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November 18, 2020

COVID-19, the CARES Act and the Impact on Mortgage Forbearance

By Bryan S. Neft

In response to the coronavirus pandemic, the federal government passed the CARES Act, which provides a number of protections to homeowners unable to pay their mortgages. The CARES Act prohibits any home foreclosures before December 31, 2020, and allows homeowners to seek forbearance from lenders for a period of 180 days, with one extension of 180 days. The Act applies to all federally backed mortgages. Thus, a homeowner with a federally backed mortgage can seek forbearance for up to one year. Since President Trump signed the CARES Act into law on March 27, 2020, most forbearances will not terminate until April or May 2021. To date, the federal government has not sought to extend CARES Act benefits beyond their expiration date.

So what is the future of mortgage forbearnace amid the pandemic and repercussions? Click **here** to read the entire article.

Debt Collectors Can Find You on Social Media Now

"The CFPB issued a 'final rule" (their term for an amendment) clarifying prohibitions on harassment and unfair practices by debt collectors as part of the Fair Debt Collection Practices Act."

Why this is important: The CFPB's new debt collection rule recently was announced and is the culmination of years of work by the CFPB in connection with a draft rule, comment period, and final rule as well as work by many industry and consumer groups to provide comments on the draft rule and meet with regulators. It isn't an understatement when the new rule is characterized as being the biggest development in the accounts receivables industry since the passage of the Fair Debt Collections Practices Act in 1977. One of the aims of the CFPB's new rule is to modernize the way that collectors communicate with consumers. The new rule contains provisions and guidance regarding communications via e-mails, texts, and social media, all three of which didn't exist when the FDCPA was passed. This article is geared toward alerting consumers that they may start to receive communications through those means (when the rule takes effect in late 2021) and provides them with information about "their rights." The article doesn't note it, but anyone watching this space should be aware that the CFPB plans to issue a companion to the rule in December to govern how collectors can collect debts that are beyond the statute of limitations. --- Nicholas P. Mooney II

ACA International Responds to CFPB's Updated Debt Collection Rule

"The release of this rule is the biggest development in the accounts receivable management industry since passage of the Fair Debt Collection Practices Act more than 40 years ago."

Why this is important: ACA International is the largest organization in the accounts receivable management industry, and it has been actively involved in every stage of the CFPB's rulemaking process -- including the CFPB's new debt collection rule (as discussed above). As the West Virginia state chair and an active member of ACA, we were interested to see ACA's official response to the new rule. ACA's response highlights the components of the rule that modernize communication methods. As the article reports, the new rule recognizes consumers' "preference to use email and text messaging over other outdated methods, such as faxes as outlined in the current law." These updated communication tools are a great step forward from outdated communication methods, that the ACA reports "hurt small businesses and [leave] consumers in the dark." --- Nicholas P. Mooney II

Ant Group's Valuation Could be Slashed by Over $150 Billion After Suspended IPO, Experts Say

"The result could be making Ant Group look more like a bank than a fintech company, experts said."

Why this is important: There is a new chapter to the story we previously reported on regarding the Ant Group's IPO. The Ant Group, which is controlled by Jack Ma, the co-founder of Alibaba, was set to launch its IPO that would have raised more than $34.4 billion, making it the largest IPO ever. The IPO was being listed on the Shanghai and Hong Kong exchanges instead of any U.S. exchange, which commentators opined was keeping with China's request that companies list at home and not in the U.S. However, at nearly the last minute, the IPO was stopped. Chinese regulators announced they would impose regulations on micro-lending, which could force the Ant Group to hold more capital, thereby requiring it to shift away from its "asset light" model to looking more like a bank. The regulations also affect the Ant Group's value. The IPO pegged the group's value at $313 billion. At least one commentator has stated the proposed regulations would "decimate" the group's value to around $150 billion. --- Nicholas P. Mooney II

What the Election Results Mean for Student Loan Borrowers

"And Biden may be able to provide additional student loan relief through aggressive executive action."

Why this is important: There are more than 44 million individuals with federal student loans owed to the U.S. government. As part of the CARES Act, student loan payments were suspended, collections ceased, and interest was waived on federal student loans held by the U.S. Department of Education through September 30, 2020. That relief was extended through December 31, 2020, via presidential order. As a result and due to the current economic conditions, President-elect Biden and his administration will need to engage in action fairly quickly. President-elect Biden has discussed numerous times the potential for changes to the student loan programs and aid for those individuals with outstanding student loans, including a $10,000 across-the-board reduction for all borrowers and additional debt waivers/reductions for other individuals. Reductions and debt waivers would directly impact consumers' monthly debt payments and discretionary income spending. In addition, the incoming administration will need to address the alleged failures of the Public Service Loan Forgiveness program, which was created in 2007 to provide forgiveness of federal student loan debt to public service workers after such workers had been employed in the public sector for 10 years. --- Angela L. Beblo

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Baby Boomers and High Earners Now Carry the Most Student Loan Debt

"Boomers owed 33% more debt in 2020 vs. 2019, due in part to Parents Plus loans secured for children and grandchildren, according to more than 250,000 loans surveyed by Fidelity."

Why this is important: The words "student loan" evoke images of younger, recent college graduates. Not older, should-about-to-be-retired individuals. In 2020, the Baby Boomer generation owes "33% more debt in 2020 vs. 2019" due, in part, to Parent Plus loans taken out to finance college education for their children and grandchildren. As college education costs increase, more and more student loan debt is owed. "The highest-income 40% of American households (those with incomes above $74,000) owe almost 60% of outstanding education debt and make almost three-quarters of the payments." As the amount and number of outstanding Parent Plus loans grow for Baby Boomers, there is serious potential that those individuals will need to delay retirement or continue working for many more years due to the student debt burden carried to ensure higher education for younger generations. --- Angela L. Beblo

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What Dealer Compliance Will Look Like in a Biden Administration

"'Auto dealers got a specific exemption from CFPB oversight, and it is no coincidence that auto loans are now the most troubled consumer financial product,' Warren said."

Why this is important: A Joe Biden presidency could lead to changes in the consumer protection area, and could create further compliance hurdles for auto dealers. The Democratic Party platform outlined that a Biden Administration will strive "to ensure equitable access to credit and banking products for all Americans, and reinvigorate the Consumer Financial Protection Bureau (CFPB) to ensure that banks, financial institutions, and lenders cannot prey on consumers." In addition, the Democratic Party platform outlines that Democrats will "eliminate the use of forced arbitration clauses." Thus, changes may be on the horizon, which could impact the automobile industry. For example, Senator Elizabeth Warren, who likely would have the attention of the Biden administration, has explained: "Auto dealers got a specific exemption from CFPB oversight, and it is no coincidence that auto loans are now the most troubled consumer financial product." Additionally, "Congress should give the CFPB the authority it needs to supervise car loans – and keep that $26 billion a year in the pockets of consumers where it belongs." Additionally, four of five Federal Trade Commission Commissioners' terms will expire during the Biden administration. FTC commissioners serve staggered terms, and a maximum of three commissioners can be members of a single party. With two Republican commissioners' terms expiring in 2023 and 2024, and a Democrat's term expiring in 2022, one might expect more left-leaning commissioners than those appointed under the Trump administration. Finally, a Biden administration would appoint a new head of the Department of Justice, and it may be reasonable to expect more investigations and enforcement actions against automobile dealers in instances where documents are falsified or transaction information is misrepresented to lenders. To prepare for these potential changes, auto dealers should take time now to update policies, ramp up employee training, and consult with legal and/or compliance advisors. --- Wesley A. Shumway

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Two Mastercard Execs Predict a Future in which Passwords and One-Time Pins Will Make Way for a More Streamlined Global Payments System

"Because of the economic trends prompted by the pandemic, two Mastercard executives predict a future in which passwords and one-time pins, powerful tools to verify transactions in the present, will become relics of the past."

Why this is important: The transition from passwords and one-time pins has already begun, with consumers using online face scans and fingerprints to pay for an outfit, a meal, or even a new appliance. The move toward contactless payments has increased even more during the global pandemic, with more than 50 percent of consumers reporting increased usage of contactless payment systems, and 44 percent confessing to using a mobile wallet more since the COVID-19 outbreak. Biometrics and AI are expected to continue to drive contactless payments even beyond the worldwide web, allowing merchants to access customers through all payment rails, including account-to-account transactions, buy-now-and-pay-later programs, and deferred and installment payment products. If consumers continue to embrace these digital trends, governments and businesses large and small will need to invest in additional cybersecurity layers to protect data privacy and keep payment systems safe and secure. --- Tai Shadrick Kluemper

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Featured Attorney Spilman Profile

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Bryan Neft is a Member in our Pittsburgh, Pennsylvania office. His practice is focused on commercial litigation, with experience in antitrust, banking and lender regulatory matters, business torts, competition and trade secrets, consumer protection, contractual disputes, fair debt collection, shareholder and corporate control disputes, and accountants' liability.

He is a member of the House of Delegates for the Pennsylvania Bar Association; Past-President of the Allegheny County Bar Association; and a Fellow and Sustaining Fellow of the Allegheny County Bar Foundation.

Bryan has a Distinguished™ Peer-Review rating by Martindale-Hubbell and was nominated by his peers for inclusion in *The Best Lawyers in America*.

He received his B.A. from the University of Pennsylvania and his J.D. from the Boston University School of Law.
