United States Senate
WASHINGTON, DC 20510

June 3, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Charles Schumer
Democratic Leader
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

Dear Leader McConnell and Leader Schumer:

We write to share with you the results of our inquiry of mortgage servicers' response to the coronavirus disease 2019 (COVID-19) pandemic. This inquiry revealed that while mortgage servicers are taking steps to comply with homeowner protection provisions guaranteed in the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act), there remain gaps in their implementation, as well as issues that were unaddressed by the CARES Act, that could result in significant harm to homeowners.

Based on these findings, we recommend that any upcoming COVID-19 relief legislation include the following critical protections for all homeowners: (1) an extension and expansion of foreclosure and forbearance protections created by the CARES Act, including a requirement for sustainable repayment options after forbearance, (2) automatic forbearance enrollment, (3) an extended moratorium on foreclosures to avoid the "foreclosure cliff", (4) safeguards from harmful credit reporting related to missed or late mortgage payments, and (5) requirements that mortgage servicers proactively and clearly notify homeowners of their available foreclosure and forbearance protections. While we work towards expanding and extending a national eviction and foreclosure moratorium, we believe these changes will provide immediate relief to homeowners.

The *Health and Economic Recovery Omnibus Emergency Solutions Act* (HEROES Act),[1] recently passed by the House of Representatives, includes many of these additional protections for homeowners. We encourage the Senate to adopt these measures, and where necessary, encourage you to go further in adopting additional safeguards that our inquiry of major mortgage servicers' practices reveals to be necessary to help homeowners survive this crisis.

Our Review of Mortgage Servicers and CARES Act Requirements

The economic shutdown associated with the pandemic has had a devastating effect on homeowners. According to one recent survey, over eight percent of all mortgages held by approximately 4.1 million homeowners are now in forbearance, a nearly thirty-fold increase from

[1] HEROES Act, https://www.congress.gov/bill/116th-congress/house-bill/6800.

the beginning of March when only a quarter of one percent of all mortgages were in forbearance.[2]

To address this problem, Congress included in the CARES Act a number of protections for mortgage holders. The law prohibits a lender or loan servicer from foreclosing on an eligible homeowner for a period of no less than 60 days, beginning March 18, 2020. It also gives single-family homeowners who are facing a hardship due, directly or indirectly, to the pandemic the right to up to 360 days of mortgage forbearance – essentially allowing them to hit pause on their mortgage payments during the crisis and to make up those payments later.[3] In order to help us better understand how mortgage servicers are implementing the provisions of the CARES Act, on April 20, 2020, we wrote to eleven major mortgage servicers requesting information on how they are ensuring homeowners facing economic hardship during the COVID-19 pandemic are able to take advantage of the foreclosure and forbearance protections included in the CARES Act.[4]

The remainder of this letter provides a summary of the findings based on the responses we received. It reveals that as the pandemic continues to grow, Congress needs to improve on the CARES Act to provide new and stronger protections for homeowners and in order to stabilize the mortgage market. Based on information we received from these mortgage servicers, we recommend that any upcoming coronavirus relief package address:

Uniform protections for all homeowners. The CARES Act provides important mortgage relief and protections for homeowners with federally backed mortgages – including a 60-day foreclosure moratorium and forbearance for up to 360 days. And the responses from the mortgage servicers revealed that an enormous number of homeowners are in need of this relief. For instance, over ten percent of PennyMac customers were on a forbearance plan by April 23, 2020,[5] almost a quarter of U.S. Bank borrowers did not make a payment in March – and over 100,000 homeowners had received forbearance,[6] over 190,000 Lakeview borrowers made late payments and close to 170,000 received forbearance,[7] and close to 250,000 Mr. Cooper customers had not made a payment by April 20, 2020, with almost 177,000 on a forbearance plan.[8]

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[2] Mortgage Bankers Association, "Share of Mortgage Loans in Forbearance Increases to 8.16%," press release, May 18, 2020, https://www.mba.org/2020-press-releases/may/share-of-mortgage-loans-in-forbearance-increases-to-816.
[3] CARES Act, Sec. 4022-4023, https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf.
[4] Letter from Senator Elizabeth Warren et al., to Wells Fargo, JPMorgan Chase, Mr. Cooper, Bank of America, PennyMac Loan Services, Quicken Loans, Freedom Mortgage, New Residential, Lakeview Loan Servicing, US Bank, and Truist, April 21, 2020, press release, https://www.warren.senate.gov/oversight/letters/sens-warren-brown-banking-committee-colleagues-urge-major-mortgage-servicers-to-immediately-notify-eligible-homeowners-of-protections-available-through-cares-act. Not all eleven servicers sent responses.
[5] Letter from David Spector, President and Chief Executive Officer, PennyMac to Senator Elizabeth Warren et al., April 24, 2020.
[6] Letter from Andy Cecere, Chairman, President and CEO, U.S. Bank to Senator Elizabeth Warren et al., April 24, 2020.
[7] Letter from Bill Maguire, Vice President, Servicing Portfolio Management, Lakeview Loan Servicing to Senator Elizabeth Warren et al., April 24, 2020.
[8] Letter from Steve Covington, EVP & Chief Risk and Compliance Officer, Mr. Cooper to Senator Elizabeth Warren et al., April 24, 2020.

But there remain gaps that future COVID-19 pandemic relief legislation needs to address. Responses from mortgage servicers indicate that most major servicers, including, PennyMac, Quicken Loans, US Bancorp, Lakeview, and Mr. Cooper already voluntarily extended CARES Act protections to homeowners without federally-backed mortgages. But some servicers, including Bank of America and Truist, only extended a limited form of these protections. For example, while the CARES Act requires that servicers provide up to 360 days of mortgage forbearance for federally-backed mortgages, Wells Fargo reported that the company only provides up to 90 days of forbearance for privately held mortgages.[9]

It is clear that millions of homeowners – some with federally-backed mortgages, others with non-federally backed mortgages – are in desperate need of relief. Homeowners who do not have a federally backed loan should not be denied important protections because of an unlucky roll of the die as to who services their mortgage. Any additional relief legislation should extend CARES Act protections to homeowners without federally-backed mortgages. This can be done along with providing servicers with needed liquidity and protections from investor liability while tying such provisions to consumer relief and reporting.

There must also be uniform, sustainable post-forbearance repayment options for borrowers. JPMorgan Chase Bank wrote that, "The mortgage servicing industry continues to request aligned, streamlined programs that are designed both to meet the needs of customers and to reflect the impact that the pandemic is having on servicing operations and resources," and specified that the post-forbearance options should be "standardized across Fannie Mae, Freddie Mac, and the government loan federal agencies."[10] Mortgage servicers and homeowners need Congress to set strong industry-wide requirements that allow homeowners to efficiently resume their regular mortgage payments where possible and to obtain more affordable loan terms where needed.

Rescinding foreclosure orders. The CARES Act protects borrowers with federally backed mortgages from foreclosures, prohibiting servicers from initiating "any judicial or non-judicial foreclosure process, move for a foreclosure judgement or order of sale, or execute a foreclosure-related eviction or foreclosure sale," starting on March 18, 2020 and lasting for a 60-day period.[11] Because the bill became law on March 27, 2020, the relief was retroactive, extending back nine days. However, most of the agencies responsible for overseeing those federally backed loans had already implemented a moratorium at least on foreclosure sales, and servicers should have halted foreclosure sales even before the CARES Act passed.[12] We asked mortgage servicers

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[9] Letter from Michael DeVito, Executive Vice President, Wells Fargo Home Lending to Senator Elizabeth Warren et al., May 5, 2020.

[10] Letter from Jason Rosenberg, Head of U.S. Government Relations, JP Morgan Chase to Senator Elizabeth Warren et al., April 24, 2020.

[11] CARES Act, Sec. 4022-4023, https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf.

[12] FHFA implemented a foreclosure moratorium through the GSEs beginning on March 18, 2020; HUD implemented a foreclosure initiation and sale moratorium for FHA and HECM loans on March 18, 2020; HUD implemented a foreclosure initiation and sale moratorium for Section 184 and 184A loans on March 20, 2020; USDA implemented a foreclosure moratorium for its direct and guaranteed loans on March 19, 2020, and March 20, 2020, respectively; and VA "strongly encourage[d]" servicers not to foreclose on borrowers on March 18, 2020. See "FHFA Suspends Foreclosures and Evictions for Enterprise-Backed Mortgages," available at https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Suspends-Foreclosures-and-Evictions-for-Enterprise-Backed-Mortgages.aspx; ML 2020-04 available at https://www.hud.gov/sites/dfiles/OCHCO/documents/20-

about steps they had taken to terminate any foreclosure activities that were initiated between March 18, 2020, when the moratorium period began, and March 27, 2020, when the bill became law. While the servicers claimed to have halted all foreclosure activities following the passage of the CARES Act, it remains unclear if all the servicers took proactive steps to rescind foreclosure activities that took place between March 18 and March 27, 2020.

For instance, Mr. Cooper—a Texas based mortgage servicer—claims to have "placed all foreclosures sales of FHA and GSE loans on hold" starting on March 18, 2020 but only halted "any and all foreclosure activity" for FHA, VA and USDA backed loans beginning on March 24, 2020.[13] JP Morgan Chase responded that "any foreclosure activity that may have proceeded in the early days of the CARES Act moratorium" was addressed "where necessary and appropriate" but did not provide any additional information on what, if any action the company took regarding foreclosures initiated between March 18 and 27, 2020.[14]

Furthermore, responses indicate that some foreclosure sales went through in contravention to the CARES Act and possibly agency policy. While some servicers rescinded these sales, including Truist and Lakeview, others did not provide information. PennyMac indicated that it had yet to rescind four foreclosure sales that went through on March 18th and March 19th, despite other servicers doing so, though the company is reviewing those foreclosures.[15] And in addition to the lack of clarity regarding foreclosures of federally-backed loans that occurred between March 18 and March 27, it is likely that there are many more non-federally-backed loans that have been foreclosed upon since March 18. Any new legislation should extend foreclosure protections to all borrowers, not just those who have federally-backed loans.

The foreclosure cliff. The CARES Act prohibited all foreclosure activity for 60 days starting on March 18. Days before this moratorium expired, all the covered federal agencies, including the Federal Housing Finance Agency (FHFA) announced an extension of the moratorium on foreclosures and evictions for single-family homes with a mortgage backed by Fannie Mae or Freddie Mac until June 30, 2020.[16] For all mortgages covered under the CARES Act, beginning on June 30, 2020, mortgage servicers can resume all foreclosure activities barring other state and local restrictions.

04hsgml.pdf; DLL 2020-04 available at https://www.hud.gov/sites/dfiles/Main/documents/sec184_letter_032020.pdf; March 19, 2020 Stakeholder Announcement, available at https://www.rd.usda.gov/sites/default/files/USDA_RD_SA_Foreclosure_and_Eviction_Relief_COVID19_National Emergency.pdf; March 20, 2020 Stakeholder Announcement, available at https://rd.usda.gov/sites/default/files/USDA_SA_COVID19_SFHContinuity03202020.pdf; Circular 26-20-8, available at https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_20_8.pdf.

[13] Letter from Steve Covington, EVP & Chief Risk and Compliance Officer, Mr. Cooper to Senator Elizabeth Warren et al., April 24, 2020.

[14] Letter from Jason Rosenberg, Head of U.S. Government Relations, JP Morgan Chase to Senator Elizabeth Warren et al., April 24, 2020.

[15] Letter from David Spector, President and Chief Executive Officer, PennyMac to Senator Elizabeth Warren et al., April 24, 2020.

[16] Federal Housing Finance Agency, "FHFA Extends Foreclosure and Eviction Moratorium," press release, May 14, 2020, https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-Foreclosure-and-Eviction-Moratorium.aspx.

The responses we received from mortgage servicers show that countless families were able to save their homes through forbearance. However, families across the country are still struggling to make ends meet as the pandemic continues to wreak havoc on the economy. More than 40 million Americans filed for unemployment in the past two months,[17] and the Treasury Secretary predicts "the reported numbers are probably going to get worse before they get better."[18] Federal Reserve System Chair Jerome H. Powell announced that "almost 40 percent of those in households making less than $40,000 a year had lost a job in March."[19] With the expiration coming and no end in sight, it is imperative that we further extend the foreclosure moratorium immediately – and protect homeowners dealing with job losses and other financial disaster from losing their homes.

When the foreclosure moratorium ends, under current federal rules homeowners completing a forbearance who cannot immediately resume making payments or get a modification will immediately face foreclosure unless provisions in the HEROES Act are adopted to give homeowners additional time, ensuring that homeowners have an opportunity to resume mortgage payments or obtain more affordable payment terms prior to the initiation of any foreclosure process.

Proactive and detailed notification from mortgage servicers. Mortgage servicers should be required to proactively notify homeowners of all potential protections for which they may be eligible under the CARES Act.

We asked mortgage servicers for information about how they communicate with customers about the availability of relief. Their responses reveal a number of problems in the notification process. For example, some companies provide contact information to their customers to discuss further available assistance, but do not proactively inform consumers of their specific protections. For instance, U.S. Bank notifies customers "about the availability of assistance programs" and note that their "customer letters, monthly statements and COVID-19 mortgage assistance website direct customers to [their] phone numbers and online tools."[20] However, it does not appear that their initial email communications included detailed information about specific relief available to their customers. Similarly, Mr. Cooper notified customers about "relief that is available" and appears to direct customers to call or navigate its website to learn about assistance options that are available.[21]

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[17] Washington Post, "Americans have filed more than 40 million jobless claims in past 10 weeks, as another 2.1 million filed for benefits last week," Tony Romm, May 28 2020, https://www.washingtonpost.com/business/2020/05/28/unemployment-claims-coronavirus/.

[18] CNBC, "Mnuchin says jobless numbers will 'get worse before they get better' — unemployment may have hit 25%,"Amanda Macias, May 10, 2020, https://www.cnbc.com/2020/05/10/coronavirus-mnuchin-says-unemployment-will-rate-get-worse-before-they-get-better.html.

[19] Federal Reserve, "Current Economic Issues," speech, Jerome H. Powell, May 13, 2020, https://www.federalreserve.gov/newsevents/speech/powell20200513a.htm.

[20] Letter from Andy Cecere, Chairman, President and CEO, U.S. Bank to Senator Elizabeth Warren et al., April 24, 2020.

[21] Letter from Steve Covington, EVP & Chief Risk and Compliance Officer, Mr. Cooper to Senator Elizabeth Warren et al., April 24, 2020.

The Office of the Inspector General at the Department of Housing and Urban Development (HUD OIG) recently evaluated the information provided by servicers to the public regarding forbearance, determining that public websites "provided incomplete, inconsistent, dated, and unclear guidance to borrowers related to their forbearance options under the CARES Act."[22]

Furthermore, materials provided in response to our letters to major servicers often do not inform eligible homeowners of their specific legal rights and present a menu of post-forbearance options, including the option to pay a lump sum if possible. While we understand that post-forbearance options have shifted throughout this process, we believe servicer scripts and materials must be clearer on the rights and options of borrowers. In one script, customer service representatives are told to say that "typically, any payments missed during a forbearance are owed at the end of the forbearance," and that any decision to avoid such lump sum payments "are determined by the owner of the loan."[23] The same script informs consumers that they may request up to six months of forbearance, but encourages them to seek less assistance, suggesting it is "helpful to start with three months."[24]

It is critical that borrowers are able to take advantage of forbearance, and that they don't feel pressured by the company servicing their loan to sacrifice basic needs to instead pay their mortgage, even if they have suffered significant economic losses because of COVID-19. The CARES Act does not require homeowners to be down to their last dollars to receive protections, only that they are experiencing "undue hardship" related "directly or indirectly" to COVID-19.[25] It is therefore important that servicers ensure they're communicating the full range of options to borrowers so that borrowers can make the best choice for them, and that sufficient resources for housing counseling are available to help borrowers navigate their options. Servicers typically inform borrowers of an option to sign up for forbearance programs they run, but do not specify that these programs are mandated by law. All of this risks leaving homeowners confused and unaware of their rights under the CARES Act.

Given how many individuals may have been unaware of or unable to claim these protections, companies should be required to include specific information on COVID protections in mailers and emails, as well as on company websites and in oral conversations with delinquent borrowers. Mortgage servicers must provide more direct, clear, and detailed information that outlines all available options for receiving relief, including repayment options after a forbearance. Doing so is critical to closing the gap between the number of homeowners struggling to make payments and the actual number of homeowners taking advantage of the protections provided in the CARES Act. Moreover, while some servicers indicated that they had employees or third-party vendors to provide translation services for calls, many did not clearly indicate how borrowers were informed of these translation options and whether they automatically provided written communications in Spanish, and if so, how these communications are provided to mortgage

[22] Office of Inspector General, "Some Mortgage Loan Servicers' Websites Offer Information about CARES Act Loan Forbearance That Is Incomplete, Inconsistent, Dated, and Unclear," Apr. 27, 2020, https://www.hudoig.gov/reports-publications/topic-brief/some-mortgage-loan-servicers-websites-offer-information-about.
[23] Doc. 11b – Forbearance Script from Mr. Cooper.
[24] *Id*.
[25] CARES Act, Sec. 4022-4023, https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf.

holders. Language access for homeowners not proficient in English, such as Spanish translations of key notices, is essential.

Impact on credit scores. The CARES Act protects consumers afforded "accommodation" by a lender and as a result are "not required to make 1 or more payments" – including homeowners with mortgages in forbearance – from negative credit reporting.[26] However, thousands of homeowners who have not yet received such accommodations and may still be struggling with late and missed payments may not be afforded the same protections. Responses from major servicers suggest that thousands of homeowners who may be eligible for CARES Act forbearance are unaware of or unable to avail themselves of these protections, rendering them unable to protect their credit. Any upcoming relief legislation needs to address this gap and must guarantee that a late or missed mortgage payment for homeowners affected by COVID-19 does not negatively affect their credit scores.

Automatic forbearance. The results of our inquiry show that thousands of people are struggling to pay their mortgages, but may be either unaware of or unable to activate the protections offered under the CARES Act. Servicer-provided statistics indicate that despite passage of CARES Act protections, thousands of homeowners are late or delinquent in their payments. For instance, Mr. Cooper responded that 248,403 borrowers had not made payments by April 20, 2020. However, only 176,901 borrowers had received forbearance by then.[27] Similarly, 192,734 Lakeview borrowers made late payments and 101,149 borrowers did not make full payment. However, only 168,726 borrowers had received forbearance. Forbearance protections should be automatic for any homeowner who is at least 60 days late on a mortgage payment.

We are happy to provide you with specific legislative language that addresses each of our concerns. We thank you for your attention to this matter and look forward to continuing to work with you to protect homeowners amid this unprecedented economic emergency.

Sincerely,

Elizabeth Warren
United States Senator

Sherrod Brown
United States Senator

Robert Menendez
United States Senator

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[26] CARES Act, Sec. 4021, https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf.
[27] Letter from Steve Covington, EVP & Chief Risk and Compliance Officer, Mr. Cooper to Senator Elizabeth Warren et al., April 24, 2020.