Crisis, Danger, and Opportunity
NCLC’s Agenda for 2021 (and Beyond)

“The Chinese use two brush strokes to write the word ‘crisis.’ One brush stroke stands for danger; the other for opportunity. In a crisis, be aware of the danger — but recognize the opportunity.”

—John F. Kennedy

The results of the 2020 Presidential and Congressional elections, combined with a worsening COVID-19 pandemic, create both challenges and opportunities for consumer rights and economic justice advocates.

To achieve economic justice for our low-income clients and other vulnerable people, families, and communities, and to address the racial and economic inequality that the COVID-19 crisis has made so starkly apparent, NCLC is advocating to advance an agenda of common-sense reforms rooted in basic fairness for all. Our 2021 Consumer Protection Federal Priorities Agenda (bit.ly/2021-Fed-Consumer-Protection) includes the following highlights:

**Access to Justice:** Restore our Day in Court. End the use of forced arbitration in contracts.

**Bankruptcy:** A Fresh Start for Working Families. Give student loan borrowers and those struggling with unaffordable criminal justice fines and fees the same fresh start opportunity as others.

**Cars:** Ensure Low-income Families Can Get and Keep a Car at Fair Terms. Identify and dismantle barriers to car ownership for low-income people and people of color, bring fairness to car sales and finance through transparency and consistency, and ensure the cars sold are safe and reliable.

**CFPB:** Keep the Consumer Watchdog Working for Us. Refocus the CFPB on its mission to protect consumers and fight discrimination.

**Civil Rights & Fair Lending:** Defend & Enforce Our Laws. Preserve the collection of race and ethnicity data and require loan-level data during the COVID-19 emergency and beyond.

**Credit:** Limit Interest Rates to Stop Predatory Lending. Extend the 36% interest rate cap that currently protects

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COVID-19 Foreclosures Are Coming
Here’s How Lawmakers Can Soften the Blow for Homeowners

Along with the devastating public health consequences of COVID-19, many consumers will also face overwhelming financial distress as a result of staggering unemployment and increases in the cost of basic necessities such as food, child and medical care, and transportation. And as courts open up for foreclosure and eviction hearings and moratorium restrictions lift, many consumers will be at risk of losing their homes.

Over 7% of adults in the U.S. report that they are either behind on their rent or mortgage payment, or have slight or no confidence in making their next payment on time. It is predicted that between 225,000 to 500,000 homeowners in the U.S. could face foreclosure through 2021. Communities of color, especially Black and Latinx communities, who have been particularly

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PAGE 5: SCOTUS Takes Up Cases on Robocalls
Dear friends, allies, and supporters:

One year ago, NCLC celebrated its 50th anniversary with a wonderful celebration. Looking back, we did not appreciate how fortunate we were to gather together in Boston. Little did we know what lay in store for us all in 2020. It has been an uncertain, turbulent, and trying time. As we reflect upon the past year, our hearts go out to the millions of individuals and families who have been devastated by COVID-19, the over 200,000 who have lost their lives; and the millions more who have lost their jobs, their hard-earned savings, and any sense of economic security.

Given all of the serious challenges we face as a country, the struggle for economic and racial justice is more important than ever. With the contentious election season behind us and the promise of a new administration ahead, NCLC looks to the future with optimism and hope about building a more just and equitable economic system for low-income and vulnerable consumers. We will seize this opportunity to bring about profound and lasting reforms to the policies and systems that have perpetuated poverty and discrimination for generations.

Inside this edition of Consumer Impact, you’ll read about the ways the dedicated advocates of NCLC are currently working to address the overwhelming financial distress caused by the pandemic. In all parts of the country, our staff is finding ways to provide relief to homeowners in danger of foreclosure; devising strategies to help households keep their utilities on; fighting attempts by predatory lenders to evade state interest rate caps; and combating schemes that target Black consumers for home purchase contracts that are designed to fail and drain wealth from Black communities.

As we look ahead to a better and more hopeful future in 2021 and beyond, you can be sure that NCLC will continue to give voice to the needs of the disadvantaged and most vulnerable. I do hope we continue to earn your trust and support.

With best wishes,

Rich Dubois
Executive Director
National Consumer Law Center
Red Alert on Predatory “Rent-a-Bank” Schemes

NCLC and its partners have been sounding the alarm for years on so-called “rent-a-bank” schemes, in which high-cost lenders launder their loans through banks to evade state interest rate limits. Payday lenders were using these schemes in the early 2000s, but action by states and federal bank regulators largely shut down these fraudulent arrangements. Now, online lenders, aided by federal banking regulators, are again exposing borrowers to high-cost rent-a-bank loans, jeopardizing the power state has had since the time of the American Revolution to limit interest rates to prevent predatory lending.

Banks are largely exempt from state rate caps, so predatory lenders are increasingly using banks as a “fig leaf” to launder usurious loans up to 160% APR or higher in states where those rates are illegal. Predatory lenders are using rent-a-bank schemes for installment loans, lines of credit, auto title loans, retail point-of-sale loans, and small business loans secured by homes.

Amidst the severe economic fallout of the COVID-19 pandemic, the FDIC and Office of the Comptroller of the Currency (OCC) have chosen to side with these predatory schemes. Both agencies issued rules (so-called “Madden-fix” rules) that allow high-cost lenders to ignore state rate caps when they buy loans from banks. The OCC has released a rule that would allow high-cost lenders to skirt state rate caps merely by putting a bank’s name on the paperwork, preventing courts from looking behind contrivances to assess whether the banks are the real underwriter.

In comments to the OCC earlier this year, NCLC and its partners deeply objected to the offensive claim that predatory lending that destroys families should be allowed in the name of “access to credit.” High-cost installment loans are an even bigger and deeper debt trap than traditional payday loans. NCLC also earlier filed comments opposing the Madden-fix rules, which are now under challenge by several state attorneys general, and filed an amicus brief supporting the Colorado Attorney General’s challenge to two lenders.

In addition to continuing to support legal challenges to rent-a-bank schemes and to the banks regulators’ rules, NCLC has partnered with the Consumer Federation of America (CFA) and other leading consumer organizations to launch a High Cost Lending Lobby Campaign to build support for a national rate cap through the Veterans and Consumers Fair Credit Act (H.R. 5050/S. 2833) and to put a stop to high-cost rent-a-bank schemes to evade state usury laws. Advocates from across the nation attended an initial online training led in part by NCLC’s Associate Director Lauren Saunders and met with their members of Congress virtually throughout the following weeks.

“Rent-a-bank schemes are the biggest threat in decades to states’ power to protect families from predatory lending. Passing a national 36% rate cap and stopping rent-a-bank evasions of state interest rate limits must be a priority in the coming year,” said Saunders.

NCLC Summer Interns: Training the Next Generation of Consumer Attorneys

Each summer NCLC hosts a talented group of law students through our annual internship program. In the summer of 2020, NCLC welcomed (pictured from left to right above): Mary (Bell) Book (rising 3L, University of Michigan Law School); Greenfield Fellow Aidan Browne, (rising 3L, Washington University School of Law); Philip Cho (rising 3L, University of Michigan Law School); Hobbs Fellow Sophie Laing (rising 3L, Yale Law School); Chasity Williams and Christopher Stahl (rising 3L, Boston College Law School). The Greenfield Fellowship is awarded annually to a 2L at the Washington University School of Law in honor of Professor Greenfield, a longtime supporter of NCLC; and the Hobbs Fellow is awarded annually by the NCLC Board of Directors in honor of Bob Hobbs, longtime NCLC Deputy Director.

In addition, we were fortunate to have Tyler Creighton (3L, Boston University School of Law) as an extern in our office, and Sarah Midkiff (3L, Northeastern University School of Law) as a Spring term Co-op placement.

NCLC Reports Detail Impact of Criminal Justice Debt, EITC Credit Seizure, and Predatory Lending Policies

Using Bankruptcy to Discharge Criminal Justice Debt

A major barrier to reentering society long after an encounter with the criminal justice system is the burden of paying fines and fees. To help knock down this barrier, a new NCLC primer guides bankruptcy and criminal defense attorneys on how to discharge criminal justice debt and help individuals avoid suspensions of drivers’ licenses and vehicle registrations. NCLC is collaborating on a New Beginning: A Guide to Discharging Criminal Justice Debt in Bankruptcy, reviews treatment of debt with use of Chapter 7 and Chapter 13 bankruptcy, an overview of which fines and fees are and are not dischargeable, and how to use the Bankruptcy Code’s automatic stay to assist those facing the consequences of nonpayment of court debt. Read the report at bit.ly/New-Beginning-CJ-Bankruptcy-Debt

Seizure of the EITC Leaving Student Loan Borrowers Homeless and Hopeless During Pandemic

Even after the passage of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which suspended all student loan collections and activity until September 30, 2020, some borrowers are still losing the EITC that they and their families rely on. Now, in the midst of the COVID-19 pandemic, many student borrowers noticed the seizure of their EITC, which has been in place for years as a way to help low-income families. Read the report at bit.ly/Voices-of-Despair

Predatory Installment Lending in the States: 2020

Caps on interest rates and loan fees are the primary vehicle by which states protect consumers from predatory lending, yet these caps are under attack. In state after state, high-cost lenders are mounting campaigns to persuade state policymakers to discard or weaken these bulwark protections. NCLC’s Predatory Installment Lending in the States: 2020 surveys the battleground as of 2020 and reports on the annual percentage rates (APRs) that the 50 states and the District of Columbia allow nonbank lenders to charge for a sample $500 six-month loan and a sample $2,000 two-year loan. States vary greatly in the level of protection they provide, some limiting APRs to reasonable, affordable levels but others allowing triple-digit APRs or imposing no cap at all. States have made several significant changes to their predatory installment loan report, Predatory Installment Lending in 2017: States Battle to Restrain High-Cost Loans. Read the report at bit.ly/Predatory-Lending-In-States
Corporate Accountability and Access to Justice for Consumers

The National Student Clearinghouse has long been concerned about the debt collection practices of the U.S. Department of Education. The Consumer Financial Protection Bureau (CFPB), the federal government agency responsible for protecting consumers from unfair, deceptive, and abusive practices, recently announced its new focal area for the remainder of 2022 will be education lending and student wellbeing. NCLC has been working in this space for nearly two decades, bringing suits against student loan servicers, coordinating with advocates across the country, and working with lawmakers to develop bills that benefit low-income consumers.


NCLC has long published model state laws and provided technical assistance to state advocates and policymakers working to protect low-income consumers. Over the past year, through the Campaign for the Future, NCLC has ramped up its work at the state level by pairing its nationally recognized State Work Coordinator, hiring lobbyists in California and Massachusetts on pending legislation, and engaging earlier in the legislative process with state groups developing bills that will benefit low-income consumers.

In the year ahead, with families struggling even more under the enormous weight of debt as a result of the coronavirus crisis, we expect to have a special focus on increasing the amount of wages and money in a bank account protected from garnishment by debt collectors. State advocacy groups identified this as a top priority on the monthly Debt Policy video call. NCLC hosts state advocates on this call to discuss the issues and consider strategies.

The State Work Coordinator also engages internally with NCLC’s advocates across issue areas to create quick policy responses to crises, such as “Stabilizing Consumer Finances During and After the Coronavirus,” and the “What States Can Do to Protect Consumers” series of issue briefs. These materials use a simple visual format that presents the problems of low-income consumers with solutions NCLC’s policy experts have developed. The goal of translating more technical work into easy-to-understand formats is to promote greater use of NCLC policy solutions by state decisionmakers.

With much uncertainty at the federal level, and states recognizing that they need to do something for their residents as unemployment, unpaid debts, and eviction and foreclosure loom, there is real opportunity for positive policy change at the state level that will help our low-income clients.

Litigation Update

The CFPB is now an agency with a sole focus on consumer protection. This is a significant milestone in the history of its first ten years. From my perspective, the key questions we need to consider are:

- How will the CFPB build bridges to the advocacy community that was already far behind due to centuries of discrimination, and the racial disparities that exist in our nation’s credit and housing markets?

- How will the CFPB engage in those practices themselves whether they were engaging in those practices and might be at risk.

- What other consumer concerns are already far behind due to centuries of discrimination, and the racial disparities that exist in our nation’s credit and housing markets?

- How will the CFPB engage in those practices themselves whether they were engaging in those practices and might be at risk.

Spotlight: Racial Justice at a Crossroads

In the midst of sustained protest over police violence and racial injustice following the killing of George Floyd, Breonna Taylor, and other Black people at the hands of law enforcement, the U.S. Department of Housing and Urban Development (HUD) quietly took steps to dismantle core civil rights protections guaranteed under the federal Fair Housing Act. The gutting of the disparate impact standard – a legal tool used successfully to challenge systemic discrimination in housing, lending, insurance, and financial services – was the latest in a series of attacks on fair housing. Only weeks earlier, the agency rolled back Obama-era rules designed to dismantle segregation and affirmatively further fair housing. Housing segregation in particular has seeded long-standing racial disparities in access to affordable credit, healthcare, employment, and education, and contributed to predatory policing practices in communities of color.

These actions are part of a larger campaign by the Trump Administration to gut civil rights and fair housing protections, retreat from supervision and enforcement of fair lending laws, and to claw back the prior administration’s collection and dissemination of race and ethnicity data. And they come at a time when communities of color are facing dire threats to their housing security from a burgeoning eviction and foreclosure crisis as a result of the COVID-19 pandemic. According to NCLC’s recent analysis of census data, Black and Latinx households are significantly less likely than white homeowners to access home savings relief options when they miss a mortgage payment, putting them at greater risk for foreclosure once the moratoriums are lifted. High levels of unemployment and other measures of significant economic distress indicate that communities of color will need targeted interventions and relief and more protections from discriminatory policies and practices going forward.

NCLC created the Racial Justice and Equal Economic Opportunity Project to address systemic discrimination in the financial services industry. Stark, long-standing racial disparities exist in who is denied credit, provided predatory subprime or high-cost loans, subjected to excessive fees and fines, and victimized by other oppressive business practices. These practices aggressively stripped wealth and resources from communities of color, that are now unavailing to the economic distress caused by the pandemic. NCLC’s challenging these policies and practices through a combination of anti-discrimination litigation, advocacy, hard-hitting reports, and training for advocates. We will continue to work with consumer, civil rights, and grassroots advocates to fight for economic and racial justice and, as the late Congressman John Lewis stated, get into some “good trouble.” More at: nclc.org/special-projects/racial-justice.html

Tools at Its Disposal

A Conversation on Ten Years of the CFPB

Lauren Saunders (LS) is NCLC’s Associate Director and was closely involved with the development and passage of 2010’s Dodd-Frank Wall Street Reform and Consumer Protection Act that, among other reforms, created the Consumer Financial Protection Bureau.

DT: Lauren, do you think the CFPB has done well over its first ten years? From my experience, I think the agency was far more effective when it was a part of the Consumer Financial Protection Bureau, the independent agency with the unique mission to protect consumers. But since it was moved under the Treasury Department to immediately cease all garnishments and Treasury offsets used during the pandemic when Congress, the US Department of Education, and the CFPB agreed to change its processes and procedures to address a wide array of legal questions as the pandemic raged.

DT: That’s true. But the CFPB was also able to have an agency with a sole focus on consumer protection and a range of tools at its disposal – research, supervision, enforcement, rulemaking, complaint management, and the bully pulp. The focus on unfair, deceptive, and abusive acts and practices also got companies seriously asking themselves whether they were engaging in those practices and might be at risk.

DT: Yes, that’s true. But the CFPB was also able to have an agency with a sole focus on consumer protection and a range of tools at its disposal – research, supervision, enforcement, rulemaking, complaint management, and the bully pulp. The focus on unfair, deceptive, and abusive acts and practices also got companies seriously asking themselves whether they were engaging in those practices and might be at risk.

DT: That’s true, the focus by itself changed behavior outside the real world. It was the reverse of what many in the industry and some academic observers complained was the “chilling effect” of things like the auto lending bulletin and the guidance on marketing credit card add-ons. Both changed industry practices for the better, saved consumers’ money, and allowed the CFPB to focus on other areas. If you had one wish for a next generation CFPB, what would be? It is a return to the Cordray era or something different?

LS: I think the most pressing issue is saving homes in Black and brown communities. The Great Recession stripped wealth from communities that were already far behind due to centuries of discrimination, and we can’t let that happen again as a legacy of the COVID-19 crisis.

I’d also urge the next CFPB Director to push Congress, other agencies, and industry to do their part to protect consumers. Ultimately, the CFPB needs to be aggressive and creative in using its resources to fulfill the mission that was laid out for it in 2010.
Meet our 2020 Rising Star Award Winners!

Rebecca Borné
Rebecca serves as senior policy counsel at the Center for Responsible Lending (CRL), which she joined 12 years ago. CRL is a research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. Rebecca advocates for federal protections against predatory practices that exploit the financially vulnerable, particularly in the areas of payday loans, high-cost installment loans, and depository overdraft practices. Rebecca engages with federal regulators and legislative offices, authoring comment letters to inform policy proposals, providing input on draft legislation, and occasionally testifying before Congress.

Jane Stevens
Jane is co-director of the special litigation unit at New York Legal Assistance Group in New York City. She has worked in legal aid for most of her 50-year legal career, starting at Legal Assistance Foundation of Chicago in 1969. In her many years of practice, she has been a passionate champion for the rights of low-income consumers. She has an impressive track record of successful litigation, including cases against predatory for-profit schools who defrauded their students. Jane has brought cases against the state and federal government on behalf of student loan borrowers, including the successful 1994 case Gibbons v. Riley, which benefitted three million student loan borrowers. She has also attacked unlawful debt collection practices and protected exempt income from seizure in consumers’ bank accounts.

Nicholas H. Mattison
Nick is a partner at Feferman, Warren & Mattison in Albuquerque, New Mexico. Nick’s practice includes individual cases and class actions against fraudulent car dealers, predatory lenders, abusive debt collectors, and other businesses that rip off consumers. He has litigated many consumer class actions from start to finish, including one where he became the first and only attorney to enforce New Mexico’s payday loan law. The case went all the way to trial, where his clients were awarded millions. Nick gets impressive results for individual clients as well. In 2016, he won a $10 million verdict against an abusive debt collector.

David H. Seligman
David has been the Executive Director of Towards Justice since 2018. He has litigated in support of workers and consumers in several class and collective actions to attack systemic injustices that undermine the power of workers and consumers in the marketplace. One such action includes the first antitrust case to challenge “no hire” provisions in franchise agreements among fast-food franchisees, as well as several cases supporting workers during COVID-19.

Campaign for the Future Update
NCLC’s Campaign for the Future is a long-term initiative launched last November to strengthen NCLC’s economic justice advocacy, and expand training and support for the consumer law community, through long-term structural investments in the following areas:

1. Next Generation Campaign: Develop the next generation of consumer lawyers and build a bigger and stronger consumer law community.

2. Legal Aid Partnership Project: Strengthen NCLC’s support of civil legal aid attorneys who serve low-income consumers.

3. State Advocacy Initiative: Expand NCLC’s impact at the state level, where many of the most important consumer law battles are being fought.

4. Communications Capacity-Building Campaign: Enhance NCLC’s ability to reach decision-makers, engage supporters, and influence public opinion.

5. Advancing the Agenda Fund: Invest in new strategies for advancing economic justice, including a major focus on promoting racial justice and economic equality.

To date, campaign leaders have stepped forward to express intentions of providing more than $10.2 million to fund these investments. With that support, significant investments are being made this year in the following Campaign priorities:

- Racial Justice Fund: Expanding NCLC’s advocacy on racial justice and economic equality issues.
- State Advocacy: Providing resources for deeper engagement in state-level economic justice advocacy.

“Personal Experience can be a Real Motivator for Supporting NCLC”

The cause that pushed Jim Francis into consumer law was his first-hand experience with the bizarre disregard for consumer rights by the credit reporting industry.

After moving home for the summer during his junior year in college and leaving a forwarding address, he learned that a credit card bill had not been forwarded, and by the time he received it, it was past due and reporting as a delinquency on his Trans Union credit report. Despite a detailed dispute and repeated efforts to engage the company, Jim was met with complete indifference and a refusal to help. That experience resonated with Jim throughout law school, along with the realization that the same experience might have been occurring to other consumers throughout the country.

And in 1998, with co-founder Mark Maillman, he created a boutique firm that focused exclusively on consumer rights litigation. Twenty-two years later, the firm is stronger and busier than ever.

With the addition of recently named partner John Soumilas, Francis Mailman Soumilas, P.C. (FMS) now has offices in Philadelphia, New York, Chicago, and San Francisco, and is behind many of the most significant decisions, settlements, and verdicts in consumer litigation. The firm handles many areas of consumer law, and is regularly on the cutting edge of new and emerging areas, most recently adding the representation of students and parents seeking tuition reimbursement and abatement against colleges limiting their educational programs to online attendance only.

“I feel so grateful to be able to do what I do for a living. Practicing consumer litigation is the ultimate win-win. You get a chance to make the world a better place... and I feel so privileged to do what I do for a living, and I love it.”

FMS’ attorneys have been regular speakers at NCLC’s conferences for many years, and the firm stepped up to the plate in September 2019 and supported NCLC’s Campaign for the Future and pledged at the Campaign Chancellor level. NCLC is not only grateful to the firm for their long time support but also to Jim, who recently joined the Partners Council as its newest member.

“I feel so grateful to be able to do what I do for a living. Practicing consumer litigation is the ultimate win-win.”

–Jim Francis

“As for NCLC, Jim shared, “I feel deeply indebted to NCLC. Since my first conference in San Diego in 1998, I have benefited tremendously from your publications, resources, and the instruction at the annual conferences. NCLC is such an important organization in so many ways. Its existence and vitality are crucial to a consumer law practice. Without NCLC we would all be significantly compromised in our practices.”

NCLC is grateful to those who have already joined the Campaign for the Future and make this work possible, and to those who are currently considering the level of their support. To learn more about the Campaign and the role(s) you can play in its success, contact Paul Laurent at paul@nclc.org.

Consumer Impact
Between November 9th and 20th, more Lobby, NCLC information desk, IT help interactive exhibitor hall, Networking law sessions, strategy summits, and live NCLC offered our full CRLC curriculum by the pandemic. resources for attorneys and advocates, NCLC committed to offering even more Symposium with significant challenges, for the 2020 Consumer Rights Litigation households keep their utilities on, was asked to devise strategies to help financial harm has devastated families ensuing months, COVID-19 has infected distant and uncertain threat. In the trains...
INSIDE COVID-19: What You Need to Know
New NCLC Reports on Criminal Justice Debt, EITC Credit Seizure, and Predatory Lending Policies
The nonprofit National Consumer Law Center® (NCLC®) works for economic justice for low-income and other disadvantaged people in the U.S. through policy analysis and advocacy, publications, litigation, and training.

Save the Date(s)!

Virtual Fair Debt Conference 2021
March 8-12, 2021
Need a deeper dive into the FDCPA and TCPA? This March is your chance! NCLC will host a virtual week-long Fair Debt Collections Conference during the week of March 8th, 2021. With no more than three sessions offered per day, content is more spread out with down time built in so you can continue the important work of your practice during the conference. Stay tuned for pricing and more in the coming month for NCLC’s Fair Debt Conference.