Racial Justice and Equal Economic Opportunity
National Consumer Law Center

Unfinished Business: Roadmap for an Equitable Economic Recovery in 2022

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Systemic racism in employment, housing, and credit led to disparities in wealth and economic opportunity for consumers of color long before the coronavirus pandemic. Now, with the enhanced child tax credit and other COVID-related economic supports expiring, lower-wage families and consumers of color will further struggle economically. Women – who bore a disproportionate share of job loss, wage decrease, and caregiving duties – will shoulder the worst of the economic impact. The unemployment rate remains persistently high for Black workers, particularly Black women even though the U.S. unemployment rate declined last year. The unemployment rate was 65% higher on average for Black women than white men from December 2020 to December 2021. Other signs of an uneven recovery are evident. Asian, Latina, and Black women are more likely to fall behind on rent or mortgage payments than white men, even with access to federal support programs, and use their child tax credit payments to pay down debt and pay for food.

Women, consumers of color, low-wage workers, and others disproportionately harmed by the COVID-19 pandemic still have a long way to go to recover from the economic aftershocks. More should be done to make sure the financial hardship brought on by the COVID-19 pandemic does not compound long-standing racial and gender disparities in the housing and credit markets. For the years ahead, the federal government must strengthen consumer financial protections to address the compounding effects of systemic racism and COVID-19-related financial hardship to allow families to build wealth and regain financial stability.

The federal policy interventions outlined below are necessary to protect consumers' homes, cars, and income, and to ameliorate the financial impact of the pandemic in the face of continued economic uncertainty for many families of color. These recommendations are made with an eye towards making progress on the Administration's promise to advance equity, civil rights, and racial justice across the federal government.

Protect homeowners and renters affected by the COVID-19 pandemic and promote sustainable homeownership

Homeowners and renters of color face a heightened risk of foreclosure and displacement as COVID-19 relief programs wind down, and federal protections against foreclosure and eviction expire. Black households and women of color are particularly at risk of displacement. Over nine percent of Black borrowers are behind on their mortgage, the highest of any racial or ethnic group. Among renters, over 30% of Black women and nearly one in five Latinas (19.6%) were behind on rent despite the existence of Emergency Rental Assistance programs. Monetary assistance for homeowners is limited. Though Congress created the Homeowner Assistance Fund (HAF) to help homeowners facing hardship due to the pandemic, as of early March 2022 only about half of the states and territories have rolled out their programs and many states expect demand for aid to surpass available resources. Homeowners exiting forbearance plans are also encountering unnecessary barriers obtaining loan modifications with affordable payment terms. The federal consumer and housing agencies, including the Federal Housing Finance Agency (FHFA), U.S. Department of Housing and Urban Development (HUD), U.S. Department of Veterans Affairs (VA), U.S. Department of Agriculture (USDA), and the Consumer Financial Protection Bureau (CFPB), as well as the U.S. Congress should take the following steps to support homeowners and renters:

- The FHFA, HUD, VA, USDA, and CFPB should issue rules to pause foreclosures for 60 days after the mortgage servicer has been notified that the borrower has applied for the Homeowner Assistance Fund and is conditionally eligible for assistance.
- HUD, the agency that oversees the majority of federally insured loans made to borrowers of color, should fully implement the COVID-19 Recovery Loss Mitigation Options for FHA borrowers and enhance oversight of servicers who fail to comply with COVID-19 loss mitigation guidelines, including through enhanced data collection and reporting.
- HUD should create a post-forbearance loss mitigation option for FHA-insured reverse mortgage borrowers that would enable them to defer property charge arrearages to the end of the loan, as forward mortgage borrowers have been permitted to do.
- HUD should fund and establish a small dollar mortgage demonstration program to expand mortgage options for consumers seeking homes priced at or below $100,000.
- Congress should ban tenant screening companies from reporting eviction records; moreover, both tenant screening and credit reporting agencies should be prohibited from reporting missed rental payments and tenancy-related debt collection items, including those caused by the pandemic.
- Congress should pass the Build Back Better Act or its equivalent to provide crucial relief to consumers impacted by COVID-19, which would substantially increase the supply of accessible and affordable housing, expand rental assistance for low-income households, and provide a first-of-its-kind down-payment assistance program for first generation homebuyers, who are disproportionately people of color.

Support Limited English Proficient consumers with information in their language

Limited English proficient (LEP) consumers face challenges in all aspects of a credit transaction, from obtaining accurate and reliable information regarding financial products and services, to navigating the loan servicing and collection process in their preferred language. They also face additional barriers accessing COVID-19 assistance programs when seeking financial relief. Lack of in-language information from reputable sources makes LEP consumers susceptible to scams and fraud.

- FHFA should require mortgage lenders and servicers to collect language preference information from borrowers, either by mandating the Supplementary Consumer Information Form (SCIF) or by reinstating the question on the Uniform Residential Loan Application, and require transfer of this information with the servicing file.
- The CFPB should produce model translations of key mortgage servicing documents and require mortgage servicers to provide translated documents in the top LEP languages. The documents should include the early intervention notice, forbearance offer letters, and other key notices mandated under the CFPB’s servicing rules.

- The CFPB should issue guidance reminding mortgage servicers of their obligation under the Equal Credit Opportunity Act (ECOA) to ensure that their servicing practices do not cause an unjustified disparate impact on borrowers based on national origin, race, or ethnicity.
- The CFPB should promote the use of Language Access Plans by mortgage lenders and servicers, as well as by other creditors and collectors.
- The CFPB should require all credit bureaus to follow Equifax's lead and provide free credit reports in Spanish, as well as require translation into the other top ten languages used by LEP consumers in order to ensure the information is reported accurately and that consumers who are struggling financially are able to dispute incorrect information.
- In tandem with the launch of state HAF programs, the Treasury Department and states should launch outreach campaigns targeted at LEP consumers, using housing counseling organizations and other trusted partners to disseminate information and utilizing multiple media channels, including social media and ethnic media outlets.

Provide greater oversight and guidance related to artificial intelligence (AI) models used in credit and housing decisions

Lenders and housing providers increasingly rely on algorithmic-based models to market, underwrite, and price credit, screen tenants, manage properties, and perform other housing-related functions. Use of artificial intelligence (AI) to target customers and underwrite credit raises concerns regarding price discrimination, redlining, and steering of consumers to higher cost credit. Poor supervision of AI use may amplify discriminatory patterns in credit markets, increase costs to consumers, and create barriers to access. Federal agencies should take steps to mitigate bias and discrimination in emerging technology and enforce fair lending laws.

- Federal agencies should conduct in-depth reviews of the use of AI, including assessments of compliance with fair lending and consumer protection laws.
- Federal agencies should require that companies routinely test their models to ensure that the outputs are fair, empirically derived, statistically sound, and accurately predict risk or achieve other valid objectives.
- Federal agencies examining use of AI models in mortgages, credit decisions, and financial services should produce guidance and other information on the use of this technology.
- Federal agencies should ensure that companies produce models that are explainable, transparent, non-discriminatory, and comply with fair lending and consumer protection laws.

Address fair lending and consumer protection risks related to emerging financial products and services

Fintech companies market financial products to underserved consumers with the promise of ease, convenience, and greater access to bank accounts and credit. However, some companies exploit unconventional data and new analytical techniques to target consumers of color for financial products with high costs, balloon-payment loan structures, or evasive back-end fees. Targeting communities of color that have been excluded from mainstream markets with high-cost or dangerous products is not the path to financial inclusion. Some of these products are evading consumer protection laws. Fintechs may also steer consumers towards risky investments and financial products that undermine financial stability. Federal agencies should step up oversight of these emerging financial products.

- Federal agencies should increase awareness and regulatory scrutiny of these products, and stop the growth of dangerous features in new fintech credit and banking products.
- The CFPB should stop evasions of consumer protection laws through interest disguised as “tips,” payday loans disguised as overdraft protection or earned wage advances, and prepaid accounts disguised as non-bank banking apps. The banking regulators should stop their banks from facilitating these evasions.
- The FDIC should stop its banks from helping predatory fintech lenders evade state interest rate laws in order to make loans at 100% to 200% APR.
- The CFPB and the Federal Reserve Board should ensure that payment apps have robust consumer protection against fraud and errors.
- Federal agencies should examine fintech products for compliance with fair lending and consumer protection laws.

Provide a fresh start to student loan borrowers and reform the federal student loan system

Higher education should be an engine of economic mobility. Yet too many families are struggling to repay educational debt, often for decades. Borrowers of color – particularly Black women – are reliant on student loans rather than familial wealth to cover the cost of college and struggle to pay off their debt. Even after years of repayment, the typical Black borrower owes more than the principal borrowed, while the average white borrower owes about 35% less than their original loan balance. Black borrowers default at a rate three times higher than white borrowers. These students face aggressive collection practices by the U.S. Department of Education, siphoning money directly from paychecks, Social Security benefits, and tax refunds.

Predatory for-profit schools often target students of color, making those students’ financial futures even more dire. Students who attend for-profit colleges take on more debt than their peers at public institutions, face worse employment outcomes, and are twice as likely to default when compared to borrowers attending public institutions. Many borrowers leave those schools with no degree, but deeply in debt.

The existing federal policies intended to help borrowers – like income driven repayment, borrower defense, and Public Service Loan Forgiveness – have been riddled with problems and have failed to provide the relief Congress intended. As a result, Black and Latinx borrowers struggle to pay unaffordable monthly payments on debt that should have been discharged.

- President Biden should act now to cancel a portion of all federal student loan borrowers’ debt to provide overdue relief to all borrowers and to promote racial equity.
- President Biden should not turn back on repayment of student loans until key fixes are implemented to core administrative programs like income driven repayment and borrower defense so that no borrower entitled to a discharge is forced back into repayment.
- The Education Department should reform income-driven repayment (IDR) so that it is affordable, functional, and promises a repayment period of no longer than 15 years going forward. To fix past problems, it should restore the promise of the program by canceling the remaining balances of borrowers who have already been in repayment for 20 years.

- President Biden should work with the Departments of Education and Treasury to end punitive collection tactics that take money intended to help meet subsistence needs and reduce poverty, like the seizure of Child Tax Credits, Earned Income Tax Credits, and Social Security benefits.
- The Department of Education should take bold action to use its existing authority to automatically cancel the debt of all students who attended predatory schools like ITT, Corinthian, EDMC, and others, and it should restore strong borrower defense and gainful employment protections to hold predatory institutions of higher education accountable and provide relief to harmed students.
- The CFPB should increase supervision of companies focused on the servicing and collection of federal student loans so consumers can fully benefit from federal protections.

Promote transportation equity

For most families, a car is essential for physical and economic mobility. Transportation is the second largest expense in the average household budget. Yet consumers face discrimination related to the price of a car, the cost of credit, the price of add-on products sold with the car, the price of insurance, and the likelihood that civil fines or penalties will lead to a suspension of a driver's license. The inability to access a working car has consequences for long-term economic stability.

- The federal government should promote car ownership programs for low-income families. This would help low-income families in general but especially people of color as they are less likely to have access to a vehicle even when controlling for income or living in an urban or rural area.
- The CFPB should issue guidance or rules on debt collection to ensure that consumers who become delinquent on auto loans have a chance to cure or catch up on missed payments. In addition, the CFPB should ensure that voluntary accommodations offered by creditors to some consumers are offered in a fair and non-discriminatory manner.
- The CFPB and FTC should increase enforcement of consumer protection laws to protect consumers against rampant discrimination in auto sales and finance.
- Congress should stop dealers from selling or leasing defective used cars subject to unperformed safety recalls.
- The federal government should ensure that a reduction in transportation costs is one of the outcomes of the President's Justice40 Initiative, which is a plan to deliver at least 40 percent of the benefits of federal climate, clean energy, and other investments to underserved communities.

Protect consumers from medical debt

One in three Black adults have past-due medical bills, compared to fewer than one in four white adults, and 17% of Black adults lack health insurance compared to 12% of white adults. Older Black adults are 2.6 times more likely to carry medical debt than older white adults. To help alleviate medical debt, the Administration should take the following steps:

- The CFPB should continue to issue guidance to debt collectors and credit bureaus reminding them to refrain from collecting and reporting debts that exceed amounts that would be permissible under applicable health care laws, and should pursue strong enforcement actions when needed to remedy violations of law and make consumers whole.

- The CFPB should require debt collectors to include in collection notices information about hospital financial assistance that may be available to resolve medical debts.
- The CFPB should create new staff positions for one or more individuals to focus on medical debt issues and coordinate with other federal agencies (similar to the CFPB's internal team focused on student loans).
- The CFPB should continue to research and report on medical credit and lending products.
- The Department of Health and Human Services (HHS) should encourage states to make Medicaid eligibility retroactive for the full three months allowed under federal law, approve state Medicaid plans that include retroactive coverage, and approve state plans that provide strong coverage without burdensome and wasteful application or program requirements.
- The Department of the Treasury should issue IRS guidance to nonprofit hospitals about their responsibilities to provide charity care to all low-income hospital patients and to screen patients for eligibility, especially before referring debts to a third-party collector.
- The Department of Defense (DoD) should continue to create more flexible credit and collection policies for medical debt from military hospitals, following on DoD's actions to drastically reduce credit reporting of VA medical debts and streamline the process to waive VA medical debts.
- DoD should implement charity care plans at military health care facilities and hospitals that are not covered by the Affordable Care Act's financial assistance rules.
- DoD, HHS, and other agencies should pursue additional ways to cancel civilian and servicemember debts owed to military hospitals or other federal health care providers.

Keep families connected to essential utility service

Access to electricity, heat, water, and the internet is essential for health and safety. Internet access has become even more important to access school, work, medical appointments, and other services online. According to the Department of Energy's (DOE's) U.S. Energy Information Administration, lower-income households lose heating and cooling service due to unaffordable utility bills at a pace that far exceeds higher income households. Similarly, households of color experience loss of service more frequently than white households. The Administration should take the following steps:

- The DOE should ensure that the benefits of the Justice40 Initiative related to weatherization, clean energy, and transportation electrification are equitably shared with communities of color and environmental justice communities, in a manner that will lower the energy burdens for these households without requiring additional unaffordable debt.
- HHS should continue to work with states to make the Low Income Home Energy Affordability Program (LIHEAP) and the Low Income Water Affordability Program (LIWAP) accessible to eligible households who struggle to pay for these essential utilities.

Encourage the robust collection of race and ethnicity data across all federal agencies

Data is the lifeblood of a movement for racial and economic justice. Race and ethnicity data is essential to unearth systemic discrimination and predatory practices.

- The CFPB should conduct robust oversight of servicers working with COVID-affected borrowers and collect and report mortgage performance data, including loss mitigation access and outcomes by race and language preference.
- The CFPB should work with other federal agencies to make servicing data transparent and accessible to the public through expanded collection and reporting, including data disaggregated by race, ethnicity, and language preference.
- The U.S. Department of Treasury should publish approved HAF plans, and collect and publicly report HAF data by jurisdiction and by servicer, including demographic data disaggregated by race, language preference, and "socially disadvantaged individuals" as they apply to specific elements of the program.
- With respect to Home Mortgage Disclosure Act (HMDA), the CFPB should reverse its 2020 action, which raised the reporting threshold for loans; add the disability status of applicants to the data that mortgage applicants are required to report under HMDA; and step up enforcement to ensure the accuracy of the data.
- The CFPB should continue to improve the accessibility and ease of use of HMDA data on its website, particularly for data users who are not researchers.
- For non-mortgage lending the CFPB should require that creditors collect race and ethnicity data, especially in auto sales and finance, and make the data available to the public.

Promote, enforce, and defend fair lending laws

All consumers deserve nondiscriminatory access to credit and protection from abusive practices.

- Following up on HUD's December 2021 guidance, and the *Interagency Statement on Special Purpose Credit Programs under the Equal Credit Opportunity Act and Regulation B*, the federal agencies should promote and facilitate the design of effective Special Purpose Credit Programs to redress systemic discrimination in housing and credit markets.
- The CFPB should update Bulletin 2012-04 on fair lending to reaffirm the application of the disparate impact doctrine in supervision and enforcement of the ECOA and Regulation B.
- HUD should receive adequate funding for staff to oversee the administration of programs and enforcement of the Fair Housing Act.
- The federal agencies should ensure aggressive supervision and enforcement with penalties and restitution to consumers harmed by financial institutions, with enforcement targeted at the communities most harmed.
- The federal agencies should engage consumer, civil rights, grassroots, and community-based organizations in regulatory efforts, and in the monitoring of COVID-19 relief measures to ensure an equitable recovery.

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