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## How State Legislatures Can Protect Key Biden Consumer Protection and Small Business Rules

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Under the Biden Administration, the Federal Trade Commission, led by Chair Lina Khan, and the Consumer Financial Protection Bureau, led by Chair Rohit Chopra, kickstarted an era of more effective, modern, and robust enforcement and rulemaking that offered better protection to consumers, workers, and independent businesses.

This was accomplished, in part, by introducing rules and guidelines designed to crack down on anticompetitive mergers, protect the ability of local businesses to find workers, and protect consumers from the deceptive pricing tactics that have been adopted across corporate America.

These measures are [extremely popular](#), garnering widespread, bipartisan support across all demographics, at a time in which voters are clearly responding to economic concerns about prices and corporate abuses of consumers across a host of markets.

It is unclear what the incoming Trump Administration intends regarding appointments to the FTC and CFPB, and therefore whether those agencies will work to implement or rescind these initiatives. Several are also the subject of litigation, and it's not known whether the agencies will continue defending them in court. Several of them could also be overturned by the incoming Congress.

But state legislatures can take steps to codify these important policies in state law, ensuring their residents continue to enjoy vital protections regardless of changes in federal policy. At the same time, if these rules are kept in place and withstand court challenges, states will be able to offer additional protection and enforcement.

This memo details **ten** policies based on FTC and CFPB actions that state legislatures can adopt:

1. **Ban mandatory, undisclosed “junk fees”:** The FTC proposed a rule to ban mandatory, undisclosed “junk fees,” those surcharges assessed on a purchase that are required to complete the transaction but correspond to no additional product or service. Minnesota and California have adopted laws broadly in line with the FTC’s ban – requiring sellers to post all-in prices, inclusive of all mandatory fees – and in 2024 legislatures in another dozen states considered similar statutes. According to Consumer Reports, undisclosed junk fees cost the average family of four more than \$3,000 per year and [polls consistently show](#) that more than 80 percent of voters support banning junk fees. For more, see Economic Liberties’ brief, [“How States Can Take on Junk Fees.”](#)

2. **Codify “click to cancel” rules for subscriptions:** The FTC [finalized a rule](#), known as “click to cancel,” preventing corporations that offer subscription and membership services – such as those provided by gyms or online apps – from making it difficult for consumers to unsubscribe from services or halt recurring payments. California recently adopted a [similar state law](#). More than [8 out of 10](#) voters say they support click-to-cancel rules. States can adopt similar protections and update existing laws to include a simple cancellation mechanism for subscription services.
3. **Prohibit including medical debt on credit reports:** The CFPB [proposed a rule](#) that would prohibit the inclusion of medical debt on consumer credit reports. Medical debt is riddled with errors and inflated by overbilling, and it is not indicative of an individual’s ability to pay a debt. Relying on medical debt to assess creditworthiness often unfairly prevents consumers from accessing credit, loans, and other financial products. Since April 2023, the three major credit agencies -- Equifax, Experian, and TransUnion -- have voluntarily removed medical debt [under \\$500](#) from consumer credit reports. Once finalized, the CFPB rule would codify this practice and extend it to an estimated 15 million Americans who still have \$49 billion in medical debt affecting their credit scores. State legislators could codify similar rules, following the lead of other states, such as [Colorado](#), [New York](#), [Virginia](#), [Illinois](#), [Minnesota](#), [Rhode Island](#), and [California](#).
4. **Ban worker non-compete agreements:** Noncompete clauses prevent workers from seeking better wages and working conditions in their chosen industry, and can trap workers in abusive work situations, because they are effectively unable to quit and take a new position unless they either relocate or take time off work – something few can afford to do. This harms both workers and small business owners who want to compete with dominant firms, but can’t employ workers who are bound by non-competes, depriving them of talent. Several states, including most recently Minnesota in 2023, have made enforcement of these agreements illegal. Many others ban them for select industries or pay levels. A proposed FTC ban – which has been paused by federal courts – would cover almost all workers and could be codified into state law. Almost [two-thirds](#) of voters say they support banning non-competes. For more, see Economic Liberties’ brief, “[Better Wages and Working Conditions: How States Should Tackle Noncompete Agreements, ‘TRAPs,’ and Other Restraints On Worker Mobility.](#)”
5. **Eliminate bait-and-switch auto sale tactics:** The FTC finalized [the CARS rule](#), eliminating many bait-and-switch tactics auto dealers use to lure consumers onto their lots, including providing misleading details about the cost or terms of financing, the availability of discounts or rebates, and the actual availability of the vehicle. State legislators could adopt a similar ban. The CARS Rule also requires dealers to provide the total price of the car up front, including all mandatory fees. Again, a large majority of voters – [78 percent](#) – say they support requiring auto dealers to clearly disclose all of the add-on costs for the vehicle.
6. **Eliminate fake online reviews and testimonials:** The FTC [finalized a rule](#) to improve online shopping by eliminating fake reviews and testimonials. This regulation forbids businesses from creating or buying reviews generated by artificial intelligence, or from people who do not have an actual experience with a product or service. It also says businesses cannot provide compensation for the creation of reviews if it’s conditioned on providing a particular viewpoint. State legislators could adopt similar rules for businesses based in their state.

7. **Adopt public interest standard merger guidelines:** The FTC, along with the Department of Justice, proposed [new merger guidelines](#), updating them to better capture the harms of modern mergers and acquisitions on prices, competition, and workers. States could codify similar protections in their state antitrust laws, giving state attorneys general more comprehensive powers to block harmful mergers, either across the economy or for specific industries. For example, several states have proposed – and Oregon and Minnesota adopted – enhanced merger review for hospitals, applying scrutiny to measures such as access to public health or the cost of care. This is critically important in light of an expected merger boom due to the perception that Trump administration antitrust regulators will be friendlier to consolidation. [73 percent](#) of voters say they support preventing corporate mergers that harm competition and consumers.
8. **Prevent abusive ‘Buy Now, Pay Later’ products:** The CFPB issued an [interpretive rule](#) stating that Buy Now Pay Later products -- short-term installment loans that charge no interest if paid off within a defined period – saying they should be subject to many regulations governing credit cards. A study published this year by the [Federal Reserve Bank of Boston](#) found Buy Now Pay Later loan recipients have lower credit scores and are more likely to carry revolving debt on credit cards than those who don’t utilize this financial product. Since 2020, California has required most Buy Now Pay Later companies operating within the state to register for and receive a license like other loan providers, subjecting them to regulations including consideration of an applicant’s ability to repay, as well as mandating them to adhere to rate and fee caps as well as respond to all customer complaints.
9. **Ensure that paycheck advance products are loans and subject to truth in lending rules:** States can affirm that “earned wage access” products, where an employee receives an advance against accrued earnings, are loans and that charges applied to receive those funds are finance charges, as the CFPB proposed an interpretive rule in July 2024. In the rule, the CFPB said credit offered in advance of the expected receipt of compensation for work [is a form of credit](#) subject to the Truth in Lending Act and Regulation Z. It also states that charges to receive funds or tips solicited for the receipt of funds are considered to be finance charges. [California](#), [Maryland](#) and [Connecticut](#) have passed laws to treat earned wage access products as loans.
10. **Classify data brokers as consumer reporting agencies when they sell financial information such as income, financial tier, credit history, credit scores, or debt obligations.** The CFPB issued a [proposed rule](#) to close a loophole that brokers have used to evade the Fair Credit Reporting Act and not comply with the same rules as the credit bureaus. Data brokers sell private information to almost anyone, regardless of the consequences, and consumers have not had tools to easily identify and prevent these practices. In some instances, brokers sell information about servicemembers and law enforcement officers. States could adopt prohibitions to ensure that consumer data is used only for the purposes the consumer intended. Congress said that companies are not supposed to monetize data provided by consumers for purposes beyond their intent. This meant that when a person applies for a loan, for example, their data would not be sold to third parties for a different purpose.