How to Get Help with Your Mortgage During COVID-19

FOR IMMEDIATE RELEASE: July 9, 2020

The following organizations have made this important information available in Spanish, Korean, Chinese, Vietnamese, Bangla, and English: AFR Language Access Task Force, Americans for Financial Reform Education Fund, Center for Responsible Lending, Consumer Action, Empire Justice Center, National CAPACD, National Consumer Law Center, National Fair Housing Alliance, and UnidosUS.

Many homeowners suffering financial hardship due to the COVID-19 pandemic may have difficulty making their mortgage payments. Most homeowners are eligible for help from their mortgage companies, but they have to ask for such help. Most borrowers can delay making mortgage payments for up to twelve months by asking for what is known as a “forbearance.” Payments that are postponed due to forbearance can be caught up later by adding the payments to the end of the loan or working out another agreement to repay over time. In most cases, missed payments will not have to be paid back all at once. If borrowers cannot afford their regular mortgage payment after the forbearance ends, they can ask the mortgage company to review them for a more affordable payment.

This relief is required under the federal CARES Act when a homeowner requests it. It applies to all mortgages insured or owned by the Federal Housing Administration (FHA), Veterans Administration, Rural Housing, Fannie Mae, and Freddie Mac. Borrowers with private mortgages may also be able to get assistance from their mortgage companies.

Limited-English-proficient borrowers who need help understanding their options or who want help communicating with their mortgage company should contact a housing counseling agency approved by the US Department of Housing & Urban Development (HUD). Certified housing counselors at these agencies offer services at no cost. Borrowers can find a HUD-approved counseling agency with counselors who speak their language here: https://apps.hud.gov/offices/hsg/sfh/hcc/hcs.cfm.

For most of us, our homes are the single largest financial investment we’ll ever make. They provide security for our families, which is especially important right now. We urge borrowers who are worried about making their mortgage payments because of the COVID-19 pandemic to reach out to their mortgage company right away.

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Residential Electricity Sales: The Early COVID-19 Stay-at-Home Period

Part 1 of 2 on consumer protections needed during and after COVID-19.

By John Howat, Senior Energy Analyst, National Consumer Law Center

July 8, 2020

The U.S. Energy Information Administration’s most recent Electric Power Monthly, released on June 24, provides sales, price and revenue data by end-use sector and Census Division for April, 2020. Data from this report shows that in each of the 10 Census Divisions, April residential sector electricity sales increased over the 4-year average April sales from 2016 – 2019 (see table).

<table>
<thead>
<tr>
<th>Census Division</th>
<th>April Residential Sales (kWh x 1,000,000)</th>
<th>Ratio of April 2020 Residential Sales to 2016 – 2019 (4-year Average)</th>
</tr>
</thead>
<tbody>
<tr>
<td>New England</td>
<td>3,509 3,197 3,418 3,417 3,327</td>
<td>1.05</td>
</tr>
<tr>
<td>Middle Atlantic</td>
<td>9,551 8,658 9,548 8,776 8,717</td>
<td>1.07</td>
</tr>
<tr>
<td>East North Central</td>
<td>12,867 11,833 13,194 11,591 12,022</td>
<td>1.06</td>
</tr>
<tr>
<td>West North Central</td>
<td>7,202 6,610 7,510 6,535 6,389</td>
<td>1.07</td>
</tr>
<tr>
<td>South Atlantic</td>
<td>25,210 23,231 24,001 23,247 22,139</td>
<td>1.09</td>
</tr>
<tr>
<td>East South Central</td>
<td>7,562 7,360 7,702 7,377 7,014</td>
<td>1.03</td>
</tr>
<tr>
<td>West South Central</td>
<td>14,256 12,866 13,208 13,287 12,534</td>
<td>1.10</td>
</tr>
<tr>
<td>Mountain</td>
<td>6,899 6,395 6,602 6,311 6,034</td>
<td>1.09</td>
</tr>
<tr>
<td>Pacific Contiguous</td>
<td>10,009 9,369 9,897 9,821 9,713</td>
<td>1.03</td>
</tr>
<tr>
<td>Pacific Noncontiguous</td>
<td>375 344 375 364 356</td>
<td>1.04</td>
</tr>
</tbody>
</table>

The table shows that April 2020 sales increased by a range of 3% to 10% in Census Divisions across the U.S. It is important to note that these monthly sales totals have not been weather-normalized, and are therefore not attributable solely to stay-at-home orders and increased unemployment. However, they do provide a clear indication that economic and societal responses to Covid-19 have led to moderate increases in residential electricity usage and sales. (See charts illustrating April sales from 2016 – 2020 for each U.S. Census Division.) It is also important to note that April is considered a “shoulder” month when electricity usage, particularly in the residential sector, is lower than in mid-summer and mid-winter when more extreme temperatures drive higher usage and sales. Month-to-month comparisons may show greater COVID-19-related increases during the summer, particularly if unemployment and public health stay-at-home orders or recommendations persist.
Ramifications of Higher Residential Electricity Usage and Sales and the Need for Protective Programs and Policies

Higher usage and sales lead to higher bills and expenditures. Higher bills also lead to increased past due accounts, particularly in households that were already struggling financially prior to the onset of the coronavirus, but also in households more recently affected by unemployment, illness, or medical debt. As temporary Covid-19 utility disconnection moratoriums expire in many states, past due accounts pose the threat of loss of vital home electricity service just as the need for indoor cooling, warm water for sanitation, and reliable telecommunication services becomes greater than ever.

Here’s what states, utilities, and utility commissions can do now to keep the power on for struggling families who will be saddled with debt:

- Restore access to service for any utility customer whose service has been cut off without requiring a hefty down payment on overdue bills.
- Develop strong disconnection protections for vulnerable customers going forward.
- Waive punitive late payment fees and security deposits.
- Provide deferred payment plan options that are affordable based on a household’s actual income and expenses.
- For households with low incomes, implement debt forgiveness programs that avoid adding to current monthly bills.
- Expand bill payment programs that reduce monthly bills to an affordable level. These programs already exist in many states but need to serve the full scope of need. A common effective approach is to reduce total bills by a set percentage, or to cap total bills at a percentage of household income.
- Expand access to comprehensive whole-house energy efficiency and retrofit opportunities.
- Require more comprehensive utility tracking and reporting of data on residential customer overdue bills, disconnections, and repayment efforts.

CFPB Guts Curbs on Unaffordable 400% APR Payday Loans

FOR IMMEDIATE RELEASE: July 7, 2020

National Consumer Law Center contact: Jan Kruse (jkruse@nclc.org) or Lauren Saunders (lsaunders@nclc.org)

Washington, D.C. – Today, the Consumer Financial Protection Bureau (CFPB) released its final rule gutting the protections against unaffordable payday loans. The previous payday loan rule, issued under former CFPB director Richard Cordray in October 2017, limited unaffordable loans that trap families in a cycle of debt. The CFPB also announced that it is ratifying and will seek to implement the provisions of the payday loan rule that prevent lenders, including those offering high-cost longer term loans, from hitting people with repeated bounced payment fees.
The following is a statement by National Consumer Law Center Associate Director Lauren Saunders:

“At this moment of health and economic crisis, the CFPB has callously embraced an industry that charges up to 400% annual interest and deliberately makes loans that put people in a debt trap. The CFPB has no basis for gutting the heart of common sense protections that merely required payday lenders to do what responsible lenders already do: ensure that the borrower has the ability to repay. The evidence to support the debt trap of payday loans is overwhelming and the CFPB’s flimsy excuses for repealing protections do not stand up.

“It is truly shocking that the CFPB, an agency created to protect families from financial abuses, is bending over backwards to side with the most scurrilous lenders over the consumers it is supposed to protect.

“The CFPB has not only repealed critical protections against dangerous payday loans, but its May template for no action letters for banks that make small dollar loans, together with bank regulator guidance that could open the door to single-payment bank loans, could be used to encourage banks to get back into the bank payday loan business. Bank payday loans were a debt trap, and banks should stay out of that business even with the CFPB inviting them back in.

“While the CFPB is allowing the payment provisions of the payday loan rule to go into effect – and the CFPB should immediately ask the Texas court to lift the stay of those provisions – that is cold comfort. The payment rules prevent predatory lenders from subjecting people to multiple fees when payments bounce. It is shocking that we even need rules to prevent that conduct, but curtailing just one dangerous impact of unaffordable loans over 100% APR does not make those loans safe.

“With the CFPB abandoning its role in protecting families, Congress must act now to extend to all families a national rate cap of 36% — which is broadly supported by Americans across the ideological spectrum. Congress should pass HR 5050/S.2833, the Veterans and Consumers Fair Credit Act, which would extend the Military Lending Act’s 36% rate cap to veterans and all consumers.

“In the absence of reform by the federal government, states should adopt or strengthen their interest rate caps. States have had usury laws since the time of the American Revolution, and state interest rate caps are the strongest protection we have today against predatory lending.”

Related NCLC Resources


Brief: [State Rate Caps for $500 and $2,000 Loans](https://www.nclc.org/brief-state-rate-caps-for-500-and-2000-loans), February 2020
Supreme Court Votes to Uphold Right to Stop Political Robocalls and Texts; Advocates Stress Importance of FCC in Upholding Key Consumer Privacy Law (TCPA)

FOR IMMEDIATE RELEASE: JULY 6, 2020
National Consumer Law Center contacts: Jan Kruse (jkruse@nclc.org) or Margot Saunders (msaunders@nclc.org)

Washington, D.C. - Today, the U.S. Supreme Court, in Barr et al v. American Political Consultants, upheld the constitutionality of the provision of the Telephone Consumer Protection Act (TCPA) that gives Americans the right to stop unwanted robocalls and texts to their mobile telephones. The case, brought by a group of robocallers, challenged the constitutionality of the TCPA based on the presence of a provision added to the law in 2015 exempting calls made to collect government debt. The challengers argued that the exemption was a content-based restriction on speech that violated the First Amendment, and that as a result the protection against unwanted robocalls to cell phones should be struck down in its entirety. A majority of the Supreme Court agreed that the exemption for calls to collect government debt was unconstitutional, but held that it alone, not the entire protection against robocalls, had to be struck down.

The Court recognized the importance of maintaining the TCPA’s integral role in protecting the country’s communications customers and the communications system from being deluged by robocalls to mobile phones. Justice Kavanaugh wrote: “Americans passionately disagree about many things. But they are largely united in their disdain for robocalls. The Federal Government receives a staggering number of complaints about robocalls—3.7 million complaints in 2019 alone. The States likewise field a constant barrage of complaints. For nearly 30 years, the people’s representatives in Congress have been fighting back.” The National Consumer Law Center, Verizon, and the Consumer Federation of America submitted an amicus brief to the Court noting that “through the TCPA, Congress sought to protect the interests of telephone consumers, businesses that relied on their phones, as well as the communications network itself.”

The following is a statement by National Consumer Law Center Senior Counsel Margot Saunders, who has worked to uphold the TCPA to ensure that consumers have an effective shield against unwanted robocalls and texts.

“This is a huge victory for all Americans who are exhausted from the constant bombardment of unwanted robocalls and texts. The federal Telephone Consumer Protection Act is an essential tool limiting unwanted robocalls to our cell phones. Without the TCPA, robocallers would be unleashed, and families, businesses, and public safety would be at risk.

“The spotlight now turns back to the Federal Communications Commission, which must correctly define an auto-dialer to ensure that Americans can continue to stop unwanted robocalls and texts. If the definition is not sufficiently broad, billions of calls now plaguing consumers will not be covered by the TCPA—leaving consumers with no ability to stop the calls. Because of the steady drumbeat of unwanted automated calls to cell phones, and the rising—and sometimes dangerous—nature of the scams made through these calls, the nation’s telephone system has already suffered a loss of trust. The TCPA’s prohibition against making automated calls to cell phones is an essential tool to combat
unwanted robocalls that would threaten to overwhelm American consumers and the nation’s telecommunications system if the limits imposed on these calls by the TCPA were weakened.

“We are also pleased that the Court’s decision eradicates the exception added to the TCPA in 2015 allowing robocalls to collect debts owed to the federal government. That provision has been the direct cause of tens of millions of unwanted and intrusive calls which will once again be limited by the simple requirement in the law that the called party must have consented to receive the calls.”

Statement of National Consumer Law Center Advocate in Support of The Emergency Broadband Connections Act of 2020

FOR IMMEDIATE RELEASE: JUNE 29, 2020
National Consumer Law Center contacts: Jan Kruse (jkruse@nclc.org) or Olivia Wein (owein@nclc.org)


“Black, Hispanic, American Indians and Alaska Natives have lower broadband subscription rates than their White counterparts and communities of color have been hardest hit by the COVID-19 crisis,” said Olivia Wein, staff attorney at the National Consumer Law Center. “The Emergency Broadband Connections Act of 2020 will enable telemedicine, distance learning, and online access to the workplace and marketplace for tens of millions of struggling low-income families and unemployed workers while protecting public health during the COVID-19 crisis. The bill also includes urgently needed enhancements to the federal Lifeline program to ensure that this service can meet the voice and data needs of low-income consumers during the pandemic,” said Wein.

The bill is also cosponsored by Sens. Brian Schatz, Kirstin Gillibrand, Edward Markey, Bernie Sanders, Sherrod Brown, Kamala Harris, Cory Booker, Jeff Merkley, Robert Menendez, Amy Klobuchar, Richard Durbin, Tammy Baldwin, Tina Smith, Chris Van Hollen, Michael Bennet, Jacky Rosen, Patty Murray, Elizabeth Warren, Ben Cardin, Tom Udall, Jack Reed, Martin Heinrich, and Tammy Duckworth.

Affordable Broadband Service is a Racial
Equity and Public Health Priority During COVID-19

Cross-posted with the United Church of Christ, OC, Inc, and the Leadership Conference for Civil and Human Rights

By Olivia Wein, National Consumer Law Center and Cheryl Leanza, United Church of Christ, OC, Inc.

If you are reading this on your smartphone or laptop, you are fortunate to have access to internet service. More than 20 million households in the United States do not have internet service at home. The main barrier? Cost.

Racial disparities with broadband service: According to census data, about 10 percent each of Black and Hispanic Americans and 13 percent of American Indians and Alaska Natives have no internet subscription compared to 6 percent of White households. And not all broadband access is equal: a disproportionate number of Black and Latino households rely on a smartphone (small screen) for their broadband connectivity. It is clear during this pandemic that working and learning via a smartphone with limited data and throttling is second-class access compared with using a laptop via wi-fi and an unlimited wired broadband connection. However, with the public health risks of COVID-19, internet access strategies that may have worked in the past for students, adults, and elders (through schools, libraries, the workplace, community centers, and free wi-fi at fast food restaurants) are no longer safe.

COVID-19 exacerbates broadband service as a public health issue: COVID-19 has ravaged communities of color. Older adults and those with chronic health conditions of all races and ethnicities are particularly at risk from coronavirus and must self-isolate. Telemedicine minimizes the transmission of the virus, but patients must have broadband to take advantage of remote health care services. Broadband in the home enables families to stay at home.

COVID-19 exacerbates broadband as an economic issue: The risk of job loss during the pandemic also falls more heavily on workers of color. Access to work opportunities, services, and benefits for recently unemployed workers requires broadband. Physical distancing is still the safest way to limit the spread of COVID-19 and broadband is needed to access commerce and banking.

COVID-19 exacerbates broadband as an education issue: During surges of coronavirus infection, the bedroom has become the classroom for students of all ages. Students without broadband can’t access classroom instruction. Even if COVID-19 infection rates continue to fall, in September many schools will likely blend at-home and in-class learning to maximize spacing among students. This means that broadband access will be important well into 2021 and beyond.

Opportunity to bring broadband to the home: The most economically distressed households must have access to affordable technology. Our health, our economy, and our educational competitiveness will not fully recover in the United States without it. Fortunately, Senators Wyden and Blumenthal have introduced the Emergency Broadband Connections Act of 2020, the Senate counterpart to Representative Veasey’s bill (H.R. 6881), which passed the House as part of the HEROES Act (H.R. 6800) on May 15. The Emergency Broadband Connections Act guarantees a $50 emergency broadband benefit — $75 in tribal areas — to every eligible low-income household in the country that makes a request to their Internet Service Provider (ISP) and provides a one-time
discount for ISP-provided devices. The bill also expands the existing Federal Communications Commission low-income Lifeline program to offer unlimited voice minutes and texting. This is the Senate’s opportunity to address racial equity and, at the same time, enable telemedicine, distance learning, and online access to the workplace and marketplace from the home while also protecting public health.

Supreme Court Weakens Independence of Consumer Watchdog

FOR IMMEDIATE RELEASE: June 29, 2020
National Consumer Law Center contact: Jan Kruse (jkruse@nclc.org)

National Consumer Law Center Advocates’ Statement re: U.S. Supreme Court Decision Challenging the Structure and Constitutionality of the CFPB (Seila Law v CFPB)

Washington, D.C. – The U.S. Supreme Court today issued its decision in Seila Law LLC v The Consumer Financial Protection Bureau. In a 5-4 decision, the Court, struck down as unconstitutional a provision in the Dodd-Frank Wall Street Reform and Consumer Protection Act that restricts the President’s ability to remove the director of the Consumer Financial Protection Bureau (CFPB) except for cause. Nonetheless, three of those justices, along with the four dissenters, held that the for-cause provision could be severed from the remainder of the Dodd-Frank Act, leaving the remainder of the CFPB intact.

“The Seila Law decision leaves the CFPB intact, but weakens the Director’s independence, making it more likely that the Director will have to think twice before crossing politically powerful financial industry players that have the ear of the President. This is unfortunate, because the CFPB should not be thinking about political ramifications when deciding whether to bring an enforcement action or to enact rules to address consumer protection problems. We have seen in this Administration how agency heads who have dared to express independent views have been short-lived, and it is unfortunate that the consumer watchdog has lost the critical independence that Congress gave it when addressing the fallout from the 2008 financial crisis,” said Lauren Saunders, associate director of the National Consumer Law Center. “Nonetheless, the CFPB survives as an agency with the rest of its critical consumer protection tools intact, and it will be up to CFPB directors to do their best to resist political pressure not to do their jobs.”

NCLC, as Counsel of Record, joined by others, filed an amicus brief that argued that, if the Supreme Court found the for-cause provision unconstitutional, it should sever that provision and preserve the remainder of the Dodd-Frank provisions establishing the CFPB, as Congress intended. That is exactly what the Court did.

“Severing the ‘for cause’ provision and allowing the CFPB to otherwise continue intact is the appropriate remedy. That result gives effect to the express language of the Dodd Frank Act’s severability clause and comports with the traditional doctrine of severability that provides that a court should nullify no more of a statute than is necessary,” said National Consumer Law Center Director of Litigation Stuart T. Rossman. “Undoing Congress’s sweeping restructuring of financial regulation by eliminating the CFPB instead of severing the for-cause removal provision
Advocates Decry Congress’s Failure to Protect Student Loan Borrowers and Taxpayers from School Fraud and Closures

FOR IMMEDIATE RELEASE: June 26, 2020

National Consumer Law Center contact: Jan Kruse (jkruse@nclc.org)

Boston – National Consumer Law Center advocates are extremely disappointed that today Congress failed to override President Trump’s veto of Congress’s prior bipartisan vote to protect federal student loan borrowers by striking down the Department of Education’s new borrower defense regulations. The severely watered-down regulations, promulgated by Secretary Betsy DeVos’s administration, are now set to go effect on July 1. The DeVos rules will limit relief to only about 3% of defrauded student borrowers, and only 1% of schools guilty of misleading students would have to reimburse taxpayers, leaving hundreds of thousands of students trapped deep in debt with no job and a worthless degree.

“Congress and President Trump had the chance to stand with Americans struggling against fraud, corruption, and bureaucratic red tape, but instead they walked away,” said National Consumer Law Center attorney Persis Yu. “Veterans and low-income communities of color have borne the brunt of predatory schools’ worst practices, and the schools’ use of arbitration clauses have kept many of their misdeeds secret and out of the courts. The Department of Education should have provided students with a fair path to access the loan relief promised by the Higher Education Act and protected their right to have their day in court. Instead, it gave the schools the green light to defraud students with impunity and continue receiving taxpayer dollars.”

This past March, Congress presented President Trump with Senate Joint Resolution 56, which applied the Congressional Review Act to block the 2019 Borrower Defense to Repayment rule from going into effect and to preserve the existing rules protecting borrowers from school fraud and closures. The joint resolution was supported by broad coalitions of organizations representing veterans (who are disproportionately targeted by predatory schools for their GI Bill dollars), students, low-income consumers, civil rights groups, and advocates for education. Last December, a diverse coalition of 57 organizations wrote that that if the 2019 Borrower Defense Rule went into effect, it would do little to provide relief to students who have been lied to, and even less to dissuade colleges from systematically engaging in deceptive and illegal recruitment tactics. The group also

would have contravened Congress’s intent to establish a sole federal regulator charged with stabilizing the marketplace and protecting consumers.”

Other groups who joined the amicus brief filed by NCLC were: Center for Consumer Law and Education Center (a joint partnership between West Virginia University College of Law and Marshall University); the UC Berkeley Center for Consumer Law & Economic Justice; The housing Clinic of the Jerome N. Frank Legal Services Organization at Yale Law School; Consumer Action; and Professor Craig Cowie (Asst. Professor of Law and Director of the Blewett Consumer Law & Protection Program at the University of Montana Alexander Blewett III School of Law.
charged that the rule fails to protect students, including first-generation college students, Black and Latino students, and military-connected students, who are targeted by and disproportionately enroll in predatory for-profit colleges. The DeVos rule makes relief all but impossible for them and fails to hold predatory schools who defraud students accountable.

Advocates Condemn FDIC Rule that Encourages Predatory High-Cost Loans; Call on Congress to Pass Federal 36% Interest Rate Cap Limit

FOR IMMEDIATE RELEASE: JUNE 25, 2020

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Americans for Financial Reform Education Fund: Diop Harris (diop@ourfinancialsecurity.org)

Washington, D.C. – Consumer advocates criticized the Federal Deposit Insurance Corp. (FDIC) for today finalizing a rule that encourages online non-bank lenders to launder their loans through banks so the non-bank lenders can charge triple-digit interest rates in states where high rates are illegal. The OCC finalized a similar rule last month. The rules were strongly opposed by a bipartisan group of attorneys general, as well as by dozens of community, consumer, civil rights, faith and small business organizations, and may face legal challenges. At least 45 states and the District of Columbia cap rates on many installment loans.

“The FDIC has been letting its banks help predatory lenders charge up to 160% APR in states where that is illegal, and this unlawful rule will only encourage these abusive rent-a-bank schemes. Interest rate limits are the simplest and most effective protection against predatory lending, and states have limited interest rates since the founding of our nation,” said Lauren Saunders, associate director of the National Consumer Law Center. “It’s deeply disturbing that the FDIC and OCC are encouraging high-cost lending rather than working to protect people, especially low-income families and people of color who are being hit the hardest during the COVID-19 crisis.”

“Neither FDIC nor OCC leadership has taken meaningful action to stop the banks they regulate from providing a smokescreen for nonbank lenders to violate state interest rate caps. Even worse, the FDIC has now joined the OCC in issuing a rule that helps clear the runway for more of these predatory lending schemes to take off,” said Rebecca Borné, senior policy counsel at the Center for Responsible Lending.

Banks are generally exempt from state rate caps that cover non-bank payday, car-title, installment, and other non-bank lenders. High-cost online lenders have tried to take advantage of this exemption by laundering their loans through banks. Opploans, Elevate’s Elastic and Rise, Enova’s NetCredit, LoanMart’s Choice Cash, EasyPay, and Personify Financial charge 99% to 160% or higher but claim they are exempt from state interest rate limits because they use FDIC-supervised banks such as Republic Bank & Trust and FinWise Bank to originate the loans. The banks then assign most of the
interest and profits back to the online lenders or entities controlled by them. NCLC’s website has a Predatory Rent-a-Bank Loan Watch List that describes high-cost rent-a-bank schemes and where they operate.

The FDIC’s rule states that when a bank sells, assigns, or otherwise transfers a loan, interest permissible prior to the transfer continues to be permissible following the transfer. But last month, a Colorado court rejected that argument, finding that an online lender, Marlette (which operates under the Best Egg name) had to comply with Colorado’s interest rate limits. The court found that the provision of the Federal Deposit Insurance Act giving banks the right to charge any rate permitted by their home state “by its plain language does not apply to non-banks, therefore federal preemption [of usury claims against nonbank assignees] does not apply.” Marlette charges up to 29.99%, which is not as sky-high as other high-cost rent-a-bank schemes but is still quite high on loans that can reach $35,000 or more, and is above the 12% allowed for unlicensed lenders in Colorado and even the 21% allowed for licensed lenders.

“As the Colorado court held, the Federal Deposit Insurance Act does not apply to non-banks, and the FDIC therefore has no authority to prevent states from limiting interest rates charged by non-bank lenders,” Saunders explained.

The new rules by the OCC and FDIC do not address whether the bank is the “true lender,” which impacts whether the interest rate is permissible even prior to the transfer. But earlier this month, new Acting Comptroller of the Currency Brian Brooks stated that the OCC plans to issue a new true lender rule to help stem litigation against the fintech lending industry, and that he expects the FDIC to do the same.

“The FDIC and OCC are encouraging lenders to ignore state protections put in place to prevent the harm caused by unaffordable high cost loans. Congress needs to stop these abuses by capping sky-high interest rates nationwide. Families are facing acute financial distress because of the COVID-19 pandemic; the last thing they need is a lender taking advantage of the situation to snare them in a debt trap.” said Linda Jun, senior policy counsel of Americans for Financial Reform Education Fund.

Additional Resources

Brief: FDIC/OCC Proposal Would Encourage Rent-a-Bank Predatory Lending, December 2019

Fact Sheet: Stop Payday Lenders Rent-a-Bank Schemes, November 2019

Website: Predatory Rent-a-Bank Loan Watch List by State

Op-Ed: Rent-a-bank schemes trample voters’ and states’ rights by Lauren Saunders, Feb. 8, 2018

CFPB Proposal Would Encourage Unaffordable Mortgage Lending and
Threaten Access to Credit

FOR IMMEDIATE RELEASE: June 22, 2020
National Consumer Law Center contact: Jan Kruse (jkruse@nclc.org)

Washington, D.C. – Today, the Consumer Financial Protection Bureau released two proposed rules that together will fundamentally reshape the mortgage market at a time when the market is attempting to adjust to the pandemic and recession and access to credit for communities of color is already constrained.

“With the country facing the effects of a worldwide pandemic, the mortgage markets need stability and the continuation of a known system that provides sustainable access to credit. The CFPB should focus its resources now on providing stability and protection for homeowners, not in making major changes,” said Alys Cohen, staff attorney at the National Consumer Law Center. “The CFPB has reduced transparency by rolling back critical disclosure of fair lending data, refused to enforce important protections for homeowners when mortgage servicers fail to provide them information, and generally neglected the concerns of communities of color in favor of a deregulatory agenda, unconnected to the present circumstances. The decision to proceed with this major mortgage rulemaking now is especially concerning because the homeowners most at risk of losing access to affordable and responsible credit under the proposal, people of color and low-income borrowers, are also those most hard-hit by both the COVID-19 financial and health crisis, as well as the last mortgage meltdown during the Great Recession a decade ago.”

The CFPB’s proposals would change the circumstances in which a lender is presumed to have met the requirement of the Dodd-Frank Act that borrowers have an ability to repay their mortgages. Instead of the current rule, which tracks the statute in requiring lenders to look at a borrower’s income in making this determination, the new rule would allow lenders to get a safe harbor from any enforcement of the statutory requirement so long as the loan is under an arbitrary price cap. While lower priced loans, unsurprisingly, have lower default rates, the CFPB’s own research shows that, holding constant for one major determinant of pricing, credit scores, Blacks and Hispanic Whites are denied mortgage loans more often than whites, thus suggesting that using pricing as a cutoff point will necessarily have a discriminatory impact on access to credit unconnected to ability to repay.

The proposals would also end the ability of lenders to rely on underwriting criteria established by Fannie Mae and Freddie Mac in meeting the statutory requirements. It is under this “GSE-patch” that a great deal of current lending in communities of color and in low-income communities is made currently. Rather than extending the GSE patch to provide stability to a market already roiled by economic uncertainty, the CFPB proposes to end it as soon as April 2021.

“Instead of continuing the GSE-patch to provide stability at a time of great market uncertainty, the CFPB is plunging ahead with rulemaking that would dramatically alter the rules of the game for mortgage lenders, borrowers, and our entire economy,” said Cohen. “Government, industry, and consumer and civil rights stakeholders must work together to develop sustainable mortgage lending models that do not risk a resurgence of abusive loans in the hardest-hit communities and that ensure opportunities to build wealth for all. The CFPB should focus its attention on pandemic response while building the long-term models for sustainable lending, rather than forcing through a rulemaking on limited data.