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**National Association of Federally-Insured Credit Unions**

April 1, 2020

The Honorable Dr. Mark A. Calabria  
Director  
Federal Housing Finance Agency  
400 7<sup>th</sup> Street SW  
Washington, D.C. 20024

**RE: Payments During COVID-19 Mortgage Forbearance Endangers Credit Unions**

Dear Director Calabria:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing to request the Federal Housing Finance Agency (FHFA) instruct Fannie Mae and Freddie Mac, the government-sponsored enterprises (GSEs), to provide relief for credit unions that will be affected by an increase in forbearance requests for loans sold to the GSEs. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve nearly 120 million consumers with personal and small business financial service products. The *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act) provides borrowers with the right to request a special forbearance on mortgage loans sold to the GSEs; however, it does not provide relief for mortgage servicers who must continue to make monthly payments to investors on mortgage-backed securities (MBS). Unlike for-profit banks, credit unions are uniquely limited in their sources of regulatory capital, so a large increase in the number of forbearance requests from borrowers affected by the novel coronavirus (COVID-19) pandemic could significantly strain credit unions' liquidity needs. Moreover, the FHFA should direct the GSEs to streamline its process for loan modifications so that small servicers are not put at a disadvantage.

Under the CARES Act, Sections 4022 and 4023 provide borrowers with forbearance options for single-family and multifamily loans sold to the GSEs, respectively. Under Section 4022, the borrower may request a special forbearance on loan payments for up to 180 days, with an option for an additional 180-day extension. These requests may be made through the covered period, which although not explicitly defined in this section, may be interpreted to mean from the date of enactment (March 27, 2020) through the earlier of the termination date of the national emergency or December 31, 2020.<sup>1</sup> During this period, credit unions expect many of their members to submit requests for forbearance as countless individuals may be furloughed or laid-off from their jobs as a result of the COVID-19 pandemic and facing financial hardship. However, credit union mortgage servicers are contractually obligated to continue to make payments to investors on the interest, with respect to Freddie Mac mortgages, and interest and principal, with respect to Fannie Mae

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<sup>1</sup> This definition of "covered period" may be interpreted based on the covered period listed in CARES Act Section 4023(f)(5).

mortgages, on MBS, based on a calculation of the unpaid principal balance of the loan after the last payment was received from the borrower.<sup>2</sup>

As you recently acknowledged, by May 2020, over 2 million borrowers could request forbearance on their mortgage payments. Credit unions stand ready to help their members remain in their homes but may also be facing difficulties handling the large volume of forbearance requests. NAFCU urges the FHFA to direct the GSEs to be as transparent as possible with respect to expectations for servicers during these unprecedented times and offer assistance programs for servicers encountering difficulties making the required payments to the GSEs on mortgages and MBS.

### **Advancing Interest Payments During the Pandemic Poses Risk to Credit Union Capital**

NAFCU greatly appreciates the FHFA's recent announcement of forbearance options for borrowers and limits on evictions as the safety and well-being of our nations' consumers is the top priority during this crisis. Considering the current economic crisis, preserving the safety and soundness of our nation's mortgage industry is another important objective. The smooth functioning of credit markets could be severely disrupted by the strain on the housing finance system resulting from the COVID-19 pandemic.

Under section 8103.9 of the Freddie Mac Single-Family Seller/Servicer Guide, when delinquency relief (such as forbearance, a repayment plan, or payment deferral) is granted on a loan, Freddie Mac must receive payment of scheduled interest amounts. Although servicers are only required to pay a proportionate share of principal collections, servicers must continue to make ongoing payments of interest at the scheduled amount, regardless of the performance status of the loan. Further, under section C-3-01 of the Fannie Mae Single-Family Servicing Guide, the servicer must remit interest to Fannie Mae on behalf of investors for scheduled (interest)/actual (principal) remittance type MBS mortgage loans and must remit principal and interest for scheduled/scheduled remittance type MBS mortgage loans regardless of whether it actually receives payments from the borrower.

With a significant amount of forbearance applications expected over the next few months and no relief on the required advances on interest and principal payments as well as taxes, insurance costs, and other fees required on the loan, credit unions may experience a negative impact on their net worth as they are forced to use capital reserves to cover these costs. Although in similar disaster forbearance programs in the past the GSEs have reimbursed the servicer after the end of the forbearance term, the initial upfront cost in this situation could be extensive as the forbearance term could be close to a year. Some credit unions may, as a result, be at risk of facing supervisory action if their net worth falls below minimum requirements.

Although depository institutions generally do have regulatory capital reserves and access to liquidity sources, credit unions are uniquely limited in their capital options. Credit unions are subject to a statutorily defined capital framework that provides limited options for external sources

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<sup>2</sup> See Freddie Mac *Single-Family Seller/Servicer Guide* (Jan. 9, 2019), §8103.9 "Accounting with respect to delinquency relief (03/02/16)," at 1476; Fannie Mae *Single-Family Servicing Guide* (Jan. 18, 2017) C-3-01: Responsibilities Related to Remitting P&I Funds to Fannie Mae.

of capital. A credit union's net worth is generally defined as "the credit union's retained earnings balance, as determined under generally accepted accounting principles." In the case of low-income designated credit unions, secondary capital accounts may also be counted toward net worth.<sup>3</sup>

The FHFA should take swift action to instruct the GSEs to offer assistance to mortgage servicers that have sold loans to the GSEs in order to avoid negative impacts on credit union net worth and to protect the stability of credit union mortgage servicers. Mindful of these concerns, on March 30, 2020, Ginnie Mae announced it would offer in the next two weeks a Pass-Through Assistance Program (PTAP) that would allow issuers to sign an agreement for Ginnie Mae to assist in the advance of principal and interest on MBS by paying the difference between available funds and the scheduled payment to investors. The FHFA should consider permitting the GSEs to offer similar programs.

### **Liquidity Shortfalls at Third-Party Servicers Could Have a Domino Effect**

Some credit unions may also see severe operational challenges arise due to the failure of their third-party servicers/sub-servicers. For example, some third-party servicers process borrowers' forbearance requests; if the third-party servicer were to fail, mandatory compliance with such requests would be significantly delayed and disrupted. Additionally, many credit unions that rely on third-party servicers do not have their own systems in place to process mortgage loan payments. In these situations, the sub-servicers process payments, complete all accounting on the members' account, and report payments to the credit reporting agencies. If these mortgage servicers were to fail, credit union members would experience significant delays as credit unions work to notify all members to send payments directly to the credit union, develop new systems to process payments and credit their members' accounts. Those credit unions that retain servicing rights on their loans, but use a third-party servicer, would be unable to process mortgage payments for months until they could operationalize their own systems.

Section 4003 of the CARES Act authorizes and appropriates \$454 billion for loans, loan guarantees, and investments in programs or facilities established by the Federal Reserve for the purpose of providing liquidity to the financial system that supports lending to eligible businesses, states, or municipalities. This funding could enable the Federal Reserve and U.S. Department of the Treasury (Treasury) to establish a liquidity facility for mortgage servicers to access funds for advancing principal and interest payments. NAFCU, therefore, urges the FHFA to work with the Treasury, the Federal Reserve and other members of the Financial Stability Oversight Council to ensure that liquidity shortfalls at these non-bank mortgage servicers do not have a domino effect on depository institutions and borrowers, and cripple the entire housing finance system. Given the current projections for the spread of COVID-19, the issues facing nonbank mortgage servicers are likely to persist for longer than a couple of months, which would put those lenders at bigger risk of failure.

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<sup>3</sup> 12 U.S.C. 1757a(c)(2).

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## **The Loan Modification Process Should be Streamlined**

Another issue that NAFCU's members are concerned about is the aftermath of the forbearance process. After the forbearance period, the borrower must enter into a repayment plan, but if a repayment plan does not work for the borrower, then the loan must undergo a modification. During recent natural disasters, such as hurricanes, some of NAFCU's member credit unions experienced complicated and burdensome processes simply because the GSEs had classified them as "small servicers." One member reported having to manually update information on approximately 300 individual loan modifications into the GSEs' systems. Larger servicers, on the other hand, were permitted to simply upload a spreadsheet containing information regarding the loan modifications.

Considering the large number of loan forbearance requests that NAFCU's member credit unions anticipate over the next few months, the GSEs should revise this process and not distinguish between small and large servicers for the purposes of entering loan modification information into their systems. Credit unions have limited resources and should not be disadvantaged compared to large lenders in the loan servicing process, particularly during a public health and economic crisis. The FHFA should direct the GSEs to put an end to this distinction between small and large servicers for the purposes of entering loan modifications into the GSEs systems and streamline the entire process to accommodate the anticipated increase in modifications.

## **Conclusion**

NAFCU requests that you take immediate action to assist credit unions facing large monthly payments on nonperforming loans sold to the GSEs and also protect credit unions from the secondary impacts of liquidity issues threatening their third-party servicers. The safety and soundness of our nation's housing finance system and the financial health of consumers is reliant on swift legislative and regulatory action during times of crisis. NAFCU urges you to act now to protect credit unions from significant impacts on their capital reserves and other effects from what is almost certain to be a significant rise in forbearance requests. The FHFA should also streamline the process for loan modifications so that small servicers like credit unions are not disadvantaged.

If you have any questions or if I may be of assistance to you in any way, please do not hesitate to contact me directly or Ann Kossachev, NAFCU's Director of Regulatory Affairs, at 703-842-2212 or [akossachev@nafcu.org](mailto:akossachev@nafcu.org).

Sincerely,



B. Dan Berger  
President and CEO