COVID-19 COLLECTIONS IMPACT BULLETIN

Prepared by Rachel B. Cash, Eli J. Hare and Denzel E. Okinedo April 8, 2020

The recent COVID-19 (or Coronavirus) pandemic has caused federal and state governments to adopt statutory or policy changes in order to protect consumers as foreseeable economic hardship is likely to occur. These statutory/policy propositions or amendments will likely to vary from state to state as federal and state governments enact different rules catering to their specific powers, needs, and constituents.

Many regulatory agencies, politicians, and other interested parties have issued public statements requesting that financial institutions, lenders, and debt collectors work with consumers throughout the span of this coronavirus pandemic. On March 22, 2020, the Board of Governors of the Federal Reserve System, Consumer Financial Protection Bureau, Federal Deposit Insurance Corporation, National Credit Union Administration, Office of the Comptroller of the Currency, and Conference of State Bank Supervisors issued a press release encouraging financial institutions to work with borrowers affected by COVID-19.

This Bulletin serves as a non-exhaustive compilation of information available as of April 7, 2020 and may be updated accordingly as government agencies amend their guidance and as states and servicers announce their own updated policies.

FEDERAL RESPONSE

No widespread federal mandate has been passed directing debt collectors on how to proceed in the current pandemic climate. However, members of Congress have reached out to financial institutions, lenders, and debt collectors requesting that they amend their current guidelines regarding late fees and collection actions. According to the United States Senate Committee on Banking, Housing, and Urban Affairs, Sen. Sherrod Brown (D-OH) recently sent letters out to debt collectors across the country calling on them "to alleviate the economic fallout American families are facing as a result of the Coronavirus pandemic by: suspending all collection activity, postponing or dismissing any pending court proceedings, not filing new lawsuits, ceasing to accrue interest on balances due, contacting consumers on automatic payment plans, and offering to temporarily suspend payments."

Senator Brown and Senator Brian Schatz (D-HI) recently introduced new legislation to protect consumers' credit scores during the coronavirus outbreak. Titled "The Disaster Protection For Workers' Credit Act," the bill would provide for an immediate four-month moratorium on all negative credit reporting and longer protections for people who face lasting financial hardship from the outbreak.

On March 26, 2020, the Attorneys General of New York, Pennsylvania, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, Virginia, Washington, Wisconsin, the District of Columbia, and Puerto Rico drafted a joint letter to Education Secretary Betsy DeVos requesting that the Department of Education take steps in assisting student loan borrowers who have suffered due to the COVID-19 pandemic. The letter calls for the federal government to cease all new and continuing involuntary collection activities, including wage garnishment and the offset of government benefits, such as Social Security and tax refunds, and refunding 2019 tax refund offsets for all federal student loan borrowers for the duration of the crisis.

Currently, many major U.S. financial institutions and lenders have adopted the following policies as a result of the coronavirus pandemic: temporarily suspending foreclosure and eviction actions, temporarily suspending debt collection activities, offering payment deferral programs, waiving certain fees, and working with consumers on a case-by-case basis.

STATE RESPONSES

- **ARIZONA** - On March 19, 2020, Arizona Attorney General Mark Brnovich issued a letter directed to in-state financial and lending institutions urging them waive payments on loans for up to 90 days in the wake of the COVID-19 outbreak. Attorney General Brnovich also asked financial institutions to forego foreclosures, cease car repossessions, refrain from applying late fees, and stop making negative reports to credit bureaus for 90 days. Currently, the Attorney General's letter is only a request and no official mandates have been put in place.

- **COLORADO** - On March 18, 2020, Colorado Attorney General Phil Weiser released a statement urging student loan servicers, debt collection agencies, and creditors to "act responsibly and compassionately" toward Colorado borrowers. The letter asks for loan servicers, creditors, and debt collectors to refrain from mandatory debt collection efforts against those who are unable to pay because of their financial circumstance. Attorney General Weiser also asked providers to work proactively with borrowers to help them best manage their situation. Colorado has not yet instituted any official state mandates in this area.

- **FLORIDA** - Reports indicate that members of Florida's state congress have approached Florida Gov. Ron DeSantis to enact a moratorium to suspend evictions, as well as mortgage and rent payments, among other financial obligations. Currently, there are no state mandates requiring such action.

- **ILLINOIS** - On March 30, 2020, the Illinois Department of Financial and Professional regulation – Division of Financial Institutions issued a news release announcing a guidance sent to its regulated entities, state banks, credit unions, installment lenders, payday lenders, title loan lenders, sales finance lenders including auto loans, currency exchanges, student loan servicers, mortgage servicers, and collection agencies concerning their lending, servicing, and collection during the COVID-19 pandemic. The guidance encouraged these entities to work with consumers battling financial difficulties in the wake of the COVID-19 outbreak, including suspending collection activities for a period of 60 days. Per Governor J.B. Prizker's March 20, 2020 Order, debt collection is not listed as an essential business. However, as of April 1, 2020, debt collectors may still continue to operate remotely provided they comply with relevant regulations.

- **LOUISIANA** - On March 11, 2020, the State of Louisiana declared a state-wide public health emergency. According to LPSC General Order R-29617, telephonic solicitation is prohibited when the State has declared a state of emergency. LPSC General Order R-29617 includes collection calls in its definition of unsolicited phone calls, effectively mandating that debt collector's cease calls as Louisiana continues to address public health concerns.

- **MARYLAND** – On April 3, 2020, Governor Larry Hogan issued an emergency order directly providing instruction to mortgage lenders and financial institutions. The order temporarily prohibits mortgage lenders from initiating the foreclosure process. During this period, no late fees may be charged, and no negative reporting to credit bureaus may occur. However, Maryland residents must contact their lender to make use of this relief. This emergency order also prohibits the repossession of cars, trucks, and mobile homes, as well as commercial and industrial evictions.

- **MASSACHUSETTS** - On March 16, 2020, Massachusetts' Division of Banks, the chartering authority and primary regulator for financial in-state service providers, issued a statement encouraging financial institutions to work with affected customers and communities.

  On March 26, 2020, Massachusetts Attorney General Maura Healy filed an emergency regulation limiting collections practices during the COVID-19 crisis. Effective immediately and spanning for 90 days or until conclusion of the declared state of emergency, 940 CMR 35.00 prohibits creditors and debt collectors from engaging in methods of debt collection that can require people to leave their homes or have in-person contact. These prohibited practices include: initiating, filing, or threatening to file any new collection lawsuits, visiting consumers at their homes or places of work, repossessing vehicles, making unsolicited debt collections calls, or garnishing wages, among other protections.

  On April 3, 2020, the Massachusetts Attorney General's Office issued new guidance in the form of FAQs addressing its recent regulations codified at 940 CMR 35.00, titled "Unfair and Deceptive Debt Collection Practices during the State of Emergency Caused by COVID-19."

- **MINNESOTA** - On March 13, 2020, Commissioner of Commerce Steve Kelley issued a temporary regulatory guidance order permitting debt collectors to work from home so long as the following criteria are met: 1) The activity is conducted from the home location of an individual working on behalf of a Minnesota licensee; 2) The individual is working from home due to a reason relating to the COVID-19 outbreak and has informed the licensee of such reason; 3) None of the activity will be conducted in person with members of the public from the home location; and 4) The licensee shall at all times exercise supervision of the activity being performed at the home office and ensure that appropriate safeguards and controls are in place to protect consumer information and data.

- **NEVADA** - On March 20, 2020, Nevada Governor Steve Sisolak issued an emergency directive mandating that all non-essential businesses close as a proactive measure to fight the spread of COVID-19. Collection agencies are currently deemed non-essential businesses. In response to the mandate, the Nevada Financial Institutions Division issued a statement directing all in-state collection agencies holding a license under Nevada Revised Statutes Chapter 649 to close from March 20, 2020 until April 16, 2020, unless otherwise modified or withdrawn by Governor Sisolak. The mandate also directs out-of-state collection agencies holding a license under Nevada Revised Statutes Chapter 649 to cease collection efforts with Nevada consumers/residents from March 20, 2020 until April 16, 2020.

- **NEW YORK** – On March 17, 2020, New York Governor Andrew Cuomo and Attorney General Letitia James announce that New York would temporarily halt the collection of medical and student debt owed to the State and referred to the Office of the Attorney General for collection, for at least a 30-day period.

- **NORTH CAROLINA** – On March 26, 2020, North Carolina Attorney General Josh Stein suspended all of the North Carolina Department of Justice's collections efforts of state debts effective immediately and until further notice. The Department's suspension action include suspending the issuance of demand letters and any other collections activities for agencies and universities that the North Carolina Department of Justice represents, including the Department of Environmental Quality, the University of North Carolina system, the North Carolina Department of Health and Human Services, and the North Carolina Department of Transportation. This applies to all debt collection, except where necessary to meet statutes of limitations or other court-imposed deadlines.

- **OHIO** – On March 25, 2020, State Rep. Thomas West introduced legislation, HB 596, which would halt all in-state debt collections until Ohio's state of emergency expired. In its proposed form, the legislation would prohibit institutions from making harassing phone calls; disconnecting electricity and other utilities; charging higher interest or penalty fees; and initiating lawsuits to collect debts, evictions, garnishments, and other efforts to collect on debts. Currently, the bill has been introduced to the Ohio House of Representatives but has not yet been voted on.

At this time, state and local action continues to vary and we expect that to continue in the near future. We will monitor such action and update this Bulletin as developments occur. Stay up to date by monitoring the latest COVID-19 resources on our CORONAVIRUS RESOURCE CENTER.

To discuss this further, please contact:
Rachel B. Cash (205-458-5483, rcash@burr.com)
Eli J. Hare (205-458-5196, ehare@burr.com)
Denzel E. Okinedo (205-458-5278, dokinedo@burr.com)
or the Burr & Forman attorney with whom you normally consult.