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April 23, 2020

Mark Calabria, Director
Federal Housing Finance Agency
Constitution Center
400 7th Street, SW
Washington, D.C. 20219

Re: Protecting Borrowers Affected By COVID-19

Dear Director Calabria,

During an economic crisis, State Attorneys General stand on the front lines. Many of us have heard directly from those who have lost their jobs and are fearful of their ability to provide for their families. As a result of the COVID-19 pandemic, millions of Americans are now facing unemployment and financial uncertainty through no fault of their own. Historic unemployment numbers have already been recorded, and there is no question that we are only at the beginning of the COVID-19 pandemic's economic impact. We applaud FHFA's initial action to halt foreclosures and evictions for 60 days for homeowners with GSE-backed mortgage loans and to ensure that borrowers affected by COVID-19 are eligible for forbearance. We also appreciate the additional forbearance and foreclosure relief provided by the CARES Act.[1]

But more must be done for distressed homeowners in the wake of this pandemic. In particular, our national response must recognize the unique challenges presented by the unprecedented number of homeowners who are affected by COVID-19, including the fact that all of these homeowners need relief at the same time. Meeting this challenge will require straightforward and consistent guidance that can be quickly operationalized to meet the scale of the COVID-19 pandemic while providing immediate relief to homeowners.

We therefore urge FHFA to take the following responsive measures.

First, the Fannie Mae and Freddie Mac forbearance programs should be revised so that the forborne payments are placed at the end of the loan's term. Forbearance is the primary tool that has been used to offer borrowers temporary payment relief during times of disaster and temporary job loss, and both the FHFA's guidance and the CARES Act require forbearance plans for borrowers affected by COVID-19. While forbearance plans are a critical first response, we have significant concerns about the mortgage servicing industry's ability to implement the

[1] Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Pub. Law No. 116-136.

forbearance plans as they are currently contemplated and about what will happen to homeowners after the forbearance period ends. Based on past experiences with both the last foreclosure crisis and recent natural disasters, we fear that both the mortgage servicing industry and homeowners will become overwhelmed if changes are not made.

Under the current forbearance programs, borrowers are required to become current at the end of the forbearance period.[2] In other words, while borrowers receive the benefit of payment relief for a period of time, borrowers are then expected to cure the delinquency by either repaying the forborne amount at the end of the forbearance period in a lump sum or by entering into a repayment plan or modification. Due to the economic uncertainty caused by COVID-19, there can be no reasonable expectation that a borrower who has experienced a loss of employment or a reduction in income will be able to repay the forborne payments in a lump sum at the end of the forbearance period. Early media stories already report significant borrower concern and confusion surrounding the lump sum repayment obligation, and we believe this concern and confusion will continue so long as this remains the first step in the post-forbearance process.

If a borrower is not able to become current, servicers are then required to evaluate the borrower for a series of loss mitigation options.[3] In normal times, or even in times of a localized disaster, this is a reasonable and practicable approach. But these are not normal times, and this is not a localized disaster. COVID-19 is unique in both the sheer scale of the crisis and the fact that affected borrowers will all need help at the same time. Unlike the last foreclosure crisis, which gradually increased over time as it moved from subprime loans to the broader economy and a national recession, this time borrowers are becoming delinquent all at once. It has been estimated by some in the industry that anywhere from 25 to 35 percent of all borrowers may need some form of assistance. Servicers already appear to be overwhelmed by implementing these forbearance programs, even though they do not require documentation or individualized borrower evaluations, resulting in long wait times and borrower confusion. We have grave doubts about servicers' abilities to effectively manage the unprecedented number of borrowers who will be emerging from forbearance plans related to COVID-19 if servicers are required to perform individualized evaluations for all borrowers. Our offices' experience with the 2008 financial crisis has consistently shown that complex solutions are difficult for servicers to operationalize and often lead to new servicing issues that harm borrowers and the broader economy. Instead, we recommend that FHFA issue simple, self-executing guidance that servicers can easily implement to meet demand while providing an immediate, responsive resolution to borrowers.

Accordingly, we urge FHFA to revise the forbearance programs so that the obligation to repay forborne payments is automatically placed at the end of the loan in the form of additional monthly payments that will follow the current term of the loan.[4] This would allow borrowers

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[2] Fannie Mae Lender Letter, LL-2020-02; Freddie Mac Servicing Bulletin, 2020-4.
[3] *Id.*
[4] We acknowledge that Fannie Mae and Freddie Mac have recently announced a new Payment Deferral program that places forborne payments on the end of the loan. *See* Fannie Mae Lender Letter 2020-05; Freddie Mac Servicing Bulletin 2020-06. Servicers, however, are not required to implement the Payment Deferral program until January 2021. Moreover, the eligibility requirements for this program are so restrictive that many borrowers are unlikely to qualify. Borrowers are only eligible if they are no more than 60 days delinquent, have been in their loan for at least a

who are emerging from forbearance plans related to COVID-19 and who are able to resume their monthly payment to do so without the need for further loss mitigation. We also encourage FHFA to issue guidance allowing these post-forbearance agreements to occur without requiring borrowers to execute any additional documents, such as a loan modification agreement or a promissory note for the forborne payments, or at least waiving or easing those requirements until the pandemic abates. Finally, we encourage FHFA to clarify that a borrower may receive a forbearance based on the borrower's verbal attestation of a hardship related to COVID-19, and to encourage servicers to proactively notify borrowers of their right to verbally request a forbearance.

Second, FHFA should expand eligibility for its disaster-related modification programs. There are three modification programs for borrowers affected by COVID-19: the Extend Modification, the Cap and Extend Modification for Disaster Relief, and the Flex Modification for borrowers affected by a disaster.[5] Currently, a borrower is only eligible for any of the programs if the borrower was current or less than 31 days delinquent as of March 13, 2020, the date of the COVID-19 National Emergency Declaration.[6] Further, a borrower is only eligible for the Cap and Extend Modification if the borrower is less than 360 days delinquent at the end of the forbearance plan.[7] For a Flex Modification, the borrower must be at least 90 days delinquent upon completion of the forbearance plan.[8]

Considering the unprecedented character of the COVID-19 pandemic, the delinquency status requirements of these modification programs should be waived. Post-forbearance modification programs should be commensurate with the forbearance plans required by the CARES Act, and the CARES Act mandates forbearance to any borrower experiencing a COVID-19 hardship, regardless of whether the borrower is current or delinquent on the loan.[9] Further, the CARES Act authorizes forbearances of up to 360 days,[10] so many borrowers who received CARES Act forbearances will be more than 360 days delinquent by the end of the forbearance period. It makes no sense to allow these borrowers to receive forbearances for a particular period of time, but then allow that same period of time to cause them to be ineligible for a modification.

Therefore, FHFA should issue guidance waiving the requirement that a borrower must have been current or less than 31 days delinquent at the time of COVID-19 National Emergency Declaration to be eligible for disaster-related modification programs, and any borrower who

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year, and have not received a modification in that time. These restrictive eligibility requirements, along with the delayed effective date mean that most borrowers who receive a forbearance are unlikely to receive a Payment Deferral. Accordingly, and to the extent that the Payment Deferral program is utilized, we recommend that FHFA eliminate the 60 day delinquency cap, along with the loan seasoning and prior modification criteria. The CARES Act allows forbearance of up to a year, and there are no seasoning or prior modification criteria to receive a CARES Act forbearance. Post-forbearance options should be commensurate to the applicability of the CARES Act forbearance program.

[5] Fannie Mae Lender Letter, LL-2020-02; Freddie Mac Servicing Bulletin, 2020-4.
[6] *Id.*
[7] Fannie Mae Servicing Guide, Chapter D2-3.2-05; Freddie Mac Seller/Servicing Guide, Chapter 9206.4.
[8] Fannie Mae Servicing Guide, Chapter D2-3.2-06; Freddie Mac Seller/Servicing Guide, Chapter 9206.5(e).
[9] CARES Act, §4022(b)(1).
[10] *Id.* at §4022(b)(2).

receives a CARES Act forbearance should be eligible for disaster-related modification programs regardless of the length of that forbearance plan.

Third, FHFA should confirm that the moratorium on foreclosures and evictions applies to all aspects of the foreclosure or eviction process. We appreciate the foreclosure and eviction moratorium of both the FHFA and the CARES Act. The CARES Act states that servicers of federally backed mortgages may not initiate any judicial or non-judicial foreclosure process, move for a foreclosure judgment or order of sale, or execute a foreclosure-related eviction or foreclosure sale until at least May 17, 2020.[11] To address differences in various states' foreclosure and eviction processes, we urge FHFA to instruct servicers that they also must suspend all foreclosures and evictions currently in process and cannot move forward or complete *any* step in the judicial or non-judicial foreclosure or eviction process while the moratorium is in place. This includes, for example, issuing pre-foreclosure notices, issuing acceleration notices, recording notices of default, recording notices of trustee sales, posting or publishing any notices, filing or proceeding with motions beyond continuances, or taking any other foreclosure or eviction action during the moratorium. Advancing any step of the eviction or foreclosure process during a forbearance related to COVID-19 will only lead to borrower confusion and harm.

Again, the State Attorneys General applaud FHFA's initial response to suspend foreclosures and apply forbearances to borrowers affected by the COVID-19 pandemic, and we appreciate the expanded protections provided by the CARES Act. Our national response, however, must continue to evolve to respond to the volume and impact of COVID-19. The proposals outlined in this letter are based on our offices' collective experience with past disasters, and our acknowledgment that COVID-19 will present unprecedented challenges to homeowners and the mortgage servicing industry. We urge FHFA to implement these recommendations to ensure that homeowners are given a fair opportunity to retain their home as we fight through this pandemic together.

Sincerely,

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[11] *Id.* at §4022(c)(2).

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