

April 14, 2020

Commissioner Karima Woods
Department of Insurance, Securities and Banking
1050 First Street, NE, Suite 801
Washington, DC 20002
Karima.Woods@dc.gov

Dear Commissioner Woods,

On behalf of the undersigned organizations representing an important segment of the District of Columbia's real estate finance industry, we are writing to offer vigorous support for your leadership in fighting the ongoing novel coronavirus COVID-19 pandemic. Please know how grateful our organizations are for your tireless efforts and leadership. We understand how you and your team are working around the clock to defeat the impacts of the virus, and we are ready to assist to best serve our community and fellow citizens.

In that spirit of partnership, we are writing to bring to your attention an urgent matter that has created concern for our member companies and request an opportunity to discuss our views. Recently legislation signed by the DC Mayor, B23-0733, contains a provision in Section 202 which requires residential and commercial mortgage servicers to develop a deferment program for borrowers who can demonstrate evidence of a financial hardship resulting from the public health emergency. The purpose of these programs is to allow borrowers and renters to defer their payments for 90 days.

As you know, on March 27th, the President signed the *CARES Act*, the stimulus package that includes a host of provisions, including direct payments to American households and businesses that may experience financial hardship connected to the global spread of the virus, and single-family and multifamily/commercial forbearance, foreclosure, and eviction provisions. Additionally, in support of these consumer and small business needs, the Federal Housing Administration as well as the Government Sponsored Enterprises – Fannie Mae and Freddie Mac– have provided detailed policies and guidance to implement their programs.

Our organizations and our member companies fully support these borrower and renter relief efforts and are working vigorously to implement them. However, the DC Council's legislation is unfortunately duplicative and divergent from these new federal requirements our members are already implementing. In addition to creating legal uncertainty as to which set of requirements servicers are to follow, many DC residents and businesses will be confused as to who may be eligible for forbearance under the legislation. Lastly, the Council has not provided the programmatic specificity needed to operationalize the forbearance program, which will likely lead to unnecessary complaints, a slower reaction to acute borrower need and ultimately enforcement by the Attorney General when a robust federal program is already available.

A key point of conflict rests in the question of how mortgage forbearance is to ultimately be repaid. The Mayor has signed legislation into law which states that borrowers and servicers must agree upon a reasonable period of time by which the borrower has to pay back the deferred 90 days of payments, and that if they cannot agree on a reasonable period of time, the deferred payments are due 5 years after the end of the deferment period or at the end of the loan term, whichever is earlier. It is difficult to imagine that many borrowers will not take

advantage of these unprecedented and extraordinary terms. Further complicating matters, during the forbearance period, servicers are required to advance loan payments, interest, insurance and property taxes on behalf of the borrower to the investor (or bond holder) of the loan. Therefore, the cost of a government required forbearance program is effectively passed on to the servicer without a corresponding remedy. Such a provision poses serious legal questions about violating mortgage contract provisions.

By contrast, federal opportunities offer longer periods of forbearance and greater options for repayment. For example, under the CARES Act, residential borrowers with federally back loans that are experiencing financial hardships as a result of the COVID-19 virus are eligible for an initial payment forbearance period of up to 6 months, and additional extension of up to 6 more months if needed. Multifamily borrowers with federally backed loans that are experiencing financial hardships as a result of the COVID-19 virus are eligible for an initial payment forbearance period of 30 days, and additional extension of up to 2 additional 30-day periods if needed. At the end of the forbearance period, borrowers have multiple options for repaying the missed payments beyond repayment in lump sum or entering a repayment plan. For borrowers who were current prior to the COVID-19 national emergency and can resume making their contractual monthly payments, Fannie Mae, Freddie Mac, FHA and RHS permit repayment over a 12-month period or at the end of the loan, whichever is earlier. For borrowers needing deeper payment relief, loan modifications are available. Servicers for these federal agencies will be faced with legal uncertainty whether to follow the agency forbearance guidelines and the CARES Act or the broader provisions of the DC legislation. Further, lenders and servicers for non-agency loans will similarly be faced with uncertainty as to whether they are allowed to follow the guidance of the forbearance program outlined by the CARES Act and the federal agencies, as well as recent IRS guidance issued for CMBS, or the broader provisions of the DC legislation.

Moreover, the stated legislative intent of B23-0733 creates substantial questions of jurisdiction and scope. First the bill states that “a mortgage servicer that holds mortgage servicing rights to a residential mortgage loan or commercial mortgage loan under the jurisdiction of the Commissioner of the Department of Insurance, Securities, and Banking, shall develop a deferment program for borrowers.” Second, the bill states that it would override exemptions provided for in the Mortgage Lender and Broker Act, which exempts banks, insurance companies, federal agency loans, etc. from licensure. Our industry requires clarity on which loans and issuing entities are intended to be covered by the bill.

We believe the correct approach for the Department is to deem those organizations that are already subject to, and in compliance with, the new borrower and rental forbearance provisions enacted by the federal government housing programs to be compliant with this new DC ordinance. Furthermore, we ask you to consider issuing written guidance as soon as possible on this matter to help clarify the full scope and jurisdiction of the law. For the real estate finance industry to be able to best assist impacted District of Columbia consumers and businesses, it must be afforded legal and regulatory certainty.

We respectfully request an opportunity to discuss the Council’s legislation as soon as possible.

Sincerely,

Mortgage Bankers Association of Metropolitan Washington
Maryland Mortgage Bankers and Brokers Association
Virginia Mortgage Bankers Association
Mortgage Bankers Association

CC:

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