BRIEFED BY THE BELL: **PREDATORY ECONOMY**

The Issue

Building assets and cultivating wealth — from a simple savings account or retirement plan to homeownership and investment accounts — is a critical and understated part of economic mobility. Those are the tools people need to weather temporary financial setbacks, avoid debt traps, and establish long-term financial stability.

Exploitative financial practices occur in all industries and make up what we call the "predatory economy." The predatory economy eats at the wealth and income of many people, but it also hurts business in general. Predatory firms use exceptions and questionable practices to take advantage of consumers, all while trampling over legitimate businesses that play by the rules and serve consumers fairly. Looking out for consumers and checking predatory practices should be an essential government function.

With the dismantling of the Consumer Financial Protection Bureau (CFPB) — the agency created by Congress in the aftermath of the Great Recession — the federal government is failing to shield consumers from some of the most egregious predatory practices that plague consumers. In the past two years, the current leadership of the CFPB has declined to crack down on student loan servicers, investigate payday lenders, and discourages transparency in home mortgage agreements. That's why it's more important than ever for states to step up and help consumers.

The Solutions

There are many ways Colorado can act to deter financial predators and protect consumers. Here are a few options policymakers can take to do just that.

Reduce and Cap Payday Loan Rates

While Colorado reformed its payday lending laws in 2010, rates are still too high and trap too many people in a cycle of debt. The average effective interest rate for payday loans is a staggering 129 percent APR. Payday lenders are allowed by law to charge a series of fees and interest of 45 percent APR on the loans, resulting in triple-digit interest rates.

The Facts

- The average effective interest rate for a payday loan in Colorado is 129 percent APR, but they can be as high as 200 percent APR
- Coloradans paid $50 million in fees to payday lenders in 2016
- Students from for-profit higher education institutions in Colorado are twice as likely to default on their student loans and half as likely to complete their degree as their counterparts from nonprofit institutions
- 53.9 percent of non-union private sector employment contracts have forced arbitration procedures; for companies with 1,000 or more employees, 65.1 percent have these procedures

Studies also show payday loan stores are much more prevalent in communities of color, hurting some of our most vulnerable citizens. Making payday loans subject to the same rates as other loans would cap them at 36 percent; this is the goal of Proposition 111 on Colorado's November ballot. If passed, this measure would help ensure Coloradans avoid the debt trap and allow them to borrow from other sources that come with less predatory tactics.

Increase Oversight of Student Loan Servicers

Student loan servicing — the way private student loan companies collect money — has become a significant part of the predatory economy. Increased student debt loads, a notable feature of Colorado underinvestment in state tuition assistance, has made many Coloradans more vulnerable to debt servicing practices.

Since 2000, student debt in Colorado for an in-state public four-year university has ballooned by 85 percent. Over 67 percent of students who graduate with a four-year bachelor's degree from a Colorado public institution have debt, averaging $25,877. Students at Colorado's for-profit institutions carry even more debt, with borrowers owing an average $32,452. Relying on misleading, deceptive, and even fraudulent tactics, predatory student loan servicers worsen debt loads for students and their families by forcing them to pay more for already expensive education costs.

For example, Navient, the largest student loan servicer in the country, is accused of telling borrowers to pause payments so borrowers can "catch up" financially, but Navient and other student loan servicers don't tell borrowers this will cause future payments to balloon. While there are options, such as income-driven repayment plans, that allow for more manageable payments, these are omitted from correspondence between the student loan servicers and borrowers.

Because of these predatory practices and others like them, Navient is being sued for defrauding 1.5 million borrowers and adding $4 billion to the costs of their loans. With the U.S. Department of Education choosing to not hold these servicers accountable, it's incumbent on the state to regulate these servicers. Colorado has the authority to do this, and six other states have already done so.

A bill last year, supported by Colorado Attorney General Cynthia Coffman and members of the Financial Equity Coalition, including the Bell Policy Center, would have given the attorney general's office the ability to license student loan servicers in the state. This would've allowed more oversight and ensured licensed loan servicers are held to the same standards as many other licensed businesses, making costs and fees more transparent. However, the bill was killed by the state Senate.

Reform Forced Arbitration Clauses

Many large companies use mandatory arbitration clauses to avoid dispute resolution in open court. Forced arbitration is more favorable for corporations as, in most cases, the business picks the arbitrator, often someone sympathetic to them or with a record of ruling on behalf of the company in past disputes.

Forced arbitration is typically a secret process, leaving future consumers in the dark about prior issues and case outcomes, and many arbitration clauses also ban class action lawsuits. These clauses are found in contracts used by cellphone carriers, online platforms, nursing homes and daycare centers, financial service companies, and many others.

But it's not just the fine print for goods and services; forced arbitration clauses are common in employment contracts as well. In fact, 53.9 percent of non-union private sector employers have forced arbitration procedures. For companies with 1,000 or more employees, 65.1 percent have them. Many times, sexual harassment cases and privacy violation issues are settled through forced arbitration.

Statistics in forced arbitration cases are hard to find due to the secretive nature of the process. However, information on Wells Fargo's arbitration record shows how the process is rigged against consumers. A nonprofit in Arizona found 215 arbitration cases between 2009 and 2016 where Wells Fargo was the defendant; consumers won $432,076 from those cases, less than half of the $1 million Wells Fargo received from rulings. When claims against Wells Fargo went to state contract court, plaintiffs won 60 percent of the time, but in arbitration, the consumers only won seven times.

While states cannot ban forced arbitration clauses — that's a matter for the federal government — there are certain reforms states can implement. For example, information on all arbitration cases, including the outcomes, should be made publicly available. Sunlight is a great disinfectant and can identify and prevent repeat offenses. Arbitration should also mirror judge and jury civil procedures more closely, by ensuring any arbitrator is selected at random and doesn't have a conflict of interest, either financially or through previous favorable rulings.

California has taken significant steps to reform the arbitration process, but it hasn't yet made the process completely transparent and fair. This leaves the door open for Colorado to be a real leader in this area. The Colorado House passed a suite of bills in 2018 that would've opened up forced arbitration toward more transparency and accountability, but those bills died in the state Senate.

Give Coloradans a Chance to Save for Retirement

Americans who have a retirement plan at work are more likely to save for their retirement, yet more than 45 percent of Coloradans work for employers that don't offer a workplace retirement savings plan, while 80 percent of Colorado's small business workers also lack access to a savings plan. Research also shows 56 percent of Latinos, 49 percent of blacks, and 44 percent of female workers in Colorado have no retirement plan at work.

If Coloradans reach retirement without adequate savings, many will be left to rely on social safety net programs, which will strain already tight state and local budgets. The Bell Policy Center has advocated for the Colorado Secure Savings Plan, a program that would allows workers to put money into a publicly administrated, privately managed portable retirement fund. Oregon started a similar program, and at the end of its first year of operations, OregonSaves has 973 participating employers and more than 1,000 workers sign up each week. Many of them are first-time savers, who have put aside more than $5 million in combined retirement savings.

Create Cabinet-Level Department of Consumer Protection

At least 11 states, including Nevada, Utah, and Oklahoma, have different kinds of departments and offices that deal with protecting consumers from fraudulent and deceptive business practices. In fact, Connecticut's Department of Consumer Protection dates back to 1959.

Colorado could follow suit, consolidating and streamlining our consumer protection efforts. Colorado's current consumer protection authority is divided between the attorney general, the Department of Regulatory Affairs, and other Executive Branch entities.

The state should focus on putting together a single, cabinet-level office that houses everything from data privacy to student loan debt, predatory lending, and financial services. A more streamlined department working in concert with the state attorney general could provide Coloradans one stop to identify and understand the threats to consumers and fight back against them.

The Takeaways

- The predatory economy effects everyone in a myriad of ways throughout their daily life
- While the state cannot stop all predatory actions, there are several policies that would ensure consumers are treated more fairly
- Payday lending and student loans have very obvious predatory practices, but commonsense fixes have been proposed
- Colorado should follow the lead of several states and establish a cabinet-level department focused on consumer protection

The Bottom Line

Too many people get caught up in scams, deceptive businesses practices, and opaque and unfair contractual fine print. We must crack down on businesses engaging in these actions, both to deter these practices, but also to ensure businesses that play by the rules, follow the law, and act ethically aren't at a disadvantage.

Coloradans need to know there are repercussions for bad actors and consumers won't be held back by the predatory economy. It's imperative we address this issue so Coloradans can thrive financially and continue to climb the economic ladder. Protecting consumers from the predatory economy is essential to fulfilling that promise.