NO FARE: REMEDYING THE MEMBER BUSINESS LOAN LOOPHOLE

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The member business loan exemption of the Federal Credit Union Act was the driving force behind the New York City taxi medallion loan crisis that led to over 950 bankrupt taxi drivers and eight suicides. This Note analyzes the exemption as the legislature's balancing act to reconcile two competing policy aims: keeping lenders safe while encouraging them to lend to risky borrowers.

Viewed through the lens of the taxi medallion crisis, this Note demonstrates the severe harm that this loophole creates. Exempting credit unions from regulatory limits has left vulnerable borrowers subject to the adverse designs of powerful actors. Ultimately, this Note proposes statutory loan protections with severe penalties for the exempt institutions to keep the credit unions and borrowers financially safe and sound.

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INTRODUCTION

The yellow taxicab has long been an icon of New York City. A shot of a street crowded with yellow cabs is the tried and true way directors have cued the New York City location in movies and television. For many immigrants, however, the taxi symbolizes something more meaningful: the American dream.[1] Many who immigrated to the United States in pursuit of a better life spoke of the medallion, the prized permit to drive a taxi in New York City, in reverent tones of opportunity.[2] To own a medallion meant that one had "made it"—it was the golden ticket to a better life in a new home. However, since 2014, that dream has become an unremitting nightmare of crippling debt and indentured servitude[3] that, for some, has ended in suicide.[4]

In May 2019, the *New York Times* published a two part series on the New York City medallion loan crisis.[5] Taxi industry leaders helped artificially inflate medallion prices to over one million dollars in 2014, over five times what they had been twelve years earlier,[6] as regulatory officials turned a blind eye to the looming crisis.[7] The investigation, however, failed to explore the original statutory root of this crisis, which is the subject of this Note. The statute was there long before the catastrophe and set it in motion.

1. Richard Perez-Pena, *For 53, the Promise of America Fits on a Taxicab*, N.Y. TIMES (May 11, 1996), https://www.nytimes.com/1996/05/11/nyregion/for-53-the-promise-of-america-fits-on-a-taxicab.html [https://perma.cc/7HFA-TLCS].

2. *See id.*

3. *See* Brian M. Rosenthal, *'They Were Conned': How Reckless Loans Devastated a Generation of Taxi Drivers*, N.Y. TIMES (May 19, 2019), https://www.nytimes.com/2019/05/19/nyregion/nyc-taxis-medallions-suicides.html [https://perma.cc/C6ZQ-3QT9].

4. *See* Emma G. Fitzsimmons, *Why Are Taxi Drivers in New York Killing Themselves?*, N.Y. TIMES (Dec. 2, 2018), https://www.nytimes.com/2018/12/02/nyregion/taxi-drivers-suicide-nyc.html [https://perma.cc/VW6G-TUC9].

5. Brian M. Rosenthal, *As Thousands of Taxi Drivers Were Trapped in Loans, Top Officials Counted the Money*, N.Y. TIMES (May 19, 2019), https://www.nytimes.com/2019/05/19/nyregion/taxi-medallions.html [https://perma.cc/YY93-4PL7]; Rosenthal, *supra* note 3.

6. Rosenthal, *supra* note 3.

7. *See* Rosenthal, *supra* note 5 (discussing the failures of the three agencies involved in the crisis: the National Credit Union Administration, the New York State Department of Financial Services, and the New York City Taxi and Limousine Commission); *see also infra* Part II.D (explaining how the three agencies were all aware of the impending medallion catastrophe, yet did little to stop it).

The key component is a loophole in the Federal Credit Union Act[8] (FCUA) that permitted some credit unions to grant limit-busting numbers of risky loans to those who wanted to buy taxi medallions.[9] With this exemption, credit unions went on a lending binge and did not stop until the intertwined machinery of medallion financing, comprised of lenders, borrowers, and regulators, finally crashed.[10]

This led more than 950 taxi drivers to file for bankruptcy, drove at least eight drivers to suicide, and cost the National Credit Union Share Insurance Fund (NCUSIF) approximately $765.5 million.[11] New York City initially made some efforts to help the drivers[12] and even discussed the possibility of a $600 million bailout,[13] but these solutions ignored the statutory exemption that saddled borrowers with such crippling debt and triggered the events that led to this crisis. Until it is addressed, New York City taxis will remain the icon of an American dream turned sour.

This Note is divided into three parts. Part I describes the social and legislative history of credit unions and the FCUA exemption that laid the foundation for the crisis. Part II chronicles the medallion loan crisis and the cast of characters that created it. To prevent similar failures, Part III proposes statutorily mandated protections for unsophisticated credit union borrowers, such as loan interest rate and maturity caps, with penalties for credit unions that fail to comply.

I. CREDIT UNIONS AND THE MEMBER BUSINESS LOAN EXEMPTION

This part examines the legal framework of credit unions, their regulation, and the member business loan (MBL) exemption that is at the core of this Note. Part I.A introduces the purpose and origins of credit unions and

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8. 12 U.S.C. §§ 1751–1795k.

9. *See infra* Part I.D (analyzing the carveout in the FCUA that exempted certain credit unions at the heart of this crisis from protective regulations).

10. *See* NCUA OFF. OF INSPECTOR GEN., MATERIAL LOSS REVIEW OF MELROSE CREDIT UNION, LOMTO FEDERAL CREDIT UNION, AND BAY RIDGE FEDERAL CREDIT UNION 1–2 (2019), https://www.ncua.gov/files/audit-reports/oig-material-loss-review-march-2019.pdf [https://perma.cc/4RQZ-3TWP] (discussing how some failed credit unions had high percentages of medallion loans); *see also* Rosenthal, *supra* note 3 (detailing how the mechanisms of medallion loans created a market bubble that ultimately burst).

11. *See* NCUA OFF. OF INSPECTOR GEN., *supra* note 10, at 6–7; Rosenthal, *supra* note 5.

12. Brian M. Rosenthal, *Facing Ruin, Taxi Drivers to Get $10 Million Break and Loan Safeguards*, N.Y. TIMES (June 12, 2019), https://www.nytimes.com/2019/06/12/nyregion/nyc-taxi-medallions.html [https:// perma.cc/93PM-RUA6] (describing Mayor Bill de Blasio's proposed initiatives to forgive up to ten million dollars in medallion owner fees and to set up a center to provide financial counseling for drivers).

13. Stephen Nessen & Elizabeth Kim, *Taxi Task Force Proposes $600 Million Fund for Struggling Cab Drivers Affected by Medallion Crisis*, GOTHAMIST (Jan. 31, 2020, 3:23 PM), https://gothamist.com/news/taxi-task-force-proposes-600-million-fund-struggling-cab-drivers-affected-medallion-crisis [https://perma.cc/9QK7-D8ER]. However, just a few months later, in July 2020, Mayor de Blasio stated that due to the impact of COVID-19, the city did not have the resources for the driver bailout. Jake Offenhartz, *COVID Crisis Sends Yellow Taxi Drivers into Financial Freefall, Report Shows*, GOTHAMIST (July 30, 2020, 1:36 PM), https://gothamist.com/news/covid-crisis-sends-yellow-taxi-drivers-financial-freefall-report-shows [https://perma.cc/4KG6-GPYS].

discusses their membership requirements. Part I.B explains the FCUA and the federal regulatory supervision of credit unions. Part I.C provides background on the financial crisis that led to stricter regulation of MBLs. Finally, Part I.D defines the MBL exemption and examines its legislative history and evolution.

A. Credit Unions: You Can Do It, We Can Help

Credit unions are member-owned financial institutions with particular membership requirements.[14] By virtue of this fact, they are nonprofit and can offer higher savings and lower borrowing rates.[15] This structure sets them apart from banks, which have stockholders without membership conditions and operate as for-profit businesses.[16] Traditionally, membership (also known as the common bond) requirements for credit unions have often revolved around one's occupation,[17] so they became self-help associations for tradesmen and lower-income individuals.[18] By pooling their small savings together, members could create a fund from which they could extend credit to other constituents.[19] This solved the members' problem of not having access to credit when banks routinely shunned them on account of their modest incomes and poor finances.[20] More formally, credit unions are defined as "a cooperative association organized . . . for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes."[21]

14. *What Is a Credit Union?*, MYCREDITUNION.GOV, https://www.mycreditunion.gov/about-credit-unions/credit-union-different-than-a-bank [https://perma.cc/LV3V-UECB] (last visited Nov. 3, 2020).

15. *See generally Credit Union and Bank Rates*, NAT'L CREDIT UNION ADMIN., https://www.ncua.gov/analysis/Pages/industry/credit-union-bank-rates.aspx [https://perma.cc/AL4D-YAAY] (last visited Nov. 3, 2020).

16. *See Issues Currently Facing the Credit Union Industry: Hearing Before the Subcomm. on Fin. Insts. & Consumer Credit of the H. Comm. on Banking and Fin. Servs.*, 105th Cong. 68 (1997) (statement of Robert D. Anderson, President and CEO, Liberty Check Printers).

17. Stephen F. Ambrose Jr., *The Legality of Credit Union Share Draft Accounts Under Federal Law*, 46 FORDHAM L. REV. 1135, 1135 n.1 (1978).

18. *See id.* at 1135; *see also* Robert Botkin, *Rationalizing the Credit Union Tax Exemption*, 19 WAKE FOREST J. BUS. & INTELL. PROP. L. 158, 159–61 (2019) (describing how credit unions were designed to create accessible credit for lower-income individuals, usually farmers).

19. Ambrose, *supra* note 17, at 1139; *see also* MARVA WILLIAMS, FINANCIAL SERVICES FOR PEOPLE OF MODEST MEANS: LESSONS FROM LOW-INCOME CREDIT UNIONS 3 (2004).

20. "When Congress enacted the FCUA, sponsors of the legislation emphasized that the cooperative nature of credit unions allows them to make credit available to persons who otherwise would not qualify for loans." Elizabeth D. Lauzon, Annotation, *Construction and Application of Federal Credit Union Act of 1934 (FCUA) (12 U.S.C.A §§ 1751 to 1795k)*, 89 A.L.R. Fed. 2d 357, § 3 (2014); *see also* Kelly Culp, Comment, *Banks v. Credit Unions: The Turf Struggle for Consumers*, 53 BUS. LAW. 193, 193–94 (1997) (delineating how credit unions were intended to service lower-income workers who banks refused to serve).

21. 12 U.S.C. § 1752(1).

Credit unions began in Europe and achieved considerable success there.[22] Rejected by banks, farmers in need of funds were forced to turn to lenders who charged ruinous interest rates.[23] To remedy this, Germany created one of the earliest known credit unions[24] to help farmers purchase farming necessities.[25]

Credit unions made their way to the United States in 1909,[26] after Edward Filene, a Massachusetts businessman, observed India's rural cooperative banks during his travels.[27] He saw their potential to help American workers and became instrumental in passing the Massachusetts Credit Union Act, upon which the FCUA was later built.[28]

B. Expanded Credit Union Growth and the FCUA

After the Great Depression, President Franklin D. Roosevelt signed the FCUA into law, which organized credit unions under federal law and established their regulatory supervision in turn.[29] The legislation came after Congress noted the impressive stability of credit unions during the Great Depression.[30] Consequently, the FCUA was enacted to create a safer alternative for organizing financial institutions at the federal level for people of small means.[31] Workers and small business owners could apply for affordable credit through a national system of cooperative credit.[32]

Initially, responsibility for administering the FCUA was assigned to the Farm Credit Administration (FCA).[33] The FCA was charged with addressing

22. *See* Stuart R. Levine, *The American Credit Union Industry Still Embodies Its Founding Values*, CUINSIGHT (May 6, 2013), https://www.cuinsight.com/the-american-credit-union-industry-still-embodies-its-founding-values.html [https://perma.cc/V2KQ-QVV2].

23. *Id.*

24. The Heddesorf Credit Union was established by Friedrich Wilhelm Raiffeisen in 1864. *Id.*

25. *Id.*

26. *Historical Timeline*, NAT'L CREDIT UNION ADMIN., https://www.ncua.gov/about-ncua/historical-timeline [https://perma.cc/ZGE8-Y8R7] (last visited Nov. 3, 2020).

27. Levine, *supra* note 22.

28. *See id.*; *see also Historical Timeline*, *supra* note 26.

29. Levine, *supra* note 22; *see also Historical Timeline*, *supra* note 26. The FCUA also applies in part to state chartered credit unions that are federally insured under the NCUA. Lauzon, *supra* note 20, § 2 n.1; *see also* 12 U.S.C. § 1781. For purposes of this Note, "credit union" refers to both.

30. *See* Lauzon, *supra* note 20. The stability of the credit unions was in particularly sharp contrast to that of the banks and other lending institutions that collapsed during the Great Depression. *Id.* While thousands of banks failed during that time, zero credit unions did. S. O. Crofton et al., *Credit Union Capital, Insolvency, and Mergers Before and After Share Insurance*, ESSAYS IN ECON. & BUS. HIST., 2020, at 1, 1.

31. Lauzon, *supra* note 20.

32. Culp, *supra* note 20, at 194.

33. The FCA was responsible for federally chartered credit unions from 1934 to 1942. John T. Croteau, *The Federal Credit Union System: A Legislative History*, SOC. SEC. BULL., May 1956, at 10, 12; *Historical Timeline*, *supra* note 26.

the credit difficulties of rural Americans who had suffered during the Great Depression and were in dire need of help.[34]

In the years that followed, Congress sporadically altered the federal regulation of credit unions.[35] A statutory tax exemption was added in 1937,[36] in recognition of the benevolent function of credit unions.[37] Other amendments to the FCUA updated its regulatory limits, which were tied to inflation,[38] and transferred FCUA oversight responsibility to various agencies.[39]

By 1970, credit unions had expanded in number and industry to reach beyond farmers.[40] In that year, Congress established the National Credit Union Association[41] (NCUA) to create a separate agency specifically to oversee credit unions to better address the industry's needs.[42] FCUA supervision was duly transferred to the newly created agency, where it remains today.[43]

C. Financial Chaos and the Road to Regulation

The landscape described above stood for over a quarter of a century.[44] Credit unions attracted customers by offering higher interest rates on deposits and charging lower rates on loans.[45] But even with this conservative business

34. *See About Us*, *History*, FARM CREDIT ADMIN., https://www.fca.gov/about/history-of-fca [https://perma.cc/X3BQ-QKHQ] (last visited Nov. 3, 2020) (describing how farmers are particularly vulnerable to changes in the economy).

35. *See* Croteau, *supra* note 33, at 11.

36. *Review of Credit Union Tax Exemption: Hearing Before the H. Comm. on Ways & Means*, 109th Cong. 2 (2006).

37. "Credit unions, unlike many other participants in the financial services market, are exempt from Federal and most State taxes because they are member-owned, democratically operated, not-for-profit organizations . . . and because they have the specified mission of meeting the credit and savings needs of consumers, especially persons of modest means." Credit Union Membership Access Act, Pub. L. No. 105-219, § 2, 112 Stat. 913, 914 (1998) (laying out Congress's findings regarding the purpose and general principles of credit unions).

38. The original statute capped the value of an unsecured loan that a credit union could make at fifty dollars. Secured loans could not exceed $200 or 10 percent of the credit union's capital, and loans could not exceed two years. Federal Credit Union Act, Pub. L. No. 73-467, § 11(d), 48 Stat. 1216, 1220 (1934) (current version at 12 U.S.C. § 1751); Croteau, *supra* note 33, at 17.

39. Between 1934 and 1970, responsibility for administering the FCUA was passed around between six agencies, including the Federal Deposit Insurance Corporation, the Federal Security Agency, and the Department of Health, Education, and Welfare. Ambrose, *supra* note 17, at 1142 n.57.

40. By the end of 1960, there were almost 10,000 credit unions in the United States with over six million members. *Historical Timeline*, *supra* note 26.

41. *Id.*

42. S. REP. NO. 91-518, at 2 (1969) (stating that credit unions have become so significant to society that they require a more responsive and independent regulatory agency).

43. *About NCUA*, NAT'L CREDIT UNION ADMIN., https://www.ncua.gov/about-ncua/mission-values [https://perma.cc/PR9X-A8DZ] (last visited Nov. 3, 2020).

44. Amendments to the FCUA between 1934 and 1998 largely dealt with organizational matters and are beyond the scope of this Note.

45. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-07-29, CREDIT UNIONS: GREATER TRANSPARENCY NEEDED ON WHO CREDIT UNIONS SERVE AND ON SENIOR EXECUTIVE

model, they could not escape the financial tumult that would begin wreaking havoc around them.[46]

The savings and loan financial crisis of the 1980s and 1990s was a devastating blow and cost billions in losses.[47] Savings and loans associations (S&Ls) are for-profit institutions whose main line of business is mortgage lending.[48] Like all lenders, S&Ls finance their lending with relatively short-term deposits.[49] This model proved vulnerable in an environment of rising short-term rates[50] and S&Ls suffered and required a government bailout.[51]

Although it is referred to as the savings and loan crisis, credit unions were affected as well. Credit unions are different from S&Ls in several respects, but the financing of long-term loans with relatively short-term funds is common to both institutions.[52] With the rising short-term rates of the 1980s, some credit unions that had issued MBLs failed.[53] This forced the NCUSIF[54]

COMPENSATION ARRANGEMENTS 26 (2006); Wendy Cassity, Note, *The Case for a Credit Union Community Reinvestment Act*, 100 COLUM. L. REV. 331, 340 n.59 (2000).

46. In 1971, President Richard Nixon ended the Bretton Woods system, which fixed currencies against the U.S. dollar and the dollar against gold at thirty-five dollars per ounce. Kenneth W. Dam, *From the Gold Clause Cases to the Gold Commission: A Half Century of American Monetary Law*, 50 U. CHI. L. REV. 504, 526, 528 (1983). In 1971, after years of financing the Vietnam War and a decline in American manufacturing, the conversion rate had become untenable. *See* Mark S. Mizruchi & Daniel Hirschman, *The Modern Corporation as Social Construction*, 33 SEATTLE U. L. REV. 1065, 1096 (2010). The breakdown of the Bretton Woods system caused rampant inflation that lasted into the 1980s. *See* Michael Bryan, *The Great Inflation*, FED. RSRV. HIST. (Nov. 22, 2013), https://www.federalreservehistory.org/essays/great_inflation [https://perma.cc/A4VD-J58P]. To bring inflation under control, the Federal Reserve System sharply raised interest rates. *See id.* All financial institutions that borrow short term and lend long term were hit with rising financing costs. MICHAEL S. BARR ET AL., FINANCIAL REGULATION: LAW AND POLICY 14–15 (Saul Levmore et al. eds., 2d ed. 2018). Particularly affected were the savings and loans associations: thrift institutions that finance investors' home purchases. *See id.* at 175. Over a thousand savings and loans associations failed from 1986 to 1995. Timothy Curry & Lynn Shibut, *The Cost of the Savings and Loan Crisis: Truth and Consequences*, FDIC BANKING REV., 2000, at 26, 33. The Government Accountability Office (previously, General Accounting Office) estimated the total cost of the failure and the taxpayer bailout at just under half a trillion dollars. Richard W. Stevenson, *G.A.O. Puts Cost of S.& L. Bailout at Half a Trillion Dollars*, N.Y. TIMES (July 13, 1996), https://www.nytimes.com/1996/07/13/business/gao-puts-cost-of-s-l-bailout-at-half-a-trillion-dollars.html [https://perma.cc/YLL5-2MQL].

47. *See* Stevenson, *supra* note 46.

48. *See* Century Fed. Sav. & Loan Ass'n v. Sullivan, 116 N.Y.S.2d 323, 326–27 (Sup. Ct. 1952), *modified on other grounds*, 118 N.Y.S.2d 479 (App. Div. 1953) (comparing credit unions and S&Ls).

49. *See* BARR ET AL., *supra* note 46, at 15, 175.

50. Kenneth J. Robinson, *Savings and Loan Crisis*, FED. RSRV. HIST. (Nov. 22, 2013), https://www.federalreservehistory.org/essays/savings_and_loan_crisis [https://perma.cc/U4N5-TVBB].

51. *See* Stevenson, *supra* note 46.

52. *See* BARR ET AL., *supra* note 46.

53. U.S. DEP'T OF THE TREASURY, CREDIT UNION MEMBER BUSINESS LENDING 11 (2001), https://www.treasury.gov/about/organizational-structure/offices/Documents/Jan2001CreditUnionReport.pdf [https://perma.cc/2DRH-XQBK].

54. The NCUSIF is administered by the NCUA and insures members' deposits in federally insured credit unions to protect individuals from loss. *See Share Insurance Fund Overview*, NAT'L CREDIT UNION ADMIN., https://www.ncua.gov/support-services/share-insurance-fund [https://perma.cc/8484-8266] (last visited Nov. 3, 2020).

to spend between twenty and thirty million dollars to bail these credit unions out.[55]

As a result, in 1987, for the first time, the NCUA promulgated regulations specifically targeted at MBLs.[56] These restrictions included a regulatory cap on the aggregate value of MBLs issued to an individual or group of individuals.[57]

MBLs were of particular concern because they have higher delinquency rates; they are riskier than consumer loans.[58] However, during the continuing years of rising interest rates, the 1987 rules proved inadequate.[59] MBLs continued to default and put stress on the credit unions that granted them. By the peak of the savings and loan crisis, from 1987 to 1991, business lending was a factor in sixteen of the thirty credit union failures that cost the NCUSIF approximately one hundred million dollars.[60] Data showed that the most unstable credit unions had a higher number of MBLs.[61] The NCUA determined that the 1987 rule was insufficient to prevent MBL losses, so in 1991, it promulgated more rules to restrict business lending.[62]

D. MBLs and the Federal Exemption That Almost Swallows the Rule

Against the backdrop of financial turmoil in the 1980s and 1990s,[63] Congress revisited credit union regulation with a particular focus on these problematic MBLs.

1. The Credit Union Membership Access Act

Eager to avoid another crisis in a different part of the market, Congress passed the Credit Union Membership Access Act[64] (CUMAA) in 1998. The CUMAA amended the FCUA to define an MBL as "any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial,

55. U.S. DEP'T OF THE TREASURY, *supra* note 53, at 11.

56. *Id.*

57. "Unless a greater amount is approved by the NCUA Board, the aggregate amount of outstanding member business loans to any one member or group of associated members shall not exceed 20% of the credit union's reserves." Organization and Operations of Federal Credit Unions; and Requirements for Insurance and Voluntary Termination of Insurance, 52 Fed. Reg. 12,363, 12,369 (Apr. 16, 1987) (to be codified at 12 C.F.R. pt. 701).

58. *See* Organization and Operation of Federal Credit Unions, 56 Fed. Reg. 48,415, 48,421 (Sept. 25, 1991) (to be codified at 12 C.F.R. pt. 701).

59. "The existing rule and increased examination and supervision efforts have not been sufficient to stem losses due to problems associated with member business loans." *Id.*

60. U.S. DEP'T OF THE TREASURY, *supra* note 53, at 11.

61. Organization and Operation of Federal Credit Unions, 56 Fed. Reg. at 48,421.

62. The 1991 rules were largely a tightening of MBL regulations that, among other items, required more diversified portfolios and established new collateral requirements. *See generally id.*

63. *See supra* note 46 and accompanying text.

64. Pub. L. No. 105-219, 112 Stat. 913 (1998) (codified as amended in scattered sections of 12 U.S.C.).

corporate or other business investment property or venture, or agricultural purpose."[65] It further stated that with regards to insured credit unions[66]:

> [N]o insured credit union may make any member business loan that would result in a total amount of such loans outstanding at that credit union at any one time equal to more than the lesser of—
>
> (1) 1.75 times the actual net worth of the credit union; or
>
> (2) 1.75 times the minimum net worth required under section 1790d(c)(1)(A) of this title for a credit union to be well capitalized.[67]

The Senate Committee on Banking, Housing, and Urban Affairs reported that the CUMAA amendments to the FCUA would significantly strengthen safeguards for credit unions to make the whole system safer, more stable, and more resilient.[68] The report stated that the MBL restrictions would help credit unions avoid carrying larger commercial loans that could potentially present a risk to the credit unions and the NCUSIF.[69]

Against these declarations, however, Congress granted a key exemption to "an insured credit union chartered for the purpose of making, or that has a history of primarily making, member business loans to its members, as determined by the Board."[70] Credit unions that primarily serve low-income members were also exempt from the above 1.75 regulatory limits.[71]

The report emphatically noted that the committee intended for this MBL exemption to be interpreted to keep credit accessible to finance worthy projects.[72] It stated that "[l]oans for such purposes as agriculture, self-employment, small business establishment . . . taxi cab medallions, tractor trailers, or church construction should not be unduly constricted."[73]

The exemption gave credit unions an easy path around the MBL limit. By being either a credit union chartered for MBLs or by primarily issuing MBLs, a credit union could grant these loans practically without limits. That would

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65. *Id.*; *see also* 12 U.S.C. § 1757a(c)(1)(A). The statute also lists various exemptions to the MBL definition that are beyond the scope of this Note. *Id.* § 1757a(c)(1)(B).

66. Insured credit unions are those in compliance with the criteria of §§ 1781–1790e of the FCUA, which includes maintaining reserves. *See id.* § 1752(7). Reserves are the percentage of a financial institution's liabilities that it must maintain to pay customers who wish to withdraw their funds. *See* BARR ET AL., *supra* note 46, at 15. This regulatory measure helps ensure the stability of financial institutions. *See id.*

67. 12 U.S.C. § 1757(a). The NCUA clarified in a rule that the restriction means that "[t]he aggregate limit on a credit union's net member business loan balances is the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets." 12 C.F.R. § 723.16(a) (2016).

68. S. REP. NO. 105-193, at 3 (1998).

69. *See id.* at 10.

70. 12 U.S.C. § 1757a(b)(1). The NCUA board defined "a history of primarily making member business loans" as when "either member business loans comprise at least 25% of the credit union's outstanding loans . . . or member business loans comprise the largest portion of the credit union's loan portfolio." Organization and Operation of Federal Credit Unions; Appraisals; Member Business Loans; and Requirements for Insurance, 64 Fed. Reg. 28,721, 28,732 (May 27, 1999) (to be codified at 12 C.F.R. pts. 701, 722, 723 & 741).

71. 12 U.S.C. § 1757a(b)(2)(A). "Low-income" is a defined term under *id.* § 4702(17).

72. S. REP. NO. 105-193, at 10.

73. *Id.*

be consistent with the intent of Congress not to "unduly constrict" MBLs and, given the higher risk and rates on business loans, would boost credit union profit.[74]

One of the supporters of the MBL exemption was the National Association of Federally-Insured Credit Unions (NAFCU).[75] The NAFCU referred to the MBL regulatory cap as "arbitrary," "outdated," and "unnecessary" and contended that the restrictions must be removed for credit unions to provide credit to small businesses and help stimulate the economy.[76]

However, not everyone shared the NAFCU's view, and the MBL exemption was controversial on both sides of the aisle. Senator Chuck Hagel (R-NE) voted against the amendment because he believed that

> [t]he legislation is risky for credit union members who rely on their credit union for small, consumer loans because it would allow credit unions to shift their focus from consumer service to large-scale commercial lending . . . . If a credit union were to reach this [1.75 times the minimum net worth] cap, it would represent more commercial lending than is generally done by the average community bank.[77]

Senator Jack Reed (D-RI) expressed similar concerns. Citing NCUA statistics, he noted that the delinquency rate on credit union business loans was more than three times the delinquency rate of credit unions' overall loan portfolios.[78] The senator also observed that by setting the commercial lending cap higher than existing commercial loan caps, Congress could encourage credit unions to issue more commercial loans.[79] Moreover, because credit unions largely deal in consumer loans, the senator believed they were unequipped to safely underwrite these riskier business loans.[80] Despite these concerns, CUMAA became law.

In 2001, the U.S. Department of the Treasury published a survey that found that 25 percent of MBLs were made to members with household incomes of less than $30,000, and 20 percent of MBLs were issued to households with incomes between $30,000 and $50,000.[81] Just as Congress and the NCUA

74. *See id.*; *see also* Organization and Operation of Federal Credit Unions, 56 Fed. Reg. 48,415, 48,421 (Apr. 16, 1987) (to be codified at 12 C.F.R. pt. 701).

75. *About Us*, NAT'L ASS'N FEDERALLY-INSURED CREDIT UNIONS, https://www.nafcu.org/about-us [https://perma.cc/UQS2-BR5B] (last visited Nov 3., 2020); *Member Business Lending*, NAT'L ASS'N FEDERALLY-INSURED CREDIT UNIONS, https://www.nafcu.org/mbl/position [https://perma.cc/QRQ9-76GL] (last visited Nov. 3, 2020).

76. NAT'L ASS'N OF FEDERALLY-INSURED CREDIT UNIONS, 2017 NAFCU REPORT ON CREDIT UNIONS 22 (2017), https://www.nafcu.org/sites/default/files/data-research/economic-credit-union-industry-trends/industry-trends/Annual%20Report%20on%20Credit%20Unions/NAFCU%20Report%20on%20Credit%20Unions%20-%202017.pdf [https://perma.cc/UXX7-M43P]; NAT'L ASS'N OF FEDERALLY-INSURED CREDIT UNIONS, 2016 NAFCU REPORT ON CREDIT UNIONS 20 (2016), https://www.nafcu.org/sites/default/files/uploads/Data%20%26%20Tools/Report%20on%20CUs/NAFCU%20Report%20on%20Credit%20Unions%20-%202016.pdf [https://perma.cc/3ACF-ASGT].

77. S. REP. NO. 105-193, at 24.

78. *Id.* at 29.

79. *See id.*

80. *Id.*

81. U.S. DEP'T OF THE TREASURY, *supra* note 53, at 6.

had intended, lower-income individuals were being granted credit through MBLs, despite potentially exposing credit unions to risk. In the struggle between credit union safety and the availability of credit to lower-income individuals, the latter was gaining the upper hand.

In 2003, the NCUA again loosened the regulatory cap on MBLs. Its intent was to "revise[] certain provisions that have created unnecessary regulatory burden."[82] The agency issued a rule that exempted commercial loans for nonmembers from the MBL cap calculation with a regulatory check to ensure that the credit unions did not trade loans to circumvent the aggregate limit.[83] Absent that, credit unions could issue business loans without running afoul of the regulation, as long as the borrowers were not members. Thus, the membership requirement element that had been the formative principle of credit unions was withdrawn.[84] The NCUA vice chairman remarked that under the regulation, credit unions would benefit from the diversification provided by nonmember business loans.[85] At the time, less than 5 percent of federally insured credit unions that provided business loans were near the regulatory cap.[86] The rule was unanimously approved by the NCUA board.[87]

In 2004, the NCUA began issuing waivers that exempted taxi medallion loans (categorized as MBLs) from certain regulations, including a 20 percent down payment requirement.[88] While the waivers permitted lenders to write more profitable loans, then chairman Dennis Dollar claimed that the agency was simply following the congressional intent of the MBL exemption.[89] He interpreted the exemption as a signal to grant more leeway for credit unions issuing MBLs, otherwise "the average cabdriver couldn't get a medallion loan."[90]

Congress again revisited the regulation of financial institutions after the 2008 financial crisis, returning to the issue of credit unions and their problematic MBLs. Testifying before the Senate in 2010 on the postcrisis soundness of credit unions, then NCUA chairman Deborah Matz acknowledged that MBLs were either a primary or secondary contributing factor to instability for credit unions engaged in those types of loans.[91]

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82. Prompt Corrective Action; Corporate Credit Unions; Credit Union Service Organizations; Member Business Loans; Regulatory Flexibility Program, 68 Fed. Reg. 56,537, 56,537 (Oct. 1, 2003) (to be codified at 12 C.F.R. pts. 702, 704, 712, 723 & 742).

83. *Id.* at 56,543–44, 56,552; *see also* 12 C.F.R. § 723.16(b) (2016). A nonmember thus receives a loan without meeting the credit union's membership requirements. *See supra* Part I.A.

84. *See supra* Part I.A.

85. Sarah Snell Cooke, *NCUA Approves MBL Rule, Expansive Community Charters*, CREDIT UNION TIMES (Sept. 30, 2003), https://www.cutimes.com/2003/09/30/ncua-approves-mbl-rule-expansive-community-charters [https://perma.cc/LYY6-VRN7].

86. *Id.*

87. *Id.*

88. Rosenthal, *supra* note 5.

89. *See id.*

90. *Id.*

91. *The State of the Credit Union Industry: Hearing Before the S. Comm. on Banking, Hous., and Urb. Affs.*, 111th Cong. 11 (2010) (statement of Deborah Matz, Chairman, National Credit Union Administration) [hereinafter *Credit Union Health Hearing*].

However, she said the number of credit unions adversely affected by MBLs was relatively small—approximately 270 of the 2200 credit unions that issued MBLs.[92] Matz took the position that the number of credit unions at risk because of MBLs was worth the important function they serve for credit accessibility.[93]

2. Opposition to Credit Union Deregulation

As the MBL debates continued, the banking industry was particularly vocal in its dissent. The banks have long had an antagonistic relationship with credit unions.[94] By virtue of their tax exempt and nonprofit business model, credit unions offer cheaper loans (with reduced rates) to their members, taking business away from the banks.[95] As credit union membership grew, the banks became more concerned about losing a large pool of potential customers.[96] Today, there are 5164 federally insured credit unions with combined total loans of over one trillion dollars.[97] The banks did not want to lose this market, so they fought credit unions on two fronts: challenging the definition of membership in order to restrict it[98] and opposing any advantages bestowed on credit unions.[99] The MBL carveout seemed to be one such advantage. The American Bankers Association testified before Congress, referring to government reports warning that credit unions were exposing themselves to more risks through business lending and that they

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92. *Id*. The 270 troubled credit unions were given CAMEL ratings of 3, 4, or 5. *Id.* at 22. A CAMEL rating is a uniform system that measures the health of financial institutions. *See* Jonathan R. Macey & Geoffrey P. Miller, *Bank Failures, Risk Monitoring, and the Market for Bank Control*, 88 COLUM. L. REV. 1153, 1167–68 (1988). Under the CAMEL rating guide published by the NCUA, credit unions given a rating of 3 "may be in significant noncompliance with laws and regulations." *Appendix A—NCUA's CAMEL Rating System (CAMEL)*, NAT'L CREDIT UNION ADMIN., https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/appendix-ncuas-camel-rating-system-camel [https://perma.cc/LPK3-NZJD] (last visited Nov. 3, 2020). CAMEL 4 credit unions are deemed a risk to the NCUSIF, with failure a distinct possibility. *See id.* Credit unions with a CAMEL 5 rating "exhibit a critically deficient performance . . . and are of the greatest supervisory concern." *Id.*

93. *See Credit Union Health Hearing*, *supra* note 91, at 8 (statement of Deborah Matz, Chairman, National Credit Union Administration).

94. *See* Adam J. Levitin, *The Politics of Financial Regulation and the Regulation of Financial Politics: A Review Essay*, 127 HARV. L. REV. 1991, 2061 (2014) (highlighting the deep rivalry between banks and credit unions).

95. Reed White, Note, *If It Quacks Like a Duck: In Light of Today's Financial Environment, Should Credit Unions Continue to Enjoy Tax Exemptions?*, 28 GA. ST. U. L. REV. 1367, 1379–80 (2012).

96. *See* Cassity, *supra* note 45, at 332–34 (describing how credit unions have dramatically expanded to compete with banks over the banking industry's dissent).

97. These statistics are current as of June 2020. NAT'L CREDIT UNION ADMIN., INDUSTRY AT A GLANCE (2020), https://www.ncua.gov/files/publications/analysis/industry-at-a-glance-june-2020.pdf [https://perma.cc/W4W9-UQR3].

98. Much of the discussion regarding credit unions is centered around defining the parameters of the common bond required for credit union membership. Lauzon, *supra* note 20.

99. *See* Cassity, *supra* note 45, at 332–34.

were exceeding the existing MBL cap.[100] In other words, aggressive pursuit of high interest, risky loans came at the expense of the lenders' safety and soundness.[101]

Within credit unions, too, there were objections to relaxing limits on MBLs and concerns for the impact of loosening standards on the safety of the industry. Dale Kerslake, president and CEO of Cascade Federal Credit Union, expressed those views:

> Doubling [member business lending (MBL)] limits for natural person credit unions is not something a majority of credit unions want or need. Yet, if a minority of powerful credit unions and industry trade associations get their way, which they usually do, MBL could easily become the next industry crisis . . . The proposed MBL limit increase . . . lacks safeguards for the thousands of credit unions that pay into NCUSIF and do not do business lending.[102]

In the battle between accessible credit and safe credit, accessible credit had won. The MBL exemption remained and credit unions made use of it.

II. The Taxi Medallion Crisis and Its Cast of Characters

This part describes the impact of the MBL exemption by examining the New York City taxi medallion loan crisis. By laying out the chain of causation that led to the crisis, this part demonstrates how the MBL exemption is at its core. Part II.A provides a brief history of the taxi medallion and its roots in New York City. Part II.B explains the factors behind the multifold rise of taxi medallion prices and introduces key players behind the price inflation. Part II.C identifies the credit unions' incentives to issue more MBLs and describes their poor lending practices in granting these loans. Part II.D discusses the regulatory agencies that saw the looming catastrophe and did little to prevent it. Part II.E depicts the crisis from the view of the borrowers and discusses the predatory lending terms of their loans. Finally, Part II.F ends the analysis of the medallion crisis by debunking the idea that ride-hailing apps such as Uber caused it.

A. What Is a Medallion?

A taxi medallion is a permit to operate a taxicab.[103] Taxi regulation in New York City was born out of necessity to manage the unbridled increase

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100. *See Credit Union Health Hearing*, *supra* note 91, at 62 (statement submitted by the American Bankers Association).

101. *See id.*

102. *Credit Unions: Member Business Lending: Hearing Before the S. Comm. on Banking, Hous., and Urb. Affs.*, 112th Cong. 91 (2011) (statement of Stephen P. Wilson, Chairman and Chief Executive Officer, LCNB National Bank) (alteration in original) (quoting Peter Westerman, *MBL Limits—Be Watchful of What Others Wish For*, CREDIT UNION TIMES (Feb. 9, 2010, 7:00 PM), https://www.cutimes.com/2010/02/09/mbl-limits-be-watchful-of-what-others-wish-for [https://perma.cc/D36Q-CYXL]).

103. The term "medallion" originates from the piece of metal typically affixed to the taxi's hood but really refers to the license to operate the taxi. Katrina Miriam Wyman, *Problematic Private Property: The Case of New York Taxicab Medallions*, 30 YALE J. ON REGUL. 125, 131

of taxicabs in the 1930s, which brought street congestion, pollution, and unsafe and uninsured cars to the city streets.[104] The medallion system began in 1937, when the city issued 12,000 of these permits at ten dollars apiece.[105]

As an income producing asset, a medallion can serve as collateral on various types of borrowing, including a mortgage or tuition.[106] Medallions had a long-standing reputation for being a dependable and safe investment.[107]

Taxi driving remained a quiet and steady occupation for many decades.[108] In 1979, New York City changed its rules to permit the leasing of cabs and turned drivers into independent contractors.[109] Under the new contractor designation, drivers did not receive Social Security, disability funding, and other benefits.[110] With this new policy, the demographics of the industry began to change and in the 1980s, more and more immigrants entered the taxi driving industry.[111] The independent nature of driving, which required little English proficiency or technical skills, appealed to them.[112] Word of the

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(2013). "The medallion is of no value as physical property; its great value is as evidence that the owner has a license to use the vehicle as a taxicab . . . ." Prop. Clerk of Police Dep't v. Rosea, 472 N.Y.S.2d 657, 658 (App. Div. 1984), *aff'd*, 473 N.E.2d 260 (N.Y. 1984); Rosenthal, *supra* note 3.

104. The sharp increase in taxis during that time was due to high numbers of unemployed individuals (after the Great Depression) entering the field because of its low barriers to entry. Arnold Gevero et al., *How Uber and Other Ride-Hailing Companies Are Roiling the Taxi Medallion Industry*, RMA J., Dec. 2015–Jan. 2016, at 36, 37.

105. Rosenthal, *supra* note 3.

106. *Frequently Asked Questions About Taxi Medallion Lending Supervisory Guidance*, NAT'L CREDIT UNION ADMIN. (July 8, 2020), https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/frequently-asked-questions-about-taxi-medallion-lending-supervisory-guidance [https://perma.cc/LD7G-Z4SG]; Rosenthal, *supra* note 5.

107. *See* Gevero et al., *supra* note 104, at 37–38 (discussing the medallion market's long-standing impression that the medallion was safe to finance and safe to own); *see also* Emily Badger, *Taxi Medallions Have Been the Best Investment in America for Years. Now Uber May Be Changing That*, WASH. POST (June 20, 2014), https://www.washingtonpost.com/news/wonk/wp/2014/06/20/taxi-medallions-have-been-the-best-investment-in-america-for-years-now-uber-may-be-changing-that [https://perma.cc/3DRK-GUKN]; Simon Van Zuylen-Wood, *The Struggles of New York City's Taxi King*, BLOOMBERG BUSINESSWEEK (Aug. 27, 2015), https://www.bloomberg.com/features/2015-taxi-medallion-king [https://perma.cc/4X7Z-QEQZ] (stating that for years medallion ownership was a good investment that often provided middle-class stability).

108. *See* Graham Hodges, Opinion, *How the Yellow Cab Went Belly Up: Uber Has Accelerated an Economic Crisis Decades in the Making*, N.Y. DAILY NEWS (Aug. 5, 2018), https://www.nydailynews.com/opinion/ny-oped-how-the-yellow-cab-went-belly-up-20180803-story.html [https://perma.cc/YL7E-NLYR].

109. *Id.*; *see also* Jeff Horwitz & Chris Cumming, *Taken for a Ride*, SLATE (June 6, 2012, 6:30 AM), https://slate.com/business/2012/06/taxi-medallions-how-new-yorks-terrible-taxi-system-makes-fares-higher-and-drivers-poorer.html [https://perma.cc/UVJ9-62H5].

110. Hodges, *supra* note 108.

111. *See* Pete Donahue, *The World Fare Cabbies 90% Foreign-Born as Immigrants Grab Wheel of Fortune*, N.Y. DAILY NEWS (July 7, 2004), https://www.nydailynews.com/archives/news/world-fare-cabbies-90-foreign-born-immigrants-grab-wheel-fortune-article-1.630371 [https://perma.cc/U7HV-TGWE] (stating that in 1980, 38 percent of taxi drivers were born outside of the United States).

112. *Id.*

job's dependability spread throughout immigrant communities until the industry was dominated by foreign-born drivers.[113]

If one truly wanted to make it in America, driving for a taxi fleet owner was not enough; one had to own a medallion. To purchase a medallion, immigrant drivers turned to credit unions to borrow the requisite funds.[114] There, the loans were issued according to established lending practices, chief among which is the relation of the value of the medallion to the borrower's ability to repay the sum.[115] Still, the demand for medallions was strong.[116] While the medallion loans were issued in compliance with conservative lending standards, the value of the medallion inched up.[117] Between 1985 and 1997, medallion prices slowly climbed from $100,000 to $200,000.[118]

B. Pedal to the Metal: Driving Medallion Prices Up

A key component of the crisis is the exponential growth of medallion prices and how various members of the industry worked to inflate them. There are 13,587 taxi medallions in New York City—the highest number of taxis in the country.[119] Some drivers own their individual medallions while others drive for a fleet owner who bears title to many medallions.[120] There is no reliable statistic on the number of taxi drivers in New York City, but as most taxis are used by two drivers, each driving a twelve-hour shift,[121] it stands to reason that the number is approximately 30,000.

New York City controls the supply of medallions, which it alone can issue.[122] The Taxi and Limousine Commission (TLC) is the city agency

113. *Id.* By 2005, only 9 percent of New York City taxi drivers were born in the United States. Rosenthal, *supra* note 3.

114. *See* Kevin Wack, *Taxi Loan Abuses Part of a Broader Pattern in New York*, AM. BANKER (May 24, 2019), https://www.americanbanker.com/opinion/taxi-loan-abuses-part-of-a-broader-pattern-in-new-york [https://perma.cc/4ENF-375T].

115. *Cf.* Rosenthal, *supra* note 3. *See generally Frequently Asked Questions About Taxi Medallion Lending Supervisory Guidance*, *supra* note 106.

116. *See* Rosenthal, *supra* note 3; *see also* Hodges, *supra* note 108.

117. Rosenthal, *supra* note 3. This typically included a larger down payment and repayment period of five to ten years. *Id.*

118. *Id.*

119. Winnie Hu, *Taxi Medallions, Once a Safe Investment, Now Drag Owners into Debt*, N.Y. TIMES (Sept. 10, 2017), https://www.nytimes.com/2017/09/10/nyregion/new-york-taxi-medallions-uber.html [https://perma.cc/EGB3-GNGK]; *Vehicles*, N.Y.C. TAXI & LIMOUSINE COMM'N, https://www1.nyc.gov/site/tlc/vehicles/get-a-vehicle-license.page [https://perma.cc/8LXN-YP22] (last visited Nov. 3, 2020).

120. Wyman, *supra* note 103, at 132–33; Rosenthal, *supra* note 3.

121. Michael M. Grynbaum, *Where Do All the Cabs Go in the Late Afternoon?*, N.Y. TIMES (Jan. 11, 2011), https://www.nytimes.com/2011/01/12/nyregion/12taxi.html [https://perma.cc/PJH7-L6P8] (describing taxi driver shift patterns).

122. "Because taxis are an important part of the public life of the City and have a City-granted monopoly on providing a crucial service, the taxi industry is pervasively regulated by the Commission." Statharos v. N.Y.C. Taxi & Limousine Comm'n, 198 F.3d 317, 324 (2d Cir. 1999); *see also About TLC*, N.Y.C. TAXI & LIMOUSINE COMM'N, https://www1.nyc.gov/site/tlc/about/about-tlc.page [https://perma.cc/DR6V-GWQP] (last visited Nov. 3, 2020).

tasked with regulating the medallions and has a history of corruption dating back five decades and through almost as many New York City mayors.[123]

During the 1990s and early 2000s, former mayors Rudy Giuliani and Michael Bloomberg stacked the commission with their political allies and instructed them to sell medallions to reduce the city's budget deficit.[124] The agency in charge of regulating medallions thus became responsible for delivering cash to the city. This practice continued under Mayor Bill de Blasio, who found allies and financial support in the taxi industry.[125]

Charged with generating money for the city, the TLC had to sell more medallions and at higher prices.[126] The commission determined that a series of blind auctions would generate the highest revenues.[127] To that end, it began heavily promoting the auctions in an advertising campaign that ran in a "myriad [of] languages."[128] In newspapers, on the radio, and through medallion sale seminars, the TLC and Mayor Bloomberg promoted buying a medallion as "a once-in-a-lifetime opportunity."[129]

The agency published a special medallion sale issue of the TLC newsletter with a front page that read: "Taxi medallions also provide both a reliable and consistent income and guaranteed employment. In addition, a medallion is collateral that can assist in home financing, college tuition, or even 'worry-free' retirement."[130] A column from then TLC commissioner Matthew W. Daus stated, "With the many financing options available today, almost anyone with the goal of medallion ownership can participate in the upcoming medallion sale process."[131] Under Mayors Bloomberg and de Blasio, the TLC provided the city more than $855 million in medallion sales and taxes.[132]

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123. *See* Wyman, *supra* note 103, at 173–776 (discussing corruption within the TLC during Ed Koch's tenure as New York City mayor in the 1980s); *see also* Rosenthal, *supra* note 5 (describing how the first chairman of the TLC was convicted of bribery).

124. Rosenthal, *supra* note 5.

125. *Id.* Mayor de Blasio received approximately $500,000 from the taxi industry. Yoav Gonen, *Taxi Industry Gave de Blasio Over $550,000 for Campaign*, N.Y. POST (May 17, 2014), https://nypost.com/2014/05/17/taxi-industry-gave-de-blasio-over-550000-for-campaign [https://perma.cc/4AY5-RDBY]; Van Zuylen-Wood, *supra* note 107.

126. Rosenthal, *supra* note 5.

127. *Id.* During the blind auctions, bidders submitted sealed bids above increasing minimums. *Id.*; *see also* Perez-Pena, *supra* note 1.

128. *The Medallion Sale—a New Milestone*, TLC TIMES, Winter 2004, at 1, 4, https://www.nyctaxinews.com/DRIVE_YOUR_FUTURE_TLC_2004.pdf [https://perma.cc/H7XK-S282].

129. Joey Fox, *City Officials Debate About What to Do About Taxi Medallion Debt Crisis*, GOTHAM GAZETTE (July 26, 2019), https://www.gothamgazette.com/city/8695-city-officials-debate-what-to-do-about-taxi-medallion-debt-crisis [https://perma.cc/H9QC-AYCF]; Rosenthal, *supra* note 5.

130. *TLC Medallion Auction Offers Unique Opportunity to* "Drive Your Future," TLC TIMES, Winter 2004, at 1, 1. The city later added disclaimers that stated past performance did not guarantee future results but continued to run the advertisements. Rosenthal, *supra* note 5.

131. *Commissioner's Corner*, TLC TIMES, Winter 2004, at 1, 1–2.

132. Rosenthal, *supra* note 5.

Some of the immediate beneficiaries of the TLC auctions were the fleet owners who already owned numerous medallions.[133] The blind auctions increased the value of existing medallions and with that, the value of their fleets.[134] These industry leaders, in turn, entered the auctions to further boost prices.[135] The owner of the largest fleet in the city, a "Taxi King" who owned around 900 medallions, consistently and purposely overbid in the auctions to establish a new high market price for the medallions, which increased the value of his fleet.[136] Seeing his success, other fleet owners followed suit.[137]

Medallion-focused credit unions, free from regulatory limits because of the MBL exemption, also added credit fuel to the vicious cycle. They allowed medallion purchasers to borrow increasingly large sums with disproportionately small down payments and longer repayment periods.[138] These lax borrowing terms made it easier to acquire loans and purchase medallions, and more immigrant borrowers did so.[139] The result was higher credit union profits, higher medallion prices, and more debt for the borrowers.[140]

Critically, the credit unions also violated industry best practices by basing their lending decisions on the inflated market value of the medallions, instead of a borrower's ability to repay.[141] This resulted in issuing larger loans as the inflated medallion rate soared.[142] The maximum income a medallion could generate under the best circumstances could support a $400,000 loan.[143] However, by 2013, the average medallion loan exceeded $600,000.[144] Between 2002 and 2014, the price of a medallion rose from $200,000 to over $1,000,000, with negligible change in driver income.[145] As medallion prices climbed, the credit unions changed their loan strategy.

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133. *See infra* notes 135, 137 and accompanying text.

134. In the first auctions in 2004, the bids were over $300,000, a 50 percent increase from 2002, when the price of the medallion was $200,000. *See* Azi Paybarah, *Taxi Industry Leaders Got Rich. Drivers Paid the Price.*, N.Y. TIMES (May 21, 2019), https://www.nytimes.com/2019/05/21/nyregion/newyorktoday/nyc-news-taxi-medallions.html [https://perma.cc/V7XW-VXGF]; Rosenthal, *supra* note 5.

135. Rosenthal, *supra* note 3 (discussing the Taxi King, among other industry players, who intentionally overpaid for medallions).

136. Brian M. Rosenthal, *The Epic Rise and Hard Fall of New York's Taxi King*, N.Y. TIMES (Dec. 5, 2019), https://www.nytimes.com/2019/12/05/nyregion/nyc-taxi-medallions-freidman.html?action=click&module=Top%20Stories&pgtype=Homepage [https://perma.cc/2Z9N-TKKF].

137. Evgeny Friedman, the Taxi King, at one point had over $525 million in asset worth and inspired other industry members to follow his practices. *See id.*

138. Rosenthal, *supra* note 3.

139. *See id.* (describing how, as the medallion prices rose and as some lenders claimed to have been pushed to write more loans, those borrowing were more frequently immigrants).

140. *See id.* (discussing how, as the loans being granted were increasingly risky for the borrowers, medallion prices and credit union profits soared).

141. *See* NCUA OFF. OF INSPECTOR GEN., *supra* note 10, at 2.

142. *See* Rosenthal, *supra* note 3.

143. Jantra Van Roy, *The Yellow Cab: A NYC Icon on the Skids*, FED. LAW., Aug. 2018, at 34, 37.

144. *Id.*

145. Rosenthal, *supra* note 3.

C. Credit Unions: Nonprofits Seeking Profits

Although credit unions themselves are nonprofit organizations, they are managed by executives whose overall compensation packages are linked to credit union revenue.[146] The higher that revenue, the higher the total compensation for the executives.[147] Like their for-profit counterparts, credit union executives thus have incentives to increase their loan portfolio values.[148]

The NAFCU's 2019 executive compensation and benefits survey listed factors used to determine the bonuses or compensation for credit union executives.[149] Loan growth, membership growth, net income growth, and asset growth were among the top five determinants.[150] CAMEL ratings, measures of a credit union's health that look at capital adequacy, asset quality, management, earnings, and liquidity,[151] ranked fourteenth on the list in order of importance.[152]

The performance-based compensation packages of credit union chief executives help explain their interest in deregulation. The MBL exemption meant a rise in the credit unions' assets and interest incomes and with that, the financial benefits their executives received. Credit unions used the MBL exception to carry a heavy concentration of risky high interest rate medallion loans to increase their assets and incomes.[153] To that end, they engaged in corner cutting: they did not adequately analyze the borrower's financial statements or monitor the loan performance after it was granted.[154]

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146. 12 C.F.R. § 701.21(c)(8)(i) (2020) states that "no official or employee of a Federal credit union . . . may receive, directly or indirectly, any commission, fee, or other compensation in connection with any loan made by the credit union" but specifically exempts "[p]ayment, by a Federal credit union, of an incentive or bonus to an employee based on the credit union's overall financial performance." *Id.* § 701.21(c)(8)(iii)(B)*; see also* Daniel Koslovsky, *Executive Compensation at Credit Unions*, DEVELOPING ECONOMIST, 2016, at 9–10 (finding that "the base compensation received by credit union CEOs is significantly determined by financial performance").

147. Koslovsky*, supra* note 146, at 20, 24. Statistics on credit union executive compensation are rare because credit unions are not required to publicly file the relevant disclosure forms. U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 45, at 6.

148. *See* Koslovsky, *supra* note 146, at 14–15.

149. NAT'L ASS'N OF FEDERALLY-INSURED CREDIT UNIONS, 2019 NAFCU-BFB GALLAGHER EXECUTIVE COMPENSATION AND BENEFITS SURVEY 17–18 (2019), https://www.nafcu.org/sites/default/files/2019%20BFB%20Gallagher%20Executive%20Compensation%20and%20Benefits%20SurveyREVISED.pdf [https://perma.cc/8V3U-XEN9].

150. *Id.* at 17.

151. *See supra* note 92.

152. NAT'L ASS'N OF FEDERALLY-INSURED CREDIT UNIONS, *supra* note 149, at 17.

153. *See* NCUA OFF. OF INSPECTOR GEN., *supra* note 10, at 1–2. Some of the failed credit unions held up to 97 percent taxi medallion loans. *Id.* at 11; Todd Harper, *NCUA a Day Late and a Dollar Short After Delaying Capital Rule*, AM. BANKER (Dec. 17, 2019, 9:00 AM), https://www.americanbanker.com/opinion/ncua-a-day-late-and-a-dollar-short-after-delaying-capital-rule [https://perma.cc/3CX8-LUVX]. Some institutions, such as Medallion Financial, specifically focused on issuing medallion loans. *See* Medallion Fin. Corp., Quarterly Report (Form 10-Q) (May 7, 2015).

154. NCUA OFF. OF INSPECTOR GEN., *supra* note 10, at 2 (describing how the credit unions failed to safely manage their medallion loans). In a 2014 NCUA supervisory letter issued to credit unions that discussed lending practices specific to taxi medallions, strong underwriting

As medallion prices kept rising, credit unions took a page from the practices of the mortgage industry before the 2008 crisis.[155] They extended the maturity of the loans,[156] accepted smaller down payments, and finally did away with the down payment requirement altogether—all of which helped in making loans to unqualified borrowers possible.[157] Some credit unions issued interest-only loans that could continue in perpetuity, while others lasted as long as fifty years.[158] Many included a "balloon clause" that automatically escalated the interest rate to as high as 24 percent if the loan was not repaid within three years.[159] Additional fees were also added to the medallion loans for paying too early or too late.[160] As the bubble neared its bursting point, many of these lenders quietly exited the medallion business or sold off the majority of medallion loans they had issued.[161]

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practices included documenting understanding of "[h]ow the borrower operates and generates revenue" and analyzing the financial capacity of the borrower and principal that, at the very least, includes an analysis of the borrower's tax return. NCUA OFF. OF EXAMINATION & INS., SUPERVISORY LETTER NO. 14-04, TAXI MEDALLION LENDING 9–10 (2014), https://www.ncua.gov/files/letters-credit-unions/SupervisoryLetter_TaxiMedallion.pdf [https://perma.cc/2MV2-D8BQ]. Some lender employees claimed they were pressured by management to issue more and more medallion loans, which likely contributed to the poor lending practices used. Rosenthal, *supra* note 3.

155. *See* Adam J. Levitin, *Safe Banking: Finance and Democracy*, 83 U. CHI. L. REV. 357, 429 (2016) (referring to the mismatch between a bank's longer loan maturity dates and their assets during the 2008 financial crisis).

156. Extending the maturity of a loan reduces the regular payment the borrower must make and therefore makes it seem more affordable in the short term. Meanwhile, the amount of interest that must be paid throughout the life of the loan increases so that overall, the borrower must pay more. *See Amortization Schedule Calculator*, BANKRATE, https://www.bankrate.com/calculators/mortgages/amortization-calculator.aspx [https://perma.cc/6DA6-XMNV] (last visited Nov. 3, 2020). In the calculator, enter $100,000 under "Mortgage amount" and 10 under "Mortgage term in years" and then hit calculate. Then enter $100,000 under "Mortgage amount" again and 30 under "Mortgage term in years" and hit calculate. The difference in the amount in monthly payments and total interest paid between the two calculations demonstrates the impact of extending the maturity of a loan.

157. *See* Rosenthal, *supra* note 3 (discussing how lenders encouraged more and more borrowing as loan safety standards slackened).

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

D. Regulatory Failure

The New York State Department of Financial Services (DFS) and the NCUA were responsible for regulating the different players in this crisis.[162] Both were aware of the looming crisis but took little action.[163]

The DFS observed interest-only loans and other risky practices and began writing warnings in 2010.[164] Concerned examiners gave a presentation in 2014 to the agency's top officials and suggested revoking charters from some lenders, but the agency decided only to issue warnings.[165] This nonaction from the state authority was in contrast to its recent aggressive enforcement measures against a large international bank.[166]

At the federal level, in addition to waiving regulations, as previously discussed,[167] NCUA examiners discovered that a number of credit unions were violating lending rules.[168] Between 2012 and 2017, examiners issued informal enforcement actions against credit unions for failing to both assess the borrower's ability to repay the loan and monitor the loan itself.[169] Moreover, the examiners noted that credit memoranda did not contain sufficient information for loan officers to make fully informed lending decisions.[170] After repeatedly warning the credit unions to comply,[171] the agency issued an industry-wide supervisory letter in 2014[172] but failed to take serious enforcement action.[173] The NCUA seemed to take the position that credit unions were simply meeting the needs of the borrowers or that the

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162. The DFS is responsible for supervising financial institutions chartered in the state. *Who We Supervise*, N.Y. STATE DEP'T OF FIN. SERVS., https://www.dfs.ny.gov/who_we_supervise [https://perma.cc/DG69-MS6H] (last visited Nov. 3, 2020). This includes some medallion credit unions, such as Melrose Credit Union and Montauk Credit Union, both of which the NCUA took possession of due to their unsafe lending practices. NCUA OFF. OF INSPECTOR GEN., *supra* note 10, at 6; Press Release, N.Y. State Dep't of Fin. Servs., NYDFS Takes Possession of Montauk Credit Union, Appoints NCUA as Conservator (Sept. 18, 2015), https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1509181 [https://perma.cc/5G8P-DPCB].

163. Rosenthal, *supra* note 5 (discussing how the agencies ignored warnings of the looming crisis).

164. *Id.* The state regulatory authority issuing the warnings in 2010 was the New York State Banking Department. In 2011, it merged with the New York State Insurance Department to become the DFS. *Our History*, N.Y. STATE DEP'T OF FIN. SERVS., https://www.dfs.ny.gov/our_history [https://perma.cc/62VF-Q58L] (last visited Nov. 3, 2020).

165. Rosenthal, *supra* note 5.

166. *See* Jonathan Stempel & Carrick Mollenkamp, *Standard Chartered May Lose NY License Over Iran Ties*, REUTERS (Aug. 6, 2012, 12:13 PM), https://www.reuters.com/article/us-standardchartered-iran/standard-chartered-may-lose-ny-license-over-iran-ties-idUSBRE8750VM20120806? [https://perma.cc/3FFE-B6PB].

167. *See supra* Part I.D.1.

168. NCUA OFF. OF INSPECTOR GEN., *supra* note 10, at 2; Rosenthal, *supra* note 5.

169. *See* NCUA OFF. OF INSPECTOR GEN., *supra* note 10, at 3, 7–8.

170. In at least two credit unions under the NCUA's jurisdiction, examiners discovered vague credit memoranda that would not allow loan officers to make informed lending decisions. *See id.* at 1–2, 13–14.

171. *Id.* at 13–14.

172. NCUA OFF. OF EXAMINATION & INS., *supra* note 154.

173. NCUA OFF. OF INSPECTOR GEN., *supra* note 10, at 12–13, 19.

industry would be fine due to its history of stability.[174] The NCUA inspector general's report later determined that loss could have been avoided if the NCUA had been more timely and aggressive in its supervision.[175] Despite warnings issued by both agencies, medallion owners signed at least 10,000 loans between 2010 and 2014.[176]

The TLC has no regulatory authority over lending practices.[177] But it, too, received warnings about unsustainable medallion prices, both from its own employees and from an internal report stating that the unstable loans would cause the market to collapse.[178] Still, the TLC held sixteen medallion auctions between 2004 and 2014.[179] It also eliminated the annual disclosure requirement for medallion owners to describe the source of their funds.[180] One medallion lender remarked that the city acted more as a partner for the credit unions in wanting to maximize medallion prices.[181]

E. The Borrowers: An American Dream Deferred

Immigrant borrowers were eager to own medallions that the city marketed as "better than the stock market."[182] They signed loan agreements at inflated interest rates with predatory terms.[183] Several lacked the English proficiency necessary to understand the terms of their loans.[184] Some had unknowingly agreed to severely harsh confessions of judgment that have been banned in consumer lending[185] but, because medallion loans are business loans, such protections did not apply.[186]

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174. *See* Rosenthal, *supra* note 5.

175. NCUA OFF. OF INSPECTOR GEN., *supra* note 10, at 11 ("The loss to the Share Insurance Fund may also have been mitigated through a more aggressive supervisory approach regarding unsafe and unsound lending practices, ineffective risk management, and repeat violations of certain NCUA member business lending regulations.").

176. *See* Rosenthal, *supra* note 5.

177. *Id.*; *see About TLC*, *supra* note 122.

178. Rosenthal, *supra* note 5.

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.* (referring to a taxi medallion advertisement issued by New York City).

183. Rosenthal, *supra* note 3; *see also infra* note 185.

184. *See* Rosenthal, *supra* note 3.

185. Many of the medallion loans included the use of confessions of judgment. *Id.* These documents allow for a predatory practice from English common law in which the bank is authorized to collect the borrower's outstanding debt by any means necessary. Zachary R. Mider & Zeke Faux, *Sign Here to Lose Everything Part 1: "I Hereby Confess Judgment,"* BLOOMBERG BUSINESSWEEK (Nov. 20, 2018), https://www.bloomberg.com/graphics/2018-confessions-of-judgment [https://perma.cc/VZR9-EMZF]. Before even taking out the loan, the borrower signs a statement waiving the right to defend against any legal action brought by the lender. *Id.* The lender can then use this confession to accuse borrowers of defaulting without any proof and can legally seize the borrower's assets. *Id.* In 1985, the Federal Trade Commission banned the use of confessions of judgment in consumer lending practices but not in business loans. *See Complying with the Credit Practices Rule*, FED. TRADE COMM'N, https://www.ftc.gov/tips-advice/business-center/guidance/complying-credit-practices-rule [https://perma.cc/W6NA-3DEB] (last visited Nov. 3, 2020).

186. Rosenthal, *supra* note 3.

Many drivers ended up having to spend nearly all of their incomes on medallion loan payments.[187] Shortly before the bubble burst, medallion buyers who typically earned $5000 per month were paying $4500 towards their loans.[188] A few discovered that they had only been paying interest.[189] When the bubble burst in 2014 and medallion values plummeted,[190] some lenders decided to leave the business and called in their loans.[191] Using the confessions of judgment, the lenders seized whatever assets they could, including the medallion and any cash in the borrower's account.[192] Borrowers were left with highly unfavorable loan rates on an asset suddenly worth a fraction of what it had been a year prior.[193] Seeing no way out, over 950 owners filed for bankruptcy and most of them lost their medallions.[194] At least eight chose suicide.[195] The COVID-19 pandemic further decimated the industry, as taxi drivers are reliant on fares from office workers and rides to and from airports for income.[196] Taxi ridership was down by over 80 percent during the pandemic's initial peak.[197] Nearly 75 percent of taxicabs were off the city streets by April 2020, and by June, the number of drivers collecting passengers was 26 percent of what it had been that January.[198] Efforts to help drivers have been few and insufficient. For its part, New York City created the GetFoodNYC program to employ drivers to deliver food to people in need.[199] The largest holder of New York City taxi medallion loans, Marblegate Asset Management, forgave seventy million dollars of debt and restructured loans to assist drivers in the wake of the pandemic.[200] However,

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187. *Id.*

188. *Id.*

189. *Id.*

190. The initial dip was an approximately 20 percent drop before the medallion prices plummeted by 90 percent. Josh Barro, *New York Taxi Medallion Prices Fall Again*, N.Y. TIMES (Dec. 2, 2014), https://www.nytimes.com/2014/12/03/upshot/new-york-taxi-medallion-prices-fall-again.html [https://perma.cc/Y879-F77K]; Rosenthal, *supra* note 3.

191. Rosenthal, *supra* note 3.

192. *Id.*

193. *Id.* A few lenders permitted borrowers to modify their loans or offered ways to release them from the debt. *See id.*

194. *Id.*

195. *Id.*

196. Paul Berger, *Investment Firm Forgives $70 Million in New York City Taxi-Cab Debt*, WALL ST. J. (Sept. 13, 2020, 12:00 PM), https://www.wsj.com/articles/investment-firm-forgives-70-million-in-new-york-city-taxi-cab-debt-11600012810 [https://perma.cc/S4H4-9SB2]. Apart from the economic impact of the pandemic, drivers were also concerned about potentially contracting the virus from a passenger. *See* Luz Lazo, *Another Casualty of the Coronavirus Pandemic: The Taxi Industry*, WASH. POST (Apr. 25, 2020, 12:35 PM), https://www.washingtonpost.com/local/trafficandcommuting/another-casualty-of-the-coronavirus-pandemic-the-taxi-industry/2020/04/25/f96a085a-8009-11ea-8013-1b6da0e4a2b7_story.html [https://perma.cc/U53L-3ZGY].

197. Offenhartz, *supra* note 13.

198. NYC TAXI & LIMOUSINE COMM'N, COVID-19 IMPACT ON THE NYC FOR-HIRE INDUSTRY 1, 5 (2020), https://www1.nyc.gov/assets/tlc/downloads/pdf/covid-impact-report.pdf [https://perma.cc/RNJ4-QGUH].

199. *Id.* at 9.

200. Berger, *supra* note 196. Somewhat controversially, the NCUA sold the majority of its medallion loan portfolio to Marblegate before the COVID-19 pandemic, citing the private entity's flexibility to work with borrowers. Paul Berger & Miriam Gottfried, *Investment Firm*

not all drivers can afford to restructure their loans, and for some, even the restructured loans are more than they can afford to repay.[201] Though laudable, these measures are insufficient to satisfactorily address the scope of the borrowers' ruin. Early talks of an extensive bailout ultimately failed, leaving borrowers chained to their debts.[202]

F. Uber: A Plausible but Innocent Scapegoat

Contrary to popular belief, ride-hailing apps such as Uber and Lyft are, at most, an ancillary part of this story. Blaming the apps for the medallion crisis was easy and initially seemed plausible, as they had disrupted the market.[203] The ride-hailing business model, particularly with respect to Uber, was singled out as the source of direct competition to the taxicab business and therefore the cause of the crisis.[204]

But a closer look at the dramatic surge in medallion prices demonstrates that the crisis had other causes. Uber did not enter the market until 2011, when the price of the medallion was already approximately $800,000.[205] If the ride-hailing app was a threat to the taxi medallions, its entry into the market would have pushed the medallion prices down. However, medallion prices increased even after Uber's launch, shooting up to over one million dollars just a few years later.[206] Drivers' lost income due to Uber and other apps may have hastened the crisis, but the statutory MBL exemption ultimately caused the dramatic rise and plunge of medallion prices that trapped borrowers in debt.[207]

Buys Taxi-Medallion Loan Portfolio, WALL ST. J. (Feb. 19, 2020), https://www.wsj.com/articles/investment-firm-nears-deal-to-buy-around-4-500-taxi-medallion-loans-11582151526 [https://perma.cc/R4RA-F79N].

201. Berger, *supra* note 196.

202. *See supra* note 13 and accompanying text.

203. Doree Leewak, *Ride-Hailing Apps Are Driving NYC Cabbies into Financial Ruin*, N.Y. POST (Mar. 24, 2018), https://nypost.com/2018/03/24/ride-sharing-apps-are-driving-nyc-cabbies-into-financial-ruin/ [https://perma.cc/9AY8-M78S].

204. *See, e.g.*, Emma G. Fitzsimmons, *A Taxi Driver Took His Own Life. His Family Blames Uber's Influence.*, N.Y. TIMES (May 1, 2018), https://www.nytimes.com/2018/05/01/nyregion/a-taxi-driver-took-his-own-life-his-family-blames-ubers-influence.html?rref=collection%2Fsectioncollection%2Fnyregion&module=inline [https://perma.cc/SH8Z-FEUL]; Hu, *supra* note 119; Cecilia Saixue Watt, *'There's No Future for Taxis': New York Yellow Cab Drivers Are Drowning in Debt*, GUARDIAN (Oct. 20, 2017, 5:00 PM), https://www.theguardian.com/us-news/2017/oct/20/new-york-yellow-cab-taxi-medallion-value-cost [https://perma.cc/8BUB-FEZ4]. While popular convention blames ride-hailing apps generally for the crisis, this Note focuses on Uber, as it launched in New York City ahead of its competitors. Mike Isaac, *Lyft Expands Its Car Hailing Service to New York*, N.Y. TIMES (July 8, 2014, 3:00 PM), https://bits.blogs.nytimes.com/2014/07/08/lyft-expands-its-car-hailing-service-to-new-york-city/ [https://perma.cc/W4RQ-85AV].

205. Rosenthal, *supra* note 3; *see also* Rosenthal, *supra* note 5.

206. Brian M. Rosenthal, *A $1.7 Million Loan, $30,000 in Income. Prosecutors Are Now Investigating*, N.Y. TIMES (Sept. 10, 2019), https://www.nytimes.com/2019/09/10/nyregion/nyc-taxi-medallion-investigation.html [https://perma.cc/AS9F-QA6D] (stating that the price of a medallion was over one million dollars in 2014).

207. Mathematics further rules out ride-hailing companies as the cause of the crash. The average income of a New York City taxi driver is approximately $42,000 a year. *Occupational Employment and Wages, May 2019: 53-3058 Passenger Vehicle Drivers, Except Bus Drivers,*

III. THOSE WHO DO NOT LEARN FROM REGULATORY HISTORY ARE DOOMED TO REPEAT IT

This part draws on information offered in Parts I and II to recommend statutory loan caps and penalties to prevent this crisis from recurring. Part III.A explains why simply removing the problematic MBL loophole is not a satisfactory solution. Part III.B explains the necessity of protecting unsophisticated players when deregulation exposes them to the free market. Finally, Part III.C recommends statutory loan rates linked to and capped at borrower income, with severe penalties for noncompliant credit unions operating under the MBL exemption. This solution allows credit unions to continue issuing MBLs but with additional safeguards to protect both the lender and the borrower.

A. A Difficult Loophole

Another exception of the FCUA demonstrates why simply removing the MBL exemption would not solve the problem. With legislative intent on their side, credit unions could argue that the medallion borrowers fall under the low-income exception of the FCUA, which is also exempted from the 1.75 MBL cap.[208] "Low-income" is statutorily defined, with respect to metropolitan areas, as "having an income . . . of not more than . . . 80 percent of the area median income."[209] As the average annual income for a New York City taxi driver is $42,000,[210] against the 2020 area median income of $102,400,[211] the credit unions' argument would be valid. Moreover, as indicated by the Department of Treasury report, MBLs are necessary.[212] To remove the entire exemption could deny people credit, when the focus must be on keeping that credit safe while limiting borrower opportunities as little as possible.

Transit and Intercity, U.S. BUREAU OF LAB. STATS., https://www.bls.gov/oes/current/oes533058.htm#st [https://perma.cc/BQ9W-R5SW] (last visited Nov. 3, 2020). The exact amount of taxi revenue loss due to Uber is disputed. *Compare* Rosenthal, *supra* note 3 (stating that taxicab revenues have decreased 10 percent since Uber entered the market in 2011), *with* Gersh Kuntzman, *Komanoff: Times Exposé Understated the Damage to Yellow Cab Industry by Uber and Lyft*, STREETSBLOG NYC (May 30, 2019), https://nyc.streetsblog.org/2019/05/30/komanoff-times-expose-understated-the-damage-to-yellow-cab-industry-by-uber-and-lyft [https://perma.cc/TJR9-3LW7] (describing a letter written by economist Charles Komanoff, where he claims that taxicab revenue loss due to Uber is 36 percent). Taking the higher percentage, assuming Uber is responsible for an annual $15,120 loss since its arrival in 2011, by 2020, each medallion owner would have lost at most approximately $136,080 due to the app. However, average borrowers owe about $500,000 on their medallions. Brian M. Rosenthal, *A Bailout for Taxi Drivers?: The Mayor Says No, but Others Keep Pushing*, N.Y. TIMES (July 8, 2019), https://www.nytimes.com/2019/07/08/nyregion/nyc-taxi-medallion-bailout.html [https://perma.cc/Y2LE-C9T5].

208. *See* 12 U.S.C. § 1757a(b)(2)(A); *see supra* note 71 and accompanying text.

209. 12 U.S.C. § 4702(17).

210. *See supra* note 207.

211. *Area Median Income*, N.Y.C. HOUS. PRES. & DEV., https://www1.nyc.gov/site/hpd/services-and-information/area-median-income.page [https://perma.cc/54DN-L5NH] (last visited Nov. 3, 2020).

212. *See supra* text accompanying note 81.

B. Leveling the Playing Field for Borrowers

The taxi medallion crisis is a story of deregulation. Deregulation is the government withdrawing from private business relations and letting the parties fend for themselves in the free market.[213] But the players in the market are not equal. An individual borrower is not equal to a credit union in terms of information, financial strength, and ease of access to the law. In a dispute between the two, the credit union has a natural advantage over the borrower by virtue of these inequalities. Markets, in short, naturally lend themselves to manipulation, further stacking the odds against the unsophisticated borrower.[214] Deregulation thus forces parties into a marketplace of unequals and under these conditions, the weak parties inherently often suffer.

The medallion loan crisis exemplifies this. Congressional intent was clear: deregulating MBLs was designed to afford individuals more opportunity.[215] Low-income immigrants were thrust into a market that was tilted against them and in favor of the self-serving entities that exploited them.[216] The MBL exemption and legislative intent to keep credit flowing to MBLs was the deregulatory clearance needed for credit unions to loosen their standards and for agencies to relax enforcement and waive regulations.[217]

The message that emerges from the medallion crisis analysis is that when average individuals are pushed into the market by the legislature, they need more protection than opportunity because they are ill-equipped to fend for themselves. Absent such defenses, sophisticated players in the market will take advantage of them.

C. A Sound Proposal for the Safety and Soundness of Lenders

Strong defenses are required to protect unsophisticated parties and defend them against manipulation. In the realm of lending and borrowing, the most important protection for a borrower is ensuring one's ability to repay the loan. There are well-established standards that determine the maximum loan amount a borrower with a certain income can afford.[218] Where MBL-exempted credit unions are concerned, federally mandated protections should be enacted to link and cap loan principal, interest, and maturity rates to

213. More formally, the goal of deregulation is "to promote economic productivity, diversity, and flexibility, while recognizing the need, on both economic and noneconomic grounds, for substantial national intervention into private markets. By relaxing national controls, these strategies would also promote self-determination at the local level." Cass R. Sunstein, *Constitutionalism After the New Deal*, 101 HARV. L. REV. 421, 508 (1987).

214. *See supra* Part II.B.2.

215. *See supra* Part I.D.1.

216. As previously discussed, New York City wanted to sell more medallions at higher prices to remedy the budget deficit, the credit union executives wanted to issue risky MBLs, as their compensation would benefit from the increased income, and the taxi fleet owners wanted to artificially inflate prices to raise the value of their fleets. All of these actions had a profound impact on borrower downfall. *See supra* Parts II.B–C.

217. *See supra* Parts II.C–D (analyzing the impact the MBL exemption had on credit union and regulatory agency behavior).

218. *See* NCUA OFF. OF INSPECTOR GEN., *supra* note 10, at 2.

borrower income. This would ensure that under no circumstances could borrowers take out loans wildly disproportionate to their salaries and that credit unions could not finagle longer maturity rates or smaller down payments. In other words, it would never be possible for individuals to be trapped in loans they could not afford to repay. Moreover, if these restrictions existed at the federal statutory level, agencies like the NCUA could not simply waive them.[219]

Though it may seem that such a proposal would prevent low-income borrowers from purchasing medallions, the opposite is true. As the market for taxi medallions is comprised of lower-income borrowers,[220] the price of the medallion will drop if they cannot afford to purchase medallions on their salaries. With a lower price, borrowers could then purchase medallions via stable and secure means.

As a second line of defense, there must be harsher penalties against institutions that do not comply. Credit unions that do not abide by such protections should have their licenses revoked and be ordered to cease operations. As these credit unions would likely be unstable, CAMEL ratings would be used to help determine noncompliance. This is what the CAMEL rating is for: to separate the healthy lenders from the unhealthy and prevent the unhealthy institutions from operating.[221] Moreover, the insurance certificates of noncompliant credit unions would be revoked, removing their NCUSIF protection.[222] While perhaps less harsh than revoking a credit union's charter, this step will have the same practical effect, as few customers would dare deposit their funds in an uninsured institution.

These penalties may seem severe but, given credit union incentives to issue risky loans that borrowers cannot afford to repay, they are necessary. Credit unions are highly sophisticated entities and this crisis demonstrates that when their limits are relaxed, they will circumvent rules for their own benefits. The solution thus must be severe to remove such an incentive; warnings and supervisory letters are demonstrably insufficient to correct the actions of repeat offenders who have an incentive to offend.[223] Further, it is precisely the severity of these proposals that would make them effective, as the mere threat of charter or NCUSIF revocation will force compliance. Credit unions will not want to trigger either, so any fear of credit unions having their charters revoked and closing—to the detriment of other borrowers—is unfounded.

219. *See* U.S. DEP'T OF THE TREASURY, *supra* note 53, at 13, 16–17 (discussing how the NCUA issued waivers to the aggregate MBL limit, even if the credit unions applying for them were not in compliance with other regulations).

220. *See supra* Part II.A.

221. *See supra* note 92.

222. *See supra* note 54.

223. *See supra* Part II.D.

CONCLUSION

Caught in the tension between trying to grant credit and keeping that credit safe, Congress created MBL regulatory caps and simultaneously issued the MBL exemption. The ensuing lack of regulation exposed borrowers to self-interested actors who exploited their lack of knowledge and saddled them with ruinous debt. Without federally imposed loan restrictions and severe penalties for recalcitrant institutions, this crisis will not be a onetime event.

Though the iconic yellow taxicab may suggest that this problem is specific to New York City, articles following the initial investigation determined that these practices have spread to other parts of the United States.[224] To date, the improper methods used to devastate New York City cab drivers have spread to ruin taxi drivers in Chicago, Boston, Philadelphia, Miami, and San Francisco.[225] These practices turned what began as an asset into a devastating liability. Unless statutory protections and penalties are enacted at the federal level to protect these borrowers, sophisticated actors will continue to prey on some of the most vulnerable of the population—whether the cab is silver, white, or yellow.

224. Brian M. Rosenthal, *'We Were Wiped Out': New Yorkers Preyed on Chicago Cabbies*, N.Y. TIMES (Oct. 4, 2019), https://www.nytimes.com/2019/10/04/nyregion/taxi-medallions-chicago.html [https://perma.cc/A2NZ-LXW3].

225. By 2010, almost every Chicago medallion purchase was financed by a New York lending institution. *Id.*