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REPORT

Loan Apps:
Financial inclusion at what cost?

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Loan Apps: Financial inclusion at what cost?

About this Report

This report was written by Jamael Jacob. It has also benefited from the research efforts of Maristela Miranda, Jessamine Pacis, and Sharifah Aine Datu Tambuyung. The author and the Foundation for Media Alternatives would also like to thank “Elmer”, “Ray”, and “Gerry” for their valuable contributions.

Rachel[1], a doctor based in Quezon City, was visibly annoyed. She could not help but share with a patient the cause of her misery. She got a call recently from a person looking for her former assistant, Tina[2]. Apparently, Tina had taken out a loan that was now overdue. The caller was a collection agent and gave Rachel the impression that Tina identified her as a character referee. This had her all riled up.

"Why would she do such a thing?" Rachel said. "She should have asked me first, before giving away my number."

Rachel's patient thought her account sounded familiar. After clarifying some details, he explained that it was probably not what she thought it to be. The caller never actually said Tina nominated her as a referee or that Tina gave away her number. Rachel merely inferred this from the call.

What most likely happened was that Tina obtained a loan via an app. When she downloaded it, she gave it access to her phone, including its directory. That's how the company got hold of Rachel's number.

Rachel's experience is not unique. In fact, there are thousands like it today because of the popularity of loan apps in developing countries like the Philippines.

One local news report featured Roger[3], another borrower, who suddenly heard from a college friend he had not talked to in years.[4] She asked him why he had given her number to a lending company that was calling up and telling people he was in debt. It turned out Roger (just like Tina) did no such thing—at least, not knowingly.

Rachel and Roger's accounts represent a tiny sample of the issues surrounding loan apps. While these technologies are frequently hailed as critical tools of financial inclusion, the problems they bring are now impossible to ignore.

This Report takes a closer look at loan apps and their widespread use in the country. By providing context, it explains their popularity despite the range of issues they have for baggage. Emphasis is given to matters relating to privacy and data protection. It also offers recommendations meant to preserve the benefits promised by this new industry, while mitigating its negative impact on people's rights and freedoms.

Microloans and loan apps

Digital loans are non-traditional loans offered by private entities operating over the internet. They are enticing for individuals who need quick access to cash but lack the credentials to qualify for common credit services. Many see them as a practical alternative. They fill the gaps left by traditional lenders by offering easy access, lax application requirements, and an expedited approval process. Unlike banks, many of these lending entities do not perform elaborate credit checks.[5]

Mobile lending, on the other hand, is characterized by small and instant loans (often called microloans or payday loans) that rely on credit scores derived from various sources like mobile transactions, electronic money usage, and credit history. Data from mobile phones themselves and the apps they contain are also utilized. At its core is an application or app (i.e., loan app) that may be downloaded from platforms like *Google Play Store* and the *Apple Store*.

The entire loan cycle happens online—from marketing to application, to the release of the loan, all the way up to collection and repayment. While specific procedures and requirements may vary between lenders, the overall process is made up mostly of common features. For example, many lending entities use social media sites and apps like *TikTok, Facebook*, and *Google* to promote their services. Their main target are Android phone users between 21 and 40 years of age,[6] most likely due to their income-earning potential. Many avoid the iPhone because of some of its security features.[7]

User experiences are almost always the same, too. Everything begins once they download the loan app and agree to its terms, including access to their phone data. Once that is done, risk assessment commences.

Since mobile lending thrives in populations with no credit history, lending entities combine data from new sources to assess creditworthiness. An applicant's phone calls, text messages, top-ups, data use, mobile money transactions and other digital payments, GPS data, social media use, Wi-Fi network use, battery level, contact lists, and many others all come into play.[8] So do other sources of digital footprints like the applicant's use of cloud-based services, banking transactions, internet browsing, shipping activities, loan management, payables, and online recordkeeping.[9] Messages, in particular, are sometimes analyzed to see if the user has already obtained loans from other lenders. For some companies, the number of loan apps and contacts they find in a phone helps make accurate credit risk evaluations.[10]

A decision to extend credit can be influenced by variables as obscure as the frequency with which a person charges his phone's battery, the number of his incoming text messages, the number of miles he travels in a day, whether he gambles, and even how he enters contacts into his phone.[11]

In some jurisdictions, data is also obtained from external sources. Take the case of Indian lending entities that are able to acquire user data from credit reporting entities like Experian, CRIF Highmark, and Equifax.[12] If they have a big enough database, they can also sell their data to other lenders.[13]

Proprietary algorithms make quick work of the data gathered. Once processing is done, a lender can approximate a person's capacity and willingness to repay. If the results are favorable, qualified borrowers are able to get their loans almost immediately.

Debt collection is the last and most controversial aspect of the process. It is the cause of most complaints, largely because of the public nature of the offenses involved. Apparently, many lenders resort to threats, harassment, and even blackmail just to solicit payment. On the receiving end are not just defaulting borrowers, but even their family, friends, and co-workers. The resulting stress and embarrassment have led to soured relationships, illnesses, and even death.

Prevalence and Benefits

The popularity of loan apps and microloans is undeniable, especially in the Global South. According to one estimate, the global microloan portfolio in 2017 was already worth over $102 billion.[14]

One major factor is the vast and rapidly growing mobile financial services ecosystem that has come a long way since the launch of the earliest digital SME lenders around 2006.[15] In 2019, this industry achieved a significant milestone when the number of registered mobile money accounts finally surpassed the billion mark.[16] Of the more than 1 billion registered accounts, 372 million were active and were responsible for over $1 billion worth of daily transactions.[17] That is quite a feat for a field barely a decade old.

Other factors that made this phenomenon possible, include:

- ***Digitalization of financial transactions.*** The fintech industry is growing at such a fast pace, especially in Southeast Asia, where around 300 million adults cannot access bank loans due to eligibility issues.[18] One consulting firm predicted that there should have already been 310 million digital consumers in the region as of 2020—almost 70% of the total number of consumers.[19] Meanwhile, outstanding digital lending is supposed to be on track to hit $100 billion in 2025, up from just $23 billion in 2019.[20]
- ***Availability of digital data.*** The ubiquity of digital data is a natural consequence of a booming digital economy. And so far, it has been the driving force behind alternative lending models. Lending entities can now use new types of data when measuring creditworthiness. This allows them to target underserved populations—those avoided by banks and other traditional lenders. The more diverse the data collected and the faster they are analyzed, the more predictive is their value.[21]
- ***Weak regulations.*** Weak (or nonexistent) regulatory regimes have also been a major influence. Here in the Philippines, the government has long championed greater financial inclusion, which underpins alternative lending mechanisms like digital loans. Coupled with the so-called, “test and learn” regulatory approach,[22] they have provided and even nurtured an environment where lenders are far more willing to test the boundaries, with little to no fear of sanctions or negative repercussions.

There is no widely available data showing much of this phenomenon is true in the local landscape. Few would disagree, though, that the population fits this industry's target demographic. 52 million people, or nearly 80% of adult Filipinos, are ineligible for bank loans.[23] That is a lot of potential customers for any business; too good to pass up for online lending platforms.[24]

According to one estimate, there were already 124 online lenders in the country in 2019.[25] 75 had mobile apps; 40 were web-based; while five were brick-and-mortar outfits that just happened to have their own digital platforms. As of 15 October 2020, nine of the top 20 *Google Play* apps for finance were loan apps,[26] with one even making it to the top ten.

External factors notwithstanding, there are also characteristics inherent in microloans and loan apps that make them more appealing than traditional creditors:

- ***Convenience.*** With practically every aspect of the lending process done digitally, securing microloans is a breeze compared to that for bank loans and other credit products. There is 24/7 service availability and all that one needs is a smartphone connected to the web. No more paperwork and long lines. While microcredit borrowers in some countries still have one-month waiting periods,[27] most microloan patrons get theirs in a matter of minutes.
- ***Minimal eligibility and document requirements.*** Online platforms require very little from potential customers, in terms of identity documents and proof of income. This is offset by the voluminous amount of data they obtain from alternative sources like the borrower's phone.

Thus far, only the COVID–19 pandemic has managed to arrest the industry's upward trajectory.[28]

Problems and Issues

While mobile lending can and do benefit certain populations, the attached risks are just as compelling. It simply took some time before people began to take them seriously.

- ***Unregistered and illegal.*** Often operating in a regulatory gray zone, many lending entities do not bother with registration and licensing requirements. This makes it extremely difficult for authorities to monitor their operations. In the Philippines, online lending platforms are regulated primarily by the Securities and Exchange Commission (SEC). In 2019, the agency issued cease-and-desist orders (CDOs) against 48 lending entities that did not have the necessary permit.[29] Seven more companies were shuttered the following year for the same reason.[30] As of 14 December 2020, the agency lists only 75 registered lending entities, some of which were operating multiple apps. The story is the same in other countries. Indonesia blocked 1,369 illegal lending platforms in 2019.[31] The previous year, that figure was already at 1,773 as of the first ten months.[32] In India, at least 60 loan apps featured in the *Google Play Store* were also found to be unregistered.[33]
- ***Lack of transparency.*** The underwriting process of lending entities is very opaque, as is their digital and mobile marketing operations. Although most people are aware that they process data using algorithms and proprietary lending models, very few—even among their employees—know exactly how they work. This, too, makes oversight difficult (if not impossible). How can one determine if specific groups are discriminated against, or are being unfairly targeted with predatory lending, without insights into how these companies evaluate their borrowers and marketing recipients? What passes off as transparency efforts are the loan app's privacy notices and terms of use. Unfortunately, many of these documents are just as problematic. Some are run-of-the-mill replicas of other policies; others are inaccurate or patently deceptive. In one case, the SEC discovered that three apps were claiming to be properties of corporations that did not actually exist.[34]
- ***Excessive data collection.*** Given the confidential nature of their credit score assessment process, the perception is that loan apps are engaged in excessive data collection. People do not understand why certain types of data are being harvested. Whether they are meant to influence a loan applicant's chances, no one (outside these companies) knows for sure.

To look into this further, one information security professional, Ray,[35] took some time to analyze a handful of apps for this Report. He points out that they sometimes require applicants to share information with no apparent use. A peculiar request, for instance, is for a person's religion. How or why that is relevant to a loan transaction is unclear. Even more puzzling are some of the access permissions lenders require: a borrower's location, text messages, file storage, vibration control, flashlight, calendar, web bookmarks and history, battery statistics, and even his phone's system settings. Lending companies may face criminal charges for violating data protection laws, if they are unable to provide any valid explanation.

- ***Unlawful, unethical, or questionable debt collection practices.*** Most complaints against lending entities revolve around their debt collection practices. When collection agents employ verbal abuse, harassment, and public shaming in going after defaulting debtors,[36] people are naturally upset. In revoking the license of one lender, the SEC remarked that the company had threatened borrowers with public shaming via social media; estafa, and theft charges; blacklisting with the National Bureau of Investigation; and even grave physical harm.[37] There have also been reports of lenders posting a borrower's selfies on Facebook, changing the borrower's profile picture on the social media platform, and using the borrower's account to post a threat.[38] The experience of other countries paint an even grimmer picture. In 2016, the Chinese government dealt with "loans for nude scams", which involved lending entities demanding nude photos from female college students as loan collateral.[39] They would threaten to release the images should the students fail to pay up. So far, these tactics have caused anxiety, depression, job loss, unemployability, and damaged reputations.[40] They can be so unrelenting at times, there have already been fatal consequences. In Indonesia, a taxi driver committed suicide, but not before leaving a note explaining his inability to confront his piling debt and asking authorities to put a stop to loan apps, which he referred to as a "devil's trap".[41]
- ***High interest rates, hidden charges, and misrepresentations.*** Lending entities have also been known to impose and charge high interest rates, unilaterally implement onerous and unreasonable terms and conditions, and make misrepresentations as to non-collection of charges and fees.[42] They only allow short repayment schedules, which are conducive to predatory lending. Today, it is not uncommon to encounter lenders imposing 60% to 100% interest rates.[43] According to the SEC, some local lending entities charge

interest as high as 2.5% per day, in addition to other fees.[44] In India, a borrower was shocked after realizing that in just a week's time, he had to pay an additional amount—consisting of interest, processing fee, and taxes—that was roughly 43% of the actual loan.[45] Even the way these interests are imposed are questionable. Some lenders immediately withhold the interest as soon as they approve a loan application,[46] preventing the borrower from making use of the full loan amount.

- ***Poor security protocols.*** The security of loan apps is seldom brought up as an issue. Note, for instance, that none of the local regulators have ever mentioned looking into it in any of their public pronouncements. This does not mean though that it does not exist. In his analyses for this Report, Ray (our infosec professional) managed to flag a number of security lapses on the part of the apps he was able to assess:

  - **Unsecure transmission.**
    Some apps transmit sensitive data via unsecure means (i.e., URL), increasing the likelihood of data leakage.

  - **Missing security headers.**
    There were apps that had missing security headers for their API.[47] This is almost always an indicator that the people behind the apps are not concerned about security and user privacy. Security headers help protect websites and apps from attacks that could lead to data breaches.

  - **Short SMS codes.**
    A number of apps utilize short SMS codes (i.e., only four-digits long) as part of their authentication process. The recommended number is six, with some companies even using seven. Short SMS codes are risky because they make it easier for bad actors to guess their way (i.e., employ "brute force" tactics) into a user's account with the help of scripts that generate guesses at a blistering pace.

  - **SSL errors.**
    Like many websites out there, some apps have also exhibited SSL errors, which could possibly mean an expired SSL certificate or a host mismatch scenario (i.e., an SSL certificate issued to a site is being used by a different one). Whichever it is, the implication is the same: a site or app vulnerable to attacks or intrusions.

Addressing the Issues

Amid mounting complaints, the response by relevant stakeholders, both in terms of strategy and outcome, has been mixed. While regulators are one in condemning errant lenders, the steps they have actually taken have sometimes varied. Meanwhile, technology platforms and even lending entities have also had some initiatives of their own.

- ***Securities and Exchange Commission (SEC).*** Among regulators, the SEC has, so far, been more aggressive in going after illegal or abusive lending companies. As early as 2016, the Commission had already issued an Advisory warning illegal lenders (i.e., those without the required Certificate of Authority).[48] The following year, it released another one; that time, cautioning the public about unregistered lenders operating via social media platforms.[49] In 2019, the agency began issuing CDOs targeting specific loan apps:

DATE ISSUED	CASE NUMBER	NO. OF AFFECTED COMPANIES
12 Sep 2019	SEC CDO Case No. 09-19-054	19
20 Sep 2019	SEC CDO Case No. 09-19-055	11
10 Oct 2019	SEC CDO Case No. 10-19-057	12
24 Oct 2019	SEC CDO Case No. 10-19-058	6
21 Jan 2020	SEC CDO Case No. 11-19-060	3
14 Apr 2020	SEC CDO Case No. 04-20-063	7
TOTAL		**58**

Companies were instructed to stop their operations, including their advertising and promotional activities, until they had incorporated and obtained the necessary permit.[50]

"Legal" entities were not spared from the purge. In a 11 November 2020 Order, for instance, the SEC revoked the permit of Super Cash Lending Corp. for engaging in unfair debt collection practices.[51] It was operating three online apps when it was shut down.

The Commission's effort has relied heavily on two key statutes: (1) Lending Company Regulation Act of 2007; and (2) Financing

Act of 1998. The first states that all lending companies must be corporations, and ought to have an SEC-issued permit.[52] Violators are fined between P10,000 to P50,000, or imprisoned for 6 months up to 10 years, or suffer both penalties.[53] The second punishes any entity operating as a financing company without the requisite authorization.[54] The applicable penalty is a fine ranging from P10,000 to P100,000, imprisonment for up to 6 months, or both.[55]

The agency has reinforced said statutes with issuances of its own: (a) *SEC Memorandum Circular No. 18 (s. 2019),* which prohibits unfair debt collection practices being committed by some lenders; and (b) SEC Memorandum Circular No. 19 (s. 2019), which provides for disclosure requirements on advertisements, and the reporting of any online platform a lender might be operating.

- ***National Privacy Commission (NPC).*** Because personal data processing is integral to their operations, lending entities are also covered by the country's data protection law: the Data Privacy Act of 2012 (DPA). This makes the NPC, as the DPA's main implementing agency, another regulator regularly looking over their shoulders.

  Like the SEC, the NPC has also taken steps to shut down rogue lending entities. In October 2019, it ordered the takedown of 26 apps after their owners failed to appear before the agency and answer the charges filed against them.[56] They were among the 67 summoned by the Commission weeks earlier.[57] It said it would coordinate with another agency, the National Telecommunications Commission, and Google to enforce its decision.[58] The NPC would later attribute the decline in the number of related complaints to its stop-processing order,[59] although no proof was offered to support any causal relation.

  The data protection authority appears to have gotten the lion's share of complaints filed against lending companies. In May 2019, it said it had already received 485 complaints regarding harassment allegedly committed by collection agents—at least 235 had led to formal charges.[60] Four months later, the agency raised that number to 921.[61] That figure kept on increasing well into the COVID-19 pandemic months, as evidenced by its December 2020 data (i.e., 1,867).[62]

  Given those staggering numbers, many have come to expect that, by this time, there would already be a long line of Commission decisions ruling against abusive lending companies. But that has not come to pass. As of this writing, the NPC website features only two decisions involving loan apps and neither one favors the borrower or her contacts. One

Gerry: fending off abuses

Gerry is the Data Protection Officer of a non-profit based in Davao City. In September 2019, he filed a complaint with the NPC against a number of lending entities. He accused the companies of committing multiple offenses punishable under the country's data protection law.

The case stems from the loan transactions of Gerry's former co-worker, Tanya. A couple of months back, Tanya installed a number of loan apps into her phone and obtained microloans. When she defaulted on her payments, the lending entities began calling and sending text messages to people whose names and contact numbers were stored on her phone. They were not limited to Tanya's co-workers. Even staff members of partner organizations got involved.

The messages often contained deceptive or false statements. For example, they would often claim or imply that Tanya herself personally identified them as her "emergency contacts" or "referees".

When Gerry tried to reach out to the lending entities, they reacted in different ways. Some responded, while others did not. Sometimes a company would simply instruct him to download their app. When he asked others to remove his number from their list, they would call and ask him instead to convince Tanya to pay up.

Gerry and his co-workers soon found the actions of the lending companies unacceptable. Not only were their antics disruptive, they also put a strain on their organization's relationship with other people.

The complaint with the NPC became inevitable. However, despite the gravity of the offenses the companies were charged with, Gerry made it clear he only wanted the lending entities to stop contacting the people on Tanya's phone directory.

ended with the borrower withdrawing her complaint,[63] while in the other, the borrower simply stopped participating in the proceedings.[64] Early reports[65] of the Commission recommending the criminal prosecution of three lending entities appear to have been gravely inaccurate,[66] or premature at best.

The Commission has not offered any official explanation for its dismal case disposition rate. Instead, it announced a plan to improve the situation via a strategy called, "Project Decongestion 2.0",[67] which involves measures such as the hiring of additional personnel, digitization and classification of cases, and the conduct of hearings via video-conferencing platforms. The effectiveness of this initiative remains to be seen. In the meantime, many continue to wonder why—even assuming many cases have been settled privately—none of the thousands of cases filed with the agency has actually ripened into a full-blown case.

Another recent development was the issuance by the NPC of a Circular prescribing specific rules for lending entities,[68] but which seemed to raise more questions than answers.[69] Its much-touted provision, one that prohibits lenders from accessing a borrower's contact list,[70] illustrates this best. Complaints involving this particular data set have been directed at its use for debt-shaming activities. But instead of prohibiting the practice, the NPC has outlawed the data collection altogether, implying no proper use for said information is possible. That is odd considering other apps ask for such access all the time. It just so happens that they use the information in ways most people find reasonable. Did the Commission consider the use of contact lists for determining creditworthiness? If so, did it find that purpose equally reprehensible that an outright ban was warranted?

The problem may be traced to the approach adopted by the agency in addressing the issues. Whereas the SEC focused on the inappropriate activities and banned them, the NPC spent much of its time telling lending entities how they should carry out their business. Adding one final twist to it all, the NPC did not actually lay down penalties. That makes its Circular practically impotent as a deterrent for would-be violators.

- ***Philippine National Police (PNP).*** So far, there has only been one law enforcement operation involving lending entities that has made the national headlines. In September 2019, the PNP raided a lending company for supposed violations of the DPA, in relation to the anti-cybercrime law.[71] Arrested onsite were the company's employees, including its five Chinese owners. Prosecutors later decided to add Grave Coercion to the charges.

Elmer: insights from the other side

Elmer used to work for a company managing two loan apps. It employed around fifty people and had Chinese nationals as owners. Elmer was assigned to the Collection Department, which was in charge of overdue accounts.

When he joined the company, Elmer had no idea what business the company was into. There was no orientation for new hires. Neither was there an office manual to guide them in going about their work. All they had was a supervisor—the Collection Manager—who they could consult whenever they had questions or things to clarify.

In his first week, Elmer was already making collection calls. A good performance during his first two weeks earned him a promotion to Team Leader, which put him in charge of two groups. One was responsible for collecting payments for loans overdue by 15 to 30 days, while the other was for loans that were a month or more past due.

A typical workday meant work from 9am to 6pm, including lunchbreak. The teams were required to meet a daily collection quota of P100,000 per team (P10,000 per team member). Failure to do so by day's end meant two additional workhours. Having had no formal training, the collection teams approached their work by relying solely on the instructions of the Collection Manager who had a very simple rule: collect debts "in all ways possible".

Elmer tried to do things differently and sought to distinguish his teams from the rest. He made sure all members undergo a 3-day (informal) training and orientation before he allowed them to deal with borrowers and their contacts. They would have a 20-minute "huddle" every day, which he would use to remind people of proper phone etiquette. This, he says, is why his teams got the least number of complaints.

As far as the company's data collection activities were concerned, they were no different from those of other online lending platforms. Borrowers had to download the company's app and install it on their phones. It would ask for access to all sorts of data, including the phone's contact list and gallery photos. Refusal would prevent the installation from being completed. A would-be borrower is also asked to provide other information like contact details, employment record, and a photo of a valid ID.

Within the company, the collected data is primarily under the charge of the Approving Department, which evaluates and acts on loan applications. Access, though, is shared between a number of units and personnel. The Reviewing Department, the Collection Department, and the General Manager all have access to the data. The Reviewing Department, which verifies all collected information, has a daily quota, as well: at least 30 applications reviewed and submitted to the Approving Department.

Compliance with the Data Privacy Act was more or less non-existent. The company had no Data Protection Officer and or even a policy that dealt with security incidents. All complaints were referred to the Customer Service Department. The company had sister companies in Metro Manila that were also into mobile lending. It was unclear whether they pooled or shared the personal data they collected.

With the company playing fast and loose with its business practices, it was just a matter of time before serious problems came about. For Elmer, the first time he felt they were probably doing something illegal was when he heard other collection agents yelling over the phone. It became clear to him why most complaints they got had to do with the harsh or impolite behavior of their collection agents. An offense made worse by their practice of reaching out even to the borrowers' contacts. Other common issues included loan disapproval, high interest rates, and short payment schedules.

Things got so bad that at one point they were getting at least 15 complaints a day. Elmer voiced out his concerns and suggested changes to the collection practices, but nothing came of it. According to Management, their practices were no different from those carried out by the company in Myanmar and mainland China. Employees were told that they were not supposed to care about their borrowers' feelings because their job was just to collect money that is owed. This did not sit well with some of Elmer's colleagues who eventually left the company. Elmer knows of at least five people who resigned because they did not agree with the company's practices.

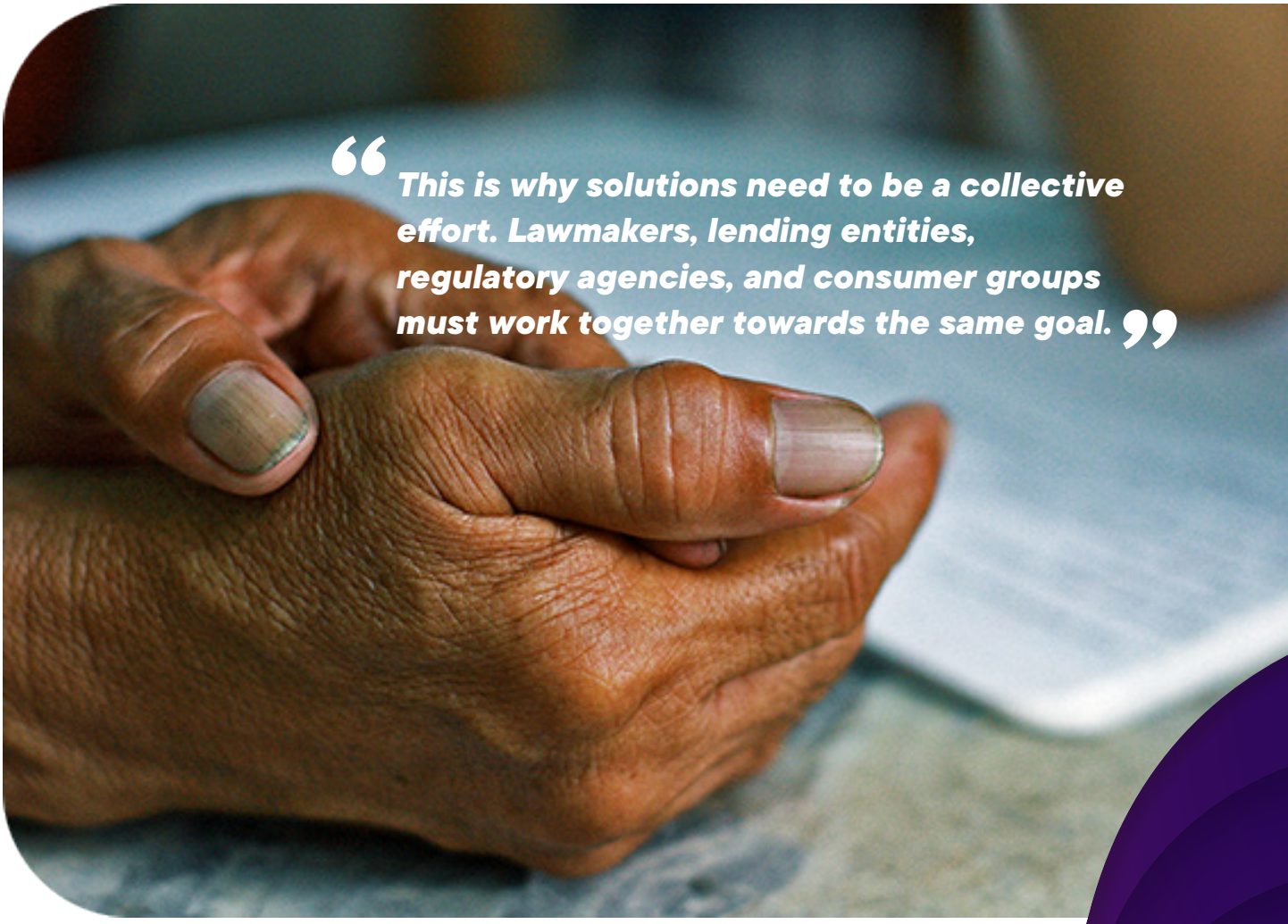
The end finally came some time in 2019. As consumer complaints against lending entities surged, Elmer and his co-workers suddenly found themselves on the wrong end of a police raid. The authorities barged into their office, arrested everyone present at that time, and confiscated all company computers. Eight hours later, the employees were finally brought to the police station for booking. They were detained for a month before being released on bail.

As of this writing, the company owners have all managed to flee the country, leaving employees like Elmer to face the charges.

- ***Internet platforms.*** Among technology companies, *Google* has shown some willingness to proactively take down loan apps violating its policies (i.e., re: loan repayment lengths, interest rates, etc.). Citing its obligation to protect borrowers, it has also gone after lenders flouting central bank regulators.[72] In most cases, though, government prodding is still a prerequisite for any company action. In October 2019, the SEC sought its assistance in cracking down against illegal online apps.[73] By January 2020, the agency said the company had been very cooperative and had already removed apps it had flagged as illegal or unlicensed.[74] *Google* has operated this way, too, in relation to Indian authorities. As of February 2021, it is said to have removed around 100 loan apps since December 2020.[75] The platform's reluctance to do more may have something to do with criticisms made by some sectors warning against the dangers of allowing a few large corporations to wield too much power, enough to influence markets and harm other businesses that offer controversial but legal products.[76]
- ***Lending Companies.*** In order to contain the waves of controversies hounding many of its members, the lending industry has turned to a familiar public relations device in times of similar crises: a call for self-regulation. In September 2019, *FinTechAlliance.ph*, a group claiming to represent a third of registered fintech companies in the country, said its member-companies had agreed to institutionalize an industry-wide code of ethics and to adopt a code of conduct for responsible online lending.[77] The organization hoped the move would dispel public perception that "all online lenders are evil".[78] Two months later, a second group calling themselves, *"Lenders Alliance, Inc."*, also came out and made a similar announcement.[79] Curiously, despite this second group's claim that its membership is limited only to companies that respect the law and their customers, some of its members actually have pending cases, as per available records. Nevertheless, in January 2020, the group declared that it had successfully issued a series of regulations meant to eradicate public shaming from its ranks.[80] Meanwhile, similar efforts were also underway in India where the Digital Lenders' Association of India (DLAI) said it had issued a code of conduct for its members which promotes responsible lending practices.[81]

If one objective of these groups is to cozy up to regulators amid an outpouring of public outrage, they appear to have succeeded. For *FinTechAlliance.ph,* at least, they managed to identify a number of government partners in their Code-drafting project: NPC, BSP, SEC, Anti-Money Laundering Council Secretariat, Bureau of Internal Revenue, Department of Trade and Industry, and the Insurance Commission.[82] The BSP[83] and the NPC[84] were even in attendance and released statements during a joint press conference.

The true value of these so-called Codes are impossible to approximate since no one—at least, outside of these groups—has seen them, let alone read them. In November 2020, the *Foundation for Media Alternatives* wrote to both organizations and requested for a copy of these self-imposed rules but never got a response. There is also no available data that showcases any impact they may have had on the industry, thus far.



Recommendations

To address the problems caused by loan apps without having to outlaw an entire industry or inhibit technological advancements, a balanced, flexible, and coordinated solution will have to be adopted.

Government authorities need to take a proactive and more hands-on approach towards regulation. Token reminders[85] about people needing to exercise more caution are ineffective and rather woeful. There has to be efficient and transparent grievance mechanisms that are accessible to borrowers and other aggrieved parties. In the case of the NPC, that means prioritizing its "Project Decongestion 2.0". Getting fewer complaints does not necessarily mean a changed and more law-abiding lending sector. People may simply have lost faith in the government's ability to grant them relief, which could explain why they no longer bother to file cases.

Policy gaps also need to be patched up regularly. Laws, even with their implementing rules, always come up short when dealing with novel issues. Additional policies, like industry-specific rules, are often necessary. They need to be made in coordination with stakeholders, so that they actually respond to the issues, without negatively impacting legitimate business practices. One measure worth looking at is a *"Small Business Borrowers' Bill of Rights"*[86], which has already been suggested in some countries. It can be adjusted for individual borrowers and may include any or all of the following rights: (a) transparent pricing and terms; (b) non-abusive products; (c) responsible underwriting; (d) fair treatment from brokers and loan aggregators; (e) inclusive credit access; and (f) fair collection practices.

Self-regulation schemes should be frowned upon. Too often, their proponents are just businesses that abhor government oversight. They are self-serving, usually ineffective, and only make for good marketing fodder. What regulators should explore is a joint or harmonized monitoring system that would make their work easier, while affording businesses fewer disruptions. Bank regulatory agencies often have such a setup. With some adjustments, theirs may be a good model to adopt or at least learn from.

For lending entities, compliance and a genuine sense of accountability are key. They have to be familiar with the applicable laws and regulations and must commit to abide by them. Like the government, they should also think ahead and set up their business with privacy and security safeguards already in mind. This "privacy-by-design" approach is now endorsed by an increasing number of laws and data protection authorities around the world.

To start, lenders should have the resolve to adopt a sound privacy program led by a capable Data Protection Officer. They need to consider an opt-in model for their data collection, instead of a default collect-everything mindset. That means putting up strong consent mechanisms that offer users meaningful alternatives. Speaking of consent, withdrawing the same or opting out should be easy. Cybersecurity ought to be a priority, instead of an afterthought. Many technology enthusiasts commit this common mistake of thinking of technology solely in terms of convenience and profitability. They take the time to discuss security once problems are already in play. An industry that relies so much on the accumulation and use of massive amounts of personal data must have appropriate data protection measures at the core of its security efforts.[87] On the whole, this makes better business sense, given the heavy penalties that more and more data protection laws are calling for.

Borrowers and the public should also eschew complacency and keep an eye on erring lending entities. They need to size-up the organizations they do business with online, just as they would during in-person transactions. They must read the privacy notices and apps' terms of use, and consult the SEC website for its latest list of accredited lenders. It also would not hurt to check an app's online reviews before forging ahead with a transaction. If, despite all these precautionary measures, one still ends up with a delinquent lender, all available remedies must be exhausted to make sure the company is held to account. It may sometimes be inconvenient, but it has to be done in order to teach the organization a lesson. It will also protect other people from falling prey to the same entity.

There is no denying that the variety and scalability of online services, combined with the rapid evolution of e-commerce, make the establishment of an effective regulatory regime a very daunting task. Lines between companies are frequently blurred, especially when they collaborate, and they are constantly introducing new products while modifying existing ones. This is why solutions need to be a collective effort. Lawmakers, lending entities, regulatory agencies, and consumer groups must work together towards the same goal.

The goal, of course, is a financial system that does facilitate financial inclusion, encourage innovation and competition in the marketplace, and acknowledge legitimate business aims, but not at the expense of people's fundamental rights.

Endnotes

[1] not her real name
[2] not her real name
[3] not his real name
[4] R Canivel, 'Online lending's ugly side: Debt-shaming' INQUIRER.NET (Makati, 15 September 2019) <https://newsinfo.inquirer.net/1164837/online-lendings-ugly-side-debt-shaming>.
[5] V Zoleta, 'Online Loans in the Philippines: What Filipinos Need to Know' Yahoo! news (New York, 6 November 2019) <https://sg.news.yahoo.com/online-loans-philippines-filipinos-know–020022682.html>
[6] P Mallikarjunan, 'How App-Based Lenders Are Harassing, Sucking Borrowers Dry' Moneylife (Mumbai, 12 June 2020) <moneylife.in/article/how-app-based-lenders-are-harassing-sucking-borrowers-dry/60621.html>
[7] Mallikarjunan, 'How App-Based Lenders Are Harassing, Sucking Borrowers Dry'.
[8] E Francis, J Blumenstock and J Robinson, 'Digital Credit: A Snapshot of the Current Landscape and Open Research Questions – eScholarshop' (July 2017).
[9] J Owens and L Wilhelm, *Alternative Data Transforming SME Finance* (International Finance Corporation 2017) viii
[10] Mallikarjunan, 'How App-Based Lenders Are Harassing, Sucking Borrowers Dry'.
[11] Owens and Wilhelm, *Alternative Data Transforming SME Finance*.
[12] Mallikarjunan, 'How App-Based Lenders Are Harassing, Sucking Borrowers Dry'.
[13] Mallikarjunan, 'How App-Based Lenders Are Harassing, Sucking Borrowers Dry'.
[14] Dr R Meager, 'Understanding the Average Impact of Microcredit' (*Microeonomic Insights*, 17 July 2019) <https://microeconomicinsights.org/understanding-the-average-impact-of-microcredit/> accessed 12 February 2021.
[15] Owens and Wilhelm, *Alternative Data Transforming SME Finance*.
[16] N Naghavl, *State of the Industry Report on Mobile Money 2019* (GSMA 2019) 5.
[17] Naghavl, *State of the Industry Report on Mobile Money 2019*, 7.
[18] J Endo, 'Fintech startups throw financial lifeline to Philippines' unbanked' *NIKKEI Asia* (Tokyo, 18 April 2020) <https://asia.nikkei.com/Business/Startups/Fintech-startups-throw-financial-lifeline-to-Philippines-unbanked>.
[19] A Nortajuddin, 'E-Wallet Adoption On The Rise In ASEAN' *THE ASEAN POST* (Kuala Lumpur, 18 October 2020) <https://theaseanpost.com/article/e-wallet-adoption-rise-asean>.
[20] Endo, 'Fintech startups throw financial lifeline to Philippines' unbanked'.
[21] Owens and Wilhelm, *Alternative Data Transforming SME Finance*.
[22] See F Tarriela, 'BSP and Fintech: The Way forward' *Business World* (Quezon City, 25 April 2017) <https://www.bworldonline.com/bsp-fintech-way-forward/>.
[23] Endo, 'Fintech startups throw financial lifeline to Philippines' unbanked'.
[24] Endo, 'Fintech startups throw financial lifeline to Philippines' unbanked'.
[25] Fintechnews Philippines, 'Philippines' Regulators Voice Support for Industry Driven TechnoEthics for Digital Lending' *FINTECH Singapore* (Singapore, 19 September 2019) <https://fintechnews.sg/33733/fintechphilippines/technoethics-digital-lending-fintech/>.
[26] SimilarWeb, 'Mobile App Ranking: Top Google Play apps in Philippines Finance Top Free' (*SimilarWeb*, 15 October 2020) <https://www.similarweb.com/apps/top/google/app-index/ph/finance/top-free/> accessed 15 October 2020.
[27] A Rizzi, I Barrès, and E Rhyne, 'Tiny Loans, Big Questions: Client Protection in Mobile Consumer Credit' (*The Smart Campaign*, September 2017) <https://sptf.info/images/RDF-Smart-Brief-Tiny-Loans-Big-Questions-Final–092617.pdf> accessed 21 February 2021.
[28] Reuters, 'How coronavirus pandemic has derailed Asia's booming online lending industry, much of it backed by Chinese money' *Reuters* (New York, 3 June 2020) <https://www.scmp.com/news/asia/southeast-asia/article/3087312/how-coronavirus-pandemic-has-derailed-asias-booming-online>.

[29] See In the matter of: INSTANT PERA, et al., CDO Case No. 09–19–054, September 12, 2019; In the matter of: CASH WHALE, et al., SEC CDO Case No. 09–19–055, September 20, 2019; In the matter of: A&V LENDING MOBILE et al., SEC CDO Case No. 10–19–057, October 10, 2019; In the matter of: BATIS LOAN, et al., SEC CDO Case No. 10–19–058, October 24, 2019.

[30] See In the matter of: PESO TREE et al., SEC CDO Case No. 11–19–060, January 21, 2020; See also In the matter of: CASHAB, et al., SEC CDO Case No. 04–20–063, April 14, 2020.

[31] C Silviana, 'Indonesian finance body blocks 297 unregistered P2P lenders' *NIKKEI Asia* (Tokyo, 1 November 2019) <https://asia.nikkei.com/Business/Business-trends/Indonesian-finance-body-blocks–297–unregistered-P2P-lenders>

[32] Silviana, 'Indonesian finance body blocks 297 unregistered P2P lenders'.

[33] S Kannan, 'Deep Dive: How China-based money loan apps are devastating gullible Indian borrowers' *India Today* (New Delhi, 6 January 2021) <https://www.indiatoday.in/india/story/deep-dive-how-china-based-money-lending-apps-devastating-gullible-indian-borrowers–1756569–2021–01–06>.

[34] In the matter of: A&V LENDING MOBILE, et al.

[35] not his real name

[36] Mallikarjunan, 'How App-Based Lenders Are Harassing, Sucking Borrowers Dry'.

[37] Securities and Exchange Commission, 'SEC REVOKES SUPER CASH LENDING'S LICENSE' (*Securities and Exchange Commission,* 28 December 2020) <https://apps002.sec.gov.ph/wp-content/uploads/2020/12/2020PressReleases_SECRevokesSuperCashLendingsLicense.pdf> accessed on 12 February 2021.

[38] See Canivel, 'Online lending's ugly side: Debt-shaming'.

[39] Kannan, 'Deep Dive: How China-based money loan apps are devastating gullible Indian borrowers'.

[40] National Privacy Commission, 'Online lending execs face jail terms for data privacy violations' (*National Privacy Commission*, 6 September 2019) <https://www.privacy.gov.ph/2019/09/online-lending-execs-face-jail-terms-for-data-privacy-violations/> accessed on 12 February 2021.

[41] The Jakarta Post, 'Man commits suicide to escape "devil's trap" of debt form fintech firms' *The Jakarta Post* (Jakarta, 12 February 2019) <https://www.thejakartapost.com/news/2019/02/12/man-commits-suicide-to-escape-devils-trap-of-debt-from-fintech-firms.html>.

[42] See In the matter of: CASH WHALE et al.

[43] Times Now Digital, 'RBI warns against unauthorised digital lending: How digital loan sharks prey on unsuspecting borrowers' *ETNOWNEWS.COM* (Mumbai, 24 December 2020) <https://www.timesnownews.com/business-economy/industry/article/rbi-warns-against-unauthorised-digital-lending-how-digital-loan-sharks-prey-on-unsuspecting-borrowers/698472>.

[44] M Lopez, 'SEC wants to set a limit on interest, fees charged by lending firms' *CNN Philippines* (Mandaluyong, 28 October 2019) <https://www.cnnphilippines.com/news/2019/10/28/SEC-cap-loan-interest-rates.html>.

[45] Mallikarjunan, 'How App-Based Lenders Are Harassing, Sucking Borrowers Dry'.

[46] Philippine National Police, 'NCRPO Raids an Online Lending Scam and Nabs 5 Chinese Nationals and 49 Filipino Employees in Pasig City' (*National Capital Region Police Office,* 27 September 2019) <https://ncrpo.pnp.gov.ph/ncrpo-raids-an-online-lending-scam-and-nabs–5–chinese-nationals-and–49–filipino-employees-in-pasig-city/> accessed on 12 February 2021.

[47] An API or Application Programming Interface is a software intermediary or "middle man" that allows two applications to talk to one another.

[48] Securities and Exchange Commission, 'Informal Lenders' (*Securities and Exchange Commission*, 14 November 2016) <https://www.sec.gov.ph/advisories–2016/informal-lenders/> accessed 12 February 2021.

[49] Securities and Exchange Commission, 'WARNING! RE: ONLINE LENDING' (*Securities and Exchange Commission,* 18 August 2017) <https://www.sec.gov.ph/advisories–2016/informal-lenders/> accessed 12 February 2021.

[50] D Abadilla, 'SEC orders shutdown of 11 illegal loan apps' INQUIRER.NET (Makati, 23 September 2019) <https://business.inquirer.net/279564/sec-orders-shutdown-of–11–illegal-lending-apps>; See also D Abadilla, '11 more loan apps shut down' *INQUIRER.NET* (Makati, 24 September 2019) <https://business.inquirer.net/279622/11–more-lending-apps-shut-down>; ABS-CBN News, 'SEC orders 11 online loan apps to stop operations' *ABS-CBN News* (Quezon City, 23 September 2019) <https://news.abs-cbn.com/business/09/23/19/sec-orders–11–online-lending-apps-to-stop-operations>.

[51] Securities and Exchange Commission, 'SEC REVOKES SUPER CASH LENDING'S LICENSE'.

[52] Rep Act No 9474 (2007) s 4.

[53] Rep Act No 9474, s 12.

[54] Rep Act No 5980 (1969), as amended by Rep Act No 8556 (1998), s 14.1.

[55] Rep Act No 5980, s 14.

[56] National Privacy Commission, 'NPC shuts down 26 online lending companies' (*National Privacy Commission*, 21 October 2019) <https://www.privacy.gov.ph/2019/10/npc-shuts-down–26–online-lending-companies/> accessed 12 February 2021.

[57] S Canivel, '67 online lenders summoned for shaming clients' *INQUIRER.NET* (Makati, 4 October 2019) <https://business.inquirer.net/280367/privacy-body-files-raps-vs-67–online-lenders-but-only-apps-named-in-notices>.

[58] E Rosales, '26 online lenders closed for data privacy code breaches' *Business Mirror* (Makati, 22 October 2019) <https://businessmirror.com.ph/2019/10/22/26–online-lenders-closed-for-data-privacy-code-breaches/>.

[59] Business Mirror, 'Lending operators group vow to adopt best practices, global standards' *Business Mirror* (Makati, 31 December 2019) <https://businessmirror.com.ph/2019/12/31/lending-operators-group-vow-to-adopt-best-practices-global-standards/>; See also The Manila Times, 'Latest NPC report welcomed by Lenders Alliance Inc.' *The Manila Times* (Manila, 5 December 2019) <https://www.manilatimes.net/2019/12/05/public-square/latest-npc-report-welcomed-by-lenders-alliance-inc/661771/>.

[60] R Arcadio, 'Money loan apps allegedly misuse debtors' personal info to shame them' *INQUIRER.NET* (Makati, 27 May 2019) <https://technology.inquirer.net/87187/money-lending-apps-allegedly-misuse-debtors-personal-info-to-shame-them>

[61] Canivel, 'Online lending's ugly side: Debt-shaming'.

[62] M Santos, 'Complaints and Investigation Division Report' [PowerPoint slides] (*National Privacy Commission*, 16 December 2020).

[63] See RBD v. FCASH GLOBAL LENDING, INC. (FAST CASH), NPC Case No. 19–1221, June 25, 2020.

[64] See JVA v. U-PESO.PH LENDING CORPORATION (UPESO), NPC Case No. 19–498, June 9, 2020.

[65] See Rappler, 'Online lending execs face charges for shaming users, data privacy violations' *Rappler* (Pasig, 9 September 2019) <https://www.rappler.com/technology/national-privacy-commission-charges-execs-online-lending-apps>; R Canivel, 'Online lenders face charges for shaming clients' *INQUIRER.NET* (Makati, 7 September 2019) <https://business.inquirer.net/278482/online-lenders-face-charges-for-shaming-clients>.

[66] The recommendation was given by the NPC's "fact-finding team" to the three-person Commission. The Commission itself had not yet adopted the recommendation. Its own press release, dated 6 September 2019, notes that the agency at that time was still giving the lending companies ten days to answer the complaints filed against them.

[67] Santos, 'Complaints and Investigation Division Report'.

[68] See NPC Circular No. 20–01 (2020).

[69] See J Jacob, 'A privacy regulation for lending applications' GMA NEWS ONLINE (Quezon City, 26 October 2020) <https://www.gmanetwork.com/news/opinion/content/761390/a-privacy-regulation-for-lending-applications/story/>.

[70] NPC Circular No. 20–01 (2020), s 3.D.4.
[71] L Guzman, 'SEC to shut down eight more online loan apps' *CNN Philippines* (Mandaluyong, 27 September 2019) <https://www.cnnphilippines.com/business/2019/9/27/sec-illegal-online-lending-issuances.html>
[72] N Anand, 'Google removes some loan apps in India to protect consumers' *Reuters* (New York, 14 January 2021) <https://www.reuters.com/article/us-india-google-digital-lending/google-removes-some-lending-apps-in-india-to-protect-consumers-idUKKBN29J10B>.
[73] D Valdez, 'SEC asks Google's help in crackdown vs illegal loan apps' *BusinessWorld* (Quezon City, 11 October 2019) <https://www.bworldonline.com/sec-asks-googles-help-in-crackdown-vs-illegal-lending-apps/>
[74] T Piad, 'SEC wants all illegal lending app removed now' *The Manila Times* (Manila, 27 January 2020) <https://www.manilatimes.net/2020/01/27/business/at-a-glance-business/sec-wants-all-illegal-lending-app-removed-now/677617/>.
[75] Indo-Asian News Service, 'Google removes 100 fraudulent instant loan apps in India: Govt' *The Economic Times* (New Delhi, 8 February 2021) <https://telecom.economictimes.indiatimes.com/news/google-removes–100–fraudulent-instant-loan-apps-in-india-govt/80752890>.
[76] See Y Hayashi, 'Google Shuts Out Payday Loans With App-Store Ban' *The Wall Street Journal* (New York, 12 October 2019) <https://www.wsj.com/articles/google-shuts-out-payday-loans-with-app-store-ban–11570886730>
[77] Fintechnews Philippines, 'Philippines' Digital Lenders Pledge to Weed Out Predatory Behaviour' *Fintech Singapore* (Singapore, 3 June 2019) <https://fintechnews.sg/31061/fintechphilippines/fintech-alliance-ph-code-of-conduct/>
[78] Fintechnews Philippines, 'Philippines' Digital Lenders Pledge to Weed Out Predatory Behaviour'.
[79] D Dumlao-Abadilla, 'Online lenders form group, adopt code of conduct' *INQUIRER.NET* (Makati, 23 November 2019) <https://business.inquirer.net/283986/online-lenders-form-group-adopt-code-of-conduct>.
[80] The Manila Times, 'Lenders Alliance Inc. creates series of regulations' *The Manila Times* (Manila, 26 January 2020) <https://www.manilatimes.net/2020/01/26/public-square/lenders-alliance-inc-creates-series-of-regulations/677295/>.
[81] Mallikarjunan, 'How App-Based Lenders Are Harassing, Sucking Borrowers Dry'.
[82] See G Gonzales, 'Fintech firms adopt code of conduct after spate of online shaming incidents' *Rappler* (Pasig, 16 September 2019) <https://www.rappler.com/technology/fintech-alliance-philippines-code-of-conduct-online-shaming>.
[83] BusinessWorld, 'Online lenders, fintechs to adopt code of ethics' *BusinessWorld* (Quezon City, 17 September 2019) <https://www.bworldonline.com/online-lenders-fintechs-to-adopt-code-of-ethics/>.
[84] BusinessWorld, 'Online lenders, fintechs to adopt code of ethics'.
[85] See J Guzman, 'Know more about online lenders' *Philippine Information Agency* (Quezon City, undated) <https://pia.gov.ph/features/articles/1034791>.
[86] See Responsible Business Lending Coalition, 'Small Business Borrower's Bill of Rights' (*Borrowersbillofrights.org*, undated) <http://www.responsiblebusinesslending.org/#sthash.sbpSzW35.dpuf/> accessed 12 February 2021.
[87] See Rep Act No 10173 (2012) s 20(b) and (c).

Foundation for Media Alternatives

The Foundation for Media Alternatives (FMA) is a non-profit service institution whose mission is to assist citizens and communities—especially civil society organizations (CSOs) and other development stakeholders—in their strategic and appropriate use of the various information and communications media for democratization and popular empowerment.

Since its formation in 1987, FMA has sought to enhance the popularization and social marketing of development-oriented issues and campaigns through media-related interventions, social communication projects and cultural work. In 1996, FMA streamlined its programs and services in both traditional and new media, with a major focus on information and communications technologies (ICTs), to enable communities to assert their communication rights and defend their rights to information and access to knowledge, towards progressive social transformation.

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