Issue Brief: Stop Payday Lenders' Rent-a-Bank Schemes, November 2019

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Are Robot Calls Robocalls?

Prolific robocaller Yodel Technologies seeks exemption for making over 77 million unwanted and illegal telemarketing calls using AI and prerecorded voice messages.

WASHINGTON – Yodel Technologies (Yodel) seeks to escape liability by petitioning the Federal Communications Commission (FCC) for an exemption for its "robot calls." Using its "soundboard" technology to mimic a consumer's interaction with a live caller, Yodel "leverages Artificial Intelligence to surface the best responses at the appropriate time." After Yodel's technology was used to assist NorthStar Alarm Systems in making nearly 78 million robot calls to sell home security systems, a federal district court in Oklahoma found Yodel and NorthStar liable for making these calls without the required consent from the called parties. Yodel is now petitioning the FCC for an exemption.

"If the FCC were to grant the petition in this case, the result would undoubtedly be an astonishing escalation in unwanted, unconsented-to telemarketing calls to the American public," said Margot Saunders, senior counsel at the National Consumer Law Center. Saunders submitted comments to the FCC in opposition to Yodel's petition on behalf of NCLC's low-income clients and: Consumer Action, Consumer Federation of America, Consumer Reports, Public Knowledge, Public Citizen, and the National Association of Consumer Advocates.

Yodel Technologies LLC (Yodel) requests in its petition that any calls made with separate snippets of prerecorded voice, as distinguished from one continuous message with a prerecorded voice, should not be governed by the requirement for prior express consent for calls with a prerecorded voice under the Telephone Consumer Protection Act (TCPA). Yodel's petition repeatedly maintains that the TCPA regulates only calls which are "entirely prerecorded."

"As much as Yodel might wish it to be otherwise, the TCPA does not just regulate calls with one continuous prerecorded voice message, it regulates any telephone call which uses a prerecorded voice," said Saunders. "Congress was quite clear in requiring that all calls with a prerecorded voice are only permitted with consent."

The FCC has noted repeatedly that unwanted calls – including illegal and spoofed robocalls – are the top consumer complaint and its top consumer protection priority. Yet, if the FCC were to grant

Yodel's petition in this case, telemarketing calls made using soundboard technology would plague our landlines, further invading our privacy. "We strongly urge the FCC to deny Yodel's requests," said Saunders.

More information on NCLC's extensive work on illegal robocalls is available at: http://www.nclc.org/issues/robocalls-and-telemarketing.html

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Consumer and Civil Rights Advocates Condemn Credit Bureaus for Suing Over Language Access Law

WASHINGTON – On Thursday, the Consumer Data Industry Association (CDIA) sued the State of New Jersey over its new law requiring credit reports to be provided in Spanish and 10 other languages, claiming the law is preempted and a violation of the First Amendment. CDIA is a trade association for the credit reporting industry, the biggest players in which are Equifax, Experian and TransUnion. Consumer and civil rights advocates expressed outrage at the credit bureaus' lawsuit.

"Nearly 26 million people in this country are limited English proficient," **noted Chi Chi Wu, staff attorney at the National Consumer Law Center**. "Not only have the credit bureaus abysmally failed to serve them on a national level by providing credit reports in other languages, but now they are actively suing to invalidate New Jersey's language access law. I'd expect this type of reaction from anti-immigrant groups, not multinational corporations."

The credit bureaus' actions are especially egregious given that the Department of Homeland Security's newly adopted public charge rule requires consideration of an immigrant's credit report and score (implementation of the public charge rule is on hold as a result of several preliminary court decisions, but the litigation is at the very early stages).

"The credit bureaus' lawsuit makes it that much harder for immigrants if the public charge rule becomes effective," **explained Jennifer Brown, associate director of Economic Policy at UnidosUS**. "Instead of helping immigrants by providing translated credit reports, the credit bureaus have joined the forces that seek to make immigrants' lives worse."

Seema Agnani, executive director of the National Coalition for Asian Pacific Americans Community Development stated, "Immigrants are the fastest growing population in many states, and our communities are engines of economic growth. The credit bureaus' unreasonable refusal to take the simple step of providing translated credit reports to help that economic growth is bad enough, but actively suing so they aren't required to provide translated credit reports is shameful."

The credit bureaus' lawsuit against New Jersey follows on the heels of a similar one against the State of Maine that seeks to protect domestic violence victims and consumers with medical debt. "The states have always filled in the gaps in federal consumer laws," **said Ed Mierzwinski, senior director for consumer programs at U.S. PIRG**. "Their latest lawsuits show that the credit bureaus not only don't care about state consumer protections, but don't care about helping consumers at all, especially vulnerable groups like immigrants, domestic violence survivors and even medical debt victims."

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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.

The National Coalition for Asian Pacific American Community Development (National CAPACD – pronounced "capacity) is a coalition of more than 100 local organizations that advocate for and organize in low-income AAPI communities to further the economic and social empowerment of low income AAPIs and equitable development of AAPI neighborhoods. The organization strengthens and mobilizes its members to build power nationally and further a vision of economic and social justice for all. www.nationalcapacd.org.

U.S. PIRG, the federation of state Public Interest Research Groups, is a consumer group that stands up to powerful interests whenever they threaten our health and safety, our financial security, or our right to fully participate in our democratic society. U.S. PIRG is part of The Public Interest Network. The Public Interest Network runs organizations committed to our vision of a better world, a set of core values, and a strategic approach to getting things done.

UnidosUS, previously known as NCLR (National Council of La Raza), is the nation's largest Hispanic civil rights and advocacy organization. Through its unique combination of expert research, advocacy, programs, and an Affiliate Network of nearly 300 community-based organizations across the United States and Puerto Rico, UnidosUS simultaneously challenges the social, economic, and political barriers that affect Latinos at the national and local levels. For more than 50 years, UnidosUS has united communities and different groups seeking common ground through collaboration, and that share a desire to make our country stronger. For more information on UnidosUS, visit www.unidosus.org or follow us on Facebook, Instagram, and Twitter.

The CFPB Should Protect Consumers, Not Abusive Debt Collectors

The Consumer Financial Protection Bureau has proposed a debt collection rule that does more to protect abusive collectors than consumers.

Urge the CFPB to strengthen the rule to protect consumers from harassment, abuse, and deception by debt collectors, including collection attorneys, and to ensure that consumers receive important information about their rights.

Actions You Can Take

The proposed rule would allow collectors to:

- **Ring you 7 times per week, per debt.** A consumer with 8 medical debts could hear the phone ringing up to 56 times a week!;
- **Contact you by text, email, or direct message without your permission, and send important information through hyperlinks**;
- **Sue you without the collector's attorneys reviewing original account documents** to make sure you are the right person and the debt is the right amount and;
- **Collect debt that is so old that the deadline for a lawsuit has passed** and records of who owes the debt and for how much may be lost.

See our **issue brief** for more on what the proposed rule does and our recommendations for strengthening it.

Actions You Can Take

- Tell us your story. Have you been harassed by debt collectors calling? Are you getting email, text, or direct messages from debt collectors? Have you been sued in a collection lawsuit where you didn't owe the debt or the amount claimed was incorrect? Have you been contacted by a collector asking you to pay a very old debt? Then tell us your story.
- Find an attorney to help stop abusive debt collection practices.
- See our CFPB debt collection rulemaking resources (including issue briefs and fact sheets) for more on what the proposed rule does, our recommendations for strengthening it, and how it impacts employers and businesses as well as consumers.

- LEARN MORE about the CFPB's debt collection rule and NCLC's work to promote fair debt collection.

Racial Justice and Equal Economic Opportunity Archives

Credit & Economic Opportunity

Policy Analysis

Policy Briefs, Reports & Press Releases

- Policy Brief: Past Imperfect: How Credit Scores and Other Analytics "Bake In" and Perpetuate Past Discrimination, May, 2016
- Policy Brief: Racial Disparities in Auto Loan Markups: State-by-State Data, June 2015
- Press Releases: Consumer Financial Protection Bureau Will Hold Auto Lenders Accountable For Discrimination in Auto Lending, March 2013
- Policy Brief: The Consumer Financial Protection Bureau Should Update Regulation B to Protect Consumers from Credit Discrimination, April 2012
- Report: Why Responsible Mortgage Lending Is a Fair Housing Issue, February 2012
- Issue Brief: State-by-State Racial Disparities in Auto Lending by Auto Dealers, May 2010
- Report: Credit Scoring and Insurance: Costing Consumers Billions and Perpetuating the Economic Racial Divide, July 2007

Comments, Letters, & Testimony

- Letter to the National Association of Forensic Economics (NAFE) expressing concern about the unfair consideration of race, ethnicity, and gender by forensic economists in future earnings modeling, April 29, 2019.
- Coalition letter urging Congress to prioritize civil rights in upcoming privacy legislation, Feb. 13, 2019
- Consumer, Civil Rights, and Privacy Advocates comments to the Department of Homeland Security opposing Notice of Proposed Rulemaking on Public Charge Determinations, Dec. 10, 2018
- Group letter to CFPB's Acting Director Mulvaney seeking to remove Mr. Eric Blankenstein from having any involvement in the Bureau's oversight and enforcement of antidiscrimination laws, Oct. 5, 2018
- Comments in response to the Consumer Financial Protection Bureau's (CFPB) RFI on the importance of maintaining Regulation B (Reg B) and the use of the long-established disparate impact doctrine in enforcement actions, examinations, and complaint investigations that have Equal Credit Opportunity Act (ECOA) implications, June 25, 2018

Litigation & Amicus Briefs

- American Insurance Association v. U. S. Department of Housing and Urban Development, Case No. 1:13-cv-00966-RJL (D.D.C.) NCLC joined an amicus brief drafted by the NAACP Legal

Defense and Educational Fund and the American Civil Liberties Union, also joined by the National Community Reinvestment Coalition, in support of the defendant's motion to dismiss or, in the alternative, for summary judgment in this case challenging HUD's Discriminatory Effects Rule under the Fair Housing Act. (2/20/2014)

- Township of Mount Holly, New Jersey v. Mt. Holly Gardens Citizens in Action, Inc., U.S. Supreme Court, No. 11-1507
  NCLC and ACLU filed an amicus brief, joined by seven other advocacy groups, supporting the respondents' position that the U.S. Court of Appeals for the Third Circuit decided correctly in ruling that the Fair Housing Act authorizes disparate impact civil rights claims as a means to combat housing discrimination.
- Beverly Adkins et al. v Morgan Stanley: NCLC is co-counsel for African American plaintiffs in a landmark lawsuit brought against Morgan Stanley. The lawsuit claims that the Defendant violated federal civil rights laws, the Fair Housing Act and the Equal Credit Opportunity Act as well as state laws by adopting mortgage securitization policies that caused predatory lending and adversely impacted African Americans in the Detroit, Michigan area.
- Subprime Mortgage Discrimination: National class action cases brought under the Fair Housing Act and the Equal Credit Opportunity Act against certain subprime mortgage lenders.
- Auto Finance Discrimination: NCLC served as co-counsel in national class-action cases brought under the Equal Credit Opportunity Act against certain auto finance companies and banks. The lawsuits, which exposed practices that had operated secretly for over 75 years and had resulted in higher-interest-rate car loans for African Americans and Hispanics, have transformed car financing practices across the industry.
- Magner v. Gallaher, U.S. Supreme Court No.1032
- NCLC has joined an amicus brief prepared by the Lawyers' Committee for Civil Rights Under Law with other national civil rights organizations arguing that the Fair Housing Act properly is interpreted to authorize disparate impact claims and that the Eight Circuit applied the correct burden-shifting approach to litigating disparate impact claims consistent with the way Title VII cases are litigated and HUD's proposed regulation governing this subject. Brief. NCLC also consulted with the ACLU (which cites NCLC's Credit Discrimination manual and references NCLC's sub-prime mortgage discrimination disparate impact cases brought under the Fair Housing Act) and the Department of Justice with regards to the preparation of the amicus briefs they separately prepared and filed with the Supreme Court in the appeal. Briefs.

Equal Access to Higher Education

Policy Briefs, Reports & Press Releases

- Report: The Student Loan Default Trap: Why Borrowers Default and What Can Be Done, July 2012
- Report: Paying the Price: The High Cost of Private Student Loans and the Dangers for Borrowers, March 2008

Letters

- Coalition letter to Education Secretary: Civil Rights, Consumer, and Education Groups Call on DeVos to Protect Student Loan Borrowers of Color, Sept 19, 2017
- Coalition letter to Education Secretary King on impact of student loans on borrowers of color, Aug. 17, 2016 || Press Release

Litigation

- NCLC and ACLU File Lawsuit against U.S. Department of Education Over Failure to Disclose Debt Collection Practice Data, March 30, 2016
- Case against the United States Department of Education
  The National Consumer Law Center is co-counsel in a Freedom of Information Act suit requesting public records of the U.S. Department of Education regarding race and debt collection practices of third-party debt collectors hired by the Department, March 30, 2016
  Complaint, Exhibit 1 (FOIA request, May 7, 2015), Exhibit 2, Exhibit 3, and Exhibit 4, and press release

Webinars

Why is America's Racial Wealth Gap Growing?, sponsored by the Insight Center and PolicyLink, March 6, 2013. NCLC attorney Deanne Loonin addresses equal access to higher education.

Sustainable Homeownership

Policy Analysis

Policy Briefs, Reports and Press Releases

- Press Release, Narratives, Summary and Policy brief: The CFPB and Other Federal Agencies Should Adopt Strong Language Access Protections for Homeowners and Other Consumers, May 2016
  Press Release in Arabic, Chinese, Creole, Korean, Spanish, Tagalog, Russian, Vietnamese
- Press Release: NCLC Working to Improve Mortgage Lenders' Data to Promote Fair Housing, March 24, 2014
- Report: Why Responsible Mortgage Lending Is a Fair Housing Issue, Feb. 2012

Comments

- Comments on the Federal Housing Finance Agency's Request for Input on Improving Language Access in Mortgage Origination and Servicing Submitted by Americans for Financial Reform's Language Access Task Force, July 31, 2017
- Comments to the Federal Housing Finance Agency re Improving Language Access in Mortgage Lending and Servicing, July 31, 2017
- Comments to CFPB on the proposed rule amending Regulation C of the Home Mortgage Disclosure Act (HMDA), Oct. 29, 2014
- Comments on the proposed credit retention rule relating to home mortgages and its exceptions: the QRM, October 30, 2013
- Comments on Qualified Mortgage Definition for HUD Insured and Guaranteed Single Family Mortgages, October 30, 2013
- Comments to the CFPB re Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), July 22, 2013
- Comments to CFPB on Truth in Lending Act – Regulation Z: Ability to Repay Standards under

the Truth-in-Lending Act, Feb. 25, 2013

- Comments on collection of Home Mortgage Disclosure Act (HMDA) data, Nov. 26, 2012
- Comments to the Federal Reserve Board regarding its proposed Truth in Lending (TILA) rules for closed end and open-end mortgage credit, December 24, 2009
- Comments on Real Estate Settlement Procedures Act (RESPA) Proposed Rule to Simplify and Improve the Process of Obtaining Mortgages to Reduce Settlement Costs to Consumers, June 16, 2008
- Comments to the Board of Governors of the Federal Reserve System regarding the Board's Authority under HOEPA to Prohibit Unfair Acts or Practices in Connection with Mortgage Lending, August 2007

Letters

- Coalition letters (Congress, HUD and FEMA) for a Just and Complete Housing Recovery from Hurricanes Harvey, Irma and Maria, Sept. 28, 2017
- Group follow-up letter to the Federal Housing Finance Agency (FHFA) re: adding preferred language data fields to redesigned Uniform Residential Loan Application, July 29, 2016
- Group letter to the Federal Housing Finance Agency (FHFA) urging inclusion of preferred language data fields in the redesigned Uniform Residential Loan Application, June 23, 2016
- Letter to the Senate Banking Committee on fair housing and GSE reform, February 26, 2014

Litigation & Amicus Briefs

- Action against discriminatory targeting of African-American consumers for abusive credit terms in home purchases.
  Horne et al v. Harbour Portfolio et al. Second Amended Complaint (N.D. GA)
  Horne et al v. Harbour Portfolio et al. Third Amended Complaint (N.D. GA)
  Opposition to Defendant Harbour's Motion to Dismiss Second Amended Complaint
  Opposition to Defendant NAA's Motion to Dismiss Second Amended Complaint
  Order on Motion to Dismiss Second Amended Complaint (N.D. GA)

  Horne v. Harbour Portfolio, Unites States District Court for the Northern District of Georgia: Suit was brought by the Atlanta Legal Aid Society on behalf of 22 African-American residents representing 16 household. The action asserted claims of discriminatory targeting for abusive credit terms in home purchase "contract for deed" transactions extended by Harbour Portfolio. The complaint alleged that Harbour Portfolio, through both intentional targeting of African-American consumers and practices that have a foreseeable disparate impact on African-American consumers, violated the Fair Housing Act of 1968, as amended, 42 U.S.C. § 3601, *et seq.*, the Equal Credit Opportunity Act, 15 U.S.C. § 1691, *et seq.*, and the Georgia Fair Housing Act, O.C.G.A. § 8-3-200 *et seq.* NCLC subsequently joined the case as plaintiffs' co-counsel.On March 20, 3018, the Court denied a motion to dismiss for all but one of the claims asserted (wrongful eviction). Thereafter, during on-going discovery, including subpoenas issued to Fannie Mae, requests for production of documents by the defendants and depositions of the defendant principal, the parties engaged in mediation before a U.S. Magistrate Judge.The case settled in December, 2018. The 12 households who were still living in their homes received a deed converting their contract for deed to a mortgage with title insurance, reduced interest rates, shorter repayment terms and, in some cases, principal reductions. They also received a lump sum cash payment. The four households who were evicted/no longer living in the home received separate lump sum cash payments. As part of the settlement, separate attorneys' fees were paid to plaintiffs' counsel of record. (More information on land installment contracts including NCLC's 2016 report, Toxic Transactions: How Land Installment Contracts Once Again Threaten Communities of Color, here)

- *Connecticut Fair Housing Center, Inc. vs Liberty Bank Case No. 18-1654* || Press Releaseand Complaint
  The National Consumer Law Center and and the Connecticut Fair Housing Center filed a fair housing lawsuit in the United States District Court for the District of Connecticut against Liberty Bank, alleging that Liberty Bank violated the Fair Housing Act by: engaging in a pattern and practice of redlining communities where most of the residents are racial and ethnic minorities; discriminating against African – American and Latinx mortgage applicants and; discouraging African – American and Latinx mortgage applicants from applying for credit. Press Release and Settlement Agreement.
- *National Fair Housing Alliance (NFHA) v. HUD*, Amicus brief || Appendix A
  The case seeks to protect HUD's 2015 Affirmatively Furthering Fair Housing Rule.
- *Bank of America, et al v. City of Miami* (United States Supreme Court, 2016). The NCLC, along with the American Civil Liberties Union, the Impact Fund, the Lawyers' Committee for Civil Rights, the Leadership Conference on Civil and Human Rights, the National Fair Housing Alliance, and the Poverty & Race Research Action Council, filed an amicus brief supporting the standing of the City of Miami to assert discrimination claims against Bank of America and Wells Fargo under the Fair Housing Act (FHA). The brief argues that standing under the FHA extends to municipalities not directly targeted by discrimination. Noting that racially discriminatory lending practices are a major cause of this country's residential segregation, the brief asserts that the FHA was designed to address the systemic problems associated with such segregation and to permit cities to seek redress for injuries caused by discriminatory practices.
- *Property Casualty Insurers Assoc. of America v. Donovan* (N.D. Ill. 2014). The NCLC, along with 12 civil rights and grassroots organizations, filed an amicus brief in an action brought by the insurance industry challenging a rule formalized by HUD in 2013 that recognized disparate impact liability under the Fair Housing Act. The insurance industry sought to invalidate the rule's application to the homeowner's insurance industry. Examining the history and persistence of insurance redlining, the organizations argued that application of the rule is vital to ensuring fairness in the market for homeowner's insurance and is consistent with sound actuarial practices, and other business related practices.
  Decision: The U.S. District Court, Northern District of Illinois decision dismissed the industry's claim under McCarran-Ferguson for lack of subject matter jurisdiction as that claim was not ripe for judicial review and also rejected the industry's challenge to HUD's adoption, in the rule, of a three-step burden-shifting approach. However, the court did determine that HUD did not adequately consider substantive comments submitted by the industry prior to adoption of the rule and remanded the case to HUD to provide further reasoned explanations of the rule's impact under McCarran-Ferguson, the filed-rate doctrine, and its general effects on the insurance industry.*American Insurance Assoc. v. U.S. Department of Housing and Urban Dev.* (D.C. 2014). The NCLC joined the NAACP Legal Defense and Educational Fund, American Civil Liberties Union (ACLU), and the National Community Reinvestment Coalition in an amicus brief in support of HUD in an action brought by homeowner's insurance associations seeking to invalidate the agency's issuance of a rule which codified its long-standing interpretation that the Fair Housing Act prohibits disparate impact discrimination. Noting the history and persistence of insurance redlining, NCLC argued that this pre-enforcement challenge to the

rule should be dismissed on jurisdictional grounds without reaching the merits.

- Beverly Adkins et al. v Morgan Stanley: NCLC is co-counsel for African American plaintiffs in a landmark lawsuit brought against Morgan Stanley. The lawsuit claims that the Defendant violated federal civil rights laws, the Fair Housing Act and the Equal Credit Opportunity Act as well as state laws by adopting mortgage securitization policies that caused predatory lending and adversely impacted African Americans in the Detroit, Michigan area.
    - The Adkins v. Morgan Stanley lawsuit asserts that Morgan Stanley pursued mortgage securitization policies and practices that, through their funding of now-defunct mortgage lender New Century Mortgage Company, resulted in a significant discriminatory impact on African-American borrowers in the Detroit metropolitan area, flooding the already highly segregated community with toxic, combined-risk subprime loans in the lead-up to the collapse of the housing market in 2008. Read the expert reports submitted in support of the reverse red-lining allegations made in the case and NCLC's issue brief detailing key findings by the experts.
      NCLC Issue Brief
      Ayers Expert Report
      McCoy Expert Report
      Oliver Expert Report
      Segrue Expert Report
- Subprime Mortgage Discrimination: National class action cases brought under the Fair Housing Act and the Equal Credit Opportunity Act against certain subprime mortgage lenders
- *Magner v. Gallaher, U.S. Supreme Court No.1032*
  NCLC has joined an amicus brief prepared by the Lawyers' Committee for Civil Rights Under Law with other national civil rights organizations arguing that the Fair Housing Act properly is interpreted to authorize disparate impact claims and that the Eight Circuit applied the correct burden-shifting approach to litigating disparate impact claims consistent with the way Title VII cases are litigated and HUD's proposed regulation governing this subject. Brief. NCLC also consulted with the ACLU (which cites NCLC's Credit Discrimination manual and references NCLC's sub-prime mortgage discrimination disparate impact cases brought under the Fair Housing Act) and the Department of Justice with regards to the preparation of the amicus briefs they separately prepared and filed with the Supreme Court in the appeal. Briefs.

Equitable Access to Broadband, Media, and Telecom Services

Policy Analysis

Comments, Letters, & Testimony

- Leadership Council coalition letter to the FCC re: need for additional steps to ensure better media ownership diversity, Aug. 11, 2014
- Group Comments to the Federal Communications Commission re: Protecting and Promoting the Open Internet Framework for Broadband Internet Service, July 18, 2014
- Comments of the Greenlining Institute, NCLC and the Utility Reform Network on the Proposed Decision of Assigned Commissioner Sandoval, Nov. 2013
- Letter of the Leadership Conference to FCC regarding Technology Transitions Policy Task Force Regarding Potential Trials and Policies to Respond to the Ongoing Technological Transition of Voice Networks, Oct. 2013
- Comments of the Leadership Conference to FCC on the Commission's proposed modernization

of E-Rate, Sept. 2013

- Comments of the Leadership Conference to FCC In the matter of Technology Policy Task Force Regarding Critical Information Needs Studies and Diversification of Ownership in the Broadcasting Services, July 2013
- NCLC's Comments in response to the AT&T Petition to Launch a Proceeding Concerning the TDM-TO-IP Transition, Jan. 2013