December 22, 2020

Office of the Comptroller of the Currency
Western District Office
Director for District Licensing
1225 17th Street, Suite 300
Denver, CO 80202

Re: Oportun's New Bank Charter Application; Application # 2020-WE-CHARTER317993; Proposed Charter #25248

The **Center for Responsible Lending (CRL)** and **California Reinvestment Coalition (CRC)**, along with **Americans for Financial Reform Education Fund, California League of United Latin American Citizens (California LULAC), Coalition for Humane Immigrant Rights (CHIRLA), League of United Latin American Citizens (LULAC), Legal Aid Society of San Diego, New Economics for Women (NEW)** and **Public Law Center** appreciate the opportunity to comment on Oportun's application to the Office of the Comptroller of the Currency (OCC) for a national bank charter. We support efforts to increase affordable and responsible consumer lending to underserved communities. Unfortunately, recent investigations and research have revealed egregious debt collection practices by Oportun. While Oportun claims to be a "mission-driven financial institution providing inclusive, affordable financial services" to Latinos, immigrants, and low-to-moderate borrowers, it has in fact aggressively marketed unaffordable loans to these communities and used abusive and intimidating debt collection tactics. Oportun's practices are also inconsistent with the interagency small dollar loan guidance that the OCC and other regulators issued earlier this year. Personal loans can promote financial inclusion when underwriting includes the assessment of a borrower's ability to repay, when loans are reasonably priced, and when loan servicing and debt collection are responsible, fair, and take into consideration language and cultural barriers (specifically, for non-English speaking and immigrant communities.) National bank charters should not be used to support lenders that are issuing unaffordable loans and using abusive debt collection practices.

Our concerns about Oportun's practices include the following: (1) poor underwriting standards that routinely result in unaffordable loans; (2) egregious, abusive, and intimidating debt collection practices; (3) use of a risky new model to issue loans through check cashing stores; (4) high pricing, particularly for larger loans; and (5) major questions about Oportun's Community Reinvestment Act plan. These practices cause severe harm to the very consumers Oportun purports to serve, even as Oportun enjoys the U.S. Treasury's seal of approval as a community development financial institution (CDFI).

In light of the concerns about Oportun's practices, we urge the OCC to condition Oportun's charter upon Oportun's substantial improvement of those practices; and we separately urge Oportun to voluntarily commit to further responsible practices in light of its past transgressions and given its certification as a CDFI.

CRL is an affiliate of Self-Help Credit Union, Self-Help Federal Credit Union, and Self-Help Ventures Fund, which are all CDFIs. With CRL, all are also part of the Center for Community Self-Help (Self-Help). For 40 years, Self-Help has created asset-building opportunities for low-income individuals, rural communities, women, and families of color. In total, Self-Help has provided over $9 billion in financing to 172,000 homebuyers, small businesses, and nonprofit organizations and serves more than 154,000 mostly low-income families through 62 retail credit unions in North Carolina, California, Florida, Illinois, South Carolina, Virginia, and Wisconsin.

The California Reinvestment Coalition builds an inclusive and fair economy that meets the needs of communities of color and low-income communities by ensuring that banks and other corporations invest and conduct business in our communities in a just and equitable manner. CRC envisions a future in which people of color and low-income people live and participate fully and equally in financially healthy and stable communities without fear of displacement, and have the tools necessary to build household and community wealth. CRC has significant concerns that when fintech firms seek bank charters, the rights of communities to reinvestment, fair housing, and consumer protection protections are diminished.

The COVID-19 pandemic has shaken our nation and the world. In the United States this crisis is bringing to light what many of us already knew: Blacks and Latinos are disproportionately suffering due to structural racism that has led to health disparities, lower incomes, stagnant wages, lack of savings, lower credit scores, unemployment rates, and a multitude of other issues affecting communities of color.[1] Sadly, the response from Congress and the Trump Administration has not provided sufficient resources to help families pay for housing, food, and other necessities during this unprecedented moment in our history. Further, undocumented immigrants, many of whom are classified as essential workers, did not qualify to receive stimulus checks and have not received financial assistance from the government to cover health care costs.

For too long, “access to credit” has been disingenuously used to justify high-cost loans as the solution to individuals having trouble making ends meet. At the same time, policy efforts to increase the federal minimum wage and provide affordable healthcare have fallen short. Young Americans have been lured into applying for credit cards in exchange for free pizza and gifts on college campuses. Today, our youth are enticed into purchasing clothing, sneakers, and electronics by signing up for loans online that are linked to their favorite stores. And when interest rates dropped to historically low levels, predatory lenders disproportionately targeted Black and Latino borrowers with toxic mortgage loans and exploding interest rates that decimated homeownership gains made by these communities prior to the foreclosure crisis.

While new federal laws and rules have cracked down on predatory mortgage lending, federal efforts to protect borrowers from predatory payday and high-cost installment loans have been stalled. Recently, many states including Nebraska, California, Colorado, and South Dakota have been successful in passing bills and ballot initiatives to curb predatory payday lending, demonstrating the desire to end debt trap loans. Meanwhile, lenders are shifting from storefront lending to online installment lending, and many of these “fintech” lenders are claiming that they are a better and safer option than payday lenders. However, some loans made by predatory fintech lenders may be just as harmful as payday loans. There are several elements that make up an affordable and responsible loan, including: strong underwriting, reasonable prices, availability of hardship options (repayment plan, loan modification, and forbearance) and fair debt collection practices that take into consideration language and cultural barriers. In addition, a responsible loan should give borrowers the ability to establish and build credit to allow them the opportunity to find lower cost credit in the future and build wealth.

In the following sections we examine Oportun's lending practices through this lens:

1. Oportun's Poor Underwriting Standards Harm the Very Consumers They Purport to Serve.

First, we will look at Oportun's underwriting standards. Oportun uses a proprietary scoring model to assess a borrower's ability-to-repay. They note in their December 2020 investor filing that they utilize "20+ alternative data sources" and have "ongoing R&D [Research and Development] for new data sets" to determine credit risk.[2] This does not provide much information about their residual income or debt-to-income ratio assessment or any risk factors considered in their lending decisions.

What we do know is that Oportun encourages and enables multiple refinances, which is an indication of unaffordability. Repeat refinances can amount to a cycle of debt and borrowers may end up paying more interest than the principal. The 2020 Interagency Lending Principles for Offering Small-Dollar Loans, issued jointly by the OCC and other banking regulators, emphasize that responsible loan programs generally have "a high percentage of customers successfully repaying . . . in accordance with original terms[,] a key indicator of affordability, eligibility, and appropriate underwriting," and that loans should "support borrower affordability and successful repayment of principal and interest/fees in a reasonable time frame rather than reborrowing, rollovers, or immediate collectability in the event of default."[3]

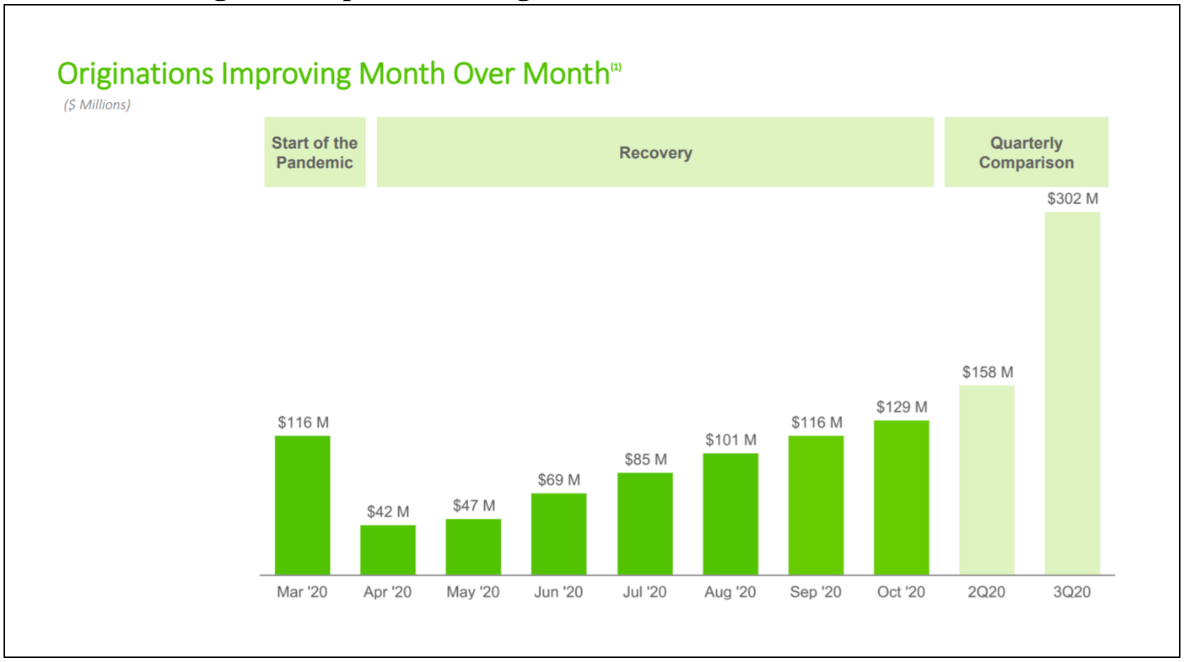
While Oportun's refinance rates are not available, 80% of its dollars loaned go to repeat customers.[4] According to an investigation conducted by *ProPublica*, "3.8 million loans [Oportun] has disbursed to date have gone to about 1.7 million people, meaning each person takes out an average of more than two."[5] Oportun's late fees also signal unaffordability: in 2018, it collected nearly $8.2 million in late fees *on roughly 75% of its loans*.[6] (See Appendix 1, Testimonial from Financial Coach from New Economics for Women, Los Angeles, California, working with Oportun borrowers; and Appendix 2, Better Business Bureau Reviews of Oportun.)

There is also concern that Oportun borrowers are experiencing an initial increase in their credit score followed by a decrease, due to repeat refinancing and default judgements. Credit scoring models are generally a black box, but it is known that scores decrease when consumers open various lines of credit in a short period of time. A borrower interviewed by *The Guardian* stated that Oportun reported her loan as "charged off" even though she had resumed payments. This damaged her credit score, and as a result, she was unable to purchase the breathing machine her daughter needed. From this experience, she stated:

> ***"Their best weapon is hurting your credit, because they know that closes a lot of doors."***[7]

Affordability in lending is especially critical now, given the health and economic implications of the ongoing COVID-19 pandemic for millions of consumers. Oportun has seen gains this year: after an initial hit to their originations in April of 2020, their originations in October 2020 exceeded those in the pre-pandemic month of March (Figure 1). **Given that consumers have been generally deleveraging during this period, further examination of Oportun's marketing and underwriting during this period is in order.**

Figure 1: Oportun's Originations Increase Since Pandemic[8]



The OCC should condition Oportun's charter on the following:

- Given the lack of responsible underwriting evidenced by repeat borrowing, late fees, and the debt collection practices described in the following section, Oportun must cancel debt for borrowers whose loans have been in default for 6 months or longer.
- Moving forward, Oportun must engage in appropriate underwriting consistent with the 2020 interagency small dollar loan guidance -- prudent policies and practices designed to result in successful repayment and minimized adverse consumer outcomes.

Oportun should further voluntarily commit to the following:

- To further address repeat refinances, establish cooling-off periods of at least 30 days following repayment of the prior loan.
- Help borrowers who are experiencing hardship during the COVID-19 crisis (3 months in default) by automatically shifting those borrowers into 3-month forbearance plans.

- Provide longer protection periods of no negative credit reporting to those facing lasting financial hardship from the outbreak, and as discussed further in section 2 below, cease legal actions that could negatively impact a consumer's credit through the end of the COVID-19 pandemic.
- Beyond the COVID-19 crisis, automatically enroll borrowers experiencing hardship in no-cost repayment and forbearance plans.

2. Oportun's Abusive and Intimidating Debt Collection Practices Harm Consumers and Contravene the OCC's Best Practices Related to Third Party Debt Collection.

Debt collection plays an important role in the functioning of the U.S. credit market, but it can also expose American households to unnecessary abuses, harassment, and other illegal conduct. Debt collection is among the leading causes for complaints to state and federal regulators, alike. A 2017 analysis of unpublished Federal Trade Commission (FTC) data revealed that more than one out of every five consumer complaints compiled by the FTC was about debt collection, accounting for a total of 620,800 complaints.[9] Debt collection is the third most complained about product in the CFPB database.[10] Unfair debt collection practices also scar people's credit scores, which become barriers to opportunities such as good jobs, lower-cost credit, and affordable housing.

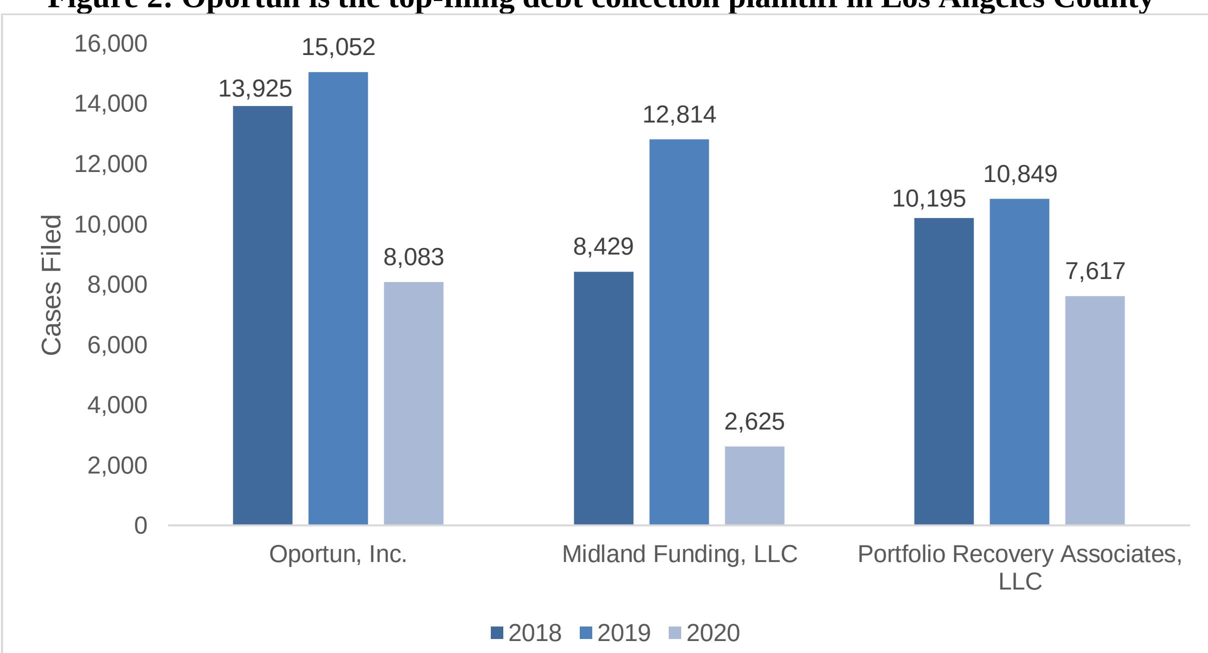
In the OCC's 2013 testimony to Congress, "Shining a Light on the Consumer Debt Industry," the OCC maintains that while banks do bear a responsibility to their shareholders to recover losses on unpaid debts, "they must do so in a safe and sound manner that complies with applicable laws and consumer protections."[11] Specifically, the OCC has been interested in ensuring that when banks sell debt to collectors, those collectors treat consumers fairly and consistently, and meet the OCC's expectations to guard against reputational risks.[12] The OCC specifically insists that "limiting the litigation strategy" is among the best practices with which banks should ensure that their debt buyer partners comply.[13] The OCC asks its banks to consider whether the debt buyer's litigation strategy "[takes] into consideration the borrower's ability to repay," and asks, "is [the litigation strategy] a model based approach, or is the initial action to litigate all accounts at the very beginning?"[14] The OCC also states that the contract between the bank and the debt buyer should "spell out the debt buyer must comply with the various consumer protection laws and standards" including but not limited to, the Fair Debt Collection Practices Act, the Federal Credit Reporting Act, and the Telephone Consumer Protection Act.[15] As the OCC states, "[i]mproving debt collection practices and establishing effective controls reduce risks facing banks but also provide important consumer protections by ensuring debt collectors (banks or third parties) seek the right amounts of repayment from the right borrowers in the appropriate manner."[16]

If Oportun's collection practices were held up to the light of the OCC's best practices governing third party debt collectors, the OCC would likely advise banks to reconsider any contract to sell debt to Oportun. Critically, Oportun does *not* limit its litigation strategy, or take into account a borrower's ability to repay; rather, data strongly suggests it takes an initial action to litigate all accounts at the very beginning. Whereas the OCC recommends that banks "consider placing litigation limits within the contract," Oportun uses litigation to shake down its borrowers.[17]

Moreover, Oportun has been the subject of lawsuits alleging consumer protection law violations. In the summer of 2020, Oportun made headlines for grossly abusive debt collection practices, which is especially alarming given the company's focus on serving Latino borrowers.[18] Consumers who do not communicate in English, including those with limited English proficiency, face unique challenges in dealing with debt collection lawsuits. Consumers often must interact with an English-only legal system, creating additional hurdles to responding to debt collection efforts and in identifying and confronting debt collection abuses. This may result in further financial harm, including negative credit reporting, legal judgments, and wage garnishment. Oportun employs a marketing strategy that appears to target Latino borrowers. Online, consumers have noted images of "Hispanic families" throughout the website (Appendix 3). In storefronts, many of its advertisements for loan products are in Spanish, and it also advertise acceptance of identification from the borrower's country (Appendix 4).

ProPublica investigated Oportun's **sue-to-intimidate method**, finding that the company filed 47,000 suits across Texas over the last four years, making it the state's most litigious personal loan company. The Guardian uncovered similar patterns in California, revealing that Oportun accounted for at least 15% of small claims filings in California from mid-2017 to mid-2018.[19] Oportun has acknowledged publicly that it has become the largest filer of debt claims in both California and Texas,[20] and CRL's analysis of cases filed in 2019 and 2020 in Los Angeles County confirms that Oportun files more cases than prolific collectors like Midland Funding and Portfolio Recovery Associates (Figure 2).[21] The data shows that in 2020, in months when the pandemic economically devastated families, Bank of America, Capital One Bank, and Wells Fargo—all regulated by the OCC—each filed about a quarter of the debt collection cases in the county as did far smaller Oportun, and American Express Centurion Bank filed about one half as many lawsuits (Appendix 5). CRL's analysis of the top ten most-populous counties in California indicates that Oportun filed at least 23,500 cases in California in 2019 and has filed over 13,000 cases in 2020, for a total of over 36,500 cases filed over two years.[22]

Figure 2: Oportun is the top-filing debt collection plaintiff in Los Angeles County[23]



Oportun borrowers' complaints filed with the CFPB demonstrate difficulty repaying and getting repayment plans.[24] Several people reported that they had proposed a repayment plan to Oportun but that it had been rejected and that Oportun instead chose to pursue them in court. One California veteran alleged in February 2020 that Oportun was threatening to sue them even though they had proposed a payment plan on a loan with a high interest rate (Figure 3). Similar complaints were filed in April and May of 2020, suggesting that the company did not change their collection practices immediately after the onset of the coronavirus pandemic.

Figure 3. "They don't want to support me in scheduling affordable monthly payments."

> *"I have made various communication with Oportun representatives and they don't want to support me in scheduling affordable monthly payments of {$70.00} until personal loan with a high interest over 50% is paid off. They sent me a letter that loan account is in review for a lawsuit against me as l am XXXX Lifetime, Retired and a XXXX XXXX XXXX XXXX Veteran. I can only pay {$70.00} @ month until loan is paid off. Oportun has reported Derogatory remarks and collections on my credit report with XXXX, XXXX and XXXX and has destroyed my credibility. Oportun...is threatening me and harrassment with collections calls and cell text at my cell XXXX. I cannot pay {$150.00} @ month and no fees."*

Source: Complaint filed against Oportun Financial Corporation on February 17, 2020 by a California servicemember. (Complaint ID: 3534840). "XXXX" represents complaint text redacted by the CFPB.

Oportun files almost all cases in small claims courts, where collectors can pursue a maximum amount of $2,500 in California. Two of the main concerns with Oportun's small claims lawsuits in California include a) such courts are not legally required to provide interpreters and b) they do not *permit* attorney representation legal counsel, even where no- or low-cost legal representation might otherwise be available. This is especially problematic when Oportun is predominantly serving the Latino community, for whom Spanish is the main spoken language for many and who may experience additional barriers in confronting an English-only legal process. Additionally, Spanish language speakers face substantially greater challenges in bringing their cases to court even apart from the language barrier. According to the California Judicial Council, Spanish language speakers, on average, reported lower levels of education, lower incomes, and less prior experience in small claims court.[25] (See Appendix 6 for testimonial from a legal service provider in Orange County California working with Oportun borrowers.)

Even setting aside the volume of case filings, Oportun's legal collections strategy suggests that its lawsuits are intended to intimidate borrowers into immediate repayment. Oportun lends primarily to the Latino community, where its litigation tactics are prone to evoke pronounced fear, particularly with regards to potential immigration enforcement.[26] The company has dropped suits in the rare cases where borrowers obtain lawyers, signaling it sues only to intimidate and/or collect default judgments.[27]

Moreover, as one legal aid attorney in California expressed, in her experience representing clients, Oportun often wins by default judgement.[28] Research has established that debt collection firms often rely on the person sued not mounting a defense to win default judgments, or automatic wins.[29] A recent CRL analysis based on data from 2012-2017 indicates that debt buyers—a subset of debt collectors known for their abusive practices—often rely on these automatic wins, where borrowers do not appear in court and thus the collectors win by default.[30] After a default judgment, wages are frequently garnished, forcing the consumer to forego wages they may depend upon for basic expenses such as food, housing, and medical care.[31] For Oportun, legal collections might not be challenged because, as the same legal aid attorney states, "[t]hey know the community they're targeting, so there's a lot of people who have questions of legality regarding citizenship status."[32]

A CRL analysis of over 550 cases filed by Oportun in Los Angeles County in December 2019 found that one in three (33.3%) cases ended in automatic wins, or default judgments, in favor of Oportun.[33] For a company that prides itself on serving traditionally underserved borrowers, relying on the same tactic of suing to secure quick default judgments that is notoriously associated with the worst actors within the debt buyer industry is misaligned with the company's stated mission.[34]

Oportun has also filed thousands of cases throughout 2020, in the midst of the coronavirus pandemic and associated economic crisis. In Los Angeles County alone, Oportun has filed over 8,000 cases this year as of Friday, December 11, 2020. This local snapshot of cases filed within this time period surprisingly exceeds even that of Portfolio Recovery Associates, LLC, one of the country's largest and most litigious debt buyers, which has notoriously been the subject of numerous CFPB, FTC and state attorney general enforcement actions (Figure 2, above).[35] In another CRL analysis of 1,170 Oportun cases filed from May through September 2020 in Los Angeles County, nearly 100% of cases resulted in dismissals.[36] Just as the aforementioned ProPublica investigations suggest, the nearly 100% dismissal rate in this sample indicates that Oportun is deploying the sue-to-intimidate model, as opposed to focusing on better loan underwriting with an eye toward ensuring their borrowers are able to repay their loans. As a self-proclaimed mission-driven lender, Oportun should use debt collection as a last resort, not as a scare tactic to haul low-income individuals into court and force them to communicate. Moreover, using the sue-to-intimidate model, especially with low-income communities and Latino communities—some of whom may be undocumented—ignores the psychological impacts that legal collections may have on these communities, particularly in cases where borrowers may not understand the difference between a civil and criminal lawsuit. The sue-to-intimidate model also overlooks the financial resources involved in defending oneself, including securing legal representation, organizing childcare, and arranging time-off work often required.

In addition to debt collection cases in which Oportun is the plaintiff suing thousands of consumers in at least the two states studied in these investigations, Oportun also states that "they have been named as a defendant in various legal actions, including class actions and other litigation."[37] Some of this litigation, Oportun maintains, stems from consumers' dissatisfaction with their products, but "some of this litigation, however, has arisen from other matters, including claims of violation of do-not-call, credit reporting and collection laws, bankruptcy and practices."[38] In at least some states, including California, Oportun is licensed as a debt collector under state debt collection laws.[39] Oportun claims that "[its] mission underscores every aspect of how [it] runs [its] business, and [it] seek[s] to align [its] success with that of [its] customers."[40] However, it is not mission-aligned to violate consumer protection laws designed to guard against abusive debt collection practices, and we urge Oportun to take steps to ensure such laws are respected.

Following media inquiries into its litigation practices, Oportun announced changes to its practices. Following the ProPublica investigation into Oportun's debt collection practices in Texas, and the Guardian's investigation into the same in California, Oportun publicly announced it would be dismissing all pending lawsuits and would be suspending new filings for the time being.[41] Oportun has not separately announced that it has, in fact, dismissed all pending lawsuits as promised. In addition, while there was no stated time frame for which Oportun would continue not to file new debt collection cases, we urge Oportun to cease filing until it has implemented responsible underwriting policies that take into account a borrower's ability to repay the loan, and at least through the end of the COVID-19 pandemic, which has especially devastated the Latino community Oportun alleges to serve.[42] The company also announced that it would lower its maximum APR to a fee-inclusive 36%, and reduce its lawsuit filing rate going forward by 60%.[43] Even if it meets that target, Oportun would be the fifth most litigious debt collector in Texas and among the top debt collectors in California.[44]

While Oportun claims to work in furtherance of its CDFI mission of helping communities build credit when these communities have otherwise been locked out of the financial mainstream, adhering to these abusive litigation tactics to shake down consumers, grossly contravenes that mission. Its practices also appear inconsistent with the interagency small loan guidelines, which urge "processes that assist customers in achieving successful repayment . . . [that] may include timely and reasonable workout strategies."[45] Moreover, Oportun reports account payment history to credit bureaus.[46] Oportun claimed to be taking "proactive steps" to support its borrowers during the COVID-19 pandemic, including "[f]ollowing applicable regulatory requirements, included the CARES Act, regarding credit reporting for those customers who informed us they are impacted by this situation."[47] However, it appears that the majority of loans that Oportun issues are not responsibly underwritten, leading thousands of them to become delinquent, end up in legal collections, and lead to negative credit score outcomes.

The OCC should condition Oportun's charter on the following. Oportun must:

- <u>Abide by its promise to dismiss all pending lawsuits with prejudice, and continue its suspension of new filings until responsible underwriting policies are implemented, and at least through the end of the COVID-19 pandemic.</u>
- <u>Stop using a sue-to-intimidate approach</u>, especially as the OCC urges third-party debt collector vendors to limit litigation;
- <u>Adhere to state fair debt collection laws,</u> given that the OCC advises that contracts governing third party collectors spell out that such collectors adhere to consumer protection laws, including fair debt collection laws, or risk their banks' reputation.
- <u>Cease negative credit reporting to credit bureaus during the crisis for all dismissed cases and affirmatively request that credit bureaus remove negative trade lines</u>. Per the CARES Act amendments to the Fair Credit Reporting Act (FCRA), a consumer whose account was not previously delinquent would be considered current on their loan so long as they had received an accommodation by their lender and had made any payments the accommodation required.[48] But, due to Oportun's overreliance on legal collections, it is likely that many borrowers' accounts were, in fact, previously delinquent, and were unable to take advantage of the credit reporting protections

afforded through the CARES Act. What is worse, these borrowers' credit scores were likely hit through negative credit reporting of their missed loan payments, and the debt collection actions taken against them. Thus, particularly as these actions are inconsistent with the OCC's guidance to limit litigation to collect debts, we urge the OCC to condition Oportun's charter on requiring Oportun to affirmatively remove negative trade lines on consumers' credit reports.

Oportun should further voluntarily commit to the following:

- Reduce debt collection filings by at least 85%. In August 2020, following several investigations, Oportun committed to reducing its debt collection filings by 60%. However, a 60% commitment still leaves much room for Oportun to abuse the legal debt collection process. As the recent investigations into Oportun's debt collection practices and CRL's analysis of Oportun's December 2019 case filings in Los Angeles County reveal, two out of every three cases were dismissed rather than pursued to judgment, suggesting that Oportun is not using legal collections as a last resort. Using the same analysis, an 85% reduction in Oportun's 2019 filings (at 15,052) would mean that Oportun would file about 2,259 cases. As a point of comparison, Wells Fargo, regulated by the OCC, filed 2,600 cases in 2018. So, if Oportun filed 85% fewer cases, it would file about as many as far larger Wells Fargo. Debt collection should not be used to force borrowers to communicate or to intimidate them into paying off delinquent loans, particularly for predominantly Latino borrowers who may encounter language barriers in dealing with an English-only legal process. A minimum of an 85% reduction in filings reflects a stronger commitment to using legal collections as a last resort; ensures that Oportun is taking its commitment to revised underwriting seriously; respects judicial economy as cases are already flooded with debt collection lawsuits and access to courts is limited during the pandemic; and protects the interests of the community it intends to serve. A reduction larger than 85% may well be more aligned with practices of some OCC banks, and the OCC's guidance that third party collectors limit their litigation strategy in collecting debt. And it is only more important in light of language barriers for so many of Oportun's borrowers and because legal representation is often not available or even permitted.
- Remove forced arbitration clauses in its consumer loan agreements. Class action can be the only cost-effective manner in which consumers can receive meaningful relief from illegal practices, and class action bans generally work to block the ability of consumers to get relief.[49] Yet Oportun has stated that "[s]ome of [its] consumer financing agreements include arbitration clauses." It further maintains that "[if] [its] arbitration agreements were to become unenforceable for any reason, [it] could experience an increase to our consumer litigation costs and exposure to potentially damaging class action lawsuits."[50] A mission-driven CDFI should not be preventing its borrowers from accessing their day in court, and should not lean on the enforceability of arbitration to ensure that class action lawsuits are not lodged against them. Thus, we urge Oportun to stop including forced arbitration clauses in its consumer loan contracts.

3. Oportun's New Partnership with DolEx Check Cashing Stores Poses Risks to Consumers.

In August 2020, Oportun announced a new partnership with DolEx check cashing stores to issue their loans.[51] In its investor filings, Oportun states its short-term plan is to "increase distribution through DolEx locations within our existing state footprint."[52]

We have analyzed a similar business model used by a comparable lender, Aura, who uses "finders" or "access partners" with DolEx and other partners including payday lenders. Aura's finder model skirts broker laws in a number of states and encourages unaffordable lending. Aura pays finders for marketing, brokering, and loan servicing. But these finders, though acting as brokers, are not licensed or regulated as brokers, even though they have access to a borrower's Social Security number, credit report, and other personal information. Aura has also pushed for laws that would enable it to pay finders more money for larger loans than for smaller ones – a strong incentive for "finders" to push borrowers into larger, less affordable loans. In addition, Aura partners with payday lenders that charge more than 300% APR on their own loans. There are no restrictions or oversight to ensure that a borrower seeking a lower cost Aura loan is not steered into a higher-cost loan from the payday lender.

Oportun should voluntarily commit to the following:

- Require that DolEx employees working on Oportun loans be licensed as brokers.
- Ensure broker compensation is not tied to loan amount to safeguard against the steering of borrowers into to larger loans.
- Refrain from partnering with payday and high-cost installment lenders that charge rates of more than 36%.

4. Oportun's Certification as a Community Development Financial Institution Compels It to Price Its Loans Responsibly, Including at Rates Well Below a Fee-Inclusive 36% on Larger Loans.

Community Development Financial Institution (CDFI) Certification is given to organizations that "provide financial services in low-income communities and to people who lack access to financing."[53] CDFIs are eligible to apply for awards funded through public dollars.

In California, Oportun provides small and large dollar loans. For loans of less than $500, Oportun has charged up to 69.99% interest. For loans of more than $2,500, Oportun charges up to 36% interest. As noted earlier, Oportun recently committed to not exceeding a fee-inclusive 36% APR on all loans.

The following figure shows the breakdown of Oportun's loans by loan size in California. In 2019, 49.4% of its loans were under $2,500, while the rest were larger, including 27.8% of loans in the amount of $5,000 or higher.

Figure 4: Oportun "Loans Made or Refinanced in California in 2019"[54]

Loans Under $2,500		
Loan Size	**Number of Loans**	**Principal Amount**
$499 or less	16,792	$5,388,693
$500 - $1,999	149,551	$134,870,313
$2,000 - $2,499	17,297	$37,455,921
Total	**183,640**	**$177,714,927**

Loans $2,500 and over		
Loan Size	**Number of Loans**	**Principal Amount**
$2,500 - $4,999	84,264	$287,092,498
$5,000 - $9,999	103,460	$703,798,882
$10,000 or more	188	$3,133,079
Total	**187,912**	**$994,024,459**

For small dollar loans, the 36% fee-inclusive rate cap under the Military Lending Act (MLA) (MAPR) that protects servicemembers and their dependents is a widely accepted dividing line between reasonably priced loans and high-cost ones.[55] However, only a very small portion (4.9% in 2019 in California) of Oportun's loans are in amounts under $500, and Oportun has typically charged up to 69.99% APR for loans in that dollar range. Additionally, in 2019 in California, only half of Oportun loans were in amounts of $2,500 or less, while half were larger dollar loans.

For larger loans, most states impose rate limits significantly lower than 36%. Among most states that set interest rate caps, the median cap on a $2,000 loan is 31% APR including fees; at $10,000, the median is 25%.[56] As shown in Figures 5 and 6 below, at $3,000 and $9,000 loan amounts, the difference for the borrower in interest paid at 36% versus 25% is substantial, warranting a tiered rate structure.

Figure 5: Cost of $3,000 loan for 24 months at 36% APR vs. 25% APR

Principal Amount Loaned	**Annual Percentage Rate Modeled**	**Term Length**	**Payment Frequency**	**Total Amount Due** ***(Monthly payment due)***	**Amount Paid in Interest Over loan** ***(Percent of principal amount loaned paid in interest)***
$3,000.00	36%	24 months	Monthly	$4,251.33 *($177.15)* *	$1,251.33 *(41.7%)*
$3,000.00	25%	24 months	Monthly	$3,842.71 *($160.12)* ^	$842.71 *(28.1%)*

* 1 final payment of $176.88.

^ 1 final payment of $159.95.

Figure 6: Cost of $9,000 loan for 60 months at 36% APR vs. 25% APR

Principal Amount Loaned	Annual Percentage Rate Modeled	Term Length	Payment Frequency	Total Amount Due *(monthly Payment due)*	Amount Paid in Interest Over loan *(Percent of principal amount loaned paid in Interest)*
$9,000.00	36%	60 months	Monthly	$19,511.45 *($325.20)* *	$10,511.45 *(116.8%)*
$9,000.00	25%	60 months	Monthly	$15,849.25 *($264.17)* ^	$6,849.25 *(76.1%)*

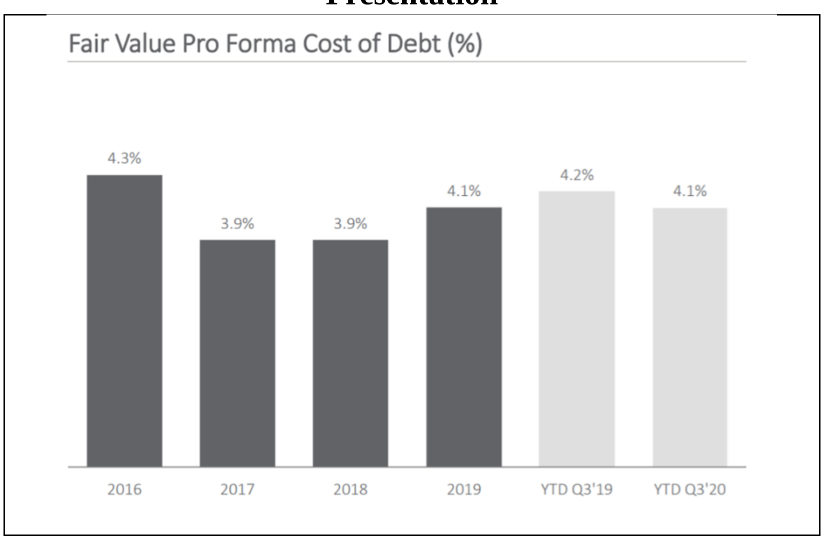
* 1 final payment of $324.65.

^ 1 final payment of $263.22

Note: Per California law, loans of this size are allowed for up to 60 months.

Oportun's December 2020 investor presentation[57] (see Figure 7 below, from slide 22) shows a low cost of funds that should drive rates lower than the 36% currently available to Oportun's borrowers. In fact, Oportun's ratio of interest expense to interest income was only 10.8% in the first nine months of 2020. The expenses pushing Oportun's growth eat up more of its interest income, but still leave enough margin to pass on lower rates to borrowers: the ratio of sales and marketing to interest income was 15.8% and other operating expense (such as salaries and facilities operation), 54.8%.

Figure 7: "Fair Value Pro Forma Cost of Debt (%)" per Oportun December 2020 Investor Presentation



If Oportun were to be allowed to accept consumer deposits, presumably its cost of funds would be driven even lower, yet we are not aware of any commitment from Oportun to pass on these savings to borrowers through better terms than indicated by its past operating history.

Oportun may point to its purportedly favorable pricing to consumers as outlined in an analysis conducted by the Financial Health Network (FHN, formerly called the Center for Financial Services Innovation)[58] that models the cost of Oportun loans compared to what FHN considers the alternatives, notably none of which include forms of responsible relatively lower cost forms of credit that may be available to borrowers with incomes below $50,000, such as credit union unsecured loans or secured credit card loans. There are also several concerns about the assumptions in the analysis.

First is what was already alluded to: the analysis excludes comparison to any consumer credit products that are lower priced than Oportun's products from credit unions, banks, and CDFIs. Second, given the concerning trends of losses in Oportun's portfolio, the omission of the full costs of default renders the analysis incomplete and may make Oportun's cost to borrowers look more favorable than it is. Finally, it should be noted that this analysis calculates cumulative costs to the borrower based on Oportun's year end 2016 portfolio. We know from Oportun's December 2020 investor presentation that the average weighted maturity of loans for Oportun's vintage years 2013-2016 (reflecting the vast majority of loans that could be outstanding at year end 2016) ranged from a low of 16.4 months to 24.2 months in the 2016 vintage. [59] Newer vintages had much longer average maturities: 29 months for 2018 and 30 months for 2019. All else being equal, longer average maturities of loans will be more costly for consumers on the cumulative cost basis that the CFSI analysis uses. Thus, the comparison of Oportun loans to other high-cost alternatives is likely to be less favorable if CFSI were to use the more recent Oportun loan structures with longer maturities.

Oportun should voluntarily commit to the following:

- Continue to offer small dollar loans (loans below $1,000), even as it has committed to lowering its rates to 36% APR, and has generally shifted to making more longer-term, higher-dollar loans.
- Commit not only to the fee-inclusive 36% rate cap overall that it has promised, but also lower rates on larger loans. These rates are rooted in medians in state law and are consistent with what CRL recommends that all CDFIs commit to in recent comments to the CDFI Fund:[60]
    - For loans up to $1,000, charge no more than a fee-inclusive 36% under the MLA;
    - For loans $1,001 to $2,500, charge no more than a fee-inclusive 31% (calculated consistent with the MLA);
    - For loans above $2,500, charge no more than a fee-inclusive 25% (calculated consistent with the MLA).
- Pass on savings to consumers, given the lower cost of funds Oportun would enjoy as a bank.

5. Oportun's Discussion of Its Community Reinvestment Act Plans Raises More Questions Than It Answers.

Recognized as a landmark piece of civil rights legislation, the Community Reinvestment Act (CRA) plays an important role in holding financial institutions accountable for making safe and sound credit available to all borrowers. As the national dialogue has rightfully reignited attention to root causes of racial economic disparities, CRA is a critical tool in ensuring that financial institutions purporting to serve communities of color and situating themselves in them are meeting the needs of those communities.

Based on the information provided by Oportun in its bank charter application, we strongly urge the OCC to consider the following questions related to Oportun's CRA plans and require that it provide answers to them:

Who are deposit products for and what are deposit projections? Oportun's application indicates that the "Organizers plan for Oportun Bank to offer online deposit products."[61] In its application, Oportun makes frequent mention of its intention to make deposit accounts available to its customers, its core low-to-moderate income (LMI) customer segment, its target market, and those with little or no credit history. But does most of Oportun's target market consisting of those with little or no credit history do their banking online? That Oportun sells its credit products through a network of 340 retail locations suggests that Oportun clients may prefer or require, and that Oportun may rely upon, face to face, not online, interactions. Oportun should clarify its goals and plans as to how it will offer its LMI, unbanked and underbanked target markets low cost and accessible bank account products. This should be a critical component of Oportun's CRA Plans.

Oportun identifies another source of deposit funding in its application: "In addition, the bank will seek deposits from socially conscious individuals, foundations, non-profit organizations, corporations and other entities that are seeking to support historically underserved communities."[62] But, as noted above, Oportun has most recently been the subject of extensive negative media attention over problematic debt collection practices. This will no doubt impact its ability to secure deposits from socially conscious individuals and nonprofits. What is the plan for securing deposits, particularly without branches?

A strong deposit base is relevant for the de novo bank's safety and soundness, as well as its community reinvestment activities. Oportun indicates that its CRA strategic plan will adhere to certain principles, including "a strong ratio of community development lending in relation to its deposit base."[63] But what this means for communities exactly is hard to measure since Oportun provides neither the ratio, nor the expected level of deposits.

Is Oportun helping to meet, or harming, community credit needs? We are concerned that Oportun is harming community credit needs by impairing the credit of thousands of LMI individuals and residents of LMI areas. As noted above, there is clear evidence that not only are a significant number of Oportun borrowers falling behind on their loans, they have also been subjected to abusive and highly problematic debt collection practices by Oportun. This has resulted in the severe damaging of the credit profiles of many Oportun borrowers who will have greater difficulty finding a place to live, employers who will hire them, and banks willing to lend to them for homeownership or small business ownership. This is the opposite of CRA. And yet, the CRA Plan of Oportun seems to rely on these same products.

Is Oportun proposing a subprime CRA Plan? In choosing the CRA Strategic Plan option, Oportun provides virtually no information regarding its CRA Plan and intentions. In essence, Oportun proposes to push back a meaningful discussion of its CRA efforts. We object to the lack of transparency regarding such an important component of the bank application.

One area in which Oportun is clear, is in promising a high cost CRA Plan. Oportun appears ready to rely on existing credit products as the main means by which it serves LMI people and communities under the CRA. By its own terms, these personal loans, credit card loans, and auto loans will carry rates from 24.9% to 36%. In relying in its CRA plan on retail products that are all higher cost, this application calls to mind that of H&R Block Bank which in its earlier iterations counted on subprime Option One mortgages to LMI individuals and communities to meet its CRA obligations. H&R Block's charter efforts were turned away twice before it received approval on the third attempt, a day before the New York Attorney General sued H&R Block for misleading Individual Retirement Account (IRA) customers about hidden fees, and a month after the California Attorney General sued H&R Block for misleading high-cost Tax Refund Anticipation Loan (RAL) customers.[64] This is an alarming precedent and does not bode well for LMI communities.

What happens when Oportun borrowers deserve lower priced credit than the products Oportun offers? Oportun should ensure that borrowers are getting the lowest priced credit for which they qualify. If they do not offer conventional pricing on all products, they must develop such products. Otherwise, this raises fair lending issues given that Oportun targets protected classes for its loans. Oportun must answer the question: are customers able to obtain access to fair and sustainable products at Oportun so they can progress on a path towards economic stability and wealth building?

Oportun should commit that a substantial component of its CRA Plan will be devoted to community development investments and loans that clearly benefit LMI communities in an impactful way, as opposed to higher cost credit products, especially during a pandemic. Such community development efforts should include support for affordable housing, investments in CDFIs that help small businesses grow, and neighborhood stabilization initiatives.

Is Oportun proposing to adequately target its CRA activities? Oportun does not propose to restrict its CRA activities to its San Mateo County headquarters. It proposes a few San Francisco Bay Area counties for its assessment area, along with a few additional Supplemental Assessment Areas. Of course, such an approach that looks beyond the headquarters of a branchless bank for assigning CRA assessment areas is not only being debated currently as part of CRA reform efforts, but has historical precedence.

In prior years, the Office of Thrift Supervision had extended assessment areas and CRA reporting beyond non-bank bank headquarters. There the OTS maintained, "having repeatedly faced the question of how to evaluate the CRA performance of thrifts that deliver their products by non-branch systems on a national or regional basis, the Office of Thrift Supervision has taken the approach of looking at their performance throughout the markets where they do credit business, not just in the main office assessment area."[65]

A similar approach was followed after Charles Schwab established a bank without branches, but retained national lending activity and its large non-bank presence in San Francisco. There, the OCC noted that, "given that the bank will have national operations, while it is only required under CRA regulations to treat the Reno MSA as its assessment area, the OCC has an interest in the full scope of the bank's CRA related activities, and will be requiring the bank to provide additional information on CRA qualifying loans, investments and services provided by the bank outside of its assessment area. The bank will be required, annually, to provide the OCC with the number, type and amount of loans and investments made in LMI geographies outside its assessment area as discussed in the conditions below."[66]

Oportun should designate a CRA Assessment Area that covers both 75% of its lending activities and 75% of its debt collection activities. The company should commit resources to finance credit repair and financial counseling for Oportun borrowers who experienced damaged credit as result of defaults due to inadequate underwriting and as a result of abusive debt collection practices.

Why is Oportun seeking a bank charter? Oportun does seem to answer this question, and it appears that this is really about securing the preemption of state law that a national bank charter may provide. As Oportun acknowledges in its application (p. 8): "To carry out current programs, the Company must maintain 27 licenses in 24 different states, vary product terms pursuant to varying state requirements, and manage a range of partner banking relationships. With a national bank charter, by contrast, the Company will be able to focus on meeting the requirements of a single primary regulator." We are extremely concerned about non-bank lenders that seek bank charters for the purpose of evading state law. Oportun should commit not only to the fee-inclusive 36% rate cap overall that it has promised, but also to lower rates on larger loans as described in section 4 above, and should commit that it will not enter into rent-a-bank relationships with non-bank lenders should Oportun obtain a charter.

Why is Oportun seeking a charter now? We raise concerns about the timing of this application and hope that Oportun is not seeking a midnight charter approval. This application was filed after the election and before the new Administration takes its place. Further, it is rare that a bank application is filed when the deadline for public comment falls on Christmas. We appreciate that Oportun has requested that the OCC extend the comment period, but a mere two-week extension would not provide sufficient time to fully inform the public record, and the granting of an extension is not certain.

The OCC should condition Oportun's charter on Oportun's doing the following:

- Offer a bank account product that is consistent with Bank On National Account Standards,[67] and commit to specific goals and a specific plan for bringing unbanked and underbanked customers into the financial mainstream. Oportun should clarify its expectations regarding the source and amount of deposits in the first three years of the de novo bank, should this application be approved.

- Provide data on its customer default rates, and how those compare to default rates for comparable national banks. Oportun must disclose whether customers have damaged their credit by taking out Oportun loans that proved unaffordable to them, and whether they are being subject to debt collections as a result of default on Oportun loans. If Oportun will not provide this information, the OCC should require that it do so as part of this application process.
- Provide much greater specificity about its CRA plans, and emphasize substantial community development efforts as opposed to offering higher cost products to LMI borrowers and communities. Oportun should commit to develop a suite of lower cost credit products to meet the needs of its customers who are able to enhance their credit profiles and are deserving of lower costs credit.
- Oportun should designate a CRA Assessment Area that covers both 75% of its lending activities and 75% of its debt collection activities. Oportun should support credit repair counseling and services, as well as legal aid services, to support its customers who have suffered damaged credit as a result of inadequate underwriting or abusive Oportun debt collection practices.
- Before the OCC makes a decision on this charter application, Oportun should arrange for an independent fair lending audit of its products, policies and practices, and make high level findings of this audit publicly available.

In addition, Oportun should voluntarily commit to charging no overdraft fees on its checking accounts, as these programs are shown to strip assets from low-wealth account holders and cause severe harm.[68] Any overdraft programs should be administered through reasonably priced lines of credit issued under the Truth in Lending Act.

We again call for an extension of the comment period in order to allow sufficient time for the public to submit comments and develop the record. This application was dropped with no advance notice or announcement, contrary to the usual practice of financial institutions. And the comment period is scheduled to end on Christmas. We further call for public hearings to be held in Los Angeles and San Francisco and Texas in order that affected consumers can testify about their experiences with Oportun and complete the public record. There are too many unanswered questions that Oportun must address.

Conclusion

Thank you for considering these comments. We would be happy to discuss them further.

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(See following page for Appendices)

Appendix 1: Testimonial from Financial Coach from New Economics for Women, Los Angeles, California

> *"I have worked with many Oportun borrowers in the past couple of years...In all cases, upon denial of [a] loan they were encouraged [by Oportun] to apply again within 30 days, which as a financial coach is not something that we advise to do because of the score drop that may occur if they once again get denied and the added inquiries on their report. Not only that, but credit profiles do not change that much within 30 days, so it would be difficult to approve someone based on positive improvements that may occur within that timeframe.*
>
> *After coaching these clients, I noticed that there was no clear understanding on who would get approved for these Oportun loans... Overall, these unclear guidelines have a negative impact on the consumers and their ability to obtain an "affordable loan".*

Appendix 2: *Better Business [Bureau Reviews](#) of Oportun*

Nain A.

07/08/2020

First of all CANT wait to finish paying this loan. I was offered another loan on top of the one i already have and i had more questions now due to the fact that I've gotten loans with Oportun since 2016. I said okay lets go through the pre-approval process and see. come to find out that they are charging 27-30 percent apr on their loans. Last amount i got from them was 8k and will be paying back 12k. Stay away from this companies that will prey on you and your money. Do not recommend to friends or family. Apply for personal loans to a bank they can work with you for lower apr. like 5% or even less if you qualify. There are also banks that will approve you with ITIN number. Get information, don't be blinded and don't rush into this type of things.

Sindi R

06/21/2020

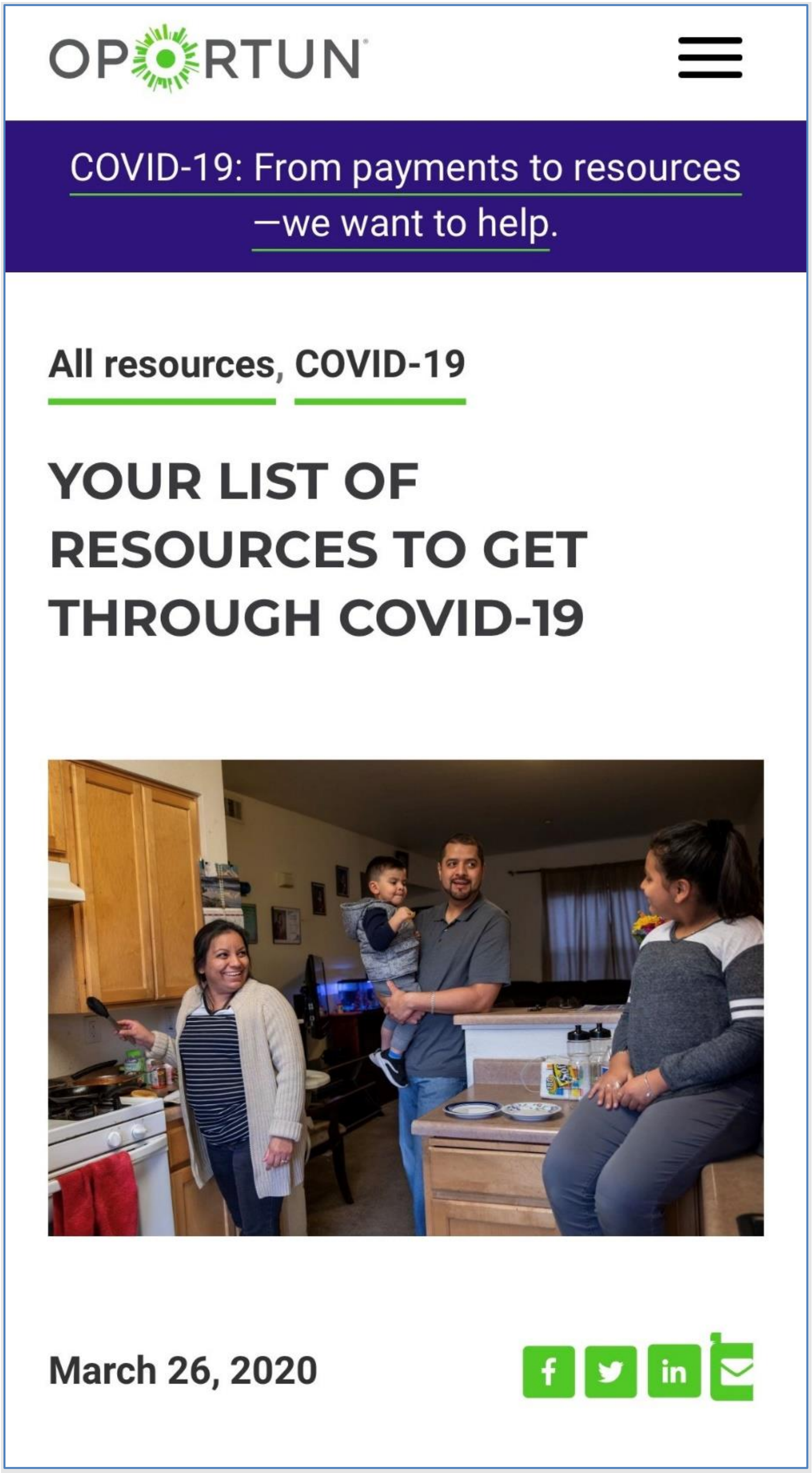
I am a DACA recipient so I don't qualify for most loans. I had gone through a miscarriage last year and ended up missing work. I had to get a loan to pay make my rent. I was very relieved that Oportun was able to help me, but I got down to the last $72.37 which meant I only had TWO MORE PAYMENTS! I was so happy when I realized. I went to pay what I needed to and they only asked me for $31.37. I thought "Cool! My last payment will only be $41.00." I logged in a couple of days later to see exactly what date my payment will be due and they had charged me a little over $14 dollars in late fees...I didn't understand so I called customer service and the women who answered apologized and told me that this tends to happen at the end of the loans and that she was going to put in a request to remove the fees and that it should reflect on my account within 3 days. I thanked her and we ended call. I checked back a few days later—there was no change. I called back and the women who and red kept telling me I was late even though they couldn't even tell s when I was late and I wasn't. She transferred me over to someone else and all the new women told me was "Can I call you back?" I said "Call me back??" She reply "Yes, so that we can resolve it." I agreed and of course we ended the call. Well guess what?? I waited over a week. No call back. I called AGAIN and they told me the request was still processing (even though I was told this would take 3 days by the ONLY person who actually ATTEMPTED to help me.) I was told they would call me once again. I believe they attempted to finally call me on June 20th, 2020. After getting a fourth call from the number that wasn't leaving any voicemails or call back number I was finally able to answer and they were only calling to ask me when I was gonna be able to pay them...what a pure disappointment. They told me that they didn't approve the request to remove the fees and they tackled on even more. I now owe over $69 when I only had $41.00 left to pay them. This is a predatory loan company. They do not care about there customer at all and you can tell because of how they customer service reps treat you. The fee I was charged wasn't just, nor was the second one that they tackled on even though my last payment wasn't due until June 28th. If I had the money I would definitely take it up with a lawyer, but this is how this company PRAYS on the minorities and the under *served. I will be telling my entire family to not do any business with them anymore. I wish I could get through to someone who actually cared and wanted to help.*

Aaron w

11/19/2019

What a scam. Do not I repeat, do not try to get a loan with the pre approved letter these guys send in the mail. They told me I was pre approved for 2500 dollars with no risk to hurt my credit score. So I went along with it, all lies they use this tactic to lure you in like a predator luring in its victims. Once you go in they want all your bank statements and run a hard inquiry on your report. I went along with it. I needed 2000 to move into a new home. Then they come back all congratulations you are approved and offered 300 dollars. I laughed at them told them to throw it all away I have no use for 300. Now I'm stuck with no home and a shiny new ding on my credit. Thanks alot scam artists. I will tell everyone about my experience with your shady buisness.

Appendix 3: Oportun employs a marketing strategy that appears to target Latino borrowers



Appendix 4: Examples of 2 Oportun locations in California, with advertisements in Spanish including "Prestamos Personales" (Personal Loans); Aplica Hoy! (Apply Today!) and "Acceptamos identificacion de tu pais" (We accept identification from your country). *Photos from Google Maps.*

Appendix 5: Oportun is the top filing plaintiff in Los Angeles County

Case Filings in Los Angeles County 2018- 2020

	2018	2019	2020
Oportun, Inc.	13,925	15,052	8,083
Portfolio Recovery Associates, LLC	10,195	10,849	7,617
Cavalry SPV, LLC	6,839	6,769	5,965
Discover Bank	7,052	10,175	5,069
American Express Centurion Bank	3,843	6,144	4,270
Midland Funding, LLC	8,429	12,814	2,625
Capital One Bank	10,266	8,222	2,250
Bank of America	5,087	8,746	2,097
Wells Fargo Bank	1,907	2,600	1,961
CACH, LLC	902	330	154
Asset Acceptance, LLC	0	0	3
Total	**68,445**	**81,701**	**40,094**

Notes: Center for Responsible Lending (CRL) analysis of cases filed in Los Angeles County Superior Courts. Cases filed in 2018 and 2019 were filed within the calendar year, and cases filed in 2020 reflect cases filed from January 1 through December 11, 2020. Companies listed here alongside Oportun represent the top ten most-filing debt collection plaintiffs in California from 2012 to 2017, according to a 2020 CRL analysis. For more information, see Barnard, J.; Sidhu, K.; Smith, P.; & Stifler, L. October 2020. "Court System Overload: The State of Debt Collection in California after the Fair Debt Buyer Protection Act." *Center for Responsible Lending*.

Appendix 6: Testimonial from legal service provider at Public Law Center in Orange County California working with Oportun borrowers

"I appreciate that Oportun was founded to provide a less expensive alternative to the triple digit payday lenders. However, interest rates of 36% do not automatically remove you from the status of predatory lender. Oportun targets the Latinx community in California. It is not clear that Oportun is turning away business when it is not in the client's best interest to take out the loan. We have also had negative experiences with their collection practices. Even before the pandemic, Oportun filing collection cases in small claims court, where the borrower cannot bring in an attorney and is unable to submit a responsive pleading, is problematic. During the pandemic, when some courts are requiring that small claims court cases are heard in person and individuals are facing under- and unemployment, the decision to pursue large numbers of collection cases is even worse. Further, while Oportun has attempted to show that it works with borrowers and their advocates, when our legal services organization has tried to work with them, we have generally been given the run around or given a generic response, without actually solving our client's individual problem.

Recently I assisted a client that took out an Oportun loan. She was unable to pay. On March 31, 2020, she received a letter from Oportun demanding that she pay them almost $200 (she owed a little over $700). In the letter, Oportun threatened to sue her, and included a mostly blank complaint for Small Claims court with the letter. She was unable to pay, so Oportun did file a lawsuit, during the pandemic. We attempted to communicate with Oportun regarding the case (they had issued the press release that they were dismissing all pending small claims cases literally days before the client's trial), but they did not get back to us. Eventually the messaging we heard from Oportun was "oh, yes, we're dismissing but we must not have gotten to those cases yet, or it must have been an oversight."

Because we couldn't get a response from Oportun in time, the client had to go to court (in-person) in early August. She is a monolingual Spanish speaker. There are rarely interpreters available in Small Claims court, and particularly not during a pandemic. We armed the client with as much information as possible. And she was lucky and her case was dismissed.

We later sent Oportun a list of all pending small claims cases in Orange County, so that they could cross-check that list with their internal list of cases to be dismissed. We still don't know if all of those cases were dismissed or not."

[1] Center for Responsible Lending, NAACP, National CAPACD, and UnidosUS, & The Leadership Conference on Civil and Human Rights. August 2020. *Comments to the Consumer Financial Protection Bureau Notice of Proposed Rulemaking Debt Collection Practices (Regulation F).* Available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-and-partners-comment-time-barred-debt-disclosures-4aug2020.pdf.

[2] Oportun. December 2020. *Investor Presentation*. Available at https://investor.oportun.com/static-files/5b418418-decf-450f-809e-eb773f757d51.

[3] Federal Reserve System, Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC). May 2020. *Interagency Lending Principles for Offering Responsible Small-Dollar Loans*. Available at https://www.occ.gov/news-issuances/news-releases/2020/nr-ia-2020-65a.pdf.

[4] K. Collier, R. Larson, and P. Trevizo. August 2020. "The Loan Company That Sued Thousands of Low-Income Latinos During the Pandemic," *ProPublica*. Available at https://www.propublica.org/article/the-loan-company-that-sued-thousands-of-low-income-latinos-during-the-pandemic#:~:text=A%20monthslong%20investigation%20revealed%20that,%E2%80%94%20even%20amid%20COVID%2D19.

[5] See Collier et. al. (2020) and Hosseini (2020) for in-depth descriptions of Oportun's practices, including accounts of the impact of these practices on the financially distressed Latino borrowers featured.

[6] Hosseini, R. August 2020. "Exclusive: The Litigious Debt Collectors Targeting Latinos During a Pandemic." *The Guardian.* Available at https://www.theguardian.com/us-news/2020/aug/02/oportun-loans-lawsuits-latino-small-claims-californi.

[7] Hosseini 2020.

[8] Oportun. December 2020. *Investor Presentation*. Available at https://investor.oportun.com/static-files/5b418418-decf-450f-809e-eb773f757d51.

[9] Kuehnhoff, A. & Vives, A.G. February 2019. "Consumer Complaints about Debt Collection: Analysis of Unpublished Data from the Federal Trade Commission." *National Consumer Law Center.* Available at https://www.nclc.org/images/pdf/pr-reports/report-analysis-debt-coll-ftc-data.pdf.

[10] Kuehnhoff & Vives 2019.

[11]Statement of the OCC, *Shining a Light on the Consumer Debt Industry,* Provided to the Subcommittee on Financial Institutions and Consumer Protection Senate Committee on Banking, Housing, and Urban Affairs, (Jul. 17, 2013), available at https://www.occ.gov/news-issuances/congressional-testimony/2013/pub-test-2013-116-oral.pdf.

[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id*.

[17] *Id*.

[18] Collier et. al. 2020.

[19] Hosseini 2020.

[20] Collier, K. & Larson, R. 2020, July 28. "They Sued Thousands of Borrowers During the Pandemic – Until We Started Asking Questions." *ProPublica*. Available at https://www.propublica.org/article/they-sued-thousands-of-borrowers-during-the-pandemic-until-we-started-asking-questions.

[21] *Id.*

[22] Center for Responsible Lending (CRL) analysis of cases filed in the top-ten most populous California (including Los Angeles, Orange, San Diego, Riverside, San Bernardino, Sacramento, Contra Costa, Santa Clara, Fresno, and Alameda). 2019 totals are from reporting by R. Hosseini in *The Guardian* (missing data from Riverside, San Bernardino, and Contra Costa), 2020 totals were gathered by searching online court records databases in each county (missing data from San Bernardino and incomplete data from San Diego).

[23] Center for Responsible Lending (CRL) analysis of cases filed in Los Angeles County Superior Courts. Cases filed in 2018 and 2019 were filed within the calendar year, and cases filed in 2020 reflect cases filed from January 1 through December 11, 2020. Companies listed here alongside Oportun represent the top two most-filing debt collectors in California from 2012 to 2017, according to a 2020 CRL analysis. Oportun also filed more cases in 2018, 2019, and 2020 than prolific collectors such as Capital One Bank, Discover Bank, American Express Centurion Bank, and Wells Fargo Bank. For more information, see Appendix 5 and Barnard, J.; Sidhu, K.; Smith,

P.; & Stifler, L. October 2020. "Court System Overload: The State of Debt Collection in California after the Fair Debt Buyer Protection Act." *Center for Responsible Lending*. Available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-california-debt-oct2020.pdf.

[24] Consumer Financial Protection Bureau. *Consumer Complaint Database*. Retrieved December 15, 2020 from https://www.consumerfinance.gov/data-research/consumer-complaints/. Complaints were filed most often by borrowers in California, Texas, Illinois and Florida. Complaints reviewed were from 2019-on.

[25] Smith, D. 2012, October. "Procedural Fairness and Effective Court Practices in Small Claims Cases: Study overview." *Judicial Council of California: Administrative Office of the Courts, Office of Court Research*. Available at https://pdfs.semanticscholar.org/3706/38a93040630d359147a44c4bd517e6b86508.pdf.

[26] ProPublica found that of 467 lawsuits reviewed in Texas, fewer than half included the defendant's Social Security number. See Collier et. al. 2020.

[27] K. Collier, R. Larson, and P. Trevizo, Aug 2020. "The loan company was founded to help Latino immigrants. It has sued thousands of low-income Latinos during the pandemic," The Texas Tribune-ProPublica Investigative Unit. Available at https://www.texastribune.org/2020/08/31/texas-oportun-lender-latinos/

[28] Hosseini 2020.

[29] Barnard, J.; Sidhu, K.; Smith, P.; & Stifler, L. October 2020. "Court System Overload: The State of Debt Collection in California after the Fair Debt Buyer Protection Act." *Center for Responsible Lending*. Available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-california-debt-oct2020.pdf.

[30] *Id*.

[31] *Id*.

[32] Hosseini 2020.

[33] Center for Responsible Lending (CRL) analysis of 565 cases filed in December 2019 in Los Angeles County. Of these cases, 188 resulted in default, or uncontested, judgments, one resulted in a contested judgment, and the remaining 376 were dismissed (232 were dismissed prior to a hearing, 18 after a hearing, 9 after a mediation, 38 were dismissed for lack of prosecution, and 79 were other court-ordered dismissals).

[34] Barnard, J.; Sidhu, K.; Smith, P.; & Stifler, L. October 2020. "Court System Overload: The State of Debt Collection in California after the Fair Debt Buyer Protection Act." *Center for Responsible Lending*. Available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-california-debt-oct2020.pdf (describing, inter alia, the default judgment approach taken by debt buyer collectors).

[35] See discussion of CFPB, FTC, and attorney general actions taken against Portfolio Recovery Associates, LLC in: Center for Responsible Lending. *Comments to the Consumer Financial Protection Bureau Notice of Proposed Rulemaking Debt Collection Practices (Regulation F) 12 CFR Part 1006 Docket No. CFPB-2019-0022 RIN 3170-AA41*. September 19, 2019. Available https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-civilrights-debtcollection-regf-sep2019.pdf.

[36] Center for Responsible Lending (CRL) analysis of 1,170 cases filed in May, June, and July 2020 in Los Angeles County. Of these cases, 1,048 (90%) were dismissed prior to a hearing, 89 (8%) were dismissed for lack of prosecution, 31 (3%) were other court-ordered dismissals, one was pending, and one was discharged in bankruptcy.

[37] Oportun. 2020. Form 10-K 2019. https://investor.oportun.com/sec-filings/sec-filing/10-k/0001538716-20-000005

[38] *Id*.

[39] Although the federal Fair Debt Collection Practices Act does not cover original creditors like Oportun, state debt collection laws such as the Rosenthal Act in California, can cover original creditors. See Barnard et. al. 2020.

[40] Oportun. 2020. Form 10-K 2019. https://investor.oportun.com/sec-filings/sec-filing/10-k/0001538716-20-000005

[41] Oportun. 2020, July 28. *Oportun to cap new loan originations at an "all-in" 36% APR*. Available at https://oportun.com/about/press/oportun-to-cap-new-loan-originations-at-an-all-in-36-apr/.

[42] Centers for Disease Control and Prevention. 2020, July 24. *Health Equity Considerations and Racial and Ethnic Minority Groups*. Available at https://www.cdc.gov/coronavirus/2019-ncov/need-extraprecautions/racial-ethnic-minorities.html; Centers for Disease Control and Prevention. 2020, July 18. *COVIDView: A Weekly Surveillance Summary of U.S. COVID-19 Activity. Key Updates for Week 29*. Available at https://www.cdc.gov/coronavirus/2019- ncov/covid-data/covidview/index.html. (explaining the COVID-19 health and economic crisis cuts against Latinos harder in housing, healthcare, employment, infection rates, and deaths).

[43] Oportun. 2020, July 28. *Oportun to cap new loan originations at an "all-in" 36% APR*. Available at https://oportun.com/about/press/oportun-to-cap-new-loan-originations-at-an-all-in-36-apr/.
[44] Collier et. al. 2020; CRL analysis.
[45] Federal Reserve System, Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC). May 2020. *Interagency Lending Principles for Offering Responsible Small-Dollar Loans*. Available at https://www.occ.gov/news-issuances/news-releases/2020/nr-ia-2020-65a.pdf.
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[54] California Department of Business Oversight CFL Annual Report Submission, p. 10.
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