CFPB Guidance for Mortgage Servicing Transfers Lacks Crucial Consumer Protections, Especially During COVID-19 Crisis

FOR IMMEDIATE RELEASE: APRIL 27, 2020
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Washington—Last Friday, the Consumer Financial Protection Bureau (CFPB) released a document providing supervisory guidance for mortgage servicing transfers. This document, reportedly under development long before the coronavirus pandemic, sets forth best practices for servicing transfers and acknowledges that servicing transfers pose particular risk for borrowers who are behind in their mortgage payments. Yet the document provides no guidance, much less a mandate, for how to protect homeowners during the current pandemic, when both unemployment and mortgage forbearance requests are rising fast.

“What’s missing is any discussion of how the CFPB will hold servicers accountable in these times, when the risks to borrowers are higher than ever,” said National Consumer Law Center attorney Alys Cohen. “It is not clear how the standards the CFPB recommends for preventing borrower harm, including long planning periods, fit with rapidly rising unemployment and exploding mortgage forbearance and delinquency rates.”

According to the CFPB guidance, servicers have continued to struggle in transferring homeowners’ accounts in a timely and accurate manner, despite earlier, very similar guidance from the CFPB to servicers. Servicers sometimes lose borrower account information in transfer, including information about borrower requests for assistance or agreed-to plans for mortgage assistance. The CFPB calls out the critical importance of planning in servicing transfers and notes problems with post-transfer data validation and incompatible technology. The increase in nonbank servicers, which are not subject to the same capital requirements as bank servicers, means an increased risk for borrowers, according to the CFPB.

Nonetheless, the CFPB announced that it will take a light touch in monitoring mortgage servicing transfers ordered by a federal regulator until four months after the end of the national emergency. This relaxation of regulatory oversight, precisely when borrowers are most at risk, according to the CFPB, is an apparent nod to the statements by the Federal Housing Finance Director, Mark Calabria, at the beginning of the month, that FHFA would force servicing transfers from smaller to larger servicers as a response to any struggles by smaller servicers.

“The CFPB is sending mortgage servicers and homeowners a mixed message, at best,” said Cohen. “Which is it? Prevention of borrower harm through well-planned and executed mortgage servicing transfers or hands-off supervision during the pandemic, when we have record numbers of homeowners out of work and three million mortgages in forbearance already? We need more clarity from both the CFPB and the FHFA as to how they will protect homeowners in the event of mortgage servicing transfers and particularly in the event that any mortgage servicers fail.”

Earlier in the month, the FHFA and the CFPB announced a “Borrower Protection Program” that permits data sharing on mortgage servicing complaints between the two federal agencies, but no
information has been provided to date as to how the agencies will use the shared information to protect borrowers. The CFPB in its guidance failed to mandate any specific steps servicers must take to protect borrowers, not even the adoption of uniform data terminology.

Consumer, Banking Groups to Congress: Exempt Economic Impact Payments From Garnishment

FOR IMMEDIATE RELEASE: April 21, 2020
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Washington, D.C. — In a letter to congressional leadership today, consumer and banking industry organizations joined together to urge lawmakers to clarify at the earliest possible opportunity that economic impact payments issued by the federal government in response to the coronavirus pandemic should be exempt from otherwise legally binding garnishment orders.

“Congress passed the CARES Act to help families purchase food and other necessities to make ends meet. Many people were already struggling prior to the coronavirus crisis and millions have now been laid off or had their hours cut. The intense demand for the emergency unemployment benefits that Congress authorized has overwhelmed state unemployment agencies and has led to delays in people receiving those benefits, especially for self-employed or 1099 workers who do not fit within previous unemployment application procedures. This makes quick access to the economic impact payments all the more essential,” the groups wrote.

The groups noted that under the CARES Act, Congress exempted these payments from offset for debts owed to federal and state agencies, except in the case of child support, but did not address court-ordered garnishments to pay creditors.

“While financial institutions and even many debt collectors and debt buyers believe that the payments should be exempt from garnishment orders, some creditors have continued to attempt to garnish and freeze bank accounts. Banks are obligated to comply with garnishment orders unless lifted by a court. Yet many consumers do not know that they may have a legal defense to those orders under state exemption laws or for other reasons, and the crisis has also made it difficult to impossible to access attorneys or the courts – presenting due process issues. The lack of clear, self-executing protection for the stimulus payments imposes a significant burden for some families facing unprecedented circumstances,” according to the letter.

The letter says that only lawmakers can provide the legal clarity needed to address this situation.

“Unless Congress takes action to provide legal certainty, the families that most need this money – those who are struggling with debt and whose entire bank accounts may have been frozen by garnishment orders – will be not be able to access the funds. We urge Congress to provide this certainty to ensure that American families are receiving these benefits as intended to fulfill our common goal of protecting these payments from garnishment within the practical realities of existing financial institution systems,” the groups wrote.
Civil Rights, Consumer, Housing, and Real Estate Groups Urge U.S Treasury and Federal Regulators to Help Mortgage Servicers Maintain Liquidity

FOR IMMEDIATE RELEASE: APRIL 17, 2019

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Washington, D.C. – Today, advocates of 31 consumer, civil rights, housing, and real estate trade organizations, including the Leadership Conference on Civil and Human Rights, National Consumer Law Center, Consumer Federation of America, National Community Stabilization Trust, National Fair Housing Alliance, Center for Responsible Lending, National Association of Real Estate Brokers, National Association of Hispanic Real Estate Professionals, and Asian American Real Estate Association called on the U.S. Treasury and federal banking and housing regulators to act immediately to give all mortgage servicers access to free or low-cost federal financing through a liquidity facility to help cover the cost of borrower assistance during the declared COVID-19 emergency. The Urban Institute estimates that the cost of forbearance on owner-occupied mortgages could range from $33 billion to $66 billion over six months. The groups insist that any liquidity facility for mortgage servicers must be linked to actual assistance to borrowers, not bonus or dividend payouts, and conditioned on public data reporting on the assistance provided borrowers, among other important borrower protections.

The group letter asserts that: “A failure to act to provide liquidity access to servicers in the conventional and government insured markets will expose consumers, lenders of all types and independent mortgage servicers to unnecessary and unacceptable risks. …. [T]he entire housing financing system could face a liquidity crisis that would threaten a very large part of the economy.“

The letter also notes that “low-wealth households, borrowers of color, and veterans are particularly at risk as their loans are disproportionately guaranteed by Ginnie Mae.”

In the letter, the groups outline five borrower protections that must be included in any liquidity facility:

- Liquidity payments must be used for borrower assistance by covering the funds not collected from borrowers that must be passed through to third parties. Payments must not be used for other purposes, such as paying executive bonuses or stock dividends.
Servicers that access the liquidity facility must offer uniform forbearance terms to all borrowers, regardless of the investor to whom the payments are owed. Those offered terms must be at least those required for forbearances on federally-backed mortgages under the CARES Act (see Section 4022), and apply equally to non-federally backed mortgages, approximately 30% of the mortgage market.

Servicers must offer a path to sustainable reinstatement at the conclusion of the forbearance period for borrowers willing and able to pay, so that no borrower is left worse off because of the forbearance. At a minimum, servicers must notify borrowers of and evaluate borrowers for all available loss mitigation options before the end of the forbearance period and before initiating a foreclosure, and options should be offered that correspond to a borrower’s ability to repay.

Servicers must adopt, implement, and monitor policies and practices to assure strict compliance with the Equal Credit Opportunity Act, Fair Housing Act, and all federal protections for consumers in protected classes. Assistance must be available to all consumers on the same terms regardless of race, ethnicity, or other characteristics and must support borrowers in all communities and housing markets. Servicers will need to maximize in-language assistance.

The provider of the liquidity facility must engage in robust data collection and reporting on loss mitigation and foreclosures during and immediately after the national emergency. This data collection must include race, location, age, and other pertinent demographic information; aggregate data, including servicer-specific performance information, must be released publicly, after protecting borrowers’ privacy.

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**Consumer Groups Support FCC Allowing Limited Automated Calls Related to COVID-19 from Lenders to Customers**

FOR IMMEDIATE RELEASE: April 10, 2020

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Washington, D.C. – Six national consumer groups, including the National Consumer Law Center (on behalf of its low income client), filed comments with the FCC supporting part of the petition by the American Bankers Association and other lenders petition to make automated calls from the institutions to alert their customers to callers’ offers related to the COVID-19 pandemic—provided that it is clearly limited in time and scope.

The Ex-Parte comments state that:
“Specifically, the groups support the FCC allowing, during the declared national emergency, limited numbers of automated calls from the described institutions for the purposes of alerting their customers to the callers’ offers of the following specified kinds of relief related to the COVID-19 pandemic, including:

- Forbearance on loans secured by homes or vehicles;
- Payment deferrals on loans secured by homes or vehicles;
- Fee waivers on loans secured by homes or vehicles;
- Extension or relaxation of repayment terms on loans secured by homes or vehicles;
- Loan modifications on loans secured by homes or vehicles; and
- Other programs, relief and resources provided to assist debtors in response to the current pandemic relating to loans secured by homes or vehicles.”

The comments to the FCC also note that “It is important to emphasize that it is the extraordinary and particularly awful circumstances of this pandemic that has led us to support permitting these calls. Also, importantly, the lenders’ petition specifies that none of these calls would include debt collection or marketing messages.”

If the FCC allows automated calls made without consent, the consumer groups urged the FCC to:

“1) explicitly prohibit any debt collection or telemarketing communication as part of the calls (other than to answer questions from the call recipient about the amount and terms of the debt that is the subject of the calls); 2) apply appropriate limits on the number of calls and require that prerecorded or artificial voice calls be concise, as the Commission required for fraud alerts by financial institutions in its July 10, 2015 order; and specify that these calls can only be made during the pendency of the federal emergency order.”

COVID-19 Crisis: Advocates Urge FHFA to Help Ensure Fair Treatment for All Borrowers, Especially Limited English Proficient Borrowers

FOR IMMEDIATE RELEASE: APRIL 9, 2020

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Washington, D.C. - The National Consumer Law Center, Americans for Financial Reform Education Fund, the National Fair Housing Alliance and 33 other consumer, civil rights, and housing counseling groups sent a letter today calling on the Federal Housing Finance Authority (FHFA) to
step up its efforts to translate key mortgage notices needed by borrowers hit hard by the COVID-19 pandemic.

“Unless FHFA translates its forbearance applications into languages other than English, many who need it most – but are not proficient in English – will not get the help they need,” said Sarah Mancini, an attorney with the National Consumer Law Center. “Limited English proficient (LEP) borrowers will face foreclosure at higher rates if they are not able to obtain information about home-saving options in their preferred language.”

Fannie Mae and Freddie Mac have directed the servicers of their mortgage loans to offer borrowers suffering from the health or financial impacts of the virus forbearances of up to 180 days, which can be extended for up to another 180 days. However, this crucial relief is not automatic; borrowers must contact their servicers to request this help. Borrowers must be aware of the relief available and the steps they must take to receive it.

“Immigrant communities and families of color are already being severely hurt by the virus and facing challenges in understanding their options,” said Linda Jun, senior policy counsel with Americans for Financial Reform Education Fund. “FHFA must act now to ensure that LEP borrowers can access much-needed mortgage relief.”

In the letter, the groups urge FHFA to take the following actions:

- Create a model notice to be sent by servicers and translate it into the top 5 languages spoken by LEP individuals in the United States, explaining forbearance options and letting borrowers know how they may be able to access in-language assistance through a housing counselor;
- Translate consumer outreach materials and model solicitation letters and evaluation notices that can be used by servicers;
- Coordinate outreach to LEP communities among government agencies and housing counseling agencies; and
- Ensure that the process of obtaining a Covid-19 forbearance is streamlined and accessible to all borrowers.

“We are already seeing big disparities in the way this virus is affecting different communities, and we must ensure fair and equitable treatment for everyone who needs help to save their homes,” said Debby Goldberg, vice president for housing policy at the National Fair Housing Alliance. “During the last mortgage crisis, borrowers who are not proficient in English were overlooked and many who were eligible for relief lost their homes because they didn’t know what options were available and how to access them. In this – perhaps even bigger – crisis, there is an urgent need to make sure servicers can provide borrowers critical information in-language so they have accurate, consistent and timely information about their mortgages.”

Related Links

NCLC’s Covid-19 & Consumer Protections, including a list of all effective foreclosure moratoriums


Consumer Action: Spanish Language Coronavirus Resources (March 23, 2020)
New CFPB Mortgage Guidance Does More for Servicers than Consumers

FOR IMMEDIATE RELEASE: April 6, 2020

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Millions of Families Could Lose Homes from Job Loss Due to COVID-19

Washington, D.C. – Late last Friday, the Consumer Financial Protection Bureau (CFPB) issued a one-sided policy guidance providing enormous flexibility to mortgage servicers while failing to ensure that distressed consumers can get access to crucial information and foreclosure-avoidance procedures. Although styled as a response to the pandemic, the CFPB, joined by six other banking regulators, in its guidance (here and here) told servicers that the Bureau would not supervise for nor enforce violations of most of its foreclosure prevention rules “until further notice,” regardless of whether the servicer’s actions are related in any way to responding to the COVID-19 emergency. “The CFPB lifted deadlines for mortgage servicers to act without providing similar flexibility for homeowners struggling to avoid foreclosure and is allowing lenders to start foreclosure before homeowners even receive required notices,” said Alys Cohen, staff attorney at the National Consumer Law Center.

The CFPB’s foreclosure prevention rules were adopted in the wake of our nation’s 2008 financial crisis when an estimated nine million families lost their homes to foreclosure. The rules are designed to ensure that all borrowers struggling to make their mortgage payments have a fair shot at an honest and transparent evaluation for an affordable loan modification. Servicers must take common-sense steps, such as telling the borrower in a timely way whether the servicer needs more documents to complete the evaluation and describing the terms of any loss mitigation option offered to the borrower. The CFPB’s rules were designed to ensure that millions of families would not again face foreclosure without having a chance to save their homes.

“Right when it is most important to help people save their homes, the CFPB has turned its back on consumers and on the lessons of the last great financial crisis,” said Cohen. “With 10 million jobless claims filed in the last two weeks, now is not the time to provide a free pass on common-sense rules that give homeowners a chance at avoiding foreclosure. The CFPB’s actions leave homeowners facing job loss or illness due to the COVID-19 emergency without clear access to foreclosure-avoidance reviews while providing mortgage servicers with fewer incentives to assist struggling homeowners. Nothing in the CFPB’s actions encourages servicers to avert unnecessary foreclosures.”

The CFPB’s asymmetrical announcement offers great leeway for servicers without ensuring reasonable consumer protections. While some narrow flexibility is needed to address servicer backlogs and to minimize homeowner hardships and confusion, the Bureau’s actions go much further. The CFPB announced that, “until further notice,” it would not expect servicers to adhere to timelines or requirements for providing complete information to struggling borrowers so long as some unspecified “good faith efforts” were made by the servicer in an undefined “reasonable time.” For example, for homeowners who receive a forbearance under the federal CARES Act, servicers are excused from providing information describing the terms of the borrower’s arrangement with the servicer. Instead, servicers are encouraged to use form letters, which the CFPB will deem timely so long as they are sent “before the end of the forbearance period.” There is no requirement that the
letters be received by the borrower before the end of the forbearance period or that they be provided in time for a borrower to complete a loss mitigation application before the servicer begins foreclosure. As a result, homeowners may receive forbearances without receiving written notice of when it will end or what comes next and people may find themselves in foreclosure before being notified about how to obtain further assistance.

Moreover, the CFPB’s announcement loosens rules for servicers whether or not the situation relates to COVID-19, without providing similar flexibility to homeowners, even where the hardship is virus-related. The CFPB does not expect servicers to reach out to and contact borrowers who are behind in their payments within the first 45 days of delinquency, the window in which early intervention is most successful in preserving homeownership, even where a borrower has not reached out and the servicer is preparing to initiate foreclosure. Nevertheless, the CFPB left the time limits for borrowers to respond to a servicer’s loss mitigation offer or appeal a denial at 14 days, even though borrowers are also surely struggling to meet the challenges of the pandemic, including stay-at-home orders that may cut them off from fax machines, printers, or photocopiers.

NCLC advocates call on the CFPB to take steps to protect consumers, including:

- Require servicers to resume reasonable diligence and provide information about what is needed to complete the loss mitigation application in time for the borrower to complete an application and be evaluated for loss mitigation before the end of the forbearance period.
- Require servicers not to initiate any foreclosure proceedings or charge borrowers any fees related to starting a foreclosure, such as appraisal fees, property inspection fees, or attorney fees, until a minimum of 30 days after the servicer has resumed reasonable diligence, in order to minimize harm to borrowers.
- Require notices to borrowers about a forbearance or other loss mitigation to be specific to the borrower’s circumstances, including what loss mitigation options may be available at the end of the forbearance.
- Encourage or require servicers to offer homeowners flexibility on timelines.
- Clarify that the CFPB will supervise and enforce for violations of fair lending laws and unfair, abusive or deceptive practices to minimize the risks that servicers will use these relaxed standards to abuse consumers.

“The CFPB’s actions set this country up for another foreclosure crisis,” said Cohen. “Instead of protecting consumers and reducing systemic risk, as it was set up to do, the CFPB instead is encouraging servicers to repeat their failures from the 2008 Great Recession and foreclose on families.”

National Consumer Law Center Advocate Slams Trump Administration Credit Reporting Guidance for Giving Relief to
Creditors and Credit Bureaus But Not Consumers During COVID-19 Pandemic

FOR IMMEDIATE RELEASE: APRIL 1, 2020

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

Boston – Today, the Consumer Financial Protection Bureau issued a policy guidance outlining the “responsibilities” of credit bureaus and furnishers (i.e., creditors and debt collectors) during the COVID-19 pandemic.

The following is a statement in response from Chi Chi Wu, staff attorney at the National Consumer Law Center:

“The Consumer Financial Protection Bureau (CFPB) utterly failed in its job to protect consumers with this guidance, simply telling the credit bureaus and furnishers that they must comply with the newly enacted CARES Act and even getting wrong the meaningless protection for consumers in that Act. Contrary to what the CFPB says, the CARES Act only helps a consumer avoid negative information on their credit report if they are not already behind in their payment when the creditor grants them relief.

“Instead of protecting consumers whose credit reports are being battered through no fault of they own, the CFPB is more concerned about relaxing deadlines for creditors, debt collectors and credit bureaus to fix problems when consumers dispute errors in their creditor reports. I don’t even know if the CFPB has the legal authority to do given that without engaging in formal rulemaking, and even the Bureau acknowledges that the guidance is non-binding.”

“The CFPB’s guidance does not provide one iota of assistance to consumers who are unable to reach their creditors because of long phone hold times, who are too overwhelmed by job losses or dealing with COVID-19 personally or helping afflicted family, or whose creditors are heartless enough to deny them relief. Instead, the CFPB provides a helping hand to creditors, debt collectors and credit bureaus, even though the latter are the number one source of complaints to the CFPB’s own Complaint Database. This is shameful beyond belief at a time when so many families and individuals are suffering, and it will make it much more difficult for them to recover financially for many years to come.”

U.S. Treasury Must Protect Stimulus Payments From Garnishment by Debt Collectors

FOR IMMEDIATE RELEASE: APRIL 1, 2020
Washington, D.C. – The U.S. Department of the Treasury must act immediately to ensure that the stimulus payments about to go out to millions of Americans are available for food and necessities and are not grabbed by debt collectors, according to advocates at the National Consumer Law Center.

“People nationwide have suffered a dramatic loss of income and desperately need the stimulus payments that Congress just authorized for food, rent, utilities and health care. But if Treasury does not take immediate steps to protect the stimulus payments, debt collectors could grab the money out of the bank accounts of the families who most need the funds for their basic survival,” said Lauren Saunders, associate director of the National Consumer Law Center.

“The Treasury Department has a simple mechanism to protect stimulus payments from debt collectors: It can code them as exempt federal benefits in the same way that it protects Social Security and other federal benefits. Treating stimulus payments as federal benefits will allow banks to use their systems already in place to preserve the money for necessities, not debt collectors,” said Margot Saunders, senior counsel at the National Consumer Law Center.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act provides for payments to individuals up to $1,200 so that people can pay for food, rent, utilities, medicine, and other basic necessities. The CARES Act protects stimulus checks from being reduced to pay certain debts owed to federal and state governments but does not specifically address garnishment or bank offsets for other debts. Instead, it gives Treasury the authority to issue rules and guidance to carry out the purposes of the stimulus payments.

Coding the payments as federal benefits will serve these important purposes:

- The payments will be available for food, medicine, utilities, and rent as Congress intended and will not be seized by debt collectors, depriving recipients of the ability to pay for essentials.
- Banks already have systems in place that will automatically protect the payments so there is no need to develop additional procedures.
- Banks will not have to deal with irate customers when desperately needed funds disappear.
- State governments and courts will not have to issue emergency orders to protect these payments, or handle disputes about them, putting banks in the middle.
- People can provide direct deposit information to the Treasury Department without fear of losing their funds so they can receive their payments quickly and safely. Otherwise, consumer advocates, legal services offices, credit counselors, and others will be forced to counsel struggling families to avoid direct deposit and wait for a paper check.
- The Treasury Department will have far fewer requests for paper checks to deliver stimulus payments.

“Clearly the purpose of the individual payments authorized by the CARES Act is to give individuals critically needed funds for necessities, not to line the pockets of debt collectors and debt buyers,” Lauren Saunders added.
COVID-19 Crisis: Advocates Call for U.S. Governors to Take Immediate Action to Ensure Residents are Protected from Utility Shut Offs

FOR IMMEDIATE RELEASE: March 27, 2020

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Boston - Advocates at the National Consumer Law Center (NCLC) called on governors across the nation to take immediate action pursuant to their authority granted under each state’s emergency management act to ensure utility customers remain connected to essential electric, gas, water, sewer, and telecommunications networks, both during and after the coronavirus emergency. State executive action is needed for several reasons.

First, the federal stimulus bill passed by the U.S. Senate includes no prohibition on critical utility service shut offs. While more than 20 state public utility commissions have acted to halt utility shut offs, other states have relied on voluntary commitments from utilities that are unenforceable and subject to change. Essential electric, gas, water, sewer, phone and broadband internet services are needed to comply with directives to stay at home while sick, engage in frequent hand-washing, work from home, participate in online education, consult with health care providers remotely, monitor the condition of vulnerable family and friends, and follow other public health recommendations.

Second, thousands of customers across the country served by unregulated municipal utilities and electric cooperatives remain unprotected from utility shut offs.

Third, no state has issued specific guidance on the many needed changes to utility credit and collections practices to protect utility customers whose incomes have been devastated by the economic shutdown, and who face an uncertain financial cliff when emergency orders are lifted.

“Governors across the country must invoke their authority under their state’s emergency management statute to protect utility ratepayers now,” said National Consumer Law Center attorney Karen Lusson. “Customers of both regulated and unregulated utilities deserve legal protection from utility shut offs due to inability to pay. Without specific guidance from governors, millions of customers remain vulnerable to disconnections. Likewise, absent specific direction from governors, utility customers in every state will be subject to a patchwork of credit and collections practices that fail to take into account a customer’s finances and the impact of the COVID-19 emergency. And that’s in addition to the households across the United States that remain without utility service because of an inability to afford monthly utility bills before the coronavirus pandemic.”

NCLC advocates recommend that states take the following actions to ensure that consumers stay connected to essential utility networks:

- Issue an emergency declaration through gubernatorial action banning all regulated and unregulated utility service shut offs, including electric, gas, water/sewer, and telecommunications services, due to inability to pay;
Order all regulated and unregulated utilities to reconnect customers who were previously disconnected due to inability to pay;
Ban all in-person marketing and sales of alternative energy supply and distributed energy products during the emergency declaration;
Encourage low-income households to apply for the federal Lifeline phone and broadband program for free or discounted voice and data service; and
Adjust state Low Income Home Energy Assistance Program (LIHEAP) application deadlines, enrollment access, and eligibility certification processes.

Governors also must act now to address the financial cliff that is coming once emergency orders are lifted. Action is needed to ensure that utility arrearages incurred during the crisis do not trigger disconnections by requiring all utility service providers, both regulated and unregulated, to adopt more flexible credit and collections practices than currently required by state regulations and unregulated utility policies. NCLC advocates recommend protections should:

- Eliminate any customer deposit requirements;
- Eliminate down payment requirements on deferred payment arrangements (DPAs);
- Allow flexible, reasonable DPAs that are based on the customer's ability to pay;
- Eliminate any requirement that disconnected customers pay the full arrearage in order to reconnect, thereby permitting reconnection upon issuance of an affordable DPA;
- Eliminate minimum balance requirements for prepaid utility service customers;
- Require utilities to write off debt for consumers who certify that they are eligible for LIHEAP but are unable to receive LIHEAP due to insufficient LIHEAP funds; and
- Prohibit utilities from imposing late fees and engaging in negative credit reporting.

NCLC Related Resources


Civil Rights and Consumer Groups Condemn “Emergency” Regulatory Guidance that Allows Banks to Make Payday Loans

FOR IMMEDIATE RELEASE: March 26, 2020
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Banks should not embrace this terrible idea, especially as

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Civil Rights and Consumer Groups Condemn “Emergency” Regulatory Guidance that Allows Banks to Make Payday Loans

FOR IMMEDIATE RELEASE: March 26, 2020
National Consumer Law Center contact: Jan Kruse (jkruse@nclc.org)

Banks should not embrace this terrible idea, especially as
they are borrowing for free

Washington, D.C. - Today, under the cover of a national crisis, the Consumer Financial Protection Bureau (CFPB), Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), Federal Reserve Board (FRB), and the National Credit Union Administration issued small dollar bank lending guidance that lacks the consumer protections needed to ensure loans do not trap borrowers in a cycle of debt. The guidance does not warn against unaffordable, high interest rates and says that balloon payments may be appropriate - paving the way for loans with characteristics of debt trap payday loans. Several civil rights and consumer groups forcefully condemned this action.

“This crisis will last longer than two weeks, and balloon-payment bank payday loans just leave a hole in the next paycheck when a family’s financial situation will only be worse,” said National Consumer Law Center Lauren Saunders. “Banks should not revive the so-called ‘deposit advance product’ payday loans they were making in 2013, which the CFPB found trapped consumers in debt.”

The National Consumer Law Center, The Leadership Conference on Civil and Human Rights, NAACP, Center for Responsible Lending, Americans for Financial Reform, and Consumer Federation of America issued the following statement:

“This is the worst possible time for banks to make predatory payday loans. Government regulators have opened the door for banks to exploit people, rather than to help them.

“Essential consumer protection measures are absent from this guidance. By saying nothing about the harm of high-interest loans, regulators are allowing banks to charge exorbitant prices when people in need can least afford it. They have also lent credibility to single balloon-payment structured loans, which have been shown to trap people in a cycle of repeat reborrowing and crushing debt.

“Banks should not take the bait of this terrible idea. Especially at a time when banks are receiving 0% interest loans from the federal government, bank loans should be fair and affordable – at annual rates no higher than 36% for small loans and lower for larger loans. We will be monitoring whether banks offer loans that help or loans that hurt.

“Around the time of the last recession, a handful of banks issued ‘deposit advances’ that put borrowers in an average of 19 loans a year at over 200% annual interest. These bank payday loans disproportionately harmed the financially vulnerable and badly damaged banks’ reputations. Since 2013 when regulatory guidance warned against this form of credit, banks have mostly stayed away. We trust that they will continue to do so as they do not want to repeat mistakes of the past.”