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HOUSING FINANCE: REGULATORY IMPACT OF THE COVID-19 PANDEMIC

In this article the author describes federal and state moratoriums on foreclosures on delinquent mortgage loans and evictions of tenants for non-payment of rent. He then discusses expanded forbearance programs, regulatory relief for lenders and servicers, and support of the secondary market for mortgage loans.

By Dwight Smith *

As it was in the last crisis, housing finance is at the economic center of today's crisis — this time, the COVID-19 pandemic and the federal response. It also presents the remaining legacy issue of the 2008-2009 financial crisis: the fate of Fannie Mae and Freddie Mac (the "Enterprises"). This article covers three sets of issues: restrictions on foreclosures, evictions, and expanded forbearance programs; regulatory relief for lenders and servicers; and support of the secondary market for mortgage loans.

FORECLOSURE AND EVICTION MORATORIUMS

A central concern of Congress and the agencies regarding the economic effect of the COVID-19 pandemic has been the impact of job losses and compensation reductions on the ability of mortgage borrowers to repay their loans. The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act")¹ contained two important supports for borrowers — moratoriums on foreclosures (and evictions) and forbearance on loan repayments. Federal regulatory agencies and the Enterprises, as well as state and local

governments, have imposed their own moratoriums as well.

With respect to foreclosures, the CARES Act contains two moratoriums — one for 1-to-4-family mortgage loans and the other for multifamily loans. Section 4022(c)(2) prohibits a servicer of a federally-backed mortgage loan² from, during the term of the moratorium, initiating any judicial or non-judicial foreclosure process, move for a foreclosure judgment or order of sale, or execute a foreclosure-related eviction or foreclosure sale. This statutory moratorium was for 60 days from enactment the CARES Act, which was March 27, i.e., a moratorium that expired on May 26. By agency action, however, the moratorium on foreclosures on delinquent single-family mortgage loans

¹ Pub. L. No. 116-136 (Mar. 27, 2020).

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² Federally-backed mortgage loans include mortgage loans, home equity conversion mortgages, and loans to Native Americans and Native Hawaiians that are insured by the Federal Housing Administration (through the Mutual Mortgage Insurance Fund), mortgage loans insured by either the Department of Veterans Affairs or the U.S. Department of Agriculture, and mortgage loans purchased or securitized by Fannie Mae or Freddie Mac. CARES Act § 4022(a)(2).

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