programs existed to help them, and they were entitled to take advantage of these benefits because they had been hit with hard times through no fault of their own. One mother, Trish, had been fired by a boss who she described as unstable. She was

206. It is important to note that another variable that worked in Belinda's favor was that she had family members willing and able to help. If this help had not been available, it is not clear that the social services Belinda had applied for would have come through in time to prevent her from having to use credit to stay afloat. If Belinda had used credit, she likely would have ended up with unmanageable debt, like others who invoked deserving recipient narratives, as described *infra* in this Part.

bitter and felt like she had had very bad luck, saying, "[s]omeone's gonna get welfare. Might as well be me. I'm struggling, and it's because of my fucking ex-boss. I'll take his tax money any day." Trish applied for and received TANF, enrolled in a job program through social services, and was able to combine a number of public benefits with help from a family member so that she did not go into severe debt while finding a new job. She got behind on a few utility payments, but as she said:

> I cut a lot, I cut everything unnecessary, and I called those companies, and I said look, work out a plan with me. I can't pay everything right now but I can pay some. And they did. I didn't even have to pay all my heat [bill]. They have programs for people like me. I don't even owe them."

Trish acknowledged she was in financial trouble, but she did not feel that her troubles were her own fault. She invoked narratives describing herself as a deserving recipient of help, and she acted in accordance with these narratives, seeking help wherever she could get it.

Indeed, almost all parents who invoked a deserving recipient narrative were sure to explain why *their* family was different, and *their* family *truly* needed the help. These parents created moral boundaries between themselves and others who may receive benefits or seek help.[207] Mel, a home health worker, told me about a time she needed to borrow money from friends and family members when her daughter needed extensive dental work. She explained that she was quite good with money, noting "I'm very careful and very responsible about money," but that the dental work "was so surprising. I mean she brushes her teeth twice a day. She flosses!" She went on to say:

> Look, I only do the big ask when I need it. I needed to protect her teeth, her mouth, but I also needed to make sure we all had food at the end of the month. I was stuck. My cousin, now she does the big ask all the time, and I guarantee you it's because she bought too many fancy panties at Victoria Secrets. She doesn't know need from want. So I never give her anything. I don't think my family does either, not anymore. They understood with me. I couldn't lose my house, our food, everything I've worked for. They know I only ask for the needs.

Most respondents who invoked deserving recipient narratives

207. This boundary creation by families who sought help has been documented in other studies of low-income families. *See, e.g.*, Greene, *supra* note 15, at 523 (noting families who had received welfare created moral boundaries between themselves and other welfare recipients).

specifically described trying to avoid the use of credit. Many of them said, in various ways, that credit card companies took advantage of people; they noted that this awareness and resistance to using credit justified their use of alternative forms of help. Mel, for example, said:

> I thought about just charging it. . . . I've learned my lesson, learned it hard, and using a card would make everything go to hell. Yeah, I wouldn't get a bill from the dentist, but my $700 bill would be $7000 by the end of the year! And my credit would go to hell! They love screwing people like me. That's their number one goal. Did you know that? Screwing people and then laughing about it. So I know who I have to ask first, family, who don't want to screw me. I feel bad, but I do what I have to do for my kids. It's all about them. Them and their shiny white teeth.

Another respondent, Marie, explained:

> I have emergency cards for things like this, but I know how it goes. Same with payday loans. You know they have online ones now. Just a few clicks and the money is yours. But I have to try everything else first, because then my credit is screwed, then I'm screwed, then my family is screwed. . . . What can I do to protect my score, my hard work, my sweat, when shitty things happen? So if I have to step right into that food pantry, I do it, and I try to leave with my soul intact. I try not to cry. I try to remember why, why I don't want to just click away. It's oh so easy, and then I can buy my babies food. What they want. But if they have to eat Jif peanut butter, so be it, because that score matters, even more than peanut butter, and Aidan loves him some Skippy.

Of course, not all respondents who invoked a deserving recipient narrative were able to avoid the use of credit and a downward financial trajectory. Indeed, many of them sought help but it either did not come fast enough, or ran out too soon. However, most respondents who invoked a deserving recipient narrative indicated they were open to filing for bankruptcy or had already done so. For example, about a year before our interview, April, a mother of four, was told by her landlord that he was selling her building and she would have to move out within 60 days. The expense of moving was much more than April had anticipated, and she had to seek help to cover the actual costs of moving her household items, a new (and higher) security deposit, and a few odds and ends she needed for her new apartment. All of April's family and friends were strapped for cash, though she reported that she did ask them for help. April turned to credit cards not only for the items she needed, but also as a way to cover expenses she usually paid for in cash, thus making the cash available for the security deposit. At the time of her interview, April was looking into filing for bankruptcy. She said:

> [M]an, it's actually expensive to file! But I have debt, a lot of it, and I need to get rid of it. I mean, Donald Trump files, so why can't I? I don't want to, but I think I might have to. I've been thinking about it, calling around. I have to find the money to file so it might be waiting for tax time.[208]

Another respondent, Latoya, talked about her bankruptcy after being out of work for over a year during the recession and relying on credit to get by:

> I did have to file, actually. Funny you ask. Legal Aid will actually do it for you. I did it myself first, can you believe? But I messed it up, and messed it up bad, and it got rejected by the judge, or something. Trying to save money. Always me trying to save money.

When I asked her how she had learned about bankruptcy, she said:

> My neighbor had told me about it actually. I thought places like Kmart filed for bankruptcy, but I could too! Can you imagine? It's this hidden thing, actually, they try not to tell you, because it's a good deal. All those debts went away. I was worried about it, and it sucked for my score, but my score was dropping so much every month, I think it helped. Now I can breathe and I'm working, and it's going up again. I even checked. You can do it, free, did you know?

The data from this study cannot predict whether these respondents will ultimately be better off financially than respondents who invoked a self-sufficiency narrative and did not file for bankruptcy, despite financial troubles. As noted previously, the data on the long-term financial trajectory of those who successfully file for bankruptcy are mixed.[209]

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208. Ronald Mann and Katherine Porter's research suggests that many bankruptcy filers wait to file for bankruptcy until they receive their tax returns as a way to afford the lawyer and filing fees. *See* Ronald J. Mann & Katherine Porter, *Saving up for Bankruptcy*, 98 GEO. L.J. 289, 319–22 (2010).

209. *See, e.g.*, Katherine Porter & Dr. Deborah Thorne, *The Failure of Bankruptcy's Fresh Start*, 92 CORNELL L. REV. 67, 69 (2006) (finding that one year after they had filed for bankruptcy, 65 percent of Chapter 7 bankruptcy filers indicated that their financial situations had improved since they filed Chapter 7, but more than one-third of debtors indicated that their financial situations were actually the same as or worse than before they filed for bankruptcy); Dobbie et al., *supra* note 201, at 26.

E. Narrative Ruptures

Narratives are malleable, adapting and expanding to accommodate new information and experiences.[210] Certain events strain their coherence; in the context of self-sufficiency and finances, homelessness is an example of one such event.

Some respondents experienced a narrative rupture, and their prevailing narrative transformed from one of self-sufficiency to one of deserving recipient. This transformation was spurred by an event or struggle that was so hard to reconcile with their existing self-sufficiency narrative that their prevailing narrative changed. Wanda's story illustrates this point: Wanda talked about the year 2000, which she called her "hell year." Her car's transmission broke. She could not afford to replace it, and she lost her job because she did not have a way to get to work. She resisted asking for help because, as she said, "I already had played the aid game. It sucked. . . . I wasn't going to go there again. I wanted to do things myself. Take care of myself. " Wanda tried to go it alone, and ended up homeless because she could not pay her rent. That was in 2000. In 2016, Wanda rents an apartment she is proud of and has a job as an administrative assistant that she claims to "love." Her job is forty-five minutes from her house, and she reported that her 1996 Ford Taurus just recently "gave out" on the way to work. She needed six hundred dollars to fix it, and Wanda did not have the money. But, as she said:

> Oh man oh man I learned my lesson! God help me, anyone help me. I needed help and I needed it fast. No more dumb "Wanda I got this" talk. No more shame. No more need to prove anything. I asked family. I went to church and asked them. I asked my kids' school. Anyone! Everyone! I needed that money and quick. Heck I went to DSS and asked for a loan. They laughed at me, really they laughed, but it was worth a try. And I got it! In less than three days. Church came through. My friends came through. And who would have thought, Zeke's school came through. I saved myself because I put aside my pride. I learned my lesson. Help, help, help, get it when you need it, quick.

Wanda and other respondents like her had learned the realities of the incentive structure of the new safety net. Essentially, they had discovered the bootstrap trap. They learned through experience to put aside their desire for self-sufficiency—for pulling themselves up by the

210. Rosen, *supra* note 178, at 271.

bootstraps—in order to avoid further financial failure. One could interpret the lesson of the data in this study as showing that we need to disrupt the self-sufficiency narrative of low-income families. Indeed, respondents like Tori ended up homeless due in part to their commitment to self-sufficiency, while at least some respondents who have adopted a deserving recipient narrative seem to better be able to weather unexpected financial emergencies. However, there are several key reasons I do not think this is the best approach.

First, findings from this study and my past work show that narratives of self-sufficiency lead to pride and motivation towards upward mobility for many respondents.[211] Not only do they desire to adhere to a self-sufficiency narrative, but the narrative and sense of one's self as a self-sufficiency citizen is a motivating factor to work towards upward mobility goals.[212] It allows them to feel pride and a sense of economic citizenship in a way that depending on TANF and having to ask for what in their minds are "handouts" from other sources did not. Further, even for families who are willing to seek help, in many cases the current safety net is inadequate. As Luke Shaefer and Kathryn Edin have noted, some people who seek TANF and qualify are denied benefits for unclear reasons.[213] And most importantly, often when people experience unexpected financial emergencies, as several respondents in this study did, they need money right away. If they do not have family or friends to rely on, often the wait for public benefits is just too long, and whether they adhere to a self-sufficiency narrative or a deserving recipient narrative, they have to use credit in order to weather the shock. Ultimately, those who invoke a self-sufficiency narrative may be particularly at risk for a financial catastrophe. However, seeking help, as those who invoke the deserving recipient narrative often do, is by no means a guarantee of financial resilience due to the very limited options for help available, particularly when someone experiences an unexpected financial emergency.

The data from this study and other studies like it show how the new safety net is simply not enough to help struggling families maintain financial resilience in the wake of income and expenditure fluctuations and unexpected financial emergencies. By examining existing proposed reforms, the following Part illuminates their strengths and

211. *See* Tach & Greene, *infra* note 239, at 28–29.

212. *Id.*

213. Edin & Schaefer, *supra* note 93.

weaknesses and helps highlight how a new proposal could better address some of the flaws in the current safety net.

IV. Existing Proposed Reforms

This Part discusses some existing reform proposals aimed at helping struggling families stay afloat. Because the universe of proposals is expansive, this discussion is limited to three key types of proposals: those aimed at reducing the collateral consequences of the credit system; those aimed at helping families manage unexpected emergencies; and those aimed at providing more direct cash benefits to struggling families. Within each category, I am able to touch only on some of the many existing proposals for change. Several of these proposals would be transformative for the respondents in this study, as well as other struggling families. My proposal, however, is aimed at addressing some of the specific issues uncovered in the data from this study, while also taking into account what we already know about the ways in which families struggle to stay afloat.

A. Reducing the Collateral Consequences of the Credit System

1. *Banning the Use of Credit Reports in Hiring.* There have been several studies of the relationship between an employee's credit report and his job performance. Consistently, these studies have found no relationship between credit reports and productivity, disciplinary actions, or terminations.[214] In fact, the studies have been so consistent in finding no predictive value in credit reports that even Eric Rosenberg, the Director of State Governmental Relations at TransUnion, testified to the Oregon legislature that, "we don't have any research to show any statistical correlation between what's in somebody's credit report and their job performance or their likelihood to commit fraud."[215] This was after testifying to Connecticut legislators in 2009 that TransUnion markets its credit reports to employers

214. Loren W. Brown, *Credit Report: An Acceptable Aid to Hiring Decision?*, 39 W. ST. U. L. REV. 1, 2–5 (2011) (observing that although credit reports may seem useful to employers, no definitive studies establish that they predict employee behavior); Laura Koppes Bryan & Jerry K. Palmer, *Do Job Applicant Credit Histories Predict Performance Appraisal Ratings or Termination Decisions?* 15 PSYCHOLOGIST-MANAGER J. 106, 115–17 (2012); Andrew Weaver, *Is Credit Status a Good Signal of Productivity?*, 68 ILR REV. 742, 767 (2015).

215. Andrew Martin, *As a Hiring Filter, Credit Checks Draw Questions*, N.Y. TIMES (Apr. 9, 2010), http://www.nytimes.com/2010/04/10/business/10credit.html [https://perma.cc/HHD6-5FXU].

because screening employees is "critical to protect the safety of Connecticut residents in their homes and offices, in their cars and in all other places they travel."[216]

With no predictive value, a potential for harm, and the appearance of shady marketing by the credit industry, several proposals have focused on limiting the use of credit reports in hiring.[217] These proposals have extended to legislation, and in 2013, several senators proposed the Equal Employment for All Act of 2013,[218] which would prevent employers from requiring credit report disclosure as part of the job application process. Although the Senate has not moved on this bill, eleven states have passed laws limiting the use of employment credit checks, as have New York City and Chicago.[219]

Researchers have studied the effects of these local and state bans. One study found that the bans did benefit some groups, such as those in the lowest credit score census tracts, but generated relatively worse outcomes for those in middle to low credit score census tracts and for black people.[220] Researchers also looked at 74 million job listings between 2007 and 2013, before and after the bans.[221] They found that when a ban on the use of credit reports in hiring went into effect, employers increased their demands for other supposed indications of an applicant's potential job performance, such as education and experience.[222] They also noted that there is some possibility that employers began to rely on racial stereotypes to screen candidates, although this was not measured.[223] Another study of bans on the use of

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216. *Id.*

217. *See, e.g.*, Amy Traub & Sean McElwee, *Bad Credit Shouldn't Block Employment: How to Make State Bans on Employment Credit Checks More Effective*, DĒMOS 1, http://www.demos.org/sites/default/files/publications/BadCreditShouldntBlockEmployment.pdf [https://perma.cc/GX9V-C8VD]; Brown, *supra* note 214, at 2–5. For legislation focused on banning the use of credit reports in hiring, see *infra* Part IV.A.1.

218. Equal Employment for All Act of 2013, S. 1837, 113th Cong. (2013).

219. *See* Traub & McElwee, *supra* note 217, at 1; *Use of Credit Information in Employment 2015 Legislation*, NAT'L CONF. OF ST. LEGISLATURES (June 2, 2015), http://www.ncsl.org/research/financial-services-and-commerce/use-of-credit-information-in-employment-2015-legislation.aspx [https://perma.cc/DG4Q-SMRQ] (identifying the states with restrictions as California, Colorado, Connecticut, Delaware, Hawaii, Maryland, Nevada, Oregon, Vermont, and Washington).

220. Robert Clifford & Daniel Shoag, "No More Credit Score": Employer Credit Check Bans and Signal Substitution 3–4 (May 2016) (unpublished manuscript), http://scholar.harvard.edu/files/shoag/files/clifford_and_shoag_final.pdf [https://perma.cc/HZW7-9DUC].

221. *Id.* at 9.

222. *Id.* at 20.

223. *Id.* at 20–22.

credit reports in hiring found reduced job-finding rates for black applicants of 7 to 16 log points.[224]

The arguments for and against banning the use of credit reports in hiring are certainly complex, and more data is needed to fully understand the effects of such bans.[225] Even if the use of credit reports for employment purposes is banned, one of the most significant questions is how far these bans would need to go to protect families. For example, a simple Google search can bring up information about debt judgments against a potential applicant. Would employers be banned from conducting such searches? And what about other background checks that may take credit into account, but are not technically credit checks?[226] The availability of big data in forms outside of credit reports is growing each day, and as research on credit reports shows, employers seek alternate information when they are banned from accessing credit reports.[227]

While we cannot know exactly how the evolving background check industry will affect financially struggling families, existing data suggests that bans may not ultimately protect families from the consequences of bad credit. This is particularly true because the consequences go beyond employment—they extend to housing, utilities, and car insurance, among other areas. Thus, though bans may be part of the solution, it seems that a more comprehensive solution would focus on the root of the problem—trying to prevent families from having problematic credit scores and reports in the first place.

224. Alexander W. Bartik & Scott T. Nelson, Credit Reports as Resumes: The Incidence of Pre-Employment Credit Screening 19–20 (Mar. 7, 2015) (unpublished graduate student research paper, MIT) (on file with the *Duke Law Journal*).

225. The arguments for and against restricting the use of credit reports in hiring mirror those in the more widely publicized "ban-the-box" debate. *See, e.g.*, Noah Zatz, *Ban the Box and Perverse Consequences, Part III*, ONLABOR (Aug. 4, 2016), https://onlabor.org/2016/08/04/ban-the-box-and-perverse-consequences-part-iii [https://perma.cc/9QLM-XBCT]; Noah Zatz, *Ban the Box and Perverse Consequences, Part I*, ONLABOR (Aug. 2, 2016), https://onlabor.wordpress.com/2016/08/02/ban-the-box-and-perverse-consequences-part-i// [https://perma.cc/N3Q3-AUBS]; Amanda Agan & Sonja Starr, Ban the Box, Criminal Records, and Statistical Discrimination: A Field Experiment (Aug. 24, 2016) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2795795 [https://perma.cc/84C9-CHBF].

226. *See* Thomas Ahern, *Use of Big Data for Background Checks Will Be Closely Watched for Potential Discrimination Issues*, EMP'T SCREENING RES. (Dec. 12, 2016), http://www.esrcheck.com/wordpress/2016/12/12/use-of-big-data-for-background-checks-will-be-closely-watched-for-potential-discrimination-issues/ [https://perma.cc/MV5X-PY9P]; John Rossheim, *Algorithmic Hiring: Why Hire by Numbers?*, MONSTER, https://hiring.monster.com/ hr/hr-best-practices/recruiting-hiring-advice/strategic-workforce-planning/hiring-algorithms.aspx [https://perma.cc/FF3M-Y4KY].

227. *See* Ahern, *supra* note 226; Rossheim, *supra* note 226; *supra* notes 214, 219.

2. *Changing Credit Report and Score Reporting Measures*. Another strain of research and advocacy focuses on the way that algorithms used in big data systems, such as credit scoring, potentially disadvantage historically vulnerable groups.[228] The concern is that information provided on credit reports and used to calculate credit scores, though non-discriminatory on its face, still results in a disparate impact on disadvantaged groups.[229] For example, studies have shown that there are fewer commercial bank branches in poor communities and communities of color, but many more after-market institutions such as payday lenders.[230] Instead of receiving safe, low-cost and affordable financial products, these communities are targeted for unsustainable, higher-cost products that ultimately wreak havoc on credit reports and scores.

In some cases, the discriminatory practices are not subtle. For example, it is well-documented that subprime lenders target poor minority communities, while mainstream lenders avoid these communities. Data show that in 2005 and 2006, 54 percent of African-Americans and 47 percent of Latinos received subprime loans,

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228. *See, e.g.*, Barocas & Selbst, *supra* note 147, at 679, 684–85. Authors Solon Barocas and Andrew Selbst have discussed the potential of big data to deny historically disadvantaged and vulnerable groups full participation in society because the data algorithms use is frequently imperfect in ways that allow algorithms to inherit the prejudices of prior decisionmakers. The authors also note, regarding credit scores, that "[t]here is no way to directly measure creditworthiness because the very notion of creditworthiness is a function of the particular way the credit industry has constructed the credit issuing and repayment system." *Id.* Authors Danielle Keats Citron and Frank Pasquale raise similar concerns. They argue that though automated systems are designed to avoid discrimination by rating people in the same way, this is misleading because "human beings program predictive algorithms, [and] their biases and values are embedded into the software's instructions, known as the source code and predictive algorithms" and thus that the scoring process can prove discriminatory, have a disparate impact, and even allow for "systemizing" discrimination. Citron & Pasquale, *supra* note 147, at 4; *see also* Rice & Swesnik, *supra* note 115, at 937 (arguing that credit scoring systems used today rely upon the dual credit market that discriminates and has historically discriminated against people of color); Zarsky, *supra* note 147, at 1376 (exploring the relationship between credit scores and discrimination). Concerns about the discriminatory impact of big data have also been raised in government research reports. A 2016 report by the executive office of the President noted that about 30 percent of consumers in low-income neighborhoods are credit invisible, meaning they do not have enough credit history to have a credit score, and thus are ineligible for credit that requires a credit score. The Report also argued that big data can lead to discriminatory results based on poorly selected data, incomplete, incorrect, or outdated data, selection bias, and unintentional perpetuation and promotion of historical biases. EXEC. OFFICE OF THE PRESIDENT, *supra* note 147, at 7–8, 11.

229. Rice & Swesnik, *supra* note 115, at 952.

230. *Id.* at 943.

compared with roughly 17 percent of whites.[231] Black people were disproportionately targeted to receive subprime loans compared to similarly situated whites, so the disparity is not simply a disparity of income levels.[232] Indeed, the Department of Justice recently settled a $335 million lawsuit with Countrywide because of its discriminatory practices, which included steering black and Latino borrowers who qualified for prime loans into subprime mortgages.[233] Several other major lenders have either settled or are in the process of defending lawsuits that allege similar practices.[234]

Compounding the problem, discriminatory practices among creditors can have sweeping consequences. Because financial products that make repayment impossible result in negative markers on credit reports, it follows that such products can lead to worse hiring outcomes since we know many employers conduct credit checks as part of the job application process.[235] This then means that applicants have little or no money to pay bills, which results in an even more problematic credit report and score, which in turn results in an inability to qualify for useful financial products and decent housing, among other consequences. In short, scholars and advocates argue that unfair credit practices result in unfair credit reports—reports with more potential red flags—for traditionally disadvantaged groups including the poor. This, in turn, can lead to disadvantage in labor markets.[236]

To address this problem, advocates have suggested the following changes in credit reporting: shortening the reporting period for adverse information from seven years to three years, limiting reporting of defaults on financial products that the Consumer Financial Protection Bureau deems unsafe, and banning medical debt from being reported on credit reports.[237]

There is little doubt that many, if not all, of these measures would

231. *Id.*

232. *Income is No Shield Against Racial Differences in Lending II*, NAT'L COMMUNITY REINVESTMENT COALITION 30 (July 2008), http://www.ncrc.org/images/stories/pdf/research/income%20is%20no%20shield%20ii.pdf [https://perma.cc/7WMX-Y4K2].

233. Press Release, Dep't of Justice, Justice Department Reaches $335 Million Settlement to Resolve Allegations of Lending Discrimination by Countrywide Financial Corporation (Dec. 21, 2011), https://www.justice.gov/opa/pr/justice-department-reaches-335-million-settlement-resolve-allegations-lending-discrimination [https://perma.cc/8TY2-TS74].

234. Alex Gano, Note, *Disparate Impact and Mortgage Lending: A Beginner's Guide*, 88 COLO. L. REV. 1109, 1134–35, 1140–42 (2017).

235. *See supra* note 151 and accompanying text.

236. FREMSTAD & TRAUB, *supra* note 22, at 9–11.

237. *Id.* at 7.

help struggling families. There is also little doubt, however, that none of these measures would protect families from falling into enduring negative debt cycles when an unexpected financial hardship hits. First, shortening the reporting period of adverse information from seven to three years would certainly help keep credit reports a bit cleaner, but for many respondents in this study, the problem of negative debt cycles is persistent. Because they turn to credit when faced with unexpected expenses—and unexpected expenses are not limited, onetime occurrences—it is likely that old adverse information would simply be replaced with new adverse information. When living paycheck to paycheck, it would be unrealistic to think that shock events are a one-time thing. Thus, while this measure may improve credit reports and scores to some degree, negative credit histories would likely persist for many struggling parents.

Second, limited reporting of default on financial products that the Consumer Financial Protection Bureau (CFPB) deems unsafe may result in improved credit scores and histories for families like some of the respondents in this study. However, the degree to which it would help would depend on which products were included in the "unsafe" category. Many of the families interviewed did not, at least initially, use credit measures such as payday loans or title loans. Most respondents started with credit cards, which seemed to have fairly standard terms. The problems for the families began almost immediately after a financial shock because they were almost always living paycheck to paycheck, as over half of all Americans do.[238]

When a shock hit, respondents used a credit card to cover the budget gap, and then interest and fees built up, so that even if the initial shock was relatively small, the resulting cycle of debt, interest, and fees became almost inescapable. Once they found themselves holding this credit card debt, they often did not pay it off immediately because rent, utilities, and food—payments that are associated with basic needs and daily survival—took precedence.[239] Credit card debt, even if it has higher interest rates, does not take priority, and thus interest and fees accumulate and credit histories suffer. And so the cycle continues.

238. *See The Role of Emergency Savings in Family Financial Security: What Resources Do Families Have for Financial Emergencies?*, PEW CHARITABLE TRS. 2, 6 (Nov. 2015), http://www.pewtrusts.org/~/media/assets/2015/11/emergencysavingsreportnov2015.pdf [https://perma.cc/2YBN-JTCE].

239. *See* Laura M. Tach & Sara Sternberg Greene, *"Robbing Peter to Pay Paul": Economic and Cultural Explanations for How Lower-Income Families Manage Debt*, 61 SOC. PROBS., 1, 1–2 (2014).

Since the CFPB would be unlikely to deem most credit cards "unsafe" financial products, this proposed measure would have some benefits for families like the respondents in this study, but would be unlikely to change their financial trajectories significantly.

Finally, there is no doubt that medical issues were the culprits spurring negative debt cycles for some respondents. For those with significant medical issues, the proposal to ban medical debt on credit reports would likely help. However, many respondents described dental issues—which are not covered by insurance, but instead put on credit cards—and work days missed for relatively minor medical problems. The medical debt proposal is one that would likely help some respondents, but it is not broad enough to cover the plethora of issues beyond major medical problems that trigger downward financial trajectories and credit history problems.

Ultimately, though the measures proposed above would certainly help some of the parents I interviewed, many parents would still suffer from negative credit histories and the associated collateral consequences. This is in part because none of the measures address the circumstances that lead to negative credit histories in the first place.

B. Helping Families Manage Unexpected Emergencies

1. *Insurance-Based Plans.* There are several insurance-based proposals designed to help families weather financial shocks. Jacob Hacker, for example, has proposed a "Universal Insurance" program that is designed to "provide short-term, stop-loss protection to qualifying families whose income suddenly declined by 20 percent or more, or whose out-of-pocket health costs in one year amounted to 20 percent or more of their combined income for that year."[240] Hacker's program focuses on "particularly dramatic cases."[241] The program would pay out short-term benefits in cases of unemployment, disability, illness, catastrophic health costs, and death of a family breadwinner.[242] This program could help save families who suffer from these catastrophic problems from financial ruin. However, it is not designed to deal with some of the seemingly small financial shocks like car repairs and dental emergencies that can still result in significant

240. Jacob S. Hacker, *Universal Insurance: Enhancing Economic Security To Promote Opportunity*, BROOKINGS INSTITUTION 2 (2006), https://www.brookings.edu/wp-content/uploads/2016/06/200609hacker.pdf [https://perma.cc/8NKB-4AVV].

241. *Id.*

242. *Id.* at 8.

financial problems over time.

Anne Alstott has proposed another important insurance-based program, Life-Planning Insurance, which would similarly benefit some of the respondents in this study. The plan calls for social services and income support for parents whose children "require intensive, personal care due to a serious illness or disability."[243] Alstott's program would be a significant step forward for struggling families, but it is only meant for families with children with major medical needs. Like Hacker's program, it addresses an important sub-set of struggling families, but is not meant to address the seemingly small financial shocks that can lead families to a downward financial trajectory.

2. *Savings-Based Plans*. The need for emergency savings has not been lost on scholars, and there have been several plans, including one of my own, that propose ways to enhance such savings.[244] Most of these proposals are meant to help financially vulnerable families save funds for a rainy day.[245] There are many different types of proposals. For example, some programs focus on tax-based savings plans,[246] whereas others involve measures that incentivize families to put some of their income into savings accounts.[247]

Successfully executed, these programs can help families have the money needed to cover small financial emergencies. However, historically, the take-up rates for savings programs have been relatively low. For example, Start2Save, a program designed to help low-income families build emergency savings, was piloted in collaboration with several community-based agencies that serve low-income and low-asset clients.[248] The savings goal for participants was $500 over a one to

243. ANNE L. ALSTOTT, NO EXIT 119 (2004).

244. *See* Greene, *supra* note 15, at 570–87 (suggesting a new way to redistribute the Earned Income Tax Credit). *See generally* A FRAGILE BALANCE: EMERGENCY SAVINGS AND LIQUID RESOURCES FOR LOW-INCOME CONSUMERS, *supra* note 20 (examining methods to promote savings in disadvantaged households); Ezra Levin, *Upside Down: The Failure of Federal Tax Policies to Support Emergency Savings*, *in* A FRAGILE BALANCE EMERGENCY SAVINGS AND LIQUID RESOURCES FOR LOW-INCOME CONSUMERS, *supra* note 20, at 39, 49–50 (describing EITC based emergency savings plans, including the Greene plan).

245. Greene, *supra* note 15, at 565.

246. Levin, *supra* note 244, at 48–49 (describing tax-based plans to encourage savings).

247. *See* Ingrid Holguin, *Start2Save: Helping Working Families Meet Unexpected Expenses and Opportunities*, *in* A FRAGILE BALANCE: EMERGENCY SAVINGS AND LIQUID RESOURCES FOR LOW-INCOME CONSUMERS, *supra* note 20, at 175, 176.

248. *Id.*

two year period, with deposits between $20 and $40 each month.[249] Only 35 percent of those who attended a Start2Save information session ended up enrolling.[250] The Start2Save researchers found that this was due to "a host of issues, financial, behavioral, and emotional," which all affected the decision to enroll.[251] Further, of those who did enroll, less than 20 percent signed up for automatic deposit, which fell short of the program's 60 percent goal. Enrollees who successfully completed the program missed three out of ten deposits, while those who dropped out or were terminated missed, on average, six out of ten payments.[252]

Though savings programs can play an important role for some families on the road to financial stability, research shows that one of the key reasons low-income families have significantly less in savings than higher income families is because they lack disposable income.[253] For 25 percent of adults who work full-time, the situation is even more dire and they do not make enough money to meet the basic needs of their families.[254] For these families, contributing to a savings plan is not possible, and indeed, potentially unwise. Thus, this Article proposes a more comprehensive program aimed at serving more families.

3. *Postal Banking and Other Financial Services.* Postal banking started in Great Britain in 1861.[255] Its adoption by the United States has been proposed at different points in U.S. history, starting in 1871.[256] At times, the U.S. Postal Service has actually performed financial services work, such as selling money orders and prepaid American Express debit cards.[257] The rationale behind proposals for postal banking is that it is both a way to revitalize the postal service and a way to provide financial services to the unbanked.[258] Some of the proposals recommend that the post office function as a bank; others call for the

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249. *Id.* at 180.

250. *Id.* at 183.

251. *Id.*

252. *Id.* at 182.

253. OFFICE OF INSPECTOR GEN., *Providing Non-Bank Financial Services for the Underserved*, U.S. POSTAL SERV. 11 (2014), https://www.uspsoig.gov/sites/default/files/document-library-files/2015/rarc-wp-14-007_0.pdf [https://perma.cc/DAH9-ZUXJ].

254. *Id*.

255. BARADARAN, *supra* note 29, at 187.

256. *Id.* at 187–211 (describing the history of postal banking proposals in the United States).

257. OFFICE OF INSPECTOR GEN., *supra* note 253, at 7–8.

258. *Id*. at i–ii (describing the advantages of the postal service providing financial services to underserved communities); Baradaran, *supra* note 255, at 211–19.

post office to provide financial services that traditional banks do not generally provide to underserved communities, such as small loans, debit-type cards with money preloaded on them, and savings programs. Depending on how exactly postal banking is implemented, it could certainly provide short-term help to some families, such as those who need a small loan to cover an unexpected expense or a safe place to keep savings. However, as proposed, postal banking does not provide financial planning and social service oriented help that many families need to create a long-term plan for financial resilience. Further, for families living paycheck to paycheck, even the low interest rates proposed for small loans would be prohibitive and eventually result in owing debt to the government. A more comprehensive program could take some of the positive features of postal banking, but create a program that would help a larger swath of families plan and maintain financial stability.

C. Proposals for Providing Direct Cash Benefits to Struggling Families

1. *Universal Basic Income, Universal Child Allowance, and Other Cash-Based Programs*. Several proposals to provide cash in the form of a universal monthly subsidy have received attention in the popular press.[259] These proposals vary in specifics, but the general idea is that the government would provide all citizens with a set amount of money on a regular basis, which would lift recipients above the poverty line. The money would not be tied to work or other requirements; instead, it would be universal, with no restrictions on who receives it or how the money is spent.[260] The idea behind a universal child allowance is the same, but the funds would be provided only to people who have children under the age of eighteen and would vary based on the

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259. *See, e.g.*, Clio Chang, *Why Democrats Must Embrace a Universal Child Allowance*, NEW REPUBLIC (Mar. 21, 2016), https://newrepublic.com/article/131784/democrats-must-embrace-universal-child-allowance [https://perma.cc/N4GM-7HTN]; Patrick Gillespie, *Mark Zuckerberg Supports Universal Basic Income. What Is It?*, CNN:MONEY (May 26, 2017, 2:24 PM), http://money.cnn.com/2017/05/26/news/economy/mark-zuckerberg-universal-basic-income/index.html [https://perma.cc/LCJ5-MMNP]; James Surowiecki, *The Case for Free Money*, NEW YORKER (June 20, 2016), http://www.newyorker.com/magazine/2016/06/20/why-dont-we-have-universal-basic-income [https://perma.cc/9LHB-J7U5].

260. Christine Emba, *Universal Basic Income*, WASH. POST (Sept. 28, 2015) https://www.washingtonpost.com/news/in-theory/wp/2015/09/28/universal-basic-income-a-primer/?utm_term=.d72ada2fea10 [https://perma.cc/3AFA-J65N] (detailing the specifics of a universal basic income).

number of children that an individual claims.[261]

The debate about the practicality and utility of such programs is beyond the scope of this Article. Without deep analysis, it appears that because most of the respondents in this study were struggling to make ends meet, an increase in their monthly income would certainly provide them some help. However, particularly because the programs are designed such that the benefits diminish (through taxes) as incomes increase, many families in financial situations similar to the respondents in this study may only see slight benefits from such programs. Unless the increased income from the subsidies was substantial enough that it could lead to meaningful savings, families would still struggle when they experienced financial emergencies because they would not have access to money to cover the emergency right away.

2. *Increasing Funding for TANF, Food Stamps, and Other Public Benefits*. Some researchers and advocates argue for increasing the amount of resources devoted to programs such as TANF,[262] the EITC,[263] and housing subsidies.[264] Increasing the cash benefits available through TANF would certainly help some families who are struggling financially. However, it would do little for families who do not qualify for TANF due to income or other factors, and it would also do little for the families who have invoked a self-sufficiency narrative and thus are unwilling to seek out TANF when they are in financial distress. Further, for families who were willing to apply for TANF and did qualify, the application and waiting period might be too long for them to wait with no other help, and they may end up turning to credit to

261. URBAN INST., PowerPoint Presentation, A Universal Child Allowance to Reduce Poverty and Improve Child Development, http://www.urban.org/sites/default/files/presentation_slides__a_universal_child_allowance_to_reduce_poverty_and_improve_child_development.pdf [https://perma.cc/N2X6-VMHF].

262. *See, e.g.*, LaDonna Pavetti, *How To Improve TANF*, CTR. ON BUDGET & POL'Y PRIORITIES (July 15, 2015), http://www.cbpp.org/sites/default/files/atoms/files/7-15-15tanf-testimony.pdf [https://perma.cc/FLB2-JWDA].

263. *See, e.g.*, Jason Furman, *Tax Reform and Poverty*, CTR. ON BUDGET & POL'Y PRIORITIES 8–9 (Apr. 10, 2006), http://www.cbpp.org/sites/default/files/atoms/files/4-10-06tax.pdf [https://perma.cc/L3HH-H2DG] (proposing to expand the EITC for larger families); Tim Worstall, *Don't Increase the Minimum Wage, Raise the EITC Instead*, FORBES (Jan. 10, 2015, 10:17 AM), https://www.forbes.com/sites/timworstall/2015/01/10/dont-increase-the-minimum-wage-raise-the-eitc-instead/#6c265ebf7a49 [https://perma.cc/UFL4-HPTT].

264. MATTHEW DESMOND, EVICTED 307–08 (2016); Matthew Desmond, *Unaffordable America: Poverty, Housing and Eviction*, FAST FOCUS 5 (Mar. 2015), https://www.irp.wisc.edu/publications/fastfocus/pdfs/FF22-2015.pdf [https://perma.cc/UR3A-NKPP].

cover expenses during the wait.

Similar to other tax subsidies, increasing the amount of money families receive through the EITC may help some families with long-term savings goals, particularly if the increase is substantial. However, for families who are unable to save their refund, an increased EITC subsidy would be unlikely to help them weather financial emergencies because the EITC comes only once a year at tax time.[265] Finally, for families living paycheck to paycheck but whose providers have steady jobs with incomes above the EITC threshold, an increase in EITC subsidy would not help build financial resilience.

Increased housing subsidies might help families who qualify, but like other public benefits programs, such subsidies provide no help at all for families who make just above the income threshold. Furthermore, if a family applied for a housing subsidy after a financial emergency already occurred, the waiting period might be so long that the family would have to use credit to cover expenses until the subsidy came through. Finally, for families who were already receiving a subsidy at the time of an emergency, it is unlikely the subsidy would have been designed to allow the family to accumulate enough savings to cover the emergency because there are often very low asset limits to qualify for such subsidy programs.

Ultimately, the proposals to increase benefits for struggling families could potentially improve the financial trajectories of qualifying families. What is less clear, however, is whether these programs would ultimately help families avoid negative debt cycles when they have to cover an unexpected expense. This is particularly an issue for families who do not qualify for these programs based on their income during times of stability and for families who are unwilling to seek out help from public benefit programs during tough economic stretches.

V. A NEW SAFETY NET: FINANCIAL SERVICES FOR FAMILY SECURITY

The new safety net program I propose in this Article is developed based on what existing data already tell us about the precarious financial situation of low-income families, and is then further informed by the data collected for this Article. Existing research indicates that the financial instability displayed by many of the respondents in this

265. *See generally* Greene, *supra* note 15 (suggesting a new way to redistribute to the EITC).

study is not unusual. Indeed, low-income families are particularly vulnerable to financial instability, including substantial income declines of 50 percent or more.[266] Further, low-income households have savings levels that are substantially lower than those at higher income levels.[267] We also know that low-income families are using credit cards at rates similar to those of higher-income households,[268] and that debt levels of families with children have increased since the 1980s.[269]

When it comes to financial emergencies, not surprisingly, households with the lowest incomes are least able to cope.[270] However, it is not just those with the lowest incomes that struggle to cover financial emergencies. One study found that less than a quarter of all U.S. households have enough savings to meet an appropriate three-month emergency savings benchmark.[271] Another study that uses the ability to come up with $2,000 as a benchmark for emergency savings found that about half of all U.S. households could not come up with $2,000 in one month.[272] In this study, poor and low-income households were found to be even worse off. Among households with income below $20,000, less than one-quarter—23 percent, to be precise—could meet the $2,000 mark, and among households with incomes between $20,000 and $30,000, only one-third could do so.[273]

So where do families who are struggling financially turn when they experience an unexpected financial shock? Existing research tells us that, consistent with the respondents in this study, low-income households are susceptible to turning to credit when an emergency hits

266. *See* Collins, *supra* note 20, at 1–2.

267. Leah Gjertson, *Liquid Savings Patterns and Credit Usage Among the Poor*, *in* A FRAGILE BALANCE: EMERGENCY SAVINGS AND LIQUID RESOURCES FOR LOW-INCOME CONSUMERS, *supra* note 20, at 17, 19–20 (describing studies that estimate the appropriate benchmark for emergency savings).

268. Mann, *supra* note 20, at 257–78.

269. Yumiko Aratani & Michelle Chou, ASSET POVERTY AND DEBT AMONG FAMILIES WITH CHILDREN, NATL'L CTR. FOR CHILD. IN POVERTY 3 (2010), https://www.nccp.org/publications/pdf/text_918.pd =f [https://perma.cc/DH69-XJ3N].

270. Gjertson*, supra* note 267, at 33 ("Households with the lowest income are least prepared to cope with a financial emergency by any measure."); *See also* Report on the Economic Well-Being of U.S. Households in 2016, BD. GOVERNORS FED. RES. SYS. 2 (May 2017), https://www.federalreserve.gov/publications/files/2016-report-economic-well-being-us-households-2017 05.pdf [https://perma.cc/GK9Q-NLVT] (finding that 44 percent of adults say they either could not come up with $400 to cover the cost of an emergency expense or would covering it by borrowing money or selling something).

271. Gjertson*, supra* note 267, at 18–20.

272. Lusardi et al., *supra* note 15, at 83; Gjertson, *supra* note 267, at 20.

273. Gjertson, *supra* note 267, at 20.

because they rarely have savings available to cover the emergency.[274] TANF, on the other hand, is under enrolled. The take-up rate of TANF is only 30.7 percent, meaning that 69.3 percent of families who qualify for TANF are not receiving it.[275] This is consistent with the resistance to applying for TANF that was displayed by many respondents in this Article's study.

This qualitative data from this study help unveil the mechanisms behind the existing data. Part of the reason take-up rates for public benefits programs like TANF might be so low is that some parents develop narratives of self-sufficiency—narratives consistent with the culture promoted by welfare reform. These parents behave in ways consistent with this narrative, which includes avoiding TANF, even when pursuing public benefits might seem otherwise rational. Instead, parents turn to credit, which for many of them results in a downward financial trajectory.

So how might an effective program aimed at promoting financial resilience be designed? This study's data suggest that establishing a program that encourages self-sufficiency, but also encourages families to actually seek help from the program, requires the program to be designed so that utilizing it is consistent with a self-sufficiency narrative. This Article's proposed program, Financial Services for Family Stability (FSFS), would use some TANF block grant funds to create a government-funded financial planning and services program.[276] The services from this program would seek to fill the role

274. Collins, *supra* note 20, at 2–5 (discussing the need for low-income families to turn to credit when they experience financial emergencies and discussing other studies that find that families take on debt following a health difficulty); Gjertson, *supra* note 267, at 28 ("[P]eople who lack liquidity as savings appear likely to turn to credit as a substitute."); *see also* Greene, *supra* note 15, at 547–52 (documenting the use of credit cards among low-income respondents who experienced financial difficulties); Mann, *supra* note 20, at 257–78 (providing detailed data about patterns of credit card use among low- and moderate-income households).

275. Crouse & Macartney, *supra* note 176, at 20.

276. The program would not necessarily replace TANF and all other public benefits programs; instead, it would likely serve somewhat different needs and different people. As Kathryn Edin and Luke Shaefer have studied, there are some families living continuously in deep poverty—on less than $2.00 a day, per person, post welfare reform. *See generally* EDIN & SHAEFER, *supra* note 1 (studying families living in deep poverty). Many of the parents in Edin and Shaefer's study have underlying needs that differ from the group of parents I interviewed, and TANF or other alternative programs may be most appropriate for them. *See id.* at xxiv ("But there will always be circumstances in which work as a primary approach to alleviating poverty won't work. In those cases, we need a system that truly acts as a safety net for families in crisis, catching them when they fall."). The FSFS program is meant primary for families whose parents have been able to find relatively stable jobs and acquire the skills necessary to work, but whose income and circumstances of living paycheck to paycheck put them at great risk for downward

that credit card companies and debt settlement companies currently serve. The program would help families develop financial resilience and avoid the cost and consequences of turning to credit as their safety net, while allowing them to continue on largely self-sufficient paths.

Several of the core features of FSFS would be based on a program in Ireland called the Money Advice and Budgeting Service (MABS).[277] MABS is a government-run program that bills itself as a money and debt advice service. The program is completely free of charge and independent, with no connection to any bank or credit union.[278] MABS operates over sixty offices around Ireland and works with "people who may be struggling with debt or who need help in managing their money."[279] MABS employs people called Money Advisers and Administrators. MABS staff are trained and skilled in "all aspects of debt and money management, as well as in skills relating to supporting people through times of crisis."[280] The user handbook for MABS says, "[m]ost of all, MABS staff are compassionate, caring and non-judgmental. We believe that it is possible to give a highly professional service in a caring manner."[281] MABS also advertises its services and *encourages* citizens to contact them for help, a very different model from TANF.[282] Indeed, the MABS Guide says, "[t]alk to MABS—make contact early, don't delay."[283]

Just as I would recommend for any major policy transformation, FSFS programs should be piloted in diverse areas around the country

mobility if just one unexpected emergency arises.

277. There are only a few evaluations of MABS publicly available. *See* Olive McCarthy, Caoilfhionn Lane & Noreen Byrne, Ctr. for Coop. Studies, Univ. Coll. Cork, *Cork MABS Study: Clients' Experiences, Opinions and Satisfaction Levels*, MONEY ADVICE & BUDGETING SERV. 2, 2 (Nov. 2013), https://www.mabs.ie/downloads/reports_submissions/CORK_MABS_RESEARCH_STUDY.pdf [https://perma.cc/G63R-JQWB]. However, those that are available report promising results. One study on the impact of debt advice found that MABS had "a very positive impact on helping people to cope with crisis debt, enabling people to repay their creditors and to manage their money." *Id*. Another study of client satisfaction with the MABS program found that overall, 80% of MABS clients were very satisfied with the program and almost 95% of clients were satisfied or very satisfied with the program. *Id*. at 13.

278. *Using the Money Advice and Budgeting Service: Your Guide*, MONEY ADVICE & BUDGETING SERV. 2 (2016), https://www.mabs.ie/downloads/publications/16_05_18_Using_MABS_WEB.pdf [https://perma.cc/A29E-YFRG].

279. *Id.*

280. *Id.* at 5.

281. *Id.*

282. *See* EDIN & SHAEFER, *supra* note 1, at 169–70 (describing evidence of how applicants are diverted from applying for aid through TANF, sometimes in unauthorized ways).

283. *Using the Money Advice and Budgeting Service: Your Guide*, *supra* note 278, at 3.

before the program is implemented widely. Rural, urban, and suburban areas with varying costs of living should be included in the pilot programs. This would help those implementing the program determine what is working and what might need to be adjusted and improved. These pilot programs could vary different aspects of the FSFS programs and test both short-term and long-term outcomes. For example, some people could receive no-interest small loans, and some people could receive very low-interest small loans. The key enduring features of FSFS are discussed in more detail below.

A. Financial Planning/Advising

Financial literacy is low in the United States,[284] and financial education is virtually non-existent.[285] Despite, or perhaps in light of, this lack of knowledge, Americans *want* financial planning help. The budget and financial-planning industry makes private actors like financial motivational speaker Dave Ramsey millions of dollars each year—people attend his seminars, buy his books, subscribe to his website, and listen to his radio show.[286] You Need a Budget (YNAB) budgeting software is also popular, as are other programs in the same vein.[287] Consistent with the popularity of these programs, the respondents in this study expressed a desire for financial-planning help. At the end of every interview I conducted, I asked each respondent if they had any questions or if there was anything else they wanted to know. Many respondents answered by asking me if I knew someone who could help them with their money or organizing their finances. One respondent, Denay, said, "I want to know how I can afford one of those rich people estate planners. You know, someone to sort this out for me! I'm just kidding, girlfriend. But it would help." Another respondent, Nicki, asked whether I knew of "any free financial planning people." FSFS would seek to respond to this need.

Similar to the MABS Money Advisers and Administrators

284. Madeline Farber, *Nearly Two-Thirds of Americans Can't Pass a Basic Test of Financial Literacy*, FORTUNE (July 12, 2016), http://fortune.com/2016/07/12/financial-literacy/ [https://perma.cc/5A8P-6QQL].

285. *Id.*

286. Joe Weisenthal, *Christian Get-Out-Of-Debt Guru is Richer than God*, BUS. INSIDER (Sept. 9, 2009, 3:06 PM), http://www.businessinsider.com/christian-get-out-of-debt-guru-is-richer-than-god-2009-9 [https://perma.cc/43R7-MHFE].

287. *See, e.g.*, MINT, https://www.mint.com/ [https://perma.cc/H5ZD-PT9D]; *You Need a Budget*, WIKIPEDIA, https://en.wikipedia.org/wiki/You_Need_a_Budget [https://perma.cc/53HJ-ZPYD].

discussed previously, FSFS would employ people called financial planners, a title conforming to the professional title used by private companies who provide financial planning services in the United States. FSFS would present itself as a professional organization whose goal is client satisfaction, mirroring private financial planning service companies. FSFS would also seek to model the service-oriented institutional culture of the MABS program. This culture would be in direct contrast to the generally unhelpful reputation welfare offices have with recipients.[288]

FSFS clients would be asked to bring certain documents to their first meeting, including all paperwork on debts, such as any notices, judgments, or court paperwork; income tax returns; and paperwork related to household spending, such as receipts and credit card bills. The exact type of advice given by FSFS financial planners would depend on the needs of individual clients, but the overarching goals would be similar to those of MABS: to support clients in finding a solution to their debt problems, and to develop client skills to allow them to have better control over their money.[289] An added goal of FSFS would be to help clients in acute situations find solutions that do not include high-interest loans or credit. More specifically, financial planners would help clients figure out how much money they need to cover their expenses and where they may be able to cut costs. Financial planners would provide both general advice on budgeting and a detailed budgeting plan, as well as help clients figure out which debts should be given the highest priority for repayment.

Other services could include helping clients objectively evaluate the payoff of options for higher education. For example, financial planners could provide guidance about some of the pitfalls of for-profit college programs.[290] They could also help people develop a sustainable budget for paying off student loans.

Staffing would need to be such that wait times are relatively short—a meeting with a financial counselor should happen within two weeks of the initial request. A wait time of about two weeks would

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288. *See* KAARYN S. GUSTAFSON, CHEATING WELFARE 110–12 (2011) (describing the lack of help and information many welfare recipients experienced when contacting or visiting the welfare office).

289. *Using the Money Advice and Budgeting Service: Your Guide*, *supra* note 278, at 9.

290. For a description of the pitfalls of for-profit colleges for students who enroll, see generally Alia Wong, *The Downfall of For-Profit Colleges*, ATLANTIC (Feb. 23, 2015), https://www.theatlantic.com/education/archive/2015/02/the-downfall-of-for-profit-colleges/385810/ [https://perma.cc/RF2Z-3XE6].

allow people to gather the necessary documents for the first meeting, but would be timely enough to ensure that people who are at risk for financial catastrophe are able to get the help they need. The two-week wait period could be waived for some people through the initial use of the financial emergency crisis counseling line, discussed in Section D below. Further, FSFS should offer flexible appointment times outside of the typical nine-to-five workday so that people do not have to take off work to seek help.

Finally, in addition to the advice from financial advisers, FSFS would have a comprehensive website providing self-help material, such as steps to take in order to negotiate with creditors, budgeting tools, and other money-management resources. A common complaint among respondents in this study was that they did not know who to trust when it came to financial advice. FSFS would be a go-to source for reliable, impartial, information.

B. Debt Management Services

Though the overall goal of FSFS would be to help clients avoid owing substantial debt and falling into negative debt cycles, inevitably a share of its clients would be people who are seeking help because they are drowning in debt. This would be particularly true in the early years of FSFS, before the financial planning services would be able to catch people and help them avoid significant debt.

FSFS would have several programs designed to help people in debt that would serve as alternatives to bankruptcy. These programs would also be meant to replace debt consolidation and settlements services, but designed to appeal to consumers who are seeking out such services with the hope of avoiding bankruptcy.

One of the programs would be modeled on a MABS program. MABS has an agreement protocol with several creditors. These creditors have agreed to help customers address their debt problems and to develop repayment plans with them. The protocols allow for some debt to be written off,[291] and other debt to be repaid over time, in some cases without interest continuing to accumulate. FSFS would adopt a similar protocol plan with creditors.

The debt protocol plans would provide both creditors and debtors some benefits over bankruptcy. For creditors, the incentive to join the

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291. *Money Advice and Budgeting Services*, CITIZENS INFO. BOARD., http://www.citizensinformation.ie/en/money_and_tax/personal_finance/debt/mabs_service.html#l536d [https://perma.cc/BA7U-SM8W].

protocol program would be that the repayment plans would net them more money than Chapter 7 bankruptcy. In Chapter 7 bankruptcy, most debts are discharged, so creditors can come out with nothing. For debtors, FSFS plans would not be reported on a credit report as a bankruptcy and would offer a more personalized solution to debt. By developing protocol plans with a cushion for unexpected expenses as well as flexibility to adjust the plans if clients' circumstances change, FSFS financial advisers would ensure that protocol plans developed for their clients were financially feasible—avoiding the problematic rigidity of obligations under Chapter 13 bankruptcy for debtors.[292] Additionally, because FSFS would not provide clients with the funds to repay these debts, clients who have adopted a self-sufficiency narrative should not have concerns that they are receiving a government handout by enrolling in the program.

FSFS might also develop partnerships with local lawyers. In some cases, clients may be referred to these lawyers in order to deal with debt judgments or situations in which FSFS feels bankruptcy would be the most beneficial option for the client and is able to convince the client to consider bankruptcy.

C. No-Interest Small Loans

The availability of emergency funds at the time of a financial shock can go a long way in preventing a costly, major, downward financial spiral.[293] FSFS would have a program allowing anyone to take out a loan for $2,000 or less. Before taking out the loan, clients would be required to meet with a FSFS counselor and discuss the need for the loan and its intended uses, though no formal documentation would be required. The counselor would determine a repayment plan based on the individual circumstances of each client. The loans would be interest-free, but any additional loan amount taken out during the repayment of a prior loan would be limited such that the borrower did not have more than $2,000 total in loans withdrawn at any given time. Recipients would be encouraged to borrow the minimum amount of

292. *See* Sara Sternberg Greene, *The Failed Reform*, 89 AM. BANKR. L.J. 241, 262–65 (2015) (discussing the fact that bankruptcy does not provide flexibility for changed circumstances and noting that changed circumstances are a reason many people repeatedly file Chapter 13 bankruptcy).

293. *See* Sharon Henderson, *Prosperity SmartSave Card*, *in* A FRAGILE BALANCE: EMERGENCY SAVINGS AND LIQUID RESOURCES FOR LOW-INCOME CONSUMERS, *supra* note 20, at 141, 144; Jonathan Mintz, *The SaveUSA Coalition*, *in* A FRAGILE BALANCE: EMERGENCY SAVINGS AND LIQUID RESOURCES FOR LOW-INCOME CONSUMERS, *supra* note 20, at 75, 76.

money needed.

Clients would still be able to access all other FSFS services if they had defaulted on a FSFS loan. FSFS's budget would be based on the assumption that a majority of the loans would not be fully paid back. The exact rules for the small loans should be subjected to pilot studies, with variations of no- and very low-interest rates as well as differing rules about repayment. Significantly, FSFS loans would not appear on credit reports and would not be subject to garnishment through taxes or wages. The incentive structure for paying back the loans would be that, once repaid, more short-term, no- or low-interest loans would be available.

Because these loans would be available to everyone irrespective of income, and would require repayment, they likely would not come with the same stigma as accepting public benefits. The terms of the loan would look more like a financial transaction than a handout.

D. Financial Emergency Crisis Counseling

FSFS would have a telephone helpline separate from their general information and scheduling phone number that would offer immediate advice for people in emergency financial situations. These crisis counselors would have a somewhat different role than the financial planners working in FSFS field offices. The counselors, who would specialize in specific geographical areas, would have a variety of resources and tools at their disposal; by pointing clients toward available resources in real time, counselors might help callers avoid triggering a downward financial spiral. For instance, counselors would be plugged into local resources outside of FSFS that may be able to provide short-term child care solutions, emergency car rides, and other such temporary help. Additionally, crisis counselors could help clients gain access to small loans in a timely matter and would make recommendations about how to most effectively use the money.

This program could be particularly effective in reducing negative debt cycles spurred by seemingly small, unexpected expenses that clients might face. For example, several respondents in this study described negative debt cycles spurred by the need for car repairs. Without their car, they were unable to get to work. If such a client called the FSFS emergency line, the counselor could help the client by figuring out what types of help may be available. The counselor might suggest the client take out a small loan from FSFS that would cover not only the car repair cost, but also the cost of mass transit or a ride service to get to work during the time the car was being repaired. This plan would minimize the financial impact on the client because the client would not have to miss work. If the need for a car repair is dealt with swiftly, alternative transportation would likely only need to be provided for a few days, at most. The counselor would then refer the client to an FSFS financial advisor to help the client come up with a plan to repay the small loan.

E. Other Considerations

There are of course several aspects of the FSFS program that would need to be further analyzed and decided. Funding is a key issue, and an analysis of the exact cost of the program would need to be conducted. Funding for FSFS could come, at least in part, from TANF block grant funds. As previously discussed, states use only an average of about 25 percent of TANF funding for basic cash assistance.[294] Other TANF block grant funds go toward programs that have a questionable relationship to TANF's goals, such as state child welfare systems. The federal government could require or incentivize states to begin using some percentage of TANF block grant funds to fund FSFS programs, perhaps even at rates as high as 50 percent.

FSFS would also need to find physical buildings to house its programs, and cost would certainly factor into this decision. Using existing public benefit program offices would not be advisable because of the negative association of those spaces for many potential clients. This could potentially cause people who adhere to a self-sufficiency narrative to avoid FSFS. Some options for existing physical space include post offices, libraries, and possibly even schools. Census data would be used to decide on strategic placement of FSFS offices in order to make sure the offices are located in neighborhoods of high need.

Policymakers would also have to pay attention to the wording and implications of FSFS legislation in order to protect clients. Care would have to be taken to ensure that FSFS loans were not reportable or accessible to credit reporting companies. Further, the program should be designed so that money from FSFS loans is not taxable and does not count as an asset for purposes of qualifying for other public benefit programs.

Several other technicalities of service and delivery would also have to be further pursued. Officials would have to develop a secure way to

294. *See supra* Figure 1; *supra* note 85 and accompanying text.

release the loan money quickly and efficiently, to receive repayment, and to track repayment. Additionally, officials would have to determine the appropriate wait time for FSFS services and staff the program accordingly, with flexibility to increase staffing as FSFS services become more popular. As discussed above, the goal should be a wait time of approximately two weeks for an in-person meeting.

Finally, FSFS would also have to publish very clear guidelines about the types of problems that fall under its umbrella. For example, FSFS would not advise on business debt or other business-related financial problems. However, it would help business owners address personal debts.[295]

F. Potential Counterarguments to FSFS Proposal

1. *FSFS Services Will Not Work for the Very Poor and Perpetually Unemployed.* The FSFS program will not solve poverty on its own, and it is not meant to be a comprehensive social service program. FSFS would fill a specific safety net hole that is currently left open by existing public programs. FSFS programs may not help everyone, and they may have less utility for the very poor who have no job and no prospect of a job. Research by Kathryn Edin and Luke Shaefer reveals that, post-welfare reform, there are some families living on less than $2.00 a day per person.[296] Many of these parents have underlying needs that are different from the group of parents I interviewed for this study. TANF-like programs or programs that focus on job training may be most appropriate for parents like those studied by Edin and Shaefer.[297]

2. *FSFS Will Be Very Expensive.* There is no doubt that the FSFS program will require a substantial budget. While a true analysis of the program's cost is well beyond the scope of this Article, there are some important factors to consider. First, if states are required or incentivized to devote some portion of their TANF block grant funds to FSFS, the additional funds needed to develop and support the program would be substantially reduced.

Second, it is very expensive to house the homeless, and significant funds are put toward upward mobility programs every year. Indeed, as

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295. *Using the Money and Budgeting Service: Your Guide*, *supra* note 278, at 2.

296. *See* EDIN & SHAEFER, *supra* note 1, at xvii.

297. *See id.* at xxiv. ("But there will always be circumstances in which work as a primary approach to alleviating poverty won't work. In those cases, we need a system that truly acts as a safety net for families in crisis, catching them when they fall.").

Jonathan Mintz noted, "In most cities, low- to moderate-income (LMI) households are the primary users of municipal social services, including workforce development and homelessness prevention programs, among others. But the progress gained through a social service intervention can be wiped out by the lack of fundamental financial stability."[298] As Mintz further notes, the lack of just a relatively small amount of money—say, $500 to pay for a car repair—could result in the loss of a day's pay or the loss of a job.[299] Once a family is jobless, we can assume that the risk of eventual need for expensive social services goes up. We learned from the respondents in this Article's study that the risk is particularly high for people who are unwilling to seek help from social services immediately. They may eventually be evicted and need social services that add up to much more than the government would have spent on a no-interest $500 loan.

Finally, there is no doubt that making FSFS a universally available program increases the cost. After careful analysis, if the cost appears too great, this facet of the program can potentially be reexamined.

3. *A Program Similar to FSFS Could Be Run Through TANF.* Some states have enacted emergency fund programs as part of their TANF programs. For example, North Carolina's TANF program includes Work First Cash Assistance, which is designed to help families who are experiencing short-term financial problems.[300] To divert parents away from traditional TANF enrollment, Work First Cash Assistance grants temporary aid in the form of cash or assistance with housing or utility expenses for a period of up to three months.[301] However, the North Carolina temporary assistance program and others like it provide just a small fraction of the services that FSFS would make available. Unlike FSFS, the current state programs are not designed to help families with long-term financial planning and stability. More importantly, programs run through TANF are unlikely to be effective for people who have embraced the self-sufficiency narrative because those individuals are reluctant to utilize what might be perceived as traditional public assistance, a problem that FSFS is structured to avoid. However, as discussed above, I do suggest that

298. Mintz, *supra* note 293, at 75.

299. *Id.*

300. *Work First Cash Assistance*, N.C. DEP'T OF HEALTH & HUM. SERVS., https://www.ncdhhs.gov/assistance/low-income-services/work-first-cash-assistance [https://perma.cc/ L69Z-JEDD].

301. *Id.*

states use some of their TANF funding to support FSFS, a cause much closer to the original goals of TANF than programs many states current use TANF sources to fund.

4. *People Will Take Advantage of the Small-Loan Programs*. The small loan program would be intentionally designed to minimize bureaucratic red tape. Applicants would have to present identification and verifiable contact information, but there would be no requirement to document hardship or need. As the stories of respondents in this Article demonstrate, the need for emergency funds is often extremely dire. If there was a lengthy application process or a requirement to justify need (as there is with most other public benefits), the waiting period would often counteract the very purpose of the loans. It would simply be too late.

One important concern is that people may take advantage of the program, borrowing money with no intention to return it. In some cases, they might use the money for illicit purposes. There is no doubt that this concern might prove true of some percent of loan recipients, and the pilot programs should monitor this issue. If the problem turns out to be significant, some demonstration of need may be required, or some requirement of providing receipts for how the money was spent may need to be imposed. Alternatively, instead of providing the money in loan form, the program could provide the money directly to whatever service provider the borrower identifies. This could include a landlord, car repair shop, dentist, child care provider, or supermarket. Another option would be to distribute the money on preloaded cards, track the use of the money, and specify the uses that are not allowed. Ultimately, the pilot program results would be important in determining the best design to minimize abuse of the program.

5. *FSFS Would Be Better Run Through Private Bank Partnerships Than by the Government*. Partnerships with private banks and financial advising businesses could certainly be explored. Indeed, from a political feasibility perspective, such partnerships may increase community buy-in and ultimately help FSFS garner political support and sustainability. The concern with such partnerships, however, is that many low-income families have had negative experiences with private banks and do not trust them.[302] Thus, when families see that the

302. *See* KATHERINE S. NEWMAN & VICTOR TAN CHEN, THE MISSING CLASS: PORTRAITS OF THE NEAR POOR IN AMERICA 173–74 (2007) (explaining that many low-income families, do

program is run through private banks, take-up rates might suffer because of families' concerns about whether to trust the program and the information provided to them.

CONCLUSION

This Article demonstrates the importance of conducting research that allows us to explore the mechanisms behind how people understand and experience structural conditions and changes, and how these understandings become determinants of behavior. We knew from existing research that the financial insecurity of low-income families was increasing, that they increasingly relied on credit, and that take-up rates of TANF were low. The findings from this study help explain this existing data. We learned that the features of the post-welfare reform safety net interact with the narratives that families have created in potentially perverse ways. Those families who have adopted the very self-sufficiency narratives welfare reformers hoped would lead to financial independence and security are instead particularly at risk when they experience an unexpected emergency.

This type of in-depth interview work is vital to understanding the connection between law, inequality, and poverty. When assumptions are made about how people have or will respond to policy changes without exploring the reasons and patterns of their behavior, inefficient and troubling policy formations can result. In this case, a key bipartisan reason for reforming welfare was that it created perverse incentives that led to dependency. The findings from this study show that we once again have a safety net with perverse incentives. Self-sufficiency and independence can lead to downward financial trajectories for families who were on a path towards upward mobility, but do not have the tools and resources of financial resilience to weather small emergencies.

As more scholarship utilizes in-depth interviews to consider existing data that point to areas of structural concern for poverty and inequality, we will be able to better understand how these structures become sources of personal meaning and determinants of behavior for

not trust banks); Greene, *supra* note 15, at 583 (explaining the distrust of banks of low-income respondents in the study). The Federal Deposit Insurance Corporation (FDIC) estimates that approximately 20% "of lower income U.S. households—almost 7 million households earning below $30,000 per year—do not currently have a bank account." *See* FED. DEPOSIT INS. CORP., NATIONAL SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS, EXECUTIVE SUMMARY 4 (2009). Further, approximately 41.1% of unbanked households believe that opening a bank account in the future is "not likely at all." *Id.*

people who experience and internalize such conditions. Indeed, inquiries of this type may lead to unexpected connections and bridges for exploration, and ultimately to innovative policy interventions.

This Article incorporates both lessons from the findings from this study and data from existing projects to argue that a new innovation is needed for the public safety net, one that takes into account the narrative perspective and supports, rather than hinders, those who have adopted a self-sufficiency narrative. The program would provide financial planning, small loans, debt management help, and emergency financial services in order to lead families on a road to financial resilience. Recall that when President Bill Clinton announced the welfare reform bill in 1996 he said, "Today the Congress will vote on legislation that gives us a chance . . . to transform a broken system that traps too many people in a cycle of dependence to one that emphasizes work and independence." However, as data from this study demonstrate, welfare reform did not create a system that ultimately allowed families to pursue a path towards independence while remaining financially resilient. A new reform is needed, one like FSFS—one that responds to what families have said they need and want, and truly allows for a system that rewards and supports work and independence.