

Federal Housing Finance Agency
Office of Inspector General



**Oversight by Fannie Mae and
Freddie Mac of Compliance with
Forbearance Requirements
Under the CARES Act and
Implementing Guidance by
Mortgage Servicers**

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Executive Summary

Fannie Mae and Freddie Mac (collectively, the Enterprises) perform an important role in the nation's housing finance system by providing liquidity, stability, and affordability to the mortgage market. The Enterprises purchase single-family mortgages from lenders and either hold these mortgages in their portfolios or package them into mortgage-backed securities that can be sold.

Mortgage servicers perform a variety of tasks on behalf of the Enterprises. These tasks include: collecting payments from homeowners; remitting principal and interest to investors for securitized loans; paying property tax and insurance premiums from escrow funds; and performing collection, loss mitigation, and foreclosure activities with respect to delinquent homeowners under the terms of the Enterprises' selling and servicing guides.

The Federal Housing Finance Agency (FHFA or Agency), as conservator, has delegated to the Enterprises responsibility for managing their relationships with their servicers. Typically, FHFA has the ability to examine the Enterprises' execution of delegated responsibilities through supervisory activities. FHFA, however, lacks statutory authority to supervise activities by mortgage servicers. To meet the critical need for oversight of these counterparties, FHFA issued three advisory bulletins which set forth its supervisory expectations for the Enterprises' oversight of their servicers.

Congress passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which was signed into law on March 27, 2020, to address some of the economic effects of the COVID-19 pandemic. Section 4022 of the CARES Act provides single-family homeowners, who are experiencing financial hardship due to the COVID-19 pandemic, the right to forbearance for up to 180 days (which can be extended for another 180 days) from making mortgage payments on loans owned or securitized by the Enterprises. An affected homeowner need only attest to the hardship; mortgage servicers are prohibited from seeking documentation to support that attestation.

Forbearance under the CARES Act does not erase what is owed by the homeowner. The homeowner will be required to repay any missed or reduced payments at some point in the future. While the CARES Act does not set forth options to repay the missed payments, FHFA publicly announced that homeowners will not be required to repay the missed payments in a lump sum at the end of the forbearance period. The Enterprises issued similar announcements on their websites.

The Enterprises' mortgage servicers are contractually obligated to advance to the Enterprises regular monthly payments of principal and interest, or only the



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interest, depending on the contract. The Enterprises then advance those payments to security holders. Those obligations continue, even for mortgages in forbearance under the CARES Act. The Enterprises have capped servicer liability for advances at four months, even though forbearances could last up to nearly a year under the CARES Act. After that four-month period, the Enterprises take over the servicers' obligations with respect to advancements of interest and principal.

Servicing a mortgage in forbearance is more labor-intensive, and thus more costly, than servicing a performing mortgage. The potential financial burden associated with servicing mortgages in forbearance is significant and creates a risk that some servicers may not follow the mandates in the CARES Act and implementing guidance. For example, a servicer might seek to secure a lump sum repayment from a homeowner who obtained forbearance of monthly payments under the CARES Act.

We undertook this review to provide information about oversight by the Enterprises over mortgage servicers' compliance with Section 4022 of the CARES Act and implementing guidance. We learned from the Enterprises that neither views its responsibilities to include testing whether its servicers comply with legal and regulatory requirements. According to the Enterprises, their long-standing business relationships with mortgage servicers, the servicers' familiarity with the Enterprises' servicing requirements, and their continual contact with servicers give them confidence that servicers are well-informed of their legal and contractual obligations under the CARES Act and implementing guidance. The Enterprises rely on representations and warranties made by each servicer that it complies with applicable law and regulations. A breach of these representations and warranties can lead an Enterprise to invoke contractual remedies. In addition, each Enterprise reported to us that it obtains an annual certification from each servicer that it complies with applicable law and regulations. FHFA advised us that it considered this oversight acceptable.

National surveys conducted by one Enterprise suggest a significant number of homeowners are not aware of the option of mortgage forbearance, and media reports state that some servicers may have provided inaccurate advice to homeowners about repayment options. Because mortgage servicers are the primary point of contact for homeowners experiencing COVID-19 related financial hardship, we reviewed the information provided by a sample of 20 large servicers, 20 medium servicers, and 20 small servicers on their websites. We found incomplete and/or unclear information about forbearance and repayment on 14 of the 20 websites of the large servicers and generally limited to no information on forbearance and repayment on the remaining 40



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websites. In a few cases, information on some servicers' websites appeared to contradict the CARES Act requirements or FHFA and Enterprise guidance. For example, two of the small servicer websites instruct homeowners that they must provide proof of unemployment and other documentation to obtain mortgage forbearance; another servicer website maintains that all missed payments must be repaid in a lump sum at the end of the forbearance period.

Congress granted homeowners with Fannie Mae and Freddie Mac mortgages a legal right to forbearance upon an attestation of financial hardship from COVID-19, and FHFA has announced that lump sum repayment is not required once forbearance ends. We observe, from the information provided to us by the Enterprises, that neither Enterprise has collected data sufficient to permit an assessment of whether servicers are complying with the CARES Act and implementing guidance. The Enterprises reported to us that they have not asked any servicer to demonstrate compliance with the CARES Act and implementing guidance. Based on our survey of 60 websites hosted by servicers, we could not determine whether homeowners were provided with accurate and complete information about forbearance.

We provided FHFA an opportunity to respond to a draft of this report. In its management response, which is included as an appendix to this report, FHFA shared our concern that servicers may not be adequately informing homeowners that forbearance is available to them.

This report was prepared by Jon Anders, Program Analyst, and Angela Choy, Assistant Inspector General for Evaluations. We appreciate the cooperation of FHFA and Enterprise staff, as well as the assistance of all those who contributed to the preparation of this report.

This report has been distributed to Congress, the Office of Management and Budget, and others and will be posted on our website, www.fhfaoig.gov, and www.oversight.gov.

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ABBREVIATIONS

CARES Act	Coronavirus Aid, Relief, and Economic Security Act
CFPB	Consumer Financial Protection Bureau
Enterprises	Fannie Mae and Freddie Mac
FHFA or Agency	Federal Housing Financial Agency
HUD	U.S. Department of Housing and Urban Development

BACKGROUND

The Role of the Enterprises and Their Mortgage Servicers in Single-Family Housing Finance

The Enterprises perform an important role in the nation’s housing finance system by providing liquidity, stability, and affordability to the mortgage market. The Enterprises purchase single-family mortgages from lenders and either hold these mortgages in their portfolios or package them into mortgage-backed securities.

Servicers collect payments from homeowners, remit principal and interest to investors for securitized loans, remit property tax and insurance premiums from escrow funds, and perform collection, loss mitigation, and foreclosure activities with respect to delinquent homeowners under the terms of the Enterprises’ respective selling and servicing guides. Even where a homeowner is late in his/her mortgage payments, the servicer is not excused from making scheduled principal and/or interest payments to investors and its other obligations. According to FHFA, “the business relationships between the Enterprises and [mortgage servicers] are a fundamental component of the Enterprises’ delegated business models.”¹

As Conservator, FHFA Has Delegated Authority to the Enterprises to Manage Their Relationships with Mortgage Servicers

After it placed the Enterprises into conservatorship and reconstituted their boards of directors, FHFA, as conservator, established a delegated approach to managing the Enterprises’ operations, which it believes is the most efficient way to manage their conservatorships. FHFA has delegated to the board of each Enterprise a significant portion of day-to-day management and risk controls, and its regulations authorize the boards to delegate execution of day-to-day operations to Enterprise employees. Management of the relationship with mortgage servicers is a responsibility delegated by FHFA to the Enterprises.²

¹ See FHFA, Advisory Bulletin 2014-07, *Oversight of Single-Family Seller/Servicer Relationships*, at 1 (Dec. 1, 2014).

² This delegation is subject to certain exceptions, such as changes to requirements, policies, frameworks, standards, or policies aligned across both Enterprises pursuant to FHFA’s direction.

FHFA Lacks Statutory Authority to Examine the Enterprises' Servicers; It Has Communicated to the Enterprises Its Expectations of Their Oversight of Their Servicers

FHFA recognizes that, for its delegated governance model to succeed, the Enterprises must fulfill their delegated responsibilities. Typically, FHFA has the ability to examine the Enterprises' execution of delegated responsibilities through supervisory activities.

However, FHFA lacks statutory authority to examine mortgage servicers.³ To meet the critical need for oversight of these counterparties, FHFA issued three advisory bulletins that communicate its supervisory expectations for Enterprise oversight of seller/servicers.

These bulletins are:

- Advisory Bulletin 2013-01, *Contingency Planning for High-Risk or High-Volume Counterparties*. FHFA articulated its expectations that the Enterprises manage their exposure to counterparty credit risk by establishing risk management practices that include monitoring and updating the condition and risk profile of their counterparties, tracking emerging events that may affect counterparty condition and risk profile, and reducing exposure when a counterparty's financial condition is deteriorating.
- Advisory Bulletin 2014-07, *Oversight of Single-Family Seller/Servicer Relationships*. FHFA announced its expectation that each Enterprise would establish a framework and policy for seller/servicer oversight. As part of that framework, the Agency instructed each Enterprise to evaluate financial, operational, legal, compliance, and reputation risks associated with single-family seller/servicers, to take appropriate action to mitigate those risks or reduce the Enterprises' exposure, and to conduct risk-based ongoing monitoring of seller/servicers.
- Advisory Bulletin 2018-08, *Oversight of Third-Party Provider Relationships*. FHFA set forth its supervisory expectation that the Enterprises monitor their relationships with third parties and, among other things, to "consider whether the third-party provider is . . . [c]omplying with applicable legal and regulatory requirements, including documenting such compliance when necessary."

Homeowners Experiencing COVID-19 Related Financial Hardships Have a Right to Receive Forbearance on Mortgage Payments Under the CARES Act

Congress passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which was signed into law on March 27, 2020, in an effort to address some of the economic

³ FHFA requested this authority in its annual report to Congress. FHFA, *2019 FHFA Report to Congress*, at 15 (June 15, 2020) (online at www.fhfa.gov/AboutUs/Reports/Pages/Annual-Report-to-Congress-2019.aspx).

effects from the COVID-19 pandemic.⁴ Section 4022 of the CARES Act, among other things, gives single-family homeowners experiencing financial hardship due to the COVID-19 pandemic the right to forbearance from making mortgage payments on loans owned or securitized by Fannie Mae and Freddie Mac, regardless of delinquency status.⁵ Section 4022(b)(1) sets forth the process to be used by a homeowner seeking forbearance for financial hardship due to COVID-19: (1) submission of a request to the homeowner’s servicer, and (2) affirmation that the homeowner is experiencing a financial hardship during the COVID-19 emergency. Upon receipt of such a request by a homeowner and attestation of financial hardship, Section 4022(c)(1) directs that the servicer “shall” grant the request without obtaining any additional documentation. The statute explicitly provides that during the period of forbearance “no fees, penalties, or interest (beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract)” can be assessed on the borrower. Under Section 4022(b)(2) of the CARES Act, forbearance “shall be granted for up to 180 days, and shall be extended for an additional 180 days upon request by the borrower . . .”

FHFA and the Enterprises have provided the public with information about forbearance on their websites. FHFA’s COVID-19 information page states that, “If your ability to pay your mortgage is impacted, and your loan is owned by Fannie Mae or Freddie Mac . . . you may be eligible to delay making your monthly mortgage payments for a temporary period . . .”⁶ The website also provides information about end-of-forbearance repayment options. Fannie Mae’s website, “Here to Help,” contains fact sheets, videos, and other resources for homeowners.⁷ Among other things, the website explains forbearance and repayment options after forbearance. Freddie Mac operates a consumer website, “MyHome by Freddie Mac,”

⁴ In response to the spread of COVID-19 in the United States, President Trump issued a declaration on March 13, 2020, that the outbreak constituted a national emergency. The COVID-19 emergency, and federal and state responses to the emergency to protect health and safety, have had wide-ranging effects on the national economy, the housing finance industry, and on homeowners.

⁵ Section 4022(b)(1). Section 4022 is part of Title IV, Subtitle A of the CARES Act, the Coronavirus Economic Stabilization Act of 2020. The CARES Act provides forbearance for up to one year to qualifying residential mortgage borrowers with “federally backed mortgage loans.” This term is defined in the Act to include residential mortgage loans purchased by Fannie Mae and Freddie Mac. For the purposes of this report, we refer to such borrowers as “homeowners.”

⁶ FHFA, COVID-19 Information and Resources (June 17, 2020) (online at www.fhfa.gov/Homeownersbuyer/MortgageAssistance/Pages/Coronavirus-Assistance-Information.aspx). FHFA also launched a joint housing assistance website with the Consumer Financial Protection Bureau (CFPB) and the U.S. Department of Housing and Urban Development (HUD). See CFPB, FHFA, and HUD, Mortgage and housing assistance during the coronavirus national emergency (updated July 1, 2020) (online at <http://cfpb.gov/housing>). This website provides information on CARES Act mortgage relief, look-up tools to help homeowners determine if their mortgage is federally backed, and resources for additional help.

⁷ Fannie Mae, Here to Help (accessed June 26, 2020) (online at www.fanniemae.com/heretohelp/kyo/index.html).

that provides information for consumers affected by the pandemic,⁸ including a blog post that explains that a homeowner with a mortgage owned by Freddie Mac or covered by the CARES Act is not required to provide documentation to prove financial hardship when applying for forbearance.

More than a Million Homeowners Whose Mortgages Are Owned or Securitized by the Enterprises Have Obtained Forbearance Under the CARES Act, but Many Others Are Unaware of Their Right to Forbearance

Millions of homeowners have obtained forbearance under the CARES Act. According to a July 12, 2020, estimate by the Mortgage Bankers Association, almost 3.9 million homeowners, representing 7.8% of servicers' portfolio volume, are in forbearance.⁹ The Mortgage Bankers Association reported that the share of Fannie Mae and Freddie Mac loans in forbearance was 5.64% of servicers' Enterprise portfolio volume. The mortgage software and analytics firm Black Knight estimated that 1,643,000 Enterprise loans were in forbearance as of July 14, 2020, representing \$346 billion in unpaid principal balance.¹⁰

Notwithstanding the millions of homeowners who have sought and obtained forbearance, many others appear to be unaware of this option. FHFA and the Enterprises explain, on their public websites, that single-family homeowners with financial hardship due to the COVID-19 pandemic may be eligible for forbearance, and media have reported the availability of COVID-19 forbearance.¹¹ However, responses to two recent Fannie Mae surveys reflect that many homeowners are not aware of their forbearance options. In April 2020, Fannie Mae began a weekly survey of consumers' financial and housing experiences during the COVID-19 pandemic. It also added related questions to its existing monthly National Housing Survey. In its May 2020 monthly National Housing Survey, Fannie Mae asked homeowners whether they were familiar with any programs that allow homeowners facing financial

⁸ Freddie Mac, Extending help to homeowners impacted by COVID-19 (accessed June 26, 2020) (online at <https://myhome.freddiemac.com/getting-help/relief-for-homeowners.html>).

⁹ Press Release, Mortgage Bankers Association: Share of Mortgage Loans in Forbearance Decreases for Fifth Straight Week to 7.8% (July 20, 2020) (online at www.mba.org/2020-press-releases/july/share-of-mortgage-loans-in-forbearance-decreases-for-fifth-straight-week-to-780).

¹⁰ Black Knight, Loans in forbearance decline for third consecutive week to lowest rate since May at 4.12M (July 17, 2020) (online at www.blackknightinc.com/blog-posts/loans-in-forbearance-decline-for-third-consecutive-week-to-lowest-rate-since-may-at-4-12m/).

¹¹ See, e.g., Chris Arnold, *U.S. Orders Up To A Yearlong Break On Mortgage Payments*, National Public Radio (Mar. 19, 2020) (online at www.npr.org/2020/03/19/818343720/homeowners-hurt-financially-by-the-coronavirus-may-get-a-mortgage-break-) and Alex Gailey, *Know Your Rights When It Comes to Mortgage Forbearance*, NextAdvisor (June 19, 2020) (online at <https://time.com/nextadvisor/mortgages/mortgage-forbearance-options/>).

hardship due to the coronavirus to lower or delay their mortgage payments.¹² Approximately 50% of homeowners responding to the monthly survey were not familiar with such programs. A May 15, 2020, weekly survey seeking to gauge borrower knowledge of forbearance options produced the same result.

FHFA and the Enterprises Have Announced that Lump Sum Payments Will Not Be Required When the Forbearance Period Ends

Forbearance under the CARES Act does not erase what is owed by the homeowner. The homeowner will be required to repay any missed or reduced payments at some point in the future. However, the CARES Act does not set forth options to repay the missed payments.

On April 27, 2020, FHFA announced that homeowners who obtain CARES Act forbearance would not be required to make a lump sum repayment of their total missed payments at the end of the forbearance period. The Agency reported to us that it did so after learning from media reports of confusion and “misinformation” regarding whether homeowners would be required to make such lump sum repayments.

That same day, each Enterprise issued similar announcements on its website (accessible from FHFA’s digital announcement through a link).¹³ Fannie Mae’s announcement states: “...the homeowner will be provided several options from their mortgage servicer for making up the missed payments, and **will not be required** to pay everything back all at once.”; and “We **do not** require a homeowner to repay missed payments all at once at the end of a forbearance plan, unless they choose to do so.” (emphasis in original) Freddie Mac’s announcement is comparable: “Simply put, if you are a homeowner seeking forbearance and Freddie Mac owns your loan, you are never required to make up missed payments in a lump sum.”¹⁴

¹² The National Housing Survey is a monthly telephone survey that polls a nationally representative sample of 1,000 consumers about owning and renting a home, purchase and rental prices, household finances, and overall confidence in the economy.

¹³ Subsequently, on May 26, 2020, both Enterprises issued press releases announcing online resources for homeowners should they experience a financial hardship due to COVID-19. *See, supra*, notes 7 and 8. Fannie Mae’s website includes a fact sheet titled, “You don’t have to repay the forbearance amount all at once upon completion of your forbearance plan: Get the facts.” A blog post on Freddie Mac’s website, “Understanding Forbearance During COVID-19,” states “You are never required to pay back your forbearance in a lump sum.”

¹⁴ The Enterprises also provided sample scripts for mortgage servicers to follow with respect to forbearance plans and lump sum payments. The scripts explain to homeowners that “[f]orbearance is when we allow you to temporarily reduce your mortgage payment or suspend or pause making your mortgage payment for a period of time.” The scripts add: “**Forbearance does not mean your payments are forgiven.** You will still be required to pay back the missed payments eventually, but **you won’t have to repay it all at once—after your forbearance ends unless you are able to do so.**” (emphasis in original) *See* Fannie Mae, COVID-19 Forbearance Script for Servicer Use with Homeowners (online at <https://singlefamily.fanniemae.com/servicing/covid-19-forbearance-script-servicer-use-homeowners>) (updated May 29, 2020) and Freddie Mac, COVID-19 Script for Servicer Use with Homeowners (updated May 28,

Homeowners with Fannie Mae or Freddie Mac mortgages have multiple options for making up missed payments from the forbearance period.¹⁵ Homeowners may repay the forbearance amount all at once in full or establish a short-term repayment plan of up to a year, or longer if approved by the Enterprises. Other options may include, for example, a payment deferral, whereby the amount of their missed payments is moved to the end of the loan term, or a loan modification. Under a loan modification, the original terms of the loan may be changed to reduce monthly payments through a reduction in the interest rate, extension of the loan up to 40 years, and/or principal forbearance.

The Enterprises Have Limited Servicers' Financial Liability for Mortgages in Forbearance

As discussed earlier, a homeowner who obtains mortgage forbearance under the CARES Act is treated as if he/she made all contractual payments on time and in full under the terms of the mortgage contract, even though mortgage payments are suspended or reduced during forbearance. The CARES Act, however, does not provide parallel forbearance for servicers.

For mortgages bought or guaranteed by the Enterprises, mortgage servicers are required under their contractual servicing agreements to advance to the Enterprises the originally scheduled, regular monthly payments of principal and interest, or only the interest depending on the servicer's contract with the Enterprise.¹⁶ The Enterprises then advance those payments to security holders. Those monthly payments are required, notwithstanding any forbearance provided to homeowners under the CARES Act,¹⁷ and such forbearance can remain in place

2020) (online at https://sf.freddie.mac.com/content/assets/resources/pdf/covid-19_forbearance-servicer-script.pdf).

¹⁵ The Enterprises have issued updated guidance to their servicers on the repayment options that are available to homeowners under the Enterprises' respective servicing guides. See Fannie Mae, Lender Letter (LL-2020-02), *Impact of COVID-19 on Servicing* (July 15, 2020) (online at <https://singlefamily.fanniemae.com/media/document/pdf/lender-letter-ll-2020-02-impact-covid-19-servicing>); Fannie Mae, Lender Letter (LL-2020-07), *COVID-19 Payment Deferral* (July 15, 2020) (online at <https://singlefamily.fanniemae.com/media/document/pdf/lender-letter-ll-2020-07-covid-19-payment-deferral>), and Freddie Mac, Bulletin 2020-15, *Freddie Mac COVID-19 Payment Deferral* (May 13, 2020) (online at <https://guide.freddie.mac.com/app/guide/bulletin/2020-15>).

¹⁶ Freddie Mac requires its servicers to remit scheduled interest payments; Fannie Mae may require advances of scheduled principal payments and interest payments, depending on the terms of the servicer's contractual agreement with Fannie Mae.

¹⁷ David Stevens, former head of the Federal Housing Administration, described this requirement as a “destructive incentive” that would encourage servicers to “try to scare people or at a minimum tell them that they're going to repay that in a balloon[.]” See Paul Kiernan, *Getting a Mortgage-Payment Break Isn't the Boon Many Expected*, Wall Street Journal (Apr. 23, 2020) (online at www.wsj.com/articles/getting-a-mortgage-payment-break-isnt-the-boon-many-expected-11587634200).

for up to 360 days. As a result, the mortgage servicer initially must fund the advances and then seek reimbursement.

On April 21, 2020, FHFA announced that servicers would have to advance principal and/or interest for only four months of the forbearance period, which aligned the Enterprises' policies. After that four-month period, FHFA instructed that the Enterprises would take over the servicers' obligations with respect to advancements of interest and principal. The Enterprises capped servicer liability for advances at four months, even though forbearances could last up to nearly a year under the CARES Act.

Servicing a loan in forbearance is more labor-intensive than servicing a performing loan and, accordingly, is more costly. Servicers must work directly with homeowners before the end of the forbearance period to review the homeowners' options with respect to how they will repay the monthly payments missed during forbearance; issue consumer communications required by the Consumer Financial Protection Bureau's mortgage servicing rules;¹⁸ and, if needed, revise the applicable loan agreements to reflect new repayment terms at the end of the forbearance period (for example, loan modification agreements and repayment plans).

There are differing views on servicers' financial capacity to meet their obligations. In recent Congressional testimony, the FHFA Director focused specifically on servicers' ability to make principal and interest payments on Enterprise mortgages during the first four months of forbearance and reported that FHFA analyses determined that servicers will have sufficient capacity to advance principal and interest payments. However, the Urban Institute estimated, in May 2020, that the potential financial burden on servicers for mortgages in forbearance ranges from \$33.2 billion and \$117.8 billion, based on its analysis of three hypothetical scenarios using different combinations of forbearance rates and months of forbearance.¹⁹ It observed that, during forbearance, servicers must advance principal and interest, or only interest depending on the servicer's contract with the Enterprise, for the first 120 days and make other payments, such as property insurance and property taxes, for the entire period. After forbearance ends, servicers must advance property taxes, insurance, and mortgage insurance premiums until the loan is modified or foreclosed upon. According to the Urban

¹⁸ Regulation X, promulgated by the CFPB, establishes mortgage servicing requirements for all servicers. Regulation X, among other things, requires servicers to provide homeowners with several different loss mitigation notices when a homeowner seeks forbearance or other short-term loss mitigation options. Servicers must provide the loss mitigation notices required by Regulation X to homeowners with CARES Act forbearances.

¹⁹ Laurie Goodman, et al., *The Mortgage Market Has Caught the Virus*, Urban Institute (May 14, 2020) (online at www.urban.org/research/publication/mortgage-market-has-caught-virus). These estimates include advance payments for Fannie Mae, Freddie Mac, Federal Housing Administration mortgages, as well as those securitized in private-label securities and held in bank portfolios.

Institute: “Under any scenario, the advances servicers are required to make to investors will be an overwhelming lift” for many servicers.

OBSERVATIONS

The Enterprises Have Issued CARES Act Guidance to Their Servicers but Have Not Required Them to Expressly Inform Homeowners of Their Forbearance-Related Rights

Both Enterprises have issued guidance to their servicers reinforcing the directive in the CARES Act that homeowners seeking forbearance must only provide an attestation of a financial hardship caused by the COVID-19 emergency.²⁰ However, this guidance does not require servicers to expressly inform homeowners that they have a legal right under the CARES Act to immediate forbearance without documentation, provided they submit the required attestation. Similarly, the Enterprises, which have issued sample scripts on their websites that explain FHFA’s prohibition on lump sum repayments, do not require servicers to use the scripts.

The Servicers’ Obligation to Advance Funds During Periods of Forbearance and the Additional Costs to Service Mortgages in Forbearance Creates a Risk that Some Servicers May Not Follow Provisions of the CARES Act and Implementing Guidance

As explained earlier, the CARES Act authorizes forbearance for up to nearly a year for homeowners. Servicing a loan in forbearance is more labor-intensive than servicing a performing loan and, accordingly, is more costly. Servicers are obligated to advance principal and interest, or only interest depending on the servicer’s contract with the Enterprise, for the first 120 days, as well as to make other payments, including property insurance and property taxes for the entire forbearance period. Although FHFA projects that mortgage servicers have sufficient capacity to advance principal and interest on Enterprise loans in forbearance, the Urban Institute describes the potential financial burden on servicers for mortgages in forbearance as “an overwhelming lift.”

²⁰ See Fannie Mae, Lender Letter (LL-2020-02), *Impact of COVID-19 on Servicing* (July 15, 2020) (online at <https://singlefamily.fanniemae.com/media/document/pdf/lender-letter-ll-2020-02-impact-covid-19-servicing>); Freddie Mac Seller/Servicer Guide, Section 9203.13(a), *Requirements for a forbearance plan* (Dec. 1, 2018) (online at https://guide.freddiemac.com/app/guide/content/a_id/1001217); and Freddie Mac, Bulletin 2020-10, *Temporary Servicing Guidance Related to COVID-19* (Apr. 8, 2020) (online at <https://guide.freddiemac.com/app/guide/bulletin/2020-10>).

In our view, that potential financial burden creates the risk that some mortgage servicers may not follow the mandates in the CARES Act and implementing guidance.²¹

The Enterprises Rely on Their Servicers' Representations that They Comply with the CARES Act and Implementing Guidance and Do Not Test the Servicers' Representations

The three advisory bulletins issued by FHFA on the Enterprises' oversight of their servicers do not prescribe the mechanisms to be used by the Enterprises for such oversight. In its most recent bulletin on this issue, AB 2018-08, FHFA explained that, in connection with the Enterprises' efforts to monitor relationships with third parties, the Enterprises "consider whether the third party is complying with applicable legal and regulatory requirements, including documenting such compliance when necessary."

The Enterprises reported to us that they do not view their responsibilities to include testing whether their servicers comply with legal and regulatory requirements. According to the Enterprises, their long-standing business relationships with servicers, the servicers' familiarity with seller/servicer guide requirements, and their continual contact with servicers gives them confidence that the servicers are well-informed of their legal and contractual obligations under the CARES Act and FHFA and Enterprise guidance.²² Both Enterprises explained that they rely on each servicer's representations and warranties that it complies with applicable law and regulations. A breach of these representations and warranties can lead an Enterprise to invoke contractual remedies, such as repurchase of the loan. In addition, each Enterprise reported to us that it obtains an annual certification from each servicer that it complies with

²¹ Anecdotes in media reports provide some support to this observation. *See, e.g.*, Michelle Singletary, *Mortgage relief was offered, but at a high price*, Washington Post (May 18, 2020) (online at www.washingtonpost.com/business/2020/05/18/mortgage-relief-was-offered-high-price/); Anna Bahney, *Confused about delaying your mortgage payments? You're not alone*, CNN Business (May 2, 2020) (online at www.cnn.com/2020/05/02/success/mortgage-forgiveness-may-coronavirus/index.html); Kristen Mosbrucker, *Homeowners left to 'scramble' to make balloon payments, mortgage modifications amid coronavirus*, The Advocate (May 6, 2020) (online at www.theadvocate.com/baton_rouge/news/coronavirus/article_fdf73a4e-83f3-11ea-86c5-f32db8207d34.html). We recognize that these reports do not make clear whether such inaccurate information from the servicers: (1) was provided with respect to Enterprise mortgages; and (2) took place after the April 27, 2020, guidance from FHFA, reaffirmed by the Enterprises, that lump sum payments were not required.

²² For example, a representative of one Enterprise advised that the Enterprise conducts weekly calls with its smaller servicers to afford them the opportunity to seek clarifications and raise questions regarding the Enterprises' respective servicing guidance. According to that Enterprise, it has issued several servicing policy updates in 2020 in response to feedback from servicers, including questions relating to the impact of the CARES Act. Representatives of the other Enterprise informed us that its customer management teams are assigned to over 1,100 single-family seller/servicers and these teams have responded to COVID-19 forbearance-related questions.

applicable law and regulations.²³ FHFA reported to us that the Agency considers the Enterprises' current practices to be "acceptable" at this time.

Our Sampling Shows Servicers' Public-Facing Websites Do Not Consistently Inform Homeowners of Their Rights Under the CARES Act and Implementing Guidance on Lump Sum Payments

Mortgage servicers are the first point of contact for homeowners experiencing COVID-19 related financial hardship. We sought to assess the accuracy and thoroughness of information about CARES Act forbearance and repayment options on servicer websites by sampling 20 websites hosted by large servicers, 20 websites hosted by medium servicers, and 20 websites hosted by small servicers.²⁴

We found incomplete and/or unclear information about forbearance and repayment on 14 of the 20 websites of the largest servicers.²⁵ Specifically, we determined that:

- Ten websites do not explain that homeowners can obtain forbearance of mortgage payments due to COVID-19 hardship without providing documentation.
- Ten websites identify lump sum payment as an option at the end of forbearance, but do not explain that homeowners will not be required to make up missed payments in a lump sum. For example, one of these ten sites reports that the total amount of payments suspended during the forbearance period will become due and payable at the end of the forbearance period if the homeowner does not seek further assistance.
- Five websites do not state that homeowners can obtain forbearance for up to 360 days.

²³ The Enterprises require their servicers to certify their compliance with applicable laws within 90 days of the servicers' fiscal year-end. According to Freddie Mac, most servicers end their fiscal year on December 31. As such, the Enterprises would not receive certification of most servicers' compliance with the CARES Act until after the expiration of Section 4022.

²⁴ We conducted this review of servicer websites between June 21 and June 30, 2020. Our sample included only servicers that serviced single-family mortgage loans on behalf of both Enterprises. (The servicers may also service loans on behalf of other investors in addition to the Enterprises.) We divided the servicers into the large, medium, and small categories based on the amount of unpaid principal balance in their Enterprise servicing portfolios, as of March 31, 2020.

²⁵ We assessed the servicer websites to determine whether the following four questions were answered: (1) Does the website state explicitly that documentation of hardship is not required?; (2) Does the website state explicitly that borrowers will not be required to make up missed payments in a lump sum?; (3) Does the website state explicitly that borrowers can obtain forbearance for 180 days with an extension of 180 more days?; and (4) Does the website state explicitly that borrowers will not incur penalties, fees, or additional interest during the forbearance period?

- Six websites state that no penalties, fees, or additional interest would be charged during the period of forbearance; seven websites state that no late fees would be applied; five websites mention two of the three would not be charged; and two websites provide no information on this topic.

Most of the large servicers maintain online portals to assist homeowners in obtaining forbearance. Without account information, however, we were not able to access the portals and could not assess information available through them.

The 40 websites hosted by medium and small servicers generally provided limited to no information about forbearance under the CARES Act and repayment options.²⁶ Instead, many of the sites advise consumers to contact them for assistance, which we were unable to do because we lacked a customer account number.

In several cases, information on some of these servicers’ websites appeared to contradict the CARES Act requirement that servicers shall grant homeowner forbearance requests without obtaining any additional documentation and FHFA and Enterprise guidance against servicers requiring lump sum repayments. For example, two of the small servicer websites instruct homeowners that they must provide proof of unemployment and other documentation of hardship in order to obtain mortgage forbearance. A medium-sized servicer website advised that “ALL payments missed during forbearance will be due the month following the forbearance. (ex: if missing 3 months payment, then ALL 3 payments PLUS the 4th month payment will be due at ONCE.)” (emphasis in original)

CONCLUSION.....

Congress granted homeowners with Fannie Mae and Freddie Mac mortgages a legal right to forbearance upon an attestation of financial hardship from COVID-19, and FHFA has announced that lump sum repayment is not required once forbearance ends. While we recognize that the websites maintained by FHFA and the Enterprises provide fulsome information about forbearance available under the CARES Act and payment options after forbearance ends, the results of recent surveys by Fannie Mae show that some homeowners are not aware of their forbearance rights and options under the CARES Act and implementing

²⁶ Of the 20 websites hosted by medium servicers, only one provided substantive information on COVID-19 forbearances. Two other websites for medium servicers linked to the text of the CARES Act and four others linked to forbearance information provided on CFPB’s, the Enterprises’, FHFA’s, and/or HUD’s websites. Our review of small servicer websites had similar results. Two small servicer websites provided substantive information about COVID-19 forbearance and eight other websites linked to forbearance information provided by the CFPB, the Enterprises, and/or HUD. Three small servicers’ websites embedded or linked directly to a CFPB video that explains homeowners’ rights under Section 4022 of the CARES Act.

guidance. The potential financial burden on servicers for mortgages in forbearance is significant and, in our view, creates the risk that some mortgage servicers may not follow the mandates in the CARES Act and implementing guidance.

We observe, from the information provided to us by the Enterprises, that neither Enterprise has collected data sufficient to permit an assessment of whether servicers are complying with the CARES Act and implementing guidance. The Enterprises reported to us that they have not asked any servicer to demonstrate compliance with the CARES Act and implementing guidance. Based on our survey of 60 websites hosted by servicers, we found incomplete and/or unclear information about forbearance and repayment on 14 of the 20 websites of the largest servicers and generally limited to no information on forbearance and repayment on the remaining 40 websites.

APPENDIX: FHFA MANAGEMENT RESPONSE.....



CONTROLLED

Federal Housing Finance Agency

MEMORANDUM

TO: Kyle Roberts, Deputy Inspector General for Evaluations

FROM: Sandra Thompson, Deputy Director, Division of Housing Mission and Goals THOMPSON

SANDRA THOMPSON
Digitally signed by SANDRA THOMPSON
Date: 2020.07.22
13:47:18 -0400

SUBJECT: Draft Report: *Oversight by Fannie Mae and Freddie Mac of Compliance with Forbearance Requirements Under the CARES Act and Implementing Guidance by Mortgage Servicers*

DATE: July 22, 2020

Thank you for the opportunity to respond to the Office of Inspector General’s (OIG) draft report, *Oversight by Fannie Mae and Freddie Mac of Compliance with Forbearance Requirements Under the CARES Act and Implementing Guidance by Mortgage Servicers* (Report). The Report focuses on whether servicers are complying with the CARES Act’s single-family forbearance provisions and the implementing guidance issued by Fannie Mae and Freddie Mac (the Enterprises). The Report makes several observations, but no recommendations for FHFA. FHFA shares the concerns in the Report that servicers may not be adequately informing borrowers that forbearance is available and will bring these issues to the Enterprises’ attention so that they can contact these servicers directly.

FHFA took decisive action, starting before the coronavirus pandemic had been declared a national emergency, to support the market and American families who should not have to worry about losing their homes during a global health crisis. Prior to the enactment of the CARES Act on March 27, 2020, FHFA announced the Enterprises would make forbearance available for up to 12 months for homeowners struggling to pay their mortgage due to a COVID-related financial hardship.¹ Although these forbearance policies broadly aligned with the CARES Act, the Enterprises subsequently updated their guidance to better conform with the requirements set forth in the new law. Section 4022 also instituted a 60-day foreclosure moratorium for federally-backed single-family mortgages, which expired on May 17, 2020. FHFA has since extended this

¹ <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Suspends-Foreclosures-and-Evictions-for-Enterprise-Backed-Mortgages.aspx>

moratorium on an ongoing basis for real estate owned (REO) properties owned by the Enterprises in order to continue to help borrowers who are at risk of losing their homes.²

While broadly sharing the Report's concerns, FHFA disagrees with the Report's implication that FHFA or the Enterprises are responsible for informing individual homeowners of their rights or for testing servicers for compliance with the CARES Act. FHFA and the Enterprises have no direct regulatory oversight of mortgage servicers to ensure compliance with laws; that responsibility sits with the appropriate regulator or supervisory body, and the CARES Act provided no additional authority to FHFA to do so. Indeed, the Report rightly notes that FHFA lacks the authority to examine mortgage servicers. FHFA has requested in its 2019 Annual Report to Congress a limited and tailored grant of examination authority, similar to that already provided to other federal safety and soundness regulators, over third-party service providers, including mortgage servicers.

Mortgage servicers' interaction with borrowers as it relates to offering and granting forbearance and post-forbearance loss mitigation options are subject to rules and regulations under the jurisdiction of the Consumer Financial Protection Bureau (CFPB). The Report does not clarify that CFPB has the primary regulatory authority with regard to a servicer's relationship with the borrower; rather, it presumes or implies that FHFA and the Enterprises have this responsibility. Although no express authority is granted to FHFA to enforce Section 4022 of the CARES Act, FHFA as regulator and conservator of the Enterprises continues to monitor the implementation of Section 4022 in relation to Enterprise-backed single-family mortgages.

FHFA has taken several steps to better monitor mortgage servicer activities, ensure that servicers properly follow Enterprise forbearance and loss mitigation guidance, and increase awareness of forbearance and other mortgage assistance options available to homeowners:

- On April 15, 2020, CFPB and FHFA announced a joint initiative called the Borrower Protection Program (BPP).³ The BPP allows the sharing of information between the two agencies, under which CFPB will make complaint information and analytical tools available to FHFA, and FHFA will make available to CFPB information about forbearances, modifications, and other loss mitigation initiatives undertaken by the Enterprises. This will augment and enhance FHFA's understanding of servicer activities as it relates to interactions with borrowers.
- On April 27, 2020, FHFA issued a statement reiterating that borrowers in forbearance with an Enterprise-backed mortgage are not required to repay the missed payments in one

² <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-Foreclosure-and-Eviction-Moratorium-6172020.aspx>

³ <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-and-CFPB-Announce-Borrower-Protection-Program.aspx>

lump sum.⁴ Although Section 4022 of the CARES Act did not address post-forbearance options for borrowers, the statement was intended to combat misinformation that could discourage borrowers from requesting forbearance. Additionally, both Enterprises released COVID-19 forbearance scripts for servicers to use with homeowners, which were subsequently translated into five additional languages to better assist limited English proficiency borrowers.⁵

- On May 12, 2020, FHFA, CFPB, and the Department of Housing and Urban Development launched a mortgage and housing assistance website, cfpb.gov/housing.⁶ This website consolidates federal information about mortgage relief options, including a video explaining how forbearance works and homeowners' rights under Section 4022 of the CARES Act. The website states explicitly that homeowners of federally-backed mortgages "experience[ing] financial hardship due to the coronavirus pandemic [...] have a right to request and obtain a forbearance for up to 180 days," and "also have the right to request and obtain an extension for up to another 180 days (for a total of up to 360 days)."⁷

The Report acknowledges the "fulsome information" provided by FHFA and the Enterprises' websites but does not appear to reference the interagency mortgage assistance website mentioned above. Taken together, FHFA believes it has acted swiftly and in coordination with other federal agencies to provide homeowners with straightforward, accessible information regarding their rights and available mortgage assistance options.

Finally, the Report states that forbearance options mandated under the CARES Act pose a significant financial burden on servicers which may in turn discourage them from following the requirements under law. As the Report mentions, FHFA has taken steps to address concerns about financial burdens on servicers by instituting a four-month limit on servicers' obligations to advance principal and interest payments on loans in forbearance. Furthermore, FHFA's recent analysis of servicer capacity indicates that servicers as a whole have sufficient capacity to handle a forbearance rate of 15 percent,⁸ whereas recent data from the Mortgage Bankers Association (MBA) indicate that the forbearance rate for Enterprise mortgages was just over 6 percent as of

⁴ <https://www.fhfa.gov/Media/PublicAffairs/Pages/No-Lump-Sum-Required-at-the-End-of-Forbearance-says-FHFAs-Calabria.aspx>

⁵ <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Makes-Translated-COVID-19-Resources-Available-in-Six-Languages.aspx>

⁶ <https://www.fhfa.gov/Media/PublicAffairs/Pages/CFPB-FHFA-HUD-Launch-Joint-Mortgage-and-Housing-Assistance-Website-for-Americans-Impacted-by-COVID-19.aspx>

⁷ <https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/mortgage-relief/>

⁸ <https://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-Dr-Mark-A-Calabria-FHFA-Director-Before-the-US-Senate-Committee-on-Banking-Housing-and-Urban-Affairs-06092020.aspx>

June 28, 2020. In addition, according to MBA data the overall share of mortgages in forbearance has decreased for three consecutive weeks as of June 28, 2020.⁹

The Report also suggests that servicing a loan in forbearance is more labor-intensive and costly than servicing a performing loan. While this is generally the case, servicers that do not offer forbearance to a homeowner facing a financial hardship may have even more costly and labor-intensive outcomes, if a mortgage loan becomes seriously delinquent. The Report also does not mention the implementation of the Enterprises' payment deferral option, which provides operational efficiencies and financial incentives for mortgage servicers and, importantly, a new, simplified post-forbearance assistance option for homeowners.¹⁰ FHFA believes its actions have ameliorated potential financial burdens on servicers while also promoting forbearance and post-forbearance mortgage relief options for borrowers.

In conclusion, we appreciate OIG's attention to this important issue. FHFA has taken swift and prudent action prior to and following the enactment of the CARES Act in order to protect homeowners during the pandemic. In coordination with other federal agencies, and with the recognition that CFPB primarily oversees a mortgage servicer's relationship with the borrower, FHFA has worked quickly to publish resources for homeowners about mortgage relief options through its own website and an interagency website. FHFA will continue to monitor data as well as new and evolving challenges as a result of the COVID-19 national emergency and will update policies accordingly.

If you have any questions related to our response, please do not hesitate to contact me.

cc: Chris Bosland
Kate Fulton
John Major

⁹ <https://www.mba.org/2020-press-releases/july/share-of-mortgage-loans-in-forbearance-decreases-for-third-straight-week-to-839>

¹⁰ <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Payment-Deferral-as-New-Repayment-Option-for-Homeowners-in-COVID-19-Forbearance-Plans.aspx>

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