

United States House of Representatives  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, D.C. 20515

July 13, 2020

## Memorandum

**To:** Members, Committee on Financial Services  
**From:** FSC Majority Staff  
**Subject:** July 16, 2020, “Protecting Homeowners During the Pandemic: Oversight of Mortgage Servicers’ Implementation of the CARES Act.”

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The Subcommittee on Oversight and Investigations will hold a hearing entitled, “Protecting Homeowners During the Pandemic: Oversight of Mortgage Servicers’ Implementation of the CARES Act” on Thursday, July 16, 2020, at 12:00 p.m., on the virtual meeting platform Cisco Webex. This hearing will have the following witnesses:

- **Alys Cohen**, Staff Attorney, National Consumer Law Center
- **Marcia Griffin**, Founder and President, HomeFree-USA
- **Donnell Williams**, President, National Association of Real Estate Brokers
- **Ed DeMarco, Ph.D.**, President, Housing Policy Council

### Overview

The widespread shutdown of economic activity across the United States in response to the COVID-19 pandemic resulted in millions of individuals losing their jobs and becoming unable to make their mortgage payments. Nationwide, nearly 33 million people claimed unemployment benefits for the week ending June 20, 2020.<sup>1</sup> Only 1.6 million people claimed unemployment benefits for the same time period in 2019.<sup>2</sup> As of the end of May, 7.76 percent of American mortgages were a month or more past due, the highest rate since 2011.<sup>3</sup> Similar to the 2007-2008 Financial Crisis, the pandemic and its economic fallout have disproportionately affected low- and moderate- income Americans and communities of color.<sup>4</sup> Data obtained from a nationally representative survey revealed higher rates of delinquent rent and utility payments and higher eviction rates among low- and moderate- income homeowners and renters during the pandemic.<sup>5</sup> The economic impact of the COVID-19 health pandemic will most likely exacerbate economic inequities and expand the racial wealth gap.<sup>6</sup>

Congress enacted the Coronavirus Aid, Relief, and Economic Security (CARES) Act on March 27, 2020, in part to provide protections for homeowners facing economic hardships due to the pandemic.<sup>7</sup> Section

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<sup>1</sup> United States Department of Labor, [Unemployment Insurance Weekly Claims Report](#), at 2 & 4 (July 9, 2020).

<sup>2</sup> *Id.*

<sup>3</sup> Black Knight, Inc., [Mortgage Monitor May 2020 Report](#), at 3, 4, & 16 (July 6, 2020).

<sup>4</sup> Urban Institute, [Research Report: How Economic Crises and Sudden Disasters Increase Racial Disparities in Homeownership](#) (June 1, 2020).

<sup>5</sup> Brookings Institute, [Housing hardships reach unprecedented heights during the COVID-19 pandemic](#) (June 1, 2020).

<sup>6</sup> Urban Institute, [Research Report: How Economic Crises and Sudden Disasters Increase Racial Disparities in Homeownership](#) (June 1, 2020).

<sup>7</sup> CARES Act, Pub. L. No. 116-136 (2020).

4022 of the CARES Act provides borrowers with federally-backed mortgages up to 360 days of forbearance and established a 60-day moratorium on foreclosures.<sup>8</sup> Prior to the passage of the CARES Act, the Department of Housing and Urban Development (HUD), the U.S. Department of Agriculture (USDA), the Department of Veterans Affairs (VA), Fannie Mae, and Freddie Mac (collectively the “Enterprises”) issued similar guidance requiring or encouraging temporary foreclosure suspensions.<sup>9</sup>

To qualify for a forbearance under the CARES Act, borrowers must affirm they are experiencing economic hardship due to the COVID-19 pandemic, but no additional documentation is required.<sup>10</sup> The Act requires that servicers provide forbearance for up to 180 days with the option to extend the forbearance up to an additional 180 days at the borrower’s request.<sup>11</sup> The forbearance plan may be shortened at the borrower’s request.<sup>12</sup> Furthermore, the servicer may not charge fees, penalties, or interest beyond what a borrower would have paid if they had made payments as originally scheduled.<sup>13</sup>

Section 4022 of the CARES Act also mandated a suspension on the initiation and completion of all judicial and non-judicial foreclosures on federally-backed mortgages.<sup>14</sup> The CARES Act initially provided for a 60-day foreclosure moratorium, starting on March 18, 2020.<sup>15</sup> However, individual agencies have administratively extended foreclosure and eviction moratoria for federally-backed mortgages through August 31, 2020, separate from the provisions of the CARES Act.<sup>16</sup>

While the protections in the CARES Act do not cover all residential mortgages in the United States, federally-backed mortgages represent about 70 percent of outstanding single-family mortgages and increase opportunities for homeownership among low- and moderate- income borrowers.<sup>17</sup> As such, the CARES Act has helped millions of Americans, as nearly 4.2 million mortgages, or approximately 8.39 percent of all mortgages in mortgage servicers’ portfolios, were in forbearance as of June 28, 2020.<sup>18</sup> The Health and Economic Recovery Omnibus Emergency Solutions Act (the Heroes Act) passed by the House

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<sup>8</sup> Pub. L. No. 116-136, §§ 4022(b)(1) & (c)(2) (2020). The foreclosure and eviction moratoriums have been extended until August 31, 2020 by HUD and FHFA. HUD, [FHA Extends Foreclosure and Eviction Moratorium for Single Family Homeowners For Additional Two Months](#) (June 17, 2020); FHFA, [FHFA Extends Foreclosure and Eviction Moratorium](#) (June 17 2020); Fannie Mae, [Lender Letter \(LL-2020-02\)](#) (June 24, 2020); Freddie Mac, [Temporary Servicing Guidance Related to COVID-19 and EDR Clarifications for All Hardship Reasons](#) (June 24, 2020) (Bulletin 2020-25).

<sup>9</sup> Katie Jones & Andrew P. Scott, Congressional Research Service, IN11334, [Mortgage Provisions in the Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#), at 2 (Apr. 14, 2020).

<sup>10</sup> Pub. L. No. 116-136, § 4022(b)(1) (2020).

<sup>11</sup> Pub. L. No. 116-136, § 4022(b)(2) (2020). The forbearance protections expire on December 31, 2020 or sooner if the president lifts the COVID-19 emergency declaration. Pub. L. No. 116-136, § 4023(5).

<sup>12</sup> *Id.*

<sup>13</sup> Pub. L. No. 116-136, § 4022 (b)(3) (2020).

<sup>14</sup> Katie Jones and Andrew P. Scott, Congressional Research Service, IN11334, [Mortgage Provisions in the Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#) (Apr. 14, 2020); Pub. L. No. 116-136, § 4022(c)(2) (2020).

<sup>15</sup> Pub. L. No. 116-136, § 4022(c)(2) (2020).

<sup>16</sup> HUD, [FHA Extends Foreclosure and Eviction Moratorium for Single Family Homeowners For Additional Two Months](#) (June 17, 2020); Fannie Mae, [Lender Letter \(LL-2020-02\)](#) (Jun. 24, 2020); Freddie Mac, [Temporary Servicing Guidance Related to COVID-19 and EDR Clarifications for All Hardship Reasons](#) (June 24, 2020) (Bulletin 2020-25); U.S. Department of Agriculture, [USDA Extends Foreclosure and Eviction Relief on Single Family Housing Direct Loans](#) (June 23, 2020); Department of Veterans Affairs, [Extended foreclosure Moratorium for Borrowers Affected by COVID-19](#) (June 17, 2020).

<sup>17</sup> The Urban Institute. [The Price Tag for Keeping 29 Million Families in Their Homes: \\$162 Billion](#) (Mar. 27, 2020); FDIC, [Affordable Mortgage Lending Guide: A Resource for Community Bankers](#) (Nov. 2018).

<sup>18</sup> Mortgage Bankers Association, [Share of Mortgage Loans in Forbearance Decreases for Third Straight Week to 8.39%](#) (July 7, 2020).

on May 15, 2020, would extend to all homeowners the foreclosure moratorium for six months as well as CARES Act forbearance protections.<sup>19</sup>

## Regulatory Guidance

Fannie Mae and Freddie Mac have at times provided inconsistent and potentially confusing guidance regarding the CARES Act forbearance protections. While noting that the CARES Act provides for an initial forbearance period of up to 180 days that may be extended to up to one year of total forbearance, Fannie Mae issued guidance on April 8, 2020 indicating that servicers “may provide an initial forbearance period, and any extended forbearance period, in separate, shorter increments. If the borrower’s COVID-19 related hardship has not been resolved during an incremental forbearance period, the servicer must extend the borrower’s forbearance period, not to exceed 12 months total.”<sup>20</sup> Freddie Mac’s guidance issued on the same day referenced that borrowers “may be given an initial forbearance plan for up to 180 days, and thereafter one or more forbearance plan term extensions, provided that total forbearance do not exceed 12 months,” but did explicitly address forbearances for shorter increments.<sup>21</sup>

On June 4, 2020, the CFPB and Conference of State Bank Supervisors issued additional guidance to mortgage servicers regarding the forbearance protections provided under the CARES Act to borrowers with federally-backed mortgages affected by the pandemic.<sup>22</sup> The guidance specified that servicers had to comply with a borrower’s request for a 180-day forbearance and could only provide less than the 180 day forbearance period mandated by the CARES Act “at the borrower’s request or with the borrower’s consent.”<sup>23</sup> On June 10, 2020, Freddie Mac issued similar guidance.<sup>24</sup>

While not specifically covered by the CARES Act, regulators have issued guidance to servicers that borrowers are not required to make a lump sum payment at the end of the forbearance period. The Federal Housing Finance Agency (FHFA) clarified on April 27, 2020 that, with respect to Fannie Mae and Freddie Mac mortgages, servicers could not require borrowers to repay their missed mortgage payments in a lump sum at the end of the forbearance period.<sup>25</sup> Similarly, FHA, VA, and USDA have provided similar joint guidance to servicers of loans that they back.<sup>26</sup>

## Servicers’ Implementation of the CARES Act

The HUD Office of Inspector General (HUD OIG), issued a report on April 27, 2020 of its review of the websites of the 30 top servicers of FHA loans regarding the information provided to borrowers about the forbearance relief provided by the CARES Act.<sup>27</sup> The HUD OIG found that ten servicers lacked information about forbearance that was “readily available” on their websites.<sup>28</sup> Additionally, the report

<sup>19</sup> Heroes Act, H.R. 6800, 116<sup>th</sup> Cong. § 110203 (2020).

<sup>20</sup> Fannie Mae, [Lender Letter \(LL-2020-02\)](#), at 6 (Jun. 24, 2020).

<sup>21</sup> Freddie Mac, [Temporary Servicing Guidance Related to COVID-19](#) (Apr. 8, 2020) (Bulletin 2020-10).

<sup>22</sup> CFPB, [CFPB and State Regulators Provide Additional Guidance to Assist Borrowers Impacted by the COVID-19 Pandemic](#) (June 4, 2020).

<sup>23</sup> CFPB and Conference of State Bank Supervisors, [CARES Act Forbearance & Foreclosure](#), at 2 (June 4, 2020).

<sup>24</sup> Freddie Mac, [Temporary Servicing Guidance Related to COVID-19](#) (June 10, 2020) (Bulletin 2020-21).

<sup>25</sup> FHFA, [“No Lump Sum Required at the End of Forbearance” says FHFA’s Calabria](#) (Apr. 27, 2020).

<sup>26</sup> FHA, VA, & USDA, [CARES Act Forbearance Fact Sheet for Mortgagees and Servicers of FHA, VA, or USDA Loans](#), at 2 (May 2020).

<sup>27</sup> [Memorandum](#) from Brian T. Pattison, Assistant Inspector General for Evaluation, HUD Office of Inspector General, to Joseph M. Gormley, Deputy Assistant Secretary for single family housing HUD (Apr. 27, 2020).

<sup>28</sup> *Id.* at 3.

revealed that fourteen servicers did not include any information on their website about the length of the forbearance period borrowers were entitled to under the CARES Act, and that certain servicers included information giving the impression that lump sum payments were required at the end of the forbearance period.<sup>29</sup> The HUD OIG concluded that “FHA servicer websites provided incomplete, inconsistent, dated, and unclear guidance to borrowers related to their forbearance options under the CARES Act.”<sup>30</sup>

On May 4, 2020, Chairwoman Waters and Representatives Green, Meeks, and Clay sent document request letters to the eleven largest mortgage servicers in the United States seeking information on their implementation of the CARES Act forbearance and foreclosure protections.<sup>31</sup> The letters also sought data regarding the number of forbearance requests received and approved, call volume and wait time for borrowers seeking to speak to a customer service representative, and the number of complaints received.<sup>32</sup> Committee staff reviewed approximately 14,000 pages of records produced in response to these letters.

According to their responses to the May 4, 2020 letters, the eleven servicers approved over 2 million forbearance requests from the March 27, 2020 enactment of the CARES Act through June 30, 2020.<sup>33</sup> The Committee staff’s investigation uncovered that not all servicers provided borrowers the option of an initial 180-day forbearance as required by the CARES Act. Almost all servicers surveyed offered borrowers an initial forbearance period of three months, despite language in the CARES Act that borrowers were entitled to forbearance for a period of up to 180 days (with the option to extend for a total forbearance period of up to 360 days). For example, one servicer’s policy as of May 7, 2020 was to “set up initial forbearance for 3 months and grant extensions for a total of 360 days.”<sup>34</sup> In its online “Covid-19 Resource Center,” the same servicer responded to the question, “Why is my forbearance plan 90 days when I thought I can request up to 180 days,” by stating that “it begins your forbearance period with a 90 day forbearance period to ensure we don’t overstate the length of your hardship.”<sup>35</sup> Similarly, in a May 19, 2020 frequently asked questions document, a servicer instructed its customer service representatives to offer forbearance protections for three months, with the potential for an extension.<sup>36</sup>

The Committee staff’s investigation also revealed that some servicers failed to inform borrowers that they could obtain up to one year of forbearance as provided by the CARES Act. As of May 28, 2020, one servicer’s website included a hypothetical example of requesting forbearance for three months, but never included the information that a total forbearance period was available for up to twelve months. That same servicer did not reference the CARES Act on its websites, paper mail, email, or social media communications with borrowers.<sup>37</sup> On April 17, 2020, another servicer provided talking points to its customer service representatives instructing them to communicate to borrowers that, at the end of the initial three-month forbearance period, the customer would be eligible to “extend the payment relief for an additional three months.” The talking points failed to mention that borrowers could be eligible for up to twelve months of forbearance under the CARES Act.<sup>38</sup>

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<sup>29</sup> *Id.* at 4.

<sup>30</sup> *Id.* at 5.

<sup>31</sup> House Committee on Financial Services, [Waters and Subcommittee Chairs Hold Mortgage Servicers Accountable During COVID-19](#) (May 5, 2020).

<sup>32</sup> See Appendix A for charts of industry-wide forbearance, call, and complaint activity based on publicly available data.

<sup>33</sup> Material on file with the Committee.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Material on file with the Committee.

<sup>37</sup> Material on file with the Committee.

<sup>38</sup> Material on file with the Committee.

While the CARES Act is silent regarding the resumption of payments, the Enterprises and FHA imposed servicing requirements to prevent post-forbearance lump sum payments for borrowers unable to afford it, and released post-CARES Act guidance clarifying that servicers could not require borrowers to make a lump sum payment at the end of the forbearance period.<sup>39</sup> Some servicers, however, provided erroneous or confusing information about whether borrowers had to repay forborne payments in one lump sum payment. Committee staff reviewed a servicer forbearance approval letter that informed borrowers that at the end of the forbearance approval period, “[y]ou will owe, and must pay, all the amounts you have not paid, in addition to your regular monthly mortgage payment effective XX/XX/XXXX [First of Month immediately following end of Forbearance Plan]. We will contact you before the end of the Forbearance Plan to discuss options to bring your account current.”<sup>40</sup> At the top of its online Temporary Hardship Application form, another servicer stated, “all unpaid moneys are due in full at the end of the forbearance,” but further down on the page the servicer referenced “several available options” for paying the missed payments.<sup>41</sup> In explaining forbearance on its website, another servicer informed borrowers that “when your forbearance period ends, any missed payments will be due. We’ll be in touch to explain options that may be available for you to repay these amounts. This may include options like extending your payment assistance period, adding the missed principal and interest to the end of your loan, a repayment plan or loan modification.”<sup>42</sup>

### Potential Liquidity Issues

While the CARES Act affords relief to borrowers unable to make their mortgage payments due to a COVID-19 related hardship, servicers are still required to advance payments to investors holding mortgage-backed securities tied to federally-backed loans. Servicers are also obligated to advance taxes and insurance premiums.<sup>43</sup> With the millions of federally-backed loans now in forbearance, servicers may not have the funds to continue to advance these payments. To address potential liquidity concerns, FHFA announced on April 21, 2020, that servicers would only be required to advance four months of missed principal and interest.<sup>44</sup> On March 27, 2020, Ginnie Mae announced that it was establishing a “Pass-Through Assistance Program (PTAP) through which [servicers] with a [principal and interest] shortfall may request that Ginnie Mae advance the difference between available funds and the scheduled payment to investors.”<sup>45</sup> Ginnie Mae also announced on April 7, 2020 that it was creating a servicer liquidity facility.<sup>46</sup> However, these FHFA and Ginnie Mae decisions only address principal and interest; servicers are still expected to advance tax and insurance payments using their own funds. Further, PTAP is only available when Ginnie Mae has determined that the issuer has exhausted other funding sources. There is some ambiguity about how those determinations will be made. The Heroes Act would permit servicers of federally-backed loans to access funding through the Department of Treasury and Federal Reserve emergency lending facilities to help address these additional funding needs.<sup>47</sup>

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<sup>39</sup> FHFA, [“No Lump Sum Required at the End of Forbearance” says FHFA’s Calabria](#) (Apr. 27, 2020); FHA, VA, & USDA, [CARES Act Forbearance Fact Sheet for Mortgagees and Servicers of FHA, VA, or USDA Loans](#), at 2 (May 2020).

<sup>40</sup> Material on file with the Committee.

<sup>41</sup> Material on file with the Committee.

<sup>42</sup> Material on file with the Committee.

<sup>43</sup> Darryl E. Getter, Congressional Research Service, IN11377, [Mortgage Servicing Rights and Selected Market Developments](#) (May 6, 2020).

<sup>44</sup> FHFA, [FHFA Addresses Servicer Liquidity Concerns, Announces Four Month Advance Obligation Limit for Loans in Forbearance](#) (Apr. 21, 2020).

<sup>45</sup> Ginnie Mae, [Ginnie Mae addresses servicer liquidity issues](#) (Mar. 27, 2020).

<sup>46</sup> Ginnie Mae, [Ginnie Mae approves private market servicer liquidity facility](#) (Apr. 7, 2020).

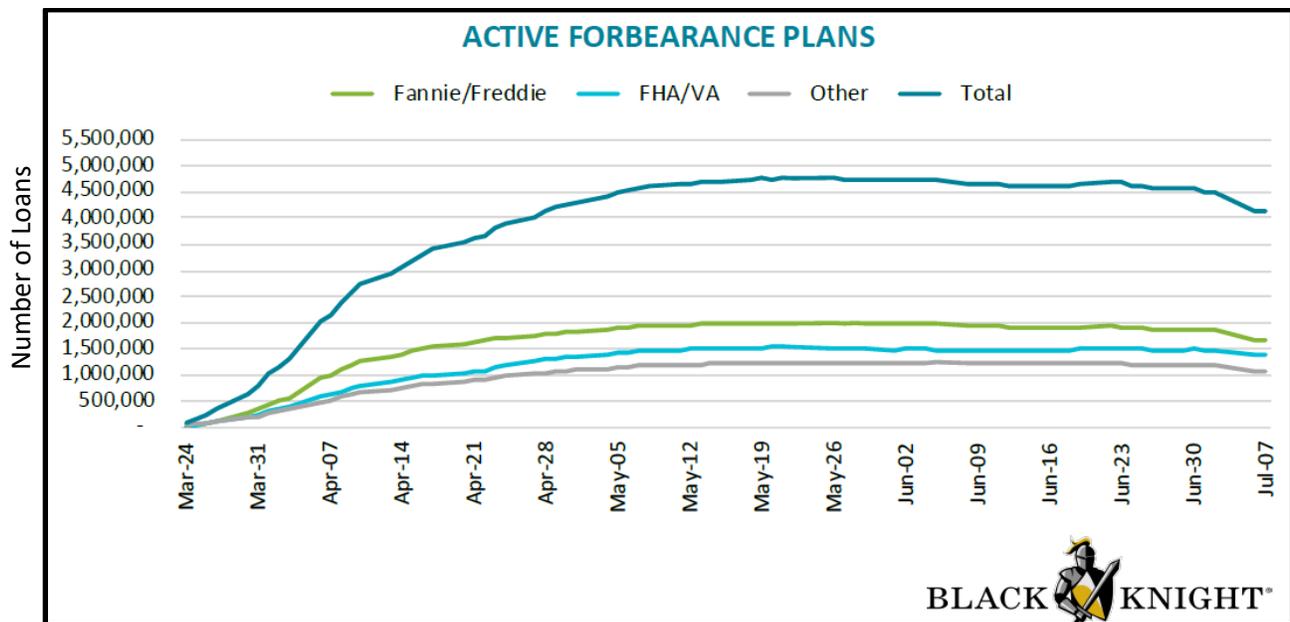
<sup>47</sup> Health and Economic Recovery Omnibus Emergency Solutions Act (the Heroes Act), H.R. 6800, 116<sup>th</sup> Cong. § 110204 (2020).

## Appendix A: Mortgage Forbearance Weekly Data (March - June 2020)

### A. Black Knight, Inc.'s McDash Flash Forbearance Tracker Data <sup>1</sup>

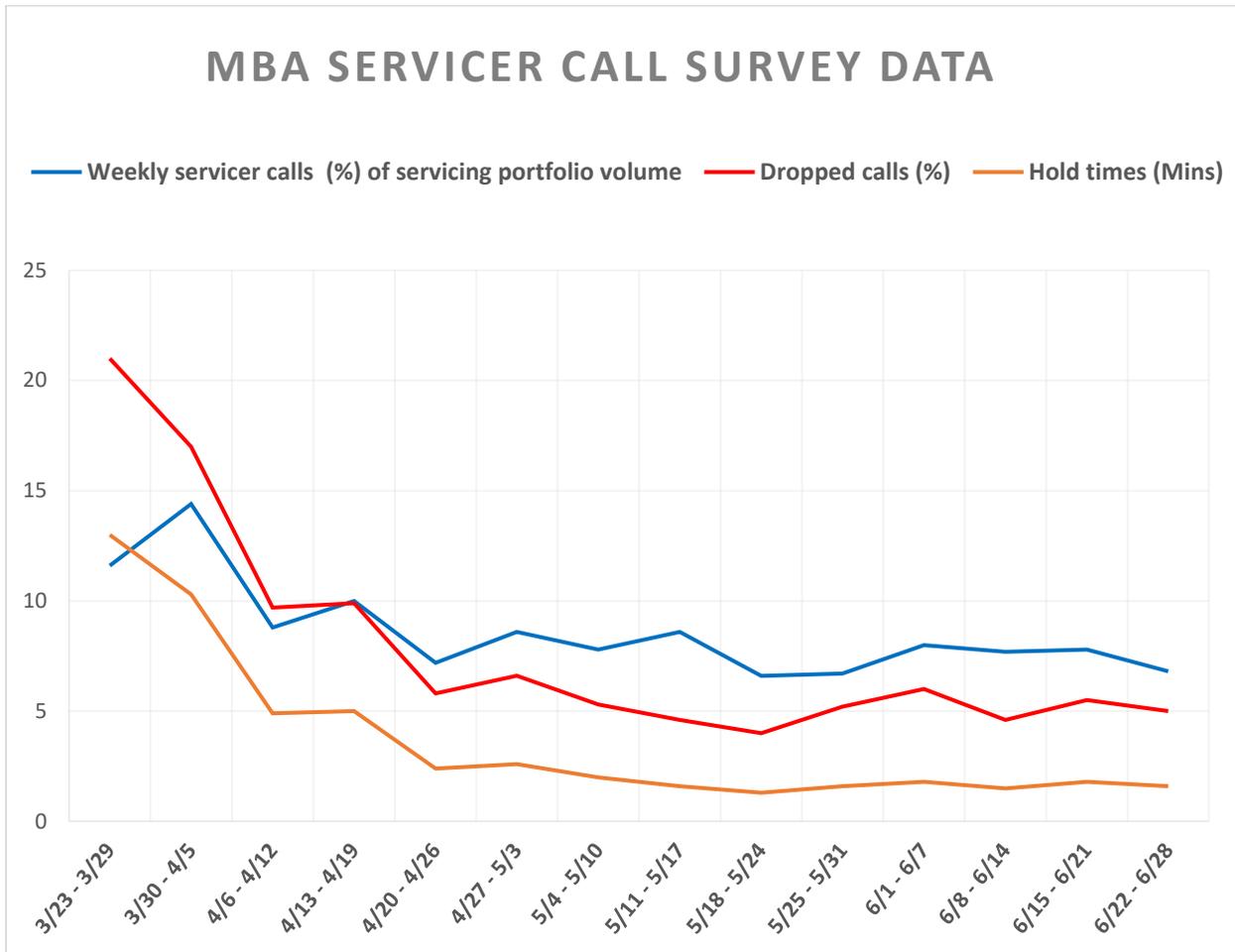
Total Loans in Forbearance (as of July 10, 2020)			
Fannie & Freddie	FHA & VA	Other*	Total
1,678,000	1,399,000	1,067,000	4,144,000

\*"Other" category includes held in portfolios, private labeled securities, or by other entities



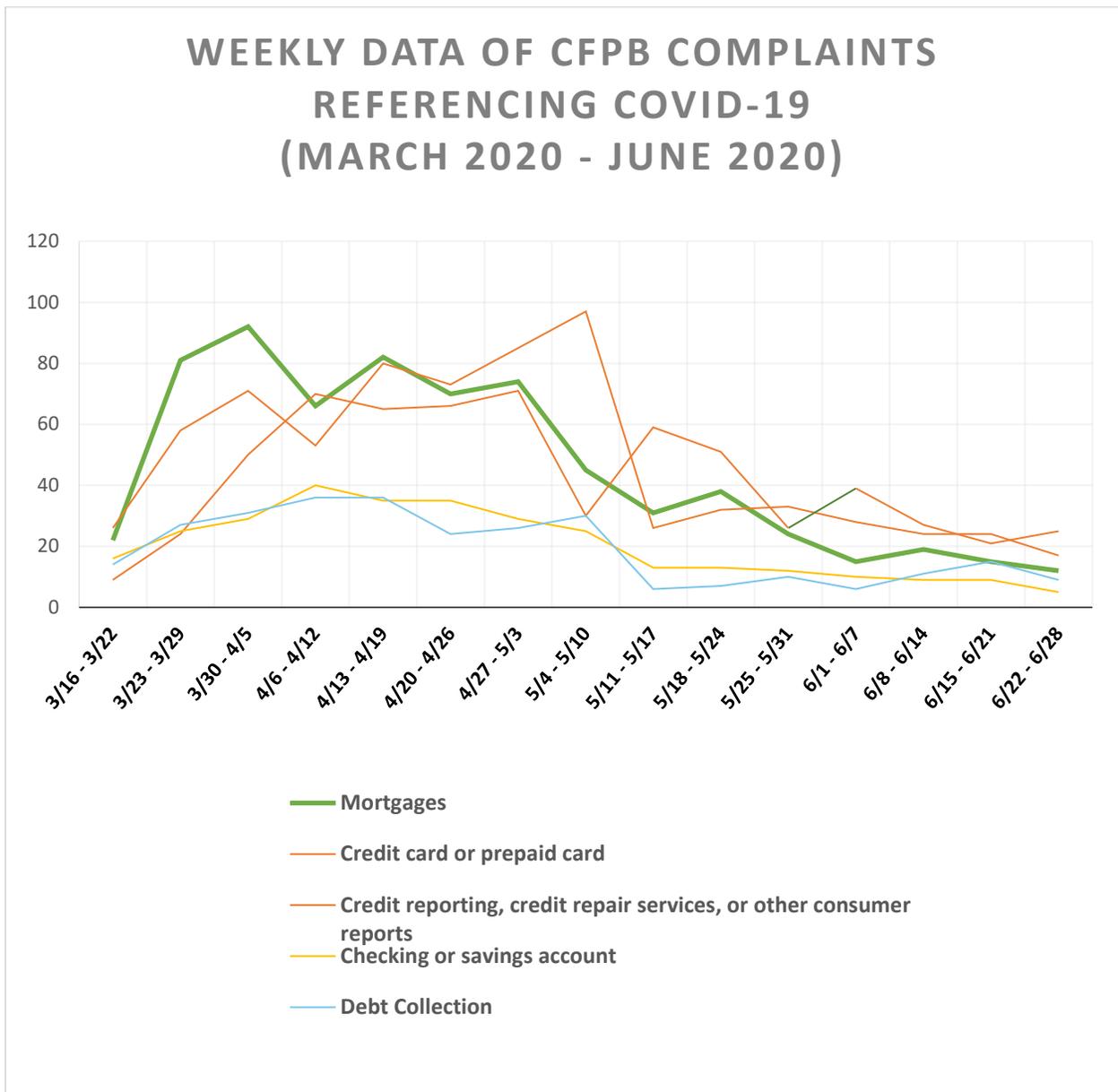
<sup>1</sup> Black Knight, Inc., [Forbearances See Largest Drop Yet](#) (July, 10, 2020).

B. Mortgage Bankers Association Forbearance and Call Volume Survey Data <sup>2</sup>



<sup>2</sup> MBA, [MBA Survey: Share of Mortgage Loans in Forbearance Continues to Climb](#) (Apr. 13, 2020); MBA, [Share of Mortgage Loans in Forbearance Rises to 5.95%](#) (Apr. 20, 2020); MBA, [Share of Mortgage Loans in Forbearance Increases to 6.99%](#) (Apr. 27, 2020); MBA, [Share of Mortgage Loans in Forbearance Increases to 7.54%](#) (May 4, 2020); MBA, [Share of Mortgage loans in Forbearance Increases to 7.91%](#) (May 11, 2020); MBA, [Share of Mortgage loans in Forbearance Increases to 8.16%](#) (May 18, 2020); MBA, [Share of Mortgage Loans in Forbearance Increases to 8.36%](#) (May 26, 2020); MBA, [Share of Mortgage Loans in Forbearance Increases to 8.46%](#) (June 1, 2020); MBA, [Share of Mortgage Loans in Forbearance Increases to 8.53%](#) (June 8, 2020); MBA, [Share of Mortgage Loans in Forbearance Increases to 8.55%](#) (June 15, 2020); MBA, [Share of Mortgage Loans in Forbearance Decreases for First Time in Series to 8.48%](#) (June 22, 2020); MBA, [Share of Mortgage Loans in Forbearance Decreases Slightly to 8.47%](#) (June 29, 2020); MBA, [Share of Mortgage Loans in Forbearance Decreases for Third Straight Week to 8.39%](#) (Jul. 7, 2020).

C. CFPB Complaints Database <sup>3</sup>



<sup>3</sup> CFPB, [Consumer Complaint Database](#) (accessed July 13, 2020).