
House Version of New Stimulus Package Proposes Loans for Debt Collectors

By Ann E. Lemmo, Joann Needleman / May 13, 2020

On Tuesday, the Democrats unveiled their latest legislative proposal: The "Health and Economic Recovery Omnibus Emergency Solutions Act" or "HEROES Act." The official summary of the bill calls it "transformative legislation to meet the challenges of the coronavirus pandemic, increase aid for state, local and tribal governments," to extend unemployment insurance and to provide direct aid to Americans.

For the consumer financial services industry -- particularly the credit reporting and debt collection sectors -- the HEROES Act looks to amend certain consumer protection laws while at the same time offering several moratoriums and forbearance options for consumers.

The details of the proposed legislation are as follows:

Credit Reporting During Major Disasters

- Negative consumer credit reporting would be suspended during the COVID-19 pandemic, other declared major disasters, and for 120 days thereafter;
- New credit scoring models that would lower existing consumer credit scores during the COVID-19 pandemic or other major disaster periods would be banned;
- Prohibit the reporting of medical debt arising out of COVID-19 treatments; and
- Expand rights for consumers to delete negative tradelines.

Restriction on the Collection of Consumer Debt During Major Disasters

- Create a temporary moratorium on consumer debt collection during this COVID19 crisis and for 120 days thereafter (covered period);
- Amending the Fair Debt Collection Practices Act (FDCPA) to include creditors under these provisions during the covered period;
- Prohibited debt collection conduct would include legal action, enforcement of security interests, termination of utilities, and threatening to do any of these activities. Non-legal activity would be permitted but will be limited by repayment and forbearance restrictions; and
- Determination that pre-dispute arbitration provisions are invalid and unenforceable during the covered period.

Mandated Repayment and Forbearance

- The FDCPA would be amended to require debt collectors to extend the period for the repayment of a debt arising from credit within a defined repayment term by one payment period for each payment that a consumer missed plus one additional payment period;
- For credit-card debt or open-ended credit, a consumer could repay the past due balance in a manner that does not exceed repayment options described in TILA;
- For all other debts, the consumer could pay in equal monthly installments, but only within a predefined period depending on the amount owed, which can extend into a longer period for repayment;
- Upon request from the consumer, debt collectors must offer a forbearance program upon the request and attestation of financial hardship, directly or indirectly related to COVID-19, until the end of the covered periods. The consumer does not have to supply any documentation in support of the hardship; and
- The Federal Reserve will establish a credit facility to make low-cost and long-term loans available to debt collectors to temporarily compensate them for the financial losses caused by the forbearance program.

Government Payments for Private Student Loans

- Extend existing CARES Act student loan payment and consumer protections (such as debt collection prohibitions) to private loan borrowers who are currently not covered by the CARES Act;
- Provide up to \$10,000 in debt relief to be applied to a private student loan with the Treasury Department making monthly payments on behalf of the borrower up to \$10,000 until September 2021. The borrower is not obligated to use that money to pay off any private student loan;
- A debt collector could not pressure a borrower to elect to apply any amount received from the Treasury to any private student loan. Such conduct would be considered an unfair and deceptive act under Dodd-Frank as well as a violation of the FDCPA; and
- Private education loan holders must modify all existing loan contacts to provide for the same repayment plan and forgiveness programs that are available under the Federal Direct Loan Plan.

Mortarium on Small Business Collections

- Amend the FDCPA to include a temporary moratorium on small business debt collection during the same covered period;
- Repayment and forbearance proposals applicable to consumer debtor would apply to small business debt; and
- The Federal Reserve will establish a credit facility to make low-cost and long-term loans available to small business debt collectors to temporarily

compensate them for the financial losses caused by the forbearance.

The proposal to offer low-cost loans to the debt collection industry for “documented losses as the result of a forbearance” needs to be carefully considered. How is the loss documented? What happens if the consumer never pays or files bankruptcy? This is not a true bailout and the debt collection industry will have to carefully consider whether taking on this kind of debt makes good business sense.