TO: All Members, California State Legislature

FROM: California Bankers Association

DATE: February 2, 2021

RE: **<u>COVID-19 Relief Efforts</u>**

Dear California State Legislator:

We are outreaching today to provide an update on some of the relief efforts undertaken and underway to assist customers affected by the Coronavirus (COVID-19) and to see how we can continue to be a resource to you, your staff, and your constituents as we work together through this crisis. We appreciate your leadership and the important work you are doing on behalf of Californians.

Since the beginning of this pandemic, California's banks have been outreaching and working proactively with customers to minimize the adverse financial effects of this crisis. Banks are delivering meaningful relief and resources to assist their customers. Beyond the proactive efforts by individual banks and the work they have been doing to implement and deploy relief made available through state and federal programs, we continue to encourage customers experiencing hardships to reach out early and immediately to their financial institution given their unique personal financial situation.

HELPING CONSUMERS

Relief offered to consumers has been deployed in several ways, including, but not limited to, forbearance of loan payments and facilitating access to economic impact payments that have flowed through the banking system.

<u>Mortgages</u>

Federal legislation enacted in March 2020, known as the Coronavirus Aid, Relief & Economic Security (CARES) Act, continues to make available relief for residential mortgage loan borrowers as follows:

- **Single Family Forbearance** – For loans backed by federal government agencies or government sponsored entities (Fannie Mae and Freddie Mac):
    - o Mortgage servicers are required to grant up to 180 days of forbearance to borrowers who request and make an affirmation of financial hardship due to COVID-19. That initial period must be extended up to another 180 days at the borrower's request.

- Mortgage servicers are restricted from assessing penalties, fees, or extra interest during the forbearance period.

One important data point is the fact that the federal government does not service mortgages. Rather, the federal government provides a source of liquidity for the mortgage marketplace or serves in the role as a provider of loan insurance. Accordingly, relief provided by the CARES Act is delivered through private sector mortgage servicers, such as banks and other mortgage companies, working closely with their borrowers.

Since the enactment of the CARES Act, the Federal Housing Finance Agency (FHFA), which oversees Fannie Mae and Freddie Mac, and the Federal Housing Administration (FHA) have extended deadlines surrounding mortgage relief. As the pandemic has evolved, the FHA and FHFA continue to monitor the virus's impact on borrowers and has periodically updated their policies. A few examples illustrate the point.

On January 19, 2021, FHFA extended the moratorium on single-family foreclosures until February 28, 2021. In addition, on January 20, 2021, President Biden signed an executive order extending the deadline to March 31, 2021, for FHA loan borrowers to request and obtain up to six months of an initial pause in their mortgage payments. The executive order also extended the foreclosure moratorium for single-family homeowners with FHA-insured mortgages through March 31, 2021. President Biden has also announced an additional economic stimulus proposal that extends the federal eviction moratorium and allow borrowers with federally guaranteed mortgages to apply for forbearance until September 30, 2021.

- **Multi-Family (5+ units) Forbearance** – Borrowers may request forbearance for a 30-day period, with up to two 30-day extensions:

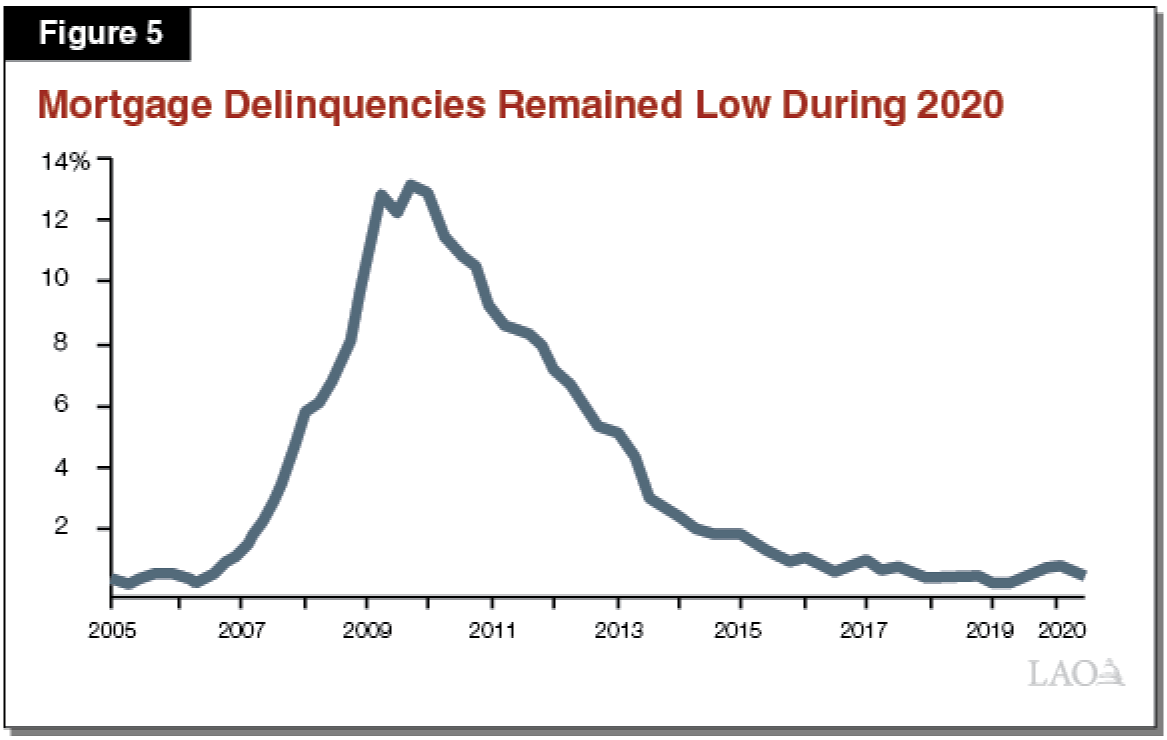
    - Mortgage servicers are required to document the borrower's hardship.
    - Borrowers must provide tenant protections, including prohibitions on evictions for nonpayment or late payment fees.

The relief outlined above for multi-family mortgage loan borrowers was set to expire on December 31, 2020, but action taken by the FHFA on December 23, 2020, extends this relief through March 31, 2021. As mentioned above, it is anticipated that the federal agencies will continue to monitor conditions and will update their policies accordingly.

While the pandemic continues to evolve, recent data from the national Mortgage Bankers Association (MBA) indicates that residential mortgage loans in forbearance are declining from a peak of 8.6 percent in June 2020. As of January 17, 2021, the MBA indicates that 5.4 percent of mortgages are in forbearance. It is also notable that for the cumulative forbearance exits from June 1, 2020, through January 17, 2021, that 29 percent of borrowers continued to make their monthly payments during their forbearance period.

A report released on January 19, 2021, from the independent Legislative Analyst's Office (LAO), titled, *How Has COVID-19 Affected Renters and Homeowners?*, indicates that "Because of homeowners' generally stronger financial position and federal policy response to the pandemic, homeowners have fared relatively well during the pandemic compared to the concerns many observers held during the first months of the pandemic. Throughout 2020, mortgage delinquencies remained very low, in part because—as discussed earlier—job losses have been less severe in jobs typically held by homeowners and federal stimulus programs have stabilized household budgets."

The LAO included the following graph illustrating their point:



While delinquencies remain low, it's important to underscore important state and federal consumer protections in place since the last economic recession designed to help distressed residential mortgage loan borrowers, specifically in California, where state law requires mortgage servicers to outreach and have conversations with borrowers to explore possible solutions and foreclosure prevention alternatives before beginning the foreclosure process.

More specifically, California's Homeowner Bill of Rights (HBOR) provides basic fairness and transparency for homeowners in the foreclosure process. Key provisions include:

- Borrower outreach and exploration of options to avoid foreclosure: Before a notice of default may be filed, mortgage servicers must contact borrowers to assess their financial situation and explore options for the borrower to avoid foreclosure. Mortgage servicers must also provide the toll-free telephone number made available by the U.S. Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency.

- Restriction on dual track foreclosure: Mortgage servicers are restricted from advancing the foreclosure process if the homeowner is working on securing a loan modification. When a homeowner completes an application for a loan modification, the foreclosure process is essentially paused until the complete application has been fully reviewed.
- Provisions of a single point of contact: Homeowners are provided a single point of contact as they navigate the system and try to keep their homes – a person or team with the mortgage servicer who knows the facts of their case, has their paperwork and can get them a decision about their application for a loan modification.
- Verification of documents: Mortgage servicers that record and file multiple unverified documents will be subject to a civil penalty of up to $7,500 per loan in an action brought by a civil prosecutor. Mortgage servicers who are in violation are also subject to enforcement by licensing agencies, including the Department of Financial Protection and Innovation and the Department of Real Estate.
- Enforceability: Borrowers have authority to seek redress of material violations of these foreclosure process protections. Injunctive relief is available prior to a foreclosure sale and recovery of damages is available following a sale.

The California Bankers Association (CBA) worked collaboratively last year with the governor, Legislature, and other stakeholders in advancing *AB 3088 (Chiu) Chapter 37, Statutes of 2020*. Among other provisions, the measure expands the HBOR, applying its provisions to non-owner occupied residential 1-4 properties as a means to provide relief to small landlords. These protections will remain in place until January 1, 2023.

In addition, *AB 3088* requires mortgage servicers to provide a notice to borrowers in circumstances where forbearance is denied. The notice must set forth the reasons why forbearance is denied and if there is a defect in the borrower's request, the mortgage servicer must identify the defect and give the borrower an opportunity to cure the defect. These notice provisions were set to sunset on April 1, 2021, but have been extended in *SB 91 (Committee on Budget and Fiscal Review) Chapter 2, Statutes of 2021* until September 1, 2021. Also, last year's compromise requires that mortgage servicers comply with federal requirements pertaining to borrower options following a COVID-19 related forbearance. Failure to comply with the provisions is punishable by a private right of action with attorney's fees and court costs as early as an injunction.

An additional observation between the pandemic and the last economic recession is that today property values continue to rise leading to increased equity in real property. December 2020 data from the California Association of Realtors indicates that the state-wide median single-family home price is $717,930, nearly 17 percent higher compared to December 2019. Increased property values have provided borrowers with an opportunity to refinance their mortgage in a low interest rate environment that can result in reduced monthly mortgage payments and increased cash flow to the borrower.

Auto

Since the beginning of the pandemic, banks have helped their borrowers with their auto loans through forbearance and temporary cessation of repossessions. Lenders continue to work with their borrowers on loan repayment options and proactively outreaching to borrowers who may be experiencing a financial hardship due to COVID-19.

Economic Impact Payments

The CARES Act, and the more recent Economic Aid Act enacted in December, provides direct payments to individuals known as economic impact payments. These payments were issued by the Internal Revenue Service through direct deposit or the issuance of paper checks.

The banking industry worked closely with stakeholders to ensure as many of these payments were made through direct deposit as opposed to the issuance of paper checks. This was done as a means to expedite an individual's receipt of these much-needed funds understanding that there would be limitations to the federal government's capacity to issue paper checks leading to delayed disbursement and the potential added burden of recipients having to negotiate paper items. The industry also advocated for limitations on garnishments against these economic impact payments.

Essential Workforce - Critical Infrastructure

As providers of financial services, banks are part of the essential workforce and are deemed critical infrastructure. Banks have remained open - subject to constraints of state and local health orders - since the start of the pandemic, ensuring that both retail and business customers have the ability to complete financial transactions both in person and online.

While banks have made efforts to expand remote work options where possible, associates who are needed to maintain systems for processing financial transactions and services, who provide customer access to banking services, or who support financial services have worked on the front lines to ensure the continuity of customer financial transactions.

At branch locations, California's banks continue to prioritize the safety of employees and customers. In addition to practicing social distancing, banks have implemented regular deep cleaning of facilities. In order to better protect customers, some banks are also providing in-person banking services by appointment to ensure limited contact or offering services through drive-up windows.

To better protect workers, banks have implemented rotating schedules, have made adjustments for high risk employees or employees with child-care needs, or have provided hardship relief, crisis relief or premium pay to employees.

Recognizing that some customers prefer or need to perform their banking transactions without leaving the home, California's banks have increased their efforts to raise the awareness of mobile banking options, online and voice banking services, as well as ATMs.

SUPPORTING SMALL BUSINESSES

Paycheck Protection Program

For small businesses, the CARES Act authorized $349 billion for small business support to be administered through the federal Small Business Administration and the Paycheck Protection Program (PPP). For background, the federal government does not make loans directly to small businesses. Instead the federal government relies upon participating private sector lenders to extend credit consistent with the guidelines established by the federal government. Accordingly, PPP loans are made through eligible SBA participating lenders, such as banks.

The initial $349 billion in federally guaranteed loans was made available through the PPP to provide eight weeks of cash-flow assistance to small businesses who maintain their payroll during the emergency. After the first round of funds were depleted, the Paycheck Protection Program and Health Care Enhancement Act, authorized an additional $321 billion in funding for the PPP. Ultimately, there were 5.2 million loans totaling $525 billion. California received the most funding in the nation with approximately 623,360 loans made to small businesses by participating lenders totaling $68.6 billion.

CBA, along with banking trade associations across the country, successfully advocated at the federal level for the re-opening of the PPP and a streamlined forgiveness application. We were pleased that the Economic Aid Act allocated $284 billion to re-open the PPP. Among other changes, small businesses that previously received PPP loans may be eligible for a second draw loan.

For most borrowers, the maximum second draw loan amount is 2.5 times the average monthly 2019 or 2020 payroll costs up to $2 million and loan proceeds can be used to fund payroll costs, including benefits; pay for mortgage interest; rent; utilities; worker protection costs related to COVID-19, etc. Eligible borrowers must have previously received a first draw loan (and will or has used the full amount only for authorized uses); have no more than 300 employees; and can demonstrate at least a 25 percent reduction in gross receipts between comparable quarters in 2019 and 2020.

Relative to loan forgiveness, the Economic Aid Act includes important relief for small business borrowers who have PPP loans of $150,000 or less. These borrowers may now submit a one-page, streamlined forgiveness application. This reform was critical as banking trade associations, working closely with their small business borrowers, became increasingly aware of the challenges and time commitments by small businesses when completing complicated loan forgiveness applications.

Troubled Debt Restructuring Accounting Rules

The CARES Act provided temporary relief on troubled debt restructuring (TDR) accounting rules so that banks could facilitate loan forbearances that would have otherwise triggered longstanding accounting rules. Once a loan is classified as a TDR, it often requires twice the regulatory capital of other loans, is ineligible for consideration as collateral at the Federal Reserve, and often requires that the bank begin to take remedial steps against a loan, including foreclosure. These accounting rules limit and frustrate a bank’s ability to work with their customers.

Understanding that the TDR relief provided for in the CARES Act was set to expire on December 31, 2020, CBA, along with banking trade associations throughout the country advocated for an extension. We were pleased that the Economic Aid Act included a one-year extension which will be critically important as banks continue to work with small businesses that need forbearance on their commercial loan payments.

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We appreciate the opportunity to share an update. Banks remain committed to proactively working with their customers and have been honored to work closely in partnership with stakeholders at the state and federal level to deploy critical relief. We would be pleased to provide additional information or answer questions that you may have on the banking industry's efforts to support their customers and communities. We know that the work is not done and that additional efforts will be necessary to help those impacted by the pandemic. We look forward to the opportunity to continue to collaborate with you.

Sincerely,

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