PROTECTING HOMEOWNERS DURING THE PANDEMIC: OVERSIGHT OF MORTGAGE SERVICERS' IMPLEMENTATION OF THE CARES ACT

VIRTUAL HEARING

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PROTECTING HOMEOWNERS DURING THE PANDEMIC: OVERSIGHT OF MORTGAGE SERVICERS' IMPLEMENTATION OF THE CARES ACT

Thursday, July 16, 2020

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 12:02 p.m., via Webex, Hon. Al Green [chairman of the subcommittee] presiding.

Members present: Representatives Green, Beatty, Lynch, Velazquez, Perlmutter, Tlaib, Casten, Dean, Garcia of Texas; Barr, Zeldin, Rose, Timmons, and Taylor.

Ex officio present: Representative Waters.

Chairman GREEN. Thank you very much everyone. I am Al Green, the Chair of the Subcommittee on Oversight and Investigations. I would like to call the hearing to order at this time, and I would like to, if I may, give just a brief overview of what you can expect. We have called the hearing to order. There will be an opening statement of the Chair; an opening statement of the ranking member; an opening statement from the Chair of the full Financial Services Committee, Chairwoman Waters; witnesses will be introduced; witnesses will give their opening statements; and then we will have Q&A of witnesses, followed by adjournment.

The title of today's hearing is, "Protecting Homeowners During the Pandemic: Oversight of Mortgage Servicers' Implementation of the CARES Act."

Without objection, the Chair is authorized to declare a recess of the subcommittee at any time. Also, without objection, members of the full Financial Services Committee who are not members of this subcommittee may participate in today's hearing for the purposes of making an opening statement and questioning the witnesses.

Members are reminded to keep their video function on at all times, even when they are not being recognized by the Chair. Members are also reminded that they are responsible for muting and unmuting themselves. I think this is something that is worthy of repeating, because I have made the mistake of not honoring this responsibility. I hope that I don't make that mistake today. Members are also reminded that they are responsible for muting and unmuting themselves, and to mute themselves after they have finished speaking.

Consistent with the regulations accompanying H. Res. 965, staff will mute Members and witnesses, as appropriate, only when they are not being recognized by the Chair, to avoid inadvertent background noise. Members are reminded that all House rules relating to order and decorum apply to this remote hearing.

The Chair now recognizes himself for 4 minutes for an opening statement.

Let me start by thanking the Chair of the full Financial Services Committee, Chairwoman Waters. It is always an honor to serve under your leadership, Madam Chairwoman. I would also like to thank the ranking member for the participation that he has brought to this hearing, and I would like to also thank the staff for the hard work that you have done in obtaining some 4,000 pages of servicer documents, including policies, procedures, and data on the largest 11 servicers, and their findings that include the fact that over 2 million forbearance requests have been approved by these 11 servicers between March 27th and June 30th of 2020.

But we have also found some other things that are causing a bit of consternation. Often, servicers fail to provide the borrowers with the 180-day forbearance that has been set in the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Too often, borrowers were given but 90 days. I have some evidence of this failure to comply that I shall share with you. This evidence is something that emanates from a request by a constituent. One of my constituents has brought to the attention of our office, this document that is titled, "Temporary Hardship Forbearance Plan Agreement."

I won't go through it in its entirety, but the important points are these, that this borrower faced a hardship and has had payments deferred for three of the payments that are due, three payments. And the amount due is going to be in the final analysis at the end of the deferment period, the amount due for all payments within that deferment period and any late fees that may have accrued from other sources of payments not being made timely. The point is this, as it reads in this document, the amount due on the next payment due date, which was 3 months away from the date that the deferment period started, includes the amount of payments being deferred under the plan. Well, this is 90 days of deferments, not the anticipated 180 days that the CARES Act affords borrowers. In fact, many of the borrowers are not made aware of this.

And we find, pursuant to some of the testimony that you will hear today, that many of these borrowers who are accorded this 90-day period, as opposed to the 180 days, are borrowers of color. It seems that this is, like many other things, having a disproportionate impact on persons of color, which causes me a good deal of consternation, I might add.

I would also say that this program that we established in Congress has been received by the persons who are charged with according these first agreements, these servicers—it has been received by them as an honor system. We never intended for this to be an honor system that would allow them to decide whether or not they would accord persons the 180 days initially, with the opportunity to extend for an additional 180 days. It was my intent that borrowers would acquire the 180 days, and then they could opt to have an additional 180 days. The remedy, it seems to be, that of having to file a lawsuit, litigation, to have to go out and hire a lawyer, and to have to take this to court, to have some period of time that might go beyond the period of time, quite frankly, that you anticipate having your forbearance.

So, I am very much concerned about this. And my hope is that we can get a means by which we can deal with this honor system and bring this under the auspices of a situation such that they will have to comply as opposed to choosing whether or not they will comply.

With this having been said, it is my honor now to recognize the ranking member of the subcommittee, Mr. Barr, for a 5-minute opening statement.

Mr. BARR. Thank you, Chairman Green. It's good to see you and all of our colleagues. And to our witnesses, thank you again for joining us virtually for today's hearing. The coronavirus pandemic and the associated government-imposed shutdown of the economy disrupted the lives and livelihoods of citizens across our country. Businesses shut down. Unemployment skyrocketed. Workers who remain employed face uncertain prospects for their long-term stability, and families are at risk of losing their homes.

As you all know, Congress passed and the President signed into law the CARES Act, which helped individuals and small businesses by creating forbearance options for struggling homeowners. At the peak, approximately 4.7 million families were in forbearance. Many more families would undoubtedly have lost their homes or struggled to make payments, if not for the swift and decisive response from Congress and the Administration: the implementation of the Paycheck Protection Program (PPP); economic impact payments; the Federal Reserve Lending Facilities under 13-3, which opened credit markets; and other assistance programs under the CARES Act, which made it easier for homeowners to pay their mortgages, for families to stay in their homes, and for small businesses to build a bridge to the other side of the crisis.

Fortunately, we have seen the number of mortgages in forbearance decrease since the peak, declining a full 13 percent since May. However, we are not out of the woods yet. There are still millions of homeowners facing hardship and requiring additional assistance.

I hope to learn from our witnesses today what may be helpful next steps as Congress contemplates additional legislation. The far-reaching aid to American homeowners was a collaborative effort between Congress, the Administration regulators, and the private sector.

It is important to note that while the CARES Act mandates that servicers of federally-backed mortgages offer a forbearance option to borrowers, that same requirement is not in place for loans held in portfolio or in private label securities. Despite the absence of this mandate, however, servicers of those non-federally-backed loans stepped up during this crisis and offered similar forbearance terms for their borrowers to those mandated under CARES. This shows that, in times of crisis, the government and the private sector can work together, and that the private sector has acted responsibly in the interest of homeowners without having government mandates imposed on them.

Unfortunately, my colleagues on the other side of the aisle believe that a top-down mandate on all servicers would be more effective. The partisan Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act included a mandate for automatic forbearance for all borrowers struggling to pay their mortgages. Not only does this mandate appear unnecessary given the market dynamics we have seen to date, but it actually has the potential to further disadvantage borrowers by limiting their options.

On May 4th, Chairwoman Waters and Chairman Green sent letters to some of the largest mortgage servicers requesting information about their interaction with customers following the passage of the CARES Act. The implication of the letter was that mortgage servicers skirted their responsibilities under the CARES Act or somehow profited by steering their customers into forbearances that were not in the best interest of the borrower.

The data that the Majority received in response to their letter told a very different story, and demonstrated that servicers are working well with borrowers in their times of greatest need. This is a hearing in search of a problem. Now, that is not to say that there weren't some hiccups along the way. There were understandable growing pains and bumps in the road as servicers staffed up call centers, updated websites, and implemented the necessary technology to help their customers.

However, given the scope and scale of the forbearance request and the short timeframe to implement new processes, the servicers overall should be commended on their treatment of borrowers in a time of crisis. And I think the creditors, the mortgage creditors and the servicers have learned from experience that the expense of foreclosure and repossessing these properties is not in anyone's best interest. Keeping homeowners in their homes is in the best interest of all involved, particularly those struggling Americans who need help.

I look forward to further exploring how servicers work with their customers, the efficacy of the CARES Act provisions in keeping families in their homes, and what additional actions may be required by Congress in potential areas of improvement in the servicer-borrower relationship. And, again, I thank all of you for being here today, and I thank Chairman Green and Chairwoman Waters for holding this hearing. I yield back.

Chairman GREEN. Mr. Barr yields back. The Chair now recognizes the Chair of the full Financial Services Committee, the gentlewoman from California, the Honorable Chairwoman Waters, for 1 minute.

Chairwoman WATERS. Thank you.

Mr. Chairman, I am so appreciative of you for holding this hearing this morning. As I took my seat, I heard you read something where there appeared to be a demand from a servicer, from an institution that was a demand for what would be considered a full payment for the months that have been missed. I just wanted to make sure that what I heard you saying was that someone had been demanded to pay the full amount of the missed payments that was about 4 months' past due. Is that correct?

Chairman GREEN. Three months of forbearance, yes, ma'am, and it would be payable upon the end of the 3-month period.

Chairwoman WATERS. Thank you very much. I wanted to make sure that I had the information correct.

Mr. Chairman and members, this is precisely what we want to avoid. As a matter of fact, I have to say to Mr. Barr, the experience that we had started in 2004 with the foreclosures that took place, with the exotic products that were placed on the market, with all of what caused us to experience disaster in our communities because of these unprecedented foreclosures leads us to understand what we must do to avoid homeowners losing their homes.

I understand that my time is up. But Mr. Chairman, I want to thank you for the hearing. And I am absolutely committed to the proposition that this will not happen, that we are going to have a credible forbearance situation for our homeowners that will not cause them to lose their homes. I yield back the balance of my time.

Chairman GREEN. The chairwoman yields back. At this time, I would like to introduce our witnesses and thank them for coming and being a part of this hearing.

We have with us today: Alys Cohen, a staff attorney for the National Consumer Law Center; Marcia Griffin, founder and president of HomeFree-USA; Donnell Williams, president of the National Association of Real Estate Brokers; and Ed DeMarco, president of the Housing Policy Council.

Welcome, again. Thank you for being with us virtually. You will each be recognized for 5 minutes to give an oral presentation of your written testimony. A chime will go off at the end of your time, and I would ask that you respect the members' and other witnesses' time by wrapping up your oral testimony. And without objection, your written statements will be made a part of the record.

Once the witnesses finish their testimony, each member will have 5 minutes to ask questions.

With that, Ms. Cohen, you are now recognized for 5 minutes.

STATEMENT OF ALYS COHEN, STAFF ATTORNEY, NATIONAL CONSUMER LAW CENTER (NCLC)

Ms. COHEN. Thank you very much, Chairman Green, Ranking Member Barr, and members of the subcommittee. Thank you for the opportunity to testify today. I am testifying on behalf of the low-income clients of the National Consumer Law Center, as well as 20 other consumer legal services and civil rights organizations. The unprecedented coronavirus pandemic has brought illness, death, unemployment, and greater economic insecurity to people across the country.

Communities of color, particularly Black and Latinx people, have been especially hard hit. Preexisting inequalities are exacerbated by the current crisis, and Black and Latinx homeownership is imperiled.

To mitigate some of the harm wrought by the pandemic, Congress must continue its vigilance in protecting homeowners, improve transparency for housing relief programs, increase its efforts to regulate and reform the mortgage servicing industry, and center relief for Black and Latinx homeowners. The Federal regulators must act as well, to prevent avoidable foreclosures and promote sustainable homeownership. Congress must pursue dedicated efforts to protect and expand Black and Latinx homeownership and pass additional measures, including collection of loan level borrower, loan performance, and lost mitigation data with free public reporting. Representative Porter's bill, H.R. 6835, is a good start on this. Expansion of CARES Act protections must include standardized forbearance for all mortgages, automatic forbearance for borrowers who have missed two payments or more, affordable repayment options for borrowers exiting forbearance plans who are seeking to resolve delinquencies that are available prior to foreclosure, written notice and in-language information for limited English proficient borrowers, a moratorium on negative credit reporting, targeted support for the hardest-hit communities, including funding for legal services, housing counseling, and cash assistance for delinquent borrowers, and measures to prevent neighborhood blight.

Moreover, Federal regulators must increase oversight, ensure mortgage assistance meets the needs of diverse communities of homeowners, improve regulations, including recent CFPB rules that leave homeowners at risk, and consider future reforms in the mortgage servicing industry, aligning servicer incentives with those of homeowners and investors. We commend the regulatory extension of the foreclosure moratoria, FHA's recent announcement to expand lost mitigation options, and GSE expansion of post-forbearance options, but more is needed.

Black and Latinx homeowners are more likely now than White homeowners to struggle paying their mortgage, seek assistance from their servicer, and miss payments instead of receiving forbearance. While all homeowners are more likely to report missing payments rather than deferring payments with their servicer, in the Census Bureau's Household Poll Survey at the end of June, 4 times as many Black homeowners recorded missing payments as compared to deferring payments. Among Hispanic or Latinx homeowners, and homeowners who identified as other or reported two or more races, there were 2 times as many homeowners reporting that they had missed payments as compared to deferring. Only about 1.4 times as many White homeowners report missing rather than deferring payments.

How can we help homeowners who have not yet received assistance? And what can we do for the disproportionately large group of borrowers of color facing this challenge?

While we focus today on efforts to contain the fallout from the pandemic, we should not lose sight of the fact that for many distressed borrowers, the mortgage servicing industry remains fundamentally broken. Our ability to prevent another great loss of homeownership for Black and Latinx families depends on our ability to have servicers see that performing default servicing well is in their interest as well as the interest of financially distressed homeowners and their communities and the economy.

Our nation is facing unprecedented challenges that present us with a real chance to look at our priorities and assumptions and make material progress in how we measure success and inclusion. Thank you.

[The prepared statement of Ms. Cohen can be found on page 34 of the appendix.]

Chairman GREEN. Thank you for your testimony, Ms. Cohen.

Ms. Griffin, you are now recognized for 5 minutes.

STATEMENT OF MARCIA GRIFFIN, FOUNDER AND PRESIDENT, HOMEFREE-USA

Ms. GRIFFIN. Thank you very much. My name is Marcia Griffin, and I am president and founder of HomeFree-USA, a nationwide HUD-approved housing counseling organization. I appreciate this opportunity to appear before you to provide firsthand insight surrounding the plight of homeowners in this pandemic.

Allow me to emphasize the importance of housing counseling organizations, which I like to call nonprofit homeownership providers. Court-approved housing counseling organizations like HomeFree-USA are mission-based entities created to provide everyday people with the tools they need to achieve and sustain their housing and homeownership goals. We help renters to become sustainable homeowners and help existing homeowners avoid mortgage delinquency and foreclosure. We are somewhat like marriage counselors—when a homeowner has unanswered questions, needs credit help, doesn't know what to do, doesn't understand the servicer's jargon, we bring them together with lenders and servicers to ensure that everyone is on the same page with the goal, of course, of finding a mortgage solution that works for both parties.

According to the U.S. Congress Joint Economic Committee, the average foreclosure costs everyone $77,934. Lenders lose an average of between 12 and 19 percent of the home's value at foreclosure, and they spend about $50,000 in the process. If counselors are able to prevent foreclosure, the value to lenders, investors, and the country is enormous.

So, what have we seen in the market today? Calls come in daily from homeowners who are exhausted, paralyzed by fear, COVID-sick, and have lost their jobs. Everyone is concerned that they will lose their home.

First, in my work at HomeFree-USA, and with my colleagues at the National Housing Resource Center, we do believe that servicers have improved since the start of the pandemic. But many still need better-trained customer-facing employees. Some call center employees read scripts that they are not familiar with, don't have time to answer questions, and are just not familiar enough with the process or procedures to assist consumers.

Second, counselors assist homeowners who are probably denied a forbearance. We have seen a troubling concentration of this issue with veterans' loans. We are seeing homeowners who may have recently completed a loan application, who have been denied, or borrowers who have just missed a payment in March or February,and they have also been denied.

Furthermore, we help homeowners who have requested a forbearance but still have questions about whether it has been approved and how to plan ahead for repayment. There is a frustratingly large number of homeowners who are unemployed but are still being told that lump sum payments are due at the end of the forbearance. Other occurring issues are highlighted in my written testimony.

Whether right or wrong, too many of our clients are unfamiliar with the terms in the servicer scripts. This only compounds the existing sense of distrust and fear of the banking industry. People of color are particularly vulnerable to this sense of distrust of lenders and servicers as a result of their most recent experience in the last housing crisis. People of color rely heavily on organizations like HomeFree-USA to advocate for them. What can be done? First, servicers do not have the capacity to handle individualized support of vulnerable homeowners. It is essential that housing counselors are supported so that we do not have to turn away a single consumer, thus freeing up servicers because we can handle the most challenging cases.

Second, we feel that the Consumer Financial Protection Bureau (CFPB), the Federal Housing Finance Agency (FHFA), and HUD should be more solution-focused and proactive in their monitoring of repayment issues. We feel the Federal agencies should coordinate and should identify real-time solutions and actively update policies and procedures.

Third, we need a streamlined loss mitigation loan procedure like we had with the Home Affordable Modification Program (HAMP). The biggest problem we have will be homeowners who return to work but have significantly reduced incomes. There will be a need for aggressive and affordable loan modifications for these borrowers. Housing counselors are capable of helping homeowners and servicers through these complicated processes.

Last, more outreach is needed. Consumer awareness of options and processes need to be better distributed.

I very much appreciate this opportunity to illuminate our concerns about COVID-related mortgage servicing, the importance of housing counseling intervention, and to sound the alarm that the worst is yet to home. HUD-approved counseling organizations can play a huge role in—

Chairman GREEN. You will have to wrap up her testimony, please. You have exceeded your time.

Ms. GRIFFIN. Okay. Thank you.

[The prepared statement of Ms. Griffin can be found on page 72 of the appendix.]

Chairman GREEN. Thank you for your testimony.

Mr. Williams, you are now recognized for 5 minutes.

STATEMENT OF DONNELL WILLIAMS, PRESIDENT, NATIONAL ASSOCIATION OF REAL ESTATE BROKERS (NAREB)

Mr. WILLIAMS. Chairman Green, Ranking Member Barr, Chairwoman Waters, and distinguished members of the subcommittee, thank you for the opportunity to testify today to discuss the importance of protecting homeowners, especially during these difficult times. I also want to thank Chairwoman Maxine Waters for calling this hearing.

My time is Donnell Williams. I serve as president of the National Association of Real Estate Brokers, the country's oldest and largest Black real estate trade association. Founded in 1947, our mission, democracy in housing, has guided our efforts to ensure fair housing practices in neighborhoods across the country, especially in communities of color. I am also the owner of Destiny Realty, a brokerage firm headquartered in Morristown, New Jersey.

COVID-19 is disproportionately affecting Black homeowners. It is well-documented that the COVID-19 pandemic has had a crushing and devastating effect on Black homeowners and caused mass unemployment, putting a deep economic strain on many Black borrowers who have worked hard to achieve the American Dream of homeownership. As of mid-June 2020, probably 24 percent of Black homeowners reported some difficulty making their mortgage payments, compared to White homeowners. There is a 13 percent gap between Black homeowners and White homeowners receiving forbearance under Section 4022 of the CARES Act, which allows borrowers to apply for a forbearance period of up to 360 days.

Solutions: In order to address the challenges facing Black homeowners as a result of the pandemic, it is imperative that Congress take action to ensure that congressional and governmental efforts to maintain homeownership are equitable and include Black homeowners. We urge Congress to take the following actions. One, allocate specific funds targeted to the preservation of Black homeownership.

Two, provide assistance for mortgage borrowers not covered by the CARES Act. Private mortgage lenders must be required to offer government-supported forbearance to their borrowers comparable to the treatment of government-supported mortgage loans.

Three, require FHA and all servicers to notify borrowers in all communications, including mail, electronic communication, and phone calls, of their rights to apply for forbearance. Require all servicers to have dedicated toll-free lines, staffed with representatives who are knowledgeable about their forbearance procedures.

Four, create a large-scale public affairs initiative. The Federal Government is allocating resources to building public awareness around the health risks associated with COVID-19. Similar efforts should be made to inform borrowers of their rights.

Five, ensure that FHA borrowers and GSE borrowers continue to have the same access to mortgage forbearance protections, financial relief, and assistance.

In conclusion, the National Association of Real Estate Brokers, whose members are known as REALTISTs, since its inception has stood with democracy in housing, and we look to the guardians of the communities we serve. We will continue to advocate for the preservation and sustainability of homeownership for Black Americans and all Americans. The REALTIST organizations are the trusted advisers of our community and the conscience of the real estate industry. And we need Congress to align with NAREB'S declaration of a cease-and-desist on the decline of Black ownership.

Thank you for the opportunity to testify before the subcommittee today, and I will be glad to answer any questions. Thank you.

[The prepared statement of Mr. Williams can be found on page 81 of the appendix.]

Chairman GREEN. Thank you very much for your testimony, Mr. Williams.

Mr. DeMarco, you are now recognized for 5 minutes.

STATEMENT OF EDWARD J. DEMARCO, PRESIDENT, HOUSING POLICY COUNCIL (HPC)

Mr. DEMARCO. Chairman Green, Ranking Member Barr, Chairwoman Waters, and members of the subcommittee, thank you for inviting me to testify on how mortgage servicers are responding to the challenges facing homeowners because of the novel coronavirus.

Many homeowners are in deep economic distress resulting directly or indirectly from the pandemic. Also, while anyone is vulnerable to the virus, the health and economic costs have disproportionately affected communities of color and lower-income households.

From the outset of this emergency, Housing Policy Council members and other mortgage servicers have been committed to keeping individual borrowers and families in their homes.

My written statement covers four topics, which I will briefly summarize here. First, the challenges facing homeowners today are not the result of poor underwriting standards or inappropriate business practices. This pandemic is a national health crisis, and the steps taken to combat it had enormous economic consequences.

In response, HPC members and other mortgage servicers have shifted virtually all of their operations out of call centers and office buildings to their own homes, and trained their staffs remotely in modified technology and managed the enormous inflow of borrower inquiries. They have set up automated online tools for borrowers to educate themselves and request payment relief. They began offering homeowners forbearance options before the passage of the CARES Act. And they have extended forbearance to homeowners who do not have federally-backed mortgages. They have executed against an evolving series of programming and regulatory announcements from various Federal programs and agencies.

By late May, just 2 months since enactment of the CARES Act, nearly 4.8 households were on a forbearance plan. That total has declined 13 percent since then. According to Black Knight Financial Services, by late May, 12.3 percent of FHA and VA loans were in forbearance, and 7.1 percent of GSE loans were in forbearance. Servicers of these loans are required by the CARES Act to offer forbearance to a customer who asks for it claiming a COVID-19 economic hardship. Yet, for non-federally-backed mortgages, 9.6 percent of such loans were also waived forbearance by late May. These include bank portfolio loans and loans in private label securities. This is a clear situation that bank portfolio lenders and other investors have also responded without a Federal directive, providing borrower payment relief at an even greater rate than we see for GSE loans.

Second, I want to acknowledge the partnerships and information sharing that has marked the last 4 months. Not only has the industry been trying to work together to develop best practices, we have been joined in partnerships with numerous other organizations and stakeholders, as well as numerous government agencies and regulators. These partnerships demonstrate a level of common concern for the families whose financial situations have been disrupted by this national health emergency. I believe it is because of this communication and coordination that relief has been provided to so many so quickly.

Transitioning from forbearance to a longer-term solution requires dedicated efforts from the borrower and servicer to ensure the best resolution. The sooner a borrower begins repaying their mortgage, the sooner he or she resumes the wealth-building opportunity that homeownership provides. When a borrower is ready to resume monthly payments, borrower contact with their servicer is critical to achieve a seamless transition and to ensure their certainty among all the parties regarding the repayment of the forborne amount. The options available are dependent on several factors, some unique to the loan program and some based on the borrower's own circumstances. Generally, the options include a short-term repayment plan, repayment at the end of the loan term, or a longer-term repayment by adding the outstanding payments into the loan balance and modifying the loan.

With the forbearance provisions in the CARES Act, Congress has already taken the cornerstone action to assist borrowers and servicers. We recognize that the pandemic has negatively affected many consumers and communities and that some of the beneficial stimulus provided under the CARES Act is coming to an end. Thus, we support additional measures by the Congress to provide fiscal stimulus to hard-hit consumers and communities. Thank you for inviting me to participate today.

[The prepared statement of Mr. DeMarco can be found on page 64 of the appendix.]

Chairman GREEN. Thank you for your testimony, Mr. DeMarco.

I now recognize the gentlewoman from California, the Chair of the Full Committee, Chairwoman Waters, for 5 minutes for questions.

Chairwoman WATERS. Thank you very much, Chairman Green. And I would like to thank all of our witnesses who are here today. I know of their worth, I have worked with them over the years, and they have been counseling and helping our homeowners, and I am very, very pleased that they are all here this morning.

But here is what I would like to do. I would like to find out, and I will ask each of our witnesses, in the time that I have, whether or not the language in the HEROES Act is doing exactly what we need it to do. We know that we are provided the right to request and receive forbearance for our homeowners on their mortgage payments for up to 6 months, with the option to extend for an additional 6 months, for a total of one year. I think there was some information shared with us that homeowners don't necessarily know this. What can we do to make sure that servicers share this information? And I would also like to know, should there be additional language about loan modification for forbearance?

So, let me ask each of our witnesses to share with me whether or not they think it is sufficient.

Let me start with Marcia Griffin, whom I have met with for so many years. Thank you, Marcia.

Ms. GRIFFIN. Wonderful. Thank you. Housing counseling organizations definitely support the HEROES Act. This is great progress. It also really helps to sort of rein in some of the issues that we are seeing with private, non-Federal loans. We are very, very appreciative of the suggestion of support, supplemental support for housing counseling. It is very, very much needed.

The focus on repayments and forbearances is good. And we should certainly continue. We have spoken about our views on the HEROES Act, also, in our written testimony. So, we are just applauding you.

Chairwoman WATERS. I want to make sure I get to the other two witnesses. National Consumer Law Center staff attorney, Ms. Cohen, do you think that we need additional information following the 1-year forbearance?

Ms. COHEN. Thank you for your question, Chairwoman Waters, and for being at the hearing today. Your question sounds like it is focusing primarily on this question of whether people need more than one year of forbearance?

Chairwoman WATERS. Yes.

Ms. COHEN. First of all, the HEROES Act has a lot of excellent provisions in it, and we hope to see the Senate take up something like that, look at those issues, and find a way to get something done.

With regard to your specific question, as you heard Dr. DeMarco, people need to transition from forbearance to repayment. And so what we would like to see is legislation and programming to help people get into repayment. Now, of course, if the financial situation in the country goes on in an unexpected way, we may need to reevaluate that. But at this point, what we would like to see and what is in the HEROES Act and could be in Senate legislation is more affordable post-forbearance repayment options that are mandatory.

Chairwoman WATERS. Very good. I think we are talking about the same thing, when you talk about repayment options after the forbearance period.

Let me ask Donnell Williams, president, National Association of Real Estate Brokers. I have worked with the REALTORS, just reconsolidated in L.A., and I appreciate your work so much. What do you think—you have given us some advice, and you have pointed out a few things that you think we can do additionally. Of those four or five things that you pointed out, which stands out most in your mind that we should do to make sure that this forbearance and loan modification process works?

Mr. WILLIAMS. I think that the servicers need to get the information about the borrowers' rights out to the community and to the borrowers. That can be done by mail—they are not getting this information or trusting this information in any other kind of way. If it doesn't come through the REALTOR organization, and it does come through the mail, that would be great through email and what have you. We also need to have data collection. But servicers need to supply this information, this data to the CFPB and to Congress.

I just had a borrower in Irvington, New Jersey, and another one in Morris Township, New Jersey, tell me their servicer, like Congressman Green said, only gave them 3 months, and that the whole balance would be due in 90 days.

Chairwoman WATERS. Well, let me stop you. Do you think we should have some penalties for servicers who violate the law that we have in the HEROES Act, and require lump sum payments like that?

Mr. WILLIAMS. I do believe so. They are roadblocking. They are stopping. They are clogging it up so that we can't have progress.

Chairwoman WATERS. Well, I thank you for your testimony here today.

And thank you, Mr. Green. I yield back the balance of my time.

Chairman GREEN. The gentlelady yields back.

The ranking member of the subcommittee, Mr. Barr, is recognized for 5 minutes for questions.

Mr. BARR. Thank you, Mr. Chairman. And thank you to all our witnesses for your testimony, which was, obviously, very powerful testimony about the vulnerability of homeowners at this time. And if I may just offer one comment or observation about the testimony of all of our witnesses, it just speaks to the very important need for us to avoid any future shutdowns of the economy. Of course, we need to practice hygiene and mask-wearing and all of the things to prevent the spread of the virus, but particularly for minority borrowers, based on the testimony that so many have offered here today, it just speaks to the importance of getting people back to work so that they can provide for their families and meet those payment obligations.

Let me start with a question for Dr. DeMarco about the non-federally-backed mortgages. I think your testimony was that for those non-government-backed mortgages, those borrowers are actually experiencing a higher forbearance rate than federally-backed mortgages.

Dr. DeMarco, what does that tell you about the marketplace and how the marketplace is responding without the HEROES Act?

Mr. DEMARCO. I think it is telling us a couple of things. I think it is telling us that what was in the CARES Act, the forbearance provisions in the CARES Act that had been implemented for federally-backed mortgages is a sound approach to dealing with this kind of situation, and that servicers that are not required under the CARES Act to provide this support are still utilizing those same tools to assist their customers in non-federally-backed mortgages.

I think that servicers recognize in this situation that payment forbearance is an appropriate response to assist their borrowers, and, in fact, they are doing that, whether required by the CARES Act or not. So, this has really developed as a best practice that it is being utilized by servicers of non-federally-backed mortgages, very effectively, and as you noted and as I noted, at a greater rate than we see in the GSEs now.

Mr. BARR. The HEROES Act, which, as you know, passed without any Republican support, contains some new parameters around options for homeowners experiencing difficulties. But apparently, the authors of the HEROES Act believe that instituting mandatory automatic forbearance for all borrowers and limiting loan modification options would benefit borrowers.

Dr. DeMarco, how would these proposed sections of the HEROES Act impact a servicer's ability to work with their customer, and would they actually help or hurt American families trying to stay in their homes? And in the context of answering that question, could you talk about the importance of communication between servicers and borrowers?

Mr. DEMARCO. That is actually where I was going to start. I understand the intention behind wanting to create an automatic forbearance opportunity for borrowers. But there is actually, I suggest, something more important here that actually comes out of the work that Congress did in the Dodd-Frank Act and has been implemented since by the CFPB, but it was also part of the development servicer practice as a result of the Great Recession.

Now, there is the importance of timely communication between a servicer and their customer, if the customer is having problems paying their mortgage. So we don't want to wait 60 days and say, "Oh, well, we haven't had a check come in; we put them on forbearance." Servicers have to be and should want to be in contact with their customers before you get to 60 days, and want to understand what is the customer's situation so that they can, in a timely way, deliver an appropriate support or opportunity to help get that homeowner back on their feet. So, for example, the homeowner may have missed 2 months of payments for reasons having nothing to do with an economic disruption due to the pandemic, but for some other reason. And so, the servicer wants to get in touch with that homeowner, find that reason, and get to solving that homeowner's particular problem.

That is why we should suggest that the idea of making sure the servicer is actually staying in contact with their customer and the customer is staying in contact with the servicer is going to yield a better outcome for the various situations that we are going to see here.

Mr. BARR. My time has almost expired, but I think it is important to recognize that different homeowners face different difficulties, and a one-size-fits-all approach may not be better. And if we can get folks into repayment quicker, we should do that.

And, finally, what we did in the CARES Act or how much forbearance requirement or forbearance is allowed in these cases, nothing can replace getting people back to work and getting kids back in school so people can take care of their mortgage obligations. Thanks so much, and I yield back.

Chairman GREEN. The gentleman's time has expired.

The Chair now recognizes the gentlewoman from Ohio, Mrs. Beatty, who is also the Chair of our Subcommittee on Diversity and Inclusion, for 5 minutes for questions.

Mrs. BEATTY. Thank you so much. It is certainly my honor to be on this subcommittee, and I thank you and Ranking Member Barr, and I certainly thank our Chair of the Financial Services Committee, Chairwoman Waters, and Ranking Member McHenry.

First, let me say to all the witnesses, thank you for your time and for your testimony.

My first question—I am going to try to get through several questions, so, if I kind of put my hand up or move on, please excuse that, it is just because of the timer.

This question is for you, Ms. Cohen. As you know, the CARES Act is very explicit about the protections Congress intended for homeowners with regards to forbearance. Borrowers experiencing financial hardship due to COVID-19 were to be provided forbearance for 180 days with the possibility of an extension for another 180 days. Despite this, I have gotten calls, dozens of calls, and they are confused about what the law said and what my constituents' mortgage servicers were offering in that way.

As you know, we passed the CARES Act on March 27th. Can you tell me, despite the confusion going on in the marketplace that we all knew about—where was the CFPB, who has oversight of the mortgage services industry, and why did it take us until June 4th?

Ms. COHEN. Thank you for your question. In terms of the complaints that you are hearing, we do have some good protections in the CARES Act. And the Federal regulators only need to step up their game and do much greater oversight of the servicers. In terms of the CFPB, they appear to have spent most of their time relaxing regulations for servicers and providing advice for homeowners. Homeowners need protection.

Mrs. BEATTY. Do you think they should have been doing more? I get the relaxing part, but people are still hurting, and they have oversight. Yes or no?

Ms. COHEN. Yes, the CFPB should do more, starting with making sure people don't face foreclosure until they get help.

Mrs. BEATTY. Thank you.

Let me move on to the next question. Mr. DeMarco, this question is for you. Earlier in the week, and maybe you have seen this article, ProPublica published a story entitled, "Trump Financial Regulator Quietly Shelved Discrimination Probes into Bank of America and Other Lenders," which found that the Office of the Comptroller of the Currency (OCC) halted or stalled at least six investigations into discriminatory mortgage redlining against the recommendations of their own career staff. This was the same time and the same agency that was working to undermine and water down the Community Reinvestment Act (CRA), which is supposed to protect against that type of discriminatory lending. In this article, they found that the OCC had found patterns of discriminatory lending against African Americans and Latinos in several lending institutions, in several areas around the country. It also listed a whole lot of other things that were shelved.

Mr. DeMarco, many of the lending institutions identified in the articles are members of those associations you lead. Can you tell me your response to this, and what are you doing to ensure that members of your organization are not perpetuating the social and economic injustices that African Americans and other minorities continue to face? This is very troublesome to me.

Mr. DEMARCO. Certainly, and I would understand that Mrs. Beatty. Forgive me, I am not aware of this article. I have not read it or seen it, so I am at a disadvantage there. But I will take what you said, and certainly, I would be concerned about those sorts of issues. I am sure if any of my member companies are named in that article, that they are looking at what is going on here, and I would be happy to go and take a look.

Mrs. BEATTY. Thank you so much. Let me go to the chairman.

Mr. Chairman, I would like to request that the committee use its powers and resources if necessary to subpoena documents from the OCC related to previous lending discrimination investigations, and seek depositions of senior leaders of the OCC, including the Director himself, Joseph Otting, to get to the bottom of these allegations. We have been hearing them. It has been talked about, and I am sorry that Mr. DeMarco is not familiar with the article. I will have my staff also send that. And my time is up. I yield back.

Chairman GREEN. Your request is duly noted and will be acted on in the due course of events.

The Chair now recognizes the gentleman from New York, Mr. Zeldin, for 5 minutes.

Mr. ZELDIN. Thank you, Mr. Chairman. I appreciate the testimony here today.

Thank you to Chairman Green and to Ranking Member Barr and Chairwoman Waters, as well. I appreciate all of you holding this hearing.

I have the honor and privilege of representing the First Congressional District of New York, which covers most of Suffolk County. Suffolk County is one of the most expensive places to live in the country, so affordable mortgage options are essential to my constituents.

We are here today to discuss mortgage servicers who play a client-facing role in mortgage finance. On April 10th, I spearheaded a letter to Secretary Mnuchin with 19 other members of this committee. The letter highlighted the need to ensure adequate liquidity for mortgage servicing because residential mortgage servicers are typically obligated to advance payments of principal, interest, taxes, and insurance on to investors and municipalities and insurers, whether the borrowers make those payments or not.

If a homeowner falls behind on payments, it is the servicer's role to work with the borrower and find ways to get them back on track through loan modifications. In the CARES Act, Congress decided that a nationwide, broad-scale forbearance program was needed, but it was important that steps were taken to buoy the market if forbearance take-up rates continue to skyrocket.

Mortgage servicers have a vital role to play in helping borrowers, but cannot shoulder the entire onus of government actions to protect the American homeowners impacted by COVID-19 if they do not have access to the needed liquidity to execute on those government actions.

I am pleased that Federal agencies have focused on this and continue to work with servicers on how best to serve homeowners. FHFA and HUD issued guidance and scripts to be distributed to mortgage servicers. These step-by-step instructions have helped to guide servicer discussions with borrowers. Additionally, the GSEs and Ginnie Mae have provided assistance to servicers dealing with loans in forbearance.

Meanwhile, the New York attorney general, on April 24th, called for mortgage servicers to, "automatically waive late fees and place homeowners in 3-month forbearance as soon as a payment is missed, whether or not this action is requested by the homeowner."

Dr. DeMarco, my question first for you is, should borrowers be automatically enrolled in forbearance, or is it better for the borrower to speak with his or her servicer first regarding the best options for his or her situation?

Mr. DEMARCO. I think it is definitely better for the borrower to speak with their servicer as soon as they have any issues with making a mortgage payment, explain what those issues are to the servicer, and the servicer may work with the borrower to determine what is the appropriate course and the best course for that particular borrower's circumstances.

Ms. COHEN. May I respond to that?

Mr. ZELDIN. Please.

Ms. COHEN. Because the subject came up twice, I will do it quickly. We agree that people should try to talk to their servicers, but as I stated before, more borrowers are not paying their mortgages than are making forbearance arrangements with their servicers, according to the U.S. Census Bureau. People who are already late on their mortgages have taken a hit on their credit, and they shouldn't face foreclosure, and they should get more assistance. Thank you.

Mr. ZELDIN. Thank you.

Dr. DeMarco, forbearance take-up rates seem to have leveled off for now. What is your assessment of the servicer liquidity situation?

Mr. DEMARCO. I think that, as a result of the administrative actions that you mentioned, particularly by FHFA and HUD, as well as some actions by the Federal Reserve and the mortgage-backed securities market, the liquidity situation has stabilized. And the interesting thing here is by regulatory actions that put guardrails around or limits around the servicers' liquidity responsibility on any given loan actually enabled the private market to step in and provide additional liquidity. Once we had greater certainty about what the rules of the road were going to look like in terms of the answers and what the duration was going to look like, the markets actually stepped in. And we still believe that the Federal Reserve and the Treasury can and should be ready to step in as needed if the situation turns worse again and liquidity is needed for nonbank services.

Mr. ZELDIN. Thank you. My time is running out, so I just want to thank again all of the witnesses for being here.

To Chairwoman Waters, Chairman Green, and Ranking Member Barr, it is great to see all of my colleagues here. I look forward to seeing you in person. I hope you and your families are healthy. To all the staff on the call, thank you for what you do to make this hearing possible and for your service to the Financial Services Committee. I yield back.

Chairman GREEN. The gentleman's time has expired. The Chair now recognizes the gentleman from Massachusetts, Mr. Lynch, who is also the Chair of our Task Force on Financial Technology, for 5 minutes.

Mr. LYNCH. Thank you very much. I appreciate you holding this hearing, Mr. Chairman.

I guess, I would like to look further out in terms of, in January or when we—hopefully when we start to come out of this lockdown, especially in the southern States, what does the transition look like in terms of recognizing the inability—well, recognizing the tremendous pressure that has been put on individual homeowners, in banks, local community banks, what does that transition look like in terms of trying to slowly, incrementally get us back to where there is full opportunity for people to catch up on their mortgage payments, in some cases, reengineering some of the mortgage products that are out there or reconstituting the mortgages that are on property that are inadvertently falling behind? How does that all come together? And is it the mortgage servicer or is it—obviously, the mortgage servicer has obligations to the shareholders. So, I am little bit unclear on how we can reengineer this in a way that doesn't put the homeowner or the renter, in some cases, at severe risk.

Let's say the President pulls off the emergency status, and by Executive Order might end all of the support and relief that we have been providing, what does that look like, and how do we help those people transition slowly back to some semblance of normalcy?

Mr. DEMARCO. I will be glad to take a crack at that, Congressman.

With 4.8 million households in forbearance, you can imagine that not everyone is going to come out of forbearance in the same situation.

Over the last few months, I think between FHFA, the GSEs, FHA, and I don't want to leave out VA and USDA, there has been a lot of development about refining for servicers the guidelines of these programs for what that post-forbearance looks like, but I think across all of them, it can be simply boiled down into, broadly speaking, three buckets.

For a borrower who comes out of forbearance and actually has the capacity not just to continue to pick up their mortgage payment, but to make a greater payment, they may determine they want to be on a short-term repayment plan and get caught up faster.

For a lot of borrowers, if they get back to work, they can resume their pre-pandemic mortgage payment, but can't pay more than that. In that case, for most of those borrowers, their forborne payment is going to get added to the end of the loan—life of the loan to be paid then and then resume a normal payment, but for those whose income has been permanently disrupted, they can't go back to their prior payment, we are going to be able to do a loan modification where we get a way of getting them caught back up by redoing the loan using loan modification terms. That is it, briefly.

Mr. LYNCH. Okay. So you don't anticipate any objection on the part of some of the shareholders that are due payments from the mortgage servicers, and you don't expect any action that we would have to take in order to make that happen? It is already in place?

Mr. DEMARCO. Certainly, with the—

Ms. COHEN. I can take that.

Mr. DEMARCO. Okay.

Ms. COHEN. Just briefly, what we saw in the last crisis and what we continue to see is that, as you said, Mr. Lynch, servicers on private mortgages are beholden to the guidelines from the investors, and so what we would like to see is a safe harbor for mortgage servicers from investor liability so that they can provide loan modifications along the lines that the GSEs and FHA and the other government agencies can provide that are sustainable.

I would add that these issues are unprecedented and we don't yet know whether the loan modifications being offered will be affordable to enough people.

Mr. LYNCH. Okay. That is a perfect answer. That is what I wanted to know, in case we need to create a safe harbor to allow the loan servicers to give a break to some of these mortgage holders. We need to collaborate on that. I think that would be a win-win all the way around, but thank you very much.

And I yield back.

Chairman GREEN. The gentleman yields back.

The Chair now recognizes Mr. Rose for 5 minutes.

Mr. ROSE. Thank you, Chairman Green and Ranking Member Barr, and thank you to our witnesses for testifying before the committee today.

Currently, as we know, approximately 4.1 million homeowners are in forbearance plans, some due to the uncertainty surrounding COVID-19. Reports have shown that a large number, however, have continued to make payments even after requesting forbearance. That number has dropped sharply between March and June, though.

Back here in Tennessee, folks are ready to get back to work, and I believe we need to do so as quickly and safely as possible.

Dr. DeMarco, why did some people opt into forbearance but continue to pay down their principal, in your opinion?

Mr. DEMARCO. Congressman, I am not sure there is one explanation for that. In some cases it might have been a timing issue. Maybe they weren't sure whether they got the request in on time for that first month. In other cases, I believe, and this may be the majority, that the consumer wasn't exactly sure what their economic situation was going to be.

Maybe they had a lot of uncertainty at work, and they wanted to get on forbearance quickly, so that they had that. And then once they realized that, in fact, their circumstances were okay, they may have ended the forbearance or others may actually have needed it and have started to take advantage of it since, so I think there are multiple reasons here.

Mr. ROSE. Are there any adverse consequences to asking for forbearance being approved, but then not taking advantage of it?

Mr. DEMARCO. You have to have an economic hardship resulting from the pandemic in order to ask for the forbearance, but if you ask for forbearance and continue to make your mortgage payment, no, there is no adverse consequence for you.

Mr. ROSE. Do you believe, Dr. DeMarco, that getting Americans back to work would decrease the number of borrowers who actually need to be in forbearance?

Mr. DEMARCO. Certainly, Congressman, the more people we get back to work, the more they are going to be able to pay their mortgage, and the fewer are going to need forbearance, yes.

Mr. ROSE. The CARES Act required unconditional forbearances of voters experiencing trouble due to the pandemic. However, those provisions only covered federally-backed loans.

Dr. DeMarco, how have the private mortgage servicers changed their practices to help keep families in their homes?

Mr. DEMARCO. They are generally doing the same thing as the servicers of federally-backed mortgages. They are offering mortgage payment forbearance to their customers who contact them and declare they are having a financial hardship due to the pandemic. As a result, the rate of those loans in forbearance is actually greater than the GSE loans.

Mr. ROSE. Interesting.

Ms. COHEN. Mr. Rose?

Mr. ROSE. Yes.

Ms. COHEN. One thing I wanted to point out is that most private servicers, if they have an investor that they are servicing for, they are advancing payments, so at about 120 days of forbearance, they are much more financially strapped.

And we are concerned that 90-day forbearances aren't going to go to 180 days in the private market and that is going to present a significant problem.

Mr. ROSE. Thank you, Ms. Cohen.

Mr. WILLIAMS. And, Mr. Rose, excuse me, the National Association of Real Estate Brokers, in our statement, we have addressed that as one of our five solutions that private servicers need to adhere to the GSE and FHA guidelines—

Mr. ROSE. Thank you.

Ms. GRIFFIN. I would also like to add—

Mr. ROSE. Let me go ahead to some other questions—reclaiming my time.

Dr. DeMarco, what other efforts have you seen industry stakeholders make to protect homeowners?

Mr. DEMARCO. I think that they have done a great deal to set up on their websites clear information for borrowers to understand what their options are. They have made a tremendous effort to shift all their servicing operations to the individuals' homes. They had to do the technology and the security around that to make that happen. I think those have been terrific efforts that servicers have made.

And the other is, they are proactively reaching out to their customers to find out what their situation is and to make sure that they are getting the right tools to help them in their situation.

Mr. ROSE. Thank you.

Throughout the pandemic, I believe, that the Trump Administration has continuously rolled out updated guidance for industry stakeholders.

Dr. DeMarco, in the few seconds we have—well, it doesn't look like we have enough time, but I would, if time permits later, love to hear your assessment of how the agencies have assisted with the implementation of the CARES Act.

And with that, I yield back, Chairman Green.

Chairman GREEN. The gentleman's time has expired.

The Chair now recognizes the gentlewoman from New York, Ms. Velazquez, who also happens to be the Chair of the House Small Business Committee, for 5 minutes.

Ms. VELAZQUEZ. Thank you, Chairman Green, Chairwoman Waters, and Ranking Member Barr for this important, quite timely hearing.

This question is for the panel. Recently, companies and organizations like the Center for Responsible Lending, the National Association of REALTORS, and Quicken Loans have all come out in opposition to the Trump Administration's plan to weaken the disparate impact rule; thereby, making it harder to pursue housing discrimination cases. Several other groups have come out in opposition to the proposed changes as well.

So with a quick yes or no, does anyone believe now is the time to weaken housing discrimination rules?

Ms. Cohen, let's start with you.

Ms. COHEN. No.

Ms. VELAZQUEZ. Ms. Griffin?

Ms. GRIFFIN. No.

Ms. VELAZQUEZ. Mr. Williams?

Mr. WILLIAMS. No.

Ms. VELAZQUEZ. And Mr. DeMarco?

Mr. DEMARCO. No, we don't want to weaken housing discrimination rules.

Ms. VELAZQUEZ. Thank you.

Ms. Cohen, while the FHA has provided some guidance to FHA servicers regarding the implementation of the CARES Act related to the forbearance, a recent HUD OIG report found that, "about 90 percent of FHA loans provided incomplete, inconsistent data, and unclear guidance to borrowers."

Do you think further guidance from the FHA to servicers regarding forbearance is needed?

Ms. COHEN. Yes. FHA should provide further guidance and so should Congress include it in the next package, both about websites, written notice, and oral notice.

Ms. VELAZQUEZ. And why do you think the FHA hasn't issued such guidance?

Ms. COHEN. I can't answer why FHA has not done that. I will say that I agree with Dr. DeMarco that they have done a really incredible job of putting out a lot of guidance and they just put out a lot of new rules, which, hopefully, will make loss mitigation more affordable for more people.

Ms. VELAZQUEZ. Thank you.

Ms. Griffin, what has your organization seen in terms of servicer communications to borrowers about having to pay a lump sum payment at the end of the forbearance period?

Do you feel misinformation about repayment options is discouraging borrowers from accessing the forbearance relief afforded to them under the CARES Act?

Ms. GRIFFIN. Absolutely. The people that we talk to are frazzled about this lump sum payment. Few of them have actually even heard of the 180 days, let alone a year.

So, it is causing really a lot of undue headache in these communities, and the borrowers are really concerned about their ability to pay, even at some point, let alone after 90 days.

They are concerned that when they are going to work and, yes, the question earlier, yes, when employment increases, things will be a little bit better, but right now these homeowners are frazzled—

Ms. VELAZQUEZ. Thank you.

Ms. GRIFFIN. —despite everything with the servicer—

Ms. VELAZQUEZ. Thank you.

Ms. GRIFFIN. —they are not getting the right information.

Ms. VELAZQUEZ. Thank you, Ms. Griffin.

Yes, Mr. Williams?

Mr. WILLIAMS. Just to dovetail on what Ms. Griffin said, that we basically need more awareness, the borrowers need to know that their rights are protected. We need to promote on TV, on the radio, and even email. They need to know they are protected because it is folklore right now.

Ms. VELAZQUEZ. So whose responsibility it is to get information out? Who is failing?

Mr. WILLIAMS. The servicers and the government right now. We are spending a lot of money, as we said in our statement, a lot of money on—

Ms. VELAZQUEZ. Thank you.

Mr. Williams, many individuals with mortgages currently in forbearance might still be unable to make their payments when their forbearance protections under the CARES Act expire.

Based on what you have seen over the past few months, are you concerned about servicers' ability to work with borrowers to keep them in their homes after their forbearance period ends?

Mr. WILLIAMS. I am very concerned. I have two witnesses, two people that I know who said that—one servicer said they didn't work with the program at all. It is a variable note. So, that is what they told this lady, that they didn't work with it at all; they would not be able to.

Another servicer gave the person, the borrower, 90 days, 3 months, and they have a payment of $17,000 at the end of that—

Ms. VELAZQUEZ. Thank you.

Mr. WILLIAMS. —so I am extremely concerned.

Ms. VELAZQUEZ. My time has expired.

Thank you.

Chairman GREEN. Thank you. The gentlelady's time has expired.

The Chair now recognizes Mr. Timmons for 5 minutes.

Mr. TIMMONS. Thank you, Mr. Chairman. It is good to be with you all, even if it is on a conference video. I appreciate you having this hearing. We need to get this right.

Just in January/February, we are experiencing some of the lowest unemployment in the history of South Carolina, in the history of our country, and COVID-19 has just changed everything.

So, the Federal Government did what it could. The CARES Act had a lot of great things. It was hurriedly put together, and I think overwhelmingly, it was in the right direction. We are going to make sure we get the next package right. Phase four needs to be tailored to those who need it and people who are still struggling from unemployment or with other economic challenges. We need to make sure that we get them the help that they need.

We are expecting a vaccine here in December, January, February, March, April, the sooner the better, in my opinion. I am sure we will all agree on that. I am probably going to be one of the first people to get it because I am in the National Guard, so I hope they get it right the first time.

Mr. DeMarco, I am concerned that in October/November, we are going to hit our 6 months and we are going to have a lot of people who are still unemployed who are going to continue to have challenges making their payments. What policies do you think we should be considering to address that?

Mr. DEMARCO. For those in federally-backed mortgages, which is the majority of homeowners, if they get to 6 months and they still are experiencing an economic hardship because of this pandemic, then they should be in touch with their servicer requesting an additional extension of their forbearance period.

In that sense, the answer is already there. The larger question is getting people back to work, and balancing and dealing with both the health issues our country is facing as well as the need to get the economy going.

Mr. TIMMONS. We are dealing with that exact issue here in South Carolina. And the issue is, if you are older or have an underlying health condition, we need you to protect yourself and we need to make sure that you are able to protect yourself.

You are not worried about having your credit ruined or risking your safety going back to work, but if you are healthy and you have a lower risk factor, we need you to get back to work, because ultimately, getting the economy restarted and getting the vaccine is what is going to get us through this.

Ms. COHEN. Mr. Timmons?

Mr. TIMMONS. Yes, ma'am.

Ms. COHEN. I just wanted to supplement what Mr. DeMarco said. We do want to see people get back to work when it is time to do that and they are healthy, but one-third of the mortgage market is not government-backed loans and so we want to make sure that those people can get affordable loan modifications if they need them after their forbearances so that we can see increased employment and decreased foreclosure, including in the upstate where you live.

Mr. TIMMONS. Yes, ma'am. I appreciate that.

Honestly, it was remarkable to me. I had so many individuals calling and talking about this issue we are discussing of a balloon payment at the end of the forbearance period, and I had a call with the bankers and the credit unions immediately the next day, and I just wanted to make sure that was not going to be the case anywhere.

Obviously, it is unacceptable. And I think the adverse impact on the perception of any entity that is not providing the forbearance necessary to those who need it is sufficient, the PR hit would be not worth the rub.

But on to a different subject. As you all know, the FHFA and the GSEs have adopted temporary origination policies for the largely remote and virtual environment we find ourselves in. This has applied to appraisals, underwriting, and remote online notarization. This has been hugely helpful, in my opinion, to help maintain the health of the housing market during the pandemic.

I would like to ask each of you, yes or no, do you think these remote policies, which are set to expire August 31st, should be made permanent?

I will start with Dr. DeMarco.

Mr. DEMARCO. These policies have certainly helped keep the mortgage market going, and yes, in one form or another, we would like to see some of these—certainly things like the remote online notarization be made permanent.

Mr. TIMMONS. Mr. Williams?

Mr. WILLIAMS. I believe some of those programs, some of those options should be made available and be made permanent.

Mr. TIMMONS. Thank you.

Ms. Cohen?

Ms. COHEN. Yes. We think those are important programs, but we need to make sure they are only used in certain circumstances and we need to make sure that appraisals are still reasonably accurate.

Mr. TIMMONS. Absolutely. I think we can agree on that.

Mr. Chairman, again, thank you for having this hearing and I look forward to working with you on this issue.

I yield back.

Chairman GREEN. The gentleman yields back.

The Chair recognizes Mr. Perlmutter for 5 minutes.

Mr. PERLMUTTER. Thank you, Mr. Chairman.

And I have to say, I subscribe to much of what Mr. Timmons had to say, and a pretty realistic view of what we are facing in the questions that he asked. And I had taken some—not offense, but I differed with Mr. Barr as he started off his remarks in saying this economic situation we are in is as a result of a government-mandated shutdown.

The bottom line is, this is COVID related, and we don't have it under control. This thing is going to continue to evolve. It is going to be difficult in we don't know how many different ways. And as Mr. Timmons was saying, and I think all of us believe, each of us has to provide some kind of latitude to others for all of us to get through this thing.

So, 37 States in this past week have seen increased numbers of infections and hospitalization, so we are not out of this by any stretch of the imagination, and I think that the housing industry, the mortgage industry is going to continue to be roiled by this for some time. So, I think this is going to evolve.

I would ask Ms. Griffin and Mr. DeMarco, there are provisions in the HEROES Act that contemplate the fact that we are not out of this virus yet, and at the end of this month, the pandemic unemployment insurance runs out. We see a lot of the funding for the PPP loans will have been exhausted by individual businesses. We haven't done another stimulus or stability payment.

If this virus continues to roll as it has, and I will start with you, Ms. Griffin, are we going to need to implement some things in the HEROES Act so people can pay their mortgages? Forget about forbearance for a second. I think we would all like them to pay their mortgages.

Ms. GRIFFIN. Absolutely. The reality is that the more help we can give to homeowners, the better. They are going to absolutely need it, as you just said. This situation is not getting better. It is getting worse.

Certainly, consideration to helping homeowners, helping organizations like ours, and others that can help these homeowners get on their feet and work with these servicers, this is really critical.

Our homeowners do not have—many of them, at least, don't have a grasp for what is next. And so the work—and I will just certainly say with the counseling organizations, that we can just kind of settle people down, give them direction, even help to provide advice and guidance about working with their servicer as well as how to enhance their own lives. This is what we want.

And we certainly need to think about a HAMP-like program that was very affected the last time. I think that this will be very effective going forward, and this is something that we would really, really encourage.

Mr. PERLMUTTER. And I thank you for that. Ms. Griffin, I think, you hit the nail on the head. When you have uncertainty and you have fear in an economy, it slows the economy down. No ifs, ands, or buts. There needs to be some level of certainty, and to try to hopefully, get a vaccine as soon as we can or make some technological breakthroughs in therapeutics to take away the fear.

But Dr. DeMarco, what do you think we are going to need, assuming that this virus isn't extinguished or isn't fought off by a vaccine for 5, 6, 7 months?

Mr. DEMARCO. Mr. Perlmutter, I agree. This is a big-picture question about our economy. It is about small businesses, and even large businesses that are suffering because of how the pandemic intersects with those industries and those businesses. It is causing great hardship among families because of the furloughs and the unemployment that is resulting from that.

So, this is a big macroeconomic challenge and that is a bit outside of my scope, but I would say that I understand that Federal Reserve Chairman Powell has been up before Congress recently, talking about the need for continued fiscal support in face of how the pandemic and the economic response to it is affecting our economy, our businesses, and our workers.

And so, I don't have a particular prescription, but to say that I think Chairman Powell certainly identified that as a role for Congress.

Mr. PERLMUTTER. Thank you.

And I yield back to the Chair.

Chairman GREEN. The gentleman's time has expired.

The Chair now recognizes Mr. Taylor for 5 minutes.

Mr. TAYLOR. Thank you, Mr. Chairman. I appreciate this hearing. I think this is a very important topic and I think we have been—I get a lot about the individual impact and I think all of us, as Members of Congress, see that every day in our districts.

I was at a food bank this morning in Allen, Texas, and just watching the real need in our communities has deeply affected me. I want to take a second and kind of step back and talk about the macro for a second, talk about the big picture.

Right now, about 8 percent of the home mortgages in the United States, according to the data I have seen, are currently in forbearance. And just thinking about what that could mean if there wasn't forbearance.

Let's just kind of take that for a second, and say if there wasn't forbearance, my guess is that would mean about 8 percent of the homes in the United States would be foreclosed within the next year. And then, when they go to sell those or liquidate those, it would basically collapse the real estate market.

So, home values would collapse across the country because you have a tremendous amount of foreclosures, and I am saying that based on the experience that Dallas, Texas, went through, and Texas as a State, during the 1980s.

I remember the savings and loan crisis and you watched a tremendous number of foreclosures with the Resolution Trust Corporation (RTC), what are referred to as the RTC days in Texas in the 1980s and early 1990s.

And the liquidations were such that things were literally—office buildings were trading for $10 a square foot, people literally could take retail properties just by paying the taxes.

So I just wanted to know if any of you have any thoughts about what if we didn't have forbearance, how bad would it be for the housing market in this country, when the valuation side in 12 or 24 months, once you had a bunch of liquidations, then collapses in values?

Mr. DeMarco, do you want to speak to that?

Mr. DEMARCO. Congressman, it certainly would be bad. I don't know how to size it any differently than you just did. It would be bad. It would also—one of the things that forbearance has accomplished is it has assisted in the response to the health crisis by allowing people to be able to stay home to quarantine, or whatever the particular standard is in a community to help suppress the virus. It is helping combat the virus, recognizing we are providing economic support to that household or those workers because they are not going to be able to pay their mortgage.

So, there is not just the economic toll and what happens in the real estate market, there is also the question of the health impact, and we create an incentive where people feel they have to go back to work, even if that is not coinciding with good health practices in this environment.

Mr. TAYLOR. Sure.

Mr. Williams, do you want to talk about what we are trying to stop from happening here?

Mr. WILLIAMS. I do. It would be horrific. But what happened to—when I went to school, they taught me the three important necessities in life were food, clothing, and shelter. Well, how did we get to bailing out the airline industry before we look out for the homeowner?

I just feel that if we don't do something, if we don't act, if we don't get everyone involved and get on the same page in the program, if we don't move quickly, then we are going to be in for a huge, huge problem.

Ms. GRIFFIN. Absolutely. If I could add to that—well, first of all, the forbearances have provided a profound help to homeowners. Without it, we would be inundated with foreclosures where there is a possibility we are headed towards that and we certainly need to work together.

But without question, for people of color, for these vulnerable communities without the forbearances, without the work that we are doing together, there would be a whole other generation of loss of wealth. It is bad now, it appears to get worse, and hopefully we can sort of work together to stem this tide.

Mr. TAYLOR. Ms. Cohen, do you want to make any comment on, again, the macro situation? It seems like there is consensus that we are avoiding a macro catastrophe by trying to use forbearances and mechanisms to get to the other side.

Ms. COHEN. I agree with that, Mr. Taylor. I think what we should also keep in mind in this macro situation is, who isn't making their payments and doesn't have a forbearance, and what is that going to do to the economy and to property values as well, and how can we collect enough data that we understand what is going on so we can prevent a catastrophe?

Mr. TAYLOR. Sure.

And in my final few seconds, I will just point out that I am working with a lot of members on this committee on both sides to try to work on forbearance or trying to help within the commercial real estate space because we have done a great job. We have heard that on the home side. There is much work to do, but we are headed in the right direction, but in commercial real estate, I am very deeply concerned that we are about to have a foreclosure crisis—

I yield back, Mr. Chairman. Thank you for indulging me.

Chairman GREEN. The gentleman's time has expired.

The Chair now recognizes Ms. Tlaib for 5 minutes.

Ms. TLAIB. Thank you so much, Mr. Chairman, and thank you so much for this really critically important hearing.

I know Chairman Al Green has come to my district and actually deeded tower of housing justice tour and saw that, even in the last recession, just how much communities are still suffering. So many of my residents, especially throughout Wayne County, have been in survivor mode.

They have been living paycheck to paycheck, and in just one of my cities, in the City of Detroit, 88,000 people were evicted out of their homes. So, for this to happen in a pandemic is not in control of any of us, right? This is very much something that came about, that I don't think any of us could have truly been able to truly prepare for, especially in the housing mechanism. I don't know about the healthcare, but especially with housing.

And so, I want to talk about this. I think this is really critically important, and I think my colleague, Mr. Taylor, was talking about this. Forbearance and these kinds of moratoriums on water shutoff, utility, student loans, mortgages, they are just band-aids, because all of that money is going to be due when the forbearance is up.

So, what are we going to do then? I want to start with Mr. Williams. You know from many of your clients and even in your membership, because what I hear from my residents is, why aren't we doing recurring payments? Why aren't we doing something as aggressive and bold as we are doing for airlines and other industries?

Why aren't we having a peoples' bailout where we are looking at recurring payments so that people can pay all this debt down because, again, some of these jobs won't come back, but even if the jobs come back, they are not going to have the lump sum ready to go to be able to pay it off. They still might end up losing their homes.

Can you talk a little bit about that?

Mr. WILLIAMS. Sure. You are absolutely right, but that is why we asked for that five-point plan. We had some serious solutions that we want you all to really seriously take a look at, because that is the direction we feel we should go in.

We have been decimated. This is a critical time. It is time for action. It is really time for action.

Ms. TLAIB. No, no. I appreciate you bringing up my Black neighbors, because we lost more Black home ownership in Michigan than any other State, about 40 percent.

Ms. Cohen, you have been very thoughtful in how you have talked about these issues and the fact that we still are leaving a lot of our neighbors across the country, homeowners, behind in the way we are approaching this.

I don't know if you are familiar with the Automatic Boost to Communities Act that I introduced, but it would be recurring payments of $2,000 per month on a recharged debit card.

Do you think that will help with some of the issues we are seeing with people possibly losing their homes because of this pandemic?

Ms. COHEN. Thank you for your question, Ms. Tlaib.

I am not familiar with it, because I live in my little universe of housing legislation, and I can talk to my colleagues about it, but the biggest problem with financially strapped people is that they are financially strapped. And so they are living on the edge and they need cash in addition to needing help from their servicers and from all of their other creditors. And so, anything we can do, to do that, will move things in the right direction.

People should also look closely at legislation around that Homeowners Assistance Fund, because States can also administer programs to hit the hardest-hit areas in ways that might be constructive.

Mr. WILLIAMS. Also, Congresswoman, getting the word out so that the homeowner or the borrower is knowledgeable enough about the program. This has the same effect as the PPP, where huge companies got all this money and then we didn't get it, because we weren't—

Ms. TLAIB. Mr. Williams, even with the PPP and my incredible colleague, Ms. Velazquez, has been so much on the—bringing the voices of small businesses, but it is so cumbersome. Let's be honest, the servicers are playing games with peoples' lives.

With some of them, if you are not actually saying the correct word, if you do not request it in a certain way—as a Member of Congress, myself, and I know I am new, but I have to pick up the phone and call a servicer and say, why did you tell my resident they don't qualify, when according to the legislation we passed they do qualify?

Well, they need to say it this way. This is not a game. They obviously can't pay, so let's put that as an option and stop playing games with people who really—they are going to lose their home. These are not people who want to lose their home. They just don't have the capability of doing it, and I am tired of people pretending that it is because of economic shutdown or all these other—we did this to them. We put them in survivor mode. They have been literally one emergency away, and now the pandemic has happened, but they were one emergency away from going into poverty.

So I think it is our responsibility to put people first, and I thank all of you so much, but I think we really need to talk about it—we talk about this program and, of course, we need all of those programs in the five points, but we need recurring payments. Enough.

Other countries are doing that. They are giving people human dignity. Let them choose what they needed for their family and recurring payments, I think, is going to be key here.

Thank you so much, Chairman Green. It's always a pleasure to work with you. Thank you.

And I yield back.

Chairman GREEN. The gentlelady yields back.

The Chair now recognizes Ms. Dean for 5 minutes.

Ms. DEAN. Thank you, Mr. Chairman, for calling this important committee hearing. And I thank Chairwoman Waters as well.

I also thank Ranking Member Barr, and Mr. Barr, you and your family are in my prayers, and you have my sympathies on your recent grievous loss.

I am really pleased to be here to talk about this and know that the lens that I am looking through what we are talking about here in terms of folks and their mortgages in precarious places, is one from what lessons did we learn from the past? What did we learn from 2008?

I was not in Congress then. Like Representative Tlaib, I am a freshman, but as Representative Taylor talked about, we have 4 million mortgage loans in forbearance, as our witnesses have told us. Many people are not in forbearance and are missing payments, so we have a gaping hole there and we put together information and important protections through the CARES Act and we want to do even more through the HEROES Act. We need to get people the protections they need to keep the roof over their head to protect their credit, and protect their family.

Mr. Williams, I would like to start with you. You have already talked about this, but you are concerned about what mortgage servicers are and are not doing to protect borrowers in terms of whether it is communication or reaching out when a payment is missed to find out what is going on to see if actually they should be put into the forbearance.

What other things do you think need to be done in order to get protection, forbearance to as many borrowers as possible?

Mr. WILLIAMS. I think we need to have some communication going out from the servicers. They need to put it in their mailings, emails. Hey, this should be a commercial on television, getting this information out. I think that we hinder ourselves. I think that they are limited in giving information for the servicers like diversity as well.

So, those are the important things, I think, right off the bat that we need to increase our communication to the borrower.

Ms. DEAN. Absolutely.

Ms. GRIFFIN. And I would like to add in there also, get and complement. The outreach is critical. What we have found from the past foreclosure crisis was that people are—they really need some guidance, they really need some help.

And even if the servicers send out information, it needs to be clear, it needs to be simple, and without question. We really need to have some advocates in the mix that can be able to explain things to these borrowers whom, as you said, Congresswoman, they are on the edge and really just need some guidance.

So the outreach is certainly critical, and the hand-holding is also critical.

Ms. DEAN. I appreciate that.

Ms. COHEN. Ms. Dean, can I just say one other thing? I agree with Mr. Williams and Ms. Griffin, but the servicers don't have the capacity to do the level of default servicing that we are going to see. They didn't do it well in the last crisis; they are not doing it well now. It is great if you can get onto a website and you don't need much from them, but if you actually need something from them, it is more complicated.

So, we can't put the onus just on the homeowner to understand and reach out. We need automated systems and we need to make sure that people are offered what they need without having to go through a lot of red tape.

Ms. DEAN. Ms. Cohen, that is a perfect segue. I wanted to ask you next, what are the lessons that we learned in the past, that I desperately hope we do not repeat in this economic collapse? What are some of those lessons?

Ms. COHEN. Thank you for the question.

The first one is, people need affordable options when they can't pay their regular mortgage payment. That is one of the good things that came out of the last crisis, was the general understanding about that, but we don't know whether the programs we have now will be affordable.

Second, when you have a crisis in Black and Latinx home ownership that has been exacerbated by the current crisis, you need to look freshly at what the problems are and what the solutions are, and to ask yourself whether we need to start something new.

Ms. DEAN. Let me ask you, in my final seconds here, you talked earlier in your testimony about the CFPB and that they need to help people avoid foreclosure.

What is the responsibility of the CFPB? What could they be doing proactively, because we see the number of complaints just going through the roof with the CFPB? What should they be doing to help people avoid foreclosure?

Ms. COHEN. I had a pretty long list in my testimony, but let me give you two. First, work with the Federal Housing Finance Agency on the Borrower Protection Program, provide transparent data, learn from the consumer complaints, and take action against companies that are misbehaving.

Second, right now they have an interim final rule that they put out. They need to protect people against foreclosure, which they haven't done.

Thank you.

Ms. DEAN. I know my time has expired.

Thank you, Mr. Chairman.

Chairman GREEN. The gentlelady's time has expired.

The Chair now recognizes himself for 5 minutes.

I will tell you, friends, I was here in 2008, and I saw how we treated the big banks. The truth is this: They were overpaid. Overpaid in this sense: There were banks that said, we don't want that money. We don't want it to appear as though we need the money, but we imposed upon them billions of dollars. They were overpaid, but when it comes to the consumer, the consumer gets short-changed. The consumer has to jump through all kinds of hoops to try to get what Congress intended consumers to receive.

So I am just appalled, to be quite frank with you, at the fact that the consumer always seems to find himself or herself groveling to a certain extent to get something that these big banks get as a matter of course. I am not opposed to big banks; I just want everybody to be treated fairly.

This program, in my opinion, has no consequences. If these servicers misbehave, there are no consequences. It seems to me that we, in the future, will have to find a way to impose some consequences.

My constituents, who have actually received this notice that is according them 3 months of forbearance when they are entitled to 180 days, now have to hire a lawyer if they want to pursue this.

They can't get it done simply because they have made a fair and just request. They will have to go through some other extenuating circumstances. I would like to note that this would be submitted into the record, without objection.

Without objection, it is so ordered.

It always seems that people of color are having to account for themselves. We have to prove that people of color are being discriminated against, and this is not just as it relates to the financial services industry, it is across-the-board. People of color always seem to be at the bottom.

At some point, we have to have a system, a justice, such that people of color will get the same treatment as other persons in this society. I think that what happened to George Floyd is exposing the underbelly of what is happening to people of color, and other people are starting to realize that it will take more than our hues and cries to get this done. It is my belief that there is systemic discrimination.

Let me go to you, Mr. Williams, if I may, please, sir. Do you agree that there is systemic discrimination taking place in lending?

Mr. WILLIAMS. I do. I totally agree. I see it often. We have some resolutions. But there is no better time than now to address the Black home ownership program.

Chairman GREEN. Let me do this. Time is of the essence.

Ms. Griffin, do you agree that there is systemic discrimination in lending?

Ms. GRIFFIN. Yes, there is.

Chairman GREEN. And let me go next to Ms. Cohen. Do you agree that there is systemic discrimination in lending?

Ms. COHEN. Yes, I agree. The CFPB found that for people with the same credit scores, Black borrowers were rejected for mortgages at higher rates.

Chairman GREEN. And Mr. DeMarco, do you agree?

Mr. DEMARCO. I agree that we have certainly had a history of this and there seems to still be areas where it is an issue, yes, sir.

Chairman GREEN. Well, if you agree that there is this systemic discrimination, I have proposed that we have a department of reconciliation with the responsibility of dealing with racism and invidious discrimination in this country. And it would deal with financial services, it goes into policing, and many other areas.

If you agree that we have this problem, and we have had it for hundreds of years, isn't it about time that we do something other than what we have been doing?

Would you agree, Mr. Williams, that it would be appropriate to have a department of reconciliation, which has as its responsibility to look out for people who are being discriminated against, and this would include the protected classes, look out for them and report to the President, through a Secretary of Reconciliation? Would you agree that such a position should exist, sir?

Mr. WILLIAMS. Yes, sir, I agree wholeheartedly.

Chairman GREEN. Ms. Cohen, where do you stand, please?

Ms. COHEN. Yes. We think that is important and we think it is important to change—

Chairman GREEN. Let me move on. My time is of the essence. I am so sorry, Ms. Cohen.

Ms. Griffin, where do you stand, please?

Ms. GRIFFIN. I fully agree that it needs to be monitored and there needs to be penalties.

Chairman GREEN. And Mr. DeMarco?

Mr. DEMARCO. I have no opinion on a position like that, Congressman. I do believe we all have a responsibility to act.

Chairman GREEN. Well, let me do this now that you have said this, Mr. DeMarco. All persons who are in agreement and you think that systemic racism and invidious discrimination as it relates to people, including the protected classes, should be handled with a department that specializes in this, kindly raise your hand, please. Raise your hand so that we may capture you all on screen.

Okay. I see everyone's hands, save Mr. DeMarco. Would you do a screen shot of this please, staff? Thank you.

My time has expired, and I would like to also include for the record, a statement from the Mortgage Bankers Association.

Without objection, it is so ordered.

Friends, if I may now bring this to closure. I thank all of you for appearing today, especially the witnesses. Thank you for your testimony and for devoting your time and resources to share your expertise with the subcommittee.

Your testimony today has helped to advance the important work of this subcommittee and the U.S. Congress.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

This hearing is now adjourned.

[Whereupon, at 1:50 p.m., the hearing was adjourned.]

A P P E N D I X

July 16, 2020

Testimony of

Alys Cohen, Staff Attorney

National Consumer Law Center

Before

A Virtual Hearing of the

House Financial Services Committee

Subcommittee on Oversight and Investigations

Regarding

Protecting Homeowners During the Pandemic:

Oversight of Mortgage Servicers' Implementation

of the CARES Act

July 16, 2020

Chairman Green and Ranking Member Barr, thank you for the opportunity to testify before you today regarding the CARES Act and the challenges homeowners are facing during this unprecedented national emergency of COVID-19. I provide my testimony today on behalf of the low-income clients of the National Consumer Law Center,[1] as well as Americans for Financial Reform, California Reinvestment Coalition, Center for Community Progress, Center for New York City Neighborhoods, Community Legal Services of Philadelphia, Connecticut Fair Housing Center, Consumer Action, Consumer Federation of America, Empire Justice Center, Greater Boston Legal Services, Mountain State Justice (WV), National Alliance for Safe Housing, National Fair Housing Alliance, National Housing Law Project, National Housing Resource Center, National Legal Aid & Defender Association, Prosperity Now, Public Justice Center (MD), Public Law Center (CA), and the Revolving Door Project.

Overview

The unprecedented coronavirus pandemic has brought illness, death, unemployment, and greater economic insecurity to Americans across the country. Communities of color, particularly Black and Latinx communities, have been especially hard hit by COVID-19, with higher rates of illness, death, and unemployment due to COVID-19 than majority white communities. Pre-existing inequalities are being exacerbated by the current crisis, and Black and Latinx homeownership is imperiled. Stable and affordable homeownership opportunities are one key component to maintaining and expanding economic opportunity. The pandemic has laid bare the fragility and weaknesses in our nation's housing and mortgage finance systems. To mitigate some of the harm wrought by the pandemic, Congress must continue its vigilance in protecting homeowners, it must improve transparency for housing relief programs, and it must increase its efforts to regulate and reform the mortgage servicing industry.

Swift Congressional action to implement a foreclosure moratorium and create a mortgage forbearance program in the CARES Act was an important first step in preserving homeownership and helping struggling homeowners. However, the work is not done, and more action is needed. To prevent a flood of avoidable foreclosures and bankruptcies, enhance transparency and accountability, and promote compliance and fairness, we recommend:

- **Renewed efforts to protect and expand Black and Latinx homeownership**, as rates of Black and Latinx homeownership had not yet recovered from the Great Recession when the pandemic began.

[1] Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness. This testimony was written by Alys Cohen, Staff Attorney, Diane Thompson, Of Counsel, Tara Twomey, Of Counsel, and Christopher Stahl, Legal Intern, with assistance from NCLC's advocacy staff.

- **Collection of loan-level borrower, loan performance, and loss mitigation data on at least a quarterly basis, with public reporting.** The evaluation of current and future relief efforts as well as identification of disparate impacts require loan-level data be available to regulators with free public access to aggregate data and information.

- **Expansion of CARES Act protections** to prevent avoidable foreclosures, mitigate the impact of foreclosures that do occur, and limit spillover effects from the housing market to neighborhoods and the broader economy. Additional protections should include:

  - Standardized forbearance options for all mortgage loans;
  - Automatic forbearance for borrowers who have missed two payments or more;
  - Notice to borrowers of their rights under the CARES Act;
  - Timely and accurate information to borrowers about the available options for loss mitigation;
  - Affordable repayment options for borrowers exiting forbearance plans or seeking to resolve delinquencies that are available prior to foreclosure;
  - Information for limited English proficient borrowers on the availability of mortgage assistance, in-language assistance, and housing counseling;
  - A moratorium on negative credit reporting;
  - Targeted support for the hardest-hit communities, including funding for legal services, housing counseling and cash assistance to delinquent borrowers;
  - Measures to prevent neighborhood blight, ensure timely resale of vacant properties, and prioritize foreclosure sales to future owner-occupants or non-profit organizations.

- **Federal regulators must increase oversight, improve regulations, and consider future reforms in the mortgage servicing industry, including:**

  - Active oversight by all federal regulators of CARES Act implementation and mortgage servicing, in general;
  - Amending the CFPB's one-sided relaxation of the mortgage servicing rules to provide protections for consumers;
  - Improving infrastructure for transfers of mortgage servicing;
  - Providing consumer protection safeguards when allowing borrowers to move from forbearances to deferral options;
  - Clarifying and improving FHA loss mitigation policies;
  - Revising FHFA programs to prevent avoidable foreclosures and support the origination market;
  - Addressing needed mortgage servicing reform to better align servicer incentives with those of borrowers and investors.

I. The COVID-19 Crisis Threatens Homeownership, Particularly Black and Latinx Homeownership.

A. The COVID-19 Crisis Is Costing Americans Lives and Livelihoods—And It Is Worsening.

To date, more than 3.2 million Americans have had confirmed cases of coronavirus disease 2019 (COVID-19).[2] More than 130,000 Americans have died from the disease.[3] This public health crisis has cost not only lives but livelihoods: the United States lost 22 million jobs in April and March and the unemployment rate reached 14.7%.[4] Although the unemployment rate has declined since then, it stands at 11.1%,[5] higher than it reached during the worst of the Great Recession.[6] And unemployment numbers understate the full extent of this economic crisis: 48.85% of respondents in the most recent Household Pulse Survey by the U.S. Census Bureau (Household Pulse Survey), ending June 30, reported loss of employment income since March 13, 2020.[7]

The impacts of COVID-19 have only worsened since the end of June, with the U.S. setting new records for daily case counts repeatedly in the last weeks.[8] On July 10, the U.S. reported more than 68,000 new cases of COVID-19—a tally almost twice the peak daily count (more than 36,000 new cases) during the previous high tide of the crisis in April.[9] The director of the National Institute of Allergy and Infectious Diseases, Dr. Anthony S. Fauci, has recently warned the Senate that we could see daily counts of more than 100,000 cases in the future.[10] Infections have increased over the last two weeks in more than 40 states.[11] In light of the resurgent crisis,

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[2] Ctrs. for Disease Control and Prevention, *Cases and Deaths in the U.S.* (2020), *available at* https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/us-cases-deaths.html.

[3] *Id.*

[4] Bureau of Labor Statistics, *The Employment Situation—June 2020* (2020), *available at* https://www.bls.gov/news.release/pdf/empsit.pdf.

[5] *Id.*

[6] Rakesh Kochhar, Unemployment Rose Higher in Three Months of COVID-19 Than It Did in Two Years of the Great Recession, Pew Research Center (June 11, 2020) (unemployment reached 10.6% in January 2010), *available at* https://www.pewresearch.org/fact-tank/2020/06/11/unemployment-rose-higher-in-three-months-of-covid-19-than-it-did-in-two-years-of-the-great-recession/.

[7] U.S. Census Bureau, *Household Pulse Survey, Week 9* (2020), *available at* https://www.census.gov/data/tables/2020/demo/hhp/hhp9.html. Note that this data is self-reported. The table used for these data points is Employment Table 1. All percentages derived from the tables provided are rounded to the nearest hundredth of a percent.

[8] *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. Times (July 11, 2020), https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html.

[9] *Id.*

[10] Sheryl Gay Stolberg & Noah Weiland, *Fauci Says U.S. Could Reach 100,000 Virus Cases a Day as Warnings Grow Darker*, N.Y. Times (June 30, 2020), https://www.nytimes.com/2020/06/30/us/politics/fauci-coronavirus.html.

[11] https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html.

states are beginning to halt and even reverse their reopening.[12] The Chair of the Federal Reserve, Jerome H. Powell, recently warned Congress that full economic recovery is unlikely so long as it remains unsafe to engage in a wide-range of economic activity.[13] Moreover, without further congressional action, extended unemployment benefits are set to expire at the end of this month, deepening the impact of unemployment.[14]

B. The COVID-19 Crisis Disproportionately Harms Black and Latinx Lives and Livelihoods.

Every aspect of the current crisis has had a disparate impact on African American and Latinx families. African Americans and Latinx are being infected at higher rates and being hospitalized at even higher rates. Morbidity and Mortality Weekly Report has consistently noted disparately high infection rates among communities of color.[15] The *New York Times* has found, using Centers of Disease Control and Prevention (CDC) data, that, through the end of May, infections per capita were nearly three times as high for African Americans as for whites and more than three times as high for Latinx as for whites.[16] The CDC itself reports that hospitalizations per capita are five times as high for African Americans and Native Americans as for whites, and four times as high for Latinx as for whites.[17] Death rates from COVID-19 also are much higher for Black and Latinx patients.[18]

African Americans and Latinx have also disproportionately borne the brunt of the economic fallout. While the overall unemployment rate during this crisis has, thus far, peaked at 14.7% in

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[12] *See, e.g.,* Office of the Texas Governor, *Governor Abbott Announces Temporary Pause Of Additional Reopening Phases* (2020), *available at* https://gov.texas.gov/news/post/governor-abbott-announces-temporary-pause-of-additional-reopening-phases; Nathaniel Weixel, Florida to close bars after shattering record of new coronavirus cases, The Hill (June 26, 2020), https://thehill.com/policy/healthcare/504704-florida-to-close-bars-after-shattering-record-of-new-coronavirus-cases.

[13] Alan Rappaport & Jeanna Smialek, *Mnuchin and Powell Offer Mixed Views of Economic Recovery*, N.Y. Times (June 30, 2020), https://www.nytimes.com/2020/06/30/us/politics/mnuchin-powell-congress-economic-recovery.html.

[14] ''CARES Act,'' Pub. L. No. 116-136 § 2104.

[15] Mark W. Tenforde, MD, PhD et al., *Characteristics of Adult Outpatients and Inpatients with COVID-19 — 11 Academic Medical Centers, United States, March–May 2020*, 69 Morbidity and Mortality Weekly Report 841 (2020), *available at* https://www.cdc.gov/mmwr/volumes/69/wr/mm6926e3.htm?s_cid=mm6926e3_w; Shikha Garg, MD et al., *Hospitalization Rates and Characteristics of Patients Hospitalized with Laboratory-Confirmed Coronavirus Disease 2019--COVID-NET, 14 States, March 1-30, 2020*, 69 Morbidity and Mortality Weekly Report 458 (2020), *available at* https://www.cdc.gov/mmwr/volumes/69/wr/mm6915e3.htm?s_cid=mm6915e3_w.

[16] Richard A. Oppel Jr. et al., *The Fullest Look Yet at the Racial Inequity of the Coronavirus*, N.Y. Times (July 5, 2020), https://www.nytimes.com/interactive/2020/07/05/us/coronavirus-latinos-African Americans-cdc-data.html; *see* Maria Godoy & Daniel Wood, What Do Coronavirus Racial Disparities Look Like State By State?, Nat'l Pub. Radio (May 30, 2020), https://www.npr.org/sections/health-shots/2020/05/30/865413079/what-do-coronavirus-racial-disparities-look-like-state-by-state.

[17] Ctrs. For Disease Control and Prevention, *COVID-19 in Racial and Ethnic Minority Groups* (2020), *available at* https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html (last updated June 25, 2020).

[18] Tiffany Ford, et al., *Race Gaps in COVID-19 Deaths Are Even Bigger Than They Appear*, Brookings Institution (June 16, 2020), *available at* https://www.brookings.edu/blog/up-front/2020/06/16/race-gaps-in-covid-19-deaths-are-even-bigger-than-they-appear/.

April and fallen to 11.1% in June, the unemployment rate for African Americans has, thus far, peaked at 16.8% in May and remained at 15.4% percent in June.[19] For Latinx, the unemployment rate has, thus far, peaked at 18.9% in April and remained at 14.5% in June.[20] In the most recent Household Pulse Survey, cited above, 57.78% of Black respondents and 61.29% of Hispanic or Latino respondents, compared to 43.79% of white respondents, reported loss of employment income.[21]

This disparity in economic hardship is likely to persist throughout the crisis. African American and Latinx workers are disproportionately either on the front lines of the crisis, placing them at risk of infection, or losing their jobs or a portion of their income to the crisis. The occupations that are most at risk in the crisis—fields that necessitate person-to-person interactions, such as retail, food preparation and service, and construction—disproportionately employ African Americans and Latinx workers compared to fields that can more easily adjust to work from home.[22] Compounding job loss is the historical reality that African Americans and Latinx have been less likely to receive unemployment benefits when eligible.[23]

C. The Impending COVID-19 Housing Crisis Threatens Black and Latinx Homeownership, Which Still Suffers from the Great Recession.

Economic hardship clearly impacts ability to repay mortgage loans. The current crisis arrived while many, particularly African Americans, had not yet regained losses from the Great Recession.[24] The lasting impacts from the previous economic downturn are now being compounded by the economic effects of the pandemic. Depending on the extent of

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[19] *The Employment Situation—June 2020*, *supra* note 4, at 7.

[20] *Id.*

[21] *Household Pulse Survey, Week 9*, *supra* note 7; *see* Kim Parker, Julianna Horowitz & Anna Brown, Pew Research Center, *About Half of Lower-Income Americans Report Household Job or Wage Loss Due to COVID-19* (2020), *available at* https://www.pewsocialtrends.org/2020/04/21/about-half-of-lower-income-americans-report-household-job-or-wage-loss-due-to-covid-19/.

[22] Keith Wardrip & Anna Tranfalgia, Federal Reserve Bank of Philadelphia, *COVID-19: Which Workers Will Be Most Impacted?* (2020), *available at* https://philadelphiafed.org/-/media/covid/which-workers-will-be-most-impacted/covid-19-impacted-workers.pdf?la=en.

[23] Austin Nichols & Margaret Simms, Urban Institute, *Racial and Ethnic Differences in Receipt of Unemployment Benefits During the Great Recession* (2012), *available at* https://www.urban.org/sites/default/files/publication/25541/412596-Racial-and-Ethnic-Differences-in-Receipt-of-Unemployment-Insurance-Benefits-During-the-Great-Recession.PDF.

[24] *See* Joint Ctr. for Hous. Studies of Harvard University, *The State of the Nation's Housing 2019* (Harvard University 2019), *available at* https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2019.pdf (housing construction has not recovered apace with housing demand, driving an affordability crisis despite historically low interest rates); Richard Fry & Anna Brown, Pew Research Ctr., *In A Recovering Market, Homeownership Rates Are Sharply Down for Blacks, Young Adults* (2016), *available at* https://www.pewsocialtrends.org/2016/12/15/in-a-recovering-market-homeownership-rates-are-down-sharply-for-blacks-young-adults/ (noting that the affordability crisis has particularly affected African American and young adult consumers); *see also* Rakesh Kochhar & Anthony Cilluffo, Pew Research Ctr., *How wealth inequality has changed in the U.S. since the Great Recession, by race, ethnicity and income*, Fact Tank (Nov. 1, 2017), https://www.pewresearch.org/fact-tank/2017/11/01/how-wealth-inequality-has-changed-in-the-u-s-since-the-great-recession-by-race-ethnicity-and-income/ (detailing the widening wealth gap since the Great Recession, exacerbating the affordability crisis).

unemployment woes, the rate of seriously delinquent mortgages could reach near or beyond that of the Great Recession of a decade ago. The following graph paints in stark terms what homeowners and the housing market may face in the near future. In the "baseline" scenario for unemployment, Corelogic predicts that 3 million homeowners would have seriously delinquent mortgages by early 2021, roughly five percent of all outstanding mortgages. If unemployment is higher than predicted in the baseline scenario, mortgage delinquencies will also rise.

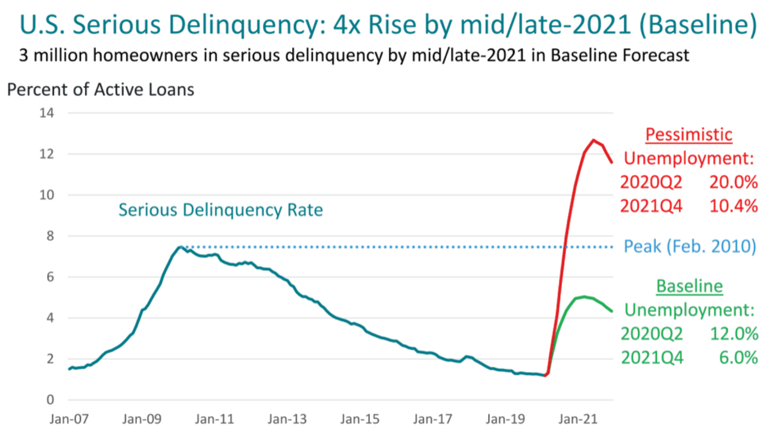
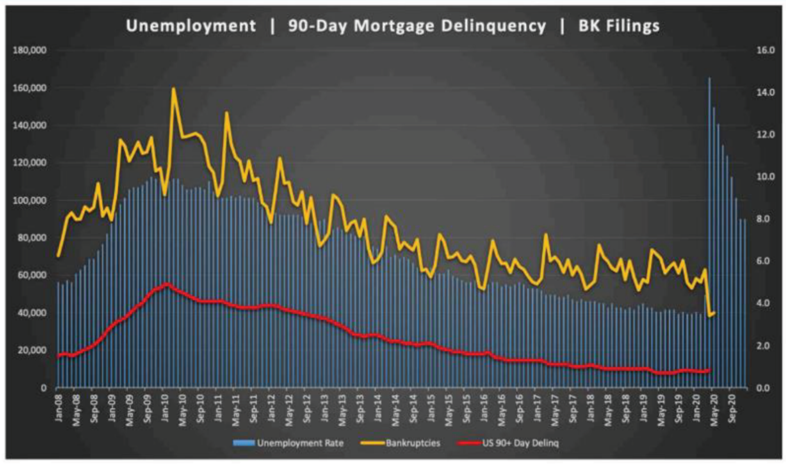


Chart provided by Corelogic. [25]

The rise in serious delinquencies likely will be accompanied by a spike in personal bankruptcies. For over a decade, bankruptcies have closely tracked serious delinquencies and unemployment rates. Thus, the projected sharp increase in unemployment in the coming years likely will bring with it a significant increase in bankruptcies.

[25] This graphic was taken with permission from a presentation by Frank Nothaft, Chief Economist of CoreLogic, at an Urban Institute event. Seriously delinquent means either payment is 90-days delinquent or the house is in foreclosure proceedings. The source is given as: CoreLogic TrueStandings Servicing; NABE Outlook Flash Survey (April 10, 2020); Mayer and Nothaft (April 29, 2020).



Bankruptcy data provided by AIS. Mortgage delinquency source Black Knight Technologies, LLC. Unemployment projections from Congressional Budget Office

Source: American InfoSource (AIS).

A rise in delinquency rates will hit hardest in communities of color, which have not recovered from the previous foreclosure crisis. Black communities in particular still suffer from a depressed homeownership rate.[26] As of the first quarter of 2020, the Black, Latinx, and white homeownership rates were, respectively, 44.0%, 48.9%, and 73.7%.[27] At its peak, the Black homeownership rate neared 50%.[28] The Great Recession saw that rate drop over 5% to 44.5% by the fourth quarter of 2012. The white homeownership rate climbed to 76% prior to the Great Recession before dropping to 73.6% in the fourth quarter of 2012. But after 2012, the white homeownership rate stabilized. For African American families homeownership rates sank further to 40.6% in 2019—a level not seen since the 1960s, before the passage of the Fair Housing Act.[29] The continued decline in Black homeownership rates represents the loss of more than a generation of hard-won gains in wealth and homeownership. Latinx homeownership rates

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[26] *See* James H. Carr, Michela Zonta, Steven P. Hornburg & William Spriggs, Nat'l Ass'n of Real Estate Brokers, *2019 State of Housing in Black America* (2019), *available at* http://www.nareb.com/site-files/uploads/2019/09/NAREB_Shiba2019_small-compressed.pdf (describing the state of black homeownership in 2019, in its historical context, in detail).

[27] U.S. Census Bureau, *Quarterly Residential Vacancies and Homeownership, First Quarter 2020* (2020), *available at* https://www.census.gov/housing/hvs/files/currenthvspress.pdf.

[28] U.S. Census Bureau, *Historical Residential Vacancies and Homeownership Tables*, *available at* https://www.census.gov/housing/hvs/data/histtabs.html. Table 16.

[29] *Id.; see* Caitlyn Young, *These Five Facts Reveal the Current Crisis in Black Homeownership*, Urban Wire (July 31, 2019); Laurie Goodman, Jun Zhu & Rolf Pendall, *Are gains in black homeownership history?*, Urban Wire (Feb. 14, 2017) (both discussing how the decade witnessed Black homeownership rates not seen since the 1960s).

have shown a stronger recovery, but still lag the pre-Great Recession peak of 50.0%.[30] Persistent, serious inequalities in the mortgage origination market as well further complicate efforts to increase African American and Latinx homeownership. For example, data analysis from the CFPB found that African American applicants are more likely to be denied a home loan than white applicants with the same credit score.[31]

The pandemic threatens to exacerbate the impact of the Great Recession on Black and Latinx homeownership.[32] Government action now is essential to prevent the current COVID-19 crisis from compounding these losses of homeownership and all that goes with it—stable housing tenure, increased economic security, and the possibility of wealth creation.[33]

Black and Latinx homeowners are more likely now to struggle paying their mortgage and to need assistance from their servicers. For example, the Household Pulse Survey asks respondents about mortgage deferrals, arrangements like forbearance to postpone mortgage payments. In week 9 of the survey, or late June, 4.08% of Black homeowners and 3.73% of Hispanic or Latino homeowners reported having had their mortgage deferred, compared to 2.69% of white homeowners.[34] Federal Housing Administration (FHA) and Department of Veterans' Affairs (VA) backed loans—which have the highest forbearance rate—are disproportionately taken out by people of color.[35] 11.83% of FHA and VA backed loans are in forbearance, compared to 10.08% of private loans, and 6.17% of government-sponsored enterprise (GSE) backed loans.[36]

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[30] *Id.*

[31] *See* Patrick Rucker, *Trump Financial Regulator Quietly Shelved Discrimination Probes Into Bank of America and Other Lenders*, ProPublica (July 13, 2020), https://www.propublica.org/article/trump-financial-regulator-quietly-shelved-discrimination-probes-into-bank-of-america-and-other-lenders (reporting regulators in recent times have stepped back from anti-discrimination enforcement); *see also* Linda Lutton, Andrew Fan & Alden Loury, *Where Banks Don't Lend*, WBEZ (June 3, 2020), https://interactive.wbez.org/2020/banking/disparity/ (discussing discriminatory lending in Chicago in recent times); Aaron Glantz & Emmanuel Martinez, *Kept Out: For people of color, banks are shutting the door to homeownership*, Ctr. for Investigative Reporting (Feb. 15, 2018), https://www.revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/ (discussing discriminatory lending in recent times).

[32] Michelle D. Layser et al., *Mitigating Housing Instability During A Pandemic*, (University of Illinois College of Law, Research Paper No. 20-15, 2020), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3613789 (discussing how the current response is unlikely to prevent a housing crisis in the African American and Latinx communities through comparison to the response to the Great Recession in light of the lack of a recovery over the last decade).

[33] *See* Michael Neal & Alanna McCargo, Urban Institute, *How Economic Crises and Sudden Disasters Increase Racial Disparities in Homeownership* 11–16 (2020), https://www.urban.org/research/publication/how-economic-crises-and-sudden-disasters-increase-racial-disparities-homeownership/view/full_report.

[34] *Household Pulse Survey, Week 9*, *supra* note 7. To be clear, in the Household Pulse Survey, deferred and did not pay mortgage are mutually exclusive categories: survey question 40, the relevant question, instructs that it wants only one answer. The questionnaire is available at: https://www.census.gov/householdpulsedata.

[35] Ctr. for Responsible Lending, *Despite Growing Market, African-Americans and Latinos Remain Underserved* (2017), *available at* https://www.responsiblelending.org/media/2016-mortgage-loan-trends-continue-racial-disparities-African Americans-and-latinos-remain.

[36] Paul Centopani, *Biggest decline in new mortgage forbearances yet logged*, National Mortgage News (July 7, 2020), https://www.nationalmortgagenews.com/news/rate-of-mortgages-going-into-forbearance-has-biggest-decline-yet-mba.

Although forbearance numbers have seen modest improvement in recent weeks, the crisis is now worsening again.

African American and Latinx homeowners are most likely to suffer a permanent loss of income due to COVID-19. They are more likely to be sick, more likely to die, more likely to have a family member be sick or die, more likely to be underinsured at a time when COVID tests can cost thousands, and more likely to lose a job or have a business fail due to COVID than whites. And, given the pre-existing racial wealth and income divide,[37] they are less likely than whites to have surplus savings to tap to tide them over, and less likely to have family members who can help. As a result, they are particularly likely to be unable to resume making their pre-crisis mortgage payments and may need to lower their monthly mortgage payments going forward. If we care at all about racial equity in this country, we must ensure that these homeowners are given an equal opportunity with whites to retain homeownership. Mortgage servicers market wide must offer affordable loan modifications that reduce payments if we are serious about preserving Black and Latinx homeownership rates.

The country also currently has no plan in place for the more than one million families who are delinquent on their mortgages yet not in a forbearance plan.[38] This number includes approximately 530,000 families who became delinquent post-COVID yet are not in a forbearance plan.[39] Most of these homeowners are seriously delinquent, which means that they can be foreclosed on and lose their homes as soon as foreclosure moratoria lift. Currently, the federal foreclosure moratoria for homes with government-backed mortgages are set to expire on August 31.[40] For homeowners with private label security and portfolio loans, whose forbearance plans were set to expire in June, foreclosures may be happening even sooner, depending on any state or local moratoria in place.[41]

The most recent data from the Household Pulse Survey indicate that all homeowners are more likely to report that they did not pay their mortgage last month than that they have arranged to defer payments with their mortgage servicer, such as through a forbearance.[42] The incidence of reporting missed but not deferred payments is significantly higher among borrowers who self-identify as Black, Other, or Hispanic/Latino than for borrowers who identify as white.[43] In week 9 of the Household Pulse Survey, which ended on June 30, 16.54% of Black homeowners and 8.03% of Hispanic or Latino homeowners reported having missed their mortgage payment last

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[37] *See* U.S. Census Bureau, *Wealth, Asset Ownership, & Debt of Households Detailed Tables: 2016* (2019), https://www.census.gov/data/tables/2016/demo/wealth/wealth-asset-ownership.html; Kochhar, *supra* note 24.

[38] Black Knight, Mortgage Monitor: May 2020 Report, p. 8, https://cdn.blackknightinc.com/wp-content/uploads/2020/07/BKI_MM_May2020_Report.pdf

[39] *Id.*

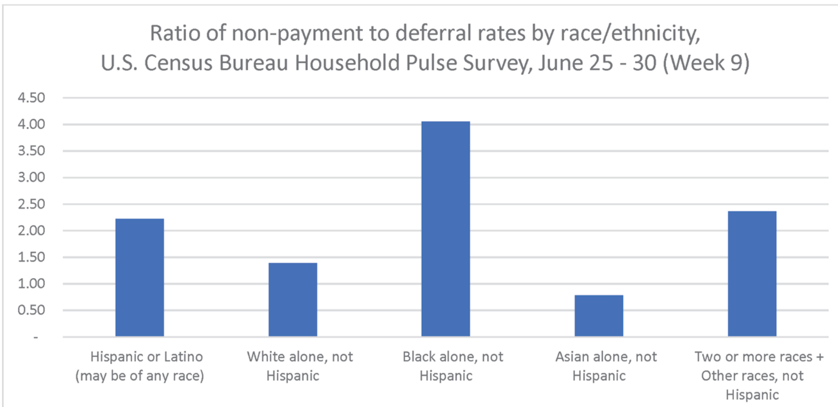
[40] ''CARES Act,'' Pub. L. No. 116-136 § 4022; U.S. Dept. of Housing and Urban Development, *Mortgagee Letter 2020-19* (2020) (extending the moratorium until August 31).

[41] Black Knight, Mortgage Monitor: May 2020 Report, p. 9, https://cdn.blackknightinc.com/wp-content/uploads/2020/07/BKI_MM_May2020_Report.pdf.

[42] *Household Pulse Survey, Week 9*, *supra* note 7. The table used for these data points is Housing Table 1a. All percentages derived from the tables provided are rounded to the nearest hundredth of a percent.

[43] *Id.*

month, compared to 3.74% of white homeowners.[44] When comparing the ratio of missed payments to deferred payments, as illustrated in the chart below, four times as many Black homeowners reported missing payments as compared to deferring payments. Among Hispanic or Latino homeowners and homeowners who self-identified as "Other" or reported two or more races, two times as many homeowners reported that they had missed payments as compared to deferring payments. Only about 1.4 times as many white homeowners reported missing payments as compared to deferring payments with the servicer.



We know that mortgage servicers, especially those servicing government-backed loans, offer opportunities to repay past due amounts and obtain more affordable payments where a homeowner is eligible. How well that system works, whether it is efficient or inefficient, and whether the payment reductions match the severity of the income loss, however, will determine the degree of impact of this crisis in Black and Latinx communities.

As discussed further below, action is needed now to better understand and address the challenges faced by homeowners and especially by African American and Latinx homeowners. Significantly enhanced data reporting, including of demographic and properly location information, is needed. Moreover, policy measures must be adopted to promote automatic forbearance for delinquent borrowers. Adequate loss mitigation measures, including procedural protections against foreclosure and meaningful access to payment reduction modifications, must be put in place now.

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[44] *Id.*

II. The Federal Government Must Collect Loan-Level Borrower, Loan Performance, and Loss Mitigation Data on at Least a Quarterly Basis and Provide Free Public Access to Aggregate Reports.

Data collection and reporting is an essential part of evaluating existing relief programs and ensuring a functioning and fair market. Currently, mortgage performance data is collected by several government agencies and private entities. Yet, very little of that information is available to the public. Moreover, the current national emergency has highlighted key gaps in data collection, particularly around forbearances and loss mitigation.

Available data analyses have not adequately focused on what appears to be a growing disparate impact in access to assistance and opportunities to avoid foreclosure. Preliminary data from the U.S. Census Bureau's Household Pulse Survey indicate that African American and Latinx homeowners are the most likely to become delinquent or extend delinquencies without obtaining a payment forbearance, as well as the ones most likely to have difficulty making their mortgage payment. Much more work needs to be done to learn what is happening in the mortgage market due to the COVID-19 crisis and how additional measures can bring greater equity to the nation's mortgage market.

Without collection of key loan-level information, and free, public reporting of aggregate data, we risk the growth of major inequities without the opportunity for meaningful examination and action to address these trends. Many unanswered questions must be examined. For example,

- Why are homeowners on average more likely to report that they are missing payments rather than that they have made plans with their servicer to defer the payments?

- Why, as discussed above, are African American homeowners four times more likely to report that they are missing payments rather than deferring payments, and Latinx homeowners and certain other homeowners of color more than twice as likely to report that they are missing payments rather than deferring payments?

- As foreclosure moratoria end and forbearances transition into repayment, who will be able to resume previous payment levels, who will need further assistance, and who will be able to avoid foreclosure?

- Are the new measures adopted by federal agencies and the mortgage servicers placing homeowners in a better position to retain their homes? Is this opportunity available to borrowers across the income spectrum and in all communities? Can homeowners with limited English proficiency or with disabilities access the necessary assistance? Do current loan modification options provide sustainable long-term solutions?

Thus, we recommend that the Consumer Financial Protection Bureau be required to collect, at least quarterly, loan level data from all servicers of residential mortgage loans containing borrower and loan data, including demographic and census tract level property location information, loan characteristics, and loan performance and loss mitigation information. Loss mitigation data must include information regarding evaluations of borrowers for assistance, forbearances, and repayment arrangements, such as deferral plans and loan modifications. While loan level data should be reported to the Bureau, and there must be systems in place to ensure reasonable accuracy, measures also should be taken to provide free and public access to aggregate data in a manner that ensures privacy. Representative Porter's bill, H.R. 6835, represents a major step toward these data collection and reporting goals by mandating loan-level reporting and public aggregate reporting for all residential mortgage loans where the servicer has received emergency government relief.

III. The CARES Act Homeowner Protections Must Be Updated and Expanded to Provide More Universal Short- and Long-term Relief to Homeowners.

The CARES Act, passed in March, codified and supplemented announced policies, including a foreclosure moratorium and forbearance, from federal agencies that back or insure mortgage loans. The government agencies, on their own, have extended the moratorium until the end of August and have announced significant policy changes that seek to provide efficient, affordable options for homeowners to repay amounts accrued during forbearance, including the GSE special deferral program and recently announced changes to FHA loss mitigation options.

Importantly, the CARES Act mandates the availability of forbearance on government-backed mortgage loans for borrowers due directly or indirectly to a COVID-related hardship without requiring written documentation of the hardship and regardless of the borrower's delinquency status. Making forbearances available without documentation to borrowers who are facing challenges paying their mortgage bills due to the novel coronavirus has created access for many borrowers who may not have the resources to obtain documentation when offices, libraries and copy shops are closed or dangerous to visit. Providing assistance regardless of delinquency status and establishing a foreclosure moratorium ensured that these homeowners would not be displaced during a national health emergency and aimed to give homeowners more time to recover financially before any foreclosure process would be triggered.

Yet, borrowers with privately held mortgages, including portfolio loans, may or may not receive such assistance, depending on the companies involved. There is no guarantee that they will. A large number of homeowners who own manufactured homes also are not covered by the CARES Act.

Moreover, even for those who are covered, CARES Act compliance varies, and there are important gaps in the protections afforded homeowners under the CARES Act. For example, the CARES Act did not require that servicers provide efficient, affordable repayment options for borrowers seeking to resume mortgage payments. Many of the three-month forbearances provided by servicers of portfolio and private label security loans are ending and are in many cases not eligible for renewal. As a result, many homeowners will need to obtain an affordable means to repay the arrearage. Even where borrowers are eligible for a deferral or partial claim to help manage the repayment, the existing programs do not adequately assist borrowers who must repay an escrow shortage due to nonpayment of taxes and insurance amounts to the servicer during a forbearance. Fundamentally, more must be done to make sure all borrowers exiting forbearance are offered automatically an option that defers arrearages to the end of the loan term with review for a payment reduction modification if resuming payments is not affordable for the borrower, and that the offer and any needed further review are done before the servicer takes any steps toward foreclosure.

The CARES Act also did not require servicers to notify borrowers directly that special assistance is available for those facing a COVID-19 hardship, nor did they direct borrowers to language access resources where needed. Importantly, the entire approach of the CARES Act relies on the homeowner to initiate contact with the servicer to obtain assistance. However, as noted above, in response to the U.S. Census Bureau's Household Pulse Survey, borrowers on average are more likely to report that they are missing mortgage payments rather than deferring mortgage payments. The CARES Act makes no provision for borrowers, even those with government-backed loans, who do not make arrangements with their servicer. Even if they are able to resume their mortgage payments after a period of delinquency, those homeowners will have more limited repayment options and will likely face foreclosure once the moratoria end. While these homeowners can apply for loss mitigation assistance during a foreclosure, the initiation of the foreclosure process increases costs and creates serious procedural hurdles to obtaining timely assistance before the home is sold to a third party.

With respect to credit reporting, the CARES Act requirement in Section 4021 requiring accounts subject to a forbearance or other accommodation to be reported with their pre-accommodation status provides modest protections, but there are still a number of problems. One problem early on was that some servicers placed forbearance codes on accounts when consumers did not specifically request a forbearance, but merely inquired about one.[45]
Another problem is that the CARES Act failed to address whether servicers and other creditors should place certain notations for an account in forbearance, i.e., codes that the account was in forbearance (CP), deferred (D), or affected by a natural or declared disaster (AW). As a result of this lack of direction, there has been no consistency in the use of these codes, with different impacts on homeowners in the same situation depending on how their servicer handled that homeowner's credit reporting. Homeowners who received the disaster (AW) code on their mortgage account had any negative information for that account suppressed from consideration in their credit score, but only with respect to VantageScore,[46] not FICO, yet the latter is the score used in the vast majority of mortgage lending.[47] At the same time, some borrowers who received the forbearance or deferment codes experienced a drop in their Vantage Scores due to a quirk in its algorithms.[48] And even though VantageScore has changed its models to minimize these problems resulting from its algorithms,[49] homeowners who received the forbearance (CP) code could still experience negative consequences if a user of the credit report who views the full report, not just the credit score, takes an adverse action simply on the basis of the forbearance's existence, even if the mortgage account is reported as current. Other lenders, however, view the

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[45] Lisa Epstein, Coronavirus Policy: Mortgage Servicers are Adding Forbearance Remarks on Credit Reports Even for Some Borrowers Not in Forbearance, Negatively Affects Credit Scores and Mortgage Refinancing, Capital Forum, May 7, 2020, at https://library.thecapitolforum.com/docs/3zur2qq14aww.

[46] VantageScore, Credit Reporting and Natural Disasters, Sept. 2017, at https://thescore.vantagescore.com/article/354/did-you-know-credit-reporting-and-natural-disasters.

[47] FICO, FICO Score Facts, at https://ficoscore.com/about/ (citing 2018 Mercator Advisory Group Analyst Report).

[48] FAQ: VantageScore credit scores and the COVID-19 pandemic, May 15, 2020, https://your.vantagescore.com/resource/439/faq-vantagescore-credit-scores-and-covid-19-pandemic.

[49] *Id.*

forbearance code positively, as the sign of a borrower taking active steps to manage a financial shortfall.

In short, the approach taken by the CARES Act has led to complexity, confusion and, lack of consistency in treatment. The solution for this complexity is the moratorium on negative credit reporting in Section 110401 of the HEROES Act—simple, broad, and straightforward. And, in the absence of congressional action, clearer guidance is needed from both the CFPB and FHFA, either requiring placing of one code, preferably the AW code, or no codes at all, in order to promote consistency and reduce confusion.

We call on Congress to pass further mortgage protections for homeowners facing hardship during the COVID-19 pandemic. We applaud the House passage of the HEROES Act and urge the Senate to act soon on the next round of COVID-19 legislation and to include essential mortgage protections. Congress can help prevent avoidable foreclosures by providing:

- **Forbearance options for all borrowers with mortgage loans.** Congress moved quickly to protect homeowners from the unprecedented financial challenges created by the COVID-19 pandemic. Not only did it provide a foreclosure moratorium, it also mandated mortgage loan payment forbearance for up to 360 days for federally-backed mortgage loans. The breathing room created by the CARES Act is critical to borrowers that have been financially impacted by COVID-19. However, only about two-thirds of residential mortgage loan borrowers were covered. Borrowers making up the remaining 33% of the market—those with loans held in portfolio or private-label securitization trusts—have no certain options. The uneven treatment of borrowers is problematic because 1) borrowers rarely choose what secondary market purchaser buys their loan, putting relief beyond borrowers' control; 2) borrowers are generally unaware of the secondary mortgage market and certainly do not understand that the identity of the secondary market purchaser impacts what loss mitigation options may be available down the road, and 3) borrowers often do not know whether their loan is federally-backed or not. Currently borrowers must figure out what type of loan they have before they can determine what their loss mitigation options are. All borrowers should be covered by the CARES Act forbearance provisions and any future relief provided by Congress. This extension of coverage should be accompanied by a safe harbor for servicers from liability to investors similar to that provided during the last crisis for servicers providing modifications under the Treasury Department's Home Affordable Modification Program.

- **Automatic forbearance for delinquent borrowers facing hardship.** Homeowners should be encouraged to reach out to their servicers when they anticipate that a hardship will prevent them from making mortgage payments. The reality, however, is that many homeowners who are not making payments are not obtaining forbearance plans to defer their payments, and that servicers and the CFPB have both acknowledged difficulties with call volume at servicing centers, making it difficult for borrowers to get through. While all homeowners are more likely to report that they are missing mortgage payments rather than deferring them, the share of missing payments is much higher for African American and Latinx borrowers. Servicers should be required to put any homeowner who misses two or more payments into forbearance automatically. An automatic forbearance would allow homeowners who do not reach out to their servicers a needed pause so they can have the opportunity to limit their arrearage, minimize fees, and work with the servicer before they find themselves in a foreclosure. Homeowners would still have an incentive to reach out to their servicers to avoid a 60+ day delinquency and the subsequent damage to their credit histories. Given the disparities in accessing mortgage help right now, adopting this policy would help prevent a huge wave of foreclosures in Black and Latinx communities in the near future.

- **Notice to borrowers of their rights under the CARES Act**. Currently, borrowers access information about CARES Act protections either by calling their servicer or looking at their servicer's website. Absent affirmatively calling the servicer or searching the website, borrowers may be left unaware of their options if they are facing a COVID-19 hardship. Servicers should be required to provide written notice to delinquent borrowers about options they provide for homeowners facing COVID-19 hardships and to provide such information orally when delinquent borrowers call them.

- **Timely and accurate information to borrowers about the available options for loss mitigation.** Borrowers in financial distress desperately need timely, accurate and consistent information regarding available loss mitigation options. For example, many borrowers may have received mortgage payment forbearance for 90 days, but are unaware that they have a right under the CARES Act to an initial forbearance period of 180 days, with the possibility of another 180 days of forbearance. Other borrowers are unaware that forbearance is an option and instead have fallen into default. And, some borrowers who have been affected by COVID19 have been reluctant to take advantage of the benefits that Congress provided to them because their servicer cannot or will not tell them what will happen at the end of the forbearance period. We have seen time and again that servicers' lack of communication or miscommunication on loss mitigation options for financially distressed borrowers creates a snowballing effect that too often leads to unnecessary foreclosures. These problems are exacerbated by the CFPB's relaxation of the loss mitigation rules, the lack of clarity surrounding post-forbearance options generally, and delays by the GSEs in providing definitive guidance. While the Real Estate Settlement Procedures Act provides a mechanism for borrowers to request this information from a servicer, that formal process simply takes too long in many circumstances to be of use, and borrowers' remedies for servicers' non-compliance are limited. Servicers must provide timely, accurate and consistent information to borrowers and must be held accountable when they fail to do so.

- **Affordable repayment options for borrowers exiting forbearance plans or seeking to resolve delinquencies.** Borrowers exiting forbearance should be automatically offered deferral plans that provide for the resumption of regular mortgage payments and offer a reasonable opportunity to address any escrow shortage. For borrowers who cannot resume their regular payment or who have escrow shortages to repay beyond what they can afford, servicers must be required to work with borrowers to help them complete a loss mitigation application, where applicable, and offer them all available loss mitigation options prior to the start or resumption of any foreclosure activity or charging of fees. We should also consider creating a system in which borrowers are provided with streamlined modification offers with payment reductions and also can apply for a full-documentation loan modification providing potentially deeper payment relief based on submitted financial information. Policymakers should keep a range of options on the table, including principal reduction, which in the event of a plummet in property values would help homeowners obtain sustainable payments without finding themselves deeply "underwater," owing more on their loans than the value of the property. That borrowers who need and qualify for loan modifications can get them is especially important for African American, Latinx, and immigrant communities. No homeowner should be required to make a lump sum repayment upon exiting a forbearance.

- **Information for limited English proficient borrowers.** Borrowers who are more comfortable speaking with the servicer in a language other than English need access to language services and translated documents and website information. All delinquent borrowers should be given information in writing from the servicer, in English and Spanish, on the availability of CARES Act forbearances and how to obtain them. They should also be afforded the opportunity to receive language assistance and general help from a HUD-approved housing counseling agency and directed on how to find such counseling agencies. Delinquent borrowers also should be provided such information orally when they speak to the servicer (in whichever language they are using to communicate with the servicer orally). Servicers' websites should clearly and conspicuously post in English and Spanish information about the availability of CARES Act forbearances and should direct homeowners who seek more information in other languages to the multi-language website on CARES Act protections created by a federal interagency effort. This federal interagency group also should make significant outreach efforts to direct LEP borrowers to these resources. Further, where a homeowner has made a servicer aware of a language preference other than English and where applicable servicing documents have been translated by a federal agency into that language, such documents should be made available to the homeowner.

- **Moratorium on negative credit reporting.** The approach taken by the CARES Act leads to complexity, which in turn has led to confusion and lack of consistency in treatment. The solution for this complexity is the moratorium on negative credit reporting in Section 110401 of the HEROES Act–simple, broad, and straightforward. This negative reporting moratorium will also protect consumers from credit reporting harm for credit accounts for which forbearances or accommodations are not mandatory, such as credit cards and auto loans. It also will benefit renters by preventing eviction-related debt collection items.

- **Targeted assistance to hardest hit communities, including funding for legal services and housing counseling.** The response to this crisis needs to be shaped by a recognition that while the entire nation has been hit with hardships from the COVID-19 economic crisis, certain communities, especially Black and Latinx communities, are at risk of much greater loss. As discussed above, these are losses that compound previous wealth loss and financial hardship wrought by the Great Recession of a decade ago. In addition to proactive work to gear foreclosure prevention assistance to the needs of the hardest hit borrowers, members of these communities would greatly benefit from enhanced access to legal services and housing counseling services. Such assistance would help prevent avoidable foreclosures. Special attention to access to credit, especially in Black and Latinx communities, also will be essential. Promoting sustainable mortgage lending in underserved areas and areas with what may be high foreclosure rates will begin to start addressing historical inequities and recent challenges with access to affordable mortgage credit.

- **Measures to prevent neighborhood blight, ensure timely resale of vacant properties, and prioritize foreclosure sales to future owner-occupants or non-profit organizations.** Any foreclosure discussion also must include a recognition that vacant properties and REO and note sales must be managed to prevent blight and preserve owner-occupancy where possible. Vacant and abandoned homes are one of the biggest threats to neighborhood stability and healthy housing markets. If homes are vacant or abandoned, servicers must take them all the way through the foreclosure and disposition process in an efficient way rather than just parking them as "zombie foreclosures" to avoid costs or wait for lower loss severities. Investors and servicers should not be able to "walk away" from distressed homes through charge-offs or lien releases other than in certain exceptional situations. Assuming a spike in defaults and a rise in foreclosures, even with the best efforts of servicers, it is critical that we not lose large amounts of housing inventory to cash investors like we did after the last foreclosure crisis. In every channel through which either nonperforming mortgages or properties are sold—note sales, third party sales, online auctions, etc.—there must be protections to ensure that homeowners have exhausted loss mitigation prior to a sale and, where applicable, have been offered sustainable loss mitigation after a note sale. Further, there needs to be an exclusive "first look" period where either homeowners or nonprofits have an option to purchase the homes before investors.

Mortgage protections must reach the range of properties in the single-family market, including manufactured housing, whether titled as real property or chattel, and other properties used as dwellings, as well as owners and residents of 2-4 family properties. While we focus on homeowners today, elsewhere important discussions are occurring about how to ensure that renters do not face a massive eviction crisis. Both direct tenant assistance and support for landlords that can be used to provide temporary relief to tenants are needed.

We are focusing here, as we did in response to the last foreclosure crisis, on providing relief to homeowners through mortgage servicers. To the extent this approach creates complexity or implementation challenges by mortgage servicers, Congress could avoid that result by providing for direct relief to homeowners facing financial difficulties caused directly or indirectly by COVID-19. We need to pass another stimulus package to help people who have lost income cover necessities, and we must pause the most aggressive forms of debt collection, including wage and bank account garnishment.[50] We have offered bailouts to entire industries, recognizing

[50] *See* Letter from 104 organizations to Sen. McConnell et al. (June 23, 2020) (supporting the debt collection provisions of the HEROES Act), *available at* https://bit.ly/heroes-debt-coll.

that their current financial difficulties are not of their making but a result of the pandemic. We should extend the same recognition to individual human beings, who also find themselves in financial crisis, through no fault of their own, with even fewer resources to manage the economic fallout from COVID-19.

IV. Federal Regulators Must Increase Oversight, Improve Regulations and Consider Future Reform of the Mortgage Servicing Industry.

The federal regulators, including the banking regulators, the Consumer Financial Protection Bureau (CFPB), the Federal Housing Finance Agency (FHFA), and the agencies that directly insure federal loans, especially the Department of Housing and Urban Development (HUD), have an important role to play at this juncture. Additional COVID-19-related mortgage policies have been established, many of which will be beneficial to consumers, such as enhanced access to streamlined post-forbearance repayment options and an extension of the CARES foreclosure moratorium. As discussed further below, the agencies' COVID-19 policies must be accompanied by rigorous oversight. In addition, certain policies require further development or, in some cases, stronger consumer protections.

A. The federal regulators must actively oversee CARES Act implementation and mortgage servicing in general.

Mortgage servicing consumer protections provide meaningful relief when industry compliance is strong. While we are only a few months into implementation of the CARES Act, we are already hearing of problems with access to forbearance and loss mitigation. These problems involve both non-compliance with specific CARES Act provisions and general problems dealing with servicers, in many instances the same challenges that have been common for many years, including during the last crisis.

Our network of attorneys has reported problems with borrowers being denied forbearances on the basis of delinquency on federally-backed loans even though the CARES Act requires servicers to provide forbearance regardless of delinquency status. For example, a single mother in Connecticut requested a forbearance when all three of her jobs were impacted by the pandemic. The servicer (PHH) asked for proof of financial hardship, even though such proof is not required by the CARES Act. It subsequently denied her request, claiming that her FHA loan was too delinquent, even though the law explicitly states that forbearance is available regardless of delinquency. The servicer insisted on moving forward with foreclosure. It took significant efforts by her attorney challenging each of these hurdles to finally get a forbearance. Many homeowners do not have this kind of assistance and do not even know if they are being improperly denied because their servicer is not following the CARES Act.

In Philadelphia, an FHA borrower was in the process of applying for a loan modification when he was laid off from his restaurant job because of the pandemic. Even though the CARES Act requires servicers to provide forbearance regardless of delinquency status, and the servicer's attorney told the borrower to apply, the servicer (Home Point Financial) denied the homeowner forbearance because his loan was in the foreclosure process.

We have heard of several cases of servicers requiring financial documentation to obtain a CARES Act forbearance for government-backed loans, even though this is specifically not permitted by the statute. At least one servicer was only accepting forbearance requests online even though some borrowers did not have internet access. While many borrowers have applied for forbearance online, those who have used the phone have faced long wait times, sudden disconnections, multiple transfers to untrained staff, inability to reach a live person, and inconsistent information, even when talking to the same servicer. Many of the letters sent to borrowers with forbearance plans include dense text about the range of repayment possibilities preceded by a prominent chart indicating that at the end of the first three months of forbearance the borrower will owe the full amount that has been forborne. While this may technically be true, servicers generally have been offering, and for government-backed loans are generally required to offer, extensions or a range of repayment options, making this type of communication misleading. For those servicers of private loans requiring lump sums after a forbearance, they are subjecting homeowners to unaffordable conditions.

The CFPB, HUD, VA, USDA, FHFA and the banking regulators should increase their oversight operations. Robust supervision and enforcement would improve compliance and help homeowners and industry participants avoid unnecessary foreclosures. Each agency, as well as Fannie Mae and Freddie Mac, should establish a robust escalations process in which a homeowner can seek assistance when the servicer is not providing proper or compliant assistance. Homeowners should be able to get assistance resolving disputes, not just a place to submit information and then have the servicer's response provided back to the homeowner without further assistance. The agencies each should also intensify efforts on fair housing oversight to identify and address systemic problems. Data available to the agencies should be used to identify hard-hit communities and develop policies to address central challenges by homeowners in those communities. Programs must center the particular issues faced by borrowers of color, especially Black and Latinx homeowners, to build more sustainable homeownership policies.

In addition, while the CFPB and FHFA's announced cooperation effort through the Borrower Protection Program seems like an important first step, public details are lacking and many questions remain. The agencies announced that the CFPB would share consumer complaint data and analytics with FHFA, and FHFA would provide the CFPB with its internal data on mortgage forbearances, modifications, and other loss mitigation, but did not specify how the shared information would be used to protect borrowers. How will the consumer complaints be used and will homeowners receive assistance in actually resolving disputes with their servicers rather than simply receiving information about the servicer's position? Will the complaints be used to inform enforcement and supervision work? Data sharing should also be used to enhance fair lending oversight, particularly in light of the disparate impact of the crisis and its economic fallout on African American and Latinx communities. Moreover, the Bureau has many more resources to share, including servicer-specific supervision and enforcement information, and it is unknown if the FHFA will share granular demographic data with the CFPB or if fair lending analyses of the data will be conducted or made available to the public by either agency. The public should know more about what steps will be taken as part of this program. Will there be additional supervision, guidance, consumer communications, or enforcement actions? Regular, public reports should be published to share the measures taken and outcomes reached by this new program for it to reach its full promise.

When homeowners are unable to make their mortgage payments, mortgage servicers must nonetheless, as a general rule, continue to make advances to investors and pay taxes and insurance. These advances, taken together, could strain the liquidity of even well-capitalized servicers. Such strains are likely to fall particularly hardest on the servicers of the FHA and VA loan pools, as they have the highest rates of forbearance and are, relatedly, the loan pools containing the greatest concentration of home loans to African Americans and Latinx. The regulators must exercise the full scope of their authority to ensure that servicers of all sizes who need liquidity can receive such funding to ensure that proper loss mitigation protocols can be provided. This assistance to servicers, of course, should be accompanied by a duty to provide sustainable options for homeowners and to report loan performance and demographic data to the federal government. The steps that FHFA and Ginnie Mae have taken to date are helpful, but do not address the full range of potential liquidity challenges. Nor has the CFPB or the FHFA made clear what their plans are for assuring the transfer of servicing from a distressed servicer so as to minimize borrower harm, such as lost data regarding loss mitigation. Failure to provide the necessary liquidity and relying on servicing transfers to address servicer liquidity constraints will predictably result in adverse outcomes for African American and Latinx homeowners and the communities they live in.

B. The CFPB's one-sided relaxation of the mortgage servicing rules should be amended to provide protections for consumers.

In early April, the CFPB, joined by six other banking regulators, issued policy guidance[51] providing enormous flexibility to mortgage servicers while failing to ensure that distressed consumers get timely access to crucial information and foreclosure avoidance procedures. Although styled as a response to the pandemic, the CFPB told servicers that the Bureau would not supervise for nor enforce violations of most of its foreclosure prevention rules "until further notice," regardless of whether the servicer's actions are related in any way to responding to the COVID-19 emergency.

The CFPB's asymmetrical announcement offers great leeway for servicers without ensuring reasonable consumer protections. While some narrow flexibility is needed to address servicer backlogs and to minimize homeowner hardships and confusion, the Bureau's actions go much further. The CFPB announced that, "until further notice," it would not expect servicers to adhere to timelines or requirements for providing complete information to struggling borrowers so long as some unspecified "good faith efforts" were made by the servicer in an undefined "reasonable time." For example, for homeowners who receive a forbearance under the CARES Act, servicers are excused from providing information describing the terms of the borrower's arrangement with

[51] Consumer Financial Protection Bureau, *et al., Joint Statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the COVID-19 Emergency and the CARES Act* (Apr. 3, 2020), *available at* https://files.consumerfinance.gov/f/documents/cfpb_interagency-statement_mortgage-servicing-rules-covid-19.pdf; Consumer Financial Protection Bureau, *The Bureau's Mortgage Servicing Rules FAQs related to the COVID-19 Emergency* (Apr. 3, 2020), *available at* https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rules-covid-19_faqs.pdf.

the servicer. Instead, servicers are encouraged to use form letters, which the CFPB will deem timely so long as they are sent "before the end of the forbearance period." There is no requirement that the letters be received by the borrower *before* the end of the forbearance period or that they be provided in time for a borrower to complete a loss mitigation application *before* the servicer begins foreclosure. As a result, homeowners may receive forbearances without receiving written notice of when it will end or what comes next and people may find themselves in foreclosure before being notified about how to obtain further assistance.

Moreover, the CFPB's announcement loosens rules for servicers whether or not the situation relates to COVID-19, without providing similar flexibility to homeowners, even where the hardship is virus-related. The CFPB does not expect servicers to reach out to and contact borrowers who are behind in their payments within the first 45 days of delinquency, the window in which early intervention is most successful in preserving homeownership, even where the servicer is preparing to initiate foreclosure. Nevertheless, the CFPB left the time limits for borrowers to respond to a servicer's loss mitigation offer or appeal a denial at 14 days, even though borrowers are also surely struggling to meet the challenges of the pandemic, including stay-at-home orders that may cut them off from fax machines, printers, or photocopiers.

We call on the CFPB to take steps to protect consumers, including:

- Require servicers to resume reasonable diligence and provide information about what is needed to complete the loss mitigation application in time for the borrower to complete an application and be evaluated for loss mitigation before the end of the forbearance period;

- Require servicers not to initiate any foreclosure proceedings or charge borrowers any fees related to starting a foreclosure, such as appraisal fees, property inspection fees, or attorney fees, until a minimum of 30 days after the servicer has resumed reasonable diligence, in order to minimize harm to borrowers;

- Require notices to borrowers about a forbearance or other loss mitigation to be specific to the borrower's circumstances, including what loss mitigation options may be available at the end of the forbearance;

- Encourage or require servicers to offer homeowners flexibility on timelines; and

- Clarify that the CFPB will supervise and enforce for violations of fair lending laws and unfair, abusive or deceptive practices to minimize the risks that servicers will use these relaxed standards to abuse consumers.

C. The CFPB and FHFA must work to improve infrastructure for transfers of mortgage servicing.

The CFPB released a document in late April providing supervisory guidance[52] for mortgage servicing transfers. This sets forth best practices for servicing transfers and acknowledges that servicing transfers pose particular risk for borrowers who are behind in their mortgage payments. Yet the document provides no guidance, much less a mandate, for how to protect homeowners during the current pandemic, when both unemployment and mortgage forbearance requests are rising fast.

According to the CFPB guidance, servicers have continued to struggle in transferring homeowners' accounts in a timely and accurate manner, despite earlier, similar guidance from the CFPB to servicers. Servicers sometimes lose borrower account information in transfer, including information about borrower requests for assistance or agreed-to plans for mortgage assistance. The CFPB calls out the critical importance of planning in servicing transfers and notes problems with post-transfer data validation and incompatible technology. The increase in nonbank servicers, which are not subject to the same capital requirements as bank servicers, means an increased risk for borrowers, according to the CFPB.

Nonetheless, the CFPB announced that it will take a light touch in monitoring mortgage servicing transfers ordered by a federal regulator until four months after the end of the national emergency. This relaxation of regulatory oversight, precisely when borrowers are most at risk, appears to be linked to statements by FHFA Director Mark Calabria at the beginning of April, that FHFA would force servicing transfers from smaller to larger servicers as a response to struggles by smaller servicers.[53]

The CFPB is sending mortgage servicers and homeowners a mixed message. Which is it? Prevention of borrower harm through well-planned and executed mortgage servicing transfers or hands-off supervision during the pandemic, when we have record numbers of homeowners out of work and millions of mortgages already in forbearance? We need more clarity from both the CFPB and the FHFA as to how they will protect homeowners in the event of mortgage servicing transfers and particularly in the event that any mortgage servicers fail. Moreover, the agencies must make meaningful progress on the project of ensuring that servicer data transfers can work for both industry participants and the homeowners whose files will be moved. We have already seen in the last foreclosure crisis that homeowners seeking assistance from their servicers during a mortgage servicing transfer often must restart the process of applying for help, even as a foreclosure looms. The adoption of uniform data terminology, for example, would be an

[52] Consumer Financial Protection Bureau, Bulletin 2020-02, *Compliance Bulletin and Policy Guidance: Handling of Information and Documents uring Mortgage Servicing Transfers* (Apr. 24, 2020), *available at* https://files.consumerfinance.gov/f/documents/cfpb_policy-guidance_mortgage-servicing-transfers_2020-04.pdf.

[53] Ben Lane, Housing Wire, *Calabria: No servicer liquidity facility coming, but GSEs may pull servicing from struggling companies* (Apr. 7, 2020), *available at* https://www.housingwire.com/articles/calabria-no-servicer-liquidity-facility-coming-but-gses-may-pull-servicing-from-struggling-companies/.

important step toward lessening chaos during the inevitable servicing transfers coming in the next few years.

D. The CFPB's Interim Final Rule will allow borrowers to move from forbearances to deferral options more efficiently but it fails to provide sufficient consumer protection safeguards.

The CFPB issued an Interim Final Rule (IFR) in June[54] allowing borrowers to move from forbearances to deferral options without having to face servicer delays, lost documentation, and the "runaround" experienced with many servicing interactions. Deferral options allow homeowners to resume their regular mortgage payment while accounting for the months of missed payments by placing them at the end of the loan. The streamlined application procedures also will help servicers deal with the large volume of deferral requests, which will hopefully free up time for them to assist borrowers who need to be reviewed for other loss mitigation options.

But the IFR does not include sufficient safeguards to prevent borrower harm. The exception in the current rule to the requirement that servicers obtain a complete loss mitigation application before evaluating a borrower for loss mitigation options is based on the premise that the borrower is facing only a temporary hardship and that relaxing the normal requirements will facilitate a temporary solution. The difficulty with the IFR's expansion of the exception to deal with COVID deferrals is that servicers may not be able to adequately determine that the borrower's hardship is temporary and resolved, and the deferral option is not a temporary solution but rather a permanent loan modification. Not only may it be unclear whether the borrower's hardship has been resolved, but the unique nature of COVID is that borrowers may experience "rolling" hardships (e.g. laid off, then rehired and then laid off again or terminated) that may arise after the deferral option is accepted. As a result, the IFR does not adequately protect homeowners, who might qualify for a permanent loan modification, from foreclosure as a result of a COVID-related hardship.

The following additional safeguards are needed:

- **A halt to the pre-foreclosure clock.** The IFR ensures that the borrower's acceptance of a deferral option ends any preexisting delinquency, thereby ensuring that the borrower will not face a risk of imminent foreclosure. However, the IFR provides no foreclosure protections to the many borrowers who have received forbearances and will not be able to resume their regular mortgage payment and accept a deferral option. The IFR should provide that the 120-day delinquency period in the existing rule before a servicer may initiate foreclosure should be tolled until a borrower has completed a forbearance program and either been placed in a permanent loan modification or, after evaluation and review, been found ineligible for all available loss mitigation options. Without this essential change, homeowners who cannot resume their monthly mortgage payment may immediately face foreclosure after their forbearance ends.

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[54] Consumer Financial Protection Bureau, *Treatment of Certain COVID-19 Related Loss Mitigation Options Under the Real Estate Settlement Procedures Act (RESPA), Regulation X; Interim Final Rule* (June 23, 2020), *available at* https://files.consumerfinance.gov/f/documents/cfpb_interim-final-rule_respa_covid-19-related-loss-mitigation-options.pdf.

- **Servicer assistance in completing a hardship application before foreclosure.** Because the CFPB had earlier relaxed certain loss mitigation requirements and timelines for borrowers who receive a COVID forbearance in the Joint Agency Statement, as discussed above, the IFR should provide that if the servicer cannot confirm that the borrower is able to continue making the full regular installment payment, or if the borrower does not accept the deferral offer, the servicer must either offer the borrower an additional forbearance (if available) or immediately exercise reasonable diligence to complete the application and evaluate the borrower for all available loss mitigation options.

- **Inclusion of escrow advances in deferral payments.** The IFR sets out criteria for the deferral options that will qualify for the exception. The CFPB suggests that the criteria ensure that borrowers in forbearance programs will not face a balloon payment at the end of forbearances and that they will not be required to make additional installment payments to catch up on the mortgage loan. However, the deferral amount in the IFR is limited to forborne principal and interest payments, and does not address escrow amounts. Thus servicers will qualify for the exception even if they demand payment of escrow advances that were made during the forbearance period, as well as additional amounts to cover escrow shortages that arise from the forbearances. This sets up the potential for the payment shock that the CFPB claims it was trying to avoid. The IFR should be changed to require at a minimum that escrow advances be included in the deferral amount (as required by the guidance issued by the GSEs).

- **Written notice.** Unlike the exception for forbearances in the existing rule, the IFR does not require notice to the borrower upon acceptance of the deferral option. The IFR should require that the servicer provide written notice to the borrower stating the specific payment terms of the deferral, including an itemization of the deferred amount and whether the deferred amount will need to be paid in a balloon payment at the end of the current loan term or in installments by extending the loan term. It should also notify the borrower that if the borrower faces a later hardship and needs assistance, the borrower may submit an application and be evaluated for all available loss mitigation options.

E. HUD's FHA policies have improved the outlook for forward and reverse mortgage borrowers; additional measures are needed to assist homeowners.

HUD's FHA program serves as a crucial source of mortgage credit for borrowers not served by the conventional market. African Americans and Latinx are disproportionately reliant on FHA lending for mortgage loans.[55] As noted above, FHA-insured borrowers currently are obtaining forbearances at a higher rate than conventional mortgage borrowers and communities of color have been hard hit by the pandemic's medical and economic costs. Thus, it is especially critical for FHA-insured borrowers to have clear, easy-to-access options for addressing COVID-19 hardships.

[55] Ctr. for Responsible Lending, New HMDA Data Show Despite Growing Market, African-Americans and Latinos Remain Underserved (Sept. 29, 2018), *available at* https://www.responsiblelending.org/research-publication/new-hmda-data-show-despite-growing-market-African Americans-and-latinos-remain.

FHA joined with other government agencies that back mortgage credit to establish and extend foreclosure moratoria. Early on, it also announced an expansion of its partial claim option for borrowers facing COVID-19 default. The partial claim provides a 0% interest loan to bring the mortgage current. In response to calls for broader options, on July 8 FHA further expanded the available options for borrowers facing hardship from COVID-19.[56] The agency created streamlined modification programs that appear to allow borrowers with COVID-19 hardships to access needed relief without significant documentation requirements. It also expanded deed-in-lieu and pre-foreclosure sale options for borrowers who cannot afford to save their home as a result of the pandemic.

Many borrowers, especially those who were already facing hardship prior to the pandemic and find themselves in a worse position now, will need to access FHA's standard foreclosure relief program, FHA-HAMP. We urge FHA to adopt joint recommendations from consumer and industry groups to remove unnecessary barriers to eligibility for that program, including eliminating the need for unnecessary paperwork and clarifying rules for financial eligibility.

HUD also should clarify the rules to make CARES Act protections work better for reverse mortgage borrowers at risk of foreclosure. Reverse mortgage loans are designed to make it easier for older homeowners to age in place by allowing them to borrow against the equity in the home without the risk of displacement. Most reverse mortgages are FHA-insured Home Equity Conversion Mortgages (HECMs). Despite the importance of the HECM program in helping elderly homeowners maintain stable housing while accessing their home equity, problems with oversight and servicing of these loans have resulted in older homeowners losing their homes to foreclosure at an alarming rate.[57] Lenders have marketed the loan as “payment-free,” and failed to explain the ongoing obligation to pay taxes and insurance, leading to 90,000 reverse mortgages (roughly 14% of the market) going into default on these property charges.[58] HUD policies and servicing failures have led to high rates of foreclosure, rather than cure of these defaults.

The greatest risks of foreclosure of reverse mortgages caused by the COVID-19 pandemic relate to property charge defaults. Borrowers who had defaulted previously may struggle to make payments on an approved repayment plan due to loss of income, and new defaults are occurring due to economic hardship and the grave risk to elder borrowers posed by going to the tax office to make a payment.

HUD has implemented CARES Act protections for HECM borrowers, as well as certain other recent changes to help prevent HECM foreclosures. Yet, further action is needed to clarify the

[56] U.S. Department of Housing and Urban Development, Mortgagee Letter 2020, FHA’s COVID-19 Loss Mitigation Options (July 8, 2020), *available at* https://www.hud.gov/sites/dfiles/OCHCO/documents/20-22hsgml.pdf.

[57] Sarah Mancini, “Protecting Seniors: A Review of FHA’s Home Equity Conversion Mortgage (HECM) Program,” Testimony before the United States House Financial Services Committee, Subcommittee on Housing, Community Development, and Insurance (Sept. 25, 2019), https://www.nclc.org/images/pdf/foreclosure_mortgage/reverse-mortgages/testimony-mancini-protecting-seniors-sept2019.pdf.

[58] Integrated Financial Engineering, Actuarial Review of the Federal Housing Administration Mutual Mortgage Insurance Fund HECM Loans For Fiscal Year 2016, at 19 (Nov. 15, 2016), available at https://www.hud.gov/sites/documents/ACTUARIALMMIFHECM2016.PDF [hereinafter FY 2016 Actuarial Review].

rules and protect older homeowners from foreclosure. HUD directed reverse mortgage servicers to provide a mandatory six-month delay on calling a loan due and payable, the first step in a property charge foreclosure, upon request from a borrower.[59] However, for loans that were already due and payable because they had progressed farther in the foreclosure process, HUD should clarify that a borrower-requested delay of foreclosure is still mandatory.[60] HUD has announced that a borrower who defaults on an existing property charge repayment plan may apply for a new repayment plan, but has not instituted a pause in payments equivalent to a forbearance in the forward mortgage market.[61] In addition, HUD should work with servicers to ensure clear communication with borrowers and heirs regarding options to cure defaults or pay off the loan and avoid foreclosure.[62] The need for better servicing of reverse mortgage loans is all the more urgent due to the pandemic and the hardships it has caused.

F. FHFA should monitor and revise its program to prevent avoidable foreclosures and support the origination market.

Elsewhere in this testimony we address several matters that intersect with FHFA's role, including the importance of fair lending data collection and reporting, services for limited English proficient borrowers, and the need for escalations, as well as work with the CFPB on the Borrower Protection Program and addressing liquidity issues for mortgage servicers. FHFA oversees the majority of the mortgage market and has a unique and central role to play in stabilizing that market in the face of the disruptions caused by the COVID-19 national emergency. FHFA, in preventing avoidable foreclosures during the COVID-19 national emergency for Government Sponsored Enterprise (GSE) borrowers, at the same time sets the national standard for all mortgage servicers and all borrowers and has the capacity to provide much-needed direction in a time of turbulence.

We welcome the GSE rollout of the new special deferral program for borrowers with COVID-19 hardships who can repay their arrearage through resumption of their regular mortgage payments. At the same time, this program is limited to borrowers who were not more than 30 days late on their mortgage. It also addresses escrow advances but does not fully address borrowers with escrow shortages. As a result, a borrower who is able to resume making the regular payment may actually face increased monthly payments as a result of the escrow shortage. Thus, even for borrowers who can resume their regular mortgage payments, there will be some ineligible for the deferral and others who cannot afford it.

It appears that the intended approach is to have those borrowers obtain a loan modification with a reduced payment through the GSE flex mod program. However, the flex mod is not keyed to an individual affordability measure for a borrower, but rather to a formula that focuses primarily on

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[59] Dep't of Housing and Urban Development, Mortgagee Letter 2020-06 (April 1, 2020), https://www.hud.gov/sites/dfiles/OCHCO/documents/20-06hsngml.pdf.

[60] *Id.* at 7. HUD's mortgagee letter makes the later-requested delay appear optional, at the servicer's discretion.

[61] U.S. Dep't of Housing and Urban Development, Request for Waiver of Housing Directive (April 14, 2020), https://www.hud.gov/sites/dfiles/OCHCO/documents/HECMCovid19RepaymentWaiver41420.pdf.

[62] National Consumer Law Center, Recommendations to Improve Servicing and Reduce Foreclosures of Federal Reverse Mortgages (March 2020), https://www.nclc.org/images/pdf/IB_HECM_3_13_20.pdf.

payment reduction. Not enough is known about the performance of the flex mod for different groups of borrowers generally, and it is still unclear if the flex mod will be able to provide sustainable loss mitigation for borrowers in the COVID-19 era. FHFA must monitor implementation of its policies for overall sustainability and for concerns regarding disparate impact, particularly on those communities hardest hit by the virus and the economic downturn, particularly African American and Latinx communities. FHFA must make public data on these issues to enhance accountability and transparency.

The gaps in the written guidance on the new deferral program heighten concerns that servicers may not implement the deferral program, including issues such as ensuring deferral reviews prior to the initiation of foreclosure, as intended by the GSEs. Additional guidance is needed to provide further assurance to homeowners, including guidance to servicers on the mechanics of this new program. Such guidance must be published soon to ease concerns about what borrowers can expect after a forbearance. Concerns about post-forbearance options remain. Anecdotal reports confirm that the continuing uncertainty about what will happen at the end of the forbearance period is discouraging some borrowers facing hardship from seeking assistance. Given the racial disparities reflected in the Pulse survey data, discussed above, indicating that many more African Americans and Latinx are missing payments than in forbearance, FHFA's failure to provide clear guidance quickly may contribute to further erosion of African American and Latinx homeownership and a widening of the racial wealth divide.

Additionally, FHFA has adopted some measures to address origination problems that have emerged during the current crisis. One important additional measure that is needed is for FHFA to reduce Loan Level Price Adjustments on loans that are being purchased out of forbearance. Such additional costs are inhibiting access to credit in harder-hit communities just at a time when such access is essential.

G. FHFA and FHA Must Address Needed Mortgage Servicing Reform.

While we focus today on the efforts to contain the fallout from the coronavirus pandemic and preserve homeownership in these times of enormous economic uncertainty, we should not lose sight of the fact that for many financially distressed borrowers the mortgage servicing industry remains a fundamentally broken system. It is a system in which borrowers have few market mechanisms to employ to ensure their needs are met. Instead, in times of unprecedented economic uncertainty, borrowers find themselves again at the mercy of their mortgage loan servicers. And, as we discuss above, the impact of poor mortgage servicing falls hardest on African American and Latinx communities.

Mortgage servicers provide the critical link between mortgage borrowers and the mortgage owners. Since the 1990s, mortgage servicing has become an increasingly specialized and lucrative industry, driven in part by the need for an entity to coordinate the distribution of mortgage revenues to the investors in securitized loans. The rights to service mortgage loans are routinely sold or transferred independently of the loans themselves. And, more and more frequently loans are subserviced by an entity that has no connection to the loan beyond a contractual relationship with the owner of the mortgage servicing right.

Servicers are generally responsible for account maintenance activities such as sending monthly statements, accepting payments, keeping track of account balances, handling escrow accounts, calculating interest rate adjustments on adjustable rate mortgages, reporting to national credit bureaus, and remitting monies to the owners of the loans. Servicers also are responsible for engaging in loss mitigation activities and prosecuting foreclosures. Servicers' goals in managing loans are generally twofold: 1) to maximize their own profits and 2) to maximize the returns to the owner of the loan or the investors in the securitized trust.

Residential mortgage servicing is two divergent businesses. One is the servicing of performing loans—a heavily automated, largely ministerial, and very profitable operation. The second is the servicing of non-performing loans, which has been labor intensive and required higher-skilled employees. Notwithstanding the disparity in costs, the fees earned by mortgage servicers are typically determined around the time of loan origination and generally set at the same rate for servicing both performing and non-performing loans. But servicing non-performing loans is far less profitable work. Because servicing non-performing loans is less profitable, servicers have unsurprisingly been unwilling to invest in the technology and personnel needed to adequately address default servicing for than a baseline, best-case level of defaults. Additionally, this incentive structure results in mortgage servicers underinvesting in planning for mortgage servicing transfers, particularly of non-performing loans, with the result that borrowers whose loans are transferred while they are in default or in loss mitigation routinely face problems with accounting errors, lost loss mitigation applications, and, too often, wrongful foreclosures. The shortcomings of this mortgage servicing structure have been widely recognized for years.[63] Yet little concerted effort has been made to address this fundamental problem in the servicing industry—the Achilles heel of the residential mortgage market.

Following the last foreclosure crisis over a decade ago, Congress and the CFPB recognized the importance of regulating mortgage servicers and requiring servicers to follow standardized loss mitigation procedures for financially distressed borrowers.[64] While these regulations were welcome and have generally been positive for borrowers, there was no fix to the underlying economics of the industry that will always put the needs of borrowers behind the profits of the servicers and investors.[65] The CFPB's relaxation of the loss mitigation rules, discussed above, reduces the incentives on servicers to provide adequate and timely loss mitigation as we enter the coming crisis. This will mean, once again, that servicers' incentives will lead them away from providing the timely assistance to borrowers that our nation's economy and hardest-hit communities, as well as individual borrowers, need servicers to provide.

[63] Richard Cooperstein and Mickey Storms, A Resilient Federal Mortgage Securities Servicing System: The Future Is Now, Andres Davidson & Co. (May 2020); Karan Kaul, et al, Options for Reforming the Mortgage Servicing Compensation Model, Urban Institute (April 2019); Stuart I Quinn and Faith A. Schwartz, Mortgage Servicing: Foundation for a Sound Housing Market, CoreLogic White Paper (October 2014).

[64] See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (2010); 12 U.S.C. § 1024.1, et seq.; 12 U.S.C. § 1026.1, et seq.

[65] *See generally* Diane E. Thompson, Foreclosing Modifications: How Servicer Incentives Discourage Loan Modifications, 86 Wash. L. Rev. 755 (2011); Adam Levitin & Tara Twomey, Mortgage Servicing, 28 Yale J. on Reg. 1 (2010).

FHFA and FHA, which together purchase, securitize, or insure roughly two-thirds of the U.S. residential mortgage market could dramatically improve the structure of the mortgage servicing industry, but to date have not shown a willingness to do so. Indeed, FHFA's last serious look at mortgage servicing compensation was nearly a decade ago.[66] The CFPB could also use its Dodd-Frank and RESPA authority to mandate certain investments in capital and infrastructure, as well as public data reporting, but to date has chosen not to do so.

We encourage FHFA and FHA, in consultation with the CFPB, to undertake comprehensive mortgage servicing reforms with these principles in mind:

- Servicing compensation should be closely tied to the actual cost of servicing loans; that is, servicers should be paid less for servicing performing loans and more for servicing non-performing loans.

- Incentives for servicers to strip wealth from homeowners through the charging of fees and costs should be minimized.

- Incentives that encourage servicers to maintain loans in or return loans to performing status should be maximized.

- Adequate planning for both spikes in default rates and servicing transfers of non-performing loans must be standardized.

Mortgage servicers are now being called upon to address an unprecedented number of homeowners facing economic uncertainty and potentially seeking loss mitigation assistance. Unfortunately, the urgency to address the broken mortgage servicing system fizzled as the housing markets rebounded. We should not miss the moment now. Indeed, our ability to prevent another great loss of homeownership for African American and Latinx families depends on our ability to convince servicers that performing default servicing well is in their interests as well as the interests of financially-distressed homeowners, the communities they live in, and the broader economy.

Conclusion

Thank you for the opportunity to testify today. Our nation is facing unprecedented challenges that also present us with a real chance to look at our priorities and assumptions and make material progress in how we measure success and inclusion. Congress and the federal regulators should act soon to prevent avoidable foreclosures and start building a more sustainable housing market, especially in Black and Latinx communities who were already set back significantly by the Great Recession of a decade a

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[66] Alternative Mortgage Servicing Compensation Discussion Paper, Federal Housing Finance Agency (Sept. 27, 2011).

HPC

HOUSING POLICY COUNCIL

Testimony of
Edward J. DeMarco
President of the Housing Policy Council

Subcommittee on Oversight and Investigations

Committee on Financial Services

U.S. House of Representatives

Hearing on:

"Protecting Homeowners During the Pandemic:

Oversight of Mortgage Servicers"

Thursday, July 16, 2020

Chairman Green, Ranking Member Barr, and Members of the Subcommittee:

My name is Edward DeMarco and I am the President of the Housing Policy Council (HPC). HPC is a trade association comprised of the nation's leading firms in housing finance and dedicated to advancing responsible and sustainable homeownership opportunities.[1]

Thank you for inviting me to testify on how mortgage servicers are responding to the challenges facing homeowners because of the novel coronavirus.

These challenges facing the nation's homeowners are real and substantial. Many homeowners are in deep economic distress resulting directly or indirectly from the pandemic. Also, while anyone is vulnerable to the virus, the health and economic costs have disproportionately affected communities of color and lower-income households.

From the outset of this emergency, HPC members have been committed to keeping individual borrowers and families in their homes. We have been doing this in partnership with many others, including government agencies and federal regulators, Congress, nonprofit and community organizations, as well as other stakeholders, including those testifying with me today.

In passing the CARES Act, Congress has provided support and direction to millions of households nationwide and to numerous organizations, including mortgage servicers, that are delivering relief to American homeowners. HPC thanks you and commends you for developing and passing a law of such magnitude in very short order.

In this statement, I will summarize the actions HPC member servicers have taken to date. It is important to note, however, that we are still in the early stages of the COVID-19 health crisis and its economic ramifications. There are many challenges ahead of all of us. We must continue to work together as we navigate these treacherous and uncharted waters.

Mortgage Servicing Support of Homeowners Affected by the Coronavirus Pandemic

The response of HPC members to this crisis has been shaped by lessons learned during the Great Recession and subsequent natural disasters. This is a mortgage servicing industry far different from the one I encountered as a regulator during the Great Recession. The capacity and commitment to serve customers and the tools available to provide near-term relief and long-term solutions is far greater than it was twelve years ago.

[1] The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers, mortgage and title insurers, and technology and data companies. HPC advocates for the mortgage and housing marketplace interests of its members in legislative, regulatory, and judicial forums. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth-building for families. A list of HPC members may be found on our website: www.housingpolicycouncil.org

Most importantly, the challenges facing homeowners today are not the result of poor underwriting standards or inappropriate business practices. This pandemic is a national health crisis, and the steps taken to combat it have had enormous economic consequences.

Thus, there are unique challenges posed by this crisis. In the Great Recession, it took three years for unemployment to go from its trough to its peak. With the pandemic, we experienced that in just two months. In the Great Recession, delinquency rates grew slowly and then accelerated, taking six years to grow from the low point to the peak. With the pandemic, we have gone from near-record low delinquency rates to a 9 percent forbearance rate in less than two months.

In response to the rapid development of this crisis, HPC members and other mortgage servicers:

- Shifted virtually all their operations out of call centers and office buildings to kitchens and family rooms.
- Trained their staffs remotely and modified technology to manage the enormous inflow of borrower inquiries.
- Set up automated on-line tools – in some cases in just a few days – for borrowers to educate themselves and request payment relief using efficient and streamlined processes.
- Began offering homeowners forbearance options before the passage of the CARES Act.
- Extended forbearance to homeowners that do not have federally backed mortgages.
- Executed against an evolving series of program and regulatory announcements from FHA, VA, USDA, Ginnie Mae, the GSEs, FHFA, and the CFPB.

The CARES Act required forbearance for borrowers in federally backed mortgages that contact their servicer and declare a financial hardship. By late May, just two months since enactment of the CARES Act, nearly 4.8 million households were on a forbearance plan.[2] This happened because servicers, both bank and nonbank, are better prepared and more nimble today than they were in the past crisis. For example, many servicers established online portals to provide educational information for consumers with immediate access to automated tools to request forbearance.

According to Black Knight, by the end of May, 12.3 percent of FHA and VA loans were in forbearance and 7.1 percent of GSE loans were in forbearance. Servicers of those loans are required by the CARES Act to offer forbearance.

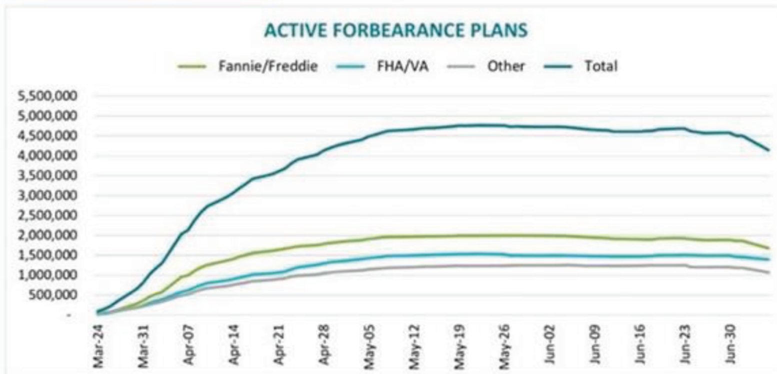
Yet for non-federally backed mortgages, Black Knight reported 9.6 percent of such loans were also in forbearance by the end of May. These include bank portfolio loans and loans in private-label securities. This is a clear indication that bank portfolio lenders and other investors have also responded voluntarily, without a federal directive, providing borrower payment relief at an even greater rate than we see for GSE loans.

[2] Forbearance data reported in this section are taken from weekly reports prepared by Black Knight Financial Services' Data and Analytics Division. These reports start with individual mortgage servicer data recorded in MSP, Black Knight's mortgage servicing platform, which are then extrapolated to represent all outstanding mortgages.

BLACK KNIGHT FINANCIAL SERVICES

Data as of July 6, 2020

	Fannie & Freddie	FHA & VA	Other**	Total
Loans in Forbearance*	1,679,000	1,396,000	1,070,000	4,145,000
UPB of Loans in Forbearance ($Bil)*	$354	$240	$305	$899
Share of Loans in Forbearance*	6.0%	11.5%	8.2%	7.8%
Active Loan Count (Mil)*	27.9	12.1	13.0	53.0



In addition to providing assistance to borrowers facing economic disruption to their ability to pay their mortgage, mortgage companies also have responded to strong customer demand for both purchase mortgages and mortgage refinance. With interest rates again finding new lows, both the refinance market and now the purchase market are defying expectations. That these loans are getting made in the midst of stay-at-home orders, is a testament to resourcefulness, technology, and regulatory flexibility. From automated methods for verifying income to appraisal accommodations to remote notarizations, the industry, program administrators, and regulators have successfully adapted on the fly.

In short, the housing finance industry is delivering mortgage relief to those who need it and lowered monthly mortgage payments for many households.

As a result of the initial spike in forbearance requests, liquidity challenges facing nonbank mortgage servicers were a concern in March and April. Since that time, a combination of policy actions and improving market conditions restored stability and a measure of calm. With Ginnie Mae, FHA, FHFA, and the GSEs each announcing program changes that put more certainty around servicer liquidity needs, market confidence improved, and markets responded with increased access to liquidity.

I have spent a lot of time talking with mortgage servicers the past few months. What I have witnessed is a group of firms working under difficult circumstances and with a good bit of uncertainty trying to do their best for their customers. When mistakes are made, or misunderstandings occur, servicers strive for prompt escalation and swift resolution.

Mortgage Servicing Stakeholders

I want to acknowledge the partnerships and information sharing that has marked the past four months. The industry itself has tried to work in a coordinated and consistent fashion. Since the start of the pandemic, we have continued to compare notes on trends and challenges. For many weeks, HPC convened daily calls with its mortgage servicers to identify what consumers needed and to help drive best practices in servicer response.

But this has not been limited to just industry. HPC participates in two, large, ongoing collaboratives that involve industry representatives along with representatives from think tanks, housing counseling organizations, and advocacy and civil rights groups. These collaboratives have been meeting regularly to share concerns and ideas. In some cases, the conversation has led to mutual advocacy for enhancement to program rules or for regulatory changes to meet the current circumstances.

Servicer response to customer needs during this pandemic also has benefited from constant interaction with a wide range of regulators, federal program administrators, and government-sponsored enterprises. None of us are operating in a vacuum. Instead, ongoing communication and information-sharing have enhanced understanding and led to numerous program and regulatory changes that have greatly enhanced servicers' ability to respond to their customers.

For example, the Department of Housing and Urban Development, including officials responsible for the Federal Housing Administration (FHA) and the Government National Mortgage Association (Ginnie Mae), have been responsible and responsive partners. Our ongoing dialogue, and their willingness to listen and respond to ideas and concerns shared by industry and other stakeholders has exceeded anything I have seen from HUD during my career. This does not mean we agree on everything; it means we believe these officials have been willing to engage and have responded appropriately to their own governing laws and objectives. Ginnie Mae's Pass-Through Assistance Program (PTAP) was one of the initial federal program responses that directly added stability to servicing in the government-backed mortgage sector.

The Consumer Financial Protection Bureau has also been a thoughtful partner, not just in working with industry representatives but in the approach they have taken to consumer education. HPC's website's first link for consumers seeking information about mortgages and COVID-19 is to the CFPB's excellent webpage "Mortgage and housing assistance during the coronavirus national emergency" that was initially developed by CFPB and is now jointly sponsored with HUD, the Federal Housing Finance Agency (FHFA), and the Department of

Veterans Affairs (VA). CFPB has continuously improved this information portal and has been receptive to feedback.

Importantly, CFPB has recognized that certain requirements under Regulation X, which were designed for standard loss mitigation situations, do not work well for consumers in a CARES Act forbearance plan. Accordingly, they have signaled a willingness to provide additional flexibility and guidance, including a recent regulatory change that allows some exceptions to the standard customer notification rules.

The Federal Housing Finance Agency and the government-sponsored enterprises for which it is conservator have also made a series of programmatic changes and clarifications over the past few months that have contributed clarity and added more market certainty with regard to servicer implementation of the CARES Act for GSE-backed loans. Two critical announcements to note are (1) the April announcement that servicers would be limited to advancing principal and interest payments for four months, thereby relieving a major liquidity challenge that advancing for up to twelve months could have imposed; and (2) the May issuance of guidance on the new deferral program, under which the repayment of forborne principal and interest could be deferred to the back end of the loan, thereby relieving customers and servicers of a major uncertainty regarding post-forbearance repayment.

HPC has also been in ongoing dialogue with VA and USDA, both of which have made clear that their natural disaster programs are available for use during this national emergency and that they will be making additional programmatic changes to streamline the use of these programs.

No discussion of public-private partnership in the mortgage servicers response to customer needs in this pandemic would be complete without acknowledging the critical role played by the Federal Reserve. Their substantial investment in federally backed mortgages have lowered rates and enhanced liquidity in a manner that has benefitted borrowers and servicers.

Understanding the Challenges Ahead

As enormous as the effort to quickly assist families facing coronavirus-based disruptions to their financial circumstances has been, many challenges threaten our ultimate success. The two biggest are (1) the unknown duration of the pandemic and the consequent economic disruptions and (2) the transition from short-term payment relief to permanent solutions, which must be suitable for each affected household, addressing their unique financial circumstances. Prompt and effective borrower – servicer communication, combined with stability in program rules, will be key to successful resolution of forbearance.

Since late May, we have seen a net decline of more than 600,000 families in forbearance plans and some measure of economic stabilization. Some borrowers are asking to end their forbearance plan as they return to work or otherwise achieve greater confidence in their ability to repay their mortgage. This is certainly good news. But we are also seeing adverse trends in the spread of the virus and numerous states contemplating pauses or reversals in their re-opening plans. Also, certain industries, such as airlines, are considering large-scale furloughs or layoffs as the outlook for the travel and hospitality industries remains bleak.

Put together, it is hard to have confidence that forbearance requests will not grow again. We simply do not know yet. Servicers stand ready to play their important role in responding to additional requests for assistance.

Transitioning from forbearance to a longer-term solution requires dedicated effort from the borrower and servicer to ensure the best resolution. The CARES Act appropriately allows flexibility for customers to receive forbearance in increments, up to the full twelve months to which they are entitled, and this flexibility is a benefit for both borrowers and servicers. For example, the sooner a borrower begins repaying the mortgage, the sooner he or she resumes the wealth-building opportunity that homeownership provides. Meanwhile, spreading the transition over several months helps servicers as well as consumers, permitting servicers to allot resources over an extended period of time, rather than concentrating them to handle spikes in post-forbearance requests.

When a borrower is ready to resume monthly payments, borrower contact with the servicer is critical to ensure a seamless transition and to ensure there is certainty among all parties regarding the repayment of the forborne amounts. The options available at this point are dependent on several factors, some unique to the loan program and some based on the borrower's own circumstances, but options include short-term repayment, repayment at the end of the loan term, or longer-term repayment by adding the outstanding payments into the loan balance.

FHA, VA, USDA, Fannie Mae, and Freddie Mac each have certain program requirements governing post-forbearance repayment options, but all are designed to produce the same basic outcome for consumers. These options have themselves been altered or refined over the past few months, and we expect further changes may be made.

Borrowers also are not uniform in their circumstances, post-forbearance. Some borrowers will have been in forbearance only a few months and may even have continued to pay their mortgage for some or all of this time. Others will be in forbearance longer. Some will have their pre-forbearance income restored and will be ready to resume their pre-forbearance payments; others will have a permanent reduction in their income and may not be able to afford their pre-forbearance mortgage payment. In any case, it will be important for borrowers to accurately explain to their mortgage servicer their financial situation and capacity to repay so that the servicer may identify the post-forbearance approach best suited to address their circumstances.

Some homeowners will want to get back on schedule with their mortgage repayment as quickly as they can. A short-term repayment plan may be what they want. For others, repayment deferral will be more appropriate. For those who have experienced a permanent decline in income, a full-blown loan modification may be the best approach.

As I stated at the outset of these remarks, HPC members are committed to do everything they can to keep people in their homes. Inevitably and regrettably, though, this may not be possible for everyone. In that case, borrowers and servicers have two advantages mostly lacking in the Great Recession. First, most borrowers in forbearance have equity, often meaningful equity, in their home, and house prices have remained stable or are even growing due to supply shortages. More than 90 percent of homeowners in forbearance have at least 10 percent equity in their homes. Second, with enhancements introduced by all of the government agencies during the last crisis, servicers have access to better alternatives to foreclosure that protect borrowers and their communities.

The bottom line is this: there is a lot of uncertainty ahead. Transitioning from forbearance to post-forbearance repayment is not a one-size-fits-all proposition. Mortgage servicers will continue to be there to assist their customers through this difficult time.

Future Government Actions

The letter of invitation asked what further actions "the federal government should take to ensure effective borrower protections for the duration of the coronavirus crisis." We recognize that the pandemic has negatively affected many consumers and communities, and that the beneficial stimulus provided under the CARES Act—including expanded unemployment benefits and the benefits of PPP loans—are beginning to dissipate. Thus, we support additional measures by the Congress to provide fiscal stimulus to hard-hit consumers and communities.

With the forbearance provisions of the CARES Act, Congress already has taken the cornerstone action to assist both borrowers and servicers. Implementation of the CARES Act is well along, aided immensely by various regulatory and program rule changes to align with the CARES Act. Moreover, CARES Act forbearances can extend up to 12 months, into 2021, if needed. The industry is now focused on delivering the customer relief and aiding consumers through exit of temporary forbearance programs. HPC members are not seeking further forbearance legislation at this time but would instead ask Congress and the Committee to continue to monitor the economic circumstance affecting many Americans and the impact of the public health crisis on housing markets.

We do expect there to be additional regulatory and program refinements as we go. HPC and others remain engaged in discussions with the various federal program administrators and regulators. Such ongoing dialogue and partnership should enable us collectively to address emerging issues.

We will continue to keep Congress informed of progress and should a potential need for further legislation emerge, we will certainly engage with this Committee.

Thank you again for inviting me to participate at today's hearing. The Housing Policy Council and its members look forward to continuing to serve and protect customers during this national health crisis.

Testimony of Marcia Griffin, President & Founder of HomeFree-USA

On behalf of Housing Counselors

Before the House Financial Services Subcommittee on Oversight and Investigations

For a hearing entitled, "Virtual Hearing - Protecting Homeowners During the Pandemic: Oversight of Mortgage Servicers' Implementation of the CARES Act"

July 16, 2020

Good morning. My name is Marcia Griffin and I am the President and Founder of HomeFree-USA, and I appreciate this opportunity to appear before you to raise the alarm that my industry colleagues in housing counseling and I share about the plight of homeowners in the pandemic.

I) Overview:

In this testimony, I will share feedback on trends and issues the housing counselors are seeing in CARES Act-related mortgage servicing at this early stage of the economic impacts of the pandemic. For example, there is a continued prevalence of pressure for lump sum repayments, confusion about available payment options, and whether or if a consumer qualifies for a payment deferral. I will also highlight the need for federal coordination to provide guidance and accountability, and the complete abandonment of consumers in non-federal loans.

II) Context: How Housing Counselors Backstop the Mortgage Industry.

I want to emphasize the importance of housing counselors in the context of this discussion about mortgage servicing during the pandemic. HUD-approved housing counseling agencies, like my company, HomeFree-USA are primarily mission-based entities that seek to provide ordinary people with the tools, guidance, and solutions they need to achieve and sustain their housing goals. We administer programs that help get renters credit ready for mortgage approval and mentally ready for homeownership. Through classes, one-on-one guidance and an easy-to-follow plans, housing counselors help aspiring homeowners achieve their dream. We also administer programs to help existing homeowners avoid mortgage delinquency and foreclosure. I often describe this work as a type of marriage counselor that helps homebuyers and homeowners work with their lender or mortgage servicer in times of stress. Achieving and sustaining homeownership is the most important financial and family investment for the consumer we counsel.

A. Counselors Serve to the Benefit of Lenders, Services, Investors and Guarantors.

In a distressed situation, housing counselors consider their task a success each time it can help a loan get back into a successful repayment status and avoid a preventable foreclosure. Although much less rewarding but sometimes necessary, we are able to help a consumer through the sad business of a "graceful exit" – a short sale or a deed in lieu of foreclosure. Whether it is putting a loan back into repayment status or negotiating a graceful exit, servicers and lenders derive a significant economic benefit from our services, as we take on the burden of facilitating resolution by organizing documentation and working with the borrower ahead of calls with the servicer. This frees up servicer time and expense because communications with the borrower are conducted more productively and efficiently.

According to the U.S. Congress Joint Economic Committee, the average foreclosure costs homeowners, neighbors, lenders, and local governments $77,934.[1] Lenders lose an average of 12-19 percent of the home's value in foreclosure and spend about $50,000.[2] If housing counselors are able to prevent an avoidable foreclosure or assist a troubled borrower regain payment status, the value to lenders, investors and guarantors is enormous.

Today, each federal agency, regulator and most servicers and lenders include reference to the availability of HUD approved housing counseling agencies to provide assistance to backstop their operational issues in communicating with consumers. This is often without compensation to counselors. Nonetheless, counselors are here to help the consumers and have an unbiased and clear view into the process and challenges in helping COVID-impacted borrowers sort out their housing issues.

During the financial crisis, Congress called upon housing counselors as part of the National Foreclosure Mitigation Counseling (NFMC) Program. Borrowers in NFMC were three times more likely to perform under a new or existing loan than those who were not counseled.[3] According to the report to Congress on the National Foreclosure Mitigation Counseling program (NFMC), homeowners who received NFMC counseling were nearly twice as likely to receive a mortgage modification. The modifications received by NFMC-counseled homeowners were deeper—$176/more per month, on average—and more sustainable -- 67% more likely to remain current after 9 months.[4] Our organizations are a longterm resource for struggling homeowners.

B. Counselors are a Cost-Effective Means to Deliver the Assistance and Require Supplemental Funding.

Based on our experience, it costs housing counseling agencies approximately $325 or to assist distressed homeowners needing affordable loan workouts (or graceful exits) with their servicers. The average amount of time spent is 10 hours per client.[5]

[1] Mortgage News Daily, *Foreclosures Cost Lender, Homeowners, the Community Big Bucks*, June 2, 2008: http://www.mortgagenewsdaily.com/622008_Foreclosure_Costs.asp.
[2] See the 2007 Joint Economic Report. Report 110-251. 110th Congress. 18 December 2007. Available here https://www.jec.senate.gov/public/_cache/files/3d0074ec-4be8-478b-9b4a-b77efa40be9c/the-2007-joint-economic-report-1810-.pdf and "Process, Data and Costs of Mortgage Foreclosure. Congressional Research Service. Updated 20 October 2008. Available at https://www.everycrsreport.com/files/20081020_RL34232_ca7cd14c3c1dd6baedd148c2d9a48327722a17e8.pdf
[3] "National Foreclosure Mitigation Counseling Program: Final Congressional Update." 13 July 2018. NeighborWorks. Available at https://www.NeighborWorks.org/Documents/HomeandFinance_Docs/Foreclosure_Docs/NFMC_Docs/Congressional-Repts/2018-NFMCCongressionalReport16.aspx
[4] "National Foreclosure Mitigation Counseling Program,: Congressional Update," 12 2012. NeighborWorks. Available at http://www.nw.org/network/foreclosure/nfmcp/documents/2012DecemberCongressionalReport_000.pdf
[5] National Foreclosure Mitigation Counseling Program: Final Congressional Update." 13 July 2018. NeighborWorks. Available at

The GSEs, at FHFA's behest, recently introduced a chart detailing incentive fees they were willing to pay servicers over and above their regular default servicing payment. The incentive is in an amount between $500- $1000 per loan for completed repayment plans, payment forbearances/COVID-19 payment forbearances, and Flex Modifications.[6] The servicers receive a $500 incentive fee to help certain GSE-supported loan become re-performing in a repayment plan, but counseling agencies rarely receive these funds. We argue that these incentive fees should be paid to the counseling agency which assisted the servicer toward these resolutions.

Today, about 4.2M homeowners, or roughly 9 percent of all homeowners are in some form of mortgage forbearance or CARES Act payment forbearance.[7] While new forbearances are leveling off, we anticipate a modest increase once unemployment benefits run out which would cause the percentage to tick closer to 11 percent. Assuming one out of 10 homeowners need more advice and help in setting up repayment terms, the housing counseling industry needs at least $220M for one year and $700 million for a full program to address the needs of housing consumers in this crisis.

C. How are Counselors Compensated? The Legal Limitations on "Fee for Service" model.

Under existing program rules, HUD prohibits HUD-approved housing counselors from charging a fee to consumers facing foreclosure.[8] This includes borrowers who have taken a COVID or CARES Act related payment forbearance or forbearance. We continue to support this prohibition; however, it creates a necessity for organizations like ours to seek additional support for this critical function we serve.

In FY 2020, HUD appropriated $53M to HUD-approved housing counselors. This would permit the counselors to serve about 163,000 individuals nation-wide if that was the only means of support. Instead, counselors in HUD-approved agencies generally provide about 1.1 million counseling units per year, of which about a fifth (about 210,00) are related to distressed homeowners needing to resolve or prevent a delinquency.

To supplement our operations, counselors are the beneficiaries of philanthropic support from a number of industry-related players and appreciate their vital contributions to the mission of sustainable homeownership.[9] However, philanthropic support is an unreliable means of on-

https://www.NeighborWorks.org/Documents/HomeandFinance_Docs/Foreclosure_Docs/NFMC_Docs/Congressional-Repts/2018-NFMCCongressionalReport16.aspx

[6] See LL-2020-09, June 10, 2020. https://singlefamily.fanniemae.com/media/23091/display

[7] MBA Forbearance and Call Volume Survey as of June 28, 2020.

[8] HUD Housing Counseling Program Handbook (7610.1), Chapter 7. May 2010. Available at https://www.hud.gov/sites/documents/76101TRNHSGH.PDF

[9] HUD FY 2017 9902 Housing Counseling Data, All numbers are either workshop attendees or counseling sessions.

Housing Counseling Delivers: Housing counseling helps America's housing consumers :

Number of counseling and education:	1,121,957
Number of low and moderate income:	669,631 (73%)
Prepurchase Educational Workshop Attendance	188,948
Prepurchase counseling	258,461
Resolving or Preventing Delinquency	219,801
Rental Counseling	105,965
Reverse Mortgage Counseling for Elderly	95,839

going support, particularly in times of economic stress and does not begin to cover the need. Housing counseling agencies are in the business of preventing foreclosures, limiting borrower stress, and helping the mortgage industry to be more successful.

III) Widespread issues the housing counselors are seeing in CARES Act-related mortgage servicing.

In my work at HomeFree-USA and my colleagues' work at the National Housing Resource Center, we cannot point to any particular large, national servicer for egregious deficiencies in their program. We believe that a servicer is only as good as their least trained consumer-facing employee. Instead, we want to provide the Committee with information about emerging patterns which we have observed in the first three months of CARES Act payment forbearances.

A. Observed Patterns of Servicer Deficiencies.

To date, the counseling industry has not undertaken an empirical study of the issues most commonly raised by consumers regarding CARES Act mortgage servicing. While improvements have been made by servicers, the anecdotal evidence from the first three months of activity since passage of the CARES Act reveals that there are still deficiencies in servicer training and performance. More outreach to vulnerable homeowner is needed.

Here are a few of the items we want to highlight from the past three months:

- Pressure for lump sum repayment at the end of the forbearance period continues.
- Homeowners call us who have not called the servicer because they are intimidated by past experiences.
- Scare tactics intended to prevent borrowers from accessing forbearances. We have found this with non-federal mortgages not covered by the CARES Act.
- Denial of CARES Act or other forbearance requests due to the loan delinquency status or recent resolution (in trial payment or otherwise recent modification).
- Lack of communication from servicer confirming that a forbearance was approved and for how long.
- Long call wait times and non-responsive or unattended email boxes.
- Consumer distrust of the servicer.
- Consumers not contacting the servicer to request forbearances.

First, notwithstanding the declarations from the FHFA and HUD that a single, lump sum payment is not required, we are still seeing consumers being given unclear instructions on their repayment options. Consumers report being offered the lump sum repayment first and needing to prove why they cannot afford that option. In extreme cases, we are seeing servicers demand that unemployment support be paid immediately towards the arrearage. Servicers' communications seem to exert pressure on the consumer to select a lump sum repayment that frustrates a productive conversation about other options or causes an early end to the conversation because the consumer is so upset.

Second, consumers have noted that when calling to request a discussion about payment forbearance options, servicer scripts start with a lump sum payment at the end of the forbearance period and scare the consumer from taking advantage of the CARES Act relief. They accomplish this outcome by telling the consumer they will be required to repay the arrearage in a lump sum, or that taking advantage of a forbearance could prevent them refinancing their loan in the future.

Third, our counselors have had veterans who were denied a forbearance on their VA loans. We are seeing consumers who claim that they have been denied forbearances for what they thought was a federally-backed loan, but it turned out to be a portfolio loan. We have seen challenges for homeowners who have recently gone through a loan modification or were delinquent heading into COVID-related furloughs. Much of our assistance to date has been assisting borrowers who were improperly denied forbearance, and only approved with the intervention of a housing counselor. More and specific guidance around recently impaired loans should be provided.

Fourth, we spoke to a number of consumers who felt like they were in limbo. They requested a CARES Act payment forbearance but had not received verification from the servicer that the forbearance request was received and granted. We think this lack of communication is partially responsible for the high (but recently declining) number of borrowers who have requested forbearances, but nonetheless paid their loan in April and May. Similarly, there is still widespread confusion about the length of the payment forbearance that was granted- three months, six months? A year?

Related, we have spoken to consumers who have called their servicer, gotten through and asked about payment options only to find that they were put in CARES Act payment forbearance without regard to their affirmative request. This unrequested forbearance could impair the consumer's credit rating (potentially), their ability to request a refinancing loan, and their ability to qualify on a loan for a home.

Fifth, the call times and responsiveness of servicers to the demands of the consumer is seriously lacking. By the time a consumer comes to us, they have already invested a number of hours into this process and are frustrated and upset. Our work generally takes an additional 10 hours of time with that borrower to get to a resolution. This is an unreasonable demand on consumers time when a majority of the borrowers should be offered repayment options that allow the arrearage to be deferred to the end of the loan.

Last, and it must be emphasized, borrowers are fatigued, stressed and frightened. Consumer trust in their lender and the banking system is low. Sentiment that the lender has the borrower's best interest in mind in even lower. For a significant proportion of borrowers we assist, the relationship with the servicer is too fraught with mistrust and fear for the consumer to undertake alone. I get calls from pastors, caregivers, health centers asking for us to help a vulnerable person navigate the complex issues of mortgage finance. People of color are particularly vulnerable to the sense of distrust in their servicer communications and rely more heavily on intermediaries like ourselves to help them advocate for the best outcome.

B. The Worst Is Yet To Come.

We expect the financial condition of many homeowners to change radically when the forbearance periods start to expire at calendar year end. About half of the loans in forbearance are scheduled for their first discussion about repayment in the next month. We expect most consumers will seek to renew/extend their payment forbearance. As we approach the six month mark, the nine month mark and the 12 month mark, we expect the need for more significant proportion of borrowers to be counseled through repayment options or to engage in loss mitigation will increase exponentially.

Servicers do not have capacity to handle the individualized support needed to get a loan back into performing status (standard repayment or loss mitigation). They have not scaled up appropriately and need to invest more than they have. It is our observation that the servicers are finding it difficult to scale up because of the existing strain on the business due to the need to advance the first four months or more of payments.

The biggest problem will be for homeowners who return to work but have a reduced income. There will be the need for aggressive and affordable loan modification for these borrowers. We know about the challenges we had in the foreclosure crisis with documenting HAMP loans and getting affordable loan modifications. We do not have a HAMP equivalent today and servicers will have to provide loan modifications on scale. Housing counselors will play a critical role in helping homeowners through this complicated time.

Knowing that the servicers will once again be inundated with consumer communication, now is the time to take decisive and affirmative action. We look forward to hearing the servicers' plans to take the time that every consumer deserves to work through their loan repayment options, but suspect that it will not match our sense of the commitment needed.

Consumers who will be extending payment forbearances to the entire year are going to skew towards the most distressed borrowers. Higher and higher percentages of these borrowers will be hard to reach and may be unresponsive to servicers' requests. We are uniquely positioned to help this population of borrowers and anticipate about that about one in 10 borrowers in payment forbearance will need special attention.

C. We Fear Economic Circumstances That Drive A Misalignment of Interests Resulting in Anti-Consumer Behavior.

The servicers represent the interest of the lenders and investors by contractual obligation. They do not bear any responsibility to act in the best interest of the consumer. That said, lenders and investors are generally perceived to be interest- aligned with the borrower because of the joint incentive to get a borrower into repayment status rather than bear the costs of foreclosure or other asset dispositions (deed-in lieu or short sale). But may not always be the case. As home price appreciation increases, we could see a true misalignment of interests that could drive anti-consumer behavior and lead to avoidable foreclosures or pressure to sell the home. A lender may calculate that the home is worth a great deal more than the outstanding mortgage and decide that offering the home on the inventory-starved market may yield more profit than would be lost in the administrative burden of eviction and foreclosure. In this instance, the servicer is not incentivized to work with the borrower on affordable repayment options.

This condition of anti-consumer behavior would not be immediately apparent to industry observers. Instead, the likelihood is that servicers would be able to shield themselves from immediate inquiry by masquerading the practice with excuses about overwhelmed phone lines and emails or placing blame on unclear guidance from the lenders and federal guarantors.

For example, we know that a servicer, lender, and guarantor's interests are best served when consumers make a lump sum payment of loan arrearages. This is why we are seeing the continued pressure on consumers to make lump sum payments, even though they are not required and often not in the best interest of the COVID-impacted borrower. The experience the industry thus far in the pandemic is indicative of cracks in the assumption that anti-consumerist behavior is not sound business.

IV) The Lack of Federal Coordination and Affirmative Action Plans To Address Problems Is Concerning.

Housing counselors are very appreciative of this opportunity to share our concerns about the lack of federal oversight that is responsive to the crisis on the ground in mortgage lending. We have deeply valued the conversations we have had with the CFPB and HUD, and the commitment of these talented and generous civil servants who we trust genuinely care about homeowner outcomes. We fear that they are not empowered to use the full resources of their agencies to be able to respond to the crisis at hand.

We observe no effective coordination between CFPB, FHFA, and HUD to pursue trend analysis on identified consumer problems with servicers. We would have expected that a significant aspect of such a plan, if it existed, would be to discern widespread problems and work quickly to release updated guidance, in real time, to resolve issues. We can and should be able to do better- especially by planning ahead now.

A. The Limitation of the CFPB's Consumer Complaint Database and FHFA and HUD Access to the Same.

One effort we note is the ability for FHFA and HUD to have access to the CFPB Consumer Complaint database. As far as we can tell from conversations with the CFPB, this is passive access that is not part of a formal plan to regularly convene to troubleshoot observed or reported issues in mortgage servicing. We support the Complaint database, but it has significant limitations for this particular crisis.

First, public-facing information from the database is difficult to obtain. As only the CFPB, FHFA and HUD have full access to the system, they are the only ones who can use the full power of its possibility. As recently written by our friends at the National Community Reinvestment Coalition's study of COVID-related complaints in the database, "The narratives that are included with the CFPB Complaints are a limited but instructive window into the cause of the complaint. Narratives can take up to 60 days to appear in the dataset if the consumer both volunteers a narrative and consents for it to be released."[10]

Second, the CFPB does not require and does not advocate for any particular response by the servicer in response to the consumer's complaint. Instead, servicers are only held to meeting deadlines and extensions thereto. Only after the full exchange can the CFPB understand when, how, and if a resolution of the consumer's issues was obtained. In this respect the Complaint database is a significant lagging indicator of problems.

Third, the database captures a subset of the problems consumers face with respect to mortgage servicing. Generally, consumers who report to the CFPB have a modest degree of sophistication and self-advocacy skills. In our experience, mortgage issues are significantly under-reported in the database. Many of our consumers have never heard of the Complaint database and may not have the means to enter a complaint. We are committed to working to remedy the situation by advising all counselors to submit complaints for capture to the CFPB and have been welcomed by the CFPB to do so.

B. Limitations of the Regulatory Exam and Audit Process.

We need stronger supervisory and enforcement activity conducted by the CFPB, FHFA (for the Enterprises) and HUD. Bad actors and unacceptable practices need to be subject to enforcement penalties. However, similar to the Complaint Database, it is a lagging indicator of problems and not well suited to giving rise to pro-active adjustments to prevent poor outcomes for consumers. The CFPB is not following up on individual complaints and making sure that consumer appropriate solutions are found to these complaints. We expect that the problems in CARES Act repayment issues will be include a significant number of consumers with similar problems (unlike the more traditional loss mitigation work). It is hard to predict what those will be this early in the process, but when they emerge, the problem is ripe for the agencies to understand and intervene with information, adjustments in policy, and regulatory guidance to course correct immediately.

V) Borrowers in Non-federally Backed Loans Need Help.

One of the most challenging aspects of our work in the time of COVID is assisting borrowers who do not have the benefit of the CARES Act payment forbearance. It has been very difficult to explain to borrowers that their loan is not eligible for relief under the CARES Act based on decisions that may not have been in their control (for example, the decision to keep a loan on portfolio or sell into a private label security). These borrowers who do not have a government-backed loan are at a serious disadvantage relative to their neighbors with government-backed loans, even though their economic circumstances may be identical.

Working with servicers of these non-federally backed loans is similarly challenging. There is a patchwork of non-binding applicable guidance from the bank regulators and some pro-active State Attorneys General have sought to intervene on these borrowers in particular

[10] Richardson, Jason. "COVID-19 and the CFPB Consumer Complaint Database." National Community Reinvestment Coalition. 9 July 2020. Available at https://ncrc.org/covid-19-and-the-cfpb-consumer-complaint-database/?mc_cid=b5c3095233&mc_eid=9b8766b3d0

jurisdictions. As a pro-consumer industry, we support efforts to extend CARES Act payment forbearance to all borrowers, along with repayment terms that allow for low or no-cost gradual repayment over time or at the conclusion of the loan.

In the absence of widespread adoption of CARES Act payment forbearance and generous repayment options, we implore the industry to create some equitable standards that would be widely adopted. Improved servicer representative scripts, better frameworks for affordable loan modification, and increased financial support for housing counseling would go far to improve the situation. These efforts will ensure that homeowners get the best possible outcomes, servicers can work more efficiently, and investors will avoid unnecessary additional loses.

VI) Conclusion

We appreciate this opportunity to illuminate our concerns about COVID-related mortgage servicing and the need for housing counseling intervention. Being given a seat in this august panel to advocate on behalf of America's homeowners is very much appreciated.

House Financial Services Committee

Subcommittee on Oversight and Investigations

7/16/20

Testimony by Donnell Williams

President of the National Association of Real Estate Brokers

(NAREB)

Chairman Green, Ranking Member Barr, Chairwoman Waters, and distinguished members of the committee, thank you for the opportunity to testify today and to discuss the importance of protecting homeowners especially during these difficult times. I also want to thank Chairwoman Maxine Waters for calling this hearing.

My name is Donnell Williams, I serve as the President of the National Association of Real Estate Brokers (NAREB), the country's oldest and largest Black real estate trade association. Founded in 1947, our mission, "Democracy in Housing," has guided our efforts to ensure fair housing practices in neighborhoods across the country, especially in communities of color. I am also the owner of Destiny Realty, a Brokerage firm headquartered in Morristown, NJ.

COVID 19 is Disproportionately Affecting Black Homeowners

It is well documented the COVID-19 pandemic has had a crushing and devastating effect on Black homeowners and caused mass unemployment putting a deep economic strain on many Black borrowers who have worked hard to achieve the "American Dream" of homeownership. As of mid-June 2020, roughly 24% of Black homeowners reported some difficulty making their mortgage payments compared to white homeowners. [1] There is a 13% gap between Black homeowners and white homeowners receiving forbearance under Section 4022 of the CARES Act, which allows borrowers to apply for a forbearance period of up to 360 days.

Solutions

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1 https://www.jchs.harvard.edu/blog/a-triple-pandemic-the-economic-impacts-of-covid-19-disproportionately-affect-black-and-hispanic-households/

In order to address the challenges facing Black homeowners as a result of the pandemic it is imperative that Congress take action to ensure that the congressional and governmental efforts to maintain homeownership are equitable and include Black homeowners. We urge Congress to take the following five actions:

1. Allocate specific funds targeted to the preservation of Black homeownership.
2. Provide assistance for borrowers not covered by the CARES ACT, private mortgage lenders must be required to offer government supported forbearance to their borrowers, comparable to the treatment of government-supported mortgage loans.
3. Require FHA and all Servicers to notify all borrowers in all communications, including mail, electronic communication and phone calls of their rights to apply for forbearance. Require all Servicers to have dedicated toll-free lines staffed with representatives knowledgeable about their forbearance procedures.
4. Create a large-scale Public Awareness Initiative. The Federal Government is allocating resources toward building public awareness around the health risks associated with COVID-19. Similar efforts should be made to inform borrowers of their rights.
5. Ensure that FHA borrowers and GSE borrowers continue to have the same access to forbearance protections, financial relief, and assistance.

Conclusion

In conclusion, the National Association of Real Estate Brokers, who members are known as Realtists, since its inception has stood for “Democracy in Housing” and we are the guardians of the communities we serve. We will continue to advocate for the preservation and sustainability of homeownership for Black Americans and all Americans. As trusted advisors we are the conscience of the Real Estate industry and want any efforts of Congress to align with NAREB’s declaration of a Cease and Desist on the decline of Black homeownership.

Thank you for the opportunity to testify before the Committee today and I will be glad to respond any questions you may have.

Donnell Williams

According to HMDA data only 4% of GSE loans are going to Black families. 40 percent of FHA borrowers are Black.

NewRez

C/O PHH Mortgage Services | 1 Mortgage Way | Mt. Laurel, NJ 08054 | Tel: 1-888-820-6474 | Fax: 1-856-917-8300

July 1, 2020

Account Number: [redacted]

0-814-BGB17-0000372-001-01-000-000-000-000

[redacted]
HOUSTON TX [redacted]

Property Address:
[redacted]
Houston TX [redacted]

TEMPORARY HARDSHIP FORBEARANCE PLAN AGREEMENT

Dear Customer(s),

Why Are We Sending This letter

Thank you for contacting us about the mortgage account referenced above. Based upon the information provided, we are offering a **Temporary Hardship Forbearance Plan ("Plan")**. The terms of this Plan are outlined below:

- Account Due Date: May 01, 2020
- Plan Effective Date: 06/30/2020
- Payments Deferred: 3
- Next Payment Due Date: 09/01/2020
- Amount Due on the Next Payment Due Date: $5,395.95

What Needs To Be Done

No further action is required at this time. The Plan is effective as of **06/30/2020**. This document is for record purposes only.

Under the terms of this Plan, the monthly mortgage payment requirement will be suspended for the period detailed above. However, we will continue to accept payments during this time should the accountholder feel financially able to make them. In addition, during the term of the Plan, PHH Mortgage Services ("PHH") will not assess late fees or report these accounts as delinquent to the credit bureaus. Also, foreclosure proceedings will not be initiated and any active foreclosure proceedings will be put on hold during the period covered by the Plan. Any bankruptcy filing during the Plan period will void the Plan.

The payments deferred under this Plan will become due on **09/01/2020**. The **Amount Due on the Next Payment Due Date** includes the amount of payments being deferred under this Plan, any past due monthly payment(s) and the regular monthly mortgage payment that will be due at that time. Please note that this amount is approximate. The accountholder will be responsible for any increases to the regular monthly mortgage payment during the Plan period, such as from an escrow analysis or an

www.MortgageQuestions.com XC005

This communication is from a debt collector attempting to collect a debt; any information obtained will be used for that purpose. However, if the debt is in active bankruptcy or has been discharged through bankruptcy, this communication is provided purely for informational purposes only with regard to our secured lien on the above referenced property. It is not intended as an attempt to collect a debt from you personally. As may be required by state law, you are hereby notified that a negative credit report reflecting

MORTGAGE BANKERS ASSOCIATION

Statement of the

Mortgage Bankers Association

for the House Financial Services Committee's

Oversight and Investigations Subcommittee Hearing

"Protecting Homeowners During the Pandemic: Oversight of Mortgage Servicers' Implementation of the CARES Act"

July 16, 2020

1919 M STREET NW, 5th FLOOR • WASHINGTON, DC 20036 • MBA.ORG • (202) 557-2700

Chairman Green, Ranking Member Barr, and members of the Subcommittee, thank you for the opportunity to submit this statement for the record on behalf of the Mortgage Bankers Association (MBA) regarding the work mortgage servicers and industry members are doing to ensure stability for homeowners and renters during our nation's current health and economic crisis.

MBA is the only national association representing all segments of the real estate finance industry — an industry that employs more than 280,000 people throughout the country. The association works to ensure the continued strength of the nation's residential and commercial real estate markets and to extend access to affordable housing to all Americans. While promoting fair and ethical lending practices, MBA fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. MBA's membership of over 2,200 companies represents all elements of real estate finance, including firms serving both the single-family and commercial/multifamily markets.

The Mortgage Industry's Implementation of the *CARES Act*

MBA members have played a critical role in supporting the economy during the current crisis, assisting the millions of borrowers impacted by COVID-19 and implementing the forbearances granted by Congress through the *CARES Act*. It is a fluid situation, compounded by the challenges that mortgage servicers — like all businesses — face in the current environment where most employees must work from home. Though the demands have been severe, we are happy to report that servicers have risen to the challenge.

In that regard, MBA members have, with unprecedented speed, worked to implement the federal *CARES Act* forbearance, foreclosure moratoria, and credit reporting requirements. MBA members expeditiously ramped up staffing and expanded online application capabilities to process an unforeseeable demand for assistance and information related to borrower options. Within a matter of just a few weeks, servicers have significantly improved borrowers' experiences in requesting mortgage payment relief and obtaining related information. Servicers achieved this result despite an unprecedented volume of requests for assistance, and in the midst of their own pandemic-related challenges.

MBA's data reflects these efforts and their positive impact on borrower experiences. As of July 11, MBA members had placed over 4 million homeowners in forbearance plans. Over the past 16 weeks, our members have cut call center average speed times from a high of 17.5 minutes immediately following the passage of the *CARES Act* to 1.8 minutes, and abandonment rates from a brief peak of 25 percent to 5 percent. As we have seen forbearance requests decrease, our members have been helping their customers consider a variety of options for exiting forbearance, while helping them identify the option best tailored to their unique situation.

Furthermore, although privately backed mortgage loans are not subject to the *CARES Act* or federal agency or GSE guidance, MBA members are implementing COVID-19 forbearance options in accordance with state law and private investor, insurer, or loan owner requirements, as applicable. There are hundreds, if not thousands, of private mortgage loan backers, each of whom determines the COVID-19 forbearance policies to which its servicers must adhere for the specific mortgage loans that the private backer owns or insures. In many cases, the investors or loan owners of privately backed mortgage loans have instructed their servicers to grant initial forbearance periods identical to those that the *CARES Act* requires, and may similarly extend such periods, with no or limited hardship documentation required. Indeed, the forbearance rate as of June 28th for borrowers with non-federally-backed mortgages was 63% higher than the rate of GSE-backed loans (10.08% vs. 6.17%)

The mortgage industry believes that the *CARES Act* is appropriately focused on government-backed single-family and multifamily mortgages, consistent with the benefits lenders and investors receive from the government backing of those loans. Expanding the scope of forbearance-eligible loans to include non-government-backed, private-sector mortgages could have negative, cascading effects on liquidity in the secondary mortgage market and associated credit availability for borrowers nationwide.

Importantly, any contemplated legislation in this area could implicate constitutional questions that deserve further analysis around takings of private property, which include contract rights and the ability of the federal government to modify contracts or limit contractual remedies in contracts negotiated between private parties.

Accordingly, we recommend Congress consider Section 102 in Chairwoman Waters' *Emergency Housing Protections and Relief Act* (H.R. 7301*)* to establish a homeowner's assistance fund as a less disruptive alternative. Direct assistance in the form of mortgage vouchers administered by state housing finance agencies would be an efficient mechanism to quickly ensure that lenders can work with their customers to keep loans current and allow borrowers to reduce amounts owed following a period of forbearance, along with other related expenses to defray the costs of housing counseling and/or utility payments. Moreover, such assistance could reach borrowers irrespective of the owner or investor of their loans, and as such would not have the same possible negative impacts to liquidity in the private market.

MBA and its Members are Ensuring Consumers are Aware of the Various Options Available to them for Exiting Forbearance Programs

It is perhaps inevitable that in such a rapidly unfolding response to an unprecedented crisis, there would have been some initial confusion and evidence of mixed messaging. To combat these issues, MBA has worked with engaged policymakers and regulators to address concerns as they have arisen and acquire consensus interpretations of newly implemented programs like the forbearances required under the *CARES Act.*

One issue that presented itself repeatedly is the misperception that a borrower must repay the deferred payments in a lump sum at the end of the forbearance period. Both the housing Government Sponsored Enterprises (GSEs), Fannie Mae and Freddie Mac, and the Department of Housing and Urban Development (HUD), through the Federal Housing Administration (FHA), have made clear that lump sum repayments are not required. Accordingly, MBA continues to work with regulators, our members, and consumer advocates to ensure that the correct information on this topic is made clear to consumers, allowing servicers to build on the work they have already done to successfully place more than four million borrowers on forbearance plans in just a few short weeks.

To assist with this goal, Fannie Mae and Freddie Mac have given clear guidance that immediate repayment of arrears is not a required solution for *CARES Act* forbearances. The GSEs released forbearance scripts to assist servicers as they guide homeowners who have experienced a hardship as a result of the COVID-19 pandemic through their options. Given the confusion in the marketplace, MBA immediately created an advertising campaign, video, and consumer webpage to help raise awareness around forbearance repayment options. The advertising campaign ran in USA Today as well as other publications and received 26 million impressions. The ads, video and website were also made available to all MBA members for their use (see Appendix). FHA, the Veterans' Administration (VA), and the Department of Agriculture (USDA) also released consumer fact sheets that made clear that lump sum repayment immediately after forbearance was not required.

MBA members are carefully monitoring complaint data to respond appropriately to individual inquiries and, where appropriate, to augment procedures, scripting, and training to foster clear and accurate communications regarding the availability of COVID-19 forbearances and post-forbearance options. Indeed, the MBA staff has worked upon request with a number of congressional offices to ensure that all affected parties – your constituents – receive the appropriate information on forbearance exit options available to them.

MBA's Views on Future Coronavirus Relief Proposals

MBA appreciates that lawmakers on both sides of the political aisle, and in both chambers of Congress, have been vocal about the mortgage industry's potential need for liquidity support as servicers "step into the shoes" of borrowers to make payments on their behalf, ensuring they are protected from financial harm. Accordingly, we support provisions in Chairwoman Waters' House-passed proposal (H.R. 7301) that include potential liquidity support for residential and commercial mortgage servicers.

Mortgage servicers – both single-family and multifamily – should have access to liquidity facilities operated by the Federal Reserve to ensure that their financial health is not jeopardized as they implement congressionally-mandated forbearance. MBA supports this approach and would recommend that future legislation include more specific language requiring the establishment of a *dedicated* liquidity facility, as the Chairwoman's proposal does for residential rental property owners.

Congress Should Promote Equal Access to Mortgage Credit by Requiring the Regulators and the GSEs to Insure or Guarantee Home Loans That Meet Their Standards but for Their Entrance into a COVID Related Forbearance Program

Ensuring that access to mortgage credit is broadly available – especially to traditionally underserved communities – will be an essential element of ensuring a broad base of Americans enjoy the benefits of a recovery from COVID-19. Unfortunately, the CARES Act did not address the so-called "early payment forbearance" problem imposed by the GSEs' regulator, the Federal Housing Finance Agency (FHFA), and the FHA through the placement of restrictions on loans for which borrowers have sought mortgage forbearance due to a COVID-19 hardship shortly after closing. Accordingly, we urge lawmakers to include *the Promoting Access to Credit for Homebuyers Act* (H.R. 6794), introduced by Rep. Juan Vargas (D-CA) and Chairwoman Waters, within any other future pandemic relief proposals.

Congress Should Seriously Consider the Potential Consumer Harm Associated with Automatic Forbearance Proposals.

There have been proposals on both the federal and state levels to provide consumers with automatic forbearance benefits should they miss a defined amount of payments. MBA cautions that loans in automatic forbearance not requested by borrowers could create confusion and could also be deemed inconsistent with state and federal laws requiring mortgage servicers to follow reasonable and lawful instructions from the borrower.

Moreover, engaging with the borrower prior to granting a forbearance empowers the borrower to make a decision that is right for the borrower, which ultimately will foster better outcomes. A one-size-fits-all approach to forbearances would ignore the realities that different borrowers are in different situations. For those impacted by COVID, forbearances are easily available, and unilaterally implementing forbearances could work to the detriment of some borrowers.

The right assistance will vary depending on each borrower's particular circumstances. For example, there will be borrowers for whom a payment issue during this crisis will be caused by a brief interruption in their income; borrowers whose pre-COVID-19 livelihoods may never return, and who will have to find new jobs or new careers; and borrowers who were seriously delinquent prior to COVID-19 and for whom nonpayment is unrelated to the current crisis entirely.

Furthermore, entering a forbearance plan could potentially impact one's ability to obtain new extensions of credit. While the CARES Act requires that servicers report to the credit reporting agencies as "current" borrowers who are on forbearance plans (or that servicers freeze the delinquency status of borrowers who were delinquent prior to being granted COVID-19 forbearance plans), it is unclear how lenders will evaluate these forbearances in connection with future extensions of credit. These examples make clear that providing appropriate relief to borrowers involves understanding the nature of their hardships, goals, and circumstances.

Nevertheless, even though MBA members may not be providing automatic forbearances, they generally are granting retroactive forbearance requests where borrowers attest that their COVID-19 related hardships predate the time of their forbearance requests. In addition, servicers have legal and regulatory requirements to proactively alert borrowers regarding their options if they miss a payment. Finally, servicers are making efforts to educate borrowers regarding their ability to request forbearance—through their websites, online applications, e-mails, phone calls, and other proactive communications. MBA members' goal is to make it simple for borrowers to obtain the COVID-19 forbearances available to them through appropriate outreach and education.

Congress Should Consider a Rental Assistance Program as a Less Disruptive Alternative to Extending Eviction and Foreclosure Moratoria

MBA appreciates the inclusion of language within Chairwoman Waters' House-passed proposal (H.R. 7301) to provide financial assistance for renters. As you are well aware, the *CARES Act* took preliminary steps to stabilize the housing market. As a number of the *CARES Act* provisions designed to provide financial assistance are nearing expiration, it is critical that Congress considers providing supplemental assistance to impacted American renters in order to help them keep up with their financial obligations.

Recognizing that the size, scope, and delivery mechanism for such a program would have to be negotiated by both the House and Senate in the coming weeks, MBA continues to recommend that Congress establish a comprehensive emergency rental assistance program sufficient to ensure that anyone who is impacted by COVID-19 does not lose his/her rental home after suffering a reduction in income (or *CARES Act* benefits) and/or falling so far behind on rent that there would be an increased likelihood of facing eviction. Such a program should be designed to provide assistance to renters in need as quickly as possible, mitigating the need for expanded eviction moratoria.

Conclusion

MBA appreciates this opportunity to offer this statement and reiterate our long-standing commitment to working with this committee on all elements of needed housing-related relief and reforms in the coming weeks and months.

Appendix

Timing Is Everything

We understand that these are challenging times. The amount of uncertainty facing our nation today makes planning for tomorrow even more difficult. We understand that making your mortgage payment is top of mind right now. If you can make your payment, you should continue to do so. If you cannot, now is the time to contact your mortgage company. Your loan servicer can explain options like forbearance and how to repay your loan when the time is right. We're here to help. Relief is simple and fast.

If you are impacted by the COVID-19 pandemic and need help today, use the information on your statement to contact your mortgage company.

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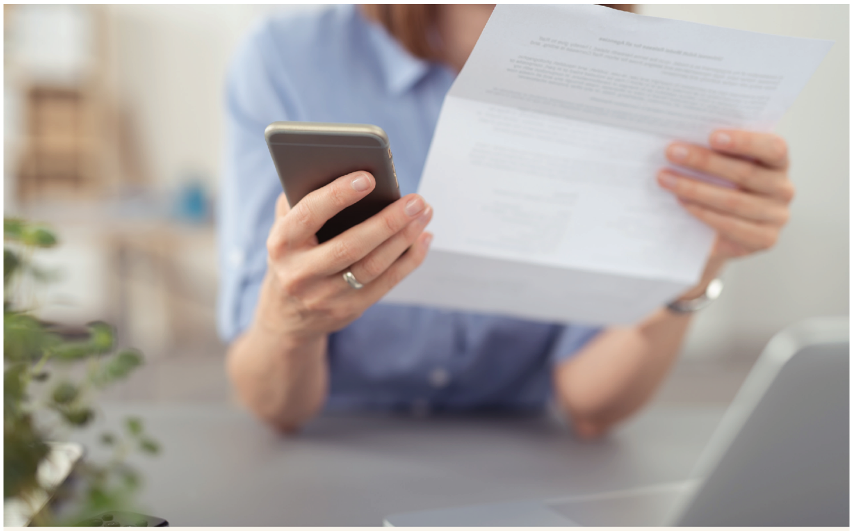

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