4-2020

# Consumer Financial Protection in the COVID-19 Crisis: An Emergency Agenda

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# CONSUMER FINANCIAL PROTECTION IN THE COVID-19 CRISIS: AN EMERGENCY AGENDA

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ABSTRACT

The coronavirus pandemic is creating overwhelming needs, in three waves. First is the health crisis; second is the macroeconomic crisis created by the abrupt halt in much business activity; and now third is a consumer crisis, as households are faced with total or partial job loss, sharp income decline, and potential loss of health care. Millions of Americans are falling behind on their bills, including major obligations like mortgages, rent, car payments, and other forms of household debt. At the same time, they face a financial industry itself struggling to respond to the compounding crises and widespread confusion as to what the new rules of the road are as financial institutions, states, localities, and the federal government scramble to respond. The result is fertile ground for consumer scams. The authors call upon the Consumer Financial Protection Bureau to recognize and respond to this new consumer crisis, providing an action plan of more than a dozen practical steps that the CFPB can and must take immediately to prevent widespread consumer harm. The action plan starts with the most basic and essential step of collecting and disseminating timely and accurate information for both consumers and policymakers. The CFPB must address pressing consumer risks in four primary areas: foreclosure prevention, non-mortgage debt forbearance, oversight of debt collectors, and supervision of credit reporting companies. In each of these primary areas, and on all the issues discussed in this paper, the CFPB must use all of its authorities to ensure that crucial relief is delivered to distressed consumers.

## I. INTRODUCTION

The coronavirus pandemic is creating overwhelming needs. First, above all else, are the dire health problems threatening the lives of so many Americans. Second is dealing with the fallout to the economy from the abrupt halt to

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[Discussion working paper]

much business activity throughout the country. But a third crucial need, which follows closely on the heels of the second, is to shield households and families from the direct economic harms they now face. We must provide people with the safeguards they will need to cope with their financial circumstances and to protect them against harm from scams, fraud, and predatory conduct.

The Consumer Financial Protection Bureau (CFPB) is the sole federal agency singularly focused on protecting consumers in the financial marketplace. Born out of the last financial crisis, it has an essential role to play right now in the emerging economic crisis. (State financial regulators and attorneys general can also be of considerable help.) Thus far, however, the CFPB has been proceeding as if it is oblivious of the new and urgent risks facing consumers. It is relaxing various duties for financial companies and continuing to push the industry to comment on regulatory initiatives at a time when the focus needs to be placed on the grave economic hardship now confronting millions of Americans.[1] The CFPB has the legal authority needed to take urgent steps to prevent many consumers from sliding off the financial cliff.[2] This brief essay highlights steps the CFPB, and those charged with congressional oversight of the agency, must take immediately to minimize harm to the American public.

## II. A CFPB EMERGENCY AGENDA

We urge the CFPB, and those charged with congressional oversight of the agency, to lose no further time in ensuring that immediate action is taken on the following points:

### *A. Find Out from Consumers What Is Happening and Share the News Widely*

Right now, the CFPB should be assembling a detailed picture of what is going on in the consumer marketplace, and, above all, what people need in this time of crisis, using all the means at its disposal. We can't expect our public health authorities to resolve the COVID-19 pandemic without adequate testing to see who has the disease. By the same token, the CFPB can hardly do its job without diagnosing the problems in its sphere of work. For example,

[1] Press Release, CFPB, CFPB Provides Flexibility During COVID-19 Pandemic (Mar. 26, 2020), https://www.consumerfinance.gov/about-us/newsroom/cfpb-provides-flexibility-during-covid-19-pandemic/; Press Release, CFPB, Consumer Financial Protection Bureau Issues Request for Information to Assist Taskforce on Federal Consumer Financial Protection Law (Mar. 27, 2020), https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-rfi-to-assist-taskforce-on-federal-consumer-financial-protection-law/.

[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111- 203, 124 Stat. 1 76 (2010) (codified as amended in scattered sections of 7, 12, 15, 22, 31, 42 U.S.C. (2012)).

the CFPB has a first-class consumer complaint response system that provides real-time information from consumers all over the country on what is happening in their lives.[3] The CFPB should use it to learn from consumers what exactly is happening and make the answers publicly available. The CFPB's offices focused on special populations (seniors, servicemembers, students, and the economically vulnerable) can also learn and share about the problems facing those groups of consumers.[4] This information can play an important role in guiding the CFPB's response to the crisis.

### *B. Help People Avoid Foreclosure*

In the last financial crisis, millions of people who could not make their mortgage payments lost access to their housing. Sporadic and inconsistent efforts were made around the country seeking to negotiate with mortgage lenders and mortgage servicers to keep people in their homes through loan modifications and payment forbearance. In the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Congress has provided a much simpler mechanism for many consumers to seek and obtain relief from foreclosure if they miss mortgage payments during the crisis.[5] The CFPB must also use its supervision authority to monitor the banks and financial companies, making sure they follow through in making such relief available to consumers. For those mortgage loans that are not covered by the CARES Act, the CFPB should work with lenders and servicers to try to develop similar arrangements for payment forbearance and loan modifications.

### *C. Help People Avoid Eviction*

More millions of Americans will lose access to their housing if they cannot make rent payments and are evicted. The CFPB should monitor closely the information being made available by public officials about restrictions on evictions in their jurisdictions and help direct consumers to where they can get any relief. Many states already have due process protections that constrain the eviction process, and since the crisis emerged, many governors have declared states of emergency allowing the use of extraordinary powers to modify

[3] CFPB, CONSUMER RESPONSE ANN. REP. (2020), https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2019.pdf.

[4] 12 U.S.C. §§ 5493(e), (g); 5535; Bureau Structure, CFPB, https://www.consumerfinance.gov/about-us/the-bureau/bureau-structure/ (last visited Apr. 4, 2020).

[5] The Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 4022 (2020).

business activity in the public interest, including restrictions on eviction.[6] More states likely will follow their lead in the coming weeks and months, and the CFPB needs to stay on top of these developments and inform the public accurately about what relief is available to them.

### *D. Make Sure Mortgage Servicers Do Their Jobs*

The CFPB thus far has afforded relief to many financial companies by relaxing their reporting requirements.[7] In some areas, that may be acceptable or even desirable. But in other areas, allowing companies to throw up their hands and wriggle off the hook from fulfilling their legal obligations will be disastrous for consumers. We saw in the last crisis how their indifference and ineptitude led many mortgage servicers to push homeowners into needless foreclosures that undermined our communities.[8] Already, there are worrying signs that homeowners are getting the runaround as they seek forbearance or other relief.[9] New rules were put in place several years ago to address these problems, and the mortgage servicers cannot now be excused from complying with these requirements when consumers need them the most. Servicers also must live up to the letter and *spirit* of the CARES Act by helping consumers avoid foreclosures wherever possible, rather than using the money made available by Treasury and the Federal Reserve simply to pad their bottom lines. They should make all efforts to develop measures for call centers, including remote access, that will allow for reasonable response times. This is not an area where the CFPB can relax the standards; close supervision and enforcement are essential here to ensure maximum execution. If that does not happen,

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[6] *See, e.g.*, State of New York Executive Chamber, Exec. Order No. 202.8, Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency (Mar. 20, 2020), https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.8.pdf (suspending enforcement of evictions for ninety days).

[7] CFPB, Statement on Supervisory and Enforcement Practices Regarding Quarterly Reporting Under the Home Mortgage Disclosure Act (Mar. 26, 2020), https://files.consumerfinance.gov/f/documents/cfpb_hmda-statement_covid-19_2020-03.pdf; CFPB, Statement on Supervisory and Enforcement Practices Regarding Bureau Information Collections for Credit Card and Prepaid Account Issuers (Mar. 26, 2020), https://files.consumerfinance.gov/f/documents/cfpb_data-collection-statement_covid-19_2020-03.pdf.

[8] *Problems In Mortgage Servicing From Modification To Foreclosure: Hearing Before the Comm. on Banking, Housing, and Urban Affairs*, S. Hrg. 111-987, 111 Cong., at 51 (Nov. 16 and Dec. 1, 2010) (Prepared Statement of Senator Sherrod Brown); FIN. CRISIS INQUIRY COMM'N, THE FINANCIAL CRISIS INQUIRY REPORT, at 402-410 (2011).

[9] Orla McCaffrey & Andrew Ackerman, *Struggling Borrowers Want to Pause their Mortgage Payments. It Hasn't Been Easy,* WALL ST. J., April 3, 2020, https://www.wsj.com/articles/mortgage-relief-from-coronavirus-crisis-is-off-to-rocky-start-11585906200.

millions of Americans will lose their homes needlessly because of poor servicer performance.

### *E. Help Lenders and Public Officials Fashion Ways to Reduce Loan Delinquencies and Defaults*

Officials at the federal, state, and local level are championing new initiatives to help minimize loan delinquencies and defaults, not only with respect to housing but across the entire spectrum of consumer finance. The CFPB should be in the lead in pressing the companies to help, such as by waiving overdraft fees, NSF fees, or late fees and by providing forbearance on loan payments. These initiatives must be simple and, if not automatic, must be easy to access; complexity was the Achilles heel of many such programs a decade ago.[10] The CFPB can help identify and clear away obstacles to execution, as for example the recent controversy over whether Social Security recipients who did not file tax returns would receive stimulus checks.[11]

### *F. Help Achieve Clear Communication Between Lenders and Consumers*

The CFPB can help lenders and other public officials provide reliable guidance to help people navigate these unfamiliar programs and initiatives to reduce loan delinquencies and defaults. This means getting the facts straight as well as ensuring that the communications are phrased in plain language that is accessible to most Americans (or translated where appropriate to reach more consumers). The more clearly people can understand their rights, the more likely they are to receive the intended assistance and support.

### *G. Monitor Lenders Closely to Ensure that Promises Made Are Promises Kept*

Lenders will be making representations to their customers about how they are willing to handle payment shortfalls, including debt collection efforts and credit reporting. The CFPB should work with state and local officials to make sure that the promises lenders make—and consumers rely on—are being kept

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[10] FIN. CRISIS INQUIRY COMM'N, THE FINANCIAL CRISIS INQUIRY REPORT, at 410 (2011); Sumit Agarwal, et al., *Policy Intervention in Debt Renegotiation: Evidence from the Home Affordable Modification Program*, Fisher College of Business Working Paper No. 2012-03-020; Charles A. Dice Center Working Paper No. 2012-20, at 36-37 (February 15, 2016), https://ssrn.com/abstract=2138314.

[11] Kelly Phillips Erb, *After Backlash, Treasury Concedes Social Security Recipients Don't Need to File A Tax Return to Get Stimulus Check*, FORBES, Apr. 1, 2020, https://www.forbes.com/sites/kellyphillipserb/2020/04/01/after-controversy-treasury-confirms-social-security-recipients-dont-need-to-file-a-tax-return-to-get-a-stimulus-check/#2d01963266f3.

rather than becoming a frustrating game of bait and switch. Companies that deceive or mislead their customers are committing clear violations of both federal and state law.[12]

### *H. Provide Vigorous Oversight of Debt Collectors*

As more indebted consumers begin to face delinquency and default, there will be more scope for harassment and abuses by some debt collectors. This is especially true as borrowers find it more difficult to repay their loans, and debt collectors find it harder to get compensated for debts they are unable to collect. The CFPB and state officials can issue guidance reminding debt collectors that the Fair Debt Collection Practices Act prohibits any conduct "the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt"[13] or any conduct that is "unfair or unconscionable."[14] The CFPB should issue guidance about what parameters debt collectors should observe in the current crisis to avoid engaging in conduct that is abusive or unconscionable, such as refraining from initiating new debt collection lawsuits, garnishing wages, or attaching bank accounts. The CFPB must also ensure that contracted debt collectors abide by all the terms newly set by the original lenders for loan modifications or payment forbearance to deal with the crisis.

### *I. Closely Monitor Efforts to Repossess Vehicles*

There is an entire industry whose business is repossessing automobiles. Close efforts to police those companies are especially important for those consumers facing possible repossession of their vehicles. In much of the country, this is the only lifeline many families have: to get to work, to secure food, or to be able to access emergency medical care. The CFPB should lead an effort to work with Congress on putting in place a moratorium on auto repossessions for the duration of the crisis and its economic aftermath. It should also take steps to ensure that consumers facing possible repossession of their vehicles are informed, treated fairly, and have the remaining equity in their car or truck fully applied to the balance of their loan.[15]

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[12] 12 U.S.C. § 5536(a)(1)(B). *See, e.g.,* N.Y. GEN. BUS. LAW § 349(a) (2020) ("Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.").

[13] 15 U.S.C. § 1692d.

[14] *Id.* at § 1692f.

[15] *See* CFPB, CFPB EXAMINATION PROCEDURES: AUTO FINANCE at 45-50 (2015), https://files.consumerfinance.gov/f/201506_cfpb_automobile-finance-examination-procedures.pdf.

### *J. Make Sure Credit Reporting Companies Are Getting Things Right for Consumers*

The CFPB has just issued guidance to credit reporting companies that they will not be expected to follow legal requirements in addressing and resolving disputes about credit reports for the duration of the economic crisis.[16] That guidance is harmful to consumers and should be rescinded *immediately*. On the contrary, as more consumers fall behind on their debts, it will become all the more crucial that the information in their credit files be kept accurately—and if they dispute errors, they can get them fixed on a timely basis. As creditors work with consumers on various forms of accommodation, there is a risk that accounts will be misreported as late when in fact the consumer is paying what is expected. Errors made in those notations would block people from getting the credit they deserve and hamper their economic opportunities far beyond the pandemic and its aftermath.

### *K. Ensure Creditors Give Appropriate Latitude to Consumers in Reporting Credit Information*

The standards for furnishing information to the national consumer reporting companies specify that accounts affected by a "natural or declared disaster" are to be reported as such with a special code that preserves people's credit from being damaged.[17] Furthermore, if payment is deferred or the loan is in forbearance, that should be reported accurately as well, again bolstering people's access to credit. The CFPB needs to make clear that failure to furnish this information accurately to the credit reporting companies is a violation of the Fair Credit Reporting Act, as Congress recently has made explicit, and the CFPB should supervise both the companies that furnish information and the consumer reporting agencies to hold them accountable for following the law. The CFPB could also encourage furnishers and credit reporting agencies to be proactive in using the disaster code, thus alleviating the current burden on consumers to have to inform furnishers and creditors that the consumer's

[16] CFPB, Statement on Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act and Regulation V in Light of the CARES Act at 2-3 (Apr. 1, 2020), https://files.consumerfinance.gov/f/documents/cfpb_credit-reporting-policy-statement_cares-act_2020-04.pdf.

[17] Consumer Data Industry Association, Credit Reporting Resource Guide: FAQ 58—Reporting of Natural or Declared Disaster (2019), https://crrg.s3.amazonaws.com/2019+CRRG+FAQ+58.pdf. *See also* CFPB, NATURAL DISASTERS AND CREDIT REPORTING: QUARTERLY CONSUMER CREDIT TRENDS at 2 (2018), https://files.consumerfinance.gov/f/documents/bcfp_quarterly-consumer-credit-trends_report_2018-11_natural-disaster-reporting.pdf (discussing consumer reporting trends in natural disasters).

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account should be covered by the special disaster code before they are entitled to such relief.

### *L. Work with Other Federal and State Officials to Police Scams and Frauds*

Fraudsters and scam artists will proliferate with novel illegal schemes designed to take money out of people's pockets just when they need it to get by. The government must be aggressive in responding to fraudulent and predatory behavior. This kind of despicable conduct—taking advantage of the misfortunes of others—must be monitored closely and prosecuted harshly and publicly to deter imitators. Scams are already popping up around testing and treatment; financial scams will shortly follow, such as phishing scams demanding sensitive banking and financial information to get stimulus funds, or phony offers of loss mitigation or credit repair assistance. The CFPB is in a good position to help coordinate such work around the country and to keep consumers closely informed about the kinds of scams and frauds that are emerging.

### *M. Require Brief Summary Reports to Monitor Industry Performance*

The CFPB's supervision program covers the largest financial companies that extend household credit in the United States.[18] It also has the authority to require financial companies that it may not supervise to provide information.[19] The CFPB should use these tools to find out from industry what exactly is happening in this fast-moving environment by requiring companies to provide brief summary reports, on a bi-weekly basis, on issues such as call volume, hold times, accounts placed in forbearance, accounts missing a payment, and whatever else may be useful to assess the status of the economic crisis affecting consumers. The anonymized data should also be made public. This will help identify the best practices the industry is developing to address the growing economic crisis. The CFPB's market-monitoring teams were designed for precisely this purpose.

### *N. Act as a Trusted Information Clearing House*

Vulnerable consumers living at the margin will be badly hurt by any recession. Even before the current crisis, about 40% of Americans did not have savings to cover three months of expenses and millions of them could not even cover a $400 emergency.[20] People who lose their jobs, or are put on

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[18] 12 U.S.C. §§ 5515(a), (b); 5514(a)(1)(b), (b).
[19] *Id.* at §§ 5512(c)(4); 5516(b).
[20] BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, REPORT ON THE

[Discussion working paper]

restricted work hours, will suffer persistent shortfalls and need information on how to cope with their situations. For example, consumers have the right to stop automatic withdrawals from their bank accounts, and the CFPB should remind them that they can take this basic step to manage their finances more flexibly and protect themselves from overdraft fees during a period in which their income may be reduced or variable. To take another example, as consumers will be receiving stimulus payments, the CFPB can advise them about how to avoid check-cashing fees and should urge companies to waive check-cashing fees for government stimulus and benefits checks during the economic crisis. Some of these answers will be uniform across the country; others may vary from state to state. The CFPB should collect and distribute this kind of crucial information, keeping up to date with ongoing developments. The CFPB's excellent website—consumerfinance.gov—already deals with a large volume of consumers and now must establish itself as the go-to spot for trusted information about how people can get the right information to face these unfamiliar situations.

### *O. Stop All Non-Essential Rulemaking Work*

All non-essential rulemaking work should be halted so that it does not divert the CFPB's limited human resources, including economists, from these critical efforts. For the next several months, it is also likely that neither industry nor consumers are likely to have the bandwidth to pay attention to requests for information or otherwise to participate in the rulemaking process in any event. This step should include the CFPB's latest request for information on its new task force charged with rewriting federal consumer financial law; nothing could possibly justify such a priority right now.[21]

### *P. Make Sure the Temporary Use of Virtual Exams Can Still Be Effective*

The CFPB has appropriately announced that its examiners are largely working from home duty stations to cut down on unnecessary travel and protect both examiners and industry staff.[22] To carry out virtual exams

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ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2018, at 21 (May 2019), https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf.

[21] Request for Information to Assist the Taskforce on Federal Consumer Financial Law, 85 FED. REG. 18214 (Apr. 1, 2020).

[22] Brendan Pedersen, Hannah Lang, & Kate Berry, *Bank Regulators Are Open for Business, But Not Business as Usual*, AM. BANKER, Mar. 16, 2020, https://www.americanbanker.com/news/bank-regulators-are-open-for-business-but-not-business-as-usual.

successfully, however, the CFPB needs to make sure that it can still identify trouble spots as effectively as it can with on-site exams. This will likely require greater cooperation with industry, including requiring companies to provide more information up front to help the CFPB appropriately scope the focus of the exam. When its resources are stretched thin, as they surely are now, it is more important than ever that the CFPB strategically target its supervisory activity to protect consumers in areas that pose special risks during the current crisis, such as mortgage servicing and debt collection.

## III. Conclusion

There is much important work for the CFPB to do, and it demands an urgent focus. The economic crisis emerging in this country creates enormous and unavoidable problems and risks for many consumers. It is in difficult times that strong consumer protections are needed the most. The CFPB is well positioned to make a difference for large numbers of Americans, but it must confront the circumstances and act immediately to mitigate the harmful effects of this crisis. Those with oversight of the CFPB, including the American public, must make sure this happens.