



Leveling the Playing Field for Low-Income Consumers

Administrative Recommendations for the Biden Administration from Community Legal Services (Philadelphia, PA)

Community Legal Services (CLS) provides free legal assistance to low-income Philadelphians. CLS's Homeownership and Consumer Rights Unit represents and advises clients in a range of matters to preserve their homes and maintain economic security, including mortgage foreclosure, tax foreclosure, debt collection, payday lending, student loans, and predatory lending schemes. CLS also educates borrowers on their rights, trains attorneys and housing counselors on mortgage foreclosure and other debt collection issues, and advocates for laws and programs to protect consumers from unfair and predatory lending practices.

Even before the COVID-19 outbreak, CLS clients, along with other Pennsylvanians, were facing financial challenges. In 2018, more than a quarter of all Pennsylvanians had a debt that was in collection on their credit report.¹ And while foreclosures were down from their height during the subprime mortgage crisis, 22,678 new residential mortgage foreclosures were filed in our state courts that same year.² Today, COVID-19 has had a significant impact on the financial stability of families across the Commonwealth, with almost 2.3 million Pennsylvanians filing unemployment claims since the middle of March.³

We need improvements to federal consumer protections to achieve economic justice for low-income people, and to address the racial and economic inequality that the COVID-19 crisis has exacerbated. We welcome the Biden-Harris administration's public commitment to ensuring that all Americans have access to affordable, stable housing, and to addressing the racial wealth gap resulting from systemic discrimination in housing and access to credit. We urge the Biden-Harris administration to take swift action on the following reforms to increase fairness for borrowers.

Assist Borrowers with Crippling Student Loan Burdens

Higher education should be the gateway out of poverty and into financial security. Unfortunately, the rising cost of tuition and the decrease in financial aid coupled with poor oversight of student loan servicing and for-profit schools has left graduates and former students with unmanageable debt that pushes them down, rather than up, the financial ladder. Roughly 45

¹ *Debt in America: An Interactive Map*, Urban Institute, available at: https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=pct_debt_collections (28% of Pennsylvanians with debt in collections).

² 2018 Caseload Statistics of the Unified Judicial System of Pennsylvania, available at: <http://www.pacourts.us/assets/files/setting-768/file-8222.pdf?cb=2e094c>

³ *Unemployment Compensation Claim Statistics & COVID 19*, Pennsylvania Department of Labor and Industry, available at: <https://www.uc.pa.gov/COVID-19/Pages/UC-Claim-Statistics.aspx>.

million Americans are burdened with a total of \$1.68 trillion in student loan debt, and more than a quarter of borrowers are behind on their loans. The impact is long lasting and hard to overstate. The majority of CLS's student loan clients are over the age of 50, and the vast majority are African-American borrowers facing student loan debt that has worsened their financial insecurity and threatens to perpetuate it for generations. COVID-19 could deepen this crisis.

- Provide immediate relief to student loan borrowers through debt cancellation. The Higher Education Act empowers the Secretary of Education to cancel federal student debt administratively. Student debt exacerbates existing racial inequities; cancellation will help reduce the racial wealth gap. It will also provide economic relief and help stimulate the economy.
- Extend the suspension of student loan payments and involuntary collection of federal student loans beyond 2020 and provide similar relief to the more than nine million borrowers with commercially held Federal Family Education Loans (FFEL) and Perkins loans.
- Restore the borrower defense to student loan repayment and gainful employment protections for borrowers who fall victim to predatory schools.

Reestablish CFPB's Central Role Protecting Consumers

All CLS clients are consumers in one way or another: as borrowers, credit card holders, tenants, mortgagors, patients, and participants in the economy at large. The mission of the CFPB is to make sure that consumers of all income levels and backgrounds have the information they need to make decisions about their financial lives and to protect them against abuse, deception, and discrimination at the hands of debt collectors and other players in the marketplace. The CFPB now has the chance to return to this crucial work, thereby reducing the pervasive power imbalance our low-income clients face in the marketplace, which perpetuates poverty and racial inequity over generations. We ask that the Biden-Harris administration:

- Restore the mission of the CFPB through a focus on consumer protection and strengthening racial and economic justice in the financial services market. Recent CFPB settlements with companies that violate consumer protections have been little more than slaps on the wrist. In April, the CFPB, Federal Reserve, FDIC, NCUA, and OCC announced that they would be lenient with servicers that did not adhere to servicing rules. Now that servicers have had time to adjust their business to the realities of the COVID pandemic, it is time to prioritize borrower protections. The CFPB should end its weakened approach to servicer supervision and enforcement.
- Rescind the proposed "seasoned" qualified mortgage (QM) rule. The Dodd-Frank Act prohibits creditors from making a mortgage without first determining the borrower's ability to repay it.⁴ Borrowers are prohibited from raising violations of this rule for

⁴ 15 U.S.C. § 1639c(a)(1).



mortgages that meet the QM definition of affordability. The CFPB's proposed rule would qualify an unaffordable mortgage as a QM as long as the borrower managed to pay it for three years, even if that was the result of draining savings, borrowing from family members, or neglecting other necessary bills. We are concerned that this proposed rule will prevent borrowers, especially those in low income communities of color targeted by predatory lenders, from defending against foreclosures on unaffordable loans as they would otherwise be able to do.⁵ The proposed seasoned QM rule should be rescinded and the QM rule reviewed to ensure that it includes an individualized assessment of a borrower's ability to repay.

- Issue rules to protect consumers from abusive overdrafts. Financial institutions drain over \$11 billion in over-draft related fees annually from customers' bank accounts through unfair and abusive practices, with our most financially vulnerable hit hardest. A CFPB study found that 80 percent of overdraft fees are paid by those with average bank account balances of less than \$350. For our CLS clients, a single overdraft can trigger a snowball of fees, and push them out of the mainstream banking system. During the COVID-19 crisis, the CFPB should swiftly issue rules making it an unfair and abusive practice to charge overdraft fees during the national emergency. In addition to suspending fees, the CFPB should issue new rules to stop predatory overdraft practices.
- Revise the agency's debt collection rule to bar the collection of zombie (time-barred) debt, which cannot be collected fairly, and prevent abusive collection lawsuits and other tactics by requiring debt collectors to have accurate information and documents for the underlying account. CLS clients, most of whom are people of color who have been systematically excluded from quality credit products, suffer financial and emotional harm every day at the hands of abusive collectors—especially those clients who are seniors, have limited English proficiency, or are otherwise isolated.

Repeal Anti-Consumer Rules Issued by the Office of the Comptroller of the Currency.

High-cost, predatory payday and installment loans trap vulnerable people in a cycle of debt, causing borrowers to fall behind on other bills, including their rent and mortgage, to overdraft and eventually lose their bank accounts, and to file bankruptcies. Pennsylvania, along with 17 other states and D.C., protects its residents from these harms with a strict cap on interest and fees for consumer loans. For years, CLS, on behalf of its low-income clients, has worked diligently and successfully to stop the payday lenders' efforts to weaken our state protections. But recent rulemaking by the Office of the Comptroller of the Currency has put our protections against predatory lending at risk by facilitating "rent-a-bank" schemes crafted to evade state law and must be reversed. We call on the Biden-Harris administration to:

⁵ 15 U.S.C. § 1640(k)(1).



- Repeal the recently promulgated rules that facilitate predatory lenders' attempts to evade state interest rate caps by laundering their loans through banks, including the so-called "valid when made" and "true lender" regulations.
- Abandon the proposal to give national bank charters, and their corresponding state law preemption privileges, to nondepository institutions.
- Robustly supervise and take swift enforcement action against any national banks that help predatory lenders engage in schemes to evade state interest rate caps.

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