

Dick Bauer, Access to Justice Fellow



Dick Bauer joined National Consumer Law Center as HomeCorps Project Supervisor in Fall 2014, focusing on foreclosures and mortgage issues. As an Access to Justice fellow, most of Dick's time has been spent supervising and mentoring on appeals and other housing cases. He also provides technical assistance, mentoring, and training to a number of other Legal Aid Programs including DOVE (Domestic Violence Ended), Inc., Greater Boston Legal Services, the Justice Center of Southeast Massachusetts, the Lawyers Clearinghouse on Affordable Housing and Homelessness, the Medical Legal Partnership of Boston, Northeast Legal Aid, the Ohio Access to Justice Foundation, the Sargent Shriver National Center on Poverty Law, South Coastal Counties Legal Services, the Tenant Advocacy Project of Harvard Law School, and the Volunteer Lawyers Project. Previously, Dick was a Senior Attorney with Greater Boston Legal Services, representing low-income homeowners, tenants, and homeless families. A graduate of MIT and Northeastern University Law School, Dick served as a member of the Massachusetts Supreme Judicial Court Standing Advisory Committee on the Rules of Civil Procedure from 1998 until 2015. In 2018, he was selected by the Massachusetts Bar Association for its Access to Justice Lifetime Achievement Award.

HAMP Policy Analysis

Analysis and Recommendations

- No Hope for Homeowners: The Administration's Home Affordable Unemployment Program Hurts the Unemployed, July 2010
- Home Affordable Modification Program: Borrower Notices Fall Short, November 2009

- Homeowners Need Mandatory Loan Modifications and Expanded Access to Mediation; Current Programs Fall Short, September 2009
- NCLC's Home Affordable Modification Program Recommendations, July 2009
- NCLC's Home Affordable Modification Program Recommendations, March 2009

Policy Briefs, Reports & Press Releases

- Report: At a Crossroads: Lessons from the Home Affordable Modification Program (HAMP), January, 2013
- HAMP Changes Urgently Needed, September 2010
- Press Release: Why Servicers Foreclose, When They Should Modify, and Other Puzzles of Servicer Behavior, October 2009
- Report w/above press release
- NCLC Reports: Special Issue on Mortgage Modification Programs, March/April 2009

Testimony

- Testimony of Diane Thompson before the Senate Committee on Banking, Housing, & Urban Affairs: Problems in Mortgage Servicing from Modification to Foreclosure, November 2010
- Testimony of Alys Cohen before the Subcommittee on Housing and Community Opportunity: The Recently Announced Revisions to the Home Affordable Modification Program (HAMP), April 2010
- Testimony of Alys Cohen before Subcommittee on Housing: Progress of the Making Home Affordable Program: What Are the Outcomes for Homeowners and What are the Obstacles to Success?, September 9, 2009
- Testimony of Diane Thompson before the Senate Committee on Banking, Housing, & Urban Affairs: Preserving Homeownership: Progress Needed to Prevent Foreclosures, July 2009
- Testimony of Tara Twomey before the House of Representatives Committee on Financial Services on the Implementation of the HOPE for Homeowners Program and a Review of Foreclosure Mitigation Efforts, September 2008

Driving with Debt: What Attorneys and Organizers Can Do to Address the Problem of Driver's License Suspensions for Court Debt

January 31, 2019

Most states suspend driver's licenses based on unpaid debts arising out of criminal proceedings or traffic tickets, and as a result millions of low-income people have lost their licenses simply because they cannot afford to pay fines and fees. This webinar will briefly address the harsh, perverse, and discriminatory impact of such policies before diving into what attorneys and local organizers can do to address this problem. We'll use efforts in Virginia and North Carolina as case studies, and will hear from advocates in Virginia engaged in impact litigation and legislative reform efforts that appear poised for success, as well as from an attorney and an organizer with North Carolina's innovative Second Chance Mobility Project, which pairs a drivers' license protection and restoration legal services delivery program with community engagement and organizing.

Speakers:

Angela Ciolfi, Legal Aid Justice Center

Daniel Bowes, North Carolina Justice Center

Dennis Gaddy, Community Success Initiative

Moderated by Samuel Brooke, Southern Poverty Law Center



Additional material: *Driven By Dollars* || Opinion granting preliminary injunction

How the Government Shutdown Puts Working Families at Risk

FOR IMMEDIATE RELEASE: JANUARY 23, 2019

National Consumer Law Center contact: Jan Kruse (jkruse@nclc.org) or (617) 542-8010

Washington, D.C. - As the longest federal government shutdown in our nation's history drags on, attorneys at the National Consumer Law Center (NCLC) raised concern as to how working families could potentially be harmed long after the government reopens its doors.

Potential Foreclosures Loom for Vulnerable Homeowners

Advocates at 15 national and state housing organizations sent a letter to U.S. Department of Agriculture Secretary Perdue requesting the USDA issue a stay of all judicial and non-judicial foreclosure activity on direct and guaranteed single family home loans during the government shutdown. This stay should include postponing timelines for borrowers to obtain the loss mitigation options available under these programs. Many homeowners with direct and guaranteed loans are unable to obtain hardship assistance while the agency is closed because the Department plays a critical role in approving alternatives to foreclosure in both programs.

Additionally, the shutdown interferes with foreclosure prevention assistance from the U.S. Department of Housing and Urban Development (HUD) affecting both traditional and reverse mortgages, as detailed in a letter sent to HUD by 37 national and state housing, civil legal aid, and consumer groups. Recently widowed spouses of older homeowners, as well as other reverse mortgage borrowers seeking relief, are facing foreclosure and eviction from their homes because they are unable to obtain approval from HUD to remain in their homes. In addition, FHA home loan borrowers who are having problems obtaining assistance from their mortgage company are unable to seek assistance from HUD's National Servicing Center. Housing advocates at NCLC said HUD should issue a stay of all judicial and non-judicial foreclosure activity on forward and reverse FHA mortgages during the shutdown.

"The shutdown is pushing vulnerable homeowners into foreclosure because they cannot get hardship assistance approved by the government," **said Alys Cohen, staff attorney at the National Consumer Law Center.** "If the IRS can restart procedures to help with new mortgage loans, the U.S. Department of Agriculture and HUD should ensure that existing homeowners are not unnecessarily pushed out."

Delay of Tax Refunds Could Harm Working Poor

With tax season scheduled to begin January 28, it's unclear whether there will be delays in issuing refunds due to IRS staffing shortages. The IRS may not be able to process refunds as quickly with only 50% of its workforce recently recalled and backups from before the recall. Furthermore, the IRS has historically hired and fully trained more than 10,000 seasonal employees by this time each year to assist with the filing season. "It's hard to imagine the IRS would be able to issue timely refunds under these circumstances," **said National Consumer Law Center Of Counsel Mandi Matlock.**

Low-income taxpayers will likely receive their refunds even later this year, on top of existing delays because refunds cannot be issued before February 15 if they include the Earned Income Tax Credit (EITC) or Additional Child Tax Credit (ACT). The EITC and ACT credits supplement modest wages and help raise children and families out of poverty. These EITC and ACT returns are complex and many taxpayers will have questions in the preparation process that might not be answered because there are fewer workers staffing the phones at the IRS.

"We are also worried that tax preparers who offer refund anticipation loans and related financial products may be using the government shutdown as a marketing opportunity for these potentially risky loans," **noted Matlock.** "It seems very likely we will see a large spike in taxpayers accessing these products."

Impact of Late Payments on Credit Reports

Many federal workers are unable to make payments on their mortgages, student loans, car loans, credit cards, and other credit obligations. Late payments can harm a person's credit report and score. "Creditors should automatically grant a forbearance if they have information in the loan file that the borrower is a federal employee or upon the employee's request, and should refrain from sending negative information about missed payments by federal employees to credit bureaus during

the shutdown,” **said Chi Chi Wu, a staff attorney at the National Consumer Law Center. Wu also urged** “credit bureaus to proactively remove any information about late payments or other negative events that occurred during the shutdown period from a credit report if the credit report indicates that the consumer’s employer is a federal agency affected by the shutdown.”

For families struggling to pay their bills, National Consumer’s Law Center’s *Surviving Debt*’s first chapter (free for all to read) includes information on prioritizing which debts to pay.

Debt Collection Fact Sheets

- Racial Disparities in Consumer Debt Collection and (Infographic)
- Servicemembers, Veterans, and Debt Collection and (Infographic)
- Older Consumers and Debt Collection and (Infographic)
- Medical Debt Collection and (Infographic)
- Student Debt Collection and (Infographic)
- Pervasiveness of Consumer Debt Collection
- Debt Buyers and Debt Collection

National and State Debt Collection Data

- National
- **Debt Collection in the States and D.C. (consumer complaints and share of population with a debt in collection), May 2020**

- Alabama
- Alaska
- Arizona
- Arkansas
- California
- Colorado
- Connecticut
- D.C
- Delaware
- Florida
- Georgia
- Hawaii
- Idaho
- Illinois
- Indiana
- Iowa
- Kansas
- Kentucky
- Louisiana
- Maine
- Maryland
- Massachusetts
- Michigan
- Minnesota
- Mississippi
- Missouri
- Montana
- Nebraska
- Nevada
- New Hampshire
- New Jersey
- New Mexico
- New York
- North Carolina
- North Dakota
- Ohio
- Oklahoma
- Oregon
- Pennsylvania
- Rhode Island
- South Carolina
- South Dakota
- Tennessee
- Texas
- Utah
- Vermont
- Virginia
- Washington
- West Virginia
- Wisconsin
- Wyoming

Advocates at Nearly 75 National, State, and Community Groups Urge Consumer Bureau to Protect Consumers from Abusive Debt Collection Practices in 2019

FOR IMMEDIATE RELEASE: December 20, 2018

Contacts: National Consumer Law Center: Jan Kruse (jkruse@nclc.org) or April Kuehnhoff (akuhenhoff@nclc.org); (617) 542-8010

Americans for Financial Reform: Carter Dougherty (carter@ourfinancialsecurity.org) or Linda Jun (linda@ourfinancialsecurity.org); (202) 251-6700

Washington, D.C. – Advocates from 74 national and state advocacy groups sent a letter yesterday afternoon to new Consumer Financial Protection Bureau Director Kathy Kraninger urging the Bureau to focus on protecting consumers from abusive debt collection practices in anticipation of a proposed debt collection rule expected in March 2019.

“Approximately 71 million adults in the United States had debt in collections in 2017, including medical debt, credit card debt, and auto loans, according to the Urban Institute,” **said April Kuehnhoff, staff attorney at the National Consumer Law Center.** “With record levels of non-housing consumer debt outstanding, debt and debt collection have sadly become an increasingly common part of American life.”

In the letter, the civil rights, consumer, community, and labor advocates noted that violations are still common more than 40 years after the federal Fair Debt Collections Practices Act (FDCPA) became law. Debt collection problems are a leading source of consumer complaints to the Consumer Bureau, which received approximately 84,500 complaints about debt collection in 2017 alone. The Bureau’s 2017 survey found that one in four consumers contacted by debt collectors felt threatened.

In particular, advocates asked the Consumer Bureau to use the rule to prevent harassment by debt collectors, protect consumer privacy, limit the collection of time-barred debt, and improve the clarity and accuracy of debt collection notices.

“Unrelenting calls from collectors can push consumers to use money they need for rent, food, or medicine in order to pay the most aggressive debt collectors, even for debts they do not owe, just to stop the harassment.” **said Linda Jun, senior policy counsel at the Americans for Financial Reform.**

In the Consumer Bureau’s survey on debt collection experiences, nearly one in five consumers were contacted eight or more times a week, and 75% of consumers who asked to stop receiving calls reported that collectors did not comply. That is the type of harassing behavior the FDCPA is designed to prevent.

Advocates asked the Consumer Bureau to limit debt collectors to one live call per week. Text and email communications should only be allowed if a consumer gives consent, in full compliance with the federal E-Sign Act, and only to the phone number or email address designated by the consumer.

The Bureau should prohibit collection of time-barred debt, both in and out of court. Debt beyond the statute of limitations is too old to collect without mistakes or deception. At a minimum, the Bureau should prohibit suits on “revived” debt, limit communications to writing only, and require each communication to have clear, consumer-tested disclosures that the consumer cannot be sued.

Additionally, the Consumer Bureau should create a model validation notice and statement of rights that provides comprehensive, clear and accurate information about the alleged debt and the consumer’s debt collection rights. Once created, this model validation notice should undergo consumer testing to confirm that it is comprehensible to the least sophisticated consumers. Each debt collector should be required to send a validation notice and statement of rights even if other collectors previously sent notices.

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Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training.

Americans for Financial Reform is a nonpartisan and nonprofit coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups. Formed in the wake of the 2008 crisis, we are working to lay the foundation for a strong, stable, and ethical financial system - one that serves the economy and the nation as a whole.

After Multiple Lawsuits and Court Order, Education Department Finally Agrees to Provide Relief to Students Hurt By School Closures

FOR IMMEDIATE RELEASE: December 14, 2018 || Contacts: Abby Shafroth (ashafroth@nclc.org) or Jan Kruse (jkruse@nclc.org); (617) 542-8010

Boston - Yesterday evening, after multiple lawsuits by borrowers and state attorneys general and a federal court order, the U.S. Department of Education announced that it would begin providing relief to approximately 15,000 student loan borrowers eligible for automatic discharges of their federal student loans because their schools closed before they could complete their programs. Approximately \$150 million in federal student loans that borrowers took out to earn degrees that they were unable to complete due to their schools’ abrupt closures will be cancelled.

The Department is required to provide this relief as part of the 2016 “Borrower Defense” regulations passed under the Obama administration, but it delayed implementing the regulations and providing relief for over a year and only acted after a federal court ordered it to do so in October and another lawsuit was filed in November. The National Consumer Law Center filed an amicus brief on behalf of 18 legal aid and nonprofit organizations in the lawsuits that led to the October order.

“This student debt relief has been a long time coming, and is only coming because borrowers and states fought for it and demanded that the Department of Education follow the law,” **said National Consumer Law Center attorney Abby Shafroth**. “The relief announced so far will apply to eligible student borrowers whose schools closed between November 1, 2013 and December 4, 2015, so some of these borrowers have been burdened for five years with unfair and unnecessary debt for a degree they couldn’t earn. During that time, most borrowers hurt by closures were left struggling to make payments while providing for their families on tightly stretched incomes. Those borrowers who couldn’t afford the loans and defaulted faced damaged credit, heavy collection fees, wage garnishment, and even seizure of important safety net protections, including Social Security and the Earned Income Tax Credit.”

“While implementing the closed school relief is a good first step, there is much more the Department needs to do to comply with the court order to fully implement the 2016 borrower defense rule,” **Shafroth said**. “Among other things, the Department must make sure that schools profiting from the federal student loan program are not using forced arbitration clauses against their students to prevent them from bringing fraud claims to court, and must adjudicate the over 100,000 borrower defense claims seeking loan relief based on school fraud—which the Department has been sitting on—using the process set out in the 2016 rule. With last week’s closure of the nationwide for-profit school chain Education Corporation of America, it should be clear to everyone that the problems of abrupt school closures and school scams are far from over, and students need protection today.”

Notably, the Department has proposed new rules that would eliminate automatic relief for borrowers hurt by school closures. If these rules are adopted, student debt relief like that announced yesterday would end. As detailed in comments submitted by the legal-aid community, advocates at the National Consumer Law Center strongly opposes restricting relief for borrowers hurt by school closures, and calls on the Department to focus its efforts on protecting students and taxpayers against the risk of abrupt closures rather than making it even harder for students hurt by closures to get relief.

Related NCLC Resources

- Issue Brief: The Borrower Defense Rule protects students and taxpayers against fraud and abuse in higher education. (January 2017)
 - Blog: Lawsuit Calls on Department of Education to Provide Relief to Students Whose Schools Closed (December 3, 2018)
 - Blog: Now in Effect: Rules on Student Loan Relief for School Closures and Misconduct, and Limits on Forced Arbitration (October 25, 2018)
 - Blog: Who is the Department of Education Looking Out For? Another Delay of Student Protections Follows a String of Actions Protecting Industry Profits Over Students (May 24, 2018)
 - Comments of NCLC and Legal Aid Community to Department of Education Opposing Proposed New Rule on Borrower Defenses, Forced Arbitration, Closed School, and False Certification Discharge (August 30, 2018)
 - Amicus Brief of National Consumer Law Center and 17 organizations in Support of Plaintiffs’ Motion for Summary Judgment in Case Challenging Department of Education’s Delay of Borrower Defense Rule (Bauer v. DeVos, September 28, 2017)
 - Further Information on school-related cancellation of federal student loan debt.
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How California's New Privacy Law Affects Everyone

December 13, 2018

A new California law that changes the way companies handle personal information could affect consumers nationwide. The law imposes some of the toughest privacy protections in the country, but the law stops short of tougher measures California was considering.

The law, which takes effect in 2020, mandates a wide variety of new protections for consumers, giving consumers new transparency, access, opt out, deletion, and portability rights. This webinar will provide an overview about what the law does, what it doesn't do, how the law will be refined as it is implemented, and what is next on the privacy frontier.

Speakers:

Justin Brookman, Director, Consumer Privacy and Technology Policy, Consumers Union
Ariel Fox Johnson, Senior Counsel for Policy and Privacy, Common Sense Media



Consumer Bureau's Shocking New "No Consumer Protection" Policy

FOR IMMEDIATE RELEASE: December 11, 2018

National Consumer Law Center contacts: Lauren Saunders (lsaunders@nclc.org) or Jan Kruse (jkruse@nclc.org)

Proposed Policy Changes Could Exempt Entire Industries from Consumer Laws and Regulations

Washington, D.C. – In a final affront to American families as acting director Mick Mulvaney headed out the door, just hours before Kathy Kraninger was sworn in as director, the Consumer Financial Protection Bureau (CFPB) has proposed a dramatic revision of its “no-action letter” policy and a new “Product Sandbox” that would give the Bureau broad authority to exempt entire industries from consumer protection laws and oversight.

“In a shocking, brazen, and unlawful move, the CFPB has proposed a ‘no action’ policy and ‘product sandbox’ that is instead a consumer protection desert that could wipe out consumer protection laws for entire industries, giving companies a safe harbor from liability if they harm consumers and from

supervision or enforcement by the CFPB against unfair, deceptive, or abusive practices,” **said Lauren Saunders, associate director of the National Consumer Law Center.** “The enemies of consumer protection failed to persuade Congress to gut the CFPB, and now the agency is trying to erase itself out of existence, and even stop consumers from protecting themselves.” The CFPB has proposed two new policies.

Under the Product Sandbox, the Consumer Bureau purports to have authority to exempt companies or entire industries from federal laws and regulations without going through the rulemaking process, seeking public comment, or fulfilling legal requirements governing the consideration of costs, benefits, or impacts on small businesses. It is proposing to give companies “a ‘safe harbor’ from liability under the applicable statute(s) to the fullest extent permitted by these provisions ... i.e., the recipient would be immune from enforcement actions by any Federal or State authorities, as well as from lawsuits brought by private parties.” Among others, the policy would permit exemptions from provisions of the laws governing mortgages, credit cards, and other forms of lending; fair lending laws that prohibit discrimination; and the laws protecting bank accounts and electronic payments.

“For example, with only a cursory 60-day review, the Bureau might decide that a computer algorithm used to decide who gets mortgages does not violate fair lending laws, even if the data later show that the algorithm discriminates against equally qualified borrowers of color. Or, the Bureau might try to exempt risky mortgages from the rules that apply to high-cost loans,” **said Saunders.**

The new “no-action letter” policy would allow companies – and trade associations on behalf of an entire industry – to seek relief from consumer protection laws for products or services on the grounds of potential “uncertainty, ambiguity or barrier.” Once a letter is granted, the CFPB “will not make supervisory findings or bring a supervisory or enforcement action against the recipient,” either under its authority to address unfair, deceptive or abusive practices or under “any other identified statutory or regulatory authority within the Bureau’s jurisdiction.” The Bureau has proposed several changes from the prior policy issued under former director Rich Cordray:

- Companies will not have to share data with the CFPB that would enable the agency to monitor the products for risks for consumers.
- The CFPB expects to grant or deny requests in only 60 days
- The default assumption will be that the letters would last indefinitely.
- The director will not need to approve the letters and will allow designated staff to commit the agency not to exercise its supervisory powers or take enforcement action.
- The Bureau is taking the position that much of the information in the applications will be confidential and not subject to public records requests.

“The CFPB’s proposals are unlawful, outside its authority, and undoubtedly will face a legal challenge,” **said Saunders.** “The Bureau cannot simply give companies a free pass to violate consumer protection laws, or carve big exemptions without even giving the public opportunity for input and without thoroughly considering the harms to consumers.”

Comments on the proposed policies will be due in mid-February but after the policies are final, the CFPB will not be taking public comment on applications to provide relief to particular companies, products, or services.

Related NCLC Materials

NCLC Comments in Response to CFPB's Request for Information Regarding the Bureau's Inherited Regulations and Rulemaking Authorities - electronic disclosures, statements, records and other communications, June 25, 2018

Letter opposing AZ HB 2434, Innovation Regulatory Sandbox, Jan. 24, 2018

Advocates Decry Lack of Compensation in Consumer Bureau Settlement

FOR IMMEDIATE RELEASE: December 7, 2018

CONTACTS: National Consumer Law Center: Jan Kruse (jkruse@nclc.org) or Chi Chi Wu (cwu@nclc.org); (617) 542-8010
Consumer Federation of America: Christopher L. Peterson, (202) 387-6121 x1020

Consumers Abused by State Farm Deserve Better

Washington, D.C. - Advocates from the Consumer Federation of American and the National Consumer Law Center criticized the Consumer Financial Protection Bureau's enforcement action announced late yesterday against State Farm Bank for imposing no restitution or fines at all. The CFPB discovered that State Farm violated the Fair Credit Reporting Act by reporting inaccurate information about its customers to the credit bureaus and for illegally pulling credit reports without a permissible purpose.

"State Farm Bank is one of the largest 1% of all banks in the America, **said Christopher Peterson, Consumer Federation of America's director of Financial Services and senior fellow.** "Nevertheless, they paid less than a parking ticket to resolve a federal investigation into serious, widespread violations of our consumer protection laws."

"State Farm wrongly reported accounts as past due, or marred the credit reports of the wrong consumer, depressing their credit scores," **stated National Consumer Law Center attorney Chi Chi Wu.** "What's worse, State Farm should have known this information was inaccurate because it allegedly conflicted with the company's own records - yet State Farm will not pay one penny for its reckless behavior."

Peterson also noted that State Farm apparently took months to clear up the errors, even after customers complained or the company otherwise knew the information was inaccurate. In the meantime, customers may have been rejected for credit, jobs, insurance or other benefits because of this false information. As for the illegally pulled reports, in behavior reminiscent of the Wells Fargo scandal, State Farm agents made up nonexistent loan applications in order to make a credit inquiry.

"It is reasonable for a bank with over sixteen billion dollars in assets to pay a substantial fine and reimburse every customer harmed by the bank's illegal practices. Instead, on his last day as Acting Director of the Consumer Financial Protection Bureau, Mick Mulvaney didn't even slap the bank on the wrist," **added Peterson.** "In over 200 CFPB enforcement cases, I cannot recall another case that was so obviously incomplete."

Wu advised consumers who are State Farm customers or have “shopped” with the company to immediately obtain their credit reports from www.annualcreditreport.com (consumers are entitled to one free report per year for each of the “Big Three” credit bureaus: Equifax, TransUnion, and Experian). Consumers should check if State Farm or its agents unlawfully pulled their credit reports by reviewing the section called “Hard Inquiries” or “Inquiries Shared with Others” for unfamiliar names.

Existing State Farm customers should check the account history on their credit reports for their State Farm accounts. If there is any inaccurate information in the history, the consumer should submit a dispute to the credit bureau reporting the information, with a copy to State Farm. “It’s important to send the dispute to the credit bureau if you want to preserve your legal rights,” **said Wu**. “With the exception of California, you can’t go after State Farm in court for messing up your credit report unless you first dispute with the credit bureau.”

More information on how to send a dispute to a credit bureau is available in the National Consumer Law Center’s guide *Disputing Errors in a Credit Report*.

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The Consumer Federation of America is a nonprofit association of more than 250 consumer groups that was founded in 1968 to advance the consumer interest through research, advocacy, and education.