



## American Rescue Plan Includes Key Consumer Priorities

NCLC-Supported Measures Will Help Struggling Families and Communities

**N**CLC applauds the passage of the \$1.9 trillion American Rescue Plan (ARP), including the newly established Homeowner Assistance Fund (HAF), as a major step forward in assisting those suffering financial hardship related to COVID-19. The \$9.9 billion HAF provides the first cash assistance available to homeowners during the pandemic and will help prevent foreclosures, especially in communities of color.

The HAF, which NCLC worked with allies and policymakers to have included in the legislative package, helps eligible homeowners catch up on mortgage payments, property taxes, insurance

payments, and utility bills. NCLC and the coalition are now working with the Biden Administration, state advocates, and industry members to help the U.S. Department of the Treasury to ensure the program reaches struggling homeowners, especially people of color. Read the full recommendations here: [bit.ly/HAF-crisis-prevention](https://bit.ly/HAF-crisis-prevention).

NCLC also provided continuous guidance to homeowners and advocates in the field throughout the pandemic by

creating and updating video explainers, free webinars, fact sheets, articles, and issue briefs. These resources are available at [nclc.org/special-projects/covid-19-consumer-protections.html#housing](https://nclc.org/special-projects/covid-19-consumer-protections.html#housing)

Other critical provisions of the ARP that NCLC fought for include: \$20 billion for rental assistance (which can also be used for utility arrearages and current bills); \$7.6 billion for broadband for schools

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*“The looming foreclosure crisis threatens to widen the racial wealth gap. The fund is an important step forward in helping struggling homeowners and working toward racial equity.”*

*—Alys Cohen, NCLC Staff Attorney*

## SCOTUS Ruling Creates New Opportunities for Pro-Consumer Litigation

**I**n late March, the Supreme Court of the United States issued a unanimous ruling on personal jurisdiction in *Ford Motor Co. vs. Montana Eighth Judicial District Court*. The Court held that when a consumer suffers an injury from a defective vehicle, due process may permit personal jurisdiction over Ford in the consumer’s home state, even if the vehicle was originally designed,



Deepak Gupta

This decision is a significant win for consumers, and NCLC extends its congratulations to the consumer champion who argued and won the case, **Deepak Gupta** of Gupta/Wessler, who also serves as a member of NCLC’s Board of Directors. We are grateful to Deepak and all at Gupta/Wessler for their work on this case and their victory on behalf of consumers!

manufactured, and/or sold outside the consumer’s home state.

For more background on this case, NCLC’s free Digital Library article “Supreme Court Issues Expansive Ruling on Personal Jurisdiction” provides expert analysis of the holding in *Ford Motor* and discusses the practice implications of the Court’s ruling for nine different types of consumer cases, ranging from auto lending to credit reporting to mortgage cases. We look forward to supporting those who will seek to use this ruling to effectively represent consumers in the face of corporate wrongdoing. ■

## Consumer Impact

is a biannual publication of the national Consumer Law Center to inform our supporters about NCLC's advocacy. To receive *Consumer Impact* via e-mail, contact [hmorway@nclc.org](mailto:hmorway@nclc.org).

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## A Note from the Executive Director

Dear friends and supporters,

After a dark and difficult year for our country, there are reasons for renewed hope and optimism as we enter the spring of 2021. Thankfully, Covid vaccinations are starting to reach more and more people, and there is reason to believe the pandemic will soon lessen its grip on our everyday lives. The American Rescue Plan passed and many of its important benefits will help struggling households pay for basic necessities. An enormous amount of work still needs to be done, but at long last we are starting to move in the right direction.



Executive Director Rich Dubois

As you will see in this newsletter, NCLC's work has made a significant impact in just a few months. Thanks in part to our advocacy and litigation:

- The Homeowner Assistance Fund will help prevent a wave of foreclosures, especially in communities of color, by helping homeowners facing COVID hardships catch up on their mortgages, property tax or insurance payments, and utility bills.
- Increased funding for the Low Income Home Energy Assistance Program (LIHEAP) and Emergency Low-Income Water Assistance will help low-income consumers stay connected to essential energy and water service.
- The Federal Communications Commission (FCC) issued important new rules that will significantly reduce invasive and unwanted prerecorded robocalls (though a Supreme Court decision has opened up a new area of concern on this issue).

- Congress ended the loophole that allowed for-profit schools to target servicemembers and veterans for their military education benefits using predatory recruitment tactics, and paved the way to ensure that student loan borrowers with loan forgiveness do not face an unfair tax penalty.
- The U.S. Department of Education stopped seizing the wages of over 50,000 student loan borrowers, provided over \$186 million in refunds of illegally seized wages to over 380,000 borrowers, and extended suspension of coronavirus-related student loan payments.
- Congress has taken first steps toward repealing a Trump-era rule which allows predatory lenders to evade state- and voter-approved interest rate caps.

This is just the beginning. NCLC understands that we must use this opportunity to make deep, structural reforms to bring about greater economic and racial justice.

Also in this newsletter, you'll find updates on NCLC's efforts to provide increased and improved training and resources to consumer attorneys and advocates, including a major upgrade to our Digital Library, new state-level strategy calls, expanded data analysis capacity, and more.

You can be sure that we will continue to work tirelessly to fight for a better and more equitable future. We are grateful to have you in the fight with us.

With best wishes,

Rich Dubois  
Executive Director

# Congress: Resolution Introduced to Rescind “Fake Lender” Rule

Working with our economic and racial justice allies, NCLC is leading a broad coalition of more than 325 organizations in all 50 states and the District of Columbia calling on Congress to overturn the Office of the Comptroller of the Currency’s (OCC) “fake lender” rule, which helps lenders charging 179% APR or more evade state- and voter-approved interest rate caps. In late March, Senator Chris Van Hollen (D-MD) and Rep. Jesus “Chuy” García (D-IL) introduced Congressional Review Act (CRA) resolutions to eliminate the Trump-era rule, which was finalized in December 2020.

The rushed rule protects “rent-a-bank” schemes whereby predatory lenders (the true lender) launder their loans through a few rogue banks (the fake lender) in order to claim that they are “bank loans” exempt from state interest rate caps. The fake lender rule overrides 200 years’ worth of case law allowing courts to see through usury evasions to the truth, and replaces that anti-evasion doctrine with a pro-evasion rule that looks only at the fine print on the loan agreement.

The rule threatens to unleash predatory lending in all 50 states. National polling shows that two-thirds of voters are concerned about the ability of high-cost lenders to arrange loans through banks at rates higher than the state laws allowed.

Currently, 45 states and the District of Columbia cap the interest rates on at least some loans, depending on the size of the loan. As was done more than a dozen times previously, Congress could use the Congressional Review Act (CRA) to rescind recently finalized regulations, including the OCC’s “fake lender” rule, but a CRA resolution must be enacted within a limited time. The current estimated deadline is May 21.

For more information, including a 2-page explanation of the “fake lender” rule; a brief explaining how these predatory lenders target veterans; and a “watch list” of predatory lenders evading state interest rate limits, go to [nclc.org/issues/high-cost-small-loans/rent-a-bank.html](https://nclc.org/issues/high-cost-small-loans/rent-a-bank.html) ■

## NCLC Advocates Appointed to Key Roles at CFPB and U.S. Dept. of Education

This February, NCLC bid a fond farewell to two employees who accepted new positions in the Biden Administration:

**Diane Thompson**, most recently Of Counsel to NCLC, is now serving as Senior Advisor to the Consumer Financial Protection Bureau’s (CFPB) Director for Markets and Regulations.

**Joanna Darcus**, previously an NCLC staff attorney who worked on consumer protection litigation and student loan issues, was appointed Senior Counsel at the U.S. Department of Education’s Office of General Counsel.

We will miss having Diane and Joanna on our team, but are thrilled to have old friends working inside the government to advance consumer rights and economic justice! ■

## Coming Soon: NCLC Digital Library 2.0

The NCLC Digital Library, which hosts all 21 titles in the Consumer Law Practice Series in a continuously-updated digital format, will launch an enhanced platform this spring, bringing the consumer law community a cutting-edge resource in research and practice tools.

In addition to a brand new design, subscribers will have an easier reading experience thanks to new features such as an option to view footnotes alongside applicable text, and instantaneous page-turning. With a new, more powerful and precise search function with added options and clearer organization, users can pinpoint the exact resources they need to answer their questions. We are also adding links to related content, with more information right on the page about that related content.

Finally, subscribers will have new capabilities to annotate and bookmark content and share their markup with a group of colleagues. We’re also developing functionality to share special content, such as materials from NCLC’s conferences and trainings, with the consumer law community.

We continue to make frequent digital updates to all 21 treatises, including more practice tools, companion materials, and pleadings, making the NCLC Digital Library more indispensable than ever! Learn more at [nclc.org/library](https://nclc.org/library) ■



# Oregon Consumer Justice

## How a 35-Cent Fee Helped Create a First-of-its-Kind State Consumer Nonprofit

What does it take to start a state-based consumer rights nonprofit? According to **David Sugerman**, “a classic case of being really pissed off, basically.”



David Sugerman

While driving home from vacation in rural Oregon a few years ago, David stopped for fuel at a mom-and-pop AARCO station. When he swiped his debit card to pay, up sprung an electronic note that said, “35 cent charge – accept or decline.” He looked at the woman behind the kiosk and said, “You can’t do that,” to which the woman said, “I know.” David replied, “I’m a lawyer and I’ve sued BP (*The British Petroleum Company PLC*) before.” The woman, with a gleam in her eye, lowered her voice and asked, “Did you win?” and David nodded. “That’s great,” she said, “someone ought to sue them again.” David replied, “Someone is thinking of doing just that.”

With the help of Tim Quenelle, Gene Hallman, Amy Johnson, Scott Schorr, Sam Issacharoff, Robert Klonoff, Eric English, and Pat O’Malley, the team embarked on a nearly decade-long case which worked its way up to the Supreme Court of the United States, challenging a practice that violated Oregon’s Unlawful Trade Practices Act (UTPA) some 13,000 times a day over many years – a practice which stopped only after a jury awarded \$409 million in the case. With some 2 million class members, a bad Oregon law that allowed unclaimed monies to

revert to the defendant, and an ongoing lost data battle with BP, the question quickly arose on how best to identify missing class members and protect consumers going forward.

What do you do when you need advice? Phone a friend, of course. And that is exactly what David did; he called NCLC’s then-Executive Director Will Ogburn and said, “You don’t know me, but I have this problem...” He also reached out to Arthur Bryant and between those three, an idea came from the dialogue that ensued which created an Oregon-based consumer protection center, modeled



Oregon Consumer Justice

on the National Consumer Law Center. Oregon Consumer Justice (OCJ)

was fully funded by cy pres funds from the BP case. According to David, what really tipped the balance in favor of creating this organization was Will Ogburn’s testimony to the trial judge. “Will was one of the biggest experts, was critical to the process and had an amazing presence over the 10-day cy pres hearing. I cannot praise Will enough and NCLC was a big part of our success in convincing the trial judge.”

OCJ was created as a center of gravity for consumer protection in and for Oregon and can help legislate, litigate, advocate, research, and educate; in essence, a state-focused NCLC. Three founding Board members were selected – Henry Kantor, President; **Justin Baxter**, Secretary; and Emily Reiman, Treasurer.

Baxter, a long time NCLC conference attendee, speaker, and sponsor, was chosen because of his expertise after serving at the hearings as a proxy for the private bar. “I am honored to serve in such a capacity and be able to further the aims of this grassroots organization.



Justin Baxter

We are ramping up staff and adding Board members, and OCJ gives us a real and tangible opportunity to help consumers in Oregon. OCJ has already made emergency relief grants to some in the community affected by COVID-19 and the recent wildfires. We also ran an ad campaign in English and Spanish that said “The Check is Real,” to try and get case class members to cash their checks.”

“OCJ is there to enhance the notion of consumer rights for all Oregonians,” Baxter continued. “This legacy has been made possible by David’s case, his brilliant lawyering, and his coalition-building, along with the advice from and brainstorming with NCLC staff. Aside from being a singularly gifted trial attorney, what really defines David is his ability to set strategy from a years-long, twenty-thousand-foot perspective, and to act as a field marshal to a team of lawyers and non-lawyers. In this case, he litigated the case through trial, recruited the appellate team, shepherded the statutory fix through the legislature, and brought together a team of experts to lay the foundation for a first-of-its-kind nonprofit.” ■

## State Advocacy Update

NCLC is now conducting monthly calls for advocates in three areas: Debt Policy; Mortgages and Foreclosures; and Credit Reporting Policy. These calls offer advocates the opportunity to connect with colleagues from different states, learn about successful state campaigns, and share intelligence about the opposition to campaigns. If you’re

interested in participating in future calls, please feel free to reach out to Michael Best at [mbest@nclc.org](mailto:mbest@nclc.org).

While NCLC is supporting work in too many issue areas and too many states to list, the program to build a systematic state campaign is gaining steam. As part of its State Advocacy Project, NCLC is supporting legislation in five states: CA, MA, ME, GA, and TX. This

support ranges from being a lead organization lobbying for pro-consumer reforms, to providing technical assistance to state advocates. In this legislative season and beyond, NCLC will continue fighting together with state advocates for economic justice and bringing its resources to bear on behalf of vulnerable consumers at the state level. ■

## Campaign for the Future Moves Forward

NCLC's *Campaign for the Future* continues to realize increased support and expanded impact. Through the end of 2020, total Campaign intentions exceed \$10 million and receipts are just under \$3 million, funds that are now being spent to expand and strengthen NCLC's impact for low-income and other vulnerable consumers, and the attorneys and advocates who represent them.

Despite the pandemic, a number of Campaign leaders were able to fulfill prior intentions during 2020. NCLC is grateful to Campaign supporters Abbas Kazerounian, Cary Flitter, Kristi Kelly and Andrew Guzzo, Jon Kravetz and his law firm Mintz, Matthew McCue, O. Rand Bragg, Scott Owens, Hassan Zavareei, and many others for their recent and ongoing support.

The priority investment areas funded by this support include racial justice; federal and state advocacy, including direct support to state-level allies; law school internships; and guaranteed conference scholarship funds for legal aid and new-to-practice private attorneys.

In 2021, we intend to continue, and in a number of cases increase, the investments initiated in the first full year of the Campaign, while launching first-time investments in areas including legal aid training, communications improvements, and expanded data analysis capacity.

NCLC hit the "pause" button on most new Campaign outreach during the pandemic, but as vaccination rates go up and life begins to return to normal, we'll once again resume reaching out to consumer law community leaders to ask for your help in building and strengthening the organization and the consumer law community. We remain grateful to all who have placed their faith, and their funding support, in the Campaign to date. ■

## NCLC Welcomes New Partners Council Member

NCLC is pleased to announce that **Hassan A. Zavareei**, founding partner of Tycko Zavareei LLP, has joined its Partners Council, a group of consumer law community leaders that works to ensure that NCLC has the revenue and resources to fight for economic fairness, equity, and consumer protection of low-income individuals and families.

Hassan graduated *cum laude* from Duke University, worked as a Russian-speaking flight attendant for Delta Air Lines for two years and later earned his law degree from the University of California, Berkeley School of Law, where he graduated as a member of the Order of the Coif.

Hassan, a general litigator, has handled numerous high-profile trials in state and federal courts across the nation in a wide range of practice areas, but devotes most of his practice to class action litigation. In his civil rights practice, he has represented individuals, groups of employees, and tenant associations in employment and fair housing litigation and has obtained substantial judgments and settlements for his civil rights clients. He speaks frequently at continuing education

events on a wide range of topics, including ethics, class action practice, and attorneys' fee jurisprudence.

Hassan is admitted to the Bar of the District of Columbia, Bar of the State of California, the Bar of the State of Maryland, the District of Columbia Court of Appeals, the Maryland Court of Appeals, and the Supreme Court of the United States. He is also admitted to practice before the Court of Appeals in the D.C., Second, Fourth, Fifth, Ninth and Eleventh Circuits and in the District Courts of the Central, Northern & Southern District of CA; CO; MD; Eastern MI, WI; and Southern TX.

Hassan and his firm have long supported NCLC through speaking at and sponsoring our conferences, nominating NCLC for cy pres awards, and most recently through his support of the *Campaign for the Future* at the Campaign Council level. "I am honored to be a part of the group and look forward to being able to contribute meaningfully" says Hassan. ■



Hassan A. Zavareei

## Mortgage Training Conference June 14-25

NCLC's 2021 virtual Mortgage Conference comes at a critical time: the COVID-19 pandemic has endangered the housing security of millions of Americans, many of whom will be at great risk of foreclosure once current moratoriums expire.

Circumstances and policies are changing rapidly, and we encourage all attorneys who do or are considering representing clients on these matters to join us for two weeks of in-depth online sessions on litigation strategies and tactics for saving your client's homes.

Week 1 will consist of introductory "Intensives" on servicing rules and loan modifications for attorneys new to handling mortgage cases, while Week 2 will feature 2-3 sessions each day on a wide range of mortgage-related consumer law subjects, including Post-Forbearance COVID-19 Relief Options, Credit Reporting Issues in Mortgage Cases, Real Estate Settlement Procedures Act (RESPA) issues, and much more.

Registration is open and more information, including the full training schedule, is available at [nclc.org/conferences](https://nclc.org/conferences). ■



## States Must Take Action to Prevent Mass Utility Terminations – and Save Lives

In response to the financial peril many households faced at the onset of the COVID-19 crisis, moratoriums on utility shut-offs were instituted in many states to protect customers from the immediate danger of termination due to non-payment. While the moratoriums did forestall terminations in 2020, many states' moratoriums are set to expire, have already expired, or were never instituted in the first place – meaning that for millions of customers, the threat of shutoff due to the inability to pay their energy bills is once again a reality.

NCLC's analysis of this troubling trend, *COVID-Driven Utility Arrearages: Implications for Policy in Massachusetts*

and *Across the Nation*, found that an estimated tens of billions of dollars in utility debts are accumulating across the country, and that communities of color are being particularly hard hit – as of August 2020, more low-income Black (20%) and Hispanic (28%) households reported having trouble paying their bills than white (12%) households, putting them at higher risk for termination of service. Learn more at: [bit.ly/covid-util-arrearages](https://bit.ly/covid-util-arrearages)

In addition, utility disconnection poses a significant threat to members of these households who are very young, very old, or seriously ill. Loss of utility service makes it more difficult to refrigerate medications, power needed

medical equipment, or simply maintain adequate temperature in the home, all of which can exacerbate existing illnesses or conditions.

In a recent 50-state review, *Protecting Seriously Ill Consumers from Utility Disconnections: What States Can Do to Save Lives Now*, NCLC found that, as with COVID shutoff moratoriums, some states provide strong protections against termination of households where someone is seriously ill, while other states provide very little or no protection.

As the economic fallout of the COVID-19 pandemic continues, states will need to implement flexible repayment programs, adopt low-income discount rates, expand and expedite the process of obtaining serious illness protection, and deploy additional aid to forestall utility shutoffs for millions of families and small businesses. Ultimately, states have a responsibility to enact strong protections against utility shutoff – particularly in households with high-risk members – in order to safeguard the health and well-being of their citizens. Read the report at: [bit.ly/ill-consumer-utility](https://bit.ly/ill-consumer-utility) ■

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## TCPA Advocates Regroup After SCOTUS' Disappointing Ruling on Autodialers

In December, the Federal Communications Commission (FCC) issued two key rulings prohibiting prerecorded “avatar” voice calls (in which the recording is manipulated by a human operator) to cell phones and landlines without the recipient's consent, restricting the number of prerecorded calls that can be made to the same number in a 30-day period, and requiring that all calls with a prerecorded or artificial voice include an opt-out mechanism. These new restrictions are enforceable under the Telephone Consumer Protection Act (TCPA), and represent a positive step

forward for consumers who are beset by automated voice calls.

Unfortunately, the Supreme Court of the United States dealt a blow to another critical protection against

unwanted robocalls in April. In *Facebook, Inc. v. Duguid*, the Court interpreted the Telephone Consumer Protection Act's (TCPA) definition of autodialer so narrowly that it may only

apply to few if any of the autodialers in use today, resulting in a dramatic increase in the robocalls and texts that already plague cellphone consumers. Additionally, under the limited application, the Court's ruling will leave cell phones used by small businesses completely unprotected from any automated live calls or texts.

While this verdict is incredibly disappointing to the advocates who have fought for decades to stem the tide of unwanted robocalls, NCLC and our allies are planning to work with both the FCC and key members of Congress to clarify current protections and create new protections in the TCPA. While legislation improving the TCPA may be challenging in the current climate in Congress, we are planning a comprehensive set of requests to the FCC to maximize protections against intrusive automated calls and texts under the TCPA. In the months to come, we'll be calling on the TCPA community to gather the stories of consumers and small businesses who will suffer the onslaught of these unwanted calls and texts, and we encourage advocates and allies to start documenting those harms now. ■



## Debt Collection Developments on Multiple Fronts

In every arena – regulation, legislation, and litigation – this has been a busy season for attorneys whose work focuses on the Fair Debt Collection Practices Act (FDCPA).

The Consumer Financial Protection Bureau (CFPB) issued new debt collection regulations at the end of 2020, which are currently scheduled to take effect on January 29, 2022 (the original deadline of November 30, 2021

*“...many of the practices authorized by the new rules will harm consumers, unless changes are made before they take effect.”*

was extended in April to give affected parties more time to comply due to the ongoing COVID-19 pandemic). These rules include some provisions to benefit consumers, such as requiring collectors to comply with oral “stop calling” requests and prohibiting credit reporting without first giving notice of the alleged debt to the consumer – but many of the practices authorized by the new rules will harm consumers, unless changes are made before they take effect. NCLC continues to work with CFPB staff and leadership to advocate for changes to the regulations to better protect vulnerable consumers. Learn more at: [bit.ly/CFPB-coll-rule-changes](https://bit.ly/CFPB-coll-rule-changes).

Congress started the legislative session with the introduction of several bills to amend the FDCPA, including draft legislation introduced in March in the U.S. House of Representatives on Policy Options to Help America’s Consumer During the Pandemic. At the state level, advocates in many states are promoting legislation on a variety of debt collection topics. NCLC is closely monitoring legislative developments and providing recommendations to legislators and staff on how to craft laws

that provide needed consumer protections.

One recurring issue in FDCPA litigation is standing, with FDCPA plaintiffs facing Spokeo challenges in many cases. To help FDCPA practitioners navigate the complex case law on standing, NCLC recently updated its section on Constitutional Standing Under *Spokeo* in its Fair Debt Collection manual, available at [library.nclc.org/fdc/111001](https://library.nclc.org/fdc/111001) (subscription required). Listservs maintained by the National Association of Consumer Advocates (NACA) are also a valuable resource for FDCPA attorneys seeking guidance on standing or other issues arising in FDCPA litigation. Other 2020 FDCPA litigation developments are highlighted in NCLC’s Digital Library, at [library.nclc.org/fdcpa-year-review-2020](https://library.nclc.org/fdcpa-year-review-2020).



NCLC is grateful to all who helped lead, and those who participated in, our recent Fair Debt Collection Practices Conference. Our community and our clients win when we learn with and from one another!

For more information on NCLC’s ongoing FDCPA advocacy, policy analysis, consumer resources and more, visit [nclc.org/issues/debt-collection.html](https://nclc.org/issues/debt-collection.html). ■

### 2021 Fair Debt Conference Recap

Thank you to everyone who attended the 2021 Virtual Fair Debt Conference! This year, approximately 270 consumer advocates from 45 states and territories tuned in to a dozen live virtual sessions on debt collection practices and litigation, hosted by some of the leading experts in the field. Additionally, this year featured the inaugural TCPA Symposium, which provided insight into recent court cases and regulatory changes in this growing practice area.

Did you miss the conference? We look forward to seeing you **in person** on March 24-25, 2022 in sunny Orlando, Florida. Mark your calendars! ■



# Student Loan Debt Relief Extended

## No Movement on Debt Cancellation

On his first day in office, President Biden directed the U.S. Department of Education to extend suspension of coronavirus related student loan payments – with the Department of Education’s website stating that student loan relief will last “at least through Sept[ember] 30, 2021.” NCLC advocated for this extension in our December 2020 issue brief: *2021 Federal Priorities: The U.S. Government Must Act Now to Address the Student Debt Crisis*, and also advocated for an extension of the 0% interest rates, which the Department has temporarily set through at least September 30, 2021. The Road to Relief report (published in November 2020 by NCLC and the Center for Responsible Lending) also provided federal policymakers with a roadmap to improve the federal student loan program and to provide substantial relief to borrowers. NCLC and its allies will continue to push President Biden to take action on widespread student loan debt cancellation.

At the state level, NCLC is urging the amendment or establishment of student protection funds (SPFs) to reimburse student borrowers of now closed for-profit school chains such as Corinthian Colleges, ITT Tech, the Art Institutes, and Education of America (and others). NCLC’s recent report, *How States Can Help Students Harmed by Higher Education Fraud*, details the use of these funds, administered by states to relieve harmed students for all their financial losses (not just tuition) caused by a broad range of illegal practices common to for-profit schools. Currently, only 20 states have SPFs, the majority of which fail to provide adequate relief to harmed students. SPFs are more critical than ever; despite the mass collapse of several for-profit chains since 2010, enrollment numbers in online for-profit schools are now on the increase due to the COVID-19 pandemic.



The image shows the cover of the 'Road to Relief' report. It features a photograph of a young woman with a backpack walking on a path. The title 'ROAD TO RELIEF' is at the top in a blue banner. Below the photo is a red banner with the text 'Supporting Federal Student Loan Borrowers During the COVID-19 Crisis and Beyond' and 'November 2020'. At the bottom are logos for CRL (Center for Responsible Lending), NCLC (National Consumer Law Center), and Student Loan Borrower Assistance.

*“If we are serious about helping communities of color and spurring economic recovery, student debt relief must be a part of the solution. The student loan system has been broken for too long; it is time to clear the books and provide borrowers with a path forward.”*

– NCLC Road to Relief, November 2020

Learn more at NCLC’s Student Loans blog: “Student Loan Payment Suspension Extended through September 30, 2021: What Borrowers Need to Know” and at the Department of Education’s webpage about coronavirus relief, which includes a detailed FAQ for borrowers. ■

### American Rescue Plan *continued from page 1*

and libraries to help close the homework gap; \$4.5 billion for energy bills through the Low-Income Home Energy Assistance Program (LIHEAP); and \$500 million for emergency low-income water assistance. Also included is the closure of a longstanding loophole that encouraged predatory post-secondary schools to target servicemembers and veterans for their military education

benefits, and elimination of taxes for cancelled student debt from December 31, 2020 through January 1, 2026.

NCLC is urging Congress to prohibit debt collectors from garnishing the new Child Tax Credit payments (increasing from \$2,000 to \$3,500 per eligible child) that should start going out in July.

Visit NCLC’s “COVID-19 & Consumer Protections project” webpage for updates. Also available: the Digital Library article: “Consumer Law Implications of the American Recovery Plan Act” at [library.nclc.org/consumer-law-implications-american-recovery-plan-act](https://library.nclc.org/consumer-law-implications-american-recovery-plan-act) ■



## Pain and Progress on Racial Equity

The murder of eight people in Atlanta on March 16, including six Asian women, comes on the heels of a sharp increase in harassment and violence against people of Asian descent. Over the past year, hateful incidents against Asian American Pacific Islander (AAPI) individuals have surged by more than **150%**. Most of the perpetrators targeted women. The vicious rhetoric, harassment, and discriminatory practices that fuel violence predate the pandemic. Exclusionary immigration policies and a long history of racist and xenophobic policies and practices that have limited the ability of Asian Americans to participate fully in civic life.

Even as we mourn and stand in solidarity with the AAPI community, we recognize the significant toll the pandemic and anti-Asian bigotry has taken on AAPI communities and individuals. Asian-owned businesses, for example, are overrepresented in some of the hardest-hit sectors of the economy and shut down early in the pandemic. Many are small businesses that employ limited English proficient workers; they may have a difficult time finding new employment or accessing relief programs. The Asian American unemployment rate **increased** by more than 450% from February to June 2020, and remains high. In addition, analysis from the National Women's Law Center consistently shows that Asian women, along with their Black and Latina peers, are more likely to be behind on mortgage payments than white, non-Hispanic men.

The Biden Administration has issued executive orders to address racial disparities in policies and practices, including efforts to identify communities the federal government has underserved and advance equity generally across the federal government. These goals are a good start, and we look forward to working with the administration to address long-standing systemic discrimination in the credit, housing, and financial markets.

Given the harsh economic fallout from the COVID-19 pandemic on AAPI and other communities of color, we expect the economic distress will deepen and make more consumers vulnerable to predatory, high-cost, and abusive forms of credit. Through our Racial Justice and Equal Economic Opportunity Project, we are applying a race equity lens to our advocacy and legislative work at the federal and state level, while pursuing anti-discrimination litigation and training consumer advocates to bring these types of cases. Even as we mourn, we renew our commitment to fighting for a more just and inclusive economy and society that values the contributions of all our community members. ■

*“Even as we mourn and stand in solidarity with the AAPI community, we recognize the significant toll the pandemic and anti-Asian bigotry has taken on AAPI communities and individuals.”*



# Thank You!

NCLC relies on the generosity of our supporters to advocate for fairness and litigate for justice, and to educate, train, and support the consumer law community. Space limitations prohibit us from recognizing every supporter by name, but we are tremendously grateful to all who have recently donated to NCLC, including the following individuals and organizations who have made significant gifts in support of our work.

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## Remembering Andy Spanogle (1934 - 2020)

Andy Spanogle, NCLC Partners Council member and co-chair of NCLC's Campaign for the Future, passed away in December 2020, on his 86th birthday.

Throughout his remarkable life, Andy was a fierce advocate for consumers – one of the original "Nader's Raiders," a law professor at the University of Maine and George Washington University Law School, and lead author of law textbooks that revolutionized consumer legal education. After his retirement from GW Law, Andy became one of NCLC's leading supporters, pledging \$1.5 million to launch our 50th Anniversary Campaign for the Future and sustain our Washington, DC office, which was renamed in his honor in 2017. The Spanogle Institute for Consumer Advocacy commemorates Andy's lifelong commitment to economic justice, and ensures a permanent voice for consumers in the nation's capital.



Andy impacted countless consumers and consumer law advocates through his advocacy, writing, teaching, and philanthropy, and NCLC is extraordinarily grateful for his leadership and support. He will be missed, and long remembered. ■

## Litigation Case Study

When one is engaged in an adversarial process like litigation, outcomes often are measured solely by a determination of who won and who lost. However, for a nonprofit public interest organization like NCLC, dedicated to protecting vulnerable low income consumers against powerful opposing forces, we often have to use cutting-edge legal theories and strategies in our impact litigation that render the assessment of the results through simple binary outcomes inappropriate. Rather, the success of NCLC's impact litigation must be measured by the outcomes a case achieves to further our goals rather than in terms of more traditional notions of absolute wins and losses.

Such was the case in recent litigation NCLC brought to protect student borrowers during the current pandemic. On April 30, 2020, Student Defense and NCLC, with the support of the Student Borrower Protection Center, filed a class action lawsuit against the U.S. Department of Education (Department), demanding an immediate halt to the Department's garnishment of student borrowers' wages, which the Coronavirus Aid, Relief, and Economic Security (CARES) Act had prohibited since March 27, 2020. On June 22, the Court Ordered that every two weeks thereafter, the Department would apprise the Court of: (1) the percentage of borrowers whose wages are being garnished; (2) the percentage of refunds issued; (3) the means the Department is using to contact employers continuing to garnish wages; (4) how many borrowers do not have a valid address on file; and (5) a description of the Department's attempts to reach them. The Department complied and has provided the required reports through January 25, 2021.

The CARES Act expired on September 30, 2020. The lawsuit, *Barber v. DeVos*, officially came to an end by voluntary dismissal, on March 16, 2021. However, during the public reporting period following the filing of the lawsuit to its conclusion, the Department stopped seizing the wages of over 50,000 student loan borrowers and provided over \$186 million in refunds of illegally seized wages to over 380,000 borrowers.

The lawsuit also exposed serious flaws inherent in the Department's current wage garnishment system, adding to the evidence that shows this system to be unwieldy and out of control – for

example, due process concerns, poor record-keeping practices, and abdicating responsibility for its collection system to employers.

Did we win or did we lose? While we can't prove that the press attention on our complaint forced the Department to speed up and enhance its efforts, there was improvement in its performance. We also engaged in discovery to better understand and document the problems with the Department's collection practices, and created a foundation for future litigation and public policy efforts challenging the Department's collection practices – all of which we consider a positive outcome. ■

## Cy Pres Awards Advance Justice for Consumers

Nominating NCLC for a *cy pres* award is one of the most effective ways to promote and advance consumer rights. NCLC is always willing to provide the information attorneys need to navigate the *cy pres* nomination process – if you are interested in nominating NCLC, please contact Paul Laurent at [plaurant@nclc.org](mailto:plaurant@nclc.org) or by calling (617) 542-8010. Thank you to all consumer attorneys who have recommended NCLC as a recipient for *cy pres* awards, including these recent successful nominators:

Darren Aitken  
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Bailey & Glasser LLP  
Rafey Balabanian  
Leonard Bennett  
O. Rand Bragg  
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Ronald Burdge  
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## **INSIDE** Coming Soon: **NCLC Digital Library 2.0**

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)!

## **Mortgage Training Conference**

June 21-25, 2021

### **Saving Homes In Pandemic and Post-Pandemic Times**

NCLC's 2021 Mortgage Training Conference will be a live virtual conference from June 21-25, 2021, with optional pre-conference intensives June 15-19.

We invite you to join NCLC advocates and leading experts in the field for more than 10 sessions covering critical mortgage and foreclosure issues. Learn strategies and tactics for effectively representing your clients both during and after the COVID-19 pandemic.

With the opportunity to earn up to 26+ CLE credits, you won't want to miss this important gathering of thought leaders as we workshop, network, and learn together this summer. Visit [nclc.org/conferences](https://nclc.org/conferences) for more information. Register today!