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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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

Press Release: FDIC to Repeal 36% Rate Cap and Bank Payday Loan Guidance, but Banks Should Not Take the Bait, May 20, 2020


Report: Why 36%? The History, Use, and Purpose of the 36% Interest Rate Cap, April 2013

Brief: State Rate Caps for $500 and $2,000 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.”

Advocates Slam FDIC Proposed Rule for Industrial Loan Companies as Invitation for Predatory Lending

FOR IMMEDIATE RELEASE: July 2, 2020

National Consumer Law Center contacts: Stephen Rouzer (srouzer@nclc.org) or Lauren Saunders (lsaunders@nclc.org)

*The bank regulator’s plan, described as “recipe for disaster” and as a way to “fuel financial exclusion,” provides an avenue for lenders to evade state laws that cap interest rates and to harm families suffering most in this economic downturn.*

WASHINGTON, D.C. – The National Consumer Law Center, on behalf of its low income clients, joined with a broad coalition of advocacy organizations in two public comment letters warning the
Federal Deposit Insurance Corporation (FDIC) that its proposed rule for chartering additional underregulated Industrial Loan Companies (ILCs) would expand predatory, high-interest lending. The plan would grant the predominantly online non-bank companies that are approved for an ILC with preemptory powers over state consumer protection laws, including interest rate caps. The FDIC is already turning a blind eye to rent-a-bank schemes where non-bank lenders piggyback off ILC and bank charters to issue loans of around 100% APR and higher.

The first, more detailed comment letter was submitted by the following civil rights and consumer organizations: National Consumer Law Center (on behalf of its low-income clients), Center for Responsible Lending (CRL), Americans for Financial Reform Education Fund, Consumer Action, Consumer Federation of America, The Leadership Conference on Civil and Human Rights, NAACP, National Association of Consumer Advocates, National Association for Latino Community Asset Builders, UnidosUS, and U.S. PIRG.

The second, short comment letter was submitted by several leading civil rights, community, consumer, and faith groups. Full text of the short letter is at bottom.

The longer, more detailed comment letter states in part:

“By permitting unprecedented blending of commercial and financial activities, and by making it easier than ever to make high-cost loans above states’ interest rate limits, this proposal is a recipe for disaster. And no one will feel the misery worse than the millions of households, disproportionately households of color, who are targeted by the abusive lending the proposal will proliferate....

“Adding the new label ‘fintech’ to high-cost lending may attract investors and make it easier for banking regulators to justify their support, but it doesn’t soften the blow high-cost loans land on struggling families.

“[T]he proposal wholly fails to consider the strong likelihood that it will cause a significant increase in predatory lending, either directly by companies that acquire ILCs or obtain ILC charters, or indirectly through increased rent-a-bank schemes with ILC banks.”

The short comment letter states in part:

“These loans target financially distressed individuals, compound their debt burden, and leave them worse off. High-cost lenders also disproportionately prey on communities of color, stripping them of income, widening the racial wealth gap, and more deeply entrenching systemic racism. Rather than promote financial inclusion, as they claim, high-cost lenders fuel financial exclusion.”

Additional Background

In March, the FDIC approved two new ILC charters, the first in over a decade. In so doing, the FDIC failed to adequately address concerns the agency itself has long had about its authority to effectively supervise ILCs.

The FDIC’s proposed ILC rule is among the attacks on state usury limits by federal banking regulators in recent years. These attacks include a proposed Office of the Comptroller of the Currency (OCC) “special purpose charter” and also rules issued by the FDIC and OCC that make it easier for banks to essentially rent out their charter to non-banks that then try to use the charter’s power to preempt state rate caps.

Full text of the short letter:
July 1, 2020

The Honorable Jelena McWilliams

Chairman

Federal Deposit Insurance Corporation

1776 F Street, NW

Washington, DC 20006

Delivered electronically

Re: Comments on FDIC Notice of Proposed Rulemaking, Parent Companies of Industrial Banks and Industrial Loan Companies

Dear Chairman McWilliams,

The undersigned civil rights, community, consumer, and faith organizations write to strongly oppose the FDIC’s proposed rule on industrial banks and industrial loan companies (together, “ILC’s”), as well as the agency’s approval of new ILC charters, in light of the threats these charters pose to state interest rate limits and, consequently, to consumers—particularly to those most financially vulnerable.

Interest rate limits are the single most effective tool states have to protect their residents from predatory loans. Predatory loans include payday and car title loans that often carry annual interest rates as high as 300% or more. Predatory loans also include high-cost installment loans and lines of credit with rates approaching and well exceeding 100%. These loans target financially distressed individuals, compound their debt burden, and leave them worse off. High-cost lenders also disproportionately prey on communities of color, stripping them of income, widening the racial wealth gap, and more deeply entrenching systemic racism. Rather than promote financial inclusion, as they claim, high-cost lenders fuel financial exclusion.

These high interest rates do not just make loans dramatically more expensive than mainstream loans. They also fundamentally alter the repayment structure, as borrowers can make payments for many months or even years without seeing any significant reduction in principal. As a result, these high rates also warp market incentives, where lenders succeed even if borrowers eventually default in great numbers.

This proposal comes amidst a number of attacks on state usury limits by federal banking regulators in recent years, as state-regulated lenders increasingly look to federal regulators to help them avoid state laws. The ILC charter is no different. By making it easier for predominantly online non-bank lenders to obtain bank charters, while avoiding consolidated supervision of the Federal Reserve, the FDIC would pave the way for non-banks to benefit from federal preemption far more easily than they otherwise could. Indeed, a law firm representing payday lenders recently wrote of the ILC proposal: “The proposed rule, together with the FDIC’s recent approvals of deposit insurance applications for [NelNet and Square], suggest the ILC charter as a viable alternative to the OCC’s fintech charter, which has been stalled by litigation.”

Several traditional FDIC-supervised banks are already facilitating evasion of state usury limits by non-banks through rent-a-bank schemes that the FDIC has not addressed. The loans these schemes
peddle are among the most irresponsible loans on the market. Republic Bank & Trust (of Kentucky) and FinWise Bank (of Utah) are enabling high-cost lenders Elevate (100% APR), OppLoans (up to 160% APR), and/or Enova (up to 99.99% APR) to evade state rate caps in over half the states. Capital Community Bank (of Utah) is helping car title lender LoanMart evade state law in a number of states. LoanMart’s loans range from 60-222% interest; a typical loan is $2,500, 18-month loan at 90%, totaling $2,136 in interest. Transportation Alliance Bank, dba TAB Bank (of Utah) is helping EasyPay Finance make predatory loans for furniture, appliances, pets, auto repairs and other products, including a $1,500 loan at a rate of 188.99%. And Bank of Lake Mills (of Wisconsin) has enabled predatory small business loans, including a 120% APR $550,000 small business loan and a 74% APR loan secured by a second mortgage.

A disproportionate number of ILCs are also engaged in rent-a-bank arrangements; these are all chartered in Utah. First Electronic Bank is helping Personify Financial make loans up to 179.99% in 22 states. WebBank is involved in litigation alleging violation of Colorado’s state usury limit through a rent-a-bank arrangement. And Celtic Bank is helping OnDeck Capital and Kabbage make small business loans at up to 99% APR.

Experience has demonstrated that parents of ILCs pose excessive risks that the FDIC is unable to constrain. A number of ILC owners failed or nearly failed during the 2008 financial crisis, including predatory mortgage lender Fremont and predatory credit card issuer Advanta. The FDIC’s proposed plan, which claims to largely formalize the existing practices that have already proved inadequate, will not compensate for its lack of consolidated supervisory authority. The FDIC proposal also fails to give adequate consideration to the Community Reinvestment Act implications of an expansion of ILC charters, including convenience and needs, fair lending, and consumer protection.

We wholly reject any notion that approval of additional ILC charters may enable lenders to meet the credit needs of the financially vulnerable. To the contrary, they would make the financially vulnerable more so by facilitating the spread of predatory lending and undermining states’ ability to stop it.

We appreciate your consideration of our concerns.

Yours truly,

Americans for Financial Reform Education Fund, National
Arkansans Against Abusive Payday Lending, Arkansas
Arkansas Community Organizations, Arkansas
California Reinvestment Coalition, California
Center for Economic Integrity, Arizona
Center for Responsible Lending, National
Consumer Action, National
Demos, National
Indiana Institute for Working Families, Indiana
Jacksonville Area Legal Aid, Inc., Florida
Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training.

**Alert: IRS Sending Letters About Unactivated Stimulus Prepaid Cards**

**FOR IMMEDIATE RELEASE: July 2, 2020**

**National Consumer Law Center contacts:** Stephen Rouzer (srouzer@nclc.org) or Lauren Saunders (lsaunders@nclc.org)

WASHINGTON, D.C. - People who have not received their Economic Impact Payments (EIP) should be on the lookout for letters being sent starting today by the Internal Revenue Service (IRS) telling them that they may have an unactivated prepaid card.

Last month, the IRS sent stimulus payments via the EIP prepaid cards instead of by paper checks to about 2 million taxpayers. Many people who were not expecting a prepaid card and did not know what it was threw it out, thinking it was a scam, or may have overlooked it.
These new letters, like the prepaid cards, are not a scam, though people should be aware of what they look like in case scammers try to impersonate them. The envelope can be viewed here and a sample letter is here.

Most importantly, the number that should be on the letter to call if someone has not received the card or has accidentally thrown it away is 800.240.8100. If the letter gives a different number people should not call it, as it is likely a scam.

“The EIP Card from Money Network Services is not a scam. It is a card being used by the IRS to distribute stimulus payments to some people. If you have any doubts or have not received your card, call 800-240-8100,” said Lauren Saunders, associate director of the National Consumer Law Center. However, she cautioned that that number will have information only about people who are being paid through the EIP card, not about payments made by paper check. “The EIP card can be cashed or used in numerous ways without incurring fees, including by transferring the funds to your bank account, using network ATMs, asking for cash back at a grocer or big box store, and by going inside to the teller window at virtually any bank or credit union,” she added.

For more details on what the EIP Card looks like and how to use it without paying fees, see NCLC’s issue brief The EIP Stimulus Payment Prepaid Card: Not a Scam; How to Avoid Fees, which includes links to a photo of a sample card and mailer.

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

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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 Alyx 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.