

116TH CONGRESS
2D SESSION

H. R. 6340

To provide for mortgage forbearance during the COVID–19 emergency, and
for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 2020

Mr. CLAY introduced the following bill; which was referred to the Committee
on Financial Services

A BILL

To provide for mortgage forbearance during the COVID–
19 emergency, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. MORTGAGE FORBEARANCE.**

4 (a) FINDINGS.—

5 (1) FINDINGS.—Congress finds that—

6 (A) the collection of debts involves the use
7 of the mails and wires and other instrumental-
8 ities of interstate commerce;

9 (B) at times of major disaster or emer-
10 gency, the income of consumers is often im-

1 paired and their necessary daily expenses often
2 increase;

3 (C) temporary forbearance benefits not
4 only consumer and small business debtors, but
5 also other creditors by avoiding downward col-
6 lateral price spirals triggered by an increase in
7 foreclosure activity;

8 (D) without forbearance, many consumers
9 and small businesses are unlikely to be able to
10 pay their obligations according to their original
11 terms and are likely to default on obligations or
12 file for bankruptcy, resulting in reduced recov-
13 eries for creditors, and in the case of bank-
14 ruptcy, no recovery of unaccrued interest;

15 (E) with forbearance, creditors are likely
16 to realize greater long-term value because con-
17 sumers and small businesses will be more likely
18 to be able to repay their obligations after the
19 major disaster or emergency has subsided;

20 (F) the legislative and administrative re-
21 sponse to major disasters and emergencies may
22 consist of multiple components divided among
23 different statutes and programs; and

24 (G) when evaluating whether property has
25 been taken from a person without just com-

1 pensation, a holistic evaluation of the burdens
2 and benefits of all legislative and administrative
3 responses, including indirect benefits from mac-
4 roeconomic stabilization, is appropriate.

5 (2) FURTHER FINDINGS REGARDING MORTGAGE
6 FORBEARANCE.—Congress further finds that—

7 (A) ensuring that consumers are able to
8 remain in their residences reduces the disrup-
9 tions and economic harm caused by such disas-
10 ters and emergencies by ensuring that con-
11 sumers are able to continue their existing em-
12 ployment, education, childcare, and healthcare
13 arrangements, which are often geographically
14 based;

15 (B) temporary forbearance on residential
16 mortgages is therefore critical to fostering eco-
17 nomic recovery and stability in the wake of
18 major disasters or emergencies;

19 (C) temporary mortgage forbearance dur-
20 ing a declared disaster benefits not only mort-
21 gagors, but also mortgagees because mortga-
22 gors' ability to pay is likely to be restored after
23 a disaster or emergency subsides, so forbear-
24 ance may increase mortgagors' total recovery.
25 Without forbearance, mortgagors are likely to

1 default or file for bankruptcy, resulting in sig-
2 nificant losses for mortgagees; and

3 (D) temporary mortgage forbearance dur-
4 ing a declared disaster also benefits the mortga-
5 gees of other properties because housing prices
6 are geographically and serially correlated so an
7 increase in foreclosures can drive down the
8 value of collateral for all mortgage lenders, fur-
9 ther destabilizing the economy.

10 (3) FURTHER FINDINGS REGARDING MORTGAGE
11 SERVICERS.—Congress further finds that—

12 (A) mortgage servicers are often contrac-
13 tually obligated to advance scheduled mortgage
14 payments to securitization investors, irrespec-
15 tive of whether the servicer collects the payment
16 from the mortgagor;

17 (B) mortgage servicers are often thinly
18 capitalized and with limited capacity for engag-
19 ing in large scale advancing of payments to
20 securitization investors;

21 (C) securitization investors have long been
22 aware of servicers' thin capitalization;

23 (D) in the wake of the 2008 financial cri-
24 sis, several servicers had difficulty obtaining
25 sufficiently liquidity to make advances;

1 (E) mortgage servicing is a heavily regu-
2 lated industry;

3 (F) in response to the 2008 financial cri-
4 sis, Congress created a safe harbor for mort-
5 gage servicers that undertook loan modifica-
6 tions;

7 (G) in response to the 2008 financial cri-
8 sis, the Home Affordable Modification Program
9 paid mortgage servicers to undertake loan
10 modifications;

11 (H) as part of the 2012 joint State-Fed-
12 eral National Mortgage Settlement, mortgage
13 servicers committed to undertaking loan modi-
14 fications; and

15 (I) investors in mortgage securitizations
16 are or should be aware of servicers' thin cap-
17 italization, liquidity constraints, the extent and
18 history of servicing regulation and therefore do
19 not have a reasonable expectation that the
20 terms of servicing contracts will be enforceable
21 at times of national financial crisis.

22 (4) DETERMINATION.—It is the sense of the
23 Congress that, on the basis of the findings described
24 under paragraphs (1), (2), and (3), the Congress de-
25 termines that the provisions of this Act are nec-

1 essary and proper for the purpose of carrying into
2 execution the powers of the Congress to regulate
3 commerce among the several States and to establish
4 uniform bankruptcy laws.

5 (b) PROHIBITION ON FORECLOSURES AND REPOS-
6 SESSIONS DURING THE COVID–19 EMERGENCY.—

7 (1) PROHIBITION ON FORECLOSURES.—The
8 Real Estate Settlement Procedures Act of 1974 (12
9 U.S.C. 2601 et seq.) is amended—

10 (A) in section 3 (12 U.S.C. 2602)—

11 (i) in paragraph (8), by striking
12 “and” at the end;

13 (ii) in paragraph (9), by striking the
14 period at the end and inserting “; and”;
15 and

16 (iii) by adding at the end the fol-
17 lowing:

18 “(10) the term ‘COVID–19 emergency’ means
19 the period that begins upon the date of the enact-
20 ment of this Act and ends on the date of the termi-
21 nation by the Federal Emergency Management
22 Agency of the emergency declared on March 13,
23 2020, by the President under the Robert T. Stafford
24 Disaster Relief and Emergency Assistance Act (42

1 U.S.C. 4121 et seq.) relating to the Coronavirus
2 Disease 2019 (COVID–19) pandemic.”; and

3 (B) in section 6(k)(1) (12 U.S.C.
4 2605(k)(1))—

5 (i) in subparagraph (D), by striking
6 “or” at the end;

7 (ii) by redesignating subparagraph
8 (E) as subparagraph (G); and

9 (iii) by inserting after subparagraph
10 (D) the following:

11 “(E) commence or continue any judicial
12 foreclosure action or non-judicial foreclosure
13 process or any action to evict a consumer fol-
14 lowing a foreclosure during the COVID–19
15 emergency or the 180-day period following such
16 emergency (except that such prohibition shall
17 not apply to a mortgage secured by a dwelling
18 that the servicer has determined after exer-
19 cising reasonable diligence is vacant or aban-
20 doned);

21 “(F) fail to toll the time in a foreclosure
22 process on a property during the COVID–19
23 emergency or the 180-day period following such
24 emergency (except that such prohibition shall
25 not apply to a mortgage secured by a dwelling

1 that the servicer has determined after exer-
 2 cising reasonable diligence is vacant or aban-
 3 doned); or”.

4 (2) REPOSSESSION PROHIBITION.—During the
 5 COVID–19 emergency and for the 180-day period
 6 following such emergency, a servicer of a consumer
 7 loan secured by a manufactured home or a motor ve-
 8 hicle may not repossess such home or vehicle.

9 (c) FORBEARANCE OF RESIDENTIAL MORTGAGE
 10 LOAN PAYMENTS FOR SINGLE FAMILY PROPERTIES (1–
 11 4 UNITS).—Section 6 of the Real Estate Settlement Pro-
 12 cedures Act of 1974 (12 U.S.C. 2605) is amended by add-
 13 ing at the end the following:

14 “(n) FORBEARANCE DURING THE COVID–19 EMER-
 15 GENCY.—

16 “(1) CONSUMER RIGHT TO REQUEST A FOR-
 17 BEARANCE.—

18 “(A) REQUEST FOR FORBEARANCE.—A
 19 borrower experiencing a financial hardship dur-
 20 ing the COVID–19 emergency may request for-
 21 bearance from any mortgage obligation, regard-
 22 less of delinquency status, by submitting a re-
 23 quest to the borrower’s servicer, either orally or
 24 in writing, affirming that the borrower is expe-
 25 riencing hardship during the COVID–19 emer-

1 agency. A borrower shall not be required to pro-
2 vide any additional documentation to receive
3 such forbearance.

4 “(B) LENGTH OF FORBEARANCE; EXTEN-
5 SION.—A forbearance requested pursuant to
6 subparagraph (A) shall be provided for a period
7 of 180 days, and may be extended upon request
8 of the borrower for an additional 180 days.

9 “(C) TREATMENT OF TENANTS.—A bor-
10 rower receiving a forbearance under this sub-
11 section with respect to a mortgage secured by
12 a dwelling that has tenants, whether or not the
13 borrower also lives in the dwelling, shall provide
14 the tenants with rent relief for a period not less
15 than the period covered by the forbearance.

16 “(2) AUTOMATIC FORBEARANCE FOR DELIN-
17 QUENT BORROWERS.—

18 “(A) IN GENERAL.—Notwithstanding any
19 other law governing forbearance relief, during
20 the COVID–19 emergency, any borrower who is
21 or becomes 60 days or more delinquent on a
22 mortgage obligation shall automatically be
23 granted a 180-day forbearance, which may be
24 extended upon request of the borrower for an
25 additional 180 days. Such a borrower may elect

1 to continue making regular payments by noti-
2 fying the servicer of the mortgage obligation of
3 such election.

4 “(B) NOTICE TO BORROWER.—The
5 servicer of a mortgage obligation placed in for-
6 bearance pursuant to subparagraph (A) shall
7 provide the borrower written notification of the
8 forbearance and its duration as well as informa-
9 tion about available loss mitigation options and
10 the right to end the forbearance and resume
11 making regular payments.

12 “(C) TREATMENT OF PAYMENTS DURING
13 FORBEARANCE.—Any payments made by the
14 borrower during the forbearance period shall be
15 credited to the borrower’s account in accord-
16 ance with section 129F of the Truth in Lending
17 Act (15 U.S.C. 1639f) or as the borrower may
18 otherwise instruct that is consistent with the
19 terms of the mortgage loan contract.

20 “(3) REQUIREMENTS FOR SERVICERS.—

21 “(A) NOTIFICATION.—

22 “(i) IN GENERAL.—Each servicer of a
23 federally related mortgage loan shall notify
24 the borrower of their right to request for-
25 bearance under paragraph (1)—

1 “(I) not later than 14 days after
2 the date of enactment of this sub-
3 section; and

4 “(II) until the end of COVID–19
5 emergency—

6 “(aa) on each periodic state-
7 ment provided to the borrower;
8 and

9 “(bb) in any oral or written
10 communication by the servicer
11 with or to the borrower.

12 “(ii) MANNER OF NOTIFICATION.—

13 “(I) WRITTEN NOTIFICATION.—
14 Any written notification required
15 under this section—

16 “(aa) shall be provided—

17 “(AA) in English and
18 Spanish and in any addi-
19 tional languages in which
20 the servicer communicates,
21 including the language in
22 which the loan was nego-
23 tiated, to the extent known
24 by the servicer; and

1 “(BB) at least as clear-
2 ly and conspicuously as the
3 most clear and conspicuous
4 disclosure on the document;

5 “(bb) shall include the noti-
6 fication of the availability of lan-
7 guage assistance and housing
8 counseling produced by the Fed-
9 eral Housing Finance Agency
10 under subsection (o); and

11 “(cc) may be provided by
12 first-class mail or electronically,
13 if the borrower has otherwise
14 consented to electronic commu-
15 nication with the servicer and has
16 not revoked such consent.

17 “(II) ORAL NOTIFICATION.—Any
18 oral notification required under clause
19 (i) shall be provided in the language
20 the servicer otherwise uses to commu-
21 nicate with the borrower.

22 “(III) WRITTEN TRANS-
23 LATIONS.—In providing written notifi-
24 cations in languages other than
25 English under subclause (I), a

1 servicer may rely on written trans-
2 lations developed by the Federal
3 Housing Finance Agency or the Bu-
4 reau.

5 “(B) OTHER REQUIREMENTS.—

6 “(i) FORBEARANCE REQUIRED.—

7 Upon receiving a request for forbearance
8 from a consumer under paragraph (1) or
9 placing a borrower in automatic forbear-
10 ance under paragraph (2), a servicer shall
11 provide the forbearance for not less than
12 180 days, and an additional 180 days at
13 the request of the borrower, provided that
14 the borrower will have the option to dis-
15 continue the forbearance at any time.

16 “(ii) PROHIBITION ON FEES, PEN-
17 ALTIES, AND INTEREST.—During the pe-
18 riod of a forbearance under this sub-
19 section, no fees, penalties or additional in-
20 terest beyond the amounts scheduled or
21 calculated as if the borrower made all con-
22 tractual payments on time and in full
23 under the terms of the mortgage contract
24 in effect at the time the borrower enters
25 into the forbearance shall accrue.

1 “(iii) TREATMENT OF ESCROW PAY-
2 MENTS.—If a borrower in forbearance
3 under this subsection is required to make
4 payments to an escrow account, the
5 servicer shall pay or advance the escrow
6 disbursements in a timely manner (defined
7 as on or before the deadline to avoid a
8 penalty), regardless of the status of the
9 borrower’s payments. The servicer may col-
10 lect any resulting escrow shortage or defi-
11 ciency from the borrower after the forbear-
12 ance period ends, in a lump sum payment,
13 spread over 60 months, or capitalized into
14 the loan, at the borrower’s election.”.

15 (d) NOTIFICATION OF LANGUAGE ASSISTANCE AND
16 HOUSING COUNSELING.—Section 6 of the Real Estate
17 Settlement Procedures Act of 1974 (12 U.S.C. 2605), as
18 amended by subsection (c), is further amended by adding
19 at the end the following:

20 “(o) NOTIFICATION OF LANGUAGE ASSISTANCE AND
21 HOUSING COUNSELING.—

22 “(1) IN GENERAL.—The Federal Housing Fi-
23 nance Agency shall, within 30 days of the date of
24 enactment of this Act, make available a document
25 providing notice of the availability of language as-

1 sistance and housing counseling in substantially the
2 same form, and in at least the same languages, as
3 the existing Language Translation Disclosure.

4 “(2) MINIMUM REQUIREMENT.—The document
5 described under subsection (a) shall include the no-
6 tice in at least all the languages for which Federal
7 Housing Finance Agency currently has translations
8 on its existing Language Translation Disclosure
9 available.

10 “(3) PROVISION TO SERVICERS.—The Federal
11 Housing Finance Agency shall make this document
12 available to servicers to fulfill their requirements
13 under subsection (n).”.

14 (e) UNITED STATES DEPARTMENT OF AGRICULTURE
15 DIRECT LOAN PROGRAM.—Section 505 of the Housing
16 Act of 1949 (42 U.S.C. 1475) is amended—

17 (1) by redesignating subsection (b) as sub-
18 section (c); and

19 (2) by inserting after subsection (a) the fol-
20 lowing:

21 “(b) LOAN MODIFICATION.—

22 “(1) IN GENERAL.—The Secretary shall imple-
23 ment a loan modification program to modify the
24 terms of outstanding loans for borrowers who face
25 financial hardship.

1 “(2) AFFORDABLE PAYMENTS.—The Sec-
2 retary’s loan modification program under paragraph
3 (1) shall be designed so as to provide affordable pay-
4 ments for borrowers. In defining ‘affordable pay-
5 ments’ the Secretary shall consult definitions of af-
6 fordability promulgated by the Federal Housing Fi-
7 nance Authority, the Department of Housing and
8 Urban Development, and the Bureau of Consumer
9 Financial Protection.

10 “(3) ADDITIONAL PROGRAM REQUIREMENTS.—
11 The Secretary’s loan modification program under
12 paragraph (1) shall allow for measures including ex-
13 tension of the remaining loan term to up to 480
14 months and a reduction in interest rate to the mar-
15 ket interest rate as defined by regulations of the
16 Secretary. The modification program shall be avail-
17 able for borrowers in a moratorium and for bor-
18 rowers not already in a moratorium who qualify
19 under the terms established by the Secretary. The
20 Secretary may also establish reasonable additional
21 measures for providing affordable loan modifications
22 to borrowers.”;

23 (3) in subsection (c), as so redesignated, by
24 adding at the end the following: “Acceleration of the
25 promissory note and initiation of foreclosure pro-

1 ceedings shall not terminate a borrower’s eligibility
2 for a moratorium, loan reamortization, special serv-
3 icing, or other foreclosure alternative.”; and

4 (4) by adding at the end the following:

5 “(d) REQUIREMENT.—The Secretary shall comply
6 with subsection (k)(1), (n), and (o) of section 6 of the
7 Real Estate Settlement Procedures Act of 1974 with re-
8 spect to any single-family loans it holds or services.”.

9 (f) FORBEARANCE OF RESIDENTIAL MORTGAGE
10 LOAN PAYMENTS FOR MULTIFAMILY PROPERTIES (5+
11 UNITS).—

12 (1) IN GENERAL.—During the COVID–19
13 emergency, a multifamily borrower experiencing a fi-
14 nancial hardship due, directly or indirectly, to the
15 COVID–19 emergency may request a forbearance
16 under the terms set forth in this section.

17 (2) REQUEST FOR RELIEF.—A multifamily bor-
18 rower may submit a request for forbearance under
19 paragraph (1) to the borrower’s servicer, either oral-
20 ly or in writing, affirming that the multifamily bor-
21 rower is experiencing hardship during the COVID–
22 19 emergency.

23 (3) FORBEARANCE PERIOD.—

1 (A) IN GENERAL.—Upon receipt of an oral
2 or written request for forbearance from a multi-
3 family borrower, a servicer shall—

- 4 (i) document the financial hardship;
5 (ii) provide the forbearance for not
6 less than 180 days; and
7 (iii) provide the forbearance for an ad-
8 ditional 180 days upon the request of the
9 borrower at least 30 days prior to the end
10 of the forbearance period described under
11 subparagraph (A).

12 (B) RIGHT TO DISCONTINUE.—A multi-
13 family borrower shall have the option to dis-
14 continue the forbearance at any time.

15 (4) RENTER PROTECTIONS.—During the term
16 of a forbearance under this section, a multifamily
17 borrower may not—

18 (A) evict a tenant for nonpayment of rent;
19 or

20 (B) apply or accrue any fees or other pen-
21 alties on renters for nonpayment of rent.

22 (5) OBLIGATION TO BRING THE LOAN CUR-
23 RENT.—A multifamily borrower shall bring a loan
24 placed in forbearance under this section current
25 within the earlier of—

1 (A) 12 months after the conclusion of the
2 forbearance period; or

3 (B) receipt of any business interruption in-
4 surance proceeds by the multifamily borrower.

5 (6) DEFINITION.—For the purposes of this sub-
6 section, the term “multifamily borrower” means a
7 borrower of a residential mortgage loan that is se-
8 cured by a lien against a property comprising five or
9 more dwelling units.

10 (g) FEDERAL RESERVE CREDIT FACILITY FOR
11 MORTGAGE SERVICERS.—

12 (1) IN GENERAL.—The Board of Governors of
13 the Federal Reserve System and the Secretary of the
14 Treasury, pursuant to the authority granted under
15 section 13(3) of the Federal Reserve Act, directly
16 (or indirectly through an intermediary, such as the
17 Federal National Mortgage Association, the Federal
18 Home Loan Mortgage Corporation, the Government
19 National Mortgage Association, an insured deposi-
20 tory institution, non-depository lending institution,
21 or a special purpose vehicle)—

22 (A) shall extend credit to mortgage
23 servicers and other obligated advancing parties
24 that in each case have liquidity needs due to the
25 COVID–19 emergency or compliance with this

1 Act with respect to mortgage loans (the “af-
2 fected mortgages”); and

3 (B) may extend further credit to mortgage
4 servicers for other liquidity needs due to the ac-
5 tual or imminent delinquency or default on
6 mortgage loans due to the COVID-19 emer-
7 gency.

8 (2) NON-COMPLIANT SERVICERS.—A mortgage
9 servicer shall not be eligible for assistance under
10 paragraph (1) if the provider is in violation of any
11 requirement under this Act, and fails to promptly
12 cure any such violation upon notice or discovery
13 thereof.

14 (3) PAYMENTS AND PURCHASES.—Credit ex-
15 tended under paragraph (1)(A) shall be in an
16 amount sufficient to—

17 (A) cover—

18 (i) the pass-through payment of prin-
19 cipal and interest to mortgage-backed se-
20 curities holders;

21 (ii) the payment of taxes and insur-
22 ance to third parties; and

23 (iii) the temporary reimbursement of
24 modification costs and fees due to servicers
25 that will be deferred until such time as a

1 forbearance period terminates, due in each
2 case on, or in respect of, such affected
3 mortgage loans or related mortgage-backed
4 securities; and

5 (B) purchase affected mortgages from
6 pools of securitized mortgages.

7 (4) COLLATERAL.—The credit authorized by
8 this section shall be secured by the pledgor's interest
9 in accounts receivable, loans, or related interests re-
10 sulting from the payment advances made on the af-
11 fected mortgages by the mortgage servicers.

12 (5) CREDIT SUPPORT.—The Secretary of the
13 Treasury shall provide credit support to the Board
14 of Governors of the Federal Reserve System for the
15 program required by this section.

16 (6) CONFLICT WITH OTHER LAWS.—Notwith-
17 standing any Federal or State law to the contrary,
18 the Federal National Mortgage Association, the Fed-
19 eral Home Loan Mortgage Corporation, and the
20 Government National Mortgage Association may
21 permit the pledge or grant of a security interest in
22 the pledgor's interest in such accounts receivable or
23 loans or related interests and honor or permit the
24 enforcement of such pledge or grant in accordance
25 with its terms.

1 (7) DURATION.—The extension of credit by the
2 Board of Governors of the Federal Reserve System
3 and credit support from the Secretary of the Treas-
4 ury under this section shall be available until the
5 later of—

6 (A) 6 months after the end of the COVID–
7 19 emergency; and

8 (B) the date on which the Board of Gov-
9 ernors of the Federal Reserve System and the
10 Secretary of the Treasury determine such credit
11 and credit support should no longer be available
12 to address the liquidity concern addressed by
13 this section.

14 (8) AMENDMENTS TO NATIONAL HOUSING
15 ACT.—Section 306(g)(1) of the National Housing
16 Act (12 U.S.C. 1721(g)(1)) is amended—

17 (A) by inserting the following new sentence
18 after the fourth sentence in the paragraph: “In
19 any case in which (I) the President declares a
20 major disaster or emergency for the Nation or
21 any area that in either case has been affected
22 by damage or other adverse effects of sufficient
23 severity and magnitude to warrant major dis-
24 aster assistance under the Robert T. Stafford
25 Disaster Relief and Emergency Assistance Act

1 or other Federal law, (II) upon request of an
2 Issuer of any security, the Association elects to
3 extend to the Issuer one or more of the disaster
4 assistance or emergency programs that the As-
5 sociation determines to be available to account
6 for the Issuer's failure or anticipated failure to
7 receive from the mortgagor the full amount of
8 principal and interest due, then (III) the Asso-
9 ciation may elect not to declare the Issuer to be
10 in default because of such request for such dis-
11 aster or emergency assistance.”;

12 (B) by inserting after the word “issued” in
13 the sixth sentence, as redesignated, the fol-
14 lowing: “subject to any pledge or grant of secu-
15 rity interest of the pledgor's interest in and to
16 any such mortgage or mortgages or any interest
17 therein and the proceeds thereon, which the As-
18 sociation may elect to approve;”; and

19 (C) by inserting after the word “issued” in
20 the seventh sentence, as redesignated, the fol-
21 lowing: “, or (D) its approval and honoring of
22 any pledge or grant of security interest of the
23 pledgor's interest in and to any such mortgage
24 or mortgages or any interest therein and pro-
25 ceeds thereon.”.

1 (h) SAFE HARBOR.—

2 (1) IN GENERAL.—Notwithstanding any other
3 provision of law, whenever a servicer of residential
4 mortgages of residential mortgage-backed securi-
5 ties—

6 (A) grants a borrower relief under section
7 6(n) and 6(p) of the Real Estate Settlement
8 Procedures Act of 1974 with respect to a resi-
9 dential mortgage originated before April 1,
10 2020, including a mortgage held in a
11 securitization or other investment vehicle; and

12 (B) the servicer or trustee or issuer owes
13 a duty to investors or other parties regarding
14 the standard for servicing such mortgage,
15 the servicer shall be deemed to have satisfied such
16 a duty, and the servicer shall not be liable to any
17 party who is owed such a duty and shall not be sub-
18 ject to any injunction, stay, or other equitable relief
19 to such party, based upon its good faith compliance
20 with the provisions of 6(n) and 6(p) of the Real Es-
21 tate Settlement Procedures Act of 1974. Any per-
22 son, including a trustee or issuer, who cooperates
23 with a servicer when such cooperation is necessary
24 for the servicer to implement the provisions of 6(n)
25 and 6(p) of the Real Estate Settlement Procedures

1 Act of 1974 shall be protected from liability in the
2 same manner.

3 (2) STANDARD INDUSTRY PRACTICE.—Compli-
4 ance with 6(n) and 6(p) of the Real Estate Settle-
5 ment Procedures Act of 1974 during the COVID–19
6 emergency shall constitute standard industry prac-
7 tice for purposes of all Federal and State laws.

8 (3) DEFINITIONS.—As used in this sub-
9 section—

10 (A) the term “servicer” has the meaning
11 given that term under section 6(i)(2) of the
12 Real Estate Settlement Procedures Act of 1974
13 (12 U.S.C. 2605(i)(2)); and

14 (B) the term “securitization vehicle” has
15 the meaning given that term under section
16 129A(f)(3) of the Truth in Lending Act (15
17 U.S.C. 1639a(f)(3)).

18 (4) RULE OF CONSTRUCTION.—No provision of
19 paragraph (1) or (2) shall be construed as affecting
20 the liability of any servicer or person for actual
21 fraud in servicing of a loan or for the violation of
22 a State or Federal law.

23 (i) POST-PANDEMIC MORTGAGE REPAYMENT OP-
24 TIONS.—Section 6 of the Real Estate Settlement Proce-
25 dures Act of 1974 (12 U.S.C. 2605), as amended by sub-

1 section (d), is further amended by adding at the end the
2 following:

3 “(p) POST-PANDEMIC MORTGAGE REPAYMENT OP-
4 TIONS.—With respect to a federally related residential
5 mortgage loan, before the end of any forbearance provided
6 under subsection (n), servicers shall—

7 “(1) evaluate the borrower’s ability to return to
8 making regular mortgage payments;

9 “(2) if the borrower is able to return to making
10 regular mortgage payments at the end of the for-
11 bearance period—

12 “(A) modify the borrower’s loan to extend
13 the term for the same period as the length of
14 the forbearance, with all payments that were
15 not made during the forbearance distributed at
16 the same intervals as the borrower’s existing
17 payment schedule and evenly distributed across
18 those intervals, with no penalties, late fees, ad-
19 ditional interest accrued beyond the amounts
20 scheduled or calculated as if the borrower made
21 all contractual payments on time and in full
22 under the terms of the mortgage contract in ef-
23 fect at the time the borrower entered into the
24 forbearance, and with no modification fee
25 charged to the borrower; or

1 “(B) if the borrower elects to modify the
2 loan to capitalize a resulting escrow shortage or
3 deficiency, the servicer may modify the bor-
4 rower’s loan by re-amortizing the principal bal-
5 ance and extending the term of the loan suffi-
6 cient to maintain the regular mortgage pay-
7 ments; and

8 “(C) notify the borrower in writing of the
9 extension, including provision of a new payment
10 schedule and date of maturity, and that the
11 borrower shall have the election of prepaying
12 the suspended payments at any time, in a lump
13 sum or otherwise;

14 “(3) if the borrower is financially unable to re-
15 turn to making periodic mortgage payments as pro-
16 vided for in the mortgage contract at the end of the
17 COVID–19 emergency—

18 “(A) evaluate the borrower for all loan
19 modification options, without regard to whether
20 the borrower has previously requested, been of-
21 fered, or provided a loan modification or other
22 loss mitigation option and without any require-
23 ment that the borrower come current before
24 such evaluation or as a condition of eligibility
25 for such modification, including—

1 “(i) further extending the borrower’s
2 repayment period;

3 “(ii) reducing the principal balance of
4 the loan; or

5 “(iii) other modification or loss miti-
6 gation options available to the servicer
7 under the terms of any investor require-
8 ments and existing laws and policies; and

9 “(B) if the borrower qualifies for such a
10 modification, the service shall offer a loan with
11 such terms as to provide a loan with such terms
12 as to provide an affordable payment, with no
13 penalties, late fees, additional interest beyond
14 the amounts scheduled or calculated as if the
15 borrower made all contractual payments on
16 time and in full under the terms of the mort-
17 gage contract in effect at the time the borrower
18 entered into the forbearance, and with no modi-
19 fication fees charged to the borrower; and

20 “(4) if a borrower is granted a forbearance on
21 payments that would be owed pursuant to a trial
22 loan modification plan—

23 “(A) any forbearance of payments shall
24 not be treated as missed or delinquent pay-

1 ments or otherwise negatively affect the bor-
2 rower's ability to complete their trial plan;

3 “(B) any past due amounts as of the end
4 of the trial period, including unpaid interest,
5 real estate taxes, insurance premiums, and as-
6 sessments paid on the borrower's behalf, will be
7 added to the mortgage loan balance, but only to
8 the extent that such charges are not fees associ-
9 ated with the granting of the forbearance, such
10 as late fees, modification fees, or unpaid inter-
11 est from the period of the forbearance beyond
12 the amounts scheduled or calculated as if the
13 borrower made all contractual payments on
14 time and in full under the terms of the mort-
15 gage contract in effect at the time the borrower
16 entered into the forbearance; and

17 “(C) if the borrower is unable to resume
18 payments on the trial modification at the end of
19 the forbearance period, re-evaluate the borrower
20 for all available loan modifications under para-
21 graph 3, without any requirement that the bor-
22 rower become current before such evaluation or
23 as a condition of eligibility for such modifica-
24 tion.”.

1 (j) CLAIMS OF AFFECTED INVESTORS AND OTHER
 2 PARTIES.—Any action asserting a taking under the Fifth
 3 Amendment to the Constitution of the United States as
 4 a result of this subsection shall be brought not later than
 5 180 days after the end of the COVID–19 emergency.

6 (k) EXTENSION OF THE GSE PATCH.—The Director
 7 of the Bureau of Consumer Financial Protection shall re-
 8 vise section 1026.43(e)(4)(iii)(B) of title 12, Code of Fed-
 9 eral Regulations, to extend the sunset of the special rule
 10 provided under such section 1026.43(e)(4) until January
 11 1, 2022, or such later date as may be determined by the
 12 Bureau.

13 (l) DEFINITIONS.—In this section:

14 (1) COVID–19 EMERGENCY.—The term
 15 “COVID–19 emergency” means the period that be-
 16 gins upon the date of the enactment of this Act and
 17 ends on the date of the termination by the Federal
 18 Emergency Management Agency of the emergency
 19 declared on March 13, 2020, by the President under
 20 the Robert T. Stafford Disaster Relief and Emer-
 21 gency Assistance Act (42 U.S.C. 4121 et seq.) relat-
 22 ing to the Coronavirus Disease 2019 (COVID–19)
 23 pandemic.

24 (2) MANUFACTURED HOME.—The term “manu-
 25 factured home” has the meaning given that term

1 under section 603 of the National Manufactured
2 Housing Construction and Safety Standards Act of
3 1974 (42 U.S.C. 5402).

4 (3) MOTOR VEHICLE.—The term “motor vehi-
5 cle” has the meaning given that term under Section
6 1029(f) of the Consumer Financial Protection Act of
7 2010 (12 U.S.C. 5519(f)).

8 (4) RESIDENTIAL MORTGAGE LOAN.—The term
9 “residential mortgage loan” means any consumer
10 credit transaction that is secured by a mortgage,
11 deed of trust, or other equivalent consensual security
12 interest on residence consisting of a single dwelling
13 unit that is occupied by the mortgagor.

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