NCLC Racial Justice and Equal Economic Opportunity
National Consumer Law Center

# No Rolling Back the Clock: Steps the Federal Government Can Take in 2023 to Advance Racial Equity and Strengthen Consumer Protections

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Emerging from the pandemic families of color are trying to regain their financial footing amid rising inflation and increasing costs for housing and other necessities. Families face new challenges as government programs and supports end and resources are curtailed. Many live in underserved communities ringed by high-cost, fringe creditors that market heavily to consumers in financial distress. Others are being targeted by new financial products that promise easy access to money but hide the fees or true cost of credit. These practices strip wealth from communities and further deplete the resources families need for economic stability.

The federal government plays a central role in building an inclusive and equitable economy. The Biden-Harris Administration's commitment to advancing equity across the federal government is a start, but more must be done to aid families. This includes addressing the harm to justice-involved individuals and families from predatory practices in the criminal justice system, reforming the federal student loan system to address debt burdens, and ensuring that consumers who speak English with limited proficiency have full access to the financial system. We urge the administration and Congress to strengthen consumer financial protection and put in place other measures to aid families of color in accessing resources and economic opportunity.

## Address the systemic barriers to affordable and accessible housing for renters and homeowners

The shortage of affordable housing, skyrocketing rents, and inflationary pressures coupled with the end of pandemic-era government programs is leading to housing instability for many households of color. Renters and homeowners are behind on housing payments or severely cost-burdened, spending more than half of their income on housing. Discriminatory and exclusionary rental practices such as landlords' use of tenant screening companies, the addition of junk fees in rental agreements, and the abusive collection of rental debt weigh on renter households. Lack of access to small dollar mortgages, appraisal bias, predatory financing schemes, and policies related to mortgage default make homeownership prohibitively expensive or unsustainable for people of color. Robust coordination across federal agencies, including the U.S. Department of Housing and Urban Development (HUD), Veterans Affairs (VA), U.S. Department of Agriculture (USDA), and the Federal Housing Finance Agency (FHFA) is necessary to increase access to affordable housing and mortgages for low-income communities and consumers of color. The federal government should take the following steps to advance housing equity and prevent displacement of households of color.

### *HOMEOWNERSHIP RECOMMENDATIONS:*

- FHFA should require the Enterprises to significantly expand their focus on mortgage servicing and housing sustainability in their Equitable Housing Finance Housing Plans to prevent the loss of homes to foreclosure.

- FHFA should require the Enterprises' Equitable Housing Finance Plans to include periodic review of loss mitigation and servicing outcomes by servicer, broken out by race, ethnicity, language preference, and geography. The FHFA and the Enterprises should publish reports of its reviews and make the underlying data, with appropriate privacy protections, available to the public.

- FHFA should require the Enterprises to significantly expand their purchase of, and support for, small dollar mortgage loans as part of their Equitable Housing Finance Plans.

- FHA should implement a pilot program in housing markets where homes are available for under $125,000 to increase access to small dollar mortgages and evaluate the feasibility of developing a direct loan program for small dollar mortgages.

- HUD should ensure that FHA-approved lenders approve mortgage loan applications across the full spectrum of loan amounts, not just higher dollar mortgage loans, to provide consumers of color access to small dollar mortgages and convene a working group of federal agencies to advance systemic reforms to address the lack of loans for lower-valued homes.

- HUD should remove barriers to the use of the 203(k) Rehabilitation Mortgage Insurance Program to repair and rehabilitate older homes or vacant and abandoned homes in distressed neighborhoods, to increase the supply of affordable homes in lower-cost markets.

- To help homeowners avoid unnecessary foreclosure under the Section 184 Indian Home Loan Guarantee Program, HUD should add flexibility to the loss mitigation program to address volatility in the economy and mortgage market. HUD should use Public and Indian Housing (PIH) Notices to issue specific eligibility requirements as such notices do not require a full regulatory process and give the agency the ability to quickly adapt its loss mitigation system to the mortgage market.

- To overhaul the property appraisal process, the Interagency Task Force on Property Appraisal and Valuation Equity (PAVE) should conduct research on alternatives to or changes in the sales comparison approach that reduce the lingering impact of past racism that leads to undervaluing property owned by people of color or in redlined communities.

- HUD should strengthen its affirmatively furthering fair housing (AFFH) regulation to increase the capacity of local fair housing organizations to do outreach and education and enforce fair housing rights; provide clarity and more detail regarding the community engagement process; increase transparency in the equity planning process; and coordinate across agencies to ensure programs and activities are administered in a manner consistent with AFFH obligations.

- To stem the loss of homes and generational wealth due to reverse mortgage foreclosure in Black communities, HUD should provide for additional flexibility with respect to property charge loss mitigation policies; rescind the due and payable status when loss mitigation is approved; allow loans to be assigned to FHA while in an active loss mitigation plan; and require a loss mitigation review prior to foreclosure.

- The Department of Treasury should require that state and local governments participating in the Homeowner Assistance Fund (HAF) describe the strategies they use to ensure that targeted populations and people with disabilities have sufficient access to the program, including a description of the methods used by applicants to access the program.

- The CFPB and the federal housing agencies should publish more data on mortgage loan performance, including specific data on loss mitigation and demographics.

- The CFPB, FHFA and HUD should facilitate the design of identity-focused Special Purpose Credit Programs, especially in the mortgage context, by providing additional information and guidance to creditors and other covered entities.
- In addition, FHFA should promote language access in the Special Purpose Credit Programs pilot initiatives created under the Equitable Housing Finance Plans.

### *TENANT PROTECTION RECOMMENDATIONS:*

- Congress should amend the Fair Credit Reporting Act (FCRA) to prohibit housing providers from using credit reports and scores in rental housing decisions, curtail tenant screening companies' use of eviction and criminal records and rental debt data, and put in place other limits on the use of tenant screening reports.
- The CFPB and FTC should collaborate to investigate and bring enforcement actions against tenant screening companies that violate the FCRA, and work with other federal agencies to assess the impact of the industry's practices on consumers of color and other protected classes. Congress, the CFPB, and other federal agencies should take action to rein in debt collectors, stop junk fees, and take other action to protect vulnerable tenants as outlined in NCLC's 2023 Consumer Reforms Priorities to Protect Tenants.
- The GSEs should insert a provision barring discrimination against holders of Housing Choice Vouchers in the Multifamily Loan and Security Agreement forms.
- Congress should amend the Fair Housing Act to protect households receiving rental assistance against source of income discrimination in rental housing.

## Help Immigrants and other Limited English Proficient consumers access financial services and products in their preferred language

Immigrants and other consumers who speak English with limited proficiency (LEP consumers) struggle to navigate the financial system and obtain mainstream financial products and services. To expand access to the mortgage market for LEP borrowers, the FHFA created a Mortgage Translations Clearinghouse with common origination and servicing documents, translated into Spanish and several other commonly spoken languages, and now requires loan originators to ask applicants about their language preference on a Supplemental Consumer Information Form, and servicers to maintain language preference data as part of fair lending compliance. But despite the availability of translated forms and disclosures, most mortgage lenders and servicers continue to use English-only materials, and immigrants still face substantial barriers in obtaining mortgages and other forms of financial assistance in their preferred language. The result is that LEP consumers are exposed to a wide variety of high-cost, predatory loans. The administration should implement policies to expand language access across the consumer financial services industry and require that financial institutions:

- Ask consumers about their language preference, record that information, and convey it whenever the debt is sold or transferred;
- Provide documents in both English and Spanish to all consumers, and use available translated documents, such as from the FHFA Clearinghouse and other federal agency sources, where the consumer has expressed a preference for one of the other available languages;

- Broadly provide oral interpretation services to LEP consumers; and
- Create, regularly update, and publicly report on language access plans for providers of mortgage and other credit.

In addition, FHFA should require the Enterprises to include a framework for mandatory collection and reporting of language preference data in their Equitable Housing Finance Plans. While FHFA now requires originators to collect this information from borrowers at origination, there is no framework in place to ensure that servicers obtain language preference information for loans originated before March 1, 2023. Servicers should be required to obtain this information for all loans, and this information should be recorded in the borrower's loan file and should travel with the borrower's file for the life of the loan.

## Redress practices that threaten the financial security of justice-involved people and their families

Due to systemic racism in the criminal justice system and the longstanding racial wealth gap, the criminal justice system and the collateral consequences that flow from it disproportionately harm people and communities of color. The federal government should use the many tools at its disposal to stop the predatory and financially destabilizing practices perpetrated against justice-involved people and their families, which include imposition of unaffordable fines and fees, collection tactics that often trap families in poverty, debt-based barriers to criminal record clearing and successful reentry, and predatory profiteering that imposes unfair charges on captive consumers.

- As part of their efforts to root out "junk fees," the FTC and CFPB should address the myriad junk fees forced upon justice-involved people and their families throughout the correctional services sector of the economy. For example, they should ban or cap fees associated with release cards—prepaid cards that people are often forced to use to access their own money when they are released from incarceration—and should limit fees charged to families when sending money to incarcerated loved ones.
- The FTC and CFPB should investigate and bring enforcement actions under the Fair Credit Reporting Act against tenant and employment screening companies that report criminal records that have been sealed, expunged, or subject to similar relief.
- The Bureau of Prisons (BOP) should bar companies that it contracts with from exploiting incarcerated people and their families through inflated monopoly pricing and excessive fees. The BOP should also withdraw its proposal to seize an even larger portion of incarcerated people's meager wages and the contributions family members make to support their loved ones in prison, which would undermine the Administration's equity and reentry goals.
- The FCC should swiftly enact regulations to implement the Martha Wright-Reed Just and Reasonable Communications Act and protect incarcerated people and their loved ones from unfair phone and video rates.
- The Treasury Department should work toward protecting money intended to support children and lift families out of poverty by recommending that Congress protect the Earned Income Tax Credit and Child Tax Credit from seizure to collect fines, fees, and other government debts, and by updating IRS systems to allow for publication of data about the scope of these seizures and to make it easier to identify and protect EITC and CTC payments from offset in the future.

- Congress should disarm the poverty trap posed by fines and fees, including by incentivizing state and local governments to reduce fines and fees and to end debt-based driver's license suspensions that prevent people from getting to work (S. 998/H.R. 2453); eliminating fines and fees as a barrier to record clearing and thus to jobs and housing (S.3049/H.R. 5651); and requiring private companies collecting fines and fees to comply with fair debt collection rules (H.R. 2547).

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

Higher education should be an engine of economic mobility for students from low-income families. Yet too many families are struggling to repay federal student loans, often for decades, and the debt is preventing them from starting families, buying homes, starting businesses, and experiencing financial security.

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 outsized debts. The typical Black borrower owes more than the principal borrowed 12 years after starting school, 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, and then face financially devastating collection practices, including siphoning money needed to pay for rent, food, medicine, and other basic necessities directly from paychecks, Social Security benefits, and antipoverty tax credits such as the Earned Income Tax Credit.

Predatory for-profit schools often target students of color for aggressive recruitment. 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 students leave those schools with no degree, but deeply in debt.

The Biden-Harris Administration has made critical inroads in addressing the burden of student loan debt and in working to redress decades of failed programs and policies. Most notably, the Administration has promised up to $10,000 in debt relief for all low-income borrowers and up to $20,000 in relief for those from low-income families to provide breathing room as borrowers recover from the pandemic and will be asked to begin making payments again. The Administration has also embarked on urgently needed long-term reforms to income-driven repayment, targeted loan relief programs, and school accountability, and is providing temporary relief to borrowers in default. These are excellent first steps, but must be converted into relief for borrowers. The Administration must prioritize delivering on debt relief and system reforms.

- President Biden must follow through on his plan to relieve student debt burdens on low-income borrowers before restarting payments.
- President Biden should not require borrowers to resume repayment of student loans until key fixes are implemented to core programs like income-driven repayment and borrower defense, so that borrowers promised discharges are not forced back into repayment.
- The Education Department should issue a final income-driven repayment rule that delivers on equity by shortening the maximum time in debt for all borrowers, increasing the amount of income protected for basic needs, making sure the most vulnerable borrowers in default do not have to pay more than other borrowers, and ensuring that low-income parents who borrow for their children's education do not get stuck in a debt trap.
- The Education Department should cancel the debts of struggling borrowers who have been trapped in default for years and cannot afford to pay.

- 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 Education Department should promptly provide debt relief to eligible borrowers under the new Closed School Discharge and Disability Discharge regulations that will go into effect July 1, 2023, and ensure that servicers inform borrowers of their newly expanded debt relief rights. The Department should also continue its use of group discharges to cancel debts of borrowers who attended schools that engaged in widespread fraud or other misconduct.
- The Department of Education should carefully scrutinize schools' use of Online Program Management companies and determine whether borrowers of color are being targeted to attend online programs.
- The CFPB should increase supervision of companies that service or collect federal student loans so consumers can fully benefit from federal protections.

## Protect consumers from discrimination related to emerging financial products and technologies, including artificial intelligence

Creditors and housing providers rely on algorithmic-based models to market and underwrite credit, screen tenants, and manage properties. Financial institutions' use of artificial intelligence (AI) models to underwrite credit or for housing-related functions may amplify discriminatory patterns and increase costs to consumers. Federal agencies should take steps to mitigate bias and discrimination in emerging technology and enforce fair lending laws whenever AI is designed, developed, and deployed.

- The federal government should ensure that the principles outlined in the Blueprint for an AI Bill of Rights are widely adopted by the financial services industry and put in practice at the federal, state, and local levels.
- Federal agencies should require that financial institutions routinely test their models to ensure that the outputs are fair, empirically derived, and statistically sound and accurately predict risk or achieve other valid objectives.
- Federal agencies should ensure that financial institutions produce models that are explainable and non-discriminatory and comply with fair lending and consumer protection laws.
- Federal agencies should conduct in-depth reviews of financial institutions' use of AI, including assessments of compliance with fair lending and consumer protection laws.

## Encourage the collection, analysis, public dissemination and sharing of data across federal agencies and with state and local governments, especially to preserve housing and address the impact of climate change

Robust data collection is necessary to create programs and policies that equitably address the needs of different communities. Federal agencies should improve data collection practices, partner across agencies, and disseminate data at all levels of government, and to the public. The federal government should take the following key steps to encourage the collection and sharing of data across governments and with the public.

- The CFPB should collect loan-level data and provide aggregate reporting free to the public regarding market-wide mortgage performance and loss mitigation, including demographic data and property location, with protections for individual privacy.
- The CFPB should work with federal banking and housing regulators and the Enterprises to conduct and make public fair lending analyses related to loss mitigation outcomes to better understand demographic differences in homeownership tenure.
- The Enterprises should analyze the servicing data they collect, including the Foreclosure Prevention and Refinance Report, to determine any racially disparate patterns or outcomes. Data regarding mortgage servicing and loss mitigation outcomes, including data disaggregated by race, ethnicity, language preference, and geography, must be made available to the public.
- The Department of Treasury should increase equity and transparency in the HAF program by publishing more data in its annual reports. The data should be disaggregated by key characteristics such as racial and ethnic demographics, and/or geographic areas, as appropriate.
- FHFA should collect more data and conduct research on the effects of climate change and natural disasters on the housing finance market and vulnerable communities and identify effective mitigation strategies in communities of color.

## Advance racial justice and strengthen existing fair lending protections; all consumers deserve nondiscriminatory access to credit and protection from abusive practices

- Congress should provide adequate funding for HUD to staff and oversee the administration of programs and enforcement of the Fair Housing Act.
- The federal agencies should ensure aggressive supervision and enforcement of fair lending protections with penalties and restitution to consumers harmed by financial institutions, with enforcement targeted at communities most harmed.
- The federal agencies should engage consumer, civil rights, grassroots, and community-based organizations in regulatory efforts, and in the monitoring for discriminatory trends in housing and financial markets.

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