Consumer & Civil Rights Advocates to OCC: Your Proposed “True Lender” Rule Would Help Fraudulent, Predatory Lenders Evade State Interest Rate Laws that Protect Families

FOR IMMEDIATE RELEASE: September 3, 2020

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The timing of the OCC’s embrace of predatory lenders could not be worse

We are in the midst of an unprecedented health crisis and a severe economic crisis, with both crises impacting communities of color more heavily than white communities

WASHINGTON, D.C. – A proposal by the regulator of the nation’s largest banks would allow predatory lenders to do an end-run around state interest rate caps, exposing people to high-cost loans with minimal consumer protections, according to a comment letter submitted today to the Office of the Comptroller of the Currency (OCC) by 13 national consumer and civil rights groups. Most of these groups also joined a shorter comment letter submitted today by more than 100 community based organizations across the country.

The Center for Responsible Lending, National Consumer Law Center (on behalf of its low income clients), Americans for Financial Reform Education Fund, Consumer Action, Consumer Federation of America, the Leadership Conference on Civil and Human Rights, NAACP, National Association of Consumer Advocates, National Association for Latino Community Asset Builders, National Coalition for Asian Pacific American Community Development (National CAPACD), Public Citizen, UnidosUS, and U.S. PIRG strongly oppose the OCC’s “true lender” rule.

The proposed rule would facilitate fraudulent predatory “rent-a-bank” schemes where a non-bank lender launders a loan through a bank (which is not subject to state rate caps) in order to charge interest rates beyond what state law allows.

The OCC’s proposal provides that a bank “makes” the loan and thus is the lender — so that state interest rate laws do not apply — so long as the bank’s name is on the loan agreement or the bank funds the loan. This rule would prohibit courts from looking behind the fine print form to the truth about which party is running the loan program and is the “true lender.” The head of the agency has said that he intends for this rule to shelter rent-a-bank arrangements from litigation. Just days before the speech, the District of Columbia (D.C.) attorney general sued a high-rate rent-a-bank lender, Elevate, for violating state rate caps; and California just launched an investigation into
LoanMart, another rent-a-bank lender. Currently, **45 states and D.C.** have interest rate caps on at least some installment loans to protect residents from high-cost predatory lending.

The groups urged the OCC to abandon its proposal in its comment letter to the OCC:

“The proposal would eliminate state interest rate limits for nonbank predatory lenders in every state as long as a bank’s name is in the fine print – nothing more – taking us back to the days of the early 2000s when payday lenders used rent-a-bank schemes to evade state laws. States would lose the power they have had since the time of the American Revolution to limit interest rates to prevent predatory lending. …

“The OCC is asking us to trust that it will not allow predatory lending. But when the OCC is going out of its way to support the right of a predatory small business lender to charge 120% APR, and is doing nothing to stop a payday lender from using an OCC-regulated bank to launder 179% APR installment loans, a naïve trust is no substitute for state interest rate limits. …

“The timing of the OCC’s embrace of predatory lenders could not be worse. We are in the midst of an unprecedented health crisis and a severe economic crisis …. We are, at the same time, at a pivotal moment in our nation’s reckoning with its history of structural racism…. [I]t is difficult to imagine a more inappropriate time to disrupt longstanding safeguards in place since the founding of this country that have played a fundamental role in protecting consumers from predatory financial practices.”

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**FHFA’s Delay of Fannie & Freddie Mortgage Refinancing Fee is a Necessary Yet Utterly Insufficient Step for Struggling Homeowners**

**Washington, D.C.** – The Federal Housing Finance Agency (FHFA) announced yesterday that a fee from Fannie Mae and Freddie Mac, which FHFA previously approved and which makes refinancing more expensive for mortgages backed by those companies, will be delayed until December 1. FHFA also said the fee will not apply to refinance loans with balances below $125,000. The fee is 0.5 percent and would add an additional cost of $1,400 to the average mortgage loan. Fannie and Freddie provide financial backing for around half of all U.S. mortgages and are Government Sponsored Enterprises (GSEs).

Today, the Center for Responsible Lending along with the National Fair Housing Alliance, National Consumer Law Center (on behalf of its low-income clients), and Consumer Federation of America said FHFA’s delay and narrowing of the fee, but the agency must completely eliminate the fee and take additional steps to ensure low- to moderate-income and lower-wealth mortgage borrowers can refinance, so that they can more easily afford their mortgage.

“FHFA took a step toward addressing concern over the refinancing fee, but more needs to be done to ensure lower-wealth families can obtain needed relief through refinancing. Lower-wealth homeowners, disproportionately people of color, are most negatively impacted by COVID-19, leading them to struggle financially during this period of both health and economic crises. These hard-
working families should be able to refinance at the historically low interest rates to save money on their mortgage – just as higher-wealth homeowners are doing,” said Nikitra Bailey, Executive Vice President at the Center for Responsible Lending. “The GSEs should not increase fees in a crisis. This entire episode demonstrates yet again why the GSEs should be regulated as utilities to fulfill their public mission and responsibility.”

Bailey added, “Recovery from the Great Recession was uneven with most of the support from the Home Affordable Refinance Program (HARP) going to wealthier households. We must learn from the past to ensure a just recovery that does not leave Black and Brown communities behind. The SBA Paycheck Protection Program has already failed to be distributed equitably. Another form of large-scale government support cannot be permitted to do the same.”

Lisa Rice, President at the National Fair Housing Alliance said, “Because of the GSEs’ Loan Level Pricing Adjustments (LLPAs) – a crude matrix for measuring risk – borrowers of color are already disproportionately steered to FHA loan products, severely limiting their mortgage credit options. The proposed added fee only exacerbates this systematic barrier to credit access for consumers of color. FHFA should be implementing policies that minimize lending steering not working to decrease opportunities for underserved borrowers. This added fee also diminishes the GSEs’ ability to fulfill their charter and mission requirement to ‘promote access to mortgage credit’ for ‘central cities, rural areas, and underserved areas.’ The National Fair Housing Alliance calls on the Federal Housing Finance Agency to abandon its proposal to implement the mortgage refinancing fee.”

Alys Cohen, Staff Attorney in the National Consumer Law Center’s Washington Office, stated, “Many homeowners, especially in Black and Latinx communities, are finding it hard to meet their financial obligations right now as the nation faces the health and economic consequences of the pandemic. The option to affordably refinance without additional fees would allow homeowners to more easily pay other bills and better use their often-limited financial resources. Government-backed mortgage refinancings should be made widely available during these unprecedented times and should not play a role in further exacerbating racial inequality.”

Mitria Wilson, Director of Housing Policy at the Consumer Federation of America, noted, “As the nation continues to navigate the COVID-19 pandemic and its corresponding economic challenges, now is not the time to needlessly increase the costs of refinance products for consumers. FHFA’s decision to delay implementation of the refinance fee is important, but still not enough. Ultimately, the FHFA should reconsider and reverse its decision requiring the GSEs to assess the fee in the first place.”

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AGENDA

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ABC Session Spotlight

- ABCS of FCRA, Class Actions, Student Loan Law, & Consumer Arbitration
- Medical Debt Primer
- Basic Intro on How to Stop Robocalls
- COVID-19 Mortgages: Post Forbearance for Fannie & Freddie Loans

Beginner Session Spotlight

- Investigation in Auto Cases
- Common Fair Debt Collections Practices Act Claims
- Consumer & Economic Civil Legal Issues for Survivors of Domestic Violence
- Your Client is Being Sued on a Debt: What Now? A Primer on Defeating Debt Collection Lawsuits
"A lot of people are alive today because of the basic rules of the road NCLC and others have fought for. But there are still too many places where the world remains complicated and opaque. There are still too many places where armies of lobbyists are fighting to rig the system so that the public remains in the dark...I know there will be many battles ahead, and I look forward to standing shoulder to shoulder once again with NCLC.” U.S. Senator Elizabeth Warren

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CFPB Issues Proposal to Permit Mortgage Lenders to Make Unaffordable Loans Without Consequences

FOR IMMEDIATE RELEASE: August 18, 2020
National Consumer Law Center contacts: Jan Kruse (jkruse@nclc.org) or Alys Cohen (acohen@nclc.org)

National Consumer Law Center Statement: Proposal May be Challenged

Washington, D.C. – Today, the Consumer Financial Protection Bureau (CFPB) announced a Notice of Proposed Rulemaking regarding the Dodd-Frank Act ability to repay and qualified mortgage rules.

The following statement is by National Consumer Law Center Staff Attorney Alys Cohen:

“The Consumer Financial Protection Bureau announced a proposed rule that would shield lenders from legal liability for making mortgage loans without regard to borrowers’ ability to repay so long as the borrower remained current for the first three years of the loan and the loan meets other requirements. This action flies in the face of the Dodd-Frank Act, which requires lenders to make a good faith determination of a borrower’s ability to repay and allows borrowers to defend a threatened foreclosure at any time by asserting that the lender ignored the borrower’s lack of ability to repay in making the loan.

“There are many reasons a homeowner can make payments for several years even when a mortgage is unaffordable to them, including payments from roommates who are not on the mortgage, borrowing money, or even going without essentials such utilities or medical care. These homeowners should not be precluded from using Dodd-Frank’s protections to save their homes, especially since the Ability-to-Repay rule contemplated this scenario already and allowed for it.

“The Dodd-Frank Act’s Ability-to-Repay rule was created to prevent the market excesses that led to
the Great Recession, a calamity from which many communities, especially low-income neighborhoods and communities of color, still have not recovered.

“The CFPB’s proposal puts low-income neighborhoods and communities of color at greater risk at a time when they are facing increased challenges due to the COVID-19 pandemic. The proposal ignores the most basic lessons of the Great Recession and clear Congressional intent, and seeks to protect lenders from basic accountability to those homeowners who may have received unaffordable loans. Because the proposed rule directly conflicts with the underlying law, the proposal may be ripe for a challenge under the Administrative Procedure Act.”

Help 12 Million People Get Their Stimulus Payment

Spread the Word! Deadlines Approaching for Unclaimed Stimulus Payments

The Coronavirus Aid, Relief, and Economic Security (CARES) Act provided economic impact payments to individuals up to $1,200 and $500 for each qualified child to help dampen the impact of the economic fallout of COVID-19. Most people have already received their payments.

But about 12 million people who make so little they do not file taxes have not claimed their payments, and they have an October 15 deadline to do so in order to receive the payments in 2020. This group includes very low-income families with children, people disconnected from work opportunities for a long period, and many low-income adult-only households. A simple IRS form they may not know about now stands between them and their much-needed stimulus funds.
Additionally, the IRS is extending to September 30, 2020 the deadline for recipients of Social Security, federal disability benefits, and other benefits – who have already received their individual payment – to apply for an additional $500 for each qualifying child.

**Help spread the word about the September 30 and October 15, 2020 deadlines for non-filers to complete the IRS form to receive their full Economic Impact Payment.**

The Center on Budget and Policy Priorities (CBPP) estimates there are 12 million people who are eligible for Economic Impact Payments (EIP) but must file an online form with the IRS by October 15 to claim the funds this year. Otherwise, they must file a 2020 tax return next year to receive the payment in 2021. The CBPP report provides demographic information, state by state numbers, and suggestions for steps that states, as well as community and legal service providers, can take to help the most vulnerable individuals claim the substantial economic stimulus payment.

In addition, Social Security, Supplemental Security Income (SSI), Department of Veterans Affairs and Railroad Retirement Board beneficiaries who do not file tax returns already automatically received their individual stimulus payments, but those automatic payments did not include funds for qualifying children. If these beneficiaries have not already used the “Non-Filers tool,” they must do so by September 15 to receive an additional $500 per qualifying child.

The best way to claim both types of payments is to use the Non-Filers: Enter Payment Info Here link on the IRS website. But it is also possible to print and mail the information. Instructions on how to do so are on the IRS Economic Impact Payment Information Center in the answers to the questions. “Can I print information to register me for the Payment if I use the Non-Filers: Enter Payment Info Here tool?” and “May I mail Form 1040 or Form 1040-SR with information Necessary for my Payment instead of using the Non-Filers: Enter Payment Info Here tool?”

**Resources**

Questions about stimulus payments are on the IRS website in the Economic Impact Payment Information Center. CBPP has resources to support EIP outreach work, including flyers, press release templates, FAQs, and additional outreach tools. Please also spread the word that people who received an EIP prepaid card should activate it or replace it to receive their money.

**More information**

- Center for Budget and Policy Priorities: [Aggressive State Outreach Can Help Reach the 12 Million Non-Filers Eligible for Stimulus Payment](https://www.cbpp.org/aggressive-state-outreach-can-help-reach-the-12-million-non-filers-eligible-for-stimulus-payment)
- IRS takes new steps to ensure people with children receive $500 Economic Impact Payments
- Center for Budget and Policy Priorities: [Stimulus Payments Outreach Resources](https://www.cbpp.org/stimulus-payments-outreach-resources)
- NCLC: [IRS Sending Letters About Unactivated Stimulus Prepaid Cards](https://www.nclc.org/index.cfm?fuseaction=pages.&page=IRSSendingLettersAboutUnactivatedStimulusPrepaidCards)
- NCLC: [The EIP Stimulus Payment Prepaid Card: Not a Scam; How to Avoid Fees (sample card and mailer)](https://www.nclc.org/index.cfm?fuseaction=pages.&page=TheEIPStimulusPaymentPrepaidCardNotaScamHowtoAvoidFees)
- NCLC’s [COVID-19 website](https://www.nclc.org/index.cfm?fuseaction=pages.&page=COVID-19-Website) (continually updated) has extensive information on responses to the crisis, including state-by-state information on orders that have been issued
CFPB Proposal Allows Abusive “Zombie” Debt Collection to Continue

FOR IMMEDIATE RELEASE: AUGUST 4, 2020

National Consumer Law Center contacts: Jan Kruse (jkruse@nclc.org) or April Kuehnhoff (akuhenhoff@nclc.org)

Washington, D.C. – The Consumer Financial Protection Bureau (CFPB) should withdraw its supplemental proposed rule on disclosures and instead completely ban all collection of time-barred “zombie” debt, both in and out of court, wrote the National Consumer Law Center (NCLC) in comments submitted today on behalf of its low income clients.

“The CFPB’s own testing shows that many people will not understand these disclosures. The proposed rules will only give cover for abusive collectors who use high-pressure collection tactics that harm consumers.” said National Consumer Law Center attorney April Kuehnhoff. “Disclosures will not protect vulnerable consumers, who will not understand why they are being contacted about a debt that is too old to sue on, or how making a small payment or acknowledgement could end up reviving the statute of limitations on a debt.”

If the CFPB does not prohibit all collection of “zombie” debt, NCLC explained that the Bureau should completely revamp the proposed disclosures and conduct additional testing and analysis to ensure that real consumers—particularly those who are least sophisticated—will understand the consequences of making or not making a payment on a time-barred debt. The CFPB should also prohibit suits and threats of suits on revived debts, limit collections of time-barred debts to only written communications, and require a time-barred debt disclosure in every communication. These and other needed reforms must be adopted if the CFPB does not prohibit all collection of time-barred debt.

The CFPB should also analyze comprehension of any proposed disclosures by members of communities of color. Debt collection disproportionately affects communities of color. According to the Urban Institute, residents of predominantly nonwhite communities (42%) are far more likely to have debts in collection compared to residents in predominantly white areas (26%). Additionally, the CFPB should require debt collectors to provide the time-barred debt disclosure in Spanish whenever the collector has communicated with the consumer in Spanish or has notice that the consumer prefers to communicate in Spanish. The same requirement should apply to other languages as soon as the Bureau has created model translations of the time-barred debt disclosure in those languages.

NCLC also noted that problems with the CFPB’s original proposed debt collection rule from May 2019 will mean that many consumers will never even receive the proposed time-barred debt disclosures. As NCLC summarized, the CFPB’s May 2019 proposal would allow debt collectors to circumvent federal law regarding consent for electronic communications to send critical information via a hyperlink in an email or text. Such a notice may go to an old email address or phone number, or the consumer might not open it or click on a link in a message from an unknown party due to concerns about computer viruses. As a result, the consumer may never receive that notice or the time-barred debt disclosure that it may contain.

Related NCLC Resources
Amicus Brief Opposes OCC Charter That Would Aid Predatory Lenders

For Immediate Release: July 31, 2020

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WASHINGTON, D.C. – The National Consumer Law Center, Center for Responsible Lending, and the National Community Reinvestment Coalition filed an amicus brief in Lacewell v. Office of the Comptroller of the Currency (OCC), in support of the plaintiff, the New York State Department of Financial Services (DFS), against the OCC’s plan to issue “special purpose national bank” charters to nonbank lenders.

In the brief, the group urged the Second Circuit Court of Appeals to uphold the lower court’s decision to block the OCC from issuing nonbank “bank” charters since doing so would allow free reign for predatory lenders to ignore state consumer protection laws, particularly state interest rate caps on lending products.

According to the group’s amicus brief: “Allowing the OCC to grant national bank charters to nonbank lenders will eviscerate the fundamental power that states have had since the time of the American Revolution—to cap interest rates to protect their residents from predatory lending. … Predatory lenders will be eager to obtain a national bank charter so that they can charge rates well over 100% APR that are illegal under most state laws. High-cost lenders, often under the “fintech” label, are already trying to exploit banks’ preemptive powers to evade state rate caps by using rent-a-bank schemes. The OCC is not reigning in – and in fact has been defending – predatory lenders that launder their loans through banks. A nonbank charter will make usurious lending even more widespread.”

The brief notes that the nonbank charter is a continuation of efforts by the OCC to support high-cost lenders, including an OCC amicus brief in support of World Business Lenders, failure to address predatory lending by WBL abetted by OCC-supervised Axos Bank, and OCC rules (recently challenged by three states) that would aid predatory rent-a-bank schemes such as the one between the payday lender CURO and OCC-supervised Stride Bank.

New York’s DFS led the challenge against the nonbank charter in Lacewell v. Office of the Comptroller of the Currency in a federal district court action in the Southern District of New York.
In May 2019, the district court ruled against the OCC, set aside the OCC’s nonbank charter, and held that the National Bank Act “unambiguously requires that …. only depository institutions are eligible to receive national bank charters from OCC.”

Under the nonbank charter, predatory lenders would have fewer constraints than true national banks. They also would not be subject to the Community Reinvestment Act, which only applies to national banks that take deposits, creating a higher risk they will offer products that harm the communities where they do business rather than serving these communities with responsible products.

Currently, at least 45 states and the District of Columbia impose interest rate caps on some consumer loans. Among those states that cap rates, the median annual rate including all fees is 38.5% for a $500, six-month loan; 31% for a $2000, two-year loan; and 25% for a $10,000, five-year loan.

The American public strongly supports state interest rate caps. At every opportunity in recent years, voters in a diverse range of states have overwhelmingly (typically by a two-to-one or higher margin) approved rate caps of 36% or less, including in Arizona, Ohio, Montana, South Dakota, and Colorado.

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**Consumer, Civil Rights, and Housing Groups Call on U.S. Senate to Save Family Homes and Stop Evictions in Next COVID-19 Bill**

**FOR IMMEDIATE RELEASE:** JULY 28, 2020

**Contacts:** Americans for Financial Reform: Diop Harris (diop@ourfinancialsecurity.org) or Linda Jun (linda@ourfinancialsecurity.org)

National Consumer Law Center: Jan Kruse (jkruse@nclc.org) or Alys Cohen (acohen@nclc.org)

**Washington, D.C.** – More than 50 consumer, civil rights, community, housing, and other public interest organizations sent a letter today to U.S. Senate leadership urging inclusion of mortgage and rental protections for families in the next COVID-19 legislation.

In the letter, the groups, which include Americans for Financial Reform, the National Consumer Law Center, the Leadership Conference for Civil and Human Rights, NAACP, and UnidosUS wrote:

“For many Americans, their home is their greatest asset and largest financial investment. But more than that, home is the place that provides families with safety and security in times of crisis. Especially now, when staying home is the best protection against contracting or infecting others with COVID-19, it is critical that Congress enact common-sense mortgage protections that will make it possible for American homeowners to keep their homes and provide them with the stability they need to rebuild. A healthy housing market also requires access to safe and affordable mortgage credit, which not only supports the economic recovery but ensures that the benefits of recovery are
broadly shared. While the CARES Act provided important protections for homeowners with government-backed mortgages, these protections need to be expanded to the entire market and refined to provide more comprehensive assistance, especially when borrowers must repay deferred payment amounts. Homeowners who have obtained a forbearance should not be forced into foreclosure before they can make affordable repayment arrangements.

“The next recovery package must prevent unnecessary foreclosures by providing homeowners with the relief they need to withstand the economic distress caused by the COVID-19 pandemic and preserve long-term homeownership. Congress should expand on the CARES Act by:

- Providing temporary payment relief to homeowners facing a financial hardship due to COVID-19 that interferes with the ability to make mortgage payments, regardless of whether the loan is federally-backed;
- Placing a temporary moratorium on foreclosures and similar actions while a homeowner is in forbearance or seeking post-forbearance repayment arrangements;
- Requiring that all homeowners, regardless of mortgage loan type, be offered an opportunity to resume regular payments, or obtain a more affordable payment where needed, after a temporary payment halt and before any foreclosure begins;
- Requiring that homeowners who are at least 60 days late on their mortgage payments be provided an automatic forbearance;
- Ensuring that all homeowners receive notice of their options if they are facing a COVID-19 hardship, including in-language communications for borrowers with limited English proficiency and information about housing counseling;
- Enacting policies that encourage the mortgage industry to offer broad access to safe and affordable credit; and
- Establishing a mortgage assistance fund to help homeowners who need emergency financial assistance to stay in their homes.

“We urge you to include these mortgage provisions in the next COVID-19 relief legislation. They will provide homeowners the temporary relief they need to get back on their feet and successfully rebuild their lives. Extending mortgage protections will allow more homeowners to save their homes, resulting in more stable communities and a faster economic recovery. Rental assistance is also critical to prevent wide-scale evictions.”

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**Student Loan Borrowers Need Real Relief, Not a COVID Stimulus Plan that Will Bury Them Deeper in Debt**

**FOR IMMEDIATE RELEASE: JULY 27, 2020**

**CONTACTS:** Jan Kruse (jkruse@nclc.org) or Persis Yu (pyu@nclc.org)

**New Republican Stimulus Bill Fails 43 Million Student Loan Borrowers**

Statement of Persis Yu, director of NCLC’s Student Loan Borrowers Assistance Project, in
response to the COVID-19 stimulus package proposed by Senate Republicans today.

“As Senator Lamar Alexander (R-Tenn.) correctly stated this past week, “[i]n less than three months, 43 million student loan borrowers will be required by law to begin monthly payments again on their loans ... Many of those borrowers won’t be able to afford those payments.” And yet, while Congress continues to bail out big businesses, the bill introduced today proposes to resume collection of federal student loans on October 1st.

“There is a pandemic still happening. Workers are still unemployed. Schools and child care programs are still closed. It is not yet safe for our economy to fully function. This so-called solution for the millions of student loan borrowers struggling to feed their families and pay their bills is to recreate a less generous, more onerous, and ultimately more expensive version of a student loan repayment program that already exists. This new proposal continues to leave out millions of federal student loan borrowers and is less generous than current income-driven repayment plans, and will be more expensive for borrowers over the long term. This is not relief and fails the 43 million student loan borrowers counting on Congress to act.

“We call on Congress to pass real relief to borrowers as detailed in our recommendations.”

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**Consumer Advocates to CFPB: Don’t Destabilize the Mortgage Market in the Midst of a Pandemic**

FOR IMMEDIATE RELEASE: JULY 27, 2020

National Consumer Law Center contacts: Jan Kruse (jkruse@nclc.org) or Alys Cohen (acohen@nclc.org)

Washington, D.C. - Today, the National Consumer Law Center (NCLC) and 13 other organizations sent a comment letter to the Consumer Financial Protection Bureau (CFPB) urging it not to revamp the rules governing the residential mortgage market—a step that could destabilize the mortgage market in the middle of the pandemic. The CFPB should focus its efforts on the effects of the pandemic and on ensuring that homeowners, especially the Black and Latinx homeowners hardest hit by both COVID-19 and the Great Recession, avoid a tidal wave of foreclosures from the pandemic.

The Dodd-Frank Act, passed in response to the last foreclosure crisis and the Great Recession, required the CFPB to adopt rules ensuring that mortgage lenders cease the risky and predatory practice of making loans without regard to the borrowers’ ability to repay those loans. Now, the CFPB is proposing to revise these rules. The two proposals issued on July 10 have rushed comment deadlines: August 10 and September 8, respectively. The CFPB proposals seek to rewrite the basic standards the mortgage market has followed since the end of the last foreclosure crisis, and the CFPB hints that it plans to finalize the new rules—and require compliance with the new rules—by April 2021. By comparison, the original ability-to-repay rules took nearly three years to write and the CFPB allowed a full year for implementation.
“Now is the wrong time to change the rules of the game in the mortgage market,” said Alys Cohen, a staff attorney at the National Consumer Law Center. “The challenges posed by the pandemic are very real, with a resurgence in cases across the country and projections of increasing economic hardship. The CFPB’s focus of resources should be to respond to the pandemic, including the looming foreclosure crisis in Black and Brown communities, not on resetting mortgage rules in a way that can have unintended consequences.

Mandated changes to underwriting standards will inevitably further disrupt a market which the CFPB acknowledges is already disrupted by COVID-19, with more borrowers reporting they are missing payments than making arrangements with their mortgage servicer. Nor has the CFPB done the foundational research needed to ascertain the impact of the changes it proposes on the mortgage market or the larger economy, much less whether its proposal is an adequate measure of borrowers’ ability to repay or only a poor proxy.

“Before we make decisions that will affect the financial health of our entire economy and impact the wealth of communities and families for generations to come, we should have adequate data and ample time to consider the consequences of our actions here,” said Cohen. “Without further preparation and analysis, a proposal that appears to generously include underserved borrowers could in fact leave victims of predatory mortgage lending with no recourse. The CFPB must extend the comment period and maintain the current rules until the COVID-19 crisis and its economic fallout are better understood and addressed.”