Statement Regarding CFPB Revamp of Mortgage Rules That Will Protect Lenders from Legal Liability for Peddling Unaffordable Loans, Increase Foreclosures, and Create Instability in the Mortgage Market

FOR IMMEDIATE RELEASE: December 10, 2020

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

Washington, D.C. – Today, the Consumer Financial Protection Bureau (CFPB or Bureau) released two final rules revising the standards for determining a borrower’s ability to repay a mortgage and further limiting lender liability despite the lessons of the previous financial crisis, which led to millions of unnecessary foreclosures. By removing protections and creating a new exception to the rule, the new “qualified mortgage” (QM) rules will protect lenders from legal liability, increase foreclosures, and lead to instability in the mortgage market. The Biden administration must revisit these rules immediately, given the short timeline until the rules become effective.

The following is a statement from National Consumer Law Center attorney Alys Cohen.

“The Consumer Financial Protection Bureau’s new rules will dramatically change the mortgage market to the detriment of homeowners, especially lower-income Black families who have historically been the target of predatory loans. The Biden Administration must review and change these rules quickly to reflect the intent of Congress that each homeowner is individually reviewed for an ability to repay a mortgage loan.

“The new rules come at the worst time as families are struggling with the economic fallout from COVID-19 and will likely increase foreclosures beyond the flood already expected from the pandemic. While providing more avenues for new credit, many of the new loans made will be neither safe nor affordable. Borrowers with small, more expensive loans will be especially exposed to unsustainable lending, which will lead to some losing their homes.

“Both the CFPB’s new approach to general Qualified Mortgages (QM), establishing ability to repay based on price rather than a borrower’s situation, and its new ‘seasoned QM’ rule, establishing ability to repay based on three years of loan payments, do not measure an individual borrower’s capacity to make payments. Homeowners with unaffordable loans sanctioned by the new rules will not be able to rely on the ability to repay rule to help prevent a foreclosure.

“The Bureau failed to adequately consider reasonable alternatives to its general QM proposal, including extending the current approach of incorporating lending standards with compensating factors from Fannie Mae and Freddie Mac or a more holistic measurement of ability-to-pay based on a borrower’s household budget or cash flow. And the CFPB’s rulemaking exacerbates the vulnerability of borrowers with small, high-priced mortgage loans, largely made to borrowers who are lower-income and people of color.
“The Bureau’s “seasoned QM” rule also gives lenders a free pass from liability where a borrower makes payments for three years even if the borrower can show the loan was unaffordable and the payment were made despite significant hardships. Many homeowners who receive unaffordable loans do make payments, often for several years, because trying to save their home is a top priority for families. They often do so by taking on hardships that are detrimental to their families, including taking on additional work, borrowing money, going without medicine or enough food, and not paying utility bills. In preventing homeowners from challenging their unaffordable loans after three years of payments, the CFPB has exceeded its legal authority. The language of Dodd-Frank is directly contrary to the rule’s approach because it allows homeowners to defend against a foreclosure for the life of the loan, not just the first three years.

“Combined, the new CFPB rules likely will lead to more foreclosures while letting mortgage lenders off the hook for peddling loans that people cannot afford to pay over the long term.”

The General QM Final Rule and the Seasoned QM Final Rule will take effect 60 days after publication in the Federal Register. The General QM Final Rule will have a mandatory compliance date of July 1, 2021.

Links

CFPB Qualified Mortgage final rule; NCLC and CFA comments to CFPB proposed rule, Sept. 8, 2020; Civil Rights and Consumer Group Comments.

CFPB Seasoned Qualified Mortgage final rule; NCLC, CFA and Prosperity Now comments to CFPB proposed rule, Oct. 1, 2020

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**U.S. Supreme Court to Hear Case on December 8 that Could Open the Floodgates to More Invasive Robocalls**

FOR IMMEDIATE RELEASE: Dec. 7, 2020
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Washington, D.C. – Tomorrow, the U.S. Supreme Court is scheduled to hear oral arguments in *Facebook v Duguid*. The Court’s decision, expected by next spring, could either uphold Americans’ right to stop unwanted robocalls and robotexts to their cell phones or render the phones useless by making many invasive autodialed calls unstoppable. In 2019, Americans were besieged with nearly 60 billion robocalls, the vast majority of them scam, telemarketing, or debt collection calls. If the Court defines an automated telephone dialing system (autodialer) as narrowly as Facebook requests, it will gut Congress’ efforts to protect consumers from a flood of unwanted autodialed calls and threaten public safety.
“A ruling in favor of Facebook would cripple the primary bulwark that we have in the United States against invasive robocalls and texts: the Telephone Consumer Protection Act (TCPA). If there is no requirement for caller consent for automated calls and texts to cell phones, then consumers will have no ability to stop the unwanted calls,” said National Consumer Law Center Senior Counsel Margot Saunders.

Congress passed the TCPA in 1991 to protect consumers, businesses, and telecommunications systems from unwanted and intrusive robocalls. The linchpin of the TCPA is the prior consent requirement for automated calls. Congress specifically intended to shield Americans from abusive calls by permitting autodialed calls to cell phones, hospital emergency lines, businesses, and other protected lines only when the receiving party has expressly consented to the automated calls (except in cases of emergency)—giving the people being called control over their phones.

As noted in an Amicus Brief submitted to the Court by the National Consumer Law Center, Consumer Federation of America, and Consumer Reports, if the Court agrees with Facebook, “The primary safeguard against the constant invasion of privacy and threat to public safety—consent—will fall. Consent will no longer be required to make these calls, withdrawing consent will be ineffective, and begging for the calls to stop will not bring relief. Callers that refuse to stop when asked will not be subject to either private or public enforcement. In essence, the Petitioner’s [Facebook] position renders the TCPA’s protection against autodialed calls meaningless.”

If the Supreme Court guts the restriction on autodialed calls, it will be up to Congress to amend the statute to restore this protection.

Get more information on NCLC’s work to stop robocalls.

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New NCLC, CRL Report Proposes Roadmap for Student Borrowers to Survive the COVID Debt Crisis

FOR IMMEDIATE RELEASE: November 23, 2020

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WASHINGTON, D.C. – Today, the Center for Responsible Lending (CRL) and the National Consumer Law Center (NCLC) released a policy report illustrating a path out of the student debt crisis and proposing solutions for a more equitable and efficient higher education system. Road to Relief: Supporting Federal Student Loan Borrowers During the COVID-19 Crisis and Beyond lays out a roadmap with four recommendations for policymakers to provide substantial relief to student borrowers as they navigate the COVID-19 public health crisis and recession, allowing them to emerge with greater financial stability. Nearly all of the proposed actions can be done through executive action and build on the campaign promises of President-Elect Biden. The report is available at: https://bit.ly/Road-to-Relief-Student-Debt
“The time to cancel student debt and provide student borrowers with significant relief is now. Short-term payment suspension alone will not help struggling borrowers who have lost their jobs or who were already in default or serious delinquency before the public health crisis started,” said CRL Federal Advocacy Director and Senior Counsel Ashley Harrington. “Communities of color are bearing a disproportionate burden from COVID-19 and its economic fallout – as they had during the Great Recession and other crises. For many, especially Black and Latino borrowers, repayment has been too onerous and too long, preventing them from achieving financial security even under normal circumstances. To address our current recession and stimulate economic recovery, we urge President-Elect Biden to immediately follow these simple steps and prevent further financial devastation for vulnerable borrowers and communities.”

“The student loan system was broken long before the pandemic hit, disproportionately strapping borrowers of color, women, and veterans with $1.6 trillion in unaffordable debt. Now these same communities are hit the hardest by the devastating impact of COVID-19,” said Persis Yu, director of the National Consumer Law Center’s Student Loan Borrower Assistance Project. “The federal government must stop borrowers from continuing to drown in student loan debt caused by a system that has been inequitable and broken for decades. Abusive debt collection practices seize critical funds, such as Social Security and the Earned Income Tax Credit, and with no time limit on collection these practices can follow borrowers to the grave. This report gives President-Elect Biden the roadmap needed to clear the books by implementing widespread debt cancellation and provide all student loan borrowers with an affordable path forward.”

Specifically, the policy report recommends:

- **Across-the-board debt cancellation.** All federal student loan borrowers (including PLUS loan borrowers and those with commercially- or institutionally held loans) should have their balances reduced. This ensures that the benefits of cancellation reach the most vulnerable borrowers and spurs economic recovery.

- **Clearing the books of bad debts.** After cancellation, the federal government should clear the books of debts currently held by borrowers that have been in repayment for longer than 15 years, debts that have been in default for 3 or more years, and debts held by borrowers who have been receiving federal means-tested benefits for 3 or more years.

- **Restoring limitations on collections.** Federal student loans should have common-sense consumer protection standards. Guardrails should include a statute of limitations, preventing the seizure of the Earned Income Tax Credit and Social Security benefits, limitations on the amount that can be seized, and limits on how long creditors can involuntarily collect. Student loans should also be dischargeable in bankruptcy.

- **Making repayment truly affordable and budget-conscious.** All borrowers on an income-driven repayment (IDR) plan or more than 30 days delinquent at the end of the COVID-19 pandemic should be auto-enrolled in a new IDR plan, the Affordable Budget-Conscious (ABC) repayment plan, that sets monthly payments based on no more than 8% of discretionary income above 250% of the poverty line.

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**CFPB Debt Collection Rule a Mixed Bag for**
Consumers

FOR IMMEDIATE RELEASE: October 30, 2020

One-Third of U.S. Adults with a Credit Report Have Debt in Collection

Washington, D.C. - The National Consumer Law Center, on behalf of its low income clients, Americans for Financial Reform Education Fund, Center for Responsible Lending, Consumer Federation of America, and the National Association of Consumer Advocates, expressed relief that the Consumer Financial Protection Bureau's final debt collection rule drops or punts on some of the most harmful parts of its proposal, but advocates still opposed the high call cap that will permit telephone harassment and noted with concern that the rule could lead to a large increase in unwelcome electronic communications.

In a victory for consumers, the final rule drops some of the more outrageous elements of the proposed rule that advocates had criticized, including a free pass for collection attorneys who make false, deceptive, or misleading representations. The CFPB also delayed until December the portions of the rule governing time-barred or “zombie” debt.

The portion of the rule finalized today is focused on telephone calls and electronic communications. Concerning parts of the rule will allow debt collectors to:

- harass consumers with a call every day of the week, and several calls a day for consumers who owe multiple debts,
- use emails, text messages, and social media private messages without consumer consent, which could lead to more electronic harassment or to missed communications if sent to old email addresses.

The 653-page rule is quite complicated and will take some time to decipher to assess the full impact.

The Bureau will also allow collectors to leave voicemails for consumers, which could potentially be heard by third parties, but the final rule omits permission to leave messages with third parties or on postcards and also now forbids the message to include the consumer’s name or to mention “an account.”

The final rule gives consumers more control in some respects, by allowing them to tell a collector to “stop calling” and by requiring every electronic message to include information about how to opt out.

The CFPB will finalize a second part of its debt collection rulemaking in December that will include time-barred debt collection, parking debts on credit reports, model notices to consumers about validating the debt, and language access provisions.

The Urban Institute has documented that, even before the COVID-19 pandemic, 31% of adults in the United States with credit reports have debt in collection. That number goes up to 42% for those residing in communities of color.

“We appreciate that the CFPB has modified many aspects of the rule in response to our concerns, but with millions of Americans scraping by amid the economic fallout from a global pandemic, the rule still allows debt collectors to make excessive, harassing calls,” said National Consumer Law Center attorney April Kuehnhoff. “The last thing struggling families need right now is to be
harassed by a debt collector.”

“We applaud the CFPB for dropping the safe harbor that would have widened the door for collectors to use state courts to sue consumers on wrong or incomplete information,” said Center for Responsible Lending policy counsel Kiran Sidhu. “But, the CFPB’s final rule does not do enough to protect communities of color, especially during COVID-19, who are still struggling to recover from the Great Recession because of discriminatory exclusion from the financial mainstream and predatory inclusion into high-cost loan products.”

“Vulnerable consumers are facing unprecedented financial challenges in the wake of the pandemic,” said Rachel Gittleman, financial services outreach manager with the Consumer Federation of America. “Although the CFPB dropped or delayed some of the most harmful parts of the proposed rule, it has fallen short to protect consumers, especially consumers of color who have a drastically larger share of debt in collections than white communities, from harassing calls and electronic communication.”

“The devil is in the details, and we will have to scour this complicated rule to make sure that it does not open up new fronts for debt collectors’ pervasive and abusive treatment of consumers,” said Christine Hines, legislative director at National Association of Consumer Advocates. “Through the guise of modernization, the debt collection rule could open the gate for collectors to aggravate vulnerable consumers with even more harassment and a flood of electronic communications.”

“As we face a dire and worsening economic crisis, we will be keeping a close eye on the ‘zombie debt’ rule, coming in December, which could leave consumers more vulnerable to deception and harassment,” said Linda Jun, senior policy counsel at Americans for Financial Reform Education Fund. “Collectors should not be allowed to bring expired debt back to life by luring people into making a small payment that revives a debt that would otherwise be past the timeline for a lawsuit.”

The debt collection rule will impact at least 68 million people in the United States. More than 233 consumer, civil rights, community, and civil legal aid organizations in all 50 states and the District of Columbia submitted comments opposing the proposed rule, noting that it would lead to more harassment of consumers by abusive debt collection and obscure consumer rights under the federal Fair Debt Collection Practices Act. The final rule addresses some, but not all, of those concerns.

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National Association of Consumer Advocates: Ira Rheingold (ira@consumeradvocates.org); Christine Hines (christine@consumeradvocates.org)
Report: Which States Put Families at Risk of Poverty During the Covid Crisis?

FOR IMMEDIATE RELEASE: OCTOBER 29, 2020
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Download the full report, state maps and state-specific information: https://www.nclc.org/issues/report-still-no-fresh-start.html

Boston – As millions of families suffer job loss or struggle to pay bills during COVID-19, states have an important role in protecting them from seizure of essential wages and property to pay old debts. A new state survey from the National Consumer Law Center finds that not one jurisdiction’s laws meet basic standards so that debtors can continue to work productively to support themselves and their families. No Fresh Start 2020: Will States Let Debt Collectors Push Families into Poverty in the Wake of a Pandemic? surveys the exemption laws of the 50 states, the District of Columbia (D.C.), Puerto Rico, and the Virgin Islands that protect wages, assets in a bank account, and property from seizure by creditors. “By reforming their exemption laws, states will not only protect families from destitution but will promote economic recovery by enabling families to spend their money in state and local communities,” said Carolyn Carter, National Consumer Law Center deputy director and author of the report.

The COVID-19 pandemic has exposed the enormous gaps in the states’ exemption laws. Only when stimulus checks were deposited in families’ bank accounts and garnished by debt collectors did many states realize that they had no state laws to protect a basic amount in a family’s bank account. Once the pandemic recedes, families struggling to get back on their feet are likely to face a wave of debt collector lawsuits for medical bills, back rent, credit card debt, the balance due on repossessed cars, and even utility bills.

Weak exemption laws also exacerbate the racial wealth gap. Communities of color are disproportionately burdened by debt, disproportionately subject to judgments in collection lawsuits, and disproportionately subject to wage garnishment. Because of longstanding discrimination, Black and Latinx households have less wealth and less of a safety net to draw on during challenging financial times. Communities of color have disproportionately suffered the effects of the pandemic — not just job loss and financial hardship but also illness and death.

States that made improvements since NCLC’s report in 2019: California, Idaho, Maryland, Minnesota, Mississippi, New Hampshire, Utah, and Virginia. In addition, in California, Colorado, Connecticut, D.C., Illinois, Maine, Massachusetts, North Dakota, and Washington, which base their wage garnishment protection on the higher of the state or federal minimum wage, the amount protected from garnishment increased because of increases in the state minimum wage.

Despite the importance of state exemption laws, this National Consumer Law Center report finds that not one state meets five basic standards:

- Preventing debt collectors from seizing so much of the debtor’s wages that the debtor is pushed below a living wage,
Allowing the debtor to keep a used car of at least average value;
Preserving the family’s home—at least a median-value home;
Preserving a basic amount in a bank account so that the debtor has minimal funds to pay such essential costs as rent, utilities, and commuting expenses, and
Preventing seizure and sale of the debtor’s necessary household goods.

**Better states:** High B grade states are Massachusetts and Nevada. Jurisdictions earning a solid B are California, Texas, Puerto Rico, and the District of Columbia. Low B ratings are: New York, Oklahoma, and South Carolina, while Kansas, North Dakota, and Wisconsin each earned a high C.

**The worst states** allow debt collectors to seize nearly everything a debtor owns, even the minimal items necessary for the debtor to continue working and providing for a family. Earning an F grade are: Georgia, Kentucky, Michigan, New Jersey, and Utah. Close on the failing heels with a low D grade are: Alabama, Arkansas, Indiana, Maryland, Missouri, Pennsylvania, and Wyoming.

**Key recommendations** include automatically updating exemption amounts for inflation and making them self-enforcing to the extent possible so that the debtor does not have to file complicated papers or attend court hearings. (See the report for the full list of recommendations.)

Model language for states to achieve these goals is provided in the National Consumer Law Center’s *Model Family Financial Protection Act*. The model law also includes steps that states can take to reduce the pervasive abuse of the court system by debt buyers. Seizure of debtors’ wages and property would not be such a problem if debt buyers did not churn out such an endless stream of judgments on old, poorly documented debts—many of them not even owed.

By updating exemption laws, states can prevent over-aggressive debt collectors from reducing families to poverty. These protections also benefit the state by keeping workers in the workforce, helping families stay together, and reducing the demand on funds for unemployment compensation and social services. Overall, both creditors and society at large benefit when consumers have the financial resources to improve their earning power and meet their new and old obligations in an orderly manner.

The report includes stories of real people harmed by draconian and dubious debt collection judgments, each state’s overall rating, and ratings for the five primary asset-preservation standards as well as appendices with specific exemption information on all 53 jurisdictions. Also included: recommendations for the minimal exemption standards that will allow a debtor to continue to work to support a family.

*For more information on NCLC’s body of work related to fair debt collection, visit:* [www.nclc.org/issues/debt-collection.html](http://www.nclc.org/issues/debt-collection.html).

**Related NCLC materials**

- Wage Garnishment for Consumer Debts: Reforms Needed in the Current Covid Crisis and Beyond
- Coronavirus Emergency: Consumer Debt Collection Lawsuits – How States Can Help
- *The Debt Machine: How the Collection Industry Hounds Consumers and Overwhelms the Courts*
- Model Family Financial Protection Act (model state law)
- What States Can Do to Help Consumers: Debt Collection
- State Debt Collection Fact Sheets
- *Fair Debt Collection and Collection Actions* (legal treatises):
New OCC Rule Protecting Predatory Lenders Could Face Legal Challenge

FOR IMMEDIATE RELEASE: October 27, 2020
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Rule that evades state interest rate laws will severely impact low-income and communities of color

WASHINGTON, D.C. – The regulator of the nation’s largest banks has finalized a rule that allows predatory lenders to do an end-run around state interest rate caps, exposing people to loans in excess of 100% APR that violate state rate limits. Merely by putting a bank’s name on the fine print of the paperwork, predatory lenders could claim that the loan is a bank loan exempt from state rate caps.

“Today’s rule takes us back to the time 20 years ago, when payday lenders were evading state interest rate caps merely by putting a bank’s name on the paperwork. The OCC’s rule protects predatory online lenders that are charging 160% or more in violation of state interest law, and eviscerates power that states have had since the time of the American Revolution to protect people from predatory lending,” said Lauren Saunders, associate director of the National Consumer Law Center. “The OCC’s rule would prohibit courts from looking behind the fine print to the truth about which party is running the loan program and is the “true lender.”

The rule would protect predatory lenders from state enforcement, such as the recent lawsuit by the District of Columbia (D.C.) attorney general, which sued Elevate for charging 99% to 251% in violation of DC’s rate caps, and potential enforcement as a result of California’s investigation into LoanMart, an auto title lender that uses rent-a-bank schemes to charge 170% APR in states like California where that rate is illegal. Currently, 45 states and D.C. have interest rate caps on at least some installment loans to protect residents from high-cost predatory lending.

“The OCC has already been sued by state attorneys general for its first attempt to protect predatory rent-a-bank lenders, and I expect the agency will be sued once again over this rule, which far exceeds the OCC’s authority to take away states’ power to protect people from predatory lending.” Saunders added. “The OCC claims that it will not allow predatory lending, but it is already allowing Axos Bank to help predatory small business lenders evade state rate caps for loans up to 139% APR that are not only devastating to small businesses but even put the owner’s home in foreclosure.”

“With this rule, the OCC is quite simply throwing the doors open to predatory lending nationwide, including in states that have enacted laws to specifically protect their citizens from the debt traps created by unaffordable, high-cost loans,” said Linda Jun, senior policy counsel at Americans for Financial Reform. “Instead of shielding vulnerable consumers, federal regulators are
sanctioning schemes designed to outflank interest rate caps and other protections that are especially critical for families as they weather the ongoing economic fallout from the COVID-19 pandemic.”

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**Consumer Groups Take on Facebook at the U.S. Supreme Court to Stop Deluge of Robocalls**

FOR IMMEDIATE RELEASE: October 26, 2020

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*National Consumer Law Center, Consumer Federation of America, and Consumer Reports submit amicus in Duguid v. Facebook*

WASHINGTON, D.C. — Unwanted robocalls invade the privacy of Americans, diminish the usefulness of cell phones, and can threaten public safety. Yet Facebook wants the U.S. Supreme Court to so narrowly define prohibitions on calls made to cell phones with an automated telephone dialing system (an autodialer) that it would nullify Congress’ efforts to protect consumers from unwanted autodialed calls, according to an amicus brief submitted late last Friday by the National Consumer Law Center, Consumer Reports, and the Consumer Federation of America to the U.S. Supreme Court in *Facebook v Duguid*.

By enacting the Telephone Consumer Protection Act (TCPA) in 1991, Congress demonstrated its intent to protect consumers, businesses, and telecommunications systems from unwanted and intrusive calls. The linchpin of the TCPA is the prior consent requirement. Congress specifically intended to safeguard Americans from abusive calls by permitting autodialed calls to cell phones, hospital emergency lines, and other protected lines only with the prior express consent of the receiving party (except in cases of emergency). The elegance of this construct, which requires consent for calls to cell phones and other protected numbers (including hospital, emergency, and poison control lines), is that it gives the people being called control over their phones.

“Facebook hopes to render the TCPA’s restriction on autodialing meaningless by convincing a majority of the Justices that it applies only to equipment that is no longer in use,” said Margot Saunders, senior counsel at the National Consumer Law Center. “A ruling in Facebook’s favor would open Americans up to a deluge of robocalls that they cannot stop.”

The Second, Sixth, and Ninth Circuits have issued common-sense decisions finding that the TCPA’s definition of an autodialer includes systems that store numbers on a list and dial them. Facebook and its supporters argue that the definition only includes dialers that dial random or sequentially
generated numbers. But unless the caller is calling from a list, the caller has no way of ensuring that it is only calling people who have consented—as Congress intended.

The rules regarding consent are relevant only if the caller has a list of stored numbers for parties that have consented to autodialed calls.

“The facts are clear — if these calls can only legally be made with the recipients’ prior agreement, they can only be made to those people’s numbers, not to random numbers,” said Susan Grant, CFA’s Director of Consumer Protection and Privacy. “Facebook’s argument is not based on the statute or the clear intent of Congress and, if it is accepted, we’ll be flooded with unwanted and unstoppable autodialed calls.”

The calling industry and the trade groups lobbying on their behalf support Facebook’s position, because they want to make cheap robocalls, billions of them, without worrying about consent. If the Court adopts the definition pressed by Facebook, autodialed calls and texts to cell phones and other protected lines will be virtually uncontrollable. It would eliminate protections against unwanted calls for all non-telemarketing texts to all cell phones. Business cell phones would be entirely unprotected from all automated texts (even those involving telemarketing), and from all automated calls that do not include a prerecorded voice. The primary safeguard against the constant invasion of privacy and threat to public safety—consent—would fall.

“For years, robocalls have invaded consumers’ privacy and subjected us all to incessant harassment,” said George Slover, senior policy counsel at Consumer Reports. “Now, callers are trying to gut the Telephone Consumer Protection Act, a key privacy statute that has helped rein in these unwanted robocalls. We urge the Supreme Court to uphold the 9th Circuit’s decision, so that consumers have some control over the robocalls they receive.”

Oral arguments in Facebook v. Duguid are scheduled for December 8.

For more information, including tips for consumers to reduce robocalls, visit NCLC’s Robocalls & Telemarketing page.

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Consumer Advocates Commemorate the 50th Anniversary of the Fair Credit Reporting Act

FOR IMMEDIATE RELEASE: October 26, 2020

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Washington, D.C. – Today marks the fiftieth anniversary of passage of the Fair Credit Reporting Act (FCRA). The following is the statement of National Consumer Law Center attorneys Chi Chi Wu, Ariel Nelson and Sarah Bolling Mancini.

“The FCRA was a landmark law for its time and the first truly significant financial privacy law in this nation. And in many ways, it is still one of the strongest, because it allows consumers to seek relief
in court on their own behalf without waiting for under-resourced or politically hobbled regulators to take action.

“The FCRA embodies several basic principles of fair information practices: The right to access information about ourselves, the right to know when that information is used against us, privacy protections to prevent inappropriate dissemination, the right to have information be accurate, and the right to correct errors. In the 50 years since the FCRA’s passage, we’ve seen the rise of the Computer Age, the Internet, the smartphone, Big Data, artificial intelligence and machine learning, and more. But the FCRA, by sticking to fundamental principles and broad standards, continues to provide critical protections to consumers. And its scope is wide, contrary to assertions of tech and data companies who might claim that the law does not apply to them simply because they use advanced technologies.

“But it would be too much to say this is a day of celebration. There are still numerous abuses and flaws in the system. Credit reports contain too many errors and the system is still biased against consumers trying to correct them. Data companies refuse to comply with the law, using tortured arguments that courts unfortunately sometimes accept. Errors by background check and tenant screening companies–like the reporting of expunged criminal records or another person’s criminal records–shut consumers out of jobs and housing. Credit reports and scores are misused for purposes for which they were never intended, such as employment, insurance, and even immigration. And credit scores reflect and perpetuate thorny racial disparities, playing a role in financially entrenching America’s original sin.

“Fundamentally, the credit reporting industry is inherently dysfunctional in its very nature, which accounts for many of its problems. It is an oligopoly of three private companies with the primary mission of generating profit, not of treating consumers fairly or furthering the public good. As the Equifax data breach starkly reminded us, consumers and our data are their commodity. Normal market forces for even oligopolies don’t apply – consumers are not the customers, so we cannot go to a competitor or opt out of the system if we are to survive and thrive financially. That is likely part of the reason that the credit reporting industry is often the number one source of complaints to the Consumer Financial Protection Bureau, including during this pandemic.

“To free our financial lives from this oligopoly, we need an alternative for credit reporting – a public credit registry option. In addition, we need reforms to stop the multitude of abuses and problems at both the “Big Three” credit bureaus (Equifax, TransUnion, and Experian) and other types of reporting agencies, such as criminal background check, tenant screening, and account screening companies. And we need to protect against watering down of the FCRA, either legislatively or by regulators.

“It’s been said that in the Information Age, “data is the new oil.” But this leaves out an important point – this is our data. These are our reputations. And it is our financial lives that depend on it. We should have better control over our data and better protection. The FCRA was a good start to protect consumers, but 50 years later, it’s time to do more.”
New Report: Using Bankruptcy to Discharge Criminal Justice Debt

FOR IMMEDIATE RELEASE

October 8, 2020

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Boston – A major barrier that keeps people in the United States from successfully reentering society long after an encounter with the criminal justice system is the burden of paying fines and fees. To help knock down this barrier, a new primer from the National Consumer Law Center guides bankruptcy and criminal defense attorneys on using bankruptcy to discharge criminal justice debt and help individuals avoid suspensions of drivers’ licenses and vehicle registrations.

“For most debtors, bankruptcy provides a fresh start in managing overwhelming debt. But for those with court debt, a new beginning is very difficult because many fees and fines are not dischargeable,” says Andrea Bopp Stark, National Consumer Law Center attorney and co-author of the report. “This limitation disproportionately affects people of color, particularly low-income African American communities that are over-policed and over-fined. Many cities use fees and fines to help fund their criminal justice systems and this burden has fallen on those least able to pay such debt, perpetuating a cycle of extraction and poverty in low-income communities. Hopefully, this Guide will help people, especially those with the least ability to pay, reduce their debt burden so they can start down a new path.”

Clearing the Path to a New Beginning: A Guide to Discharging Criminal Justice Debt in Bankruptcy reviews treatment of debt with use of Chapter 7 and Chapter 13 bankruptcy, an overview of which fines and fees are and are not dischargeable, and how to use the Bankruptcy Code’s automatic stay to assist those facing the consequences of nonpayment of court deb. It also suggests basic reforms needed to the Bankruptcy Code to truly help people restart their lives. The Guide includes excerpts of relevant statutes from the Bankruptcy Code, a sample discharge injunction violation motion, and a checklist for dischargeability of criminal debt in Chapter 7 bankruptcy.

Get more information on NCLC’s work on criminal justice debt.

LDF, ACLU of Michigan, National Consumer Law Center, and Michigan Poverty Law
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Detroit – Today, the NAACP Legal Defense and Educational Fund, Inc. (LDF), the American Civil Liberties Union of Michigan (ACLU), the National Consumer Law Center (NCLC), and the Michigan Poverty Law Program filed a federal class action lawsuit against Vision Property Management (Vision). The lawsuit was filed on behalf of financially challenged Detroit- and Flint-area residents to whom Vision promised a path to homeownership but are now trapped in contracts structured to fail. Vision primarily targeted Black consumers for its home purchase scheme, the lawsuit argues.

“Our complaint includes detailed allegations about how Vision operated almost exclusively in Black neighborhoods, profiting from communities that were hit hardest in the housing crisis and thwarting attempts to build wealth in the Black community,” said Jennifer A. Holmes, assistant counsel at LDF. “Our lawsuit seeks to remedy the damages caused to communities of color throughout the Greater Detroit region as a result of Vision’s practices.”

As detailed in the lawsuit’s 109-page complaint, Vision purchased approximately 1,000 foreclosed homes in Black neighborhoods, many of them dilapidated, and failed to invest in making those homes livable. Vision then sold many of these homes under contracts that obscured the true cost of buying and repairing the home. The terms of the contracts made it difficult for buyers to achieve homeownership while also allowing Vision to avoid responsibility for upkeep while would-be homeowners poured their money into making the homes livable.

“From Inkster to Flint to Ann Arbor to Detroit, Vision marketed to primarily Black, low-income people with high-interest land contracts for homes that were over-priced and in poor condition,” said Bonsitu Kitaba, ACLU of Michigan deputy legal director. “People who signed contracts with Vision were saddled with all the repairs, upkeep, insurance and taxes – all the responsibilities that come with homeownership – with none of the rights.”

“The harm Vision’s practices have caused to communities and people of color shows that vigorous enforcement of federal civil rights and consumer protection laws are needed now more than ever,” said Sarah Bolling Mancini, staff attorney at the National Consumer Law Center. “This is not the moment to abandon the goals of fair housing and safe lending. In the wake of the Coronavirus crisis, the need for strong federal and state protections will be even greater.”

There is a long history of housing and credit discrimination in Detroit and surrounding areas. For
years, housing companies have targeted Black communities for predatory lending schemes using deceptive terms. The long-term consequences have proven devastating, a massive reversal in minority homeownership rates and an erosion in Black wealth accumulation. These schemes, combined with the deeply concerning recent rollback of civil rights protections in the housing and financial sectors, have unjustly prevented many people of color from achieving long-term economic security.

“It is time to eliminate the predatory schemes that have exploited our Black communities. We commit to standing shoulder-to-shoulder with members of low-income communities of color who for too long have been targeted by unscrupulous predatory lenders,” said Lorray Brown, managing attorney and consumer law attorney at the Michigan Poverty Law Program.

Read the filed complaint here.