Common Ownership:
Andrew Granato
Alicia Schleifman
Joel Michaels
Kenneth Khoo

Credit & Banking Access:
Daniel Backman
Jake Langbein
Nicole Cabanez
Areeb Siddiqui
Drew D’Alelio
Natalie Giotta
Andrew Breckel

Pro-Competition Solutions to Address Mutual Fund Common Ownership and Unequal Access to Credit & Banking Services
February 2021
This report includes a summary of proposals for the Biden Administration and Congress to address two sets of competition issues in the financial sector: 1) Issues relating to common ownership of stocks by large mutual funds; and 2) Problems of unequal access to retail banking and credit for low-income communities and communities of color.

PART I: MUTUAL FUND CONCENTRATION AND COMMON OWNERSHIP

Introduction
“Common Ownership”, or “Horizontal Shareholding”, arises when shareholders hold substantial stakes in competing firms. Like horizontal mergers, common ownership may lead to anticompetitive effects through one of two means. First, a common owner has an incentive to influence a portfolio firm’s conduct so that the shareholder maximizes its portfolio profits as opposed to the firm’s individual profits, even in the absence of any explicit collusion or communication between firms. Second, common ownership has the potential to encourage either tacit or explicit collusion amongst competing firms. Both mechanisms are likely to result in a decrease in competition by the commonly owned firms across product markets, resulting in increased prices and/or worse quality of goods and services for consumers.

Although scholars have known about these potential anticompetitive effects for a long time, there has been a substantial increase in scrutiny of the issue in recent years, driven by real-world changes in the structure of capital markets over the past century. In 1950, institutional investors owned about 7% of public companies in the U.S. Today, they hold almost 70-80% of the U.S. market1. When combined, three firms alone; Vanguard, BlackRock, and State Street; own about 40% of the S&P 500.

A wave of recent literature2, though in its early stages, indicates that greater regulatory attention to the issue is warranted. In particular, the mechanisms by which common ownership causes anticompetitive harm require further study. Furthermore, proposals to anticipate or ameliorate potential harms are sensitive to multiple possible channels of anticompetitive behavior. It is of particular concern that collection of the data required to fully and accurately analyze the scope of this issue has been neglected.

In this report, we propose a variety of regulatory and legislative solutions to address this problem. We advocate revamping reporting requirements to enable better study of potential harms of common ownership, urge antitrust regulators to conduct vigorous investigation and prepare for litigation if necessary, and outline potential structural remedies to directly address these issues depending on the results of regulatory investigations.

Problem: Systemic Errors and Gaps in Relevant Data
The study of common ownership issues is hampered by gaps in data and errors in the data that does exist. The regulatory agencies that collect these data should act to rectify these problems.

---

Analyzing potential anticompetitive harms cannot be done effectively without comprehensive and detailed data.

**Enforcement Action Solutions:**

1. The Securities and Exchange Commission (SEC) should overhaul its Form 13F, where institutional investors with assets of over $100 million must disclose their asset holdings each quarter. The 13F, though it is the most important data source for much of the research on common ownership, is notoriously unreliable. On 13F filings, the SEC even includes the disclaimer, “The Securities and Exchange Commission has not necessarily reviewed the information in this filing and has not determined if it is accurate and complete. The reader should not assume that information is accurate and complete.”
   a. The SEC should give investors that file 13Fs one year to amend filings going back to 1999 (the first year 13Fs were required to be filed electronically) for accuracy. Following the grace period, the SEC should conduct checks of post-1999 13Fs and issue penalties to companies with misfiled data.
      i. If necessary, Congress should appropriate additional funding to the SEC to create a specific team that will be permanently responsible for 13F maintenance.
   b. The SEC should immediately reverse course on its recent proposal to increase the 13F threshold to institutional investors with assets of over $3.5 billion. This change would reduce the number of 13F forms filed by 90% and thus severely hamper insight into behavior of major institutional investors.
   c. The SEC should require disclosure of short positions on the 13F beginning in 2021. Policymakers, academics, and the public should be able to catalogue investment activity broadly, which includes shorts.
   d. The SEC should require both the prospective and retrospective disclosure of which share classes are owned by the investor in a new column in the 13F (ex. owning Class A shares vs Class B shares in companies with dual class share structures where Class A shares have more voting power), so that genuine level of control over a company can be better measured.
      i. The SEC should also create and maintain a quarterly database of company share classes as well as the voting power of each class of shares for each company for all publicly traded American firms.
   e. The SEC should require disclosure of the security ownership at both the investor/manager level and the individual fund level. This will help substantially in matching data to other datasets where securities ownership may only be recorded at lower or higher levels of institutional affiliation.
   f. The SEC should publish criteria for inclusion into the Official List of securities that must be reported on the 13F. The SEC should also be required to publish an explanation of why a security is deleted from the list whenever a security is deleted.

---

g. Costs of instituting these reporting requirements to firms will be minimal: the 13F only applies to large asset managers and many of the reporting requirements have already been formally instituted for many years, just not properly enforced.

2. The Federal Trade Commission (FTC) should authorize a Federal Trade Commission Act 6(b) investigative disclosure order to the most significant common owners to seek information about interactions with portfolio company managers relating to votes and discussions about whether to bring shareholder resolutions, board appointments, etc., as well as on ownership structures (should this information not be available from the SEC).

   a. The final report resulting from the 6(b) should also include a review and evaluation of the extensive body of academic work on common ownership and interviews with relevant scholars on approaches to the issue.

   b. When crafting the 6(b), the FTC should gather data that examines the possibility that common ownership can generate anticompetitive behavior through a (passive) lack of standard shareholder engagement to push firms to beat competitors as well as aggressive shareholder engagement that directly pushes firms to not compete.

For example, academics have provided evidence of a “behind the scenes” channel for passive investors to influence corporate governance.

   i. One proposal recommends collecting evidence on the following aspects of index fund management companies: “the number of conversations [with portfolio companies], which side initiated them, what changes (if any) the investment fund manager demanded, and what information (if any) the issuer provided that could be material for the investment fund manager’s voting decisions.”

   ii. The FTC should also be aware of the fact that information exchanges between shareholders and managers (of portfolio companies) may lead to an increased risk of explicit or tacit collusion. Such exchanges may amount to a violation of § 1 of the Sherman Act.

   c. The bulk of current academic research on common ownership concentrates on a select few industries where scholars can readily access data (most notably, airlines and banking). In issuing the 6(b) order, the FTC should require funds to organize their reporting in accordance with the 71 Global Industrial Classification Standard (GICS) categories. Bradshaw and Schaeffer have suggested that more in-depth information is required to analyze whether common ownership manifests in similar ways across industries.

---


facilitate review of common ownership in areas beyond those that have received the most academic attention.

d. The 6(b) order should be issued to the “big three” index funds (Vanguard, BlackRock, and State Street) and sample from other funds of varying sizes as well in order to examine common owner interactions with portfolio firms by size of fund.

3. The FTC is inviting public comment regarding a proposal to loosen the definition of ‘person’ in rules under the Hart-Scott-Rodino (HSR) Antitrust Improvements Act such that more individual funds in high-asset fund families will be required to report acquisitions. Currently, investment firms beyond a certain asset size are required to report acquisitions, and under the proposed change, the fund size will be evaluated at the fund family level rather than the individual fund level. We commend that the FTC is acting against the ability of massive asset managers to avoid having to report acquisitions by having their smaller funds conduct the transactions and recommend that it continue pursuing this aspect of HSR reform.

   a. Given evidence of substantial consolidation that occurs in deals below HSR prospective merger review acquisition size thresholds, the FTC should also consider substantially lowering such thresholds.\(^{11}\)

**Problem: The Challenge of Addressing Antitrust Concerns from Common Ownership**

Potential antitrust concerns arising from common equity ownership are not only difficult to detect, owing to a lack of available data, but are also difficult to confront. Importantly, the effectiveness of potential remedies will depend on the dominant mechanism of anticompetitive harm in common ownership. For instance, if fund managers urge executives of the firms they manage investments in to coordinate with other firms they hold stock in, antitrust regulators can bring suit against them under existing law.\(^ {12}\) However, some scholars have argued that anticompetitive harm can also occur when large fund managers are inactive in corporate governance, tolerating managerial failures to engage in cost-reducing measures.\(^ {13}\) We suggest an array of regulatory solutions to address these varying concerns.

**Enforcement Action Solutions:**

1. The SEC and FTC should jointly convene a conference of large mutual fund managers and academics to consider policy and industry solutions guarding against potential anticompetitive harms created by common ownership. Firms like Vanguard, Blackrock, and State Street now hold a large and increasing proportion of all domestic equity shares, and they have strong incentives to address this issue head-on before regulatory concerns risk posing an existential threat to their business model.

2. We believe there is opportunity to engage the industry constructively to minimize regulatory and legal conflict and find cost-effective solutions. But if major common owners refuse to engage with the legitimate concerns of the risk of anticompetitive conduct, the


DOJ and FTC should consider preparing antitrust actions pursuant to existing antitrust law against common owners involved in markets where evidence has accumulated, through academic research or regulatory investigation, of common ownership-associated harms.

a. § 7 of the Clayton Act is consistent with the preclusion of stock acquisitions that may lead to anticompetitive effects, even without explicit evidence on the exact mechanism of harm. Thus, mutual funds could be precluded from acquiring stock that would lead to such anticompetitive effects.14

b. The so-called passive investor “exception” to the Clayton Act is not really an “exception” at all, but merely requires that a higher standard of proof apply to purely passive investments.15

(Potential Future) Regulatory Solutions:

We emphasize that the following recommendations are contingent on further investigation into the nature of common ownership.16 We include them as examples of possible future courses of action should further action on the issue be warranted.

3. One possible future approach, in the event of evidence that common owners exert affirmative pressure on portfolio firms to refrain from competition with other portfolio firms: regulatory agencies might consider requiring that “no institutional investor or individual holding shares of more than a single effective firm in an oligopoly may ultimately own more than 1% of the market share unless the entity holding shares is a free-standing index fund that commits to being purely passive.”17

a. This structural remedy would require the consolidation of existing (common) stockholdings where common owners wish to retain their control rights.

b. A large fund with, for example, holdings of 5% of the market will want to hold at least 1% of firms in an oligopoly, and therefore will not be able to invest in competitors.

c. Prior to the start of each calendar year, the DOJ and FTC would make a list of industries constituting oligopolies and company market shares based on certain thresholds, and permit institutional investors time to give comment on the list and thresholds and rearrange their holdings to comply with the policy.18

d. An index fund that is purely passive would commit to engage in no communication with top managers or directors, refrain from voting its shares in any corporate governance decision, and own and trade stocks only in accordance with clear and non-discretionary public rules, such as matching an index as closely as possible.19

15 Ibid.
16 Structural remedies gain attractiveness when common owners are both able and willing to directly influence firm decision making by way of their control rights. See José Azar and Martin C. Schmalz, “Common Ownership of Competitors Raises Antitrust Concerns,” Journal of European Competition Law & Practice 8, no. 5 (2017): 329-332.
18 Ibid.
19 Ibid. See also Lund, “The Case Against Passive Shareholder Voting.”
e. The augmented risks of tunneling associated with the increased value of control rights in voting stock needs to be addressed. Perhaps stricter fiduciary duties and disclosure rules would be effective.  

4. In the event of evidence that common owners use their shareholder voting authority to vote for or exert pressure on behalf of anticompetitive resolutions and strategies, the SEC should look into the possible reform of voting rules that mandate mutual fund voting. Mandatory voting rules may have unintended side effects in allowing mutual funds with common ownership to implement their anticompetitive preferences.
   a. Currently, under SEC Final Rule IA-2106, fund managers are fiduciaries that owe their clients duties of care with respect to all services undertaken on the client's behalf, including proxy voting. This requires an adviser with proxy voting authority to vote the proxies.

5. In the event of evidence that common owners act passively in corporate governance matters as to indirectly discourage competition between portfolio firms, the SEC should consider ways to delegate control rights to alternative bodies.
   a. Individual fund managers in large fund families may face disincentives to exercise active governance because doing so could trigger fund family-wide additional regulatory compliance and potentially hurt the position of funds managed by their colleagues. As such, fund managers in positions where the fund family is a large common owner could be required to delegate shareholder voting control rights to a “shareholder representative” organization, independent directors selected by other shareholders, or a public agency designed to promote competition. In this manner, index fund investors would delegate corporate governance decisions in much the same way that government employees do with assets in their pension funds.

PART II: EXPANDING ACCESS TO RETAIL BANKING AND CREDIT

Introduction
The market for retail banking and credit does not provide affordable, equitable products for low-income communities and communities of color. Providing basic bank accounts and credit services to consumers is often unprofitable for mainstream banks due to relatively low-dollar account balances and higher default risk on loans. Past efforts to create affordable, government sponsored banking and credit options (e.g. credit unions, Savings and Loans, etc.) were undermined by deregulation and concentration in the banking sector. Further, when large companies from other sectors, like Wal-Mart in 2005, have attempted to enter this market and provide basic banking services, the existing players have successfully lobbied to prevent them from entering.

As a result, expensive and often predatory alternatives have filled the market gap. Estimates suggest that low-income Americans without access to mainstream banking and credit options

---

20 For instance, nonprofit organizations are subject to a “nondistribution constraint”, and so beneficiaries without control rights have standing to sue fiduciaries that violate such a constraint. See Henry B. Hansmann, ”The Role of Nonprofit Enterprise,” Yale Law Journal 89, no. 5 (1980): 835-901.
22 Id. at 493.
spend around 10% of their income each year in fees and interest on financial services that those with access to mainstream services typically get for free.\textsuperscript{25} For-profit banks and current competitive conditions cannot be relied upon to sustainably fill the market gap for affordable basic financial services on their own. A combination of public options and regulatory changes are necessary to expand access to credit and banking services.

The below proposals aim to reduce the costs and obstacles that low-income communities and communities of color face in accessing basic banking and credit services by creating greater choice and competition in the market. Banking and credit are core infrastructures of the economy\textsuperscript{26} and should be analyzed at least in part through the lens of competition in order to address these market failures. This report addresses four problems: lack of competition for retail banking services, competition in the credit score industry, real-time payment processing, and reporting on access to banking services.

\textbf{Problem 1: Lack of Competition in Retail Banking Services}

\textbf{In 2019, an estimated 5.4\% of U.S. households (7.1 million households) were “unbanked,” meaning no one in the household had a checking or savings account at a bank or credit union. While that number decreased steadily since 2011, about two thirds of the decline is attributed to improved socioeconomic circumstances (income level, income volatility, employment, homeownership, and educational attainment) of U.S. households during that period. For that reason, the FDIC believes the recession caused by the COVID-19 pandemic is likely driving this rate back up.}\textsuperscript{27}

\textbf{Another 24.2 million U.S. households were underbanked in 2017, relying at least in part on money orders, check cashing, rent-to-own, or other alternative financial services.} In 2017, the last year for which the FDIC reported underbanked status, 18.7\% of U.S. households who had a checking or savings account also used alternative financial products such as money orders, check cashing, payday loans, and pawn shops.\textsuperscript{28} Unbanked and underbanked households are disproportionately low-income, Black or Hispanic/Latino, less educated, disabled, and noncitizen.

\textbf{In 2018, unbanked, underbanked, and other low-income households in the U.S. spent $189 billion in fees and interest on financial products, and that number is growing. That includes $16.7 billion spent on fees for payments and deposits and another $39.9 billion on fees for single payment loan products like payday loans.}\textsuperscript{29} Spread across an estimated 31.3 million unbanked or underbanked households, the total cost represents about $6,000 per household.\textsuperscript{30}

\begin{flushright}
\begin{footnotesize}
\item[28] Federal Deposit Insurance Corporation, “FDIC National Survey of Unbanked and Underbanked Households: 2017 Executive Summary,” October 2018.
\item[30] This rough estimate divides the $189 billion cost for financial products by an estimate of the total number of unbanked (7.1 million in 2019) and underbanked (24.1 million in 2017) households.
\end{footnotesize}
\end{flushright}
The reasons households give for being unbanked suggest that the retail banking market is not providing affordable, trustworthy products.31

Solution: Create a public option for basic retail banking services open to any American who wants to use it. Congress should pass legislation to allow all U.S. citizens, residents, and U.S.-domiciled businesses and institutions to open a banking account at the Federal Reserve. Known as “FedAccounts,” this program would fill market gaps not being served by private financial institutions and reduce costs and other burdens that low-income Americans face in accessing basic financial services.

- Establishing Basic Bank Accounts through the Fed: Under this proposal, as put forward by Morgan Ricks, John Crawford, and Lev Menand,32 Congress would authorize the Federal Reserve to establish basic banking accounts for all U.S. citizens, residents, and U.S.-domiciled businesses and institutions. The accounts would be accessible on a user-friendly online interface, complementing the Administration’s universal broadband push. If necessary to limit opposition from the banking industry, Congress could consider limiting eligibility only to Americans who earn below a certain income threshold and businesses under a certain size. To successfully fill the market gap and meet the needs of low-income Americans, these accounts should include at least the following key features:
  - A debit card, ATM access, and direct deposit and online bill pay functionalities;
  - No fees and no minimum deposits, in order to maximize accessibility;
  - No credit check requirement for opening an account, and no profitability considerations used to determine account opening;
  - Real-time payments between accounts, a critically important feature made possible because the accounts would operate on the Fed’s existing real-time payments infrastructure;
  - User-friendly, accessible interfaces available in multiple languages;
  - Customer service available by phone in multiple languages and in person at Federal Reserve branches and other locations.

- U.S. Postal Service as Point-of-Service and Small-Dollar Lender: Though the online FedAccounts interface would have all the necessary functionality, U.S. Postal Service branches should be used to provide physical points of service for those with limited computer literacy or trust. Fed ATMs should be placed at every post office location, and post office employees should be trained to handle cash and check deposits and cash withdrawals. In addition, in line with the Postal Banking Act introduced by Sen. Kirsten Gillibrand in 2018, the Postal Service should be authorized to provide small-dollar loans (up to $500 at a time and $1,000 per year) with low fees and low interest rates compared to private alternatives33; remittance services; check-cashing services; and other basic financial services as deemed appropriate by the Postal Service.34

---

31 In 2019, the most common reasons households gave for not having a bank account was 1) that they did not have enough money to meet minimum balance requirements, 2) that they don’t trust banks, 3) that they are concerned about their privacy, 4) that bank account fees are too high, and 5) that bank account fees are too unpredictable. See Federal Deposit Insurance Corporation, “How America Banks: Household Use of Banking and Financial Services: 2019 FDIC Survey Executive Summary,” October 2020.
33 In 2014, the Postal Service estimated that it could provide a $375 loan with just $48 in interest and fees, compared to $520 in fees and interest that would be charged on the average $375 payday loan from a private payday lender. See U.S. Postal Service, Providing Non-Bank Financial Services for the Underserved (2014), 14.
34 S.2755 - Postal Banking Act, introduced April 25, 2018.
• **Community Bank & Credit Union Partnerships:** In addition, the Federal Reserve could consider partnering with local community banks and credit unions as additional points of service for these accounts. Rep. Waters’s legislation, for example, would enable “pass through” accounts that would be held at the Federal Reserve like all FedAccounts but maintained by the private banks. This would expand access to local, culturally literate customer service, enhance trust, and facilitate connections to other services that those institutions provide. It may also address potential opposition from the community bank and credit union industries. The Federal Reserve in coordination with the Treasury Department, and Consumer Financial Protection Bureau, should ensure that these other private services are equitable and do not include predatory features.

• **Inclusion in COVID-19 Relief Package:** The Administration should advocate for passage of this proposal as part of the recently announced American Rescue Plan. The need to bank the unbanked and underbanked has only grown during the COVID-19 crisis. FedAccounts would facilitate faster and more equitable distribution of stimulus checks, Child Tax Credit refunds, and other COVID-19 relief measures. Key members of Congress have already drafted legislation and shown interest in establishing FedAccounts as a strategy for facilitating faster distribution of COVID relief.

**Executive Action Option:** If Congress does not pass the above proposal, the Administration can establish a public banking option through the Postal Service by executive action. Experts on postal banking, as well as the Postal Service itself, have said it can offer basic checking and savings accounts and some other financial services within its existing authority. This would simply require a vote of the Board of Governors. The Administration should appoint pro-postal banking leaders to the four open seats on the USPS Board of Governors. Democratic appointees would then make up a majority of the board and could establish postal banking. If necessary, they could also remove current Postmaster General Louis DeJoy, who has been opposed to postal banking, from his position. Congress could then add the small-dollar loan and digital FedAccount components through subsequent legislation.

**Problem 2: Lack of Competition in the Credit Score Market and Mortgage Industry**

As many as 60 million adults in the U.S. have difficulty applying for credit cards and other loans. This number adds those with blemishes on their credit reports to the 26.5 million adults who are “invisible” due to not having credit reports or scores. Such individuals have a more difficult time withstanding financial difficulties or other emergencies. There is also a racial gap in consumer access to credit. A CFPB study revealed a 34th percentile median FICO score for consumers in zip codes that were majority non-white, as opposed to a 52nd percentile median FICO score for

---

35 Conversation with Morgan Ricks, January 18, 2021.
39 Marte, Jonnelle, “U.S. consumers’ access to credit may be worse than previously thought: Fed study,” Reuters, September 24, 2019.
consumers in zip codes that were majority white. Credit score impacts not just access to, but quality of, credit. The drop off in credit scores from 760+ to 620-639 corresponds to a 66% increase in interest rate.

The Fair Isaac Corporation (FICO) enjoys a virtual monopoly in the credit score market, providing its proprietary analytical output to each of the three major credit bureaus: Experian, TransUnion, and Equifax. FICO claims that its scoring models capture a 90 percent share of the market. In March 2020, the DOJ opened an antitrust probe into FICO, centering on alleged “exclusionary practices.” The three major credit bureaus, who also wield considerable market power in a triopoly, have also created their own credit score, Vantage Score, to challenge the FICO paradigm. Because the three credit bureaus have the power to control access to and pricing of their data, the likelihood of Vantage Score driving down costs and improving credit scoring is uncertain.

Because of the lack of competition in this domain, there has been limited innovation in scoring methodology. Current algorithms fail to account for a number of variables (e.g. rent, telecom, and utility payments) that are positive predictors of credit behavior. FICO’s older model, FICO 4, is still the only model used for mortgage underwriting and pricing, even though it is outdated. There are also a number of fledgling startups that are attempting to disrupt the credit score industry via the inclusion of new—and more inclusive—scoring mechanisms.

Solutions:

- **Ensure competing credit models reach Fannie Mae and Freddie Mac, and are considered by Fannie Mae and Freddie Mac, in a fair and timely manner.** In 2018, Congress passed the Economic Growth, Regulatory Relief, and Consumer Protection Act, which allowed Fannie Mae and Freddie Mac to consider non-FICO scoring models for mortgages. However, no non-FICO models have yet been adopted. Potential competitors have been stalled by a multi-year FHFA validation process that they must pass through before even being considered for approval by Fannie Mae and Freddie Mac. The FHFA should ensure Vantage Score are other models are fairly treated and are granted a fast approval process. If Fannie Mae and Freddie Mac do not adopt new alternative scoring methods, and FHFA does not act to facilitate competition in the credit scoring market, Congress should pass legislation to require it.

- **Urge Congress to take a proactive regulatory approach to preventing discrimination by AI-based credit scoring algorithms.** AI models that use zip code and other metrics that end up being proxies for race will likely exacerbate unfair and discriminatory lending. The Federal Reserve should submit an interagency request to review risks to AI applications in financial services, seeking input from regulators, banks, companies, civil society, academics, and others, as previously suggested by Federal Reserve Governor Lael Brainard. In addition, Congress should amend the

---


41 DeMatteo, Megan, “This is the credit score lenders use when you apply for a mortgage,” CNBC.com, December 2, 2020.


Equal Credit Opportunity Act and the Fair Housing Act to extend fair lending criteria and anti-discrimination rules to fintech companies. Because these companies are in charge of developing the algorithms, they are responsible for any lending decisions that the algorithms make if they perpetuate racial discrimination in the allocation of credit.

**Problem 3: Lack of Competition in Real-Time Payment Processing**

The lack of competition in the market for real-time payments systems drives up costs and drives down quality for consumers of basic banking services. Real-time payments systems facilitate money transfers from one bank/brokerage account to another instantaneously. The U.S. lags behind Mexico, Europe, and other advanced economies in implementing widespread real-time payments systems. Instead, consumers and businesses often have to wait multiple days for their funds to transfer.49

This friction creates detrimental liquidity challenges for families with low or volatile incomes, for whom a three-day delay in their rent payment getting to their landlord or their paycheck landing in their checking account can be particularly costly. These delays cause many families who do have bank accounts to opt for more expensive check cashing, payday loan, or other alternative financial services. In other words, the lack of universal real-time payments infrastructure drives up the rate of underbanked Americans.50

The U.S. market for real-time payments systems for retail banking consumers is dominated by The Clearing House, a bank services provider owned by the world’s largest banks.51 The Clearing House’s Real Time Payments (RTP) system enables real-time transfers for low-dollar transactions between participating financial institutions.52 Without additional competition, The Clearing House’s monopoly would allow them to raise prices or fail to interoperate with smaller banks or other competitors.53

**Solutions:**

- **Expedite FedNow Launch:** The Federal Reserve is working to create FedNow, a public option for real-time payments processing that would be operated as a public utility accessible to all banks.54 This would provide competition to the private RTP option and ensure that smaller banks, businesses, and communities can access real-time payments.55 Its launch has been delayed until 2023-2024.56 The Administration should encourage Congress to exercise its oversight role over the Federal Reserve to determine the reasons for the delayed launch. If it would help expedite the project, Congress should consider

---

50 Ibid.
51 Ibid.
56 Ibid.
providing additional funding or legislative clarity to ensure that the Fed has the funds and authority it needs to roll out this platform as quickly as possible.\textsuperscript{57}

- **Work with Congress to Urge or Require the Fed to Use Its Other Authorities to Stimulate Innovation in the Real-Time Payments Market:** In addition to implementing FedNow, the Fed has other fiscal, supervisory, and regulatory authorities it can use to facilitate the emergence of faster payment processing options in the private sector. For example, as the U.S. government’s fiscal agents, the Federal Reserve Banks could immediately push all government payments (e.g., Social Security payments and civilian and military payrolls) to faster payment systems. That includes payments such as Social Security disbursements and military benefits. Further, the Fed can exercise its supervisory authority to push individual banks toward greater adoption of faster payments models as part of their annual supervisory examinations. It can also encourage large banks to move toward real-time payments systems as part of its supervision of Systemically Important Financial Institutions and Systemically Important Financial Market Utilities.\textsuperscript{58} In 2019, the Fed indicated that it believed it did not have these regulatory or supervisory authorities over the U.S. payment system.\textsuperscript{59} Conti-Brown and Wishnick argue that the Fed does, in fact, have this authority. Congress should consider passing legislation to clarify the Fed’s authority in this area and to require that the Fed take these actions to spur faster payments in the market.\textsuperscript{60}

**Problem 4: Lack of reporting on access to banking services**

In the 2019 iteration of its biannual report on unbanked and underbanked Americans, the FDIC removed any mention of underbanked populations. This departed from the FDIC’s standard practice for these reports going back to 2009, which was to include counts and findings on both unbanked and underbanked households.\textsuperscript{61} As a result, policymakers and stakeholders cannot as effectively assess trends in the underbanked population. As discussed above, underbanked households are disproportionately low-income and of color, and they spend significant portions of their income on alternative financial services due to limited mainstream banking options.

**Solutions:**

- The FDIC should ensure that its 2021 report once again includes reporting on underbanked households. It should also issue a revised or supplemental report with whatever data it did collect on underbanked households in its 2019 survey, in order to preserve the integrity of comparisons over time.
- Congress should consider amending Section 7 of the Federal Deposit Insurance Reform Conforming Amendments Act of 2005, which requires these biannual surveys and reports,

\textsuperscript{57} In 2019, Sens. Van-Hollen and Warren and Reps. Pressley and Garcia introduced the Payment Modernization Act of 2019 to clarify that the Federal Reserve had the existing authority to create a real-time payments system and require that they do so. Following this push and a hearing on the subject, the Fed announced that it had decided to move forward with implementation of FedNow. The legislation did not move further. However, Congress could consider additional hearings and legislation to require the Fed to move more quickly to implement FedNow given the long timeline and risk of continued delays. See “Van Hollen, Warren, Pressley, Garcia Introduce Legislation to Ensure the Fed Will Act on Faster Payments,” Office of Sen. Chris Van Hollen, July 24, 2019.

\textsuperscript{58} The proposals in this section are outlined in Conti-Brown, Peter and David A. Wishnick, Private Markets, Public Options, and the Payment System, 37 Yale J. on Reg. (2020).


\textsuperscript{60} Conti-Brown, Peter and David A. Wishnick, Private Markets, Public Options, and the Payment System, 37 Yale J. on Reg. (2020).

\textsuperscript{61} Letter from Sens. Sherrod Brown, Tina Smith, and Elizabeth Warren to FDIC Chair Jelena McWilliams, December 23, 2020.
to specifically require reporting on underbanked households. Currently, the language of the statute only mentions unbanked individuals and families, not underbanked ones.62

- The FDIC should expand its surveying and reporting on unbanked and underbanked households to cover key data on market competition, prices, and usage of both mainstream and alternative financial services. Data should be reported at both a national and local level, ideally down to the census tract or neighborhood level. Congress should consider requiring this additional reporting as part of an amendment of Section 7 of the Federal Deposit Insurance Reform Conforming Amendments Act of 2005. This would ensure that future administrations would have to continue reporting the numbers.

---