

CFPB Proposal Allows Abusive “Zombie” Debt Collection to Continue

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

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

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

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

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

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

Related NCLC Resources

Brief: Time Barred Debt Disclosures in CFPB's Supplemental Rulemaking Fall Short, May 2020

Fact Sheet: Racial Disparities in Consumer Debt Collection

Amicus Brief Opposes OCC Charter That Would Aid Predatory Lenders

For Immediate Release: July 31, 2020

Media Contacts:

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

Center for Responsible Lending: Ricardo Quinto (ricardo.quinto@responsiblelending.org)

National Community Reinvestment Coalition: Alyssa Wiltse (awiltse@ncrc.org)

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

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

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

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

New York's DFS led the challenge against the nonbank charter in *Lacewell v. Office of the Comptroller of the Currency* in a federal district court action in the Southern District of New York.

In May 2019, the district court ruled against the OCC, set aside the OCC's nonbank charter, and held that the National Bank Act "unambiguously requires that only depository institutions are eligible to receive national bank charters from OCC."

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

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

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

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

FOR IMMEDIATE RELEASE: JULY 28, 2020

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

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

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

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

"For many Americans, their home is their greatest asset and largest financial investment. But more than that, home is the place that provides families with safety and security in times of crisis. Especially now, when staying home is the best protection against contracting or infecting others with COVID-19, it is critical that Congress enact common-sense mortgage protections that will make it possible for American homeowners to keep their homes and provide them with the stability they need to rebuild. A healthy housing market also requires access to safe and affordable mortgage credit, which not only supports the economic recovery but ensures that the benefits of recovery are

broadly shared. While the CARES Act provided important protections for homeowners with government-backed mortgages, these protections need to be expanded to the entire market and refined to provide more comprehensive assistance, especially when borrowers must repay deferred payment amounts. Homeowners who have obtained a forbearance should not be forced into foreclosure before they can make affordable repayment arrangements.”

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

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

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

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

FOR IMMEDIATE RELEASE: JULY 27, 2020

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

New Republican Stimulus Bill Fails 43 Million Student Loan Borrowers

Statement of Persis Yu, director of NCLC’s Student Loan Borrowers Assistance Project, in

response to the COVID-19 stimulus package proposed by Senate Republicans today.

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

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

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

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

FOR IMMEDIATE RELEASE: JULY 27, 2020

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

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

The Dodd-Frank Act, passed in response to the last foreclosure crisis and the Great Recession, required the CFPB to adopt rules ensuring that mortgage lenders cease the risky and predatory practice of making loans without regard to the borrowers’ ability to repay those loans. Now, the CFPB is proposing to revise these rules. The two proposals issued on July 10 have rushed comment deadlines: August 10 and September 8, respectively. The CFPB proposals seek to rewrite the basic standards the mortgage market has followed since the end of the last foreclosure crisis, and the CFPB hints that it plans to finalize the new rules—and require compliance with the new rules—by April 2021. By comparison, the original ability-to-repay rules took nearly three years to write and the CFPB allowed a full year for implementation.

“Now is the wrong time to change the rules of the game in the mortgage market,” **said Alys Cohen, a staff attorney at the National Consumer Law Center.** “The challenges posed by the pandemic are very real, with a resurgence in cases across the country and projections of increasing economic hardship. The CFPB’s focus of resources should be to respond to the pandemic, including the looming foreclosure crisis in Black and Brown communities, not on resetting mortgage rules in a way that can have unintended consequences.

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

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

Consumer Groups Demand Review of FCC Ruling that the Calling Industry Claims Will Allow Millions More Unsolicited Text Messages and Calls to Consumers’ Cellphones

FOR IMMEDIATE RELEASE: July 24, 2020

National Consumer Law Center contacts: Jan Kruse (jkruse@nclc.org) or Margot Saunders (msaunders@nclc.org)

Advocates seek review of the Declaratory Ruling issued by the Consumer and Governmental Affairs Bureau, which blesses P2P texting platforms invented to evade consumer protections

WASHINGTON, D.C. – Consumer groups, led by the National Consumer Law Center (NCLC) on behalf of its low-income clients, today filed an appeal with the Federal Communications Commission (FCC) of a ruling by the FCC’s Consumer and Governmental Affairs Bureau that federal protections against unwanted text messages do not apply to peer-to-peer (P2P) text messaging systems. The calling industry is already citing the ruling as a basis to exempt *all* text messages and autodialed voice calls from the federal prohibition against making these calls without the consumer’s consent.

“Such an interpretation would lead to an exponential growth in unsolicited calls and text messages from both telemarketers and political campaigns,” **said Margot Saunders, senior counsel with the National Consumer Law Center.** “Now more than ever, as consumers face mounting pressures from the ongoing COVID-19 pandemic and as we’re entering the peak election season, the FCC must protect consumers from unwanted and harassing text messages rather than bowing to political pressure to allow these unwanted texts without consent.” Automated dialing systems made it possible for debt collectors, telemarketers, scammers, and others to generate over 58 billion calls to U.S. consumers in 2019.

The ruling involves an interpretation of the federal consumer privacy law, the Telephone Consumer Protection Act (TCPA), and its application to the P2P texting platform. The purveyors of the P2P platform invented it to evade the consent requirements of the TCPA for robocalls, and to allow political campaigns and telemarketers to send thousands of identical texts in a short period of time, without the consent of the recipients. The consumers’ application for review notes that the ruling conflicts with previous FCC orders, recent decisions in the Second and Ninth Circuits Courts of Appeal, and the TCPA itself.

“The Bureau’s ruling implicitly relies on facts regarding the P2P system’s level of automation that are not supported by the record and are contrary to readily available information,” **said Saunders.** “This ruling repeatedly characterizes the definition of an autodialer in ways that conflict with each other, with the FCC’s rulings, *and* prevailing case law.”

NCLC was joined in the appeal by Consumer Action, Consumer Federation of America, EPIC, the National Association of Consumer Advocates, and Public Knowledge.

For additional information, visit NCLC’s Robocalls & Telemarketing page.

Leading Civil Rights & Housing Groups Condemn President’s Effort to Gut Fair Housing, Use of Incendiary Racial Rhetoric for Political Gain

FOR IMMEDIATE RELEASE: July 23, 2020

Media contacts: Jan Kruse (jkruse@nclc.org) or Odette Williamson (owilliamson@nclc.org)

Fair housing advocates denounce Trump’s newest effort to eliminate a critical tool to desegregate communities and call on the president to instead concentrate on ensuring housing equity during a pandemic

Washington, D.C.- Today, a coalition of civil rights, affordable housing and consumer advocacy organizations condemned the move by the Trump administration to eliminate a critical tool for addressing systemic racism and segregation in our communities. In its haste to undermine this central component of the Fair Housing Act, the administration has done an end run around the normal rulemaking process and adopted a new Affirmatively Furthering Fair Housing (AFFH) rule by

executive fiat.

This new rule is at complete odds with Congress' intent in including this provision in the Fair Housing Act of 1968, as well as decades of case law interpreting this provision. That act requires federal agencies, especially HUD, to "affirmatively further fair housing." Under the AFFH mandate, localities receiving federal assistance must take meaningful actions to undo decades of federal, state, and local discriminatory policies and practices that resulted in creating racially segregated, under-resourced communities that persist to this day. They must also address local policies that illegally discriminate against residents. Further, they must ensure that all neighborhoods have equitable access to high quality schools, healthy food, clean air and water, reliable transportation, quality healthcare facilities, and other community resources and amenities.

Under the Trump administration, HUD suspended the AFFH regulations finalized in 2015 - effectively gutting the only meaningful guidance since the Fair Housing Act for how states and localities should correct discriminatory housing practices and undo the harms caused by racial segregation, housing discrimination and disinvestment. Today's action by the president is the administration's latest effort to thwart access to fair housing and to perpetuate segregation. The coalition call on him to rescind this mandate and reinstate the 2015 AFFH regulation.

There is considerable evidence that all residents benefit from diverse, inclusive communities. Research by Harvard University Economist Raj Chetty showed that moves by lower-income residents to higher-income neighborhoods not only reduce the intergenerational persistence of poverty but also ultimately generate positive returns for taxpayers. Despite this evidence, the president has falsely claimed that AFFH would lead to decreased property values and increased crime in suburban communities. Given that one statutory purpose of AFFH is to create more housing opportunities for people who have been historically excluded from predominantly white neighborhoods due to federal, state, and local policies and practices, the president's assertions have clear racial implications. This mandate, issued just a few months before the presidential election, is designed to engender fear among suburban white voters.

At a moment when much of the nation is calling for sweeping reforms to overcome structural racism and achieve greater racial justice and equity, the administration is seeking to eviscerate the legal requirement to achieve greater desegregation and housing equity. The president's action today is especially egregious during the coronavirus pandemic when millions of families of color are experiencing disproportionate income and job loss and are at greater risk of being evicted from their homes and becoming homeless.

"Housing justice and racial justice are inextricably linked. The AFFH regulation was an important step to rectify decades of racist housing policies that created today's segregated neighborhoods and all its associated harm to children, families and the country." said **Diane Yentel, president and CEO of the National Low Income Housing Coalition**. "Secretary Carson has worked to undermine fair housing since the day he stepped into the HUD building, so this action is not surprising. But it is abhorrent for Trump to use a critical fair housing tool for election year race-baiting, particularly during a time of reckoning for racial injustices."

"The Affirmatively Furthering Fair Housing provision of the long-standing Fair Housing Act is needed to dismantle decades of government-sponsored discrimination that led to segregation and disinvestment in healthcare, housing, education, and other essential services in Black communities and other communities of color," said **Odette Williamson, staff attorney and director of the Racial Justice and Equal Economic Opportunity Project at the National Consumer Law Center**. "The disparate impact on highly segregated Black communities that were historically redlined still plays out today as Black families bore the brunt of early infections and death due to the

COVID-19 pandemic. This unacceptable action is yet another attempt by the Trump Administration to roll back hard-won civil rights protections that provide housing opportunities for people who have been excluded from highly resourced communities.”

“People should not be shut out of the American Dream based on the color of their skin. However, decades of redlining have cemented this injustice, perpetuated a massive racial wealth gap between Black and white families, and sustained the continued distribution of resources and opportunity based on race,” said **Nikitra Bailey, executive vice president at the Center for Responsible Lending**. “The government helped create entrenched, pernicious residential segregation and has an obligation to undo it. By rejecting the Fair Housing Act’s mission to dismantle segregation and the inequity it created, this Administration is eschewing its responsibility and will be on the wrong side of history.”

“We call on every American to oppose the unjustifiable and shortsighted rollback of civil rights laws like the AFFH mandate,” said **Heather Abraham, supervising attorney of the Georgetown University Law Center Civil Rights Clinic**. “Today, more Americans are waking up to the reality that our government has repeatedly used its power and resources to segregate communities by race, and that history must be confronted and reversed. The last thing we should do is create another barrier to reform. No more rollbacks, no more games.”

“President Trump’s elimination of the 2015 AFFH rule is an unacceptable affront to civil rights and constitutes a reprehensible regression for fair housing in this country,” said **Lisa Cylar Barrett, director of Policy at the NAACP Legal Defense and Educational Fund, Inc.** Today’s announcement is particularly egregious amid an ongoing pandemic that disproportionately impacts Black people’s socioeconomic security and during a period with staggeringly low Black homeownership rates. The president’s action is the exact opposite of the type of housing policy needed at this moment.”

“It is absolutely essential that fair housing opportunities are available to historically marginalized populations, including survivors of domestic and sexual violence,” said **Peg Hacskaylo, Founder/CEO of the National Alliance for Safe Housing**. “This pandemic has shown that there are massive racial disparities in who can access and maintain safe and healthy housing. The federal government must be responsible for addressing our country’s housing inequalities that were created through decades of federally backed discriminatory housing policies. HUD’s decision to end the affirmatively furthering fair housing rule only creates a barrier towards achieving true housing equality and will worsen our current housing crisis.”

“The COVID-19 pandemic continues to amplify the grave disparities and structural racism that exists in our country’s housing system,” said **Seema Agnani, executive director of the National Coalition for Asian Pacific American Community Development**. “The administration’s lack of respect and care for the American people continues to reveal itself and is truly putting our communities and neighborhoods at further risk. Such actions are simply unacceptable and make very clear the administration’s priorities during this time crisis.”

“This is terrible. The administration just gutted the rule that enforces fairness in housing, which was and still is the whole point of the Fair Housing Act,” said **Jesse Van Tol, CEO of the National Community Reinvestment Coalition**. “All of us have an interest in living in fair and desegregated communities. This would be a return to separate but equal and would be among the most overtly racist housing policies in decades. It’s hard to even call it a policy. It doesn’t enforce anything, it hands off any action to local governments, and they can get away with no action. This approach won’t affirmatively further anything other than discrimination.”

“The president seems to think that what you don’t know about or don’t measure can’t hurt you. We know that’s not true — whether it’s a highly contagious new disease or segregation and discrimination in housing. He wants to take away tools to measure housing discrimination because he doesn’t want it to be counted. This move is a deflection,” said **Lisa Rice, president and CEO of the National Fair Housing Alliance**. “The worst thing we can do in a major health pandemic is increase housing instability, homelessness, and overcrowding — which is what will happen if the Affirmatively Furthering Fair Housing provision is significantly weakened. Taking away strong fair housing tools makes all of our communities less safe and increases housing instability. We have learned that lesson and we should not repeat that mistake. We will not allow Trump to take away tools to fight discrimination or make our neighborhoods less safe.”

“The President’s attacks on the Affirmatively Furthering Fair Housing Rule are deeply racist. The AFFH rule was functionally eliminated in 2017 so the administration’s focus on it now is clearly a political stunt to stoke racial animus before the election. To say that a rule that requires cities to analyze segregation would ‘destroy the suburbs’ is as close as you can get to an endorsement of racial segregation without actually saying the words,” said **Shamus Roller, executive director of the National Housing Law Project**. “Our nation is simultaneously facing a global pandemic and a nationwide reckoning on entrenched institutional racism. Both have laid bare our country’s enduring legacy of the disenfranchisement of and disregard for Black and Brown lives. Instead of working to ensure that all our nation’s families can stay safe and avoid eviction during the public health crisis, this Administration is working to dismantle decades of civil rights law.”

“The 2015 AFFH regulation provided communities with a roadmap for identifying and addressing the housing and other needs of people with disabilities,” said **Dara Baldwin, director of the Center for Disability Rights, Inc.** “Now, without any opportunity for their voices to be heard, the President is taking away that tool. That experience tells us the result will be that people with disabilities will have less access to suitable, affordable housing in the neighborhoods of their choice that enables them to fully participate in their communities. This is a bad outcome for people with disabilities, and a bad outcome for the nation.”

“Discriminatory housing practices have been at the core of systemic racism in this country from the Jim Crow era right up to the present day,” said **Melissa Boteach, VP of Income Security and Child Care at National Women’s Law Center**. “Our cities are now more racially segregated than they were when the Fair Housing Act was first passed, and surging rent prices have made historically Black neighborhoods unaffordable for most Black families. HUD must play a critical role in turning this tide towards true economic justice instead of actively seeking to hurt the well-being of the women of color this move will impact the most. Abandoning this rule now will only serve to further the harm endured by generations of communities of color, leaving them even more exposed to the impacts of a mismanaged pandemic and a historic downturn.”

“The President’s attempted rewriting of the Fair Housing Act shows a flagrant disregard for racial discrimination and its human cost, as well as a fundamental misunderstanding of the federal government’s statutory responsibility to address the ongoing legacies of segregation,” said **Philip Tegeler, executive director of the Poverty & Race Research Action Council**. While this new anti-AFFH rule will not pass legal muster, the signal it sends to local jurisdictions will be chilling.”

“Once again, Trump is seeking to strip historically marginalized communities of their basic civil and human rights,” said **Vanita Gupta, president and CEO of The Leadership Conference on Civil and Human Rights**. “At a time when evictions, joblessness, and housing insecurity are exacerbated by the pandemic, gutting the Fair Housing Act will only serve to continue systemic racism and segregation against families of color seeking secure, safe, and fair housing. This cruel action continues housing inequity today as well as for future generations. All people in America deserve fair

housing, especially in the midst of a global pandemic.”

OCC Proposal Would Turn State Interest Rate Limits Into a “Dead Letter,” Causing Explosion of Rent-a-Bank Payday Lending that Will Devastate Struggling Families

FOR IMMEDIATE RELEASE: JULY 20, 2020

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

Washington, D.C. – Today, the Office of the Comptroller of the Currency (OCC) issued a proposed rule that overturns the “true lender” rule that courts have used since the early 1800s to prevent evasions of state usury laws. The deadline to submit comments on the OCC’s proposal is September 3, 2020.

The following statement is by National Consumer Law Center Associate Director Lauren Saunders.

“The OCC’s ‘true lender’ proposal would turn state usury laws into a ‘dead letter,’ in the words of the U.S. Supreme Court, and eviscerate power that states have had since the time of the American Revolution to protect people from high interest rates and predatory lending. At the time of the American Revolution, every American state had interest rate limits, and today at least 45 states and the District of Columbia have interest rate caps on installment loans.

“Yet under the proposal, a payday lender or other nonbank lender could ignore state interest rate limits as long as **either** a bank ‘[i]s named as the lender in the loan agreement,’ **or** the bank ‘[f]unds the loan’ — that is, the payday lender launders the loan through the bank. This proposal would allow payday lenders to resume the rent-a-bank schemes that were shut down by bank regulators in the mid-2000s, and would embolden today’s high-cost predatory rent-a-bank lending by online installment lenders.

“The proposed rule would purport to overturn the ‘true lender’ doctrine, which allows courts to prevent evasions of usury laws by looking beyond the technical form or fine print of a loan transaction to examine which party has the predominant economic interest in the loan. The true lender doctrine has long been used to prevent payday lenders and other high-cost lenders from laundering their loans through banks, which are not subject to state interest rate caps.

“Many courts used the true lender doctrine in the early 2000s to stop payday lenders from using banks to get around state interest rate limits. And in 2014, a West Virginia court found that CashCall had to obey West Virginia’s usury caps and could not charge 96% APR because the purpose of the arrangement with a bank ‘was to allow CashCall to hide behind’ the bank.

“Just last month, the District of Columbia Attorney General used the true lender doctrine to

challenge a rent-a-bank scheme by Elevate, which was charging from 99% to 251% APR despite DC's 6% to 24% interest rate caps

"The OCC has no authority to take away the right of courts to look beyond the fine print to prevent evasions of state usury laws. The true lender doctrine is part of the longstanding anti-evasion principle that courts have used to enforce usury laws. As the Supreme Court said in one case, *Scott v. Lloyd*, in 1835:

'The ingenuity of lenders has devised many contrivances by which, under forms sanctioned by law, the [usury] statute may be evaded....[I]f giving this form to the contract will afford a cover which conceals it from judicial investigation, the [usury] statute would become a dead letter. Courts, therefore, perceived the necessity of disregarding the form, and examining into the real nature of the transaction.'

"The OCC's proposed rule would prevent courts from examining the real nature of a predatory rent-a-bank scheme, help predatory lenders conceal their schemes from judicial review, and turn state usury laws into the 'dead letter' that the Supreme Court predicted in 1835.

"The OCC's trumped-up excuses for this rule do not hold water. The true lender doctrine does not threaten legitimate bank activities but it *does* prevent predatory lenders from hiding behind banks. The OCC's overreach is breathtaking in its audacity and it will not stand.

"In 2002, former OCC Comptroller Hawke shut down rent-a-bank schemes that payday lenders were using, declaring that bank privileges 'cannot be treated as a piece of disposable property that a bank may rent out to a third party that is not a national bank.' Today the OCC, instead of preventing banks from shielding payday lenders, is attempting to issue a rule that could allow payday lenders to ignore state interest rate limits in all 50 states. But the OCC has no authority to take away courts' power to enforce state interest rate laws, and this proposal will not stand.

"It is shocking that in the midst of the coronavirus pandemic with unemployment at a level not seen since the Great Depression that the OCC is pushing hard and fast on a proposal that will embolden predatory lenders while trapping many struggling families into long-term debt."

More information

[Predatory Rent-a-Bank Loan Watch List by State](#)

[Advocates Praise Rent-a-Bank Colorado Court Ruling Upholding State Interest Rate Caps, June 10, 2020](#)

[Advocates Praise D.C. Attorney General Suit Against Predatory High-Cost Rent-a-Bank Lender, June 5, 2020](#)

[State Rate Caps for \\$500 and \\$2,000 Loans, February 2020](#)

[Brief: FDIC/OCC Proposal Would Encourage Rent-a-Bank Predatory Lending, December 2019](#)

[Testimony of Lauren Saunders before the U.S. House Financial Services Committee on Rent-a-Bank Schemes and New Debt Traps, Feb. 5, 2020](#)

[Op-Ed: Rent-a-bank schemes trample voters' and states' rights by Lauren Saunders, Feb. 8, 2018](#)

National Consumer Law Center Attorney Alys Cohen to Testify at U.S. House Hearing on Thursday, July 16: Mortgage Servicers' Implementation of the CARES Act

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

Full testimony is available at: <https://bit.ly/oversight-svcrs-cares>

Washington, D.C. – On Thursday, July 16 at 12pm ET, National Consumer Law Center attorney Alys Cohen will testify virtually at the U.S. House Financial Services Oversight Subcommittee hearing: Protecting Homeowners During the Pandemic: Oversight of Mortgage Servicers' Implementation of the CARES Act.

Cohen's testimony will focus on how pre-existing inequalities are exacerbated by the COVID-19 crisis, and Black and Latinx homeownership is imperiled. A policy brief released today by the National Consumer Law Center **finds that 17% of Black homeowners and 8% of Latinx homeowners reported missing their May 2020 mortgage payment compared to 4% of white homeowners**, according to the U.S. Census Bureau.

"The pandemic has amplified the raw inequality in our nation's housing and mortgage finance systems," **said National Consumer Law Center attorney Alys Cohen.** "We must renew efforts to protect and expand Black and Latinx homeownership, as these communities had not yet recovered from the Great Recession when the pandemic began and have been hit hardest by COVID-19."

Congress and the federal regulators must expand on their initial steps to protect homeowners by extending protections of the CARES Act, increasing transparency around who benefits from housing relief programs, and requiring the mortgage servicing industry to meet the needs of homeowners facing COVID-19 hardships, especially those in Black and Latinx communities who are at greatest risk of foreclosure.

To prevent a flood of avoidable foreclosures and bankruptcies and to promote fairness, Cohen's testimony will identify some key actions that must be taken quickly, including:

- **Data collection and reporting:** The Consumer Financial Protection Bureau should collect loan-level data and provide aggregate reporting to the public at no cost at least every quarter regarding market-wide mortgage performance, including demographic data, property location, and forbearance statistics, to better monitor developments and to identify disparate impacts.
- **Dedicated data and policy analysis:** The federal regulators and the Government Sponsored Enterprises (including Fannie Mae, Freddie Mac, FHA) should analyze demographic and locality data to understand the impact of housing policies on the lives of Black and Latinx homeowners and communities, and low-income homeowners nationwide, and develop policies accordingly.

- **Targeted intervention:** Congress should fund targeted interventions, including legal services, housing counseling, and cash assistance to cover past-due debt in communities identified by the data analysis as likely to be the hardest hit by foreclosure.
- **CARES Act Expansion:** Congress should expand CARES Act protections to promote foreclosure prevention and preserve neighborhoods. The protections should apply to the private market, not just to federally backed mortgage loans, and should include automatic forbearances for delinquent borrowers, automatic and affordable repayment options, a stay of any foreclosure steps until after the homeowner has been offered all available loss mitigation options, and notice of borrower options, including communications for for limited English proficient borrowers.

Cohen's testimony will be presented on behalf of the National Consumer Law Center's low-income clients and 20 other national and local housing and civil legal-aid organizations across the nation. Read the full testimony at: <https://bit.ly/oversight-svcrs-cares>.

NCLC policy brief: A Looming Crisis: Black Communities at Greatest Risk of COVID-19 Foreclosure, July 2020

Report: Student Loan Borrowers Teetering on the Edge of Catastrophe after Having Tax Refunds Seized

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National Consumer Law Center contacts: Persis Yu (pyu@nclc.org) or Jan Kruse (jkruse@nclc.org)

Congress Must Act to Stop Snatching of Earned Income Tax Credits

Boston - This Tax Day, the National Consumer Law Center (NCLC) has released *Voices of Despair: How Seizing the EITC Is Leaving Student Loan Borrowers Homeless and Hopeless During a Pandemic*. The updated report builds on a 2018 NCLC report that compiled stories from dozens of borrowers recounting the hardship caused by the federal government's seizure of their Earned Income Tax Credits (EITC) because of defaulted student loans and lays out what Congress can do to remedy this destructive practice that is ripping families apart.

Since the initial report, NCLC has continued to hear from distressed borrowers who had their EITCs seized for defaulted student loans. Even after the passage of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which suspended all student loan collection activity until September 30, 2020, some borrowers are still losing the EITC that they and their families rely on. In the 2018 report, many borrowers described the things their growing children would have to do without (including school clothes and food). Two years later, during the COVID-19 pandemic, the situation is even more dire: many student borrowers noted that the seizure of their EITC meant they were teetering on and in some cases, pushed into homelessness.

“The loss to these families is heartbreaking and infuriating,” **said Persis Yu, National Consumer Law Center attorney, director of NCLC’s Student Loan Borrower Assistance Project, and author of the report.** “The Earned Income Tax Credit helps lift extremely poor working parents and their children out of poverty. Robbing families of these funds is counterproductive and makes absolutely no sense. During a pandemic, it is even more catastrophic and can literally mean the difference between homelessness and keeping a family safe and healthy at home. Members of Congress have known about the problem for years so why aren’t they doing more to take action to help these families?”

The Center on Budget and Policy Priorities (CBPP) credits the EITC with pulling about 3 million children out of poverty and reducing the severity of poverty for another 6.1 million children in 2018 aloner.

Taking the EITC also compounds the harms borne by low-income borrowers and borrowers of color, many of whom were denied the promised benefits of education. For example, many students were lured to attend a predatory school or a school that closed in mid-course.

Students of color are disproportionately impacted by student loan debt. “Student loan debt is a critical racial justice issue. Borrowers of color are not only more likely to borrow from the federal government to pay for their postsecondary education than their white peers, but they also take longer to pay back their loans and are significantly more likely to face default,” **said Yu.** “The government’s coercive collection tools, such as seizing the Earned Income Tax Credit, hits borrowers of color the hardest and drains vital resources from communities of color. It should not take a pandemic to realize that borrowers need this money to survive.”

Key Recommendations

To stop this draconian and counterproductive practice, the report calls for:

- Congress to ban the seizure of the EITC;
- Department of Education to reimburse all borrowers whose tax refunds were taken for tax year 2019; and
- An overhaul of the country’s draconian student loan debt collection and default policies, which threaten borrowers’ financial security.

In 2019, U.S. House of Representative Sylvia Garcia (D-TX) along with 12 co-sponsors introduced the Stop EITC and CTC Seizures Act which would protect student loan borrowers from having their EITC and Child Tax Credit seized to repay their defaulted federal loan.

“Congress needs to act now to put a hard stop to this punitive and morally bankrupt federal government practice,” **said Yu.**