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THE ILLUSORY PROMISE OF FREE ENTERPRISE: A PRIMER TO PROMOTING RACIALLY DIVERSE ENTREPRENEURSHIP

ABSTRACT

The U.S. Census reports that Minority business ownership exceeds the corresponding racial makeup of U.S. demographics. Based on these figures, the principle of free enterprise seems to be acting on equal grounds. Could entrepreneurship be the social panacea for abolishing racial biases and the inequality gap?

This Essay argues that this parity of Minority entrepreneurship is misleading. The Kauffman Foundation and Small Business Administration most recently reported that Black-owned firms represent only 7% of all U.S. businesses, Asian-owned firms represent only 4.3%, and Hispanic-owned firms represent only 10.6%. These businesses typically do not grow or expand, leaving the number of people employed by them relatively constant. Overall, minority-owned firms experience more business failure, turnover, and job loss than traditional businesses. This disparity in American free enterprise is, in and of itself, a source of systemic racism and social injustice.

Seemingly, American Minority entrepreneurs are given a false hope of economic independence. In fact, this Essay illustrates that current legal programs destine many of them for insolvency, bad credit, debt accumulation, or, at best, being rendered small and meaningless in the marketplace without the proper tools and opportunities to increase equity and wealth.

The Essay concludes by proposing new legal methods to increase dedicated access to capital, networking, guidance, and education for racially diverse entrepreneurs. Specifically, it proposes relaxing bureaucracy, fixing biases in lending, forming racially inclusive networks, and cultivating the role of lawyers as social agents who can inform Minorities about impediments and opportunities to accumulate wealth and economic growth.

***1579 INTRODUCTION**

> Job applicants with identical resumés, qualifications, and interview styles still experience different receptions, depending on their race. White and African American consumers still encounter different deals. People of color looking for housing still face discriminatory treatment by landlords, real estate agents, and mortgage lenders. Minority entrepreneurs sometimes fail to gain contracts though they are the low bidders, and they are sometimes refused work even after winning contracts. Bias, both conscious and unconscious, reflecting traditional and unexamined habits of thought, keeps up barriers that must come down if equal opportunity and nondiscrimination are ever genuinely to become this country's law and practice.

--Ruth Bader Ginsburg [1]

The Minority Business Development Agency of the U.S. Department of Commerce paints a rosy picture of minority entrepreneurship--an astonishing 11 million minority-owned businesses in America employ over 6.3 million people and generate $1.8 trillion in revenue. [2] While minorities make up 23.7% of the U.S. population, the U.S. Census reports that minority-owned business enterprises account for almost 42% of all firms. [3] The picture depicted from all accounts is quite rosy. Based on these data, free enterprise appears to be advancing minorities in a manner that is in accord with, or even exceeds, their racial distribution in society. Is entrepreneurship the remedy to the racial wealth disparity and inequity gap?

A closer look at this statistical depiction reveals that, despite gains by minority groups in entrepreneurship, white males remain the disproportionately dominant entrepreneurial group by a wide margin. [4] The Kauffman Foundation and Small Business Administration ("SBA") reported that Black-owned firms represent only 7% of all U.S. businesses, Asian-owned firms represent only 4.3%, and Hispanic-owned firms represent only 10.6%. [5] The discrepancy ***1580** between these different reports lies within their definition of Minority. [6] Nonetheless, because these businesses typically do not grow, the number of people employed by them remains constant, and they experience frequent failures, turnover, and job loss. [7] What contributes to differences between nonwhite and white-owned business entrepreneurship?

Researchers from the Kauffman Foundation examined the connections between race, wealth disparity, and entrepreneurship rates. [8] They concluded that entrepreneurs tend to be "white, male, and come from higher-income families." [9] Family wealth was found to contribute the most to an individual's likelihood of becoming an entrepreneur; [10] data from the Global Entrepreneurship Monitor show that more than 80% of funding for new businesses comes from personal savings and friends and family. [11] In 2013, the median white household held $141,900 in net worth, a figure approximately 13 times the median wealth of African American households ($11,000) and about 10 times that of Latino households ($13,700). [12] Similarly, a Brandeis University study confirmed that factors such as attending college, raising children in a two-parent household, working full time, and spending less are likely *not* sufficient to reduce the racial wealth gap. [13] The key factor that explains the wealth gap, the study noted, is that Whites are five times as likely as Blacks to receive substantial gifts and inheritances. [14] This "white[] wealth advantage" and racial economic gap has ***1581** been passed down for generations and is difficult to close. [15] As Professor Dorothy Brown put it, "[a]s in so many parts of American life, being black is more likely to hurt and being white is more likely to help." [16]

In a recent survey on disparities in wealth, the Board of Governors of the Federal Reserve System confirmed that Black and Hispanic families have considerably less wealth than white families, with Black families' median and mean wealth comprising less than 15% of white families' wealth. [17] Asian, American Indian, Alaska Native, Native Hawaiian, Pacific Islander, and other racial group families have less wealth than white families but more wealth than Black and Hispanic families. [18] Even among college-educated individuals, the racial disparities in wealth are drastic; college-educated Black people hold about 13% of the wealth that their white counterparts hold. [19] Additionally, more white taxpayers than black of latino taxpayers invest in the stock market. [20] What is the nature of entrepreneurship that is exercised within this context of highly charged racial disparity with regard to wealth?

Racial and ethnic minority firms (hereinafter "Minority Firms" or "Minority-Owned Businesses" [21]) promote moral and social goals that benefit disadvantaged populations whose main path to a livelihood and financial autonomy is business ownership. [22] However, a troubling observation is that Minority-Owned Businesses are mostly one-man or one-woman businesses-- ***1582** solo operations that lack real opportunities for growth. [23] Entrepreneurship became a popular alternative means of offsetting workforce discrimination. [24] Starting a micro-business and becoming self-employed evolved into the default mechanism for racial and ethnic minorities (hereinafter "Minority" or "Minorities" [25]) to gain experience, training, and economic independence, and today, it is the principal avenue for Minorities to advance from unemployment, under-employment, or welfare-based income to valid work and productivity. Indeed, the Annual Survey of Entrepreneurs, published by the U.S. Census Bureau, the Kauffman Foundation, and the Minority Business Development Agency, notes that financial independence and economic mobility are the main reasons that Minorities start their own businesses. [26]

However, free enterprise promises the opportunity to not only be one's own boss, but also achieve scalable entrepreneurship. [27] Indeed, moving up the economic ladder is Minorities' main goal when starting their own businesses. [28] Entrepreneurship should not only serve as a fallback instrument for talented and motivated Minorities to counteract workforce discrimination and job loss but also provide real opportunities for expansion and growth. [29] Investors and venture capitalists are not looking for sole practitioners but for entrepreneurs capable of creating profitable and booming enterprises that cultivate an ecosystem of their own. [30] How can Minorities achieve that?

***1583** Our legal system imposes order and enables entrepreneurs to operate in the market, but it also presents Minority entrepreneurs with unusually higher hurdles. This Essay outlines the social and legal practices that have infused the free enterprise system with racial biases and doomed greater Minority entrepreneurs to insignificance or failure. [31] Social network players, business lenders, and investors consider Minority entrepreneurs to be riskier because they lack (or are perceived as lacking) the same education, experience, and connections as their white counterparts. [32] Even communities with high degrees of racial diversity can still have a narrow mindset in judging "who is excellent." [33] These conventions and biases have prevented Minority entrepreneurs from attaining equal access to networks and capital building and limited their access to effective integrated business networks that ultimately lead to financial viability. [34] American Minorities have been given a false hope of economic independence without realistic opportunities to scale their entrepreneurial capacity to attain wealth and develop their communities.

This Essay proceeds as follows: Part I discusses the importance of entrepreneurship to economic development and wealth mobility. It argues that one of the most important factors for entrepreneurial success is the ability to scale profitable operations, leading to spillovers into other markets, neighborhoods, and communities. However, as Part II demonstrates, Minority entrepreneurs encounter asymmetric regulatory burdens, biases in lending, and discrimination in capital investment that tend to contribute to high failure rates and predestine them to remain small and insignificant. Part III provides a primer to scaling racial Minority entrepreneurship and proposes several ways to remove current biases. It suggests creating specialized assistance programs to coach, train, and mentor Minority entrepreneurs, revising lending model algorithms, revamping microgrant and government contract programs, and cultivating the role of lawyers as skilled social agents who can steer racial minority entrepreneurs in the right direction. The Essay concludes with future inquiries on entrepreneurship and racial disparities.

*1584 I. THE IMPORTANCE OF ENTREPRENEURSHIP TO ECONOMIC MOBILITY

Entrepreneurship entails the creation of new enterprises. [35] But whether new firms are entrepreneurial depends upon their ability to convert original ideas into success. [36] There are various manifestations of entrepreneurial success. For example, once an entrepreneurial firm becomes successful, it initiates mass production of its products or services by expanding the number of employees and growing its workforce. [37] This growth in the firm's economic activity often gives rise in income levels, scope of sales, and the return-on-assets ratio, and allows the entrepreneur to capitalize on this entrepreneurial prosperity by accumulating personal wealth. [38]

A. Entrepreneurship as a Pathway to Economic and Wealth Mobility

Free enterprise is key to facilitating market competition, [39] preventing concentration of market power, [40] eliminating large deadweight losses, [41] and maintaining a vibrant economy. [42] Today, there is general agreement among economists that entrepreneurship is the driving force of economic development. [43] Empirical data indicate that entrepreneurship activity is the ***1585** engine of economic growth, as it is strongly linked to the emergence of new firms--entrepreneurs form new businesses that create new jobs and increase productivity. [44] "Entrepreneurial gains" reflect a firm's ability to convert valuable resources into superior economic performance. [45] When entrepreneurs realize success, they begin to reap "supra-competitive gains," capital that emanates from new market demand. [46]

Why is free enterprise a compelling solution to wealth inequality? Entrepreneurship is essential to achieving economic development, as it facilitates the formation of new businesses, creates new products and services, generates jobs, and fosters innovation. [47] Noteworthy entrepreneurs use their unique talents to exploit market conditions in exceptional ways. They upend existing markets through disruptive innovation, creating new markets and combinations. [48] Successful entrepreneurship yields large profits. This juncture opens economic opportunities for minorities to build wealth. [49] It has the potential to narrow Minority entrepreneurs' economic disparities, improve their well-being, and spillover to their neighborhoods and localities. [50]

*1586 *B. Expansion as an Important Ingredient of Successful Entrepreneurship*

In the past, creating a new firm in itself was considered an entrepreneurial act, and the entry of new firms has thus become a well-accepted measure of economic wealth. Undeniably, new organizations are perceived as a means through which entrepreneurs transform resources into final goods. Yet, most scholars distinguish between simply creating a firm and achieving profitability and success. [51] They point to scaling entrepreneurship and expansion as key to leveraging business operations into financial prosperity. [52] Entrepreneurial firms are portrayed as the largest contributors to economic growth because of their effect on labor expansion:

> How is entrepreneurship good for economic growth? This question would seem to have a simple answer: Entrepreneurs create new businesses, and new businesses in turn create jobs, intensify competition, and may even increase productivity through technological change. High measured levels of entrepreneurship will thus translate directly into high levels of economic growth. [53]

One of the most recognized positive effects of successful entrepreneurial firms is when they expand their economic activity, which manifests as a rise in income levels, growth in sales, increase in revenues, or surge in assets. [54] Thereafter, successful firms grow their workforce, contributing to job creation and economic growth. [55] Such indicators of increased economic performance are immediate proxies for entrepreneurial success because they signal the ability of firms to provide superior products or services.[56] This form of economic wealth from entrepreneurial firms can then be transferred to the entrepreneur's personal assets and capital.

***1587** Still, the principle of free enterprise alone is not a guarantee of achieving economic independence and improving wealth parity. There are differences between various types of entrepreneurship. Economist Zoltán Ács differentiates between "necessity entrepreneurs"--who act because of the lack of other employment options--and "opportunity entrepreneurs"--who start a new enterprise to exploit a business opportunity.[57] Only opportunity entrepreneurship has a positive and significant effect on economic development and should be combined with the economic power of established corporations.[58]

Most Minority Firms today exist as necessity entrepreneurship primarily to provide a means of support for the owners and their families.[59] They operate mostly on local, geographically driven demand and fill market niches.[60] Minority-Owned Businesses tend to focus on personal service and the availability of local goods while building their reputation,[61] although some firms are formed to act as franchised agents or subcontractors of larger firms.[62] To some extent, they improve market diversity and regional revitalization.[63]

Community economic development and poverty alleviation are social imperatives to every functioning society. Yet, achieving these objectives requires a macroeconomic perspective focused on changes within and among groups of people.[64] Entrepreneurship has the capacity to achieve such goals. It can lift entrepreneurs and their employees out of poverty and introduce a suitable alternative to government welfare and income-substitute programs.[65] However, this depends fundamentally on the assumption that entrepreneurs will leverage ***1588** their success and potential for high growth into regional and national economies by producing goods or services that are in high demand.[66]

To summarize, entrepreneurship should not only serve as a default mechanism for capable Minorities to respond to labor and employment discrimination, but also deliver genuine opportunities for economic development and wealth growth. Unfortunately, even though entrepreneurship can potentially narrow wealth inequalities, currently these inequalities represent a major impediment for Minorities to attaining entrepreneurial success and expansion, as discussed in the next Part.[67]

II. BARRIERS TO CULTIVATING MINORITY ENTREPRENEURSHIP

Entrepreneurship is a useful means that, if managed correctly, can narrow the wealth gap and provide opportunities for Minority entrepreneurs to overcome inequality.[68] Moreover, ensuring equal opportunity for all will allow more Minority-Owned Businesses to contribute even further to the American economy.[69] Although reports point to increasing numbers of Minority-Owned Businesses,[70] past and present biases present hurdles to sustaining these firms and improving their economic status.

As is demonstrated in this Part, current legal arrangements and government programs are filled with exclusionary policies and systemic racial inequality. Complex procedures and unfair practices exacerbate failure, bad credit, and debt--factors that contribute to expanding the wealth gap and increasing economic disparity for Minorities. They compel Minority Firms to remain small and insignificant in the marketplace. Consequently, these biases increase social injustice and expand the divergence in the quality of life and social mobility between these groups and the rest of society.

A. Failure and Insolvency

The risk of failure and its adverse legal consequences constantly threaten businesspeople. The legal system plays a key role in dictating the effects of ***1589** entrepreneurial failure.[71] Financial accountability outcomes that are too harsh can discourage entrepreneurs from assuming new risks or entering the market.[72] However, because of idiosyncratic structures and procedures, Minority entrepreneurial failure can happen more often and have much larger consequences. Accordingly, funding applications, lending practices, and insolvency procedures play important parts in increasing uncertainty and impeding minority entrepreneurship.

Indeed, scholars have historically maintained that the business failure experienced by Black entrepreneurs is notably higher than that of their counterparts. [73] Black individuals experience a twofold higher rate of unemployment, have significantly lower personal and family incomes to rely on, are three times more likely to live in poverty, and possess only one-fifth of the net worth of whites. [74] Accordingly, the higher failure rates of Minority-Owned Businesses compared to those of their white cohort have been correlated to limited access to capital, difficulties raising money, and the accumulation of large debts within the marketplace. [75]

The legal significance of bankruptcy procedures is that they provide debtors with a chance to discharge debt and attain a fresh economic start. [76] However, prior business failures make it almost impossible for Minority entrepreneurs to obtain credit or new funding, even through Minority-designated lending programs. [77] For Minority entrepreneurs, the concept of bankruptcy's fresh start hardly ever transpires in reality. [78] They feel they are penalized too harshly for ***1590** their errors and overwhelmed by many vague rules and standards. [79] For instance, one of the requirements for admission to the 8(a) Business Development program is that the business be controlled by "one or more socially and economically disadvantaged individuals," [80] a broad and unclear standard. Furthermore, in some Minority communities, there is a strong social aversion and shame associated with bankruptcy filing. [81]

Nevertheless, an empirical study on bankruptcy petitioners in California found that contrary to what had been hypothesized, Minority entrepreneurs were not overrepresented in the bankruptcy population. [82] A plausible explanation for this underrepresentation may be the lack of access to formal debt financing and inadequate access to professional financial advice. [83] In the said California bankruptcy study, Minority bankruptcy petitioners were found to have less access to financial capital, fewer accumulated assets, fewer ties to financial institutions, and a higher lending rejection rate. [84] The reliance on private resources and self-financing serves as modern redlining practice and an inevitable reality for Minority entrepreneurs compelled by their lack of access to debt financing. [85] Consequently, Minority entrepreneurs who were in the midst of bankruptcy procedures were found to be more financially fragile than their non-Minority counterparts, with substantially lower equity cushion or levels of income and assets. [86]

***1591** Minority entrepreneurs disproportionately under-participate in bankruptcy proceedings also because they rely heavily on unregulated or informal lending. [87] Credit and banking practices can shed light on this phenomenon. Scholars have claimed that the effects of the segregated debt market are still felt today in both the regulated banking industry and the unregulated credit industry. [88] For instance, Black neighborhoods have been described as "banking deserts," with 93% of all banks closings occurring in low-income minority neighborhoods while payday lenders and title lenders take over the credit void. [89] As they have been left out of the mainstream banking system, the Black community historically has been either unbanked or under-banked, thus leaving them with the extremely costly unregulated credit industry. [90]

Indeed, legal scholars Richard Thaler and Cass Sunstein pointed out that Black and Hispanic borrowers pay, higher loan fees than white borrowers. [91] Additionally, mainstream banks provide fewer loans to borrowers in Black neighborhoods than to borrowers in white ones and deny more mortgage applications from minority zip codes. [92] Accordingly, the Black community is more than twice as likely as any other race to use payday loans. [93] Not surprisingly, Blacks are more likely to be sued by debt collectors, and the number of debt collection judgments is five times higher in Black neighborhoods than in white neighborhoods. [94] Such studies have long established that racial minorities have fewer assets and opportunities to accumulate wealth and are thus less able to financially ascend and mobilize. They simply are not fortunate enough to have a buffer against life's hardships and are more exposed to financial shocks, aggressive collection, debt and insolvency pressures, eviction, and legal action.[95] These trends can shed light on why, despite the increase in ***1592** the number of Minority business owners, the racial wealth gap and inequality keep expanding.

Alas, legal initiatives to change these practices, such as the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, have been unsuccessful. The Act aimed to preserve and increase the number of "[M]inority-owned banks" by providing technical assistance, training, and educational programs to prevent insolvency.[96] Under the Act, banking and federal agencies (such as the FDIC) were to increase their support for Minority-owned or Minority-controlled banks through grants and programs and encourage deposits in such institutions.[97] However, scholars have criticized that in the absence of a clear mandate, these federal agencies have not established adequate formal processes.[98] They were not consistent in their policies and decisions but rather acted on a case-by-case basis.[99] Lastly, such agencies took the role and acted to educate, guide, and train Minority banks, rather than their Minority borrowers.[100]

B. High Interest Rates and Limited Funding Opportunities

As demonstrated above, the rate of entrepreneurship among people of color is on the rise, driven mainly by their desire for financial independence and economic mobility.[101] However, all Minority entrepreneurs do not experience the same outcomes.[102] High interest rates and limited funding opportunities contribute to this disparity. Indeed, the SBA reported that Minority-Owned Businesses typically have lower loan approval rates than small white-owned businesses.[103]

Minority entrepreneurs who are fortunate enough to obtain loans to operate their businesses tend to rely on high-cost capital that represents a burden on their finances and hinders their business growth.[104] The SBA pointed out that Minority entrepreneurs are considered riskier in terms of the likelihood of ***1593** repayment compared to their white counterparts because there is generally more information available about the latter.[105] Minority entrepreneurs often lack managerial experience, regulatory knowledge, and assets level, increasing their default exposure in the eyes of creditors.[106] Such systemic bias in lending is devastating to Minority entrepreneurs, as they lack the economic cushion other entrepreneurs bring from home.[107]

Moreover, private investment in Minority entrepreneurship is scarce. Stockholders, investors, and venture capitalists seek to invest in entrepreneurial firms with potential to make supra-competitive profits that will change their environments.[108] Businesses that start from strong financial positions are more likely to be able to scale up and adapt to challenges. As noted, Minority entrepreneurs lack access to capital, which for many Americans, is created through homeownership and family assets, which historically been rife with discrimination.[109] Accordingly, they start small and stay small; their lack of home-based capital hinders them from attracting investment capital.[110]

One such illustration of this Catch-22 is apparent in crowdfunding investment. In theory, crowdfunding was meant to be an inclusive system that enables entrepreneurs, regardless of their age, origin, appearance, or geographical location, to utilize social networks and the internet to obtain capital.[111] Moreover, it was designed to allow companies that are considered ***1594** riskier to solicit retail investors to make investments, which were traditionally offered solely to accredited (wealthy) investors. However, crowdfunding platforms that curate and select the companies they list focus mainly on establishing their reputation as a reliable market for investors than on market inclusivity.[112] Minority business owners without family ties and affluent friends have difficulties employing crowdfunding successfully and kickstarting interest in their projects. Their constricted access to capital and networking effectively blocks them from pulling in capital from the public.[113]

To summarize, the high cost of capital and limited access to funding may elucidate why the increase in the number of Minority-Owned Businesses does not match with their degree of financial viability.[114] Indeed, Census Bureau data indicate that the quantity of business receipts belonging to Black-owned businesses remains far lower than their share of businesses.[115] The sales of the average Black-led business remained minuscule, while the ratio of the average sales of businesses headed by white

Americans rose. [116] Minority-Owned Businesses are less profitable than comparable white-owned firms, earning just 0.3% of total business receipts. [117] The share of U.S. private sector employment in African American-led businesses has remained very small, at around 1%. [118] While the average size of majority-owned businesses amounts to $2.3 million in annual revenue, the average size of Minority-Owned Businesses is only $1.6 million. [119] Moreover, non-Minorities are twice as likely as Minorities to own employer businesses in the U.S., and Black entrepreneurs are almost three times more likely than whites to have profits negatively impacted by access to ***1595** capital. [120] Another factor that contributes to such trends is the uniquely higher regulatory barriers Minority entrepreneurs encounter as portrayed next.

C. Asymmetric Regulatory Burdens

The government promulgates regulations to correct market inefficiencies associated with promoting social welfare in areas such as workplace safety, environment, immigration, etc. [121] Complying with these regulations can be very costly. [122] Rules and procedures represent a system of knowledge about who might take action and under what certain circumstances. [123] For example, there are regulatory costs imposed for new administrative filings in addition to disclosure requirements for existing processes and recordkeeping necessary to comply with current rules. [124] In its most recent Information Collection Budget, the Office of Management and Budget reported that the public spends 11.4 billion hours annually responding to federal information collection requests stemming from paperwork requirements. [125] Most of these compliance costs are fixed, regardless of the entity's income level. They come at the expense of time and money not spent on alternative, more productive business opportunities. [126]

Operating within a regulated environment, entrepreneurs incur indirect informational costs to learn, interpret, and comply with the requirements of law and regulations. “Written ... by lawyers for lawyers,” regulations are often multifaceted and extremely convoluted for business owners to comprehend. [127] Entities must understand a significant body of regulations to determine what rules apply and how to avoid noncompliance. Regulatory costs fluctuate according to the manager's education and background, the entity's products and services, and other industrial and financial conditions. [128] Entrepreneurs' ability ***1596** to mitigate new and existing regulatory burdens is a function of their industrial maturity, knowledge, and market familiarity. This kind of “economics of experience” includes knowledge about not only regulations, but also production processes, market structure, marketing methods, distribution channels, retailer relationships, etc. [129] Although obtaining market information is a calculated cost, the literature has largely overlooked the distributive effects of regulatory knowledge on Minorities.

In this context of regulatory burdens, the lack of “economies of experience” has a regressive distributional impact on Minority entrepreneurs. Entrepreneurs' age and level of education greatly affect their ability to defray regulatory costs. [130] The more time they have to become informed and well-versed about their market and become acquainted with its landscape, the better they are positioned to defray such gathering and processing informational costs and adapt to changes in regulations or new rules. Alas, as the Kauffman Firm Survey reports, Minority entrepreneurs are often younger, hold fewer college and graduate degrees, have less general work experience, and possess significantly less net wealth than their white counterparts: [131]

OWNER CHARACTERISTICS OF KAUFFMAN FIRM SURVEY BUSINESSES

Owner Characteristics	White	Black/Hispanic	Female	Male	High Tech

	Net Wealth of $250K+ (2008)	45.4%	20.6%	41.1%	42.2%	52.4%
	Ave Hours Worked (week)	42.7	43.5	40.1	44.3	44.3
	Prev. Years of Industry Experience	12.8	11.6	9.5	13.7	16.1
	Owner Age	45.8	42.8	45.1	45.3	44.9
	Some College	36.3%	43.2%	40.8%	34.6%	22.6%
	College Degree	32.7%	27.7%	29.4%	33.5%	34.5%
	Graduate Degree+	18.2%	15.7%	19.7%	18.3%	36.9%
	Previous Startup Experience	44.3%	38.1%	37.0%	45.8%	46.1%
Source: Office of Advocacy, U.S. Small Business Administration [132]						

Evidently, Minority entrepreneurs lack economies of experience and do not operate on the same level playing field. [133] Lacking the same levels of education and experience as their counterparts, Minority entrepreneurs may face a difficult ***1597** choice between two undesirable options. On the one hand, the Minority entrepreneur can choose to go into business without the same education and connections and thus be disadvantaged as a business owner. Or alternatively, they may choose to get the education and experiences they need before starting their own business. But this option may be prohibitively expensive since Minorities also tend to have less wealth and lower incomes than non-Minorities. Minorities often are not paid at the rate of non-Minorities, so taking the time to gain additional experience or pay others for such knowledge may end up putting Minorities in an even more precarious financial state when they start the business. [134]

Being short of marketplace familiarity and formal postsecondary education puts Minorities at a major disadvantage compared to those who already possess knowledge, industrial maturity, and regulatory understanding. They incur higher informational and learning costs when obtaining licenses, importing goods, hiring employees, and handling financial transactions. [135] As time passes, developing practices and putting monitoring systems into place to stay informed of regulatory changes also require them to spend greater time and money. Moreover, because most Minority Firms are small, they face disadvantages related to economies of scale and their inability to spread such fixed costs over a larger output. [136]

When Minority entrepreneurs--overwhelmed by trying to obtain capital, develop their product, and penetrate their market--face bureaucratic processes and complex procedures, they experience more unnecessary delays, high penalties, and prohibitive costs. [137] For example, more Minority business owners have described the government procurement process as unbearably complex and lengthy. [138] A study reported that minority business owners spent an average of ***1598** 1.7 years (20 months) and 6.1 unsuccessful bids before they were able to secure a federal contract, while it took the average non-Minority contractor only 1.3 years (16 months) and 4.4 unsuccessful bids. [139] The Urban Institute in 1996 found that Minority-Owned Businesses receive just fifty-seven cents of every dollar from government contracts expected to be allocated to them based on firm availability. [140]

Furthermore, the asymmetrical distribution of regulatory costs affects Minority Firms more intensely, thus creating significant hurdles that reduce their competitive position. Minority entities that cannot easily mitigate these regulatory outlays are forced to sell their products at suboptimal prices leading either to stagnation or death in the long run. In extreme cases, the economic effect of certain regulations can be so immense as to hamper and inhibit Minority entrepreneurs from entering the market at all. [141]

Lastly, costs are not solely borne by a regulated entity, as they also affect other stakeholders dealing with the entity, such as vendors, customers, and employees in the form of inferior payments, higher prices, and lower compensation, respectively. [142] The ability to mitigate regulatory transaction costs has significant implications. These costs of obtaining information, studying rules, and conforming with business regulations may or may not be able to pass to other parties. "Incidence theory" identifies which constituents are affected by changes in the firm's costs. [143] We have limited data about the incidence of regulatory costs and allocation of such costs because they mostly ***1599** involve private undisclosed dealings. [144] However, assuming that many Minority Firms' customers and employees are Minorities themselves dictates that the government plays a key role in placing an asymmetric distribution of regulatory costs on Minority Firms' patrons and workers. Such uneven cost allocation result in a loss to society [145] when Minority entrepreneurs forgo actions that cultivate economic growth, racial diversity, and social mobility. [146]

To conclude, for those who possess it, economies of experience in terms of age, scope, and scale of operations increases their ability to defray costs associated with the production or distribution process. Accordingly, having lower levels of personal wealth, educational knowledge, and marketplace experience places Minority entrepreneurs and their firms at a disadvantage compared to majority-owned firms, who possess more information, exposure, and connections. [147] These hurdles may have contributed to establishing long-term majority-owned firms' dominance. They also distress the nature of Minority business communities and neighborhoods. [148] The next Part attempts to remedy such systemic inequalities and distributional asymmetries Minority entrepreneurs and their firms face throughout their various venturing stages.

III. A PRIMER TO PROMOTING MINORITY ENTREPRENEURSHIP

Minority entrepreneurs are at a disadvantage by having limited opportunities to obtain capital, facing asymmetric regulatory burdens, and having an increased likelihood of failure. Accordingly, this Part proposes new approaches to alleviate these systemic effects on Minority entrepreneurs. It suggests utilizing collaborative mechanisms to provide coaching and mentoring, increasing dedicated Minority capital and lending, and establishing information-sharing networks between peers. Lastly, it emphasizes the role of legal agents in empowering Minority entrepreneurs' success.

***1600** *A. Minority Regulatory Flexibility*

One solution to the problems faced by Minority entrepreneurs may lie in the form of regulatory flexibility. If a regulatory action represents a competitive disadvantage to Minority entrepreneurs, the government may consider relaxing from its purview Minority-Owned Businesses. For example, the government can request that regulating agencies perform a "regulatory flexibility analysis," specifying the effect of the proposed (or existing) rule on Minority-owned entities. [149] Similar analysis on the effect of regulation on small businesses has been incorporated in the U.S. legal system since the early twentieth century, when the typical business enterprise was small, local, and personal. [150] Moreover, another possible effective measure would be to afford regulatory exclusions similarly to the numerous regulatory exceptions currently provided to small business owners. [151] For example, relief (even if temporary) from certain reporting and paperwork requirements can serve as a Minority-based adjustment. [152]

Nevertheless, exclusions do not eliminate regulatory costs altogether because Minority entrepreneurs will still have to learn about the existence of such regulatory exclusions, determine whether they apply, and monitor and stay up to date on new or revised regulatory exclusions. Thus, indirect costs of learning the various secondary exclusionary rules will persist in some manner. [153] Lastly, morally speaking, Minority-based regulatory flexibility should be applied only in legal areas that, on balance, may not exacerbate social welfare causing greater harm to health, privacy, environment, or increasing the risk of defrauding the public. [154]

***1601** *B. Inclusive Networks to Develop Mentorship and Information Sharing*

Empirical studies have shown that--independent of the quality of the application--Minority applicants are significantly less likely to secure a patent relative to others due to bias during application process at the U.S. Patent and Trademark Office. [155] Obtaining funding to seek assistance with, prepare, search, and engage in patent process review is a costly endeavor. Scholars indicated that Minority entrepreneurs more frequently cannot secure such funding, do not have access to support networks, lack knowledge about the process, and, as a result, forgo patent protection altogether. [156] According to the National Venture Capital Association, 87% of venture capitalists are White, 9% are Asian, 2% are African American or Latino, and 2% are of mixed race. [157] Where can Minority entrepreneurs seek inexpensive advice on how to scale their knowledge and discovery?

1. Cooperatives, Incubators, and Accelerators

Although Minority Firms often are not able to pinpoint one "defining moment" that led to financial success, peer advice from other Minority entrepreneurs has been found to be more useful than other strategies. [158] Accordingly, some asymmetric burdens and discriminatory practices could be mitigated through collaborative measures. Minority entrepreneurs can form industrial cooperatives and networks to share legal and regulatory information as well as market opportunities and strategies. [159] Such collaborative platforms can be incorporated in current Minority industrial associations such as the African-American Entrepreneurs Association and National Hispanic Business Group that aim to advocate, educate, and connect culturally responsible entrepreneurs and maintain a positive impact the community. [160] Regulatory data ***1602** and industry information accumulated by Minority entrepreneurs can be collected, organized, and conveyed to network members for a minimal fee or in exchange for contributing to the cooperative's database of advice and knowledge. The collaborative network can likewise maintain information sharing forums, provide free webinars by veteran members, or recruit experts and legal advisors to counsel Minority entrepreneurs on specific compliance issues at a reduced or no cost.

Another way to increase financial opportunities and business information to Minority-owned firms is to create more Minority-designated accelerators and incubators. Incubators and accelerators are innovation agents that help mostly early-stage entrepreneurs. [161] Thus, it is important to first point out the differences between these two models. Both incubators and accelerators furnish entrepreneurs with a variety of resources, such as coaching, business training, access to capital, networking, and free or sponsored office space. Nevertheless, the International Business Innovation Association describe *incubators* mainly as nonprofits with an economic development agenda, such as job creation and community development, who supply firms with programs, services, and space for differing periods of time depending on their organizational needs and strategies without receiving any monetary compensation from participating firms. [162] *Accelerators* are mostly revenue-driven ventures funded by private capital and focused on early-stage investments. [163] They typically choose a group of firms and provide specific training that culminates in a public pitch event or demonstration day for investors. Accelerators may also invest seed money in participating firms in exchange for equity. [164]

The SBA reported that Minority entrepreneurs suffer from lack of appropriate business education and managerial experience. [165] Indeed, when Minority entrepreneurs begin to develop their businesses, they may experience extreme challenges regarding networking, information, and capital. [166] One way ***1603** to alter that is for Entrepreneurial Development Centers to partner with Minority-concentrated colleges and Historically Black Colleges and Universities (HBCUs) as a means of improving business opportunities and professional development of Minorities. [167] A complementary manner may lay with "Minority incubators." [168]

Incubators are intended to assist all emerging entrepreneurs in building networks and obtaining knowledge and capital. However, Minorities remain greatly underrepresented in firms supported by incubators, as they are dominated mainly by white-male entrepreneurs. [169] As Professor Dorothy Brown has argued, given that it is no longer acceptable to be overtly racist, the bulk of racism has gone underground; unconscious racism is today's enemy. [170]

Accordingly, increasing the number of Minority-designated incubators and accelerators can be an important piece of the puzzle. Such organizations can provide tailored opportunities for mentorship, learning, and networking, as well as a place to benefit from Minority peer support and feedback. The hurdles facing racially diverse entrepreneurs who lack social capital and networks are more pronounced and can be better solved by professionals with specialized knowledge and experience working with and representing Minority organizations. [171] Currently, while there are many organizations that advertise they support Minority entrepreneurs, there are only a limited number of incubators and accelerators that focus solely on Minority-owned startups. [172] One such example is "Black Ambition" recently launched by producer and rapper Pharrell Williams. This incubator is designated for Black and Latinx entrepreneurs in tech, design, healthcare, and consumer products and provides ***1604** awards ranging from $1 million for a national competition to a $250,000 scholarship to attend an HBCU. [173]

Moreover, because most incubators are currently situated in high-income and less-diverse communities, it would be beneficial to also establish incubators in areas with higher concentrations of Minority entrepreneurs, such as inner cities. [174] Scaling and establishing more Minority incubators in segregated neighborhoods and inner cities across the U.S. would trickle down and help spur the growth of more successful Minority-Owned Businesses, which in turn would help to revitalize these areas. [175]

Expanding and supporting representation by Minorities also necessitates making incubators more inclusive. Incubators and accelerators typically use selection panels to decide which ventures to support, and the composition of these panels can create biased outcomes. [176] For instance, the 2010 Venture Capital Human Capital Report found that only 17% of private, early-stage internet companies receiving venture capital in the first half of 2010 had a minority on the founding team, and only 13% of founders of internet firms receiving venture capital are Minorities. [177] This need for reform is especially true because incubators and accelerators attract mostly *young* entrepreneurs; a new report from the Brookings Institute's Metropolitan Policy Program revealed that the millennial generation is America's largest generation at 75 million, with a Minority population of 44%. These millennials are set to serve as a social, economic, and political bridge to future (and increasingly racially diverse) generations. [178] This demographic trend emphasizes the critical importance of making incubators and accelerators more racially inclusive to ensure that *all* future entrepreneurs are given the same level of support and to offer ***1605** underrepresented entrepreneurs opportunities to build confidence, develop their skills, learn sustainable practices, and maintain peer support networks. [179]

2. Coaching, Training, and Mentoring for Established Minority Firms

Minorities ranked fellow business owners who shared advice, experience, and connections as the most helpful source of assistance. [180] Outside consultants and the Office of Small and Disadvantaged Business Utilization were other sources of support that were helpful to Minority firms that sought advice regarding Minority contracting. [181] These were found to be useful for understanding and learning how to successfully navigate through complex regulatory paperwork, multifaceted procedures, and cumbersome guidelines. Over the years, scholars have pointed to the significance of social networks in supporting all phases of firm development. [182] Sharing peer experiences saves time and capital when obtaining such information [183] and helps Minority entrepreneurs become familiar with administrative procedures, obtain legal advice, and pay fines and penalties for noncompliance. [184]

Establishing Minority-designated coaching programs could provide free mentoring and personal and business consultation. Minorities frequently do not have access to the same level of institutional knowledge as their white counterparts, possibly because mentorship resources are allocated to those with whom "the mentors are most comfortable, and these may tend to be juniors of the same race and gender as the mentors." [185] Training and mentoring can help Minority Firms with growing an established business, developing leadership, and achieving financial independence. Obtaining such targeted guidance could help prevent Minority Firms from making costly mistakes, and it could provide ***1606** additional resources and networks. This can be made possible by assigning coaches and financial analysts with similar backgrounds, as much as possible, to allow a better rapport during such activities. Minority-designated coaching strategies may include identifying new customers and achieving marketing goals, thus increasing sales and successful scaling. There are many possible venues for fostering such programs, such as local civic centers, university community outreach programs, or the Small Business Development Centers that currently operate similar assistance programs for women and veterans.

Such one-on-one targeted Minority coaching can have a substantial effect on improving operations, growing the business, building wealth through Minority designated lending, attaining a Minority business certification, and securing Minority procurement contracts and set asides. In that context, the Minority Business Development Agency (MBDA) at the U.S. Department of Commerce could also be utilized for that purpose. This federal agency was created with a mandate to foster the growth of Minority-Owned Businesses, specifically in communities of color.[186] Over the years, the MBDA has been criticized for being a severely neglected institution with limited authority and funding.[187] Nevertheless, it could be revamped and inspired to fill a much-needed gap in supporting Minority Firms.[188] Its unique history and current structure could give the Biden Administration a new opportunity to channel funding to the agency. Similar to the SBA mandate, the MBDA can be authorized to advocate in Congress and address the racial inequality of Minority Firms within existing legislation and congressional appropriation.[189]

C. Designated Capital-Growth Programs

> Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as ***1607** compared to others in the same or similar line of business who are not socially disadvantaged.[190]

1. Removing Biases in Lending and Microgrants

Funding support is an essential component of fostering Minority entrepreneurship. As stated above, household wealth and informal funding from friends and family for new ideas play an important role in supporting emergent entrepreneurs.[191] "At the early stage of idea formation, risk-tolerant, 'patient' sources of funds are important to testing [and developing] a new idea."[192] However, Minority entrepreneurs lack this monetary cushion and these capital reserves. This creates a severe lack of access to capital for Minorities and greatly disadvantages them in the entrepreneurial process.[193] Moreover, current financial institutions and borrowing practices are deeply rooted in biases and race-based inequities.[194] Again, these discriminatory practices in lending are immense hurdles to the expansion of Minority-Owned Businesses, contributing to their failure and marginal stake in the market. The need to remedy lending biases is of utmost importance in narrowing the race-based wealth gap.[195]

Undeniably, traditional underwriting systems rely heavily on information about an applicant's income and credit history. For example, Black borrowers often realize that to accumulate credit, a person must already have a reviewable good credit history.[196] As another example, financial institutions often offer financial products and services to consumers in the form of market segmentation--the process of "dividing the population into niches according to [demographic] characteristics to gauge individuals' attractiveness as targets for financial products."[197] Nevertheless, such practices often single out Black borrowers for predatory loans and harmful financial products, a practice that has been dubbed "reverse redlining."[198] Civil rights attorney John P. Relman noted the following:

> ***1608** The legacy of historic discrimination ... often leaves the residents of minority communities desperate for credit, and without the knowledge or experience required to identify loan products and lenders offering products with the most advantageous terms for which they might qualify. Instead, residents of underserved minority communities often respond favorably to the first offer of credit made, without regard to the fairness of the product.[199]

Looking ahead, there are various ways to assist Minority Firms with acquiring capital to start, grow, and expand. The SBA's 7(a) primary loan programs provide over nine types of financial assistance to small businesses with different guaranteed percentages and loan amounts.[200] Outside of these programs, the SBA launched a few limited pilot programs that offer any small business "Community Advantage" loan guarantees between 75% and 85% by the SBA through local lenders to businesses based on the business's location in an underserved area ranging from $50,000 to $250,000 with interest rates between 7% and 10%.[201]

Likewise, microloan programs provide any small business with amounts between $500 and $50,000 and interest rates of 8% to 13%, payable within 6 years. [202] These programs can be expanded and redesigned to give small Minority-Owned Businesses along with a more flexible and guided application process. [203]

Another option is to designate loan officers in banks who can understand, identify, and address the race-based financial inequity and biases Minority clients face in lending. Such funding support can be delivered to Minority-Owned Businesses via designated Minority small business microgrants [204] whose limited scope reduces the risk to financial institutions and may help Minority ***1609** Firms to establish a good credit history and receive more credit further down the road.

Artificial Intelligence and algorithmic models for assessing creditworthiness that rely on income level and credit history tend to generate racially discriminated results. [205] As a result, numerous scholars have called for reforms of the Fair Credit Reporting Act that mandate banking compliance rules in this area. [206] Nevertheless, they also have the potential to make financial services more accessible to underserved communities. [207] Financial institutions can implement certain strategies by using big data assessment models and credit algorithms that are fairer to Minority-Owned Businesses, ensuring that such practices avoid discriminatory effects. [208] Instead of relying solely on income and credit history (which Minorities often lack), algorithmic models can be designed to draw on a broader range of predictive variables. Consequently, allowing banks to fine-tune the weight given in algorithmic models to other factors aside from income level and credit score (without creating new biases) may solve the paradox that many Minority entrepreneurs face involving the need to have an established credit history prior to building credit. [209] Increasing dedicated access to capital aimed at business growth not only helps prevent business failure and encourage business expansion, but can also act as a catalyst in economically marginalized neighborhoods. [210]

2. Revamping Government Contracting Programs

> [T]he opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic equality for such persons and improve the functioning of our national economy. [211]

***1610** The extensive history of Minority set-aside programs can be traced back to New Deal efforts in the 1930s. These programs have the potential to serve as a public policy tool to reduce systemic racism in government contracting. [212] Since 1978, Congress has required federal agencies to consult with the SBA and establish goals to award agency contracts to socioeconomically disadvantaged businesses. [213] The SBA currently runs a federal contract set-aside program for Minority-owned businesses--The Minority Small Business and Capital Ownership Development Program--commonly known as the 8(a) Program. [214] The program's purpose "is to assist eligible small disadvantaged business concerns to compete in the American economy through business development." [215] A "set-aside" award is a contract-grant for which only designated contractors may compete (as opposed to a "sole-source" award that is awarded to such entities without competition). [216] In Fiscal Year 2019, 8(a) firms were granted $30.4 billion in government contracts, including $8.6 billion in 8(a) set-aside grants and $9.9 billion in 8(a) sole-source awards. [217]

8(a) Program award eligibility is limited to small businesses owned and controlled by "one or more socially and economically disadvantaged individuals who are of good character and citizens of [and residing in] the United States" and demonstrate "potential for success." [218] Members of certain racial and ethnic groups are presumed to be socially disadvantaged, while other individuals can prove they are also socially disadvantaged. To be considered "economically disadvantaged," an individual must have (and continue to have) a net worth of less than $750,000. [219] When determining whether an applicant has "good character," the SBA takes into account criminal conduct and violations of SBA federal contracting rules. [220] A firm wishing to establish "potential for success" ***1611** needs to be in business for at least two years immediately prior to applying to the program. [221]

Currently, there are about fifty federal socioeconomic programs that have implemented this type of 8(a) designated contracting process.[222]

Yet, the Disadvantaged Business Enterprise ("DBE") program is an example of an 8(a) Minority-designated set-aside program developed at the Department of Transportation that illustrates the ambiguity and inefficiency of many of these programs.[223] A DBE is defined as a for-profit small business that is at least 51% owned, managed, and controlled by socially and economically disadvantaged individuals.[224] However, even qualifying as a DBE entails navigating through a large amount of red tape and bureaucracy.[225] DBEs must develop and submit within sixty days a comprehensive business plan setting forth its business targets, objectives, and goals.[226] Thereafter, the DBE goes into a two-year developmental stage and five-year transitional stage allowing it to obtain government contract support, financial assistance, and training.[227] Yet, like the MBDA, the DBE program has been criticized for its complexity and regulatory ***1612** costs.[228] Mounting fraud and misuse infiltrated the program and redirected its focus and funding toward investigations and misrepresentation while denying opportunities to genuine Minority Firms.[229] This example illustrates that government contracting is a costly and complex process, especially for Minority Firms.[230] They struggle to maneuver through the multifaceted procedures for qualifying as a "certified minority" to benefit from these programs.[231] As a result, they do not obtain the same ratio of government contracts as non-Minority firms.[232]

Scholars, research agencies, and the media have criticized these Minority set-aside programs for their lack of oversight and widespread abuse.[233] A recent Congressional Research Service report stated there has been a current decline in the number of participants in the Minority government contracting programs.[234] The programs' complexities as well as their lack of oversight and core safeguards eroded their efficiency and allowed questionable white-owned firms to abuse them.[235] Another study found that affirmative action programs and, by extension, Minority contracting programs appear to have a positive empirical impact on the success of Black business owners.[236] Other empirical studies have demonstrated that such mandatory goal-setting procedures have not had a statistically significant positive effect on increasing the federal contract dollars given to Minority-Owned Businesses.[237] Thus, to assure these programs are ***1613** indeed effective in promoting and improving the survival rates of Minority Firms, there is a need to put greater emphasis on attaining contracting success.

A better approach could be to deliver the opportunities to Minority Firms through a direct channel. Designated professionals who specialize in identifying potential contractual opportunities for Minorities in federal, state, and local agencies can provide targeted assistance to Minority Firms.[238] The certification process for licensing such procurement specialists should not only assess their knowledge of how to correctly fill in forms and compete for contracts, but also familiarize the specialists with the particular hurdles that Minority entrepreneurs face. Agents familiar with the obstacles Minority Firms confront can help them by informing them about potential contracts for their products and services. This includes educating, familiarizing, and ushering them through the bid process, as well as assisting them with obtaining and preparing documentations, proposals, and other contractual forms. Providing Minority entrepreneurs with specialized guidance on how to conform to rules as well as maintain quality assurance as it relates to government-specific contracts or requirements will help them remain compliant and increase their chances of securing future government contracts.

3. Sponsoring Credit Rehabilitation Services for Minorities

As detailed in Part II, Minority bankruptcy petitioners are more likely to have less access to private resources and outside financing, making them more financially fragile than their non-Minority counterparts.[239] Since whites disproportionately own the type of assets that bankruptcy protects, bankruptcy laws favor white debtors over Black debtors.[240] A preferable alternative to traditional bankruptcy proceedings would be for the government to offer credit rehabilitation services to Minorities.

The unregulated and predatory nature of the lending industry makes relying on private credit building agencies to provide adequate credit restoration services to Minorities impractical.[241] For example, Hispanic and Black ***1614** homeowners are most likely to be the targets of predatory lending.[242] In identifying communities to target, "predatory lenders need to identify people who are disconnected from the credit economy and therefore unlikely or unable to engage in comparison shopping."[243] These communities often are more likely to be people of color who, because of credit rationing, discrimination, and other social forces, have not had experience with legitimate lenders.[244] "Predatory lending and unfair pricing often result in direct, as well as disparate, impacts on [M]inorities. Most often, it can take the form of reverse redlining and other discrimination after credit has already been extended."[245] This has created a segmented system of consumer finance in which higher-income consumers tend to be served by more highly regulated banks and thrifts, while lower-income and Minority customers become the primary customers of the unregulated ones.[246] And while payday loans in particular are typically marketed as short-term options to provide emergency capital, one study found that "[m]ost borrowers use payday loans to cover ordinary living expenses over the course of months, not unexpected emergencies over the course of weeks."[247] "Thus, high-risk, low-income (and often [M]inority) borrowers disproportionately use payday loans to fill in the gaps left by the difference between their cost of living and income, and consistently roll over these loans."[248] In fact, payday lenders specifically target workers living paycheck-to-paycheck that are left to pay predatory interest rates that are on average twenty times higher than those of credit cards.[249]

As Professor Abbye Atkinson argues, "talk about low-income Americans' access to credit indicates that the balance in the public-private American welfare regime has shifted too far toward individualism and private provision."[250] "Although one might expect that advocates of the market will continue to view credit as a viable tool of intertemporal redistribution, advocates of economic rights, poverty rights, and economic equality must begin to examine closely the ***1615** ideal of safe or low-interest credit as valid, universal social policy."[251] It would not be unprecedented for the government to play an active role in offering credit to low-income people. In the past, "the government has supported banks with a special mission of meeting the needs of the poor, such as credit unions, S&Ls, and Morris Banks."[252] In line with what was once its mission of sponsoring financial institutions to help give the poor access to small loans,[253] the government could provide free credit restoration services to Minorities to improve their credit prospects.

Existing private credit restoration companies are often problematic for a variety of reasons. For one, these services carry a high price tag, typically including a start-up fee and ongoing monthly costs.[254] Many of these companies also make promises they cannot keep; the Consumer Financial Protection Bureau recently sued a credit repair company that had racked up $23 million in fees, all while not delivering on its promises to consumers.[255] A supervised government service that will help restore credit history of minorities that maintain their tax payments schedule on time, for instance, can have a positive effect on such constituents ability to obtain future seed funding.

D. The Role of Lawyers as Social Agents

Running a business entails adhering to numerous regulations, acquiring licenses, and submitting informational filings.[256] Many Minority entrepreneurs might not be aware of the extent of these bureaucratic hurdles until faced with administrative delays and overwhelming costs. Accordingly, the effects of asymmetric regulatory costs on Minority entrepreneurs are palpable.[257] One way to decrease the impact of current legal rules and lending practices on Minorities is to ensure that they have a more predominant role in the rulemaking process.[258] This approach has been successfully implemented in fintech regulation, in which industry players come together to propose, discuss, and test technologies and ***1616** financial services in banking without suffering the consequences of regulatory default.[259] In a similar manner, minority entrepreneurs and their legal representatives should have "a seat at the regulator's table" to opine on the effect certain rules might have on minority businesses.

Another important aspect of reducing systemic biases is to acknowledge that lawyers play a major role in informing Minority entrepreneurs of administrative and regulatory requirements.[260] One potential boundary for many lawyers in this area is that not all law students are exposed to critical legal theory during their law school careers. For example, future corporate lawyers are among the least likely to be engaged in critical legal theory in law school because business law courses rarely utilize it in their curriculum.[261] Yet, lawyers' interactions with their Minority clients provide them an opportunity to directly advance social justice within the practice of law.[262] Socially responsible practitioners can serve as agents of change. Attorneys can play a central role in not only advising, but also educating Minority entrepreneurs about regulatory, financial, and legal opportunities to give them the same chance to succeed as other businesses.[263] Such legal advice is vital for under-resourced micro-entrepreneurs to avoid legal conflicts, build wealth, and realize economic empowerment.[264] Activist legal counsels may also take on informing Minority entrepreneurs about opportunities for business expansion, scaling an enterprise, and building wealth and credit.

Since such legal advice in the private legal market is usually quite expensive, it is necessary to make it more accessible to Minority entrepreneurs. Providing legal services programs specifically designated to Minority-entrepreneurs free of charge via the American Bar Association, local chambers of commerce, Student Bar Associations, or university clinics can make a big difference to ***1617** emergent entrepreneurs and established Minority-Owned Businesses. These agencies should recruit legal agents interested in taking an active role in promoting social justice by helping underrepresented and Minority entrepreneurs in their communities. They can help foster an innovative spirit and growth while dismantling the walls of systemic racism. University administrators and law school deans should proliferate entrepreneurship and transactional clinics and their essential services to underserved Minority entrepreneurial clients while cultivating students' social responsibility and learning outcomes.[265] These legal agents can contribute in a meaningful way to advancing Minorities' economic empowerment, wealth equality, and social justice.

CONCLUSION

This Essay pointed to several systemic biases that contribute to the default of Minority entrepreneurs and exposed the degree to which they face an uneven playing field. It demonstrated that the asymmetrical distribution of regulatory costs falls more heavily on Minority-Owned Businesses. Minorities are at a disadvantage when trying to obtain capital or secure government set-asides. They experience lending biases as well as limited access to financial and social networks. While these problems are common to all entrepreneurs, they are exacerbated for Minority entrepreneurs, who the SBA report suffer from lower levels of education and managerial experience.[266]

Entrepreneurship cannot, in and of itself, be the solution to narrowing the racial wealth and equity gap. Done correctly, entrepreneurship has immense potential to promote equity growth for Minority businesspersons. Improving the Minority entrepreneurial ecosystem is a step in the right direction for attaining economic justice and narrowing the racial wealth gap. Advancing public policy to promote Minority entrepreneurship and urban recovery is long overdue. Acknowledging the importance of Minority entrepreneurs and addressing their high compliance costs and tight credit problems can help achieve cultural objectives, such as supporting diversity and developing neighborhoods and urban areas, both of which are vital elements of social justice and equality.

When the government promulgates rules and regulations, it has the ability to create winners and losers.[267] Responsible regulators should routinely consider ***1618** other, more efficient methods to mitigate the impacts of regulations on Minorities in society. This Essay hopes to spur empirical research on how laws, rules, and procedures affect the cohort of Minority entrepreneurs to determine the degree to which the discriminatory asymmetries described here translate to their everyday business practices. Including more Minority entrepreneurs in the rulemaking process is another essential step. Forming inclusive Minority networks, as well as information cooperatives, incubators, and accelerators, can help defray some of the negative impacts of asymmetric costs. Lessening regulatory requirements and forming racial Minority capital growth programs are other ways to offset Minority biases. Further experimentation should explore the efficacy of such initiatives in narrowing the gaps in racial wealth and inequality. Lastly, cultivating the role of lawyers, practitioners, and students as social agents who can undertake advancing Minority entrepreneurs is of utmost importance in achieving a more equal and just free-enterprise system.[268] Promoting the well-being and success of Minority entrepreneurs will generate a stronger economy and a healthier society.

Footnotes

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1 Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 273-74 (1995) (Ginsburg, J., dissenting).

2 *Who We Are*, MINORITY BUS. DEV. AGENCY, https://www.mbda.gov/who-we-are/overview (last visited Aug. 3, 2021).

3 *Quick Facts*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/Fact/table/US/PST045219 (last visited Aug. 3, 2021) (reporting 7,952,386 minority owned firms and 18,987,918 non-minority owned firms); *see also* EWING MARION KAUFFMAN FOUND., ZERO BARRIERS: THREE MEGA TRENDS SHAPING THE FUTURE OF ENTREPRENEURSHIP 1, 12 (2017), (predicting that, by 2050, more than half of the U.S. population will be from racial minority backgrounds).

4 *Statistically, What Does the Average Entrepreneur Look Like?*, ENTREPRENEUR https://www.entrepreneur.com/article/312943 (May 10, 2018) ("The stereotypical image of an entrepreneur is male and the data illustrate that, unfortunately, this is the case.").

5 EWING MARION KAUFFMAN FOUND., KAUFFMAN COMPILATION: RESEARCH ON RACE AND ENTREPRENEURSHIP 3 (2016), https://www.kauffman.org/wp-content/uploads/2019/12/kauffman_compilation_race_entrepreneurship.pdf.

6 For example, the Census data provides that "[h]ispanics may be of any race, so also are included in applicable race categories." *See Quick Facts*, U.S. CENSUS BUREAU, *supra* note 3, n.b. The Kauffman report does not seem to include Hispanics with other racial groups. EWING MARION KAUFFMAN FOUND. ZERO BARRIERS, *supra* note 3, n.5.

7 *See id.*

8 *See* Emily Fetsch, *Does Racial Wealth Disparity Hinder Entrepreneurship?*, EWING MARION KAUFFMAN FOUND. (Jan. 21, 2016), https://www.kauffman.org/currents/does-racial-wealth-disparity-hinder-entrepreneurship/ (demonstrating that entrepreneurs of color are underrepresented).

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10 *Id.* at 24.

11 Aimee Groth, *Entrepreneurs Don't Have a Special Gene for Risk--They Come from Families with Money*, QUARTZ (July 17, 2015), https://qz.com/455109/entrepreneurs-dont-have-a-special-gene-for-risk-they-come-from-families-with-money/.

12 Abbye Atkinson, *Modifying Mortgage Discrimination in Consumer Bankruptcy*, 57 ARIZ. L. REV. 1041, 1064 (2015).

13 *See* Groth, *supra* note 11 (demonstrating the connection between family wealth and entrepreneurship); Peter Coy, *The Big Reason Whites are Richer than Blacks in America*, BLOOMBERG (Feb. 8, 2017, 5:00 AM), https://www.bloomberg.com/news/articles/2017-02-08/the-big-reason-whites-are-richer-than-blacks-in-america.

14 Coy, *supra* note 13.

15 *Id.*

16 DOROTHY A. BROWN, THE WHITENESS OF WEALTH: HOW THE TAX SYSTEM IMPOVERISHES BLACK AMERICANS--AND HOW WE CAN FIX IT (discussing systemic racism in the U.S. Tax Code);Dorothy A. Brown, *How the US Government Created an (Almost) Exclusively White Middle Class*, LITERARY HUB (Mar. 25, 2021), https://lithub.com/how-the-us-government-created-an-almost-exclusively-white-middle-class/.

17 Neil Bhutta, Andrew C. Chang, Lisa J. Dettling, Joanne W. Hsu & Julia Hewitt, *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, BD. GOVERNORS FED. RSRV. SYS. (Sept. 28, 2020), https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm.

18 *Id.*

19 Khiara M. Bridges, *Excavating Race-Based Disadvantage Among Class-Privileged People of Color*, 53 HARV. C.R.-C.L. L. REV. 65, 81 (2018).

20 Dorothy A. Brown, *Teaching Civil Rights Through the Basic Tax Course*, 54 ST. LOUIS U. L.J. 809, 819 (2010) ("In 2002, 9.4% of latinos, 11.7% of blacks and 35% of whites owned stocks and mutual funds.").

21 The term "Minority" in this Essay alludes to minorities as characterized by the U.S. Census as any race and identity bunch other than non-Hispanic white. Yet, as this Essay claims, because this broad definition masks differences in entrepreneurial inclusion, the greater focus of the Essay is on racially diverse Minorities. It is worth noting that local-enterprise development, particularly of underserved communities (known as "urban entrepreneurship") has "become a euphemism for "[M]inority entrepreneurship." *See* Susan R. Jones, *Supporting Urban Entrepreneurs: Law, Policy, and the Role of Lawyers in Small Business Development*, 30 W. NEW ENG. L. REV. 71, 72-73 (2007).

22 *See* Audrey J. Murrell & Ralph Bangs, *Reducing Disparities for Women and Minority Business in Public Contracting Work: A Call for Social Virtuousness*, 10 FRONTIERS PSYCH. 1, 1-2 (2019) (calling to use social virtuousness for creating positive social change for historically disadvantaged minority businesses).

23 *See* SUMIYE "SUE" OBUKO & MARK PLANTING, THE STATE OF MINORITY BUSINESS ENTERPRISES: AN OVERVIEW OF THE 2007 SURVEY OF BUSINESS OWNERS, FISCAL YEAR (2015), https://archive.mbda.gov/page/state-minority-business-enterprises-overview-2007-survey-business-owners-0.html (reporting 95% are minority-owned lifestyle companies started by a sole proprietor (non-SGI firms)).

24 For a review of employment discrimination from the prisms of law and economics and Critical Race theories, see, e.g., Devon W. Carbado & Mitu Gulati, *Book Review: The Law and Economics of Critical Race Theory: Crossroads, Directions, and a New Critical Race Theory*, 112 YALE L.J. 1757, 1762 (arguing that "[i]n order to increase efficiency, employers have incentives to screen prospective employees for homogeneity, and, in order to counter racial stereotypes, nonwhite employees have incentives to demonstrate a willingness and capacity to assimilate").

25 *See supra* note 21. The term "Minority entrepreneurs" in this Essay will be used hereafter to denote Black and Hispanic entrepreneurs.

26 LUCIA FOSTER & PATRICE NORMAN, THE ANNUAL SURVEY OF ENTREPRENEURS: AN INTRODUCTION 12 n.33 (2016), https://www2.census.gov/ces/wp/2015/CES-WP-15-40.pdf.

27 See *infra* Part I.

28 *Id.*; FOSTER & NORMAN, *supra* note 26.

29 *See, e.g.*, Devon W. Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. 1259, 1262 (2000) (pointing to the way Minorities "are often likely to perceive themselves as subject to negative stereotypes ... [and] feel the need to do significant amounts of 'extra' identity work to counter those stereotypes").

30 Angus Loten, *For Startups, Bootstrapped Startups Risk a Lack of Connections; Financial Self-Reliance Can Come Back to Haunt Entrepreneurs If They Suddenly Need Investors*, WALL ST. J., Feb. 5, 2015, at B5.

31 *See* Nicole S. Dandridge, *Racial Etiquette and Social Capital: Challenges Facing Black Entrepreneurs*, 32 W. NEW ENG. L. REV. 471 (2010) (suggesting certain practices have "infected our free-enterprise system with racial bias").

32 *See* Loten, *supra* note 30 (pointing to the importance of connections and introductions in the challenging reality that finding venture capital funding).

33 *See* Patrick S. Shin & Mitu Gulati, *Cultivating Inclusion*, 112 MICH. L. REV. FIRST IMPRESSIONS 117, 121 (2014); Loten*, supra* note 30.

34 Dandridge, supra note 31, at 481; ALICIA ROBB, ACCESS TO CAPITAL AMONG YOUNG FIRMS, MINORITY-OWNED FIRMS, WOMEN-OWNED FIRMS, AND HIGH-TECH FIRMS 2-3, 6-7 (2013), https://www.sba.gov/sites/default/files/files/rs403tot(2).pdf (pointing out to the difficulties for Minority-Owned Businesses to obtain outside capital).

35 *See e.g.,* William B. Gartner & Nancy M. Carter, *Entrepreneurial Behavior and Firm Organizing Processes, in* ZOLTÁN J. ÁCS & DAVID B. AUDRETSCH, HANDBOOK OF ENTREPRENEURSHIP RESEARCH 195 (2003) (defining entrepreneurship by differentiating between the creation of new organizations to maintaining operations of on-going organizations.).

36 *See* Joseph A. Schumpeter, *Economic Theory and Entrepreneurial History, in* CHANGE AND THE ENTREPRENEUR (1949), *reprinted in* JOSEPH A. SCHUMPETER, ESSAYS ON ENTREPRENEURS, INNOVATIONS, BUSINESS CYCLES, AND THE EVOLUTION OF CAPITALISM 293 (Richard V. Clemence ed., 1989)

37 *See* ZOLTÁN J. ÁCS & CATHERINE ARMINGTON, ENTREPRENEURSHIP, GEOGRAPHY, AND AMERICAN ECONOMIC GROWTH 16 (2006); PER DAVIDSSON, FRÉDÉRIC DELMAR & JOHAN WIKLUND, ENTREPRENEURSHIP AND THE GROWTH OF FIRMS 8 (2006); Zoltán J. Ács, David B. Audretsch, Pontus Braunerhjelm & Bo Carlsson, *The Missing Link: The Knowledge Filter and Entrepreneurship in Endogenous Growth* CEPR Discussion Paper No. 4783 (Dec. 2004), http://ssrn.com/abstract=667944.

38 For a literary review of these factors *see* Diego B. Avanzini, *Designing Composite Entrepreneurship Indicators: An Application Using Consensus PCA* 3 (June 20, 2009), *in* ENTREPRENEURSHIP AN ECONOMIC DEVELOPMENT: DESIGNING COMPOSITE ENTREPRENEURSHIP INDICATORS ch. 3 (Wim Naudé & Palgrave MacMillan eds., 2011), *available at* http://ssrn.com/abstract=1988954.

39 *See* DANIEL F. SPULBER, REGULATION AND MARKETS 138 (1989) ("[T]he possibility of competitive entry limits the profits of incumbent firms.").

40 *See* HERBERT HOVENKAMP, THE ANTITRUST ENTERPRISE: PRINCIPLE AND EXECUTION 54 (2009) (indicating that we should strive to assure easy entry into the market).

41 *See* Douglas Gegax & Kenneth Nowotny, *Competition and the Electric Utility Industry: An Evaluation*, 10 YALE J. ON REGUL. 63, 82 (1993) (stating the existence of competitors provides benefits markets).

42 *See* WILLIAM BAUMOL, THE FREE-MARKET INNOVATION MACHINE: ANALYZING THE GROWTH MIRACLE OF CAPITALISM 2 (2002) ("Whatever the deficiencies of the free market, it is certainly very good at one thing: the manufacture of economic growth.").

43 *See generally* PETER F. DRUCKER, INNOVATION AND ENTREPRENEURSHIP: PRACTICE AND PRINCIPLES 21 (1985) (pointing to entrepreneurship as driving economic growth); JOSEPH A. SCHUMPETER, THE THEORY OF ECONOMIC DEVELOPMENT: AN INQUIRY INTO PROFITS, CAPITAL, CREDIT, INTEREST, AND THE BUSINESS CYCLE 74 (Redvers Opie trans., 3d ed. 1949) (noting that entrepreneurship is the "fundamental phenomenon of economic development"); ISRAEL M. KIRZNER, COMPETITION AND ENTREPRENEURSHIP

81 (1978) ("[E]ntrepreneurship is important primarily in sparking economic development."); FRANK H. KNIGHT, RISK, UNCERTAINTY AND PROFIT 41 (1921) (stating that entrepreneurship has unique importance in a productive economy).

44 *See, e.g.*, NIELS BOSMA, YANA LITOVSKY, ALICIA CODURAS & JEFF SEAMAN, GEM MANUAL: A REPORT ON DESIGN, DATA, AND QUALITY CONTROL OF THE GLOBAL ENTREPRENEURSHIP MONITOR 7-9 (2012), https://www.gemconsortium.org/report/gem-manual-design-data-and-quality-control (demonstrating the contribution of entrepreneurial entities to economic growth); John Haltiwanger, Ron S. Jarmin & Javier Miranda, *Who Creates Jobs? Small Versus Large Versus Young*, 95 REV. ECON. & STAT. 347, 360 (2013) (discussing how new entrepreneurial firms contribute to job growth).

45 *See* ALEX COAD, THE GROWTH OF FIRMS, A SURVEY OF THEORIES AND EMPIRICAL EVIDENCE 77 (2009).

46 *See* Daniel F. Spulber & Christopher S. Yoo, *Mandating Access to Telecom and the Internet: The Hidden Side of Trinko*, 107 COLUM. L. REV. 1822, 1844 (2007) (noting supra-competitive returns allocate scarce network resources and provide incentives to invest).

47 *See* ZOLTÁN J. ÁCS & DAVID B. AUDRETSCH, ENTREPRENEURSHIP, INNOVATION AND TECHNOLOGICAL CHANGE 1 (2005) (demonstrating that entrepreneurship drives economic growth because entrepreneurs create new businesses, and new businesses, in turn, create jobs and increase productivity through technological change). *But see* ALGERNON AUSTIN, THE COLOR OF ENTREPRENEURSHIP: WHY THE RACIAL GAP AMONG FIRMS COSTS THE U.S. BILLIONS 4, 19-20 (2016) http://globalpolicysolutions.org/wp-content/uploads/2016/04/Color-of-Entrepreneurship-report-final.pdf (claiming free enterprise and encouraging minority entrepreneurship are not by themselves sufficient in promoting wealth equality).

48 *See supra* notes 42-46 and accompanying text.

49 FOSTER & NORMAN, *supra* note 26, at 3.

50 *See* MIKE KONCZAL & MARSHALL STEINBAUM, DECLINING ENTREPRENEURSHIP, LABOR MOBILITY, AND BUSINESS DYNAMISM: A DEMAND-SIDE APPROACH 1-2 (2016), http://rooseveltinstitute.org/wp-content/uploads/2016/07/Declining-Entrepreneurship-Labor-Mobility-and-Business-Dynamism-A-Demand-Side-Approach.pdf (arguing that slack labor markets and entrepreneurship explain the fall in job switching and a decline in geographic mobility).

51 *See generally* Mirit Eyal-Cohen, *The Cost of Inexperience*, 69 ALA. L. REV. 859, 872-80 (2018) (reviewing the literature and pointing out the effect of scale, scope, and age on the innovative nature of the firm).

52 *See* Mirit Eyal-Cohen, *Through the Lens of Innovation*, 43 FLA. ST. U. L. REV. 951, 963 (2016) (arguing firms "invest a high proportion of their income in knowledge procurement in the hope of deriving profits and expanding their labor force").

53 Zoltán Ács, *How Is Entrepreneurship Good for Economic Growth?*, 1 INNOVATIONS: TECH., GOVERNANCE, GLOBALIZATION 97, 97 (2006).

54 *See, e.g.*, John Williamson, *Profit, Growth and Sales Maximization*, 33 ECONOMICA 1, 1-2 (1966) (providing a model that measures the differences in firm behavior driven by sales maximization).

55 *See* DAVIDSSON ET AL., *supra* note 37 (exploring job growth factors).

56 *See, e.g., id.*; David J. Bryce & Jeffrey H. Dyer, *Strategies to Crack Well-Guarded Markets*, 85 HARV. BUS. REV. 84, 84 (2007) (pointing out the correlation between firm growth change in average annual sales).

57 *See* Ács, *supra* note 53.

58 *Id.* at 97, 104; *see also* Zoltán J. Ács, *"Entrepreneurial Capitalism" in Capitalist Development: Toward a Synthesis of Capitalist Development and the "Economy as a Whole", in* ENTREPRENEURSHIP, GROWTH, AND PUBLIC POLICY 319 (Zoltan J. Ács, David B. Audretsch & Robert J. Strom eds., 2009).

59 *See supra* note 23 and accompanying text.

60 *See* Rafael Efrat, *Minority Entrepreneurs in Bankruptcy*, 15 GEO. J. ON POVERTY L. & POL'Y 95, 100, 102 (2008).

61 Rohit Arora, *Examining the Funding Challenges for Black-Owned Businesses on Juneteenth*, FORBES (June 18, 2020, 10:14 AM), https://www.forbes.com/sites/rohitarora/2020/06/18/examining-the-funding-challenges--for-black-owned-businesses-on-juneteenth/?sh=66e6d6027af0.

62 *See* Buck Brown, *New Owners of Franchises Belie Mom-and-Pop Image*, WALL ST. J., Aug. 29, 1988, at 11 (arguing that during the 1990s there was a shift in franchising toward more-sophisticated buyers with proven business skills and deep pockets).

63 *See generally* Rashmi Dyal-Chand & James V. Rowan, *Developing Capabilities, Not Entrepreneurs: A New Theory for Community Economic Development*, 42 HOFSTRA L. REV. 839, 842 (2014).

64 *Id.* at 842-43; *see* Dana Thompson, *L3Cs: An Innovative Choice for Urban Entrepreneurs and Urban Revitalization*, 2 AM. U. BUS. L. REV. 115, 116 (2012).

65 *See* Stephanie Rugolo, *Increasing Entrepreneurship Is a Key to Lowering Poverty Rates*, GOLDWATER INST. (Oct. 29, 2014), https://goldwaterinstitute.org/article/increasing-entrepreneurship-is-a-key-to-lowering-2/.

66 *See* Alicia Alvarez, *Lawyers, Organizers, and Workers: Collaboration and Conflict in Worker Cooperative Development*, 24 GEO. J. ON POVERTY L. & POL'Y 353, 353 (2017) ("Entrepreneurship has been the centerpiece of community economic development's poverty alleviation efforts.").

67 *See* Lynnise E. Phillips Pantin, *The Wealth Gap and the Racial Disparities in the Startup Ecosystem*, 62 ST. LOUIS U. L.J. 419, 422, 424-26, 428 (2018).

68 *Id.* at 419, 423-24.

69 *See* AUSTIN, *supra* note 47 (discussing ways to promote equal opportunity for Minorities).

70 See *supra* note 2 and accompanying text.

71 *See* Seung-Hyun Lee, Yasuhiro Yamakawa & Mike W. Peng, *Entrepreneurship and the Barrier to Exit: How Does an Entrepreneur-Friendly Bankruptcy Law Affect Entrepreneurship Development at a Societal Level?* 9 (SBA, Working Paper No. SBAHQ-06-M-0536, 2008), http://core.ac.uk/download/pdf/7372321.pdf (pointing to the correlation between entrepreneurship and bankruptcy rates).

72 *See* D. Gordon Smith & Darian M. Ibrahim, *Law and Entrepreneurial Opportunities*, 98 CORNELL L. REV. 1533, 1536 (2013) ("[L]imited liability and asset partitioning--*reduce the costs of entrepreneurial action and failure*, thus emboldening entrepreneurs to exploit opportunities.").

73 *See* Jones, *supra* note 21, at 74-75.

74 *See* W. Sherman Rogers, *The Black Quest for Economic Liberty: Legal, Historical, and Related Considerations*, 48 HOW. L.J. 1, 10 (2004) (reviewing the history of Black entrepreneurs).

75 *See, e.g.*, Hannah Knowles, *Number of Working Black Business Owners Falls 40 Percent, Far More Than Other Groups Amid Coronavirus*, WASH. POST (May 25, 2020, 8:00 AM), https://www.washingtonpost.com/business/2020/05/25/

black-minority-business-owners-coronavirus/ ("[M]inority-owned businesses have suffered disproportionately in a crisis that's also killing nonwhite Americans at higher rates and eliminating more of their jobs.").

76 *See generally* DOUGLAS G. BAIRD, ELEMENTS OF BANKRUPTCY 30-59 (6th ed. 2014).

77 For example, to be able to qualify for 8(a) SBA government contract program the Minority entrepreneur needs to be in "good standing." What are the basic requirements a concern must meet for the 8(a) BD program?, 76 Fed. Reg. 8,254 (Feb. 11, 2011) (codified at 13 C.F.R. § 124.101).

78 *See* PHILIP J. ADELMAN & ALAN M. MARKS, ENTREPRENEURIAL FINANCE: FINANCE FOR SMALL BUSINESS 162-63 (1998) (pointing to hurdles in establishment of line of credit to protect against cash flow deficiencies).

79 *See, e.g.*, John M. Czarnetzky, *Time, Uncertainty, and the Law of Corporate Reorganizations*, 67 FORDHAM L. REV. 2939, 2980-81 (1999) (generally arguing bankruptcy rules are not useful in the entrepreneurial context).

80 13 CFR § 124.101 (2020).

81 *See* Efrat, *supra* note 60, at 122. Furthermore, Minorities in bankruptcy procedures report different experiences than their White counterparts. *See* Pamela Foohey, *Lender Discrimination, Black Churches, and Bankruptcy*, 54 HOUS. L. REV. 1079, 1098 (2017) ("[i]t appears that some attorneys steer their Black clients to Chapter 13 while counseling similarly situated white clients to file under Chapter 7. Attorneys' responses to an experimental vignette designed by Jean Braucher, Dov Cohen, and Robert Lawless to ascertain how attorneys guide a debtor toward a particular bankruptcy Chapter revealed that, on average, attorneys seemed to want Black clients to "earn" their bankruptcy discharge.").

82 *Id.* at 121-22 (demonstrating that, counterintuitively, minority business owners are not overrepresented in the bankruptcy sample).

83 *Id.* at 123-24.

84 *Id.* at 100 (containing research data obtained in 2005 and 2006 from surveys completed by bankruptcy petitioners in the Central District of California San Fernando Valley Division).

85 *See* Alicia M. Robb & Robert W. Fairlie, *Access to Financial Capital Among U.S. Businesses: The Case of African American Firms*, 613 ANNALS AM. ACAD. POL. & SOC. SCI., 47, 49, 60, 63, 65 (2007) (discussing issues in self-financing and performance of Black-owned business).

86 *See, e.g.*, Rory Van Loo, *A Tale of Two Debtors: Bankruptcy Disparities by Race*, 72 ALA. L. REV. 231, 232-33 (2009) (reviewing the disparate impact of race on bankruptcy outcomes).

87 *See* Jesse P. Houchens, Comment, *Minority Entrepreneurs and Fast Failure*, 32 BYU J. PUB. L. 257, 280 (2018) (arguing Minority businesses are subject to discriminatory practices that contributed to their higher failure rates).

88 *See* Mehrsa Baradaran, *Jim Crow Credit*, 9 U.C. IRVINE L. REV. 887, 887-88, 939 (2019) (challenging a long-standing banking myth that small community banking and microfinance are the answer for marginalized communities).

89 *Id.* at 939.

90 *See Testimony of Mehrsa Baradaran Before the U.S. S. Comm. on Banking, Hous., & Cmty. Affs*. 2-3 (2019), https://www.banking.senate.gov/imo/media/doc/Baradaran%20Testimony%207-30-19.pdf.

91 RICHARD H. THALER & CASS R. SUNSTEIN, NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS 136 (2008).

92 *See* Peter Eavis, *Race Strongly Influences Mortgage Lending in St. Louis, Study Finds*, N.Y. TIMES (July 19, 2016), https://www.nytimes.com/2016/07/19/business/dealbook/race-strongly-influences-mortgage-lending-in-st-louis-study-finds.html.

93 Baradaran, *supra* note 88, at 939.

94 *Id.* at 939-40.

95 *Id.* at 940.

96 Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. 101-73, § 308, 103 Stat. 183, 353 (1989).

97 *See* Baradaran, *supra* note 88, at 940-41.

98 *See id.* at 941.

99 *See id.*

100 *Id.*

101 *See* FOSTER & NORMAN, *supra* note 26, at 3-4.

102 Pantin, *supra* note 67, at 428.

103 *See* Houchens, *supra* note 87, at 283-84.

104 *See* David G. Blanchflower, Phillip B. Levine & David J. Zimmerman, *Discrimination in the Small-Business Credit Market*, 85 REV. ECON. & STAT. 930, 930 (2003) (demonstrating that Black, Hispanic, and Asian firm owners pay higher interest rates and are often denied financing).

105 *See* Houchens, *supra* note 87, at 284.

106 Efrat, *supra* note 60, at 95.

107 *See* Alicia Robb, *Access to Capital Among Young Firms, Minority-Owned Firms, Women-Owned Firms, and High-Tech Firms* 4-5 (SBA, Working Paper No. SBAHQ-11-M-0203, 2013), https://www.sba.gov/sites/default/files/files/rs403tot(2).pdf ("[M]uch of the financial capital used to start businesses comes from the owners themselves.").

108 *See, e.g.*, Andrew Wong, *Angel Finance: The Other Venture Capital, in* VENTURE CAPITAL 71, 73 (Douglas Cumming ed., 2010) (noting angel investors in many cases restrict limit their investments to firms within a three-hour drive from home).

109 *See* Michael P. Seng, *Restorative Justice: A Model for Conciliating Fair Housing Disputes*, 21 J. L. Society 63, 69-70 (2021) (describing the history of discrimination and restrictive racial covenants on residential properties).

110 EWING MARION KAUFFMAN FOUND., STATE OF ENTREPRENEURSHIP, ZERO BARRIERS: THREE MEGA TRENDS SHAPING THE FUTURE OF ENTREPRENEURSHIP 3 (2017), https://www.kauffman.org/wp-content/uploads/2019/12/state_of_entrepreneurship_address_report_2017.pdf ("[I]f minorities started and owned businesses at the same rate as non-minorities do, the United States would have more than 1 million additional employer businesses and approximately an extra 9.5 million jobs in the economy."). *But see* C. Steven Bradford, *Crowdfunding and the Federal Securities Laws*, 2012 COLUM. BUS. L. REV. 1, 104 (2012) ("Crowdfunding ... gives poorer entrepreneurs whose friends and family lack the wealth to provide seed capital somewhere else to turn.").

111 *See, e.g.*, Andrew A. Schwartz, *The Gatekeepers of Crowdfunding*, 75 WASH. & LEE L. REV. 885 (2018) (providing an empirical analysis of the two core policy goals of securities crowdfunding inclusivity and efficiency).

112 *Id.* at 921 (pointing to the need to consciously trade off inclusivity and efficiency in crowdfunding).

113 *See* HABIB JAMAL, CROWDFUND CAP. ADVISORS, CROWDFUNDING'S POTENTIAL FOR MINORITY AND WOMEN OWNED ENTERPRISES (2014), https://www.scribd.com/document/235308665/Crowdfunding-s-Potential-for-Minority-and-Women-Owned-Enterprises (describing the low rate of businesses funded by women and Minorities).

114 *See* Scott Shane, *More African-Americans Are Becoming Entrepreneurs, But Gap Remains*, SMALL BIZ TRENDS (Nov. 2, 2015), https://smallbiztrends.com/2015/11/african-american-entrepreneurs-survey.html (noting that the number of Minority-Owned Businesses rose from 7.1% in 2007 to 9.4% in 2012).

115 STATE OF ENTREPRENEURSHIP, *supra* note 110.

116 Shane, *supra* note 114 ("In 2012, the average non-employer headed by a white American had sales of $50,900, while that of the average non-employer headed by an African-American had sales of $19,000.").

117 *Serious Help May Be on the Way for America's Black Entrepreneurs, Will Banks and Biden Start to Level the Playing Field?*, ECONOMIST (Dec. 12, 2020), https://www.economist.com/united-states/2020/12/12/serious-help-may-be-on-the-way-for-americas-black-entrepreneurs.

118 *Survey of Business Owners (SBO)--Survey Results: 2012*, U.S. CENSUS BUREAU (Feb. 23, 2016), https://www.census.gov/library/publications/2012/econ/2012-sbo.html; Shane, *supra* note 114 ("The average non-employer business headed by a [w]hite American is 2.7 times larger than the average non-employer business headed by an African-American."); *see* Fetsch, *supra* note 8, at 11.

119 Fetsch, *supra* note 8, at 14; STATE OF ENTREPRENEURSHIP, *supra* note 110, at 14.

120 STATE OF ENTREPRENEURSHIP, *supra* note 110, at 17.

121 *See, e.g.*, Thomas O. McGarity & Ruth Ruttenberg, *Counting the Cost of Health, Safety and Environmental Regulation*, 80 TEX. L. REV. 1997, 1998-2000 (2002) (providing an empirical review of regulatory impact analyses).

122 Eyal-Cohen, *supra* note 51, at 861.

123 *Id.* at 866.

124 *See, e.g.*, C. Steven Bradford, *Does Size Matter? An Economic Analysis of Small Business Exemptions from Regulation*, 8 J. SMALL & EMERGING BUS. L. 1, 8 (2004) (discussing the effect of administrative requirements on small business).

125 OFF. MGMT. & BUDGET, INFORMATION COLLECTION BUDGET OF THE U.S. GOVERNMENT 2 (2017), https://www.whitehouse.gov/wp-content/uploads/2020/02/icb_2017-FINAL-1.pdf.

126 *See, e.g.*, William J. Baumol & J. Gregory Sidak, *The Pricing of Inputs Sold to Competitors: Rejoinder and Epilogue*, 12 YALE J. ON REGUL. 177, 185 (1995) (defining opportunity costs from regulation).

127 Eyal-Cohen, *supra* note 51, at 882 (citation omitted).

128 *See, e.g.*, Serguey Braguinsky, Steven Klepper & Atsushi Ohyama, *High-Tech Entrepreneurship*, 55 J.L. & ECON. 869, 881 (2012) (pointing to the level of education of entrepreneurs regarding regulatory compliance).

129 Eyal-Cohen, *supra* note 51, at 871 (defining economies of experience and pointing to the regressive effects of regulatory costs on newcomers and entities that lack economies of experience).

130 *See* Braguinsky et al., *supra* note 128, at 881 (pointing to the important effects of the education level of entrepreneurs).

131 ROBB, *supra* note 34, at 11.

132 *Id.* at tbl.2.

133 *Id.* (including an SBA study demonstrating minority entrepreneurs have lower business education, college degrees, and managerial experience).

134 *See* Nicole Dieker, *Why the Racial Wealth Gap Exists, and What You Can Do About It*, HAVEN LIFE (July 10, 2020), https://havenlife.com/blog/racial-wealth-gap/. *See also* Dorothy A. Brown, *Three Ways Tax Policies Increase the Black-White Racial Wealth Gap*, PROMARKET (May 18, 2021), https://promarket.org/2021/05/18/taxes-increase-racial-wealth-gap-america-inheritance/ (noting Black college graduates are 40% likely to have graduate school debt compared to 22% for their white peers).

135 *See, e.g.*, MICHAEL PARKIN, MELANIE POWELL & KENT MATTHEWS, ECONOMICS (2003) (pointing to the effect of licensing regulations on entrepreneurship).

136 *See* B. Peter Pashigian, *A Theory of Prevention and Legal Defense with an Application to the Legal Costs of Companies*, 25 J.L. & ECON. 247, 261 (1982) (demonstrating empirically economies of scale in legal costs of top 750 Fortune companies).

137 *See* Mary K. Olson, *Explaining Regulatory Behavior in the FDA: Political Control vs. Agency Discretion, in* 7 ADVANCES IN THE STUDY OF ENTREPRENEURSHIP, INNOVATION AND ECONOMIC GROWTH 71, 73 (Gary D. Libecap ed., 1996) (arguing excessive compliance barriers pose threats to the development of businesses).

138 *See* Stephen Clowney, *Invisible Businessman: Undermining Black Enterprise with Land Use Rules*, 2009 U. ILL. L. REV. 1061, 1065 (2009) (arguing that zoning regulations impress unique and disproportionate harms on African American merchants).

139 *See* Chris Burrell, *Disparities in Government Contracting Hurt Minority-Owned Businesses*, NPR (Feb. 20, 2020, 5:00 AM), https://www.npr.org/2020/02/20/807126443/disparities-in-government-contracting-hurt-minority-owned-businesses; MARÍA E. ENCHAUTEGUI, MICHAEL FIX, PAMELA LOPREST, SARAH C. VON DER LIPPE & DOUGLAS WISSOKER, DO MINORITY OWNED BUSINESSES GET A FAIR SHARE OF GOVERNMENT CONTRACTS? (1997), https://www.urban.org/research/publication/do-minority-owned-businesses-get-fair-share-government-contracts.

140 *See id.*

141 *See* Christoph Müller & André Nijsen, *Development of an RIA Coordination with a Focus on SME and Start-Ups, in* BUSINESS REGULATION AND PUBLIC POLICY 282 (A. Nijsen, John Hudson, Christoph Müller, Kees van Paridon & R. Thurik eds., 2009) (defining "irritation costs" as "the effect of regulation hindering the entrepreneur at the highest degree in his activities").

142 *See, e.g.*, Arnold C. Harberger, *The Incidence of the Corporation Income Tax*, 70 J. POL. ECON. 215 (1962) (discussing the incidence of corporate tax).

143 *See, e.g.*, Ian W.H. Parry, Hilary Sigman, Margaret Walls & Roberton C. Williams III, *The Incidence of Pollution Control Policies, in* THE INTERNATIONAL YEARBOOK OF ENVIRONMENTAL AND RESOURCE ECONOMICS 2006/2007, at 19 (Tom Tietenberg & Henk Folmer eds., 2006) (arguing that low-income households bear a disproportionate share of the costs of environmental regulation).

144 Eyal-Cohen, *supra* note 51, at 896-97 ("[While] it is challenging to measure the effect of an entire regulatory system, ... it is worthwhile to consider the *potential* incidence of regulation on a cohort of regulated and unregulated affiliates, even if measuring it is cumbersome.").

145 For the definition of "social loss" see Daniel J. Gifford, *The Antitrust State-Action Doctrine After* Fisher v. Berkeley, 39 VAND. L. REV. 1257, 1295-96 (1986) (describing "social loss" as what "would have been produced or sold in a

competitive market but that are not produced because of the anticompetitive effects of the law of a state or a political subdivision thereof").

146 On the effect of regulation on society, see D. Bruce La Pierre, *Political Accountability in the National Political Process--The Alternative to Judicial Review of Federalism Issues*, 80 NW. U. L. REV. 577, 648 (1985).

147 Timothy Bates, William E. Jackson III & James H. Johnson Jr., *Advancing Research on Minority Entrepreneurship*, ANNALS AM. ACAD. POL. & SOC. SCI. 10, 10 (2007).

148 *See* Houchens, *supra* note 87, at 280.

149 This is similar to the small business regulatory flexibility analysis in 5 U.S.C. § 602. *See generally* Paul Verkuil, *A Critical Guide to the Regulatory Flexibility Act*, 1982 DUKE L.J. 213, 216-26 (1982) (reviewing the requirements under the act).

150 *See* Mirit Eyal-Cohen, *Why Is Small Business the Chief Business of Congress?*, 43 RUTGERS L.J. 1, 14 (detailing historical consequences that preceded small business deregulation).

151 *See generally* Mirit Eyal-Cohen, *Down-Sizing the "Little Guy" Myth in Legal Definitions*, 98 IOWA L. REV. 1041, 1042 (2013) (reviewing small business deregulation in various areas of the law).

152 For a discussion on the constitutionality of race-based classifications, see Charlie Penrod & Christopher L. Atkinson, Rothe Development v. U.S. Department of Defense*: Overcomplicating the Uncomplicated*, 25 TEX. J. C.L. & C.R. 81, 82 (2019) (criticizing a recent decision in the case of *Rothe Development* that held that using race as a factor in SBA Minority contracting does not make the consideration race-based, and for negating the Supreme Court's decision in *Adarand Constructors, Inc. v. Pena* holding race-based classifications used in the selection process for federal contractors must pass strict scrutiny to survive).

153 *See generally* Richard J. Pierce, Jr., *Small Is Not Beautiful: The Case Against Special Regulatory Treatment of Small Firm*, 50 ADMIN. L. REV. 537, 542-43 (1998) (claiming small business exemptions are inefficient).

154 *See, e.g.*, Thomas Lee Hazen, *Social Networks and the Securities Laws--Why the Specially Tailored Exemption Must Be Conditioned on Meaningful Disclosure*, 90 N.C. L. REV. 1735, 1745-46 (2012) (criticizing the various small business exemptions in securities law); Pierce, *supra* note 153, at 537, 558 (noting that small businesses are responsible for more cases of discrimination).

155 W. Michael Schuster R., R. Evan Davis, Kourtenay Schley & Julie Ravenscraft, *An Empirical Study of Patent Grant Rates as a Function of Race and Gender*, 57 AM. BUS. L.J. 281, 281 (2020) (examining the rate at which patent applications are granted as a function of the inventor's race and gender).

156 *See* Miriam Marcowitz-Bitton & Emily Michiko Morris, *The Distributive Effects of IP Registration*, 23 STAN. TECH. L. REV. 306, 349 (2020) (exploring the distributive implications of such two-tiered regimes of registered and unregistered rights).

157 Dorothy A. Brown, *Diversity and the High-Tech Industry*, 6 ALA. C.R. & C.L. L. REV. 95, 105 (2014).

158 ENCHAUTEGUI ET AL., *supra* note 139, at 10.

159 *See, e.g.*, Dariam M. Ibrahim, *Financing the Next Silicon Valley,* 87 WASH. U. L. REV. 717, 726 (2010) (naming Stanford Research Park as an example for academic-industrial cooperation).

160 *See African American Entrepreneurs Association: Advocate, Educate, Connect*, AFRICAN AM. ENTREPRENEURS ASS'N, https://aaeassociation.org/ (last visited Aug. 3, 2021); *About Us*, NAT'L HISPANIC BUS. GRP., https://www.nhbg.org/ (last visited Aug. 3, 2021).

161 *See generally* Brad Bernthal, *Investment Accelerators*, 21 STAN. J.L. BUS. & FIN. 139, 139 (2016) (noting the role of accelerators as information networks and institutions that support entrepreneurs.).

162 *About Us*, INT'L BUS. INNOVATION ASS'N, https://inbia.org/about/ (last visited Aug. 3, 2021).

163 *See* C. Scott Dempwolf, Jennifer Auer & Michelle D'Ippolito, *Innovation Accelerators: Defining Characteristics Among Startup Assistance Organizations* 23 (SBA, Working Paper No. SBAHQ-13-M-0197, 2014), https://www.sba.gov/sites/default/files/rs425-Innovation-Accelerators-Report-FINAL.pdf.

164 It is worth noting that incubators and accelerators are distinguished from shared working environments that offer entrepreneurs and other professionals business services and networking opportunities in a space shared with others similar entrepreneurs. *Id.* at 10.

165 ROBB, *supra* note 34, at 11.

166 *See* Wanda Eugene, Yerika Jimenez, Ekaterina Muravevskaia, Carmen Lopez-Ramirez & Juan Gilbert, *Moving Beyond Stuck: A Design-Based Approach to Enhancing Minority Tech Startup Launches, in* HCI INTERNATIONAL 2020 (Constantine Stephanidis, Margherita Antona & Stavroula Ntoa eds., 2020) (claiming Black entrepreneurs do not have access to venture capital and get "stuck from the start").

167 *See* TIFFIANY HOWARD, NAOMI SMITH & UJU NWAIGWE, BANKS AND THE BLACK COMMUNITY, WHAT CAN MAJOR COMMERCIAL AND RETAIL BANKING INSTITUTIONS DO TO BETTER SUPPORT BLACK ENTREPRENEURS AND BUSINESSES IN THE U.S.? (2020), http://thoward.faculty.unlv.edu/wp-content/uploads/2020/06/BOA-REPORT-FINAL_2020.pdf.

168 *See* Eugene et al., *supra* note 166, at 19 (claiming Black entrepreneurs do not have access to venture capital and get "stuck from the start").

169 *Id.* at 20.

170 Dorothy A. Brown, *Fighting Racism in the Twenty-First Century*, 61 WASH. & LEE L. REV. 1485, 1489-90 (2004).

171 *See* Jennifer Owens, Alexander Riehm & Flavius R. W. Lilly, *Social Innovation Microgrants as Catalysts to Community Development in Economically Marginalized Urban Communities*, 18 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 352, 360 (2018) (describing the effect of microgrants on urban communities).

172 For an updated list of such organizations, see *Startup Ecosystem Canvas: Black Americans*, FOUNDER INST., https://fi.co/insight/black-american-startup-resource-list-200-accelerators-incubators-investors-and-more (last visited Aug. 3, 2021).

173 Monica Melton, *Pharrell Launches Black Ambition, An Accelerator for Black and Latinx Entrepreneurs*, FORBES (Dec 2, 2020).), https://www.forbes.com/sites/monicamelton/2020/12/02/pharrell-launches-black-ambition-an-accelerator-for-black-and-latinx-entrepreneurs/?sh=2f3c21f7461e.

174 *See* INITIATIVE FOR A COMPETITIVE INNER CITY ("ICIC"), AMERICAN COMMUNITY SURVEY 1 (2015) (examining 261 incubators and pointing out that only 24% are in inner cities, although they make up only 10% of the population nationwide and include 21% of minorities).

175 For example, in Detroit, an expected 86% (1,237) of Minority Firms are located downtown. Detroit Kitchen Connect and TechTown Detroit are incubators with 90% Minority entrepreneurs supported via various mentorship and acceleration programs. *See* ICIC, CREATING INCLUSIVE HIGH-TECH INCUBATORS AND ACCELERATORS: STRATEGIES TO INCREASE PARTICIPATION RATES OF WOMEN AND MINORITY ENTREPRENEURS 9, 14 (2016), http://icic.org/wp-content/uploads/2016/05/ICIC_JPMC_Incubators_post.pdf?58f619.

176 *See id.*

177 *Id.*

178 WILLIAM H. FREY, BROOKINGS INST. METRO. POL'Y PROGRAM, THE MILLENNIAL GENERATION: A DEMOGRAPHIC BRIDGE TO AMERICA'S DIVERSE FUTURE 2 (2018), https://www.brookings.edu/research/millennials/.

179 Owens et al. *supra* note 171, at 359-60 ("[T]he entrepreneurship-enhancing effect of community social capital is stronger for white than for minority individuals." (quoting Seok-Woo Kwon, Colleen M. Heflin & Martin Ruef, *Community Social Capital and Entrepreneurship*, 78 AM. SOCIO. REV. 980, 986 (2013))).

180 ENCHAUTEGUI ET AL., *supra* note 139, at 15.

181 *See, e.g., Office of Small and Disadvantaged Business Utilization*, U.S. DEP'T COM., https://www.commerce.gov/bureaus-and-offices/os/cfo-asa/small-and-disadvantaged-business-utilization (last visited Apr. 25, 2021).

182 *See* Oswald Jones & Dilani Jayawarna, *Resourcing New Businesses: Social Networks, Bootstrapping and Firm Performance*, 12 VENTURE CAP. 127, 128 (2010) (investigating how social networks can influence business performance).

183 *See* Jeff Schwartz, *The Twilight of Equity Liquidity*, 34 CARDOZO L. REV. 531, 580 (2012) (noting that young firms suffer higher compliance costs up-front).

184 *See, e.g.*, Kristine M. Kuhn & Tera L. Galloway, *With a Little Help from My Competitors: Peer Networking Among Artisan Entrepreneurs*, 39 ENTREPRENEURSHIP THEORY & PRAC. 571 (2015) (surveying entrepreneurs and showing types of advice and support they value and provide to others).

185 Devon Carbado & Mitu Gulati, *Race to the Top of the Corporate Ladder: What Minorities Do When They Get There*, 61 WASH. & LEE L. REV. 1645, 1668 (2004).

186 *See Who We Are*, MINORITY BUS. DEV. AGENCY, https://www.mbda.gov/who-we-are/overview (last visited Aug. 3, 2021).

187 *See* CONNOR MAXWELL, DARRICK HAMILTON, ANDRE M. PERRY & DANYELLE SOLOMON, A BLUEPRINT FOR REVAMPING THE MINORITY BUSINESS DEVELOPMENT AGENCY (2020), https://www.americanprogress.org/issues/race/reports/2020/07/31/488423/blueprint-revamping-minority-business-development-agency/ ("[T]he MBDA's effectiveness is currently limited by narrow authority and meager funding.").

188 *Id.* (criticizing the MBDA inefficiency due to lack of funding).

189 *Id.* at 1-2 ("Under the current congressional appropriations, the president need only include language in his annual budget proposal asking for a significant increase in funding," which can be channeled to different projects).

190 13 CFR § 124.104.(a) (2018).

191 *See supra* notes 8-14 and accompanying text.

192 Owens et al., *supra* note 171, at 359.

193 Julia F. Hollresier, Note, *Closing the Racial Gap in Financial Services: Balancing Algorithmic Opportunity with Legal Limitations*, 105 CORNELL L. REV. 1233, 1234 (2020) (arguing that lending algorithms are discriminatory and contribute to the racial gap).

194 *See* Baradaran, *supra* note 88, at 911.

195 *Id.* at 909.

196 Hollresier, *supra* note 193, at 1255.

197 *Id.* at 1244 (quoting Linda E. Fisher, *Target Marketing of Subprime Loans: Racialized Consumer Fraud & Reverse Redlining*, 18 J.L. & POL'Y 121, 129 (2009)).

198 *Id.* at 1245.

199 John P. Relman, *Foreclosures, Integration, and the Future of the Fair Housing Act*, 41 IND. L. REV. 629, 637 (2008).

200 *Types of 7a Loans*, SMALL BUS. ADMIN., https://www.sba.gov/partners/lenders/7a-loan-program/types-7a-loans (last visited Aug. 3, 2021).

201 *Pilot Loan Programs*, SMALL BUS. ADMIN., https://www.sba.gov/partners/lenders/7a-loan-program/pilot-loan-programs (last visited Aug. 3, 2021).

202 *Id.*; *Microloan Program*, SMALL BUS. ADMIN., https://www.sba.gov/loans-grants/see-what-sba-offers/sba-loan-programs/microloan-program%20 (last visited Aug. 3, 2021).

203 Prioritizing Minority owners has been recently held unconstitutional in the case of *Greer's Ranch Café v. Guzman*, 2021 U.S. Dist. LEXIS 102243, 1, F. Supp. 3d, 2021 WL 2092995 (2021) (holding unconstitutional section 5003 of the American Rescue Plan Act that appropriates $28.6 billion to create the Restaurant Revitalization Fund for those harmed by Covid-19 pandemic administered by the Small Business Administration that prioritize in the first 21 days of the program restaurants according to the race and sex of the owner.)

204 Owens et al., *supra* note 171, at 360 ("Given the importance of social capital and networks in supporting innovation and the role of the household wealth and informal, friends and family funding for new ideas, there is a strong case for microgrants to supplement these funds at the earliest stage of an innovation's development.").

205 *See* Kristin N. Johnson, *Automating the Risk of Bias*, 87 GEO. WASH. L. REV. 101 (2019) (pointing to the tension between attaining efficiency and the fact that automated decision-making platforms may demonstrate biases, but do not democratize markets and increase exclusion of minority participants); Hollreiser, *supra* note 193, at 1248-49.

206 *See, e.g.*, Solon Barocas & Andrew D. Selbst, *Big Data's Disparate Impact*, 104 CALIF. L. REV. 671, 732 (2016) (calling for caution in the use of data mining, due the risks of inherent prejudices against members of protected classes).

207 Hollreiser, *supra* note 193, at 1255; Baradaran, *supra* note 88, at 940.

208 Hollreiser, *supra* note 193, at 1235.

209 *Id.* at 1255; *see also* Baradaran, *supra* note 88 (discussing the experience of Minority entrepreneurs in the U.S. in the last fifty years).

210 Owens et al., *supra* note 171, at 352.

211 An Act to Amend the Small Business Act and the Small Business Investment Act of 1958, Pub. L. No. 95-507, 92 Stat. 1757, 1760 (1978).

212 *See* Bessie House-Soremekum, *The Impact of Minority Set-Aside Programs on Black Business Success in Cleveland, Ohio: Implications for Public Policy*, 30 W. NEW ENG. L. REV. 19, 28 (2007) (providing a historical review of government set-aside programs).

213 In 1978, Congress amended the Small Business Act of 1953 and the Small Business Investment Act of 1958 to require specific set-aside goals. An Act to Amend Small Business Act and the Small Business Investment Act of 1958, Pub. L. No. 95-507, 92 Stat. 1757 (1978).

214 *See* Section 8(a) of the Small Business Act, 15 U.S.C. § 637; 13 C.F.R. §§ 121, 124 & 134 (2011) (authorizing the SBA to make contracts with other Federal agencies to furnish equipment, materials, or services and subsequently delegate the provision of these contracts to qualified minority-owned firms).

215 63 Fed. Reg. 35,740 (June 30, 1998) (codified at 13 C.F.R. pt. 124).

216 *See Set-Aside Procurement*, SMALL BUS. ADMIN., https://www.sba.gov/partners/contracting-officials/small-business-procurement/set-aside-procurement (last visited Aug. 3, 2021).

217 ROBERT JAY DILGER, CONG. RSCH. SERV., R44844, SBA'S "8(A) PROGRAM": OVERVIEW, HISTORY, AND CURRENT ISSUES 1 (2021).

218 13 C.F.R. § 124.101. (2020).

219 13 C.F.R § 124.104(c)(2) (2020).

220 *Id.*

221 *Id.*

222 Dennis E. Black, *Effectiveness of the Mandatory Minority Business Set-Aside Contracting Goals: A Regression Analysis*, 7 EVALUATION REV. 321, 322 (1983).

223 13 C.F.R. § 124.402 (2020). The business plan must contain "[a] detailed description of any products currently being produced and any services currently being performed by the concern, as well as any future plans to enter into one or more new markets;" "[a]n analysis of market potential, competitive environment;" and "[a]n analysis of the concern's strengths and weaknesses, with particular attention on ways to correct any financial, managerial, technical, or work force conditions which could impede the concern from receiving and performing non-8(a) contracts," among other requirements. *Id.*

224 13 C.F.R. § 124.103 (2020). "Socially Disadvantaged" individuals are those who have been subjected to racial or ethnic prejudice or cultural bias due to their identities as members of certain groups. *Id.* Their social disadvantage must stem from circumstances beyond their control. *Id.* The rule includes a rebuttable presumption that certain listed individuals are socially disadvantaged, including Black Americans, Hispanic Americans, Native Americans, and Asian Pacific Americans, among others. *Id.* Individuals who are *not* members of the explicitly designated groups can be considered socially disadvantaged, but they must demonstrate that they have suffered from social disadvantage that is chronic and substantial in addition to meeting other enumerated criteria. *Id.*

225 For a list of what a concern must submit to apply to the 8(a) BD program, see 13 C.F.R. § 124.203 (2020) (detailing the information and documentation each 8(a) BD firm must submit in support of its application for admission to the SBA 8(a) BD program, including, but not limited to, financial data and statements, copies of filed federal personal and business tax returns, individual and business bank statements, personal history statements, etc.).

226 *See* 13 C.F.R. § 124.402 (2020); GA. DEP'T TRANSP., GEORGIA UNIFIED CERTIFICATION PROGRAM: DISADVANTAGED BUSINESS ENTERPRISE 2019 PROGRAM PLAN 16 (2019), http://www.dot.ga.gov/PartnerSmart/Business/Documents/Plan/Disadvantaged%20Business%C20Enterprise%C202019%C20Program%20Plan-Signed.pdf.

227 *Appendix C to Part 26 - DBE Business Development Program Guidelines*, U.S. DEP'T TRANSP., https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/appendix-c-to-part-26-dbe-business-development-program-guidelines (last visited Aug. 3, 2021).

228 Hongtao Dang & Jennifer S. Shane, *Fraud and Abuse Schemes in the Disadvantaged Business Enterprise Program*, 12 J. LEGAL AFF. & DISP. RESOL. ENG'G & CONSTR. 1, 1 (2020) (discussing fraud and inefficiency of the program).

229 *Id.*

230 Alysha Sideman, *Women, Minorities Pay a High Price for Procurement Gains*, WASH. TECH. DAILY (Mar. 6, 2012), https://washingtontechnology.com/articles/2012/03/06/women-minority-contracting-study.aspx (citing an American Express survey finding that, for Minorities, the annual investment made to seek federal contracts was 35% higher than for the average small firm with the same credentials).

231 *Id.*; *cf.* House-Soremekum, *supra* note 212 (discussing the large number of Minority and women business owners who remain uncertified in Cleveland, Ohio, and how it affects their success).

232 *See* Chris Burrell, *Disparities in Government Contracting Hurt Minority-Owned Businesses*, NPR (Feb. 20, 2020), https://www.npr.org/2020/02/20/807126443/disparities-in-government-contracting-hurt-minority-owned-businesses (citing to a federal study by the MBDA in early 2017 that determined no increase in Minority-Owned Business participation in public contracts).

233 *Id.*; *see also* Mattie Quinn, *Governments Struggle to Root Out Fake Minority Contractors*, GOVERNING (Apr. 2016), https://www.governing.com/topics/mgmt/gov-women-minority-contracting.html (claiming that states and cities want to support women- and Minority-Owned Businesses but that they often do not look into who they are really paying).

234 DILGER, *supra* note 217, at 33.

235 For example, the SBA excluded equity in a primary residence from the calculation of an individual's net worth. *See* Dang & Shane, *supra* note 228 (reviewing the past and present of the DBE program).

236 House-Soremekum, *supra* note 212, at 33.

237 *See* MINORITY BUS. DEV. AGENCY, CONTRACTING BARRIERS AND FACTORS AFFECTING MINORITY BUSINESS ENTERPRISES: A REVIEW OF EXISTING DISPARITY STUDIES 11, 37 (2016), https://www.mbda.gov/sites/default/files/migrated/files-attachments/ContractingBarriers_AReviewofExistingDisparityStudies.pdf; Dennis E. Black, *Effectiveness of the Mandatory Minority Business Set-Aside Contracting Goals: A Regression Analysis*, 7 EVALUATION REV. 321, 330 (1983) (concluding Minority set-asides have no statistically significant positive effect in increasing federal contract dollars to Minority-Owned Businesses).

238 There are currently two SBA programs designed to support 8(a) firms: the 7(j) Management and Technical Assistance Program and the 8(a) Mentor-Protégé Program. *See* DILGER, *supra* note 217, at 1.

239 See *supra* Part II.

240 Van Loo, *supra* note 86, at 233.

241 *See* Kathleen C. Engel & Patricia A. McCoy, *A Tale of Three Markets: The Law and Economics of Predatory Lending*, 80 TEX. L. REV. 1255 (2002) (discussing the origins of predatory lending and its negative social consequences).

242 Elizabeth Warren, *The Economics of Race: When Making It to the Middle Is Not Enough*, 61 WASH. & LEE L. REV. 1777, 1797 (2004).

243 Engel & McCoy, *supra* note 241, at 1281.

244 *Id.*

245 Andrew Kuntz, Note, *Sub-Prime Protection: The Inadequacies of the Federal Response to the Economic Crisis in Protecting Minorities from Predatory Lending*, 13 RUTGERS RACE & L. REV. 219, 228 (2011).

246 *See* Cassandra Jones Havard, *Democratizing Credit: Examining the Structural Inequities of Subprime Lending*, 56 SYRACUSE L. REV. 233, 261 (2006).

247 Abbye Atkinson, *Rethinking Credit as Social Provision*, 71 STAN. L. REV. 1093, 1107 (2019).

248 *Id.* at 1107-08.

249 Yonathan A. Arbel, *Payday*, 98 WASH. U. L. REV. 1, 4 (2020) ("A $300 loan can quickly balloon into thousands of dollars of outstanding debt, leading many borrowers to debt spirals that can culminate in deep financial distress and even bankruptcy.").

250 *Id.* at 1158.

251 *Id.* at 1160.

252 Mehrsa Baradaran, *How the Poor Got Cut Out of Banking*, 62 EMORY L.J. 483, 547 (2013).

253 *Id.* at 486.

254 Bruce McClary, *An Overview of Credit Restoration and Why It Usually Isn't Worth the Cost*, NFCC (Oct. 30, 2020), https://www.nfcc.org/resources/blog/an-overview-of-credit-restoration-and-why-it-usually-isnt-worth-the-cost/.

255 *Id.*

256 *See* Timothy Dunne, Mark J. Roberts & Larry Samuelson, *Patterns of Firm Entry and Exit in U.S. Manufacturing Industries*, 19 RAND J. ECON. 495, 513 tbl.11 (1988) (demonstrating empirically on the effect of regulation on new and diversified entrants).

257 *See supra* Part II.C.

258 *See* Eyal-Cohen, *supra* note 51, at 909 (suggesting giving newcomers a more predominant role in the rulemaking process through "regulatory sandboxes").

259 *See* Hilary J. Allen, *Regulatory Sandboxes*, 87 GEO. WASH. L. REV. 579, 580 (2019) (discussing the U.S. Treasury's proposal to implement regulatory sandboxes in financial regulations); Erik Vermeulen, Mark Fenwick & Wulf A. Kaal, *Regulation Tomorrow: What Happens When Technology Is Faster Than the Law?* 27 (Tilbrug Univ., Discussion Paper No. 2016-024, 2016), https://ssrn.com/abstract=2834531 (reviewing the function of regulatory sandboxes in the FinTech industry).

260 *See, e.g.*, Lynnise E. Phillips Pantin, *The Economic Justice Imperative for Transactional Law Clinics*, 62 VILL. L. REV. 175, 203 (2017) (emphasizing the role of lawyers in informing racially diverse entrepreneurs).

261 *See* Alina S. Ball, *Disruptive Pedagogy: Incorporating Critical Theory in Business Law Clinics*, 22 CLINICAL L. REV. 1, 29 (2015).

262 *See* Luz Herrera & Louise G. Trubek, *The Emerging Legal Architecture for Social Justice*, 44 N.Y.U. REV. L. & SOC. CHANGE 355, 388-93 (2020) (discussing a "new breed" of progressive lawyers envisioning a social justice law practice).

263 *See* Jack Wroldsen, *Creative Destructive Legal Conflict: Lawyers as Disruption Framers in Entrepreneurship*, 18 U. PA. J. BUS. L. 733, 755-59. (2016) ("'[N]ew product architectures involving little new technology per se,' are frequently better positioned than existing market leaders to carry out disruptive innovations, which create new markets and eventually destroy old ones.").

264 *Id.* at 733 ("[W]hen innovative entrepreneurs upend the status quo, the result is often legal conflict.").

265 Pantin, *supra* note 260, at 177.

266 Houchens, *supra* note 87, at 284.

267 *See* Robert Crandall, *Who Wins the Regulatory Game? Who Profits: Winners, Losers, and Government Regulation*, 4 YALE J. ON REGUL. 495, 495-96 (1987) (reviewing the fact that government policies create winners and losers); Jonathan Baert Wiener, *Global Environmental Regulation: Instrument Choice in Legal Context*, 108 YALE L.J. 677, 700 (1999) (exemplifying net winners and losers from global environmental regulation).

268 Pantin, *supra* note 260.

70 EMORYLJ 1577