

WRITTEN TESTIMONY IN OPPOSITION TO HB 5574, HA #1

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(cumulatively, the “Illinois Financial Industry Coalition”)

The Illinois Financial Industry Coalition hereby submits the fact sheet attached hereto and incorporated herein by this reference, in opposition to HB 5574, House Amendment #1.

In further opposition to HB 5574, House Amendment #1, and in support of its argument the measure is unnecessary, the Illinois Financial Industry Coalition presents the following policy considerations:

1. Federal law already addresses in a comprehensive and sufficient manner COVID-19 mortgage forbearance and loss mitigation relief:
 - a. The CARES Act prohibits foreclosure actions and establishes forbearance options for homeowners that enable them to reduce or suspend their mortgage payments while they regain their financial footing (initial period: 6 months; extension: another 6 months, for a total of 12 months).
 - b. Fannie Mae and Freddie Mac require servicers to offer mortgage payment deferrals, forbearance plans and loan modifications to assist borrowers who experience a financial hardship resulting from COVID-19; payments are suspended and no late fees may be imposed. After forbearance, a servicer must work with the borrower on a plan to help maintain or reduce monthly payment amounts.
 - c. CFPB, Federal Reserve Board, FDIC, NCUA and OCC have issued interagency guidance supporting lender efforts to modify mortgage loans for affected borrowers.
2. Illinois regulatory guidance provides sufficient parameters for banks and credit unions to work constructively and proactively with borrowers affected by COVID-19 (IDFPR Guidance issued March 30, 2020).
3. The federal approach speaks in terms of forbearance and loss mitigation. The approach in HB 5574 speaks in terms of debt cancellation and, in so doing, goes too far (especially since it is hinged upon the creation of a new government “relief fund,” that would place lenders in the lowest priority for payments). As recognized in the federal approach, debt cancellation is an unnecessary, inappropriate and unreasonable step. Accordingly, it raises the issue of being an impermissible impairment of contract under the U.S. and Illinois Constitutions. No one argues the COVID-19 pandemic has created an economic crisis of profound proportion. But, as

the federal approach recognizes, this does not mean debt cancellation is a necessary response. If debt cancellation is so “reasonable and necessary” as the HB 5574 proponents argue, why has the comprehensive COVID federal approach avoided it and focused on forbearance and loss mitigation? The answer is that debt cancellation is, in fact, a violation of the Contracts Clause of the United States and Illinois Constitutions.

4. As a matter of public policy, the Illinois legislature recognizes throughout the Code of Civil Procedure that persons should assume personal responsibility to pay their obligations and judgments (e.g. through the preservation of post-judgment remedies by curing constitutional defects noted by the courts). The current legislative scheme balances the public interest in seeing debts and judgments paid against ensuring debtors and their dependents having adequate resources to meet their housing and other needs (e.g. at least 85% of gross weekly wages are exempt from garnishment and from there it goes up to 100% - more liberal schedule than the federal scheme).
5. HB 5574, as amended, compromises the interests of the State of Illinois in seeing borrowers repay their loans. Debt cancellation obliterates the carefully devised loss mitigation protocol of Congress and federal and state regulators alike in encouraging forbearance plans individually tailored to address the COVID-19 financial hardships of the particular borrower. The bill:
 - a. unfairly punishes the borrower by cancelling a debt in default, which makes it more difficult for him or her to obtain credit from other sources in the future at reasonable rates;
 - b. unfairly punishes conscientious consumers by making it more cumbersome and costly for lenders to collect mortgage loans from the proper party (e.g., other customers of the bank or members of the credit union end up bearing the expense of the uncollectible loan loss in the form of higher loan rates and fees and lower savings rates);
 - c. adversely impacts the capital strength of financial institutions operating in Illinois by unnecessarily straddling them with higher loss loan write downs and charge-offs that may leave them impaired – which harms the consumers they serve and raises regulatory red flags; and
 - d. creates confusingly similar but distinct forbearance standards that will escalate compliance burdens for lenders. Those burdens will be particularly onerous for smaller lenders. The statutory penalty and attorney fee recovery provisions in the bill will needlessly invite litigation over the good faith efforts of those lenders to help their borrowers address their forbearance needs.

OPPOSE HB 5574

HB 5574, House Amendment No. 1 (Rep. Delia C. Ramirez and Will Guzzardi)

“COVID-19 Emergency and Economic Recovery Renter and Homeowner Protection Act (“Act”)”

Background

HB 5574 creates the Act, the stated purpose of which is to protect small business commercial and residential tenants and homeowners from eviction and foreclosure during the public health and economic crisis created by COVID-19. While the Act primarily focuses on landlords and tenants, it also impacts lenders and borrowers with the following provisions:

- §15: Cancellation of the obligation to make mortgage principal and interest payments during the “moratorium” (180-day period beginning on the effective date of the Act), to the extent permitted by federal law and subject to appropriation.
- §20: Foreclosure action forbearance during the moratorium.
- §25: Borrower forbearance program that (i) grants 180-day forbearance period for principal, interest, taxes and insurance payments; (ii) waives late fee and other penalties and charges during the forbearance period; and (iii) prohibits reporting any delinquency information to credit agency.
- §25: Loss mitigation options, including loan repayment term extension and forgiveness of the forborne payments.

Lender Opposition

Lenders oppose HB 5574, as amended, because:

- 1) It is inconsistent and redundant with many existing provisions of federal law (CARES Act and Fannie/Freddie guidance), which already establishes a foreclosure action moratorium and 180-day mortgage forbearance period that may be extended another 180 days.
- 2) It is inconsistent with IDFPF guidance to banks and credit unions that encourages them to offer mortgage payment accommodations, such as the deferral of payments at no cost, but does not suggest cancellation of debt.
- 3) It is inconsistent with the “Chicago Housing Solidarity Pledge,” which embodies an effort by the City of Chicago to generate lender and landlord support for deferred payment arrangements, suspension of foreclosure filings, neutral reporting to credit agencies and no late fees for missed payments, in response to economic hardship arising as a result of COVID-19; but which makes no reference to debt cancellation.
- 4) Federal law and Illinois regulatory guidelines sufficiently address the topic of COVID-19 forbearance and loss mitigation. HB 5574 goes beyond those standards with its creation of redundant and inconsistent provisions making compliance very burdensome. The proposed debt cancellation process is a non-starter, as an impermissible impairment of the loan contracts voluntarily entered into by borrowers with their lenders.
- 5) Under very difficult circumstances, lenders are doing an excellent job of serving their borrowers suffering from economic hardship due to COVID-19. The draconian provisions in HB 5574 are unnecessary and will generate unintended consequences that will harm consumers.

HB 5574, House Amendment No. 1 is **OPPOSED** by the Illinois Credit Union League, Community Bankers Association of Illinois and the Illinois Bankers Association. We ask that you vote “NO” on HB 5574, HAM #1.