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**The Impact of COVID-19 and CARES Act On
Mortgage Servicers and Borrowers: Forbearance, Foreclosure, and Our Recommendations**

I. Introduction

The impact of the COVID-19 Emergency¹ has affected and will continue to affect our personal lives and to businesses. Indeed, as had been widely reported, in just the first two weeks of mandatory lockdowns,² new applications for unemployment compensation benefits reached 9.9 million, which alone represents about as many job losses in a few weeks as there were during the entire 2008-2009 economic recession. Within the last week, that number reportedly increased by another 6.6 million. According to United States Department of Labor statistics,

¹ The “COVID-19 Emergency” is defined by the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) to mean “the national emergency concerning the novel coronavirus disease (COVID-19) outbreak declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 *et seq.*.” CARES Act, Pub. L. No. 116-136, 134 Stat. 281, § 4022(a)(1).

² As of the date of this revised memorandum, most states have ordered that citizens to stay at home and/or closed all non-essential businesses. The list of those states, together with the revised end dates of the orders as of May 1, are Alabama (through April 30, with phased opening on April 30), Alaska (through April 21, with phased opening on April 24), Arizona (through May 15), California (indefinite), Colorado (through April 26, with phased opening on April 27), Connecticut (through May 20), Delaware (through May 15 or until health threat is eliminated), D.C. (through May 15), Florida (through April 30, with phased opening on May 1), Georgia (through April 30 (June 12 for elderly and medically fragile), with phased opening on April 24), Hawaii (May 31), Idaho (through April 30, with phased opening on May 1), Illinois (through May 30), Indiana (through May 1), Kansas (through May 3, with phased opening on May 4), Kentucky (indefinite, with phased opening on May 11), Louisiana (through May 15), Maine (through May 31), Maryland (indefinite), Massachusetts (through May 18), Michigan (through May 15), Minnesota (through May 18, with phased opening on April 27), Mississippi (through April 27, with phased opening on April 27), Missouri (through May 3, with phased opening on May 4), Montana (through April 26, with phased opening on April 27), Nevada (through May 15, with phased opening on May 1), New Hampshire (through May 4), New Jersey (indefinite), New Mexico (through May 15), New York (through May 15), North Carolina (through May 8), Ohio (indefinite, with phased opening on May 4), Oklahoma (through May 6, but only for vulnerable individuals), Oregon (indefinite), Pennsylvania (through May 8), Puerto Rico (through May 3), Rhode Island (through May 8), South Carolina (indefinite), Tennessee (through April 30, with phased opening on April 27), Texas (through April 30, with phased opening on May 1), Vermont (through May 15), Virginia (through June 10), Washington (through May 4), West Virginia (indefinite, with phased opening on April 30), Wisconsin (through May 26, with phased opening on April 29).

The list of states with local municipal orders include Oklahoma (Edmond, Stillwater, Oklahoma City, Tulsa, and Norman); Utah (Salt Lake City and Park City); and Wyoming (Jackson).

Iowa and North Dakota have ordered nonessential businesses to close, but have not issued stay-at-home orders. Arkansas, Nebraska, and South Dakota have no known stay-at-home-orders or business closures in place.

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nearly eleven percent of the U.S. labor force has filed for unemployment compensation benefits as a result of the COVID-19 Emergency. Unfortunately, more will follow in the coming weeks and months as the Country proceeds through the pandemic.

As people face uncertainty, so too do businesses, including our mortgage servicer and lender clients. Will borrowers be able to continue servicing their mortgage debts? If not, what happens? May borrowers stop making payments and, if so, for how long and what proofs are needed? May servicers commence foreclosures and evictions, and continue with pending foreclosures and evictions? Most importantly to stand-alone servicers, will Congress provide relief and, if so, what relief?

Although questions abound, we attempt to provide some clarity and answers, to anticipate and address other potential relevant issues, and to provide necessary guidance and direction during these unprecedented times. It will not be easy, but, to be sure, we will get through this. We always do. Together. Indeed, as Andrew Cuomo, Governor of the State of New York, recently recognized:

“This is an extraordinary time in this Nation’s history ... where you need to see government perform at its best, where you need to see people at their best. Everybody’s afraid, everybody’s nervous. ***How you respond, how you act, this is a character test for all of us individually, it’s a character test for us collectively as a society.***”³

II. CARES Act Provisions Applicable to Mortgage Servicers and Lenders

The third phase and, to date, the final iteration of the Coronavirus Aid, Relief, and Economic Security Act, commonly referred to as the “CARES Act,” includes several provisions related to mortgage servicers, and is designed to provide a reprieve to borrowers who are struggling due to the COVID-19 Emergency. Most notably, the CARES Act provides significant relief to borrowers with mortgages that are backed by federal loans. Those relief provisions, including payment relief and foreclosure stays, are discussed below.

Moreover, shortly after the CARES Act became law, the Consumer Financial Protection Bureau (“CFPB”), Board of Governors of the Federal Reserve System (“Federal Reserve”), the Federal Deposit Insurance Corporation (“FDIC”), the National Credit Union Administration (“NCUA”), the Office of the Comptroller of the Currency (“OCC”), and their state counterparts were compelled to issue a joint policy statement to clarify the CARES Act’s forbearance provision, the application of the Regulation X⁴ mortgage servicing rules, and the agencies’

³ <https://newyork.cbslocal.com/2020/03/17/coronavirus-new-york-spread-peak/amp/> (emphasis added)

⁴ 12 C.F.R. § 1024, Real Estate Settlement Procedures Act, 12 U.S.C. § 2605.

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approach to supervision and enforcement related to the servicing rules during this emergency.⁵ That joint policy statement is also discussed below.

A. May Servicers Commence Foreclosures and Evictions and Continue with Pending Foreclosures and Evictions?

First and foremost, let us not forget the context in which we currently find ourselves. We are in the midst of a pandemic that no living American has seen before. Having guided mortgage servicers through, among other matters, the financial crisis of 2008 and the robo-signing controversy, and having litigated hundreds if not thousands of cases in state and federal courts for our servicer clients, we are uniquely aware of the general perception that some courts and the public have of servicers, which we strive to change with every appearance we make on behalf of our servicer clients. Indeed, although some lenders have raised their borrowing standards for new home loans to now require certain baseline credit scores and down-payments of at least twenty percent of the home's value to attempt to address the pandemic's future impact, commencing mass foreclosures and/or eviction proceedings during this unprecedented time in American history would not have been viewed favorably by any court in any jurisdiction, despite our servicer clients' legal rights upon default.

In that regard, Congress has instructed that now is not the time for mortgage servicers to enforce and argue their rights upon borrowers defaulting on federally-backed residential mortgage loans in light of COVID-19. In fact, section 4022 of the CARES Act provides for a moratorium on foreclosures,⁶ and provides for a borrower's right to request payment forbearance. Specifically with respect to foreclosures, servicers of federally-backed mortgage loans⁷ are prohibited from commencing foreclosure proceedings or evictions⁸ for at least sixty days from March 18, 2020. We anticipate that the prohibition may be extended beyond the initial sixty-day period. Notably, because the broad purpose of the foreclosure moratorium is to not force defaulted borrowers from their homes at this particular point in time, the moratorium does not apply to properties that are vacant or have been abandoned by borrowers.

⁵ 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).

⁶ CARES Act, Pub. L. No. 116-136, § 4022(c)(2).

⁷ The phrase, "Federally backed mortgage loan," is defined by the CARES Act to mean any loan that is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one-to-four families that is insured by the Federal Housing Administration under title II of the National Housing Act (12 U.S.C. 1707 et seq.); insured under section 255 of the National Housing Act (12 U.S.C. 1715z-20); guaranteed under section 184 or 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z-13a, 1715z-13b); guaranteed or insured by the Department of Veterans Affairs; guaranteed or insured by the Department of Agriculture; made by the Department of Agriculture; or purchased or securitized by the Federal Home Loan Mortgage Corporation ("Freddie Mac") or the Federal National Mortgage Association ("Fannie Mae"). CARES Act, Pub. L. 116-136, §§ 4022(a)(2)(A) – (G).

⁸ CARES Act, Pub. L. 116-136, §§ 4022(c)(2), 4024(b).

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Even before the CARES Act, some governors quickly acted to protect their respective residents by issuing executive orders or signing bills prohibiting the removal of borrowers and tenants during this time. For instance, in the State of New Jersey, Governor Phil Murphy signed Assembly Bill No. A-3859, which authorized the Governor to issue an executive order declaring a moratorium on removing individuals from their homes pursuant to an eviction or foreclosure proceeding.⁹ Immediately thereafter, and pursuant to the authority granted to him by the New Jersey Legislature, Governor Murphy signed Executive Order 106, which imposes that moratorium.¹⁰ As a result, the New Jersey Department of Banking & Insurance (“NJBI”) announced an agreement with approximately forty-five national banks, state-chartered banks, credit unions, and mortgage servicers to provide mortgage forbearance and financial protections announced by Governor Phil Murphy. We are pleased to have offered guidance to some of our mortgage servicing clients on the ramifications of that agreement.

Additionally, New York Governor Andrew Cuomo issued Executive Order 202.9, which directs institutions regulated by the New York Department of Financial Services (the “NYDFS”) to provide relief to consumers in New York experiencing a financial hardship due to the COVID-19 pandemic. As a result, the NYDFS promulgated new Part 119 of Title 3 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“NYCRR”), which requires all institutions regulated by the NYDFS to:

- (i) make applications for forbearance of any payment due on a residential mortgage of a property located in New York, widely available to any individual who resides in New York and who demonstrates financial hardship as a result of the COVID-19 pandemic; and
- (ii) subject to the safety and soundness requirements of the regulated institution, grant such forbearance for a period of ninety (90) days to any such individual.¹¹

Notably, however, that regulation does not apply to, “and does not affect any mortgage loans made, insured, or securitized by any agency of the United States, any Government Sponsored Enterprise, or a Federal Home Loan Bank, or the rights and obligations of any lender, issuer, servicer or trustee of such obligations, including servicers for the Government National Mortgage Association.”¹²

Moreover, for our foreclosure trustee client in the judicial- and non-judicial-foreclosure State of California, Governor Gavin Newsom issued Executive Order N-28-20, which suspends

⁹ https://www.njleg.state.nj.us/2020/Bills/A4000/3859_I1.HTM

¹⁰ <https://nj.gov/infobank/eo/056murphy/pdf/EO-106.pdf>

¹¹ https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf

¹² *Id.*

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the statutory cause of action for judicial foreclosure.¹³ Thereafter, mere days ago, the California Judicial Council enacted Emergency Rule 2 to the California Rules of Court to stay judicial foreclosures and actions for deficiency judgments, and to toll any applicable statute of limitations.¹⁴

Lastly, servicers should always be mindful of the RESPA provision generally prohibiting most servicers from taking steps to initiate a judicial or non-judicial foreclosure in any state and commonwealth until at least 120 days have passed since the borrower became delinquent.¹⁵

B. May Borrowers Stop Making Mortgage Payments?

Yes, for a period of time. Forbearance, in this specific instance, will allow a borrower to suspend his or her monthly mortgage payments if he or she attests that COVID-19 has created, “directly or indirectly,” a hardship in the ability to make payments.¹⁶ Forbearance, however, is not payment forgiveness; the borrower who is granted payment forbearance will eventually have to make up those deferred payments.

(1) Single-Family Forbearance

If the mortgage being serviced is federally-backed, which most mortgages are, and the property collateralizing the mortgage being serviced is single-family,¹⁷ then mortgage servicers and lenders are required to provide forbearance for borrowers who affirm that they are experiencing a financial hardship caused by the COVID-19 pandemic.¹⁸ Here, forbearance is granted pursuant to existing Regulation X rules governing mortgage servicing, but to allow the process to be expedited, without having to comply with all of the other applicable rules.¹⁹ Generally, a borrower experiencing direct or indirect financial hardship relating to the COVID-19 Emergency is able to request at least 180 days of forbearance, ***regardless of delinquency status***.²⁰ That means if the borrower is already delinquent, the borrower can request – and it must be given – forbearance on any presently due or future payments during the COVID-19

¹³ <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.16.20-Executive-Order.pdf>

¹⁴ <https://jcc.legistar.com/View.ashx?M=F&ID=8234474&GUID=79611543-6A40-465C-8B8B-D324F5CAE349>

¹⁵ 12 C.F.R. § 1024.41(f)(1)(i).

¹⁶ CARES Act, Pub. L. 116-136, § 4022(b).

¹⁷ Single-family homes are homes designed for one to four families.

¹⁸ CARES Act, Pub. L. 116-136, § 4022(b).

¹⁹ Regulation X, 12 C.F.R. 1024 already contemplates that some borrowers may need fast, short-term help and provides flexibility for servicers when they offer certain short-term options, such as short-term payment forbearance programs. A CARES Act forbearance qualifies as a short-term payment forbearance program under Regulation X, so it is excluded from some of the otherwise applicable loss mitigation requirements. By way of example, under Regulation X, 12 C.F.R. 1024.41(c)(2)(iii), mortgage servicers do not have to obtain a complete loss mitigation application from a borrower before offering a short-term loss mitigation option as defined in the rules, such as the CARES Act forbearance.

²⁰ CARES Act, Pub. L. 116-136, §§ 4022(b)(1), (b)(2).

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Emergency. That forbearance period can be extended another 180 days at the request of the borrower.²¹

In addition to the CARES Act's provisions concerning forbearance, HUD "announced a tailored set of mortgage payment relief options for single family homeowners with FHA-insured mortgages who are experiencing financial hardship as a result of the COVID-19 National Emergency."²² HUD's announcement implements key provisions of the CARES Act related to residential mortgages, and includes an extension period for seniors with Home Equity Conversion Mortgages, otherwise known as reverse mortgages.

As previously mentioned, federal and state agencies issued a joint policy statement concerning the CARES Act's forbearance provision and their supervision of mortgage servicers and their enforcement of other rules and regulations governing mortgage servicing. Importantly, to provide some relief to servicers to facilitate forbearance, the federal and state agencies expressly stated in their joint policy statement that they "do not intend to take supervisory or enforcement action against mortgage servicers" for the following:

- failing to provide the acknowledgment notice described in Regulation X, 12 C.F.R. § 1024.41(b) within five days of the receipt of an incomplete application (whether the servicer receives the incomplete application before or during the forbearance or repayment plan period), provided the servicer sends the acknowledgment notice before the end of the forbearance period, for a short-term payment forbearance program;²³
- delays in sending the loss mitigation-related notices and taking the actions described in Regulation X, 12 C.F.R. §§ 1024.41(b) – (d), (h)(4), and (k), which, among other things, include the five-day acknowledgement notice, the thirty-day evaluation and notice, and the appeals notice, provided that servicers are making good faith efforts to provide these notices and take the related actions within a reasonable time;²⁴
- delays in establishing or making good faith efforts to establish live contact with delinquent borrowers as required by Regulation X, 12 C.F.R. § 1024.39(a), provided that servicers are making good faith efforts to establish live contact within a reasonable time;²⁵

²¹ CARES Act, Pub. L. 116-136, § 4022(c)(1).

²² HUD No. 20-048 (Apr. 1, 2020).

²³ Joint Statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the COVID-19 Emergency and the CARES Act, at p. 6 (Apr. 3, 2020).

²⁴ *Id.*

²⁵ *Id.* at p. 7.

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- delays in sending the written early intervention notice to delinquent borrowers required by Regulation X, 12 C.F.R. § 1024.39(b) (the “45-day letter”), provided that servicers are making good faith efforts to provide this notice within a reasonable time; and²⁶
- delays in sending the annual escrow statement required by Regulation X, 12 C.F.R. § 1024.17(i), provided that servicers are making good faith efforts to provide these statements within a reasonable time.²⁷

Finally, because we have handled many cases in which borrowers assert causes of action, particularly in adversary proceedings, based on miscalculation of amounts due because of alleged improper fees and costs, it is imperative that mortgage servicers be mindful that, during a 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, shall accrue on the borrower’s account.”²⁸

(2) Multi-Family Forbearance

Pursuant to Section 4023 of the CARES Act, forbearance is also available to borrowers with federally-backed mortgages on multi-family properties, which are designed for the occupancy of five or more families.²⁹ Importantly, however, unlike a borrower with a federally-backed mortgage on a single-family residence who has to provide no evidence to be granted forbearance, a borrower with a federally-backed mortgage on a multi-family residence ***must be current on the mortgage payments as of February 1, 2020***,³⁰ and after being granted forbearance, ***must not*** evict a tenant or charge late fees or other penalties to tenants during the period of forgiveness.³¹ Multi-family forbearance is scheduled to expire on either the end of the COVID-19 Emergency or December 31, 2020, whichever comes sooner.³²

C. Does A Borrower Have To Provide Evidence of Hardship?

As was just preliminarily discussed, not really, but it depends on whether the mortgage is federally-backed and whether the home is single-family or multi-family.

With respect to whether a borrower with a federally-backed mortgage on single-family home has to provide any evidence of hardship, the answer is, simply, **no**. Section 4022, expressly directs that, “upon receiving a request for forbearance from a borrower under

²⁶ *Id.*

²⁷ *Id.* Servicers, however, must still comply with the requirements of Regulation X, 12 C.F.R. 1024.17(k) concerning timely disbursements from escrow accounts.

²⁸ CARES Act, Pub. L. 116-136, § 4022(b)(3).

²⁹ CARES Act, Pub. L. 116-136, §§ 4023(a), (f)(2).

³⁰ CARES Act, Pub. L. 116-136, § 4023(b).

³¹ CARES Act, Pub. L. 116-136, §§ 4023(d)(1) – (2).

³² CARES Act, Pub. L. 116-136, §§ 4023(f)(5)(A) – (B).

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subsection (b), *the servicer shall with no additional documentation required other than the borrower's attestation to a financial hardship caused by the COVID-19 emergency ... provide forbearance[.]*³³ For instance, a borrower with a federally-backed mortgage on single-family home requesting forbearance does not need to provide proof that he or she tested positive for COVID-19. Nor does that borrower have to provide actual proof of a downturn in his or her financial circumstances or proof of unemployment due to the pandemic. Indeed, unlike a typical loan modification for which a borrower provides, among other documents and details, financials and employment information, a borrower with a federally-backed mortgage on single-family home seeking forbearance qualifies for and must be granted that forbearance by simply asking for it and by attesting financial hardship due to the COVID-19 Emergency such that they cannot continue to pay their existing mortgage obligations.

With respect to whether a borrower with a federally-backed mortgage on a multi-family home has to provide any evidence to be granted forbearance, the answer is **some evidence**. As previously discussed, the borrower on a multi-family has to provide evidence that he or she was current on the loan as of February 1, 2020. Thus, it is important to note that the financial hardship required for forbearance in this instance must arise from the COVID-19 Emergency. Subsection (a)(1) of Section 4022 defines "COVID-19 emergency" as the national emergency declared by President Trump on March 13, 2020 by Executive Order pursuant to the National Emergencies Act, 50 U.S.C. 1601 et seq. ("NEA"). Pursuant to Section 4023(f)(5), the "covered period" of the CARES Act is the period beginning on the date of enactment of the Act and ending on the sooner of the termination date of the March 13, 2020, COVID-19 Emergency declaration by the President, or December 31, 2020. That declaration can be extended by the President.

D. HUD Guidance on FHA-Insured and Reverse Mortgages

As previously mentioned, HUD issued an announcement implementing the CARES Act's forbearance provisions for FHA-insured mortgages and reverse mortgages.³⁴ In addition to the COVID-19 forbearance, FHA implemented the COVID-19 National Emergency Partial Claim, an option that may be used by mortgage servicers when the COVID-19 forbearance period ends.³⁵ The partial claim is designed to help eligible homeowners who have been granted COVID-19 forbearance to reinstate their loans by authorizing servicers to advance funds on behalf of homeowners.³⁶ The partial claim will defer the repayment of those advances through an interest-free subordinate mortgage that the borrower does not have to pay off until their first mortgage is paid off.³⁷

³³ CARES Act, Pub. L. 116-136, § 4022(c)(1) (emphasis added).

³⁴ HUD No. 20-048 (Apr. 1, 2020).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

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In addition, with respect to reverse mortgages, the FHA instructed mortgage servicers to delay submitting “Due and Payable” requests by six months, with an additional six-month delay available with HUD approval.

III. Anticipated Issues Related to Implementation of and Compliance With The CARES Act

In this section, we provide some guidance on potential issues related to the CARES Act.

A. Does The CARES Act Apply to Mortgages Not Federally Insured or Guaranteed?

It appears that the CARES Act does not apply to cover mortgage loans that are not federally insured or guaranteed, or otherwise purchased or securitized by Fannie Mae or Freddie Mac. It is therefore unclear, if not entirely unlikely, whether a mortgage servicer of a mortgage that is *not* federally-backed would have to comply with the forbearance and the foreclosure moratorium provisions of the CARES Act. Notably, however, for any mortgage that is not federally-backed, servicers must be mindful of the various states’ respective executive orders, legislation, and amendments to court rules governing foreclosures, some of which are summarized in this memorandum, that extend moratoriums to all mortgages.³⁸

B. Must A Borrower Request CARES Act Forbearance In Writing?

Again, it depends on whether the borrower has a federally-backed mortgage on a single-family or multi-family property. Unlike other federal statutes that require borrowers to submit certain notices in writing, such as a Qualified Written Request pursuant to the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605(e)(1)(B), the CARES Act is silent on whether the request for forbearance from a borrower of a federally-backed mortgage for a single-family property has to be in writing. Specifically, section 4022(b) of the CARES Act provides only that “a borrower with a Federally backed mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID–19 emergency *may request* forbearance[.]”³⁹ The CARES Act does not state in what manner the “request” must be made. Given the CARES Act’s underlying legislative intent and purpose of providing borrowers with expeditious relief during the COVID-19 Emergency, we believe that any reviewing court will broadly interpret section 4022(b)’s “request” requirement to include oral requests. Accordingly, we recommend that mortgage servicers consider oral requests for forbearance from borrowers of federally-backed mortgages on single-family properties.

³⁸ We are in the process of finalizing a multi-state survey of executive orders, legislation and amendments to court rules governing foreclosures.

³⁹ CARES Act, Pub. L. 116-136, § 4022(b) (providing that “a borrower with a Federally backed mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID–19 emergency *may request* forbearance []” without further guidance on the exact form of the request.

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Conversely, with respect to a federally-backed mortgage for a multi-family property, the CARES Act expressly states that a request for forbearance by a borrower may be either oral or in writing.⁴⁰

C. Must A Mortgage Servicer Grant All Requests for CARES Act Forbearance?

Generally, yes. It appears, however, that a mortgage servicer would not have to grant a borrower's request for forbearance that was received, or at a future date is received, outside of the covered period of the COVID-19 Emergency, which the CARES Act defines as "the national emergency concerning the novel coronavirus disease (COVID-19) outbreak declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. § 1601 *et seq.*)."⁴¹ Additionally, as previously noted, it appears that the CARES Act does not apply to mortgages that are not federally-backed.

D. Issues Related to Credit Reporting

Pursuant to the Fair Credit Reporting Act ("FCRA"),⁴² servicers are required to report, accurately, a borrower's financial standing and payment history to credit bureaus. As a result of the pandemic, Freddie Mac has already instructed mortgage servicers to **not** report borrowers on forbearance plans as delinquent to the credit bureaus.⁴³

Moreover, section 4021 of the CARES Act amends the FCRA by providing instruction for reporting consumer credit information to credit bureaus during the pandemic. Specifically, section 4021 adds to the FCRA a section that provides that, if a creditor or other furnisher offers an accommodation to a consumer affected by the COVID-19 pandemic in connection with a credit obligation or account and the consumer satisfies the conditions of such accommodation, the furnisher of the credit information **must report** the credit obligation or account as "current."⁴⁴ Indeed, section 4021 defines the term, "accommodation," to mean and include:

"an agreement to defer 1 or more payments, make a partial payment, forbear any delinquent amounts, modify a loan or contract, or any other assistance or relief granted to a consumer

⁴⁰ Section 4023 of the CARES Act, Pub. L. 116-136, provides, in two separate sections, that borrowers of federally-backed mortgage loans on multi-family properties may submit a forbearance request either orally or in writing. CARES Act, Pub. L. 116-136, § 4023(b) (providing "multifamily borrower with a Federally backed multifamily mortgage loan that was current on its payments as of February 1, 2020, may submit an **oral or written** request for forbearance under subsection (a) []") (emphasis added), and § 4023(c)(1) (providing that "[u]pon receipt of an **oral or written request** for forbearance from a multifamily borrower, a servicer shall []." (emphasis added).

⁴¹ CARES Act, Pub. L. 116-136, §§ 4022(a)(1), 4023(f)(4).

⁴² 15 U.S.C. § 1681s-2(a)(1).

⁴³ <http://www.freddiemac.com/about/covid-19.html>

⁴⁴ CARES Act, Pub. L. 116-136, §§ 4021.

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who is affected by the coronavirus disease 2019 (COVID-19) pandemic during the covered period.”⁴⁵

Section 4021 applies from January 31, 2020, through the later of 120 days after either enactment of the amended subsection, or termination of the national emergency declaration.⁴⁶

It also is important to recognize that state laws may also have statutory authority governing the furnishing of credit information. To the extent state law is inconsistent, state law would be generally preempted pursuant to section 1681t(b)(1)(C) of FCRA.⁴⁷

IV. Conclusion

Just because the world is on hold does not mean that we are. As we have been for many years, we stand ready to face and to strategically navigate the novel challenges ahead, together, with our mortgage servicing and other clients. To be sure, how we respond, how we act, is a character test for us individually and as a society.

If you would like to further discuss this overview, please let me know and I will make myself available at your convenience. I look forward to being able to visit and be with you all again in person after we emerge from this crisis.

Very truly yours,

MC ELROY, DEUTSCH, MULVANEY & CARPENTER, LLP

By: /s/ RYAN P. MULVANEY
RYAN P. MULVANEY

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⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ 15 U.S.C. § 1681t(b)(1)(C).