National Consumer Law Center Advocates’ Statement Regarding U.S. House Passage of HEROES Act

FOR IMMEDIATE RELEASE: MAY 15, 2020
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Washington, D.C. – Today, the U.S. House passed a $3 trillion dollar package in response to the COVID-19 crisis. In the consumer area, the bill provides desperately needed help for families dealing with the economic crisis, beyond the modest start in the previous CARES Act. In particular, the HEROES Act, HR 6800:

- Provides immensely needed funds to help families cover necessities through increased stimulus payments, extended unemployment benefits, and, for the poorest families, increased support for food, rent, home energy, water, and basic broadband service.
- Expands recently passed debt forbearance relief to most mortgages, federal and private student loans, and rent.
- Stops debt collection activities that endanger stimulus payments, wages, bank accounts, homes, utilities, and cars.
- Creates a path to recovery by halting negative credit reporting and by requiring creditors to offer affordable repayment options.

“The HEROES Act recognizes that people need much more direct support to pay for basic necessities, and much broader forbearances to ensure that they do not lose their homes or face debt collectors over loans they cannot repay right now due to no fault of their own. The HEROES Act focuses on real people because consumers drive our economy and we can’t just leave American families to trickle-down help from businesses,” said Lauren Saunders, associate director of the National Consumer Law Center.

Mortgages and Housing: “The HEROES Act builds on the vital relief offered to homeowners by the CARES Act by expanding forbearance protections to the whole mortgage market while offering essential new housing protections,” said Alys Cohen, attorney at the National Consumer Law Center. “The HEROES Act will ensure homeowners receive accurate information about their forbearance rights and other hardship assistance, and sustainable and streamlined ways to repay past due amounts. And the HEROES Act makes certain that no homeowner who has obtained assistance will face an imminent foreclosure before having a chance to make affordable arrangements to retain their family home.”

Student Loans: “The HEROES Act extends vital protection to the nine million student loan borrowers who were left out of the CARES Act. But making sure that all borrowers have access to a temporary hiatus from making payments, though necessary, is insufficient,” said Persis Yu, staff attorney and director of NCLC’s Student Loan Borrower Assistance Project. “Unfortunately, the paired down federal and private student loan forgiveness provisions will leave many borrowers without long-term relief. Many borrowers – especially low-income borrowers, borrowers of color, and those who lost their jobs due to the pandemic – will still be burdened with historically high student loan debt and will face a potentially devastated economy when they start making payments again. Their student loan payments will likely prevent them from recovering and contributing to rebuilding our economy. Widespread debt cancellation is imperative.”
Debt Collection and Debt Repayment: “It is astonishing that during this challenging public health and economic crisis, debt collectors are still trying to grab stimulus payments, wages, and assets in bank accounts, and people are still facing threats of eviction, utility shut-offs, and car repossessions,” said Margot Saunders, senior counsel at the National Consumer Law Center. “The HEROES Act addresses those problems by imposing a temporary halt to debt collection activities and by giving people time to repay their debts after the economic crisis eases.”

Autos: “The HEROES Act protects a family’s car, often their lifeline to work, groceries, testing and so much more, from repossession by prohibiting repossessions both in person and electronically, for at least the next four months,” said John Van Alst, attorney at the National Consumer Law Center.

Criminal justice debt: “The last thing that we need right now is to have people in unsafe prisons and jails for the crime of being poor,” said Abby Shafroth, attorney at the National Consumer Law Center. “By prohibiting the government from incarcerating people for nonpayment of debts, restricting the use of money bail to detain poor people who have not been convicted of a crime, and incentivizing state and local governments to suspend imposition and collection of fines and fees during the crisis, the HEROES Act protects people from being imprisoned or trapped in the broken criminal justice system merely because they are unable to afford a debt or a fine.”

Home energy, water, and broadband assistance: “The HEROES Act’s emergency benefit for broadband service will help protect public health by ensuring vulnerable households have critical broadband service so that every member of a household can perform essential tasks online from home,” said Olivia Wein, attorney at the National Consumer Law Center. “The bill also provides $1.5 billion to help low-income households stay connected to vital water and wastewater service, a critical human need, but even more so to protect health and safety during this COVID-19 crisis. However, the magnitude of the need will require more robust funding for water assistance.”

“The HEROES Act also provides a much-needed additional $1.5 billion in funds for the Low Income Home Energy Assistance Program,” added Charlie Harak, attorney at the National Consumer Law Center. “Increased Low Income Home Energy Assistance funds will keep many households connected to life-saving home heating and cooling services, but much more will be needed to help families trying to avoid termination of their utility services.”

Credit Reporting: The HEROES Act includes a temporary moratorium on negative credit reporting and a permanent ban on reporting medical debt related to COVID-19, which will greatly help consumers whose finances have been devastated by the economic crisis caused by COVID-19. “By recognizing the need to stop negative credit reporting for at least four months and by providing further relief to consumers experiencing continuing hardship, the HEROES Act will help tens of millions of consumers who have lost their jobs, small businesses, or other income from this pandemic,” said National Consumer Law Center attorney Chi Chi Wu. “The HEROES Act will prevent the current financial catastrophe from haunting the credit reports of consumers for the next seven years, which could otherwise impede their ability to find housing, jobs, and generally financially recover once the crisis is over.”

Prison phone justice: “The need for communication between incarcerated people and their families is greater than ever during this crisis, with in-person visits suspended and family members facing grave threats to their health. But even absent the widespread economic hardship caused by the crisis, the cost of prison calls can be prohibitively expensive to families,” said Ariel Nelson, attorney at the National Consumer Law Center. “The HEROES Act takes a critical step towards helping families to stay connected by immediately capping the cost of calls and prohibiting exploitative practices that take advantage of families’ basic need to connect to generate revenue.”
**NCLC Advocates Praise U.S. House HEROES Act for Giving a Lifeline for Student Loan Borrowers Drowning in Debt**

**FOR IMMEDIATE RELEASE:** May 14, 2020

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The U.S. House has proposed a $3 trillion bill in response to the COVID-19 crisis that will include debt relief for student loan borrowers. The following is a statement by Persis Yu, National Consumer Law Center staff attorney and director of NCLC’s Student Loan Borrower Assistance Project:

“We applaud Speaker Pelosi’s leadership in ensuring that student loan borrowers get real relief in this next stimulus package. Making sure that all borrowers have access to a temporary hiatus from making payments, though necessary, is insufficient. Struggling borrowers – especially low-income borrowers and borrowers of color – still burdened with historically high student loan debt will face a potentially devastated economy when they start making payments again. Their student loan payments will likely prevent them from recovering and contributing to rebuilding our economy. Debt cancellation is imperative. The $10,000 of federal loan forgiveness and $10,000 of private student loan forgiveness provided by the HEROES Act will help ensure that balances go down so borrowers can make ends meet now and then recover along with the economy.”

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**U.S. Dept. of Education and Secretary DeVos Sued for Illegally Seizing Student Borrowers’ Paychecks During Coronavirus Emergency**

**FOR IMMEDIATE RELEASE:** May 1, 2020

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**Share your story** if you have had wages garnished in 2020 for a student loan.

WASHINGTON – Student Defense and the National Consumer Law Center (NCLC), with the support of the Student Borrower Protection Center (SBPC), filed a class action lawsuit against the U.S. Department of Education and Secretary Betsy DeVos, demanding an immediate halt to the
Department’s illegal garnishment of student borrowers’ wages. The Coronavirus Aid, Relief, and Economic Security (CARES) Act prohibits the Department from garnishing wages of student borrowers through September 30, 2020. The lawsuit was filed last night on behalf of a class of distressed borrowers whose paychecks continue to be seized, in clear violation of federal law.

“With the President at her side, Secretary DeVos promised in March that she had stopped federal wage garnishments altogether, which is what the CARES Act requires,” said Alex Elson, senior counsel at Student Defense. “The truth is, she keeps on taking wages from the paychecks of Americans struggling to make ends meet. We sued to make her stop.”

“Right now, low-wage workers hit hardest by the economic impact of the pandemic need their paychecks to keep food on the table and a roof over their heads,” said Persis Yu, director of the National Consumer Law Center’s Student Loan Borrower Assistance Project. “By continuing to use its harsh collection tools during this public health and economic crisis, the Department of Education is placing the health, safety, and well-being of vulnerable student loan borrowers in peril.”

“The Trump Administration is taking money from borrowers who are living on the edge of poverty, in the middle of a pandemic, and in violation of the law. It’s completely outrageous,” said SBPC Executive Director Seth Frotman. “We will continue to do everything in our power to stop Betsy DeVos from further driving struggling borrowers into despair. This lawsuit shines light on how she has been operating a student debt collection machine that is accountable to no one—and it must be stopped.”

Lead plaintiff Elizabeth Barber works as a home health aide outside of Rochester, NY. She earns $12.89 per hour caring for clients with cerebral palsy, many of whom are at elevated risk of severe symptoms from the coronavirus. During the pandemic she has seen her weekly schedule reduced by 10 to 15 hours, greatly adding to her financial strain. Ms. Barber has had to leave bills unpaid in order to cover her basic needs, has no money in her bank account, is in arrears on various local taxes, and has a lien on her house. She is also past due on both her water and electric bills, which she cannot afford to pay in full each month. Despite the passage of the CARES Act, the Department has continued to garnish her paychecks through the pandemic. The very purpose of the CARES Act is to provide immediate emergency relief to Americans, like Elizabeth, suffering the economic consequences of the coronavirus pandemic.

“I am so worried about how I will get through this,” said lead plaintiff Elizabeth Barber. “I have no money in the bank. I need every dollar I earn at work to survive each day, but my hours have been cut because of the virus. I don’t understand why the government keeps taking my money away after it passed a law that says they will stop.”

Under normal circumstances, the Department has the extraordinary authority to garnish the wages—without a court order—of individuals who default on their federal student loans, withholding up to 15 percent of a borrower’s paycheck to collect on past-due student loan debts. In the 2018 fiscal year, the Department of Education seized more than $840 million using wage garnishment, and the Department estimates that approximately 285,000 borrowers were subject to the practice in the last month alone.

In the CARES Act, Congress gave most federal student loan borrowers a six-month reprieve from paying back their loans, and prohibited the Department of Education from using involuntary collection practices, including wage garnishment, against borrowers in default. But for Ms. Barber and many other borrowers, that hasn’t been the case. Guidance posted on the Department’s website asserts that borrowers may continue to see their wages garnished, promising a refund at some unspecified, future time—a practice that does not satisfy the clear requirements of the CARES Act.
and ignores the urgent current financial needs of borrowers during the coronavirus pandemic.

The lawsuit demands that the Department immediately implement the suspension of wage garnishment and refund any money taken from Ms. Barber and all other borrowers.

Over the past month, the Student Borrower Protection Center has been flooded with stories from borrowers across the country seeing their hard-earned wages unlawfully seized. These troubling accounts depict a broken collections system operating without regard for borrowers’ protections under the law. Following reports of illegal garnishment, Senator Cory Booker and Congresswoman Ayanna Pressley led a group of over forty members of Congress in a letter blasting Secretary DeVos earlier this month. The lawmakers called on the Secretary to issue guidance halting all involuntary collections effective immediately and to provide a clear timeline for refunds to borrowers who have had wages unlawfully garnished since the new protections were put in place. Today, more than six weeks after the national emergency was declared, advocates and news media continue to report on borrowers’ wages being illegally seized.

A copy of the class action complaint filed against the Department of Education is available here.

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**Consumer Bureau Mortgage Origination Guidance Overlooks Urgently Needed Consumer Protections**

**FOR IMMEDIATE RELEASE:** APRIL 30, 2020  
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Washington — Yesterday, the Consumer Financial Protection Bureau (CFPB) released guidance on mortgage originations. While the guidance does no harm to consumers, it also fails to address the real and pressing problems homeowners face as a result of the COVID-19 crisis.

“The CFPB is continuing its one-sided approach to the crisis,” said National Consumer Law Center attorney Andrew Pizor. “The CFPB notes that it received a number of questions from creditors, industry representatives, and state regulators. Shockingly absent is any mention of questions or concerns of consumers or any consultation with groups representing them. Unsurprisingly, then, the CFPB has failed to address the real problems homeowners are facing because of the crisis, including the widely reported misrepresentation by mortgage servicers as to the terms of CARES Act forbearances.”

The core interpretive rule released by the CFPB restates long-standing statutory requirements regarding homeowners’ ability, in a personal financial emergency, to shorten the Truth-in-Lending Act’s three-day cooling-off period. The rule is a commonsense application of the statutory requirements to the current crisis. It similarly clarifies that COVID-19 is “an extraordinary event” that would allow lenders to adjust the price disclosures they give borrowers about the cost of their
mortgages. Some additional guidance makes clear that borrowers can agree not to get copies of the appraisal used in making the loan until closing, instead of before closing.

“While these all seem unobjectionable and obvious interpretations of existing law, it seems unlikely that these statements will have any measurable impact on consumers’ ability to access credit quickly, the CFPB’s stated objective,” Pizor said. “Notably, the CFPB doesn’t even claim to be doing anything to ensure that the terms of credit are affordable and sustainable—a specific statutory mandate for the CFPB—or that mortgage servicers are complying with federal law, both more important than ever during the current pandemic. We need the CFPB to step up and do its job to protect consumers.”

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**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.

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**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
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.
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
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 commonsense 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.”