Center for Responsible Lending

State Consumer Protection Response to the COVID-19 Crisis

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The COVID-19 crisis is having profound financial impacts on families across the country and on the economy overall. With businesses shuttered, and over 22 million unemployment claims filed in the first month of the crisis alone, it is hard to overstate the financial instability and hardship the crisis has produced. These impacts will worsen over time, as immediate income shortfalls result in missed or late bill payments, adding late fees and related penalties to swelling debt burdens. Some families will lose their homes to eviction or foreclosure, either now, or when protections available to some renters and homeowners expire. High cost lenders will increase the hardship of those who succumb to the false hope these lenders provide.

Historically, crises disproportionately impact communities of color and low-to moderate income communities because of structural and institutional discrimination. The COVID-19 crisis is proving to be no different. Both people of color and lower-income earners face disproportionate crisis-related job and income loss—yet have less family and community wealth to tap into to soften the blow. These communities urgently need prompt and comprehensive relief.

Unfortunately, federal relief efforts have utterly failed to meet this need. To date such relief has not provided substantive, comprehensive financial support for vulnerable families, who have lost jobs or had working hours reduced due to the crisis. The most lucrative relief, forgivable loans extended through the Small Business Administration, have left out communities of color almost entirely, and undocumented residents, families with mixed immigration status, and individuals with past involvement in the criminal justice system are expressly excluded from much or all of these programs.

In light of the federal level failures, it is incumbent upon the states to implement solutions that meet the needs of communities of color and low- and moderate-income families. This relief must both provide the means to stabilize their lives during the crisis and set them up to thrive thereafter. The success of any relief measure will be determined by how well it accomplishes these two objectives.

The policy recommendations offered here center those who have been hardest hit by an unpredictable economic downturn brought on by this unexpected global pandemic. Specifically, our policy recommendations center minimum wage and hourly workers, communities of color, undocumented people, older Americans, and gig economy workers.

As such, we see the following as guiding principles for state policy consumer protection responses to the COVID-19 crisis. Regulators and policymakers must be wary of industries and corporations offering false solutions which seek to prioritize profits over people. As many large businesses have gained access to zero-interest loan funds from the federal government, any credit offered to consumers must be affordable and low-cost—below 36% APR, and well below that rate where possible.

Take bold rapid action that prioritizes financially vulnerable groups. States must ensure equitable distribution of federal stimulus relief to low- and moderate-income families and communities of color. Placing financially vulnerable Americans at the center of relief will ensure a proper safety net for those who need it most.

Rapid relief is key. Families cannot wait months for income replacement or policy change. They should not be put through bureaucratic hoops to get the relief they need now.

Create conditions for families to achieve stability over the long-term. States and localities that have historically diverted resources from financially vulnerable communities need to recognize these inequalities and correct them. States can use this moment of crisis to remedy disinvestment by addressing policies that have led to structural inequality such as zoning restrictions, land use, high interest rates, lax consumer protections, and low wages to ensure future systemic change.

Lead in policy and enforcement actions against consumer abuse. States can and should lead in both policy and enforcement actions against consumer abuse, including suspending and/or revoking licenses and obtaining swift resolution. States must be ever vigilant in this time of uncertainty, enforcing consumer protection laws and ending abuses. (See Appendix for example actions already taken by state actors.)

Keep People in Their Homes

Housing accounts for almost 20% of the overall economy and its impact will have broad ramifications. Urgent relief is needed to ensure housing stability, particularly for vulnerable communities experiencing layoffs and income insecurity. Furthermore, states play an important role in ensuring equity, such as pursuing fair lending and consumer protection enforcement actions and monitoring industry compliance with new rules. We urge states to implement the following:

- A moratorium on evictions and foreclosures for renters and homeowners should be put in place for at least 6 months or the duration of the crisis if longer (with an exception for vacant or abandoned properties).
- Forbearance of up to 12 months on government-backed mortgages and for non-government-backed mortgages, to the extent funding is provided to cover forbearance. In addition, while the federal CARES Act provides for forbearance for government-backed mortgages, states should ensure that borrowers are not misled or deceived when attempting to take advantage of forbearance options.
- No late fees, default interest, or interest on interest should be charged during forbearance. When forbearance ends, borrowers should be offered affordable payment options through a simple process that is not onerous to borrowers, and no lump sum demands should be permitted.
- Adequate funding should be provided for rental assistance, including rent for manufactured home lots, to those struggling to make payments.
- Increased funding should be provided for adequate counseling, legal services, outreach, free advice, and assistance to all consumers seeking to navigate their financial situations.
- Emergency funding should be provided to address the needs of people experiencing homelessness.
- States should prioritize fair lending enforcement and compliance, including attention to the digital divide as well as people who are limited English proficient.

Protect Consumers from High-Cost Loans

Even during the best economic times, payday, vehicle title, and high-cost installment lenders prey upon the financially vulnerable, trap them in triple-digit interest debt, and leave them far worse off than when they started. During a period of sustained crisis, this harm, if not reined in, will be far greater. For consumers experiencing income instability, high cost debt they cannot afford to repay will only deepen their economic hardship. Payday loans are not essential; people experiencing sustained financial distress do not need to be straddled with a triple-digit interest loan designed to trap them in debt. During this time of crisis states should limit interest rates and be vigilant in protecting consumers. Specifically:

- In the short term, states should be vigilant against predatory lenders seeking to take advantage of people struggling financially with strong oversight and enforcement of existing laws, including suspending or revoking licenses.
- In states that do not currently have stronger limits on interest rates and loan fees, for loans made, refinanced, or renewed during the crisis limit loan costs to 36% APR or below on small dollar, short-term loans (and to lower rate caps for larger-balance, longer-term loans). This would be consistent with the rates the Military Lending Act permits lenders to charge active servicemembers, extended to all during a time of emergency.
- States with stronger loan cost limits should enforce these laws and reject attempts to weaken them. This includes preventing non-banks engaged in rent-a-bank schemes from evading strong state laws and rejecting calls from high-cost lenders to weaken laws to permit higher cost credit in a time of emergency.
- In the long term, states should permanently extend the protections of the Military Lending Act, including interest rate limit at 36% APR, to all so that borrowers will not be exploited by triple-digit interest rate loans.
- In addition to implementing a rate cap, states can support access to safe and affordable credit by funding state-based community development financial institutions (CDFIs) that serve communities of color and low-income communities.

Protect Consumers from Overdraft Fees

Consumers shoulder well over $12 billion annually in overdraft fees. This is a massive amount of money funneled straight out of consumers' paychecks or benefits checks and into banks' bottom lines. The vast majority of these fees are paid by banks' most financially vulnerable consumers. The average fee is $35 even though it costs banks very little to cover an overdraft; even banks with "limits" will charge up to four fees a day, totaling $140. Particularly as consumers await stimulus checks, states should do what they can to ensure large chunks of those checks do not get siphoned off by banks.

- During this crisis, states should order their state-chartered banks to stop charging overdraft fees.

Protect Today's and Tomorrow's Students and Student Loan Borrowers

As the federal government halts interest on student loans and provides relief for student loan borrowers, states likewise should provide relief for student debt. States should consider how they will appropriate leftover grant dollars equitably, allocating this money to those who most need relief while also providing protection from predatory for-profit universities that often leave those who have attended worse off.

- States should prioritize grant dollars to ensure students who rely on their college or university for housing, food, and a job are able to remain in safe housing and receive the financial support they need for the duration of the crisis.
- After decades of discriminatory policies and long-term underfunding, Historically Black Colleges and Universities (HBCUs) already have fewer resources to help struggling borrowers and their families. States must ensure that these public and private non-profit schools with less institutional wealth are given the financial resources they need to help support their students and keep their doors open. Further, states must adequately fund all public institutions, both two-year and four-year, that largely serve low-income communities or communities of color.
- Policymakers must recognize that performance-based funding for public and non-profit schools is inappropriate in the wake of the crisis, particularly for underfunded non-profit schools serving marginalized communities. If performance-based funding is already in place, HBCUs and Minority Serving Institutions must be given a grace period that allows the school and their students to recover from this disaster.
- Universities and colleges must reimburse students for the unused portions of moneys paid for their room and board.
- States should apply and vigorously enforce consumer protection laws to protect student loan borrowers. In states that have passed Borrower Bills of Rights, Attorneys General, regulators, and others tasked with oversight must uphold servicing standards to curb abuses and inadequacies. In states that have not passed servicing standards, state Unfair and Deceptive Practices statutes and other consumer protection authority may be used to protect borrowers from servicer abuses, and lawmakers should consider a Borrower Bill of Rights to enhance protections for their student borrowers.
- As the 2008 financial crisis proved, for-profit colleges prey on those who have lost work, saddling them with additional debt with little to show for it. States should use enforcement power to ensure that for-profit institutions are not deceiving consumers and violating consumer protection laws.
- As learning moves online, states will need to provide increased oversight, particularly with regards to quality and student outcomes. Already, online learning has proven to have fewer desirable outcomes than classroom instruction, particularly for already vulnerable student populations.
- Some colleges and universities will not survive the shift to online learning and the economic downturn. States must be prepared for this reality by passing laws that outline what an orderly closure must look like, protecting borrowers from schools that close suddenly and leave them without access to their records and transcripts.
- As schools work to make up for lost revenues, "creative" funding solutions like Income Share Agreements may be promoted as alternatives for struggling borrowers. These loan agreements are often inscrutable, with unknowable costs and without the protections of federal student loans. States and schools should reject these agreements and instead work to lower the cost of education for borrowers and their families.

Protect Consumers from Abusive Debt Collection Practices and Fines and Fees

Debt collectors, including debt buyers, have over the years successfully weaponized the court system for their collection activity by purchasing debt for pennies on the dollar and suing consumers in court to quickly obtain default judgments. People of color have been disproportionately impacted by the actions of debt collectors. With Americans experiencing income instability during this crisis, it is clear that we are not in a time of business as usual. With shelter in place orders, state courts have been ordered closed and debt collection litigation has been halted. As such we urge states to do the following, as a matter of public health and economic health:

- Protect stimulus payments and unemployment benefits from bank account garnishment or seizure.
- With respect to privately-held debt, including medical debt, for at least three months suspend: all referrals to debt collectors or sales to debt buyers; all new and existing court filings, garnishments, offsets, repossessions, and court clerk-entered default judgments; and any other activity that will seize people's income and/or deprive consumers of the use or benefit of wages, income, government payments or benefits, bank accounts, and other household assets.
- Cease the collection of debts owed or assigned to the state, including student loan debt, medical debt, and criminal legal system fines and fees, and interest accrual and late and/or collection fees assessment should also cease.
- Suspend utility payments for public utilities, including interest and late fees, and cease utility shut-offs due to non-payment during the crisis.
- Negative credit information should not be reported to the credit bureaus during the crisis; longer protection periods should be available to those facing lasting financial hardship from the outbreak.
- Once the time period for the suspension of debt collection activities ends, states should require that payment options are affordable to consumers and are not burdensome to access. Lump sum or balloon payment demands should be prohibited.

Appendix – Example State Consumer Protection Responses to COVID-19

Actions Addressing Housing Concerns

- California: Governor action in partnership with financial institutions; moratorium on foreclosure starts for 60 days; 90-day grace period on mortgage payments; and relief from mortgage-related fees and charges for 90 days.
- Iowa: Governor action; suspension of new and existing foreclosure proceedings and certain evictions during public health crisis proclamation.
- Kansas: Governor action; eviction and foreclosure moratorium when defaults or missed payments on rent or mortgage due to financial hardship caused by the pandemic; banks, lenders, and landlords have the burden of proving that eviction or foreclosure is not due to financial hardship caused by the pandemic.
- Massachusetts: Enacted legislation; eviction and foreclosure moratoriums during crisis; requires mortgage forbearance lasting up to 180 days, with skipped payments added to the end of the term of the loan unless otherwise agreed to; prohibition on reporting negative information for non-payment of rent in specific circumstances or mortgage payments.
- New York: Agency action; requires state-regulated financial institutions to grant forbearance for 90 days to any individual who can demonstrate financial hardship due to crisis.

Actions Addressing High-Cost Lending and Overdraft Issues

- New Mexico: Governor action; payday lenders considered non-essential under public health emergency order and ordered to close
- New York: Agency action; requires state-regulated financial institutions to eliminate overdraft fees for any individual who can demonstrate financial hardship due to crisis.
- Wisconsin: Agency action; emergency guidance warning payday and licensed lenders against increasing fees and costs and indicating willingness to revoke or suspend license for engaging in "opportunistic and exploitative conduct."

Actions Concerning Students and Student Borrowers

- Georgia: State University System action; providing partial refunds for students for fees such as room and board and other mandatory fees at all 26 public universities and colleges; amount of refund varies by fee type and campus; refunds do not include tuition refunds.
- Maryland: Legislative action (pre-COVID-19); requires post-secondary institutions operating in the state to have an agreement in place in the event of school or programmatic closure; prohibits a closed school from collecting on debt owed by a student to the institution.
- Multi-state action: Nine states secured agreements from 20 student loan servicers servicing private student loans or privately-held federal student loans providing relief for those borrowers, including minimum of 90 days of forbearance, waiving late payment fees, suspension of debt collection lawsuits for 90 days, and prohibition on negative credit reporting. New York previously announced a similar agreement.

Actions Addressing Debt Collection Concerns

Protection of Stimulus Payments

- California: Governor action; crisis-specific financial assistance payments and benefits (whether federal, state, or local) exempt from garnishment, attachment, levy, execution, lien, or setoff; retroactive application, and all stimulus money collected prior to order date (April 23, 2020) must be refunded.
- Nebraska: Attorney General action; declaring that state law may exempt CARES Act payments from garnishment or attachment and that threats or attempts to attach or garnish such payments will be considered an unfair trade practice under state law.
- Ohio: Attorney General action; declaring CARES Act payments exempt from garnishment, attachment, or execution under current state law.

Suspension of Debt Collection Activities for Privately-Held Debts

- Massachusetts: Attorney General action; emergency debt collection regulation prohibiting creditors and collectors from, among other things, acting upon or threatening various debt collection activities including filing new lawsuits; garnishing, seizing, attaching, or repossessing property or wages; or communicating with a consumer in person. Also prohibits debt collectors and debt buyers from initiating phone calls to collect debt; regulation last 90 days or end of the state of emergency period, whichever occurs first.
- Texas: State Supreme Court action; prohibition on granting of default judgments; prohibition on service of garnishment order on consumer until after May 7, 2020
- Washington, D.C.: Legislative action; prohibition on filing or threatening to file new, or proceeding with existing, debt collection lawsuits; prohibition on garnishing, seizing, attaching, or repossessing any funds, wages, earnings, or property of a consumer; last through period of crisis plus 60 days after.

Suspension of Debt Collection Activities for Public Debts

- California: Agency action; suspends the collection of debts owed to state and local governments, including criminal legal system fines and fees, parking tickets and vehicle violations, tuition, and other debts; lasts through July 15, 2020, or a date to be determined based on the evolving nature of the crisis
- Kentucky: Governor and agency action; new wage and bank levies stopped; existing levies released; drivers' license revocations suspended; tax payments suspended for 3 months if taxpayer contacts Department of Revenue.

Credit Reporting Protections

- Pennsylvania: Attorney General action in partnership with financial institutions; banks agree not to report negative information for consumers who access relief on consumer loans.

Prohibition of Utility Shut-Offs

- North Carolina: Governor action; prohibiting public and private utility service providers from shutting off service for nonpayment; prohibiting the charging or billing of any fee, charge, penalty, or interest for late payments that become due after the date of the executive order; requires utilities to provide customers with the ability to pay over a period of at least six months any missed payments or arrearages accrued during the period of the order (or extension of the order) plus 180 days after.