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October 5, 2021

Rohit Chopra, Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Priorities for the CFPB

Dear Director Chopra,

Congratulations on your confirmation as Director of the Consumer Financial Protection Bureau. We are excited to work with you to improve protections for consumers.

The National Consumer Law Center works for economic justice for low-income and other disadvantaged people in the U.S. through policy analysis and advocacy, publications, litigation, and training. On behalf of our low-income clients and other vulnerable consumers, including communities of color, we would like to highlight some thoughts on immediate and longer-term priorities for the agency.

The CFPB's top priorities should include addressing COVID impacts for homeowners, tenants and student loan borrowers and emphasizing racial justice throughout the Bureau by looking for disparate impacts, examining new technology, and ensuring equal access to hardship programs. This letter is focused on COVID and racial justice issues, but we also touch on other priorities, including the need to address longstanding problems with overdraft fees, payday loans, and credit reporting and to prevent emerging fintech evasions of credit and other consumer protection laws. This letter is not an attempt to provide a comprehensive roadmap, and we would welcome the opportunity to have more in-depth conversations on these and other issues.

Addressing the impact of the COVID-19 pandemic

The pandemic has wreaked havoc on the finances of families across the nation. The impacts have been especially pronounced in communities of color, which already bear disproportionately high debt loads and have less financial wealth. The first priority of the CFPB must be to support families and communities that are struggling due to the crisis and to prevent long-term impacts that exacerbate inequities and the racial wealth gap. Areas that need attention include:

Prevent a new foreclosure crisis and the loss of wealth in communities of color. One of the greatest tragedies of the last financial crisis is the massive loss of homeownership, especially in communities of color that have yet to recover. Despite the lessons learned over the intervening years, serious weaknesses remain in our mortgage servicing and foreclosure prevention infrastructure. Forbearances have helped many temporarily, but over one million homeowners, including many lower-income Federal Housing Administration (FHA) borrowers, will be exiting forbearances before the end of the year. The CFPB's recent report on mortgage servicing highlights some of the disparities in the performance of servicers,¹ and the end of forbearances will challenge them even further. Steps that the CFPB can take to help save homes include²:

- Closely supervise mortgage servicers to ensure **compliance with loss mitigation requirements** and the new mortgage servicing procedural safeguards in Regulation X.
- **Extend the Regulation X safeguards** beyond 2021 or establish other similar foreclosure protections.
- Establish **robust escalations channels** for advocates working with COVID-affected homeowners, especially those with non-bank servicers of private loans that lack the protections of government-backed loans.
- Closely **monitor phone access** for homeowners with **limited English proficiency** who are seeking assistance from mortgage servicers.

Protect tenants from eviction and homelessness. The end of the eviction moratorium has exposed millions of families to eviction. These are among the lowest income families who have few resources. They risk not only losing their homes, but also being barred from finding new ones. While the CFPB's authority in this area is limited, it does have authority over debt collectors and credit reporting agencies that can be used to help mitigate this crisis. The CFPB can:

- Require debt collectors, including attorneys for landlords, to provide notice about **Emergency Rental Assistance Program (ERAP) funds**.
- Prohibit debt collectors from seeking payment for amounts that were or will be paid by ERAP or similar funds and require collectors to pause collection efforts, including evictions, where the collector has notice that an application for ERAP funds has been submitted.
- Clarify that states are **not preempted** from adopting laws to exclude pandemic-era eviction and other negative information from **tenant screening reports**.
- **Prohibit credit reporting** of rent arrears if ERAP funds have been paid or an application has been submitted, and require deletion of any such collection items.

¹ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-mortgage-servicers-pandemic-response-varies-significantly/>.

² For details and more housing priorities, see NCLC, [2021 Foreclosure Prevention and Mortgage Lending Priorities: Consumer Financial Protection Bureau](#) (Nov. 2020) ("Housing Priorities").

Protect federal student loan borrowers as payment suspensions end. On February 1, 2022, payments are scheduled to resume for over 30 million student loan borrowers. But servicers have a history of misleading borrowers about options and making mistakes that extend repayment. The Education Department's relief programs are woefully backlogged and inadequate. Problems will be compounded with the transfer of nearly 16 million borrowers to new servicers following the exit of three major federal student loan servicers. Transferring these accounts smoothly is a monumental task. While the primary responsibility for federal student loans lies with the Education Department, the CFPB should:

- Urge the President to cancel student loans on a widespread basis. Millions of borrowers, especially in communities of color, are struggling under impossible debt loads they can never surmount. Cancelling debt now, before payments resume, would restore financial futures and prevent the coming chaos.
- Resume supervising servicers of federal student loans to prevent harm to struggling borrowers. Servicing problems with student loans are endemic even in normal times, and robust supervision is needed now more than ever.
- Use the Student Loan Ombudsman's reports to bring attention to problems.

Racial justice

The CFPB has a critical role to play in addressing this nation's longstanding racial and ethnic injustices. Actions the CFPB can take to address systemic discrimination and the harsh economic fallout from the COVID-19 pandemic on communities of color include:

- Pay special attention to **disparate impacts** on communities of color in all markets and services and all areas of the Bureau's work, including discrimination in areas such as auto finance and add-ons. Update CFPB 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.
- Closely monitor use of **alternative data and new and emerging technologies**, including artificial intelligence models used in marketing, credit underwriting and pricing, to ensure they do not violate fair lending laws.
- Convene a cross-Administration working group on **sustainable homeownership in communities of color**.
- **Ensure equal access to hardship programs**, both those that are COVID-specific and ongoing programs offered by creditors, servicers, and collectors for struggling consumers. The CFPB should assess relief policies for disparate impacts and collect data. Companies should be encouraged to make relief automatic, to provide information

about relief in every relevant communication, in the consumer's preferred language, and to eliminate discretion in the granting of relief.³

- Strengthen the **Home Mortgage Disclosure Act** by reverting to the 2015 rule's reporting thresholds and by halting efforts underway to further eliminate other data required by that rule, including disaggregated race and ethnicity data, and in particular data on Asian-American and Pacific Islander consumers.
- Ensure market access to consumers with **limited English proficiency** by ensuring that companies collect consumer language preference and provide translated disclosures and oral interpretation.
- Facilitate the use and design of **Special Purpose Credit Programs**, especially in the mortgage context.

Other issue-specific priorities

The Bureau faces a full plate of pressing consumer protection problems. Below are some of the top priorities for attention.

Predatory lending: Restore the 2017 **payday loan rule** and **supervise** the larger installment, line of credit and vehicle title lenders, especially high-cost lenders. Use enforcement, guidance or rulemaking, and rescind inappropriate advisory opinions or sandbox approvals, to prevent **fintech evasions of credit laws** by wage access products,⁴ income share agreements,⁵ and disguised finance charges through "tips," late fees and other guises.

Banking: Enact strong rules to stop abusive use of **overdraft fees** as a deceptive, high-cost form of credit. Enforce and close loopholes in the **Prepaid Accounts Rule** to ensure that prepaid card companies and **non-bank fintech accounts** do not have overdraft fees, deposit advance (bank payday loan) products, or other dangerous or deceptive credit features.⁶

³ See Housing Priorities; Emergency Debt Collection Priorities.

⁴ See NCLC, [Early Wage Access: A Good Option for Workers or a Fintech Payday Loan?](#) (Mar. 2020); Comments of NCLC, Center for Responsible Lending (CRL) to Calif. Dep't of Fin'l Protection & Innov. on earned wage access products (Mar. 15, 2021), https://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/CRL_CA_DFPI_EWA_Comments.pdf.

⁵ See Comments of NCLC, CRL and Student Borrower Protection Center to Calif. Dep't of Fin'l Prot'n & Innov. on income share agreements (Mar. 15, 2021), https://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/CA_DFPI_ISA_Comments.pdf.

⁶ See Jason Mikula, Fintech Business Weekly, "Chime Var May Misdlead on Overdrafts" (Feb. 7, 2021), <https://fintechbusinessweekly.substack.com/p/chime-varo-may-misdlead-on-overdrafts>; NCLC, Press Release, "[CFPB Quietly Launches Web Database of Prepaid and Payroll Card Fees and Disclosures but Some Cards with Overdraft Fees are Missing](#)" (Oct. 16, 2019); NCLC, [Payday Lender Prepaid Cards: Overdraft and Junk Fees Hit Cash-strapped Families Coming and Going](#) (July 2015).

Credit reporting: Use consumer response, supervision, enforcement, guidance, and rulemaking to achieve serious, systemic reforms at credit bureaus and specialty reporting agencies to ensure fairness and accuracy, and to promote economic recovery.⁷

Debt collection: Closely monitor debt collectors' implementation of the new rules and use data and research, especially on the impact of electronic communications, to improve the rules.⁸ Collect data on private collection of government fines and fees, update research on medical debt collection, and address problems with medical debt.⁹

PACE loans: Establish robust consumer protection rules for **Property Assessed Clean Energy (PACE) loans** and work with other agencies to ensure that government-backed loans are not made on properties with PACE liens until such rules are in place.

Payments: Work with the Federal Reserve Board to ensure protection against fraud-in-the-inducement and consumer errors in the new **FedNow** system and other person-to-person payment systems.¹⁰ Stop hidden fees and inflated exchange rates in **international remittances**.

Forced arbitration: Require the submission of data by those who use forced arbitration clauses, as an interim step toward further action to prohibit or impose conditions or limitations on the use of forced arbitration.

Restoring the CFPB's consumer protection infrastructure

Beyond specific issues, the CFPB must take steps to undo measures that have weakened consumer protection.

- Restore **vigorous enforcement** with meaningful penalties and restitution to injured consumers. For example, recent issues of Supervisory Highlights document a number of areas of concern in auto servicing, consumer reporting, deposits, debt collection, mortgage servicing, payday lending, student loans and other areas.
- Rescind or dramatically revise the poorly conceived **Advisory Opinion Policy, Compliance Assistance Sandbox, No-Action Letter Policy, and Trial Disclosure Sandbox**, which give companies a secretive, one-sided channel for favored interpretations of the

⁷ See NCLC, [2021 Credit & Consumer Reporting Priorities to Promote Economic Recovery](#) (Dec. 2020).

⁸ See Letter from NCLC to Acting Director Uejio re Non-Regulatory Actions Needed on Debt Collection (Feb. 1, 2021), https://www.nclc.org/images/pdf/debt_collection/Debt_Coll_Letter_Uejio.pdf.

⁹ See Letter from Senator Murphy, et al. to Acting Director Uejio (June 25, 2021), https://www.murphy.senate.gov/imo/media/doc/medical_debt_letter.pdf.

¹⁰ See Letter from 43 consumer, small business, civil rights, community and legal service groups to Board of Governors of the Federal Reserve System (Sept. 9, 2021), https://www.nclc.org/images/pdf/banking_and_payment_systems/fintech/FedNow-coalition-comments-final.pdf; Lauren Saunders, "Will Faster Electronic Payments Mean Faster Fraud?" (Sept. 17, 2015), <https://www.americanbanker.com/opinion/will-faster-electronic-payments-mean-faster-fraud>.

Rohit Chopra, Director

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law, encourage evasions in the name of “fintech,” and complicate genuine compliance.¹¹

- Rescind actions that limit the CFPB’s authority over or enforcement of the law, including the policy statements on **abusive conduct**¹² and **early termination of consent decrees**.¹³
- Restore the accessibility of the narratives in the **complaints database**.

* * *

We stand ready to assist you in any way we can and would love the opportunity to meet with you to discuss these and other issues. You can reach me at lsaunders@nclc.org or 202-595-7845. Thank you for your commitment to consumer protection.

Yours very truly,



Lauren Saunders
Associate Director

¹¹ See, e.g., [Comments of NCLC et al. on Advisory Opinions Proposal](#) (Aug. 21, 2020).

¹² See NCLC, Press Release, [Advocates Decry Consumer Agency’s Narrowing of Abusive Standards Which Will Protect Dishonest Businesses Instead of Cheated Consumers](#) (Jan. 24, 2020).

¹³ CFPB, Press Release, Consumer Financial Protection Bureau Issues Policy Statement on Applications for Early Termination of Consent Orders (Oct. 5, 2020), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-issues-policy-statement-applications-early-termination-consent-orders/>.