

**Testimony of  
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**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,<sup>1</sup> 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.

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<sup>1</sup> 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).<sup>2</sup> More than 130,000 Americans have died from the disease.<sup>3</sup> 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%.<sup>4</sup> Although the unemployment rate has declined since then, it stands at 11.1%,<sup>5</sup> higher than it reached during the worst of the Great Recession.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> Infections have increased over the last two weeks in more than 40 states.<sup>11</sup> In light of the resurgent crisis,

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<sup>2</sup> 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>.

<sup>3</sup> *Id.*

<sup>4</sup> Bureau of Labor Statistics, *The Employment Situation—June 2020* (2020), available at <https://www.bls.gov/news.release/pdf/empst.pdf>.

<sup>5</sup> *Id.*

<sup>6</sup> 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/>.

<sup>7</sup> 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.

<sup>8</sup> *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>.

<sup>9</sup> *Id.*

<sup>10</sup> 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>.

<sup>11</sup> <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

states are beginning to halt and even reverse their reopening.<sup>12</sup> 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.<sup>13</sup> Moreover, without further congressional action, extended unemployment benefits are set to expire at the end of this month, deepening the impact of unemployment.<sup>14</sup>

## **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.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup> Death rates from COVID-19 also are much higher for Black and Latinx patients.<sup>18</sup>

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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<sup>12</sup> 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>.

<sup>13</sup> 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>.

<sup>14</sup> “CARES Act,” Pub. L. No. 116-136 § 2104.

<sup>15</sup> 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](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](https://www.cdc.gov/mmwr/volumes/69/wr/mm6915e3.htm?s_cid=mm6915e3_w).

<sup>16</sup> 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>.

<sup>17</sup> 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).

<sup>18</sup> 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.<sup>19</sup> For Latinx, the unemployment rate has, thus far, peaked at 18.9% in April and remained at 14.5% in June.<sup>20</sup> 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.<sup>21</sup>

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.<sup>22</sup> Compounding job loss is the historical reality that African Americans and Latinx have been less likely to receive unemployment benefits when eligible.<sup>23</sup>

### **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.<sup>24</sup> 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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<sup>19</sup> *The Employment Situation—June 2020*, *supra* note 4, at 7.

<sup>20</sup> *Id.*

<sup>21</sup> *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/>.

<sup>22</sup> 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>.

<sup>23</sup> 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>.

<sup>24</sup> 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](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.

## U.S. Serious Delinquency: 4x Rise by mid/late-2021 (Baseline)

3 million homeowners in serious delinquency by mid/late-2021 in Baseline Forecast

Percent of Active Loans

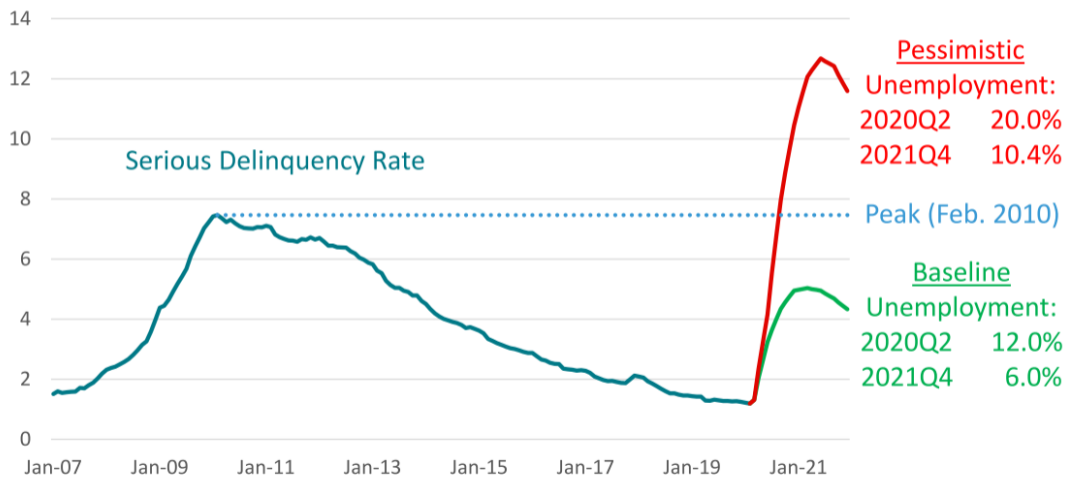
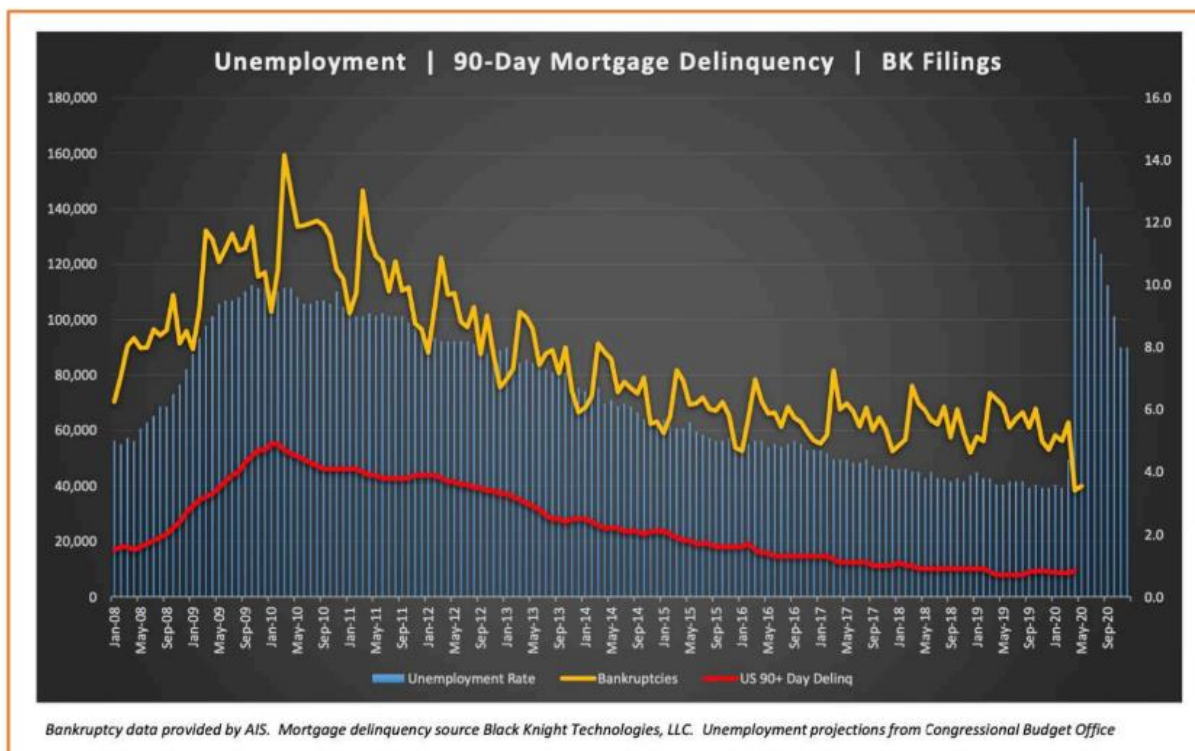


Chart provided by Corelogic.<sup>25</sup>

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.

<sup>25</sup> 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).



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.<sup>26</sup> As of the first quarter of 2020, the Black, Latinx, and white homeownership rates were, respectively, 44.0%, 48.9%, and 73.7%.<sup>27</sup> At its peak, the Black homeownership rate neared 50%.<sup>28</sup> 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.<sup>29</sup> 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

<sup>26</sup> 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](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).

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

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

<sup>29</sup> *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%.<sup>30</sup> 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.<sup>31</sup>

The pandemic threatens to exacerbate the impact of the Great Recession on Black and Latinx homeownership.<sup>32</sup> 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.<sup>33</sup>

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.<sup>34</sup> 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.<sup>35</sup> 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.<sup>36</sup>

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<sup>30</sup> *Id.*

<sup>31</sup> 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).

<sup>32</sup> Michelle D. Laysner 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](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).

<sup>33</sup> 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](https://www.urban.org/research/publication/how-economic-crises-and-sudden-disasters-increase-racial-disparities-homeownership/view/full_report).

<sup>34</sup> *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>.

<sup>35</sup> 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>.

<sup>36</sup> 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,<sup>37</sup> 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.<sup>38</sup> This number includes approximately 530,000 families who became delinquent post-COVID yet are not in a forbearance plan.<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup>

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.<sup>42</sup> 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.<sup>43</sup> 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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<sup>37</sup> 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.

<sup>38</sup> Black Knight, Mortgage Monitor: May 2020 Report, p. 8, [https://cdn.blackknightinc.com/wp-content/uploads/2020/07/BKI\\_MM\\_May2020\\_Report.pdf](https://cdn.blackknightinc.com/wp-content/uploads/2020/07/BKI_MM_May2020_Report.pdf)

<sup>39</sup> *Id.*

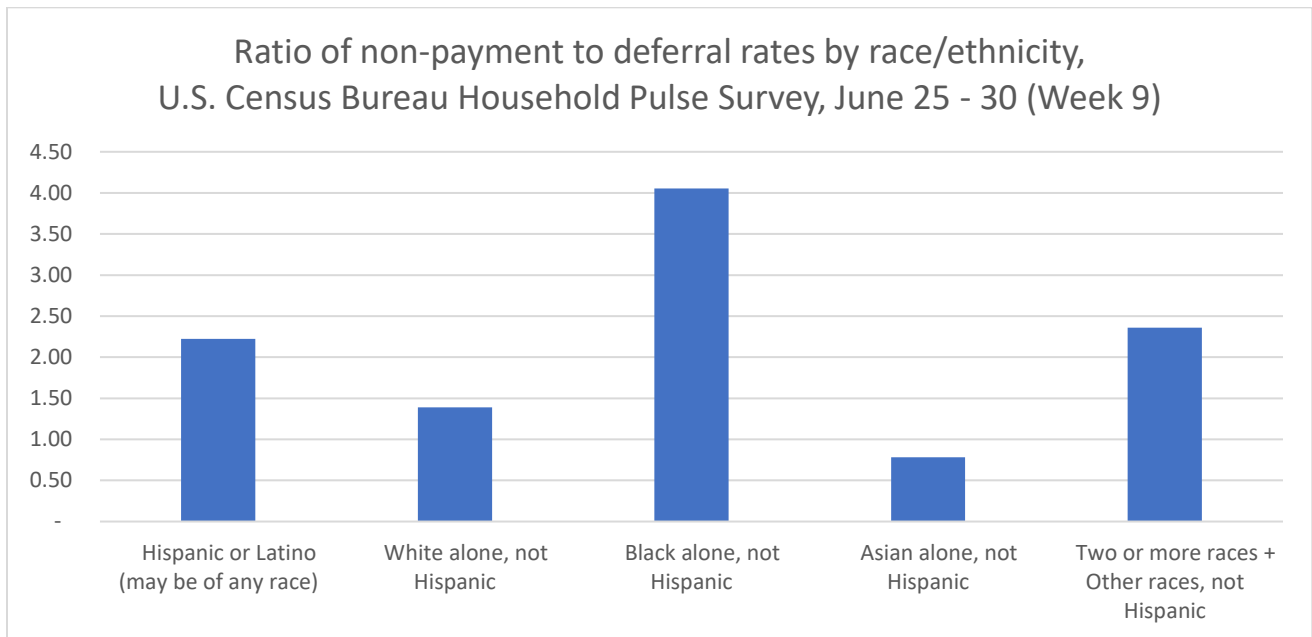
<sup>40</sup> “CARES Act,” Pub. L. No. 116-136 § 4022; U.S. Dept. of Housing and Urban Development, *Mortgagee Letter 2020-19* (2020) (extending the moratorium until August 31).

<sup>41</sup> Black Knight, Mortgage Monitor: May 2020 Report, p. 9, [https://cdn.blackknightinc.com/wp-content/uploads/2020/07/BKI\\_MM\\_May2020\\_Report.pdf](https://cdn.blackknightinc.com/wp-content/uploads/2020/07/BKI_MM_May2020_Report.pdf).

<sup>42</sup> *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.

<sup>43</sup> *Id.*

month, compared to 3.74% of white homeowners.<sup>44</sup> 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.

<sup>44</sup> *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.<sup>45</sup> 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,<sup>46</sup> not FICO, yet the latter is the score used in the vast majority of mortgage lending.<sup>47</sup> 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.<sup>48</sup> And even though VantageScore has changed its models to minimize these problems resulting from its algorithms,<sup>49</sup> 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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<sup>45</sup> 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>.

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

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

<sup>48</sup> 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>.

<sup>49</sup> *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.<sup>50</sup> We have offered bailouts to entire industries, recognizing

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<sup>50</sup> 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/hero-es-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<sup>51</sup> 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

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<sup>51</sup> 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](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](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<sup>52</sup> 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.<sup>53</sup>

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

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<sup>52</sup> Consumer Financial Protection Bureau, Bulletin 2020-02, *Compliance Bulletin and Policy Guidance: Handling of Information and Documents using Mortgage Servicing Transfers* (Apr. 24, 2020), available at [https://files.consumerfinance.gov/f/documents/cfpb\\_policy-guidance\\_mortgage-servicing-transfers\\_2020-04.pdf](https://files.consumerfinance.gov/f/documents/cfpb_policy-guidance_mortgage-servicing-transfers_2020-04.pdf).

<sup>53</sup> 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<sup>54</sup> 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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<sup>54</sup> 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](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.<sup>55</sup> 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.

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<sup>55</sup> 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.<sup>56</sup> 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.<sup>57</sup> 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.<sup>58</sup> 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

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<sup>56</sup> 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>.

<sup>57</sup> 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](https://www.nclc.org/images/pdf/foreclosure_mortgage/reverse-mortgages/testimony-mancini-protecting-seniors-sept2019.pdf).

<sup>58</sup> 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.<sup>59</sup> 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.<sup>60</sup> 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.<sup>61</sup> 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.<sup>62</sup> 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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<sup>59</sup> Dep't of Housing and Urban Development, Mortgage Letter 2020-06 (April 1, 2020), <https://www.hud.gov/sites/dfiles/OCHCO/documents/20-06hsngml.pdf>.

<sup>60</sup> *Id.* at 7. HUD's mortgage letter makes the later-requested delay appear optional, at the servicer's discretion.

<sup>61</sup> 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>.

<sup>62</sup> 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](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.<sup>63</sup> 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.<sup>64</sup> 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.<sup>65</sup> 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.

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<sup>63</sup> 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).

<sup>64</sup> 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.

<sup>65</sup> 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.<sup>66</sup> 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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<sup>66</sup> Alternative Mortgage Servicing Compensation Discussion Paper, Federal Housing Finance Agency (Sept. 27, 2011).