Stabilizing Consumer Finances During and After the Coronavirus Crisis in California
May 2020

In 2018, more than a quarter of all Californians had a debt in collection.[1] The increases in unemployment claims and general job loss due to COVID-19 will without question result in an explosion of debts in collection that will disproportionately impact the most vulnerable consumers who are least able to weather a financial crisis and whose consumer spending at local businesses underpins so much of the economy.

With consumer spending fueling almost 70% of the U.S. economy,[2] consumers are simply too big to fail. Consumer protection is a powerful and necessary economic development tool that will keep consumers in their homes, in their cars, able to return to work, and able to invest their wages in their local communities.

Consumer protection should be targeted where it is needed most: vulnerable consumers and communities, including low-income communities with a high proportion of laid-off low-wage workers; workers that continue to work on the front line during the crisis; communities of color and immigrant communities; older adults; and people with disabilities.

This relief should be granted in a self-executing and automatic fashion wherever possible. Cumbersome application processes and discretion on how or when to give relief all too often defeat the goals of relief or result in discrimination.

Vehicle Ownership and Auto Finance

Consumers tend to prioritize car payments, sometimes even over rent or a mortgage, because a car is the key to employment.[3] If a consumer has missed a car payment, this is a sign that their family is in economic crisis. Yet in California, **cars can be repossessed immediately after one missed payment**. The legislature should take additional action to ensure that Californians are able to go to work, school, and other essential appointments once the initial crisis has passed.

What's Been Done: The Governor's Executive Orders have made some progress in protecting California drivers. Thus far, the state has granted a 60-day extension for customers on several Department of Motor Vehicles deadlines, including for recently expired drivers' licenses and identification cards, to reflect public compliance with the COVID-19 stay at home order. The Governor has also suspended the imposition of late fees for expired vehicle registrations.

Emergency Measures Needed: Key measures still needed to assist California families include Banking Chair Limon's efforts to prohibit repossessions during the emergency and 180 days after; give borrowers the option to request loan forbearances in 90-day increments throughout the emergency; and require lenders to move missed payments to the end of the loan. These protections will serve as an excellent legislative bridge to keep folks in their cars between the immediate crisis and the longer economic downturn we are facing. NCLC appreciates the opportunity to work with the Chair's personal and committee staff to ensure that any forbearance program protects consumers and harmonizes with federal law.

Credit Reporting

The current crisis will damage the credit reports of tens of millions of consumers, and lower credit scores will impede Californians' ability to get affordable credit, jobs, and housing. The federal response to this looming credit reporting calamity has been weak, and states must step in to help their residents.

What's Been Done: The federal CARES Act's credit reporting provisions are inadequate to assist consumers. California has not yet implemented credit report reforms, but there are opportunities to protect consumer credit reports both during the emergency and during the longer term economic slowdown ahead.

Emergency Measures Needed: Consumers should be allowed to place "COVID-19 alerts" on their credit reports; for these consumers, credit scoring models should be prohibited from taking negative COVID-19 related information into account. Further, states should forbid lenders, employers, landlords, insurers, and other users of credit reports from considering negative COVID-19-related information in their decision making.

Long-Term Reforms to Bolster Families and the Economy: As the economic recovery may take a long time, most if not all of the negative information that will be added to consumer credit reports over the next several years will ultimately have its roots in the COVID-19 crisis. As such, California should strengthen its protections against using credit information in hiring decisions, forbid credit information from being used by landlords, and regulate the use of specialized tenant screening reports that can prevent consumers from obtaining new housing.

High-Cost Loans

At the best of times, payday lenders take advantage of vulnerable consumers desperate to keep a car running, or food on the table, with up to 460% interest loans.[4] These are not the best of times, and the pool of desperate consumers for payday sharks to prey on has increased dramatically. Consumers need protection from usurious interest rates during the immediate COVID-19 crisis and the economic downturn that Californians may be living with for years to come.

What's Been Done: While no specific COVID-19 emergency measures have been passed, California made important progress in 2019 in stopping predatory lending by enacting AB 539 (Limon), which capped interest rates on loans from $2,500 to $10,000. But payday loans remain legal in California and the crisis may make interest rates on other loans unaffordable even if the rates are under 36%.

Emergency Measures Needed: California should further limit interest rates and be vigilant in protecting consumers. Advocates have asked Governor Newsom for additional consumer protections with respect to loans below $2,500 until the state of emergency is lifted or for a minimum of 120 days (whichever is longer). During this crisis, among other things, interest rates on small dollar loans should be capped at 15% and balloon payments at the end of loans should be prohibited. The legislature could also, of course, enact this emergency protection.

Long-Term Reforms to Bolster Families and the Economy: California should eliminate triple-digit payday loans and cap interest rates on small loans at 36%. California also should stop high-cost lenders from evading California's interest rate caps by laundering their loans through out-of-state banks. The proposal to enchance the Department of Business Oversight and turn it into the Department of Financial Protection and Innovation will help protect Californians from predatory lenders and help further other goals in this issue brief.

Criminal Justice Debt

Criminal justice debt is disproportionately borne by low-wage workers and people of color—populations especially vulnerable to financial devastation caused by the pandemic. Many will lose jobs and be unable to pay criminal justice debts through no fault of their own. States must act so that inability to pay does not trap families in poverty or entangle them in the criminal justice system--especially at a time when outbreaks are spreading through jails and prisons. As unemployment rates rise and the economy continues downwards, people will be increasingly unable to pay criminal justice-related fines and fees—let alone food, healthcare and other basic necessities—through no fault of their own.

What's Been Done: California has taken several important emergency steps during the COVID-19 crisis, including suspending the collection of criminal justice debt and most other government-owed debts via wage garnishments, bank levies, and tax intercepts and providing (limited) free phone calls to people who are incarcerated. In order to keep criminal justice debt from pushing families into poverty during the coming economic crisis, more needs to be done.

Emergency Measures Needed: Key legislative actions should include suspending all fines, fees, and criminal justice debt collection and enforcement at both the state and county level and ensuring that additional debts are not imposed on people during the crisis. Additionally, all private collection agencies contracted by the judicial court system and state entities should be prohibited from moving forward with calls for collection and the garnishment of wages.

Long-Term Reforms to Bolster Families and the Economy: As a general matter, fees should be eliminated entirely; these are regressive taxes imposed on people least able to pay. California took important action by prohibiting counties from imposing juvenile fees in 2018 when SB 190 went into effect; the state should now take additional steps by passing SB 1290 and eliminating previously imposed juvenile debt, and by prohibiting fees throughout the criminal legal system, such as by passing SB 144. Ending government reliance on fees is especially important now in light of the risk that cash-strapped counties may otherwise feel pressure to raise revenues on the backs of poor and already marginalized families. Punitive fines, if used at all, should be structured so that they are proportional and do not impoverish families or make it harder for people with criminal records to get back on their feet. There are a variety of state and court led reforms detailed in NCLC's What States Can Do: Criminal Justice Debt issue brief, ranging from creating affordable payment plans to ensuring that courts and law enforcement are funded through general revenues and not fines and fees. These steps can help protect Californians from being pushed into poverty by criminal justice debt.

Medical Debt

Appropriate testing, treatment and an eventual vaccine are key to ending the COVID-19 crisis. Many Californians who do not qualify for Medi-Cal, lack insurance, or have insurance with high out-of-pocket costs may fear accruing significant medical debt. These fears may make consumers reluctant to seek COVID-19 testing and treatment, which will exacerbate the crisis. During the likely long and painful economic recovery from the crisis, California should build on its strong health care consumer protections to reform the collection of medical debt and strengthen hospital Financial Assistance Policies (FAPs) so that Californians who have lost a job and insurance are not pushed into poverty by medical debt.

What's Been Done: California has taken several strong measures in response to the crisis, including creating a special enrollment period to purchase insurance through Covered California, adding flexibility regarding prescription drug coverage and prior authorizations, expanding telehealth access, and expanding coverage for COVID-19 testing. Yet more can be done to protect vulnerable consumers.

Emergency Measures Needed: Fears over medical debt may make consumers reluctant to seek COVID-19 testing and treatment, which will exacerbate the crisis. California must make clear that no one will be punished for seeking the care they need. California should adopt additional consumer protections to eliminate patient cost-sharing requirements for any testing or treatment related to confirmed or presumptive cases of COVID-19, during the state of emergency and after the state of emergency ends. During the state of emergency, consumer protections must be implemented for all medical debts, which could be extended once the crisis has passed.

Long-Term Reforms to Bolster Families and the Economy: NCLC's What States Can Do to Help Consumers: Medical Debt issue brief maps out a number of possible long-term reforms to strengthen state financial assistance policies and to implement fair restrictions on collection of medical debts.

Homeowners

As the coronavirus emergency causes the shutdown of cities and towns and forces businesses to close, millions of consumers are facing a sharp decrease or loss of their income for the foreseeable future. Without stable housing, people will be unable to avoid infection by practicing social distancing and those who get a mild infection will not have a place to convalesce where they can avoid infecting others. As the economy recovers from the pandemic homeowners returning to work will face substantial arrears that accrued during months of unemployment. Maintaining housing is more important than ever, both during the COVID-19 crisis and the looming economic crisis.

What's Been Done: Governor Newsom took swift action in issuing an early executive order that authorized local governments to halt evictions for renters and homeowners and slowed foreclosures. Initially, the protections were in effect through May 31, 2020, unless extended. The order also requested that banks and other financial institutions halt foreclosures and related evictions during this time period. Following this executive order, and another that expanded its emergency authority, the Judicial Council of California went much further, placing on hold nearly all evictions in the state, effectively suspending all unlawful detainer actions until 90 days after California's COVID-19 state of emergency ends.

Emergency Measures Needed: These actions will do a great deal to protect Californians and allow them to stay in their residences. However, the legislature should consider actions that go beyond these initial efforts to protect Californians as the state recovers from the crisis. Specifically, the Legislature should enact a forbearance program for mortgages to help Californians weather the COVID-19 emergency in their homes. NCLC supports Chair Limon's efforts to create an effective forbearance program for mortgages that consumers and lenders can live with so that Californians do not lose their homes because of this crisis. NCLC's recently updated Coronavirus Emergency: Mortgage Relief for Consumers - How States Can Help issue brief lays out a variety of state legislative actions to help consumers stay in the homes they own.

Long-Term Reforms to Bolster Families and the Economy: Long-term reforms the legislature could implement include requiring more judicial involvement in the foreclosure process, which can include effective foreclosure mediation.

Debt Collection

Debt collection problems are always rampant and the crisis has exacerbated these problems. Wage and bank account garnishments, including garnishment of federal stimulus payments, can stop families from paying for food, utilities, rent, medicine, and other basic needs at a time when many have lost income, frustrating economic recovery. Limitations on court access and stay-at-home advice can impede access to courts, to assistance with self-representation, and to legal representation.

What's Been Done: Governor Newsom signed an Executive Order that stops garnishment of any federal, state, or local government financial assistance granted in response to the COVID-19 pandemic. This includes economic impact payments under the CARES Act. As a result, California has one of the strongest protections in the nation to protect stimulus funds from garnishment by debt collectors or offset by banks.

Emergency Measures Needed: Court traffic creates a substantial risk of spreading the virus to litigants, attorneys, court personnel, and the public. Until the state of emergency is lifted, California should, among other things, stay enforcement of all existing judgments of consumer debt for 120 days after the emergency.

Long-Term Reforms to Bolster Families and the Economy: While California recently improved protection of bank accounts from garnishment, the state should increase the amount of wages protected from garnishment--California received only a "C" grade in NCLC's recent *No Fresh Start* report on wage garnishment. NCLC's What States Can Do to Help Consumers: Debt Collection lays out a range of other options for making debt collection lawsuits more fair, addressing the problems posed by stale, time-barred debt, and protecting consumers' basic income and assets so families can recover. The issue brief has links to model law language on how to protect consumers.

Utility Services

Nearly 1 in 3 U.S. households faced challenges in paying energy bills or keeping their homes heated or cooled in 2015, as did 50% of households with less than $20,000 in annual income. Those numbers will almost certainly get worse as unemployment numbers increase. It is in no one's interest for the homes of vulnerable households to become unsafe and uninhabitable because there are insufficient utilities due to an economic downturn outside of consumer control.

What's Been Done: The California Public Utilities Commission (CPUC) determined in March that energy, water, sewer, and communications companies under CPUC jurisdiction should halt customer disconnections for non-payment as a result of the State of Emergency called by Gov. Gavin Newsom due to COVID-19. The Governor then requested that CPUC monitor measures undertaken by public and private utility providers to implement customer service protections for critical utilities, including but not limited to electric, gas, water, internet, landline telephone, and cell phone services. Currently, CPUC is monitoring these issues and reporting back to the administration on a weekly basis.

Emergency Measures Needed: The legislature should consider banning shut-offs during the emergency by unregulated utility service providers and prohibiting all utilities from imposing late fees or engaging in negative credit reporting. Affordable electric, gas, water, sewer, and telecommunications (including broadband internet) service are essential to keeping consumers safe and connected to their communities. Even as shelter-at-home orders lighten, our most vulnerable Californians will need to remain indoors to protect their health. As such, protections will be needed for a duration of time following the immediate emergency.

Long-Term Reforms to Bolster Families and the Economy: NCLC's What States Can Do to Help Consumers: Energy Insecurity issue brief maps out a number of reforms to increase energy security for Californians, from enacting discount rates or Percentage of Income Payment Plans for consumers at or below 60% to 80% of median income, to eliminating deposits for most residential customers.

Endnotes

[1] Debt In America: An Interactive Map, Urban Institute
[2] St. Louis Federal Reserve, Shares of gross domestic product: Personal Consumption Expenditures.
[3] A record 7 million Americans are 3 months behind on their car payments, a red flag for the economy. *Washington Post*, February 12, 2019.
[4] U.S. Payday Interest Rates, Center for Responsible Lending, February, 2019.

About NCLC:

The nonprofit National Consumer Law Center® (NCLC®) works for economic justice for low-income and other disadvantaged people in the U.S. through policy analysis and advocacy, publications, litigation, and training.