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Racial Equity & Consumer Protection

Assessing the Biden Administration's Commitment to Racial Equity in Policymaking

Acknowledgments

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About Public Citizen

Public Citizen is a national non-profit organization with more than 500,000 members and supporters. We represent consumer interests through lobbying, litigation, administrative advocacy, research, and public education on a broad range of issues including consumer rights in the marketplace, product safety, financial regulation, worker safety, safe and affordable health care, campaign finance reform and government ethics, fair trade, climate change, and corporate and government accountability.



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Introduction

On his first day in office, President Biden signed an executive order titled, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.”¹ The executive order instructs all federal agencies to evaluate their racial equity policies and outcomes, and to outline changes the agency must take to ensure the needs of communities of color and other underserved communities are fulfilled. The executive order said: “It is therefore the policy of my Administration that the Federal Government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.”² In light of this executive order, Public Citizen has been surveying work that consumer protection agencies have done in recent years to advance racial equity. An analysis of that survey is below. Much more must be done to advance racial equity in federal policies and programs.

Consumer Protection is a Racial Justice Issue

In the middle of the COVID-19 health and economic crisis, law enforcement officers killed George Floyd in May 2020. His death and the rally cry for racial justice sparked months of protests. It was not lost on many people of color that they were protesting for racial justice and equity during a global pandemic that left Black and Brown people sickened by and dying from COVID-19 at higher rates than their white counterparts.³ The pandemic also saw Black and Brown renters twice as likely to be behind on rent⁴ and with higher unemployment as compared to white people.⁵ In many ways, the COVID health and economic crisis laid bare the systemic inequality that communities of color have faced for centuries in the U.S.

The Trump administration did little to correct these wrongs. Before winning the presidency, Joe Biden promised to make racial equity a priority of his administration. Once in office, the Biden Administration moved quickly by signing the executive order on racial equity that required

¹ Executive Order on Advancing Racial Equity and Support for the Underserved Communities Through the Federal Government, THE WHITE HOUSE (Jan. 20, 2021), <https://bit.ly/3xAaJXq>.

² *Id.*

³ Emma Grey Ellis, *Covid-19 Is Killing Black People Unequally-Don't be Surprised*, WIRED (May 2, 2020), <https://bit.ly/317agaU>.

⁴ Sophia Wedeen, *Black and Hispanic Renters Face Greatest Threat of Eviction in Pandemic*, JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY (Jan. 11, 2021), <https://bit.ly/33vl2Af>.

⁵ Jhacova Williams, *Laid Off More, Hired Less: Black Workers in the COVID-19 Recession*, RAND CORPORATION (Sept. 29, 2020), <https://bit.ly/3AdpqAM>.

each federal agency to produce a plan for how it would address racial inequity in its policy and programs.

Much work must be done to turn Biden's words from rhetoric to concrete change. This issue brief surveys what consumer protection agencies have already done to address issues of racial equity, and Public Citizen intends to follow this work with an analysis of the equity plans that the agencies will be submitting to the White House in the coming weeks.

As these plans are just the beginning of each agency's work, so, too, is our advocacy to ensure that the federal government tackles racial inequity head on.

Racial Equity Actions by Consumer Protection Agencies

For fifty years, Public Citizen has been working to protect consumers from unsafe and deceptive practices by corporate bad actors and to advocate for strong government enforcement of consumer protection laws. More recently, we have worked to shine a light on consumer protection inequities faced by Black and Brown people. Even when consumer protection agencies are not taking policy or enforcement actions to directly combat racial inequality, their work broadly has an impact on Black and Brown communities. For example, cracking down on predatory payday lenders will protect all consumers, but inherently has a larger impact on communities of color since predatory payday lenders are concentrated in communities of color.⁶ That said, it is important to discuss how federal consumer protection agencies can specifically tackle racial inequity because while consumer protection is not an issue often talked about in discussions of racial justice and racial equity, it is a critical issue area to address to ensure the economic inclusion of Black and Brown people in society. Several types of consumer harms disproportionately impact marginalized communities, such as abusive lending practices and housing discrimination that has stopped people of color from building wealth through homeownership,⁷ and canceling student debt in order to help tackle the widening racial wealth gap.⁸ Improving biased consumer practices is one tool to level the playing field.

Some of the federal government's top consumer protection agencies are the:

⁶ *Payday and vehicle title lending disproportionately harm communities of color, exploiting and perpetuating the racial wealth gap*, CENTER FOR RESPONSIBLE LENDING (Nov. 2020), <https://bit.ly/3FLVAEK>.

⁷ Gillian B. White, *Why Blacks and Hispanics Have Such Expensive Mortgages*, THE ATLANTIC (Feb. 25, 2016), <https://bit.ly/3lxAXOH>.

⁸ *Coalition Letter to POTUS Re: Student Debt*, PUBLIC CITIZEN (viewed on Jan. 18, 2022), <https://bit.ly/3rr1shL>.

- Consumer Financial Protection Bureau (CFPB), the newest consumer protection agency, which polices the consumer financial space against unfair, deceptive, and abusive practices;⁹
- Consumer Product Safety Commission (CPSC), the nation’s chief product safety regulator and independent agency, responsible for protecting consumers from unreasonable injury or death associated with consumer products.¹⁰ The agency’s jurisdiction makes it responsible for the safety of more than 15,000 products;¹¹ and
- Federal Trade Commission’s Bureau of Consumer Protection (FTC), an independent agency that works to “stop businesses practices...that are deceptive or unfair to consumers.”¹²

Each agency plays an important role in protecting the economic well-being of communities of color and advancing racial equity on the federal level.

Given each agency’s roles in protecting consumers of color, Public Citizen researched how each agency sought to address racial equity as a priority within their overarching missions. Below is a comprehensive, but not exhaustive, list of racial equity actions that the CFPB, CPSC, and FTC have taken in recent years. We applaud the actions each agency has taken thus far to advance racial equity, but expect more, and so eagerly anticipate the agencies’ forthcoming racial equity plans. All federal agencies are required to submit racial equity action plans to the Office of Management and Budget by January 20, 2022 – a year since Biden took office. We have urged these agencies to draft bold plans that transform their work in the racial equity space. Public Citizen looks forward to reviewing the plans, providing guidance and critiques, and continuing our advocacy by working collaboratively with these agencies to implement their goals.

Survey of Racial Equity in Consumer Protection Agencies

Some of the work that agencies are focused on began before the Biden administration took office. In some cases, this work has stalled. In other cases, little progress has been made. While we encourage each agency to continue and expand upon the below work in its racial equity plans, these actions alone are largely not bold enough. Indeed, some of the work is simply

⁹ *The Bureau*, CONSUMER FINANCIAL PROTECTION BUREAU (viewed on Jan. 14, 2022), <https://bit.ly/32anCfq>.

¹⁰ *Who We Are – What We Do for You*, UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION (viewed on Jan. 14, 2022), <https://bit.ly/33Q5197>.

¹¹ Remington A. Gregg, *Delay and Secrecy: How Section 6(b) of the Consumer Product Safety Act Keeps Consumers in the Dark*, PUBLIC CITIZEN (June 24, 2019), <https://bit.ly/3qEX7ID>.

¹² *2013 One Page FTC Performance Snapshot*, FEDERAL TRADE COMMISSION (viewed Jan. 18, 2022), <https://bit.ly/3GGs055>.

reports addressing the problem with no clear solutions or metrics of success to judge the agency on. We will work with and encourage the FTC, CPSC, and CFPB to take more robust and transformative actions in this space.

Over the past half century, Public Citizen has sought to protect consumers, without fear of repercussions from those in power or a desire for favors in return. That does not always make us popular – especially when powerful business interests or Federal officials are on the receiving end of our criticisms. But the criticism should be taken in the spirit it is given: to do what we believe is in the public interest. Righting the wrongs of years of systemic inequality cannot be fixed overnight, but robust and serious implementation of the President’s racial equity executive order will be a concrete step forward.

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Agency	Action Type	Title	Description of Action
CFPB	Report	<u>Consumer complaints throughout the credit life cycle, by demographic characteristics</u>	The CFPB did a first of its kind report analyzing their consumer complaint database by demographic information in order to understand if complaints differ across demographic and socio-economic groups. Analysis showed that communities with a high share of Black consumers submit the most complaints per resident and found that a majority of those complaints were about credit reporting.
	Webpage	<u>Striving for equity</u>	The CFPB has a separate page on their website that affirms their commitment to racial equity. The page shares steps the CFPB is taking to create tools and resources to fight inequality.
	Blog	<u>The Bureau is working hard to address housing insecurity, promote racial equity, and protect small businesses' access to credit</u>	Former Acting Director Dave Uejio outlined his vision for the CFPB’s Division of Research, Markets, and Regulation. Uejio asked the division to regularly publish research reports addressing racial equity, including analysis of consumer finance barriers to racial equity. This division was directed to include racial equity analysis to all policy proposals.
	Video statement	<u>Addressing racial inequities in consumer finance markets</u>	Former Acting Director Dave Uejio affirmed racial justice as a top priority of the CFPB. As the COVID-19 health and economic pandemic continues, the CFPB commits to take action on issues of racial injustice and the long-term impacts of the COVID-19 pandemic on communities of color.
	Blog	<u>Consumers and their experiences to be at the foundation of CFPB policymaking</u>	Former Acting Director Dave Uejio outlined his vision for the CFPB’s Division of Consumer Education and External Affairs. Uejio instructed the division to write a report on disparities in companies’ responses to Black, Brown, and Indigenous communities. The division will also work to refocus their work on consumers and rebuild relationships with consumer, civil rights, racial justice, and tribal and Indigenous advocates.
	Blog	<u>Spring 2021</u>	The CFPB’s spring 2021 rulemaking agenda included

CFPB		Rulemaking Agenda	drafting a rule implementing section 1033 of the Dodd-Frank Act to address consumers’ right to access their digital financial data. The CFPB noted that this issue has deep racial equity implications.
	Blog	The Office of Servicemember Affairs year in review: Working together to protect servicemembers, veterans, and military families	The CFPB’s Office of Servicemember Affairs affirms that racial equity is a top priority for the agency. In order to understand how to shape policies that improve racial equity in the financial marketplace, the office will conduct outreach to military members of color and their families.
	Rulemaking	Prepared Remarks of Acting Director Dave Uejio for the Interim Final Rule on CDC Eviction Moratorium Rights under the Fair Debt Collection Practices Act	The CFPB implemented an interim final rule to protect tenants during the COVID-19 pandemic. The rule requires debt collectors to provide tenants with a written notice of their rights under the CDC eviction moratorium. The rule also states that debt collectors, including attorneys of landlords, can be held accountable under federal law if this rule is violated. The CFPB stated that this is an important rule for tenants of colors because Black and Hispanic households are twice as likely to be behind on rent.
	Blog	The Significant Impact of Student Debt on Communities of Color	The blog highlights some of the racial disparities in student loan debt and how those disparities affect the economic mobility of students of color. Most Black and Latino college graduates have student debt, Asian students are more likely to rely on private student loans, and all students of color often borrow money at much higher rates than white students. The CFPB noted that it is taking action to make the student loan market work better for students of color, including debt relief scams.
	Webinar	CFPB Prioritizing Resources Against Racial Bias in Home Appraisals	The CFPB hosted a roundtable in collaboration with National Credit Union Administration, Office of the Comptroller of the Currency, and Department of Housing and Urban Development to discuss racial bias in home appraisals. These agencies will be part of an interagency

CFPB			initiative to address this issue.
	Report	New report highlights housing insecurity and the need for aggressive action	A CFPB report on housing insecurity during the COVID-19 pandemic found that Black and Hispanic families are more than twice as likely to report being behind on their housing payments than white families
	RFI	CFPB Seeks Input on Detecting Discrimination in Mortgage Lending	The CFPB issued a Request for Information on the implementation of the Home Mortgage Disclosure Act (HMDA). The agency is looking for comments on its assessment plan on the effectiveness of the HMDA rule. This request came from a HMDA report that found that mortgage lenders deny credit and charge higher interest rates to Black and Hispanic applicants than white applicants.
Enforcement	CFPB, DOJ, and OCC Take Action Against Trustmark National Bank For Deliberate Discrimination Against Black and Hispanic Families	The CFPB, Department of Justice and Office of the Comptroller of the Currency filed a joint complaint against Trustmark National Bank for redlining in communities of color. The agencies allege that the bank discriminated against Black and Hispanic neighborhoods in Memphis because they deliberately did not market, offer, or originate home loans in primarily Black and Hispanic neighborhoods.	
CPSC	Report	Better Data Collection and Assessment of Consumer Information Efforts Could Help Protect Minority Children	A 2009 study conducted by the Government Accountability Office (GAO) found that the CPSC needs to better address preventable injuries and deaths among minority children caused by children’s products. The GAO recommended that the CPSC conduct better data collection practices and develop better strategies for communicating safety messages with high risk racial and ethnic groups.
	Operating Plan	FY 2021 Operating Plan	The CPSC’s FY 2021 Operating Plan instructs the Office of Hazard Identification and Reduction to conduct a staff analysis on how the agency can strengthen data collection and analysis of product safety incidents, injuries, and deaths in order to understand if communities of color are more vulnerable.

CPSC	Report	Non-fire carbon monoxide deaths	The CPSC authored a report on carbon monoxide-related deaths associated with a consumer product. The report found that there was a disproportionate number of Black victims of carbon monoxide deaths compared to the percentage of Black people in the U.S. population.
	Report	Playground surfacing	The CPSC conducted a national survey to understand how children are exposed to playground surfaces made with recycled tire material. The survey included how parents’ race and ethnicity affects exposure time.
	Report	Fireworks reports	The CPSC analyzed data of non-occupational fireworks-related deaths and found that compared to their size of the population, there are proportionately more Black victims in fireworks-related deaths.
	Report	Pool safety and deaths for children 15 and under	In a report analyzing pool related deaths involving children under 15 years old, the CPSC found that there is a higher percentage of Black children who die from pool related deaths compared to their proportion of the U.S. population.
FTC	Agency Memo	Vision and Priorities for the FTC	In a memo to staff, Chair Lina Khan laid out her vision and priorities for the FTC. A priority for the FTC would be to combat business practices that target marginalized communities.
	Event	Working Together to Serve Diverse Communities: A Virtual Resource Fair	The FTC held a two-day virtual resource fair with nine other federal agencies to share resources and programs that are available for Black, Latino, and other communities of color.
	Guidance	Aiming for truth, fairness, and equity in your company's use of AI	The FTC wrote guidance for businesses on how to use artificial intelligence (AI) truthfully, fairly, and equitably in order to prevent and fix racial discrimination.

FTC	Enforcement Case	Bronx Honda	The FTC charged New York City car dealer Bronx Honda for discriminating against Black and Hispanic car buyers. Bronx Honda charged higher financing markups to Black and Hispanic customers and engaged in illegal discriminatory advertising and sales practices. They will pay the FTC \$1.5 million to redress consumers.
	Enforcement Case	Moda Latina	The FTC filed a complaint against Moda Latina BZ for luring Latina consumers into a purchasing a work-at-home business reselling luxury goods and falsely promising large earnings. Moda Latina is permanently banned from selling services or products that are marketed as a money-making opportunity. They will pay a monetary judgement of more than \$7 million.
	Report	Combating Fraud in African American and Latino Communities	The FTC conducted a Fraud Survey which found that Black and Latino consumers are more likely to be victims of fraud than non-Hispanic white consumers. The FTC is using fraud prevention strategies, law enforcement strategies, and consumer outreach to fix this disparity.
	Enforcement Case	Blessings in No Time	The FTC and the State of Arkansas filed a complaint against the operators of an investment program that the FTC alleges was an illegal pyramid scheme that took millions of dollars by targeting Black consumers.
	Blog	A government program that pays your bills?	The FTC wrote a blog to warn consumers about a scam occurring in some Black church communities where people approach churchgoers about a federal program that will pay their monthly bills in exchange for a processing fee or up-front payment. The blog links to legitimate government programs to assist consumers with medical and energy bills.
	Consumer Resource	Fotonovelas	The FTC created comics called fotonovelas for the Latinx community in order to offer tips on how to detect common scams that target Latinx people and Spanish speakers.

FTC	Enforcement Case	<u>FTC Obtains Court Order Against Telemarketing Scheme that Preyed on Spanish-Speaking Consumers</u>	The FTC stopped a telemarketing scheme that used deceptive and abusive practices to sell Spanish-speaking consumers English learning products. The company pretended to be affiliated with the U.S. government and threatened to sue, arrest, or jail consumers or seize their home if consumers did not pay for the products. The companies are banned from telemarketing and required to pay \$6.3 million
	Programs	<u>The FTC works for your community</u>	The FTC wrote a 2015 blog highlighting their efforts over a year-long period to address racial equity and outreach to communities of color. They held 10 conferences, over 140 outreach events, and brought over 15 cases affecting consumers of color.
	Enforcement Case	<u>Court Blocks Telemarketer that Pitched High-End Merchandise to Hispanic Consumers, Then Charged them Up-Front Fees for Worthless Products</u>	A U.S. district court approved the FTC’s request to temporarily shut down a telemarketing scam that made unsolicited calls to Spanish-speaking consumers. The scam offered consumers a money-making opportunity reselling brand-name merchandise, but consumers received low-quality and generic merchandise instead. The FTC sent \$1.3 million to consumers defrauded by the company.
	Event	<u>Fraud Affects Every Community</u>	The FTC conducted a workshop that examined how fraud affects, among others, communities of color.
	Event	<u>Gone to Carolina</u>	The FTC conducted outreach in North Carolina with immigrant communities to understand what consumer protection issues they are facing. The FTC found that the most prevalent issues are people posing as immigration officers, tax preparation scams, notario fraud, pyramid schemes, and shipping and lottery scams.
	Report	<u>Serving Communities of Color</u>	The FTC wrote a report highlighting all of their recent enforcement actions affecting communities of color and outreach efforts to understand where they can continue to learn about the issues affecting communities of color.