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

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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 J**esse 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
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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

FOR IMMEDIATE RELEASE: JULY 15, 2020
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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

FOR IMMEDIATE RELEASE: JULY 15, 2020

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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**.

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

Brief: After Payday Loans: How do Consumers Fare When States Restrict High-Cost Loans? Oct. 2018

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
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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

The Leadership Conference on Civil and Human Rights, National

Maryland Consumer Rights Coalition, Maryland

Missouri Faith Voices, Missouri

National Association of Consumer Advocates, National

National Association of Consumer Advocates (NACACO), Colorado

National Consumer Law Center (on behalf of its low income clients), National

New Jersey Citizen Action, New Jersey

Public Good Law Center, National

Texas Appleseed, Texas

THE ONE LESS FOUNDATION, Pennsylvania and Colorado

Tzedek DC, District of Columbia

Virginia Citizens Consumer Council, Virginia

Virginia Organizing, Virginia

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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.

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)

Washington, D.C. The National Consumer Law Center commends the leadership of U.S. Senator Ron Wyden, who joined with Senators Richard Blumenthal, Mazie Hirono, and Chuck Schumer to introduce *The Emergency Broadband Connections Act of 2020,* which would help low-income households afford home broadband service.

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

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