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COVID 19: Consumer Loan Forbearance and Other Relief Options

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SUMMARY

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COVID 19: Consumer Loan Forbearance and Other Relief Options

A growing number of reported Coronavirus Disease 2019 (COVID-19) cases have been identified in the United States, significantly impacting many communities. This situation is evolving rapidly, and the economic impact has been large due to illnesses, quarantines, social distancing, local stay-at-home orders, and other business disruptions. Consequently, many Americans will lose income and face financial hardship due to the COVID-19 pandemic.

Many consumers may have trouble paying their loan obligations, such as mortgages, student loans, auto loans, and credit cards. Due to increasing hardship, *loan forbearance* has become a common form of consumer relief during the COVID-19 pandemic. Loan forbearance plans are agreements that allow borrowers to reduce or suspend payments for a short period of time, providing extended time for consumers to become current on their payments and repay the amounts owed. These plans do not forgive unpaid loan payments and tend to be appropriate for borrowers experiencing temporary hardship. Loan forbearance may become a less viable option to deal with the financial ramifications of COVID-19 if the pandemic causes prolonged disruptions, such as persistent elevated levels of unemployment or permanent business closures.

A consumer's ability to get a forbearance and under what terms may be significantly influenced by what type of institution owns the loan. These various institutions—including banks and credit unions, private nonbank financial institutions, government-sponsored enterprises (GSEs), and the federal government—are subject to different laws, regulations, and business considerations.

In response to the COVID-19 pandemic, the President signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136) on March 27, 2020. The act establishes consumer rights to be granted forbearance for federally insured mortgages (Section 4022) and federal student loans (Section 3513). The law also protects the credit histories of consumers with forbearance agreements (Section 4021).

The CARES Act establishes consumer rights to be granted forbearance for many types of mortgages and federal student loans, but the act does not grant consumers these rights for other types of consumer loan obligations, such as auto loans, credit cards, private student loans, and bank-owned mortgages. In these cases, financial institutions have discretion about when and how to offer loan forbearance or other relief options to consumers. Therefore, a consumer's ability to access these options may vary.

In addition to legislative responses, financial regulatory agencies have responded to the COVID-19 pandemic using existing authorities to encourage loan forbearance and other financial relief options for impacted consumers. Many financial regulatory agencies have updated their guidance to help financial firms support consumer needs during this time. Regulatory guidance does not force financial institutions to take any particular action for consumers (such as offering loan forbearance), but it can encourage them to offer various forms of support. In recent weeks, many banks and credit unions have announced measures to offer various forms of assistance to affected consumers.

The economic effects of the COVID-19 pandemic impact the financial system in important ways. Large numbers of missed consumer loan payments can have significant negative consequences for financial institutions. Because of the potential strain on the financial system, it might be challenging for institutions to provide consumer relief,

and financial relief efforts may be insufficient to provide widespread assistance to impacted consumers without direct government intervention.

Many consumers having trouble paying their loans may not realize that the CARES Act gives consumers a right to be granted loan forbearance in certain circumstances, and that their financial institutions can provide loan forbearance, access to credit, or other assistance. If consumers are not aware of these existing relief options, it is possible that relief might not reach the most in need. In addition, increasing fraud schemes relating to COVID-19 seem to be occurring, which can drive consumer confusion. Both government agencies and financial institutions can play an important role in communicating with financially impacted consumers.

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A growing number of reported Coronavirus Disease 2019 (COVID-19) cases have been identified in the United States, significantly impacting many communities.[1] As this situation rapidly evolves, the economic impact due to illnesses, quarantines, social distancing, local stay-at-home orders, and other business disruptions will be large.[2] Consequently, many Americans will lose income and face financial hardship due to the impact of the COVID-19 pandemic.[3]

In response, four pieces of COVID-19-related legislation have been enacted—most relevant for this report is the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136) enacted on March 27, 2020. The act establishes consumer rights to be granted forbearance for many types of mortgages (Section 4022) and for most federal student loans (Section 3513). The law also protects the credit histories of consumers with forbearance agreements (Section 4021). In addition, financial regulatory agencies have updated their guidance to provide clarity to financial institutions responding to these events.

For loan obligations where the CARES Act does not guarantee a right to loan forbearance, such as auto loans, credit cards, private student loans, and bank-owned mortgages, a consumer's ability to access this option may vary. Reports suggest that many consumers have requested payment relief for these types of loans not covered by the CARES Act.[4] Different financial institutions may be subject to different laws and incentives to handle consumer relief requests. For this reason, an individual consumer may find a range of responses from different financial institutions when requesting relief options.

This report focuses on policy responses relating to the financial services industry for consumers who may have trouble paying their loan obligations, such as mortgages, student loans, auto loans, and credit cards.[5] First, it provides an overview of loan forbearance and other possible relief options for consumers. Then, the report discusses relevant CARES Act provisions and federal financial regulatory responses. Lastly, the report describes the impact this pandemic and the proceeding policy responses have had on financial institutions and consumers.

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[1] For background on the Coronavirus Disease 2019 (COVID-19), see CRS In Focus IF11421, *COVID-19: Global Implications and Responses*, by Sara M. Tharakan et al.

[2] For background on the potential economic effects of the COVID-19 pandemic in the United States, see CRS Insight IN11235, *COVID-19: Potential Economic Effects*, by Marc Labonte.

[3] For more information on financial industry policy issues during the COVID-19 pandemic for consumers having trouble paying their bills, see CRS Insight IN11244, *COVID-19: The Financial Industry and Consumers Struggling to Pay Bills*, by Cheryl R. Cooper.

[4] Kevin Wack, "Plenty of takers for offers to skip credit card, student loan payments," *American Banker*, April 23, 2020, at https://www.americanbanker.com/news/plenty-of-takers-for-offers-to-skip-credit-card-student-loan-payments? ; Kevin Wack, "Ally girds for surge in auto loan defaults," *American Banker*, April 20, 2020, at https://www.americanbanker.com/news/ally-girds-for-surge-in-auto-loan-defaults.

[5] Other policies outside of the financial services industry might also help consumers with their finances during the pandemic. For example, social insurance programs or government support to businesses may provide a consumer with unemployment insurance or job security. These policies and others are outside of the scope of this report. For more information, see CRS In Focus IF11447, *COVID-19: Social Insurance and Other Income-Support Options for Those Unable to Work*, coordinated by Laura Haltzel; and CRS Report R46284, *COVID-19 Relief Assistance to Small Businesses: Issues and Policy Options*, by Robert Jay Dilger, Bruce R. Lindsay, and Sean Lowry.

Overview of Loan Forbearance and Other Relief Options for Consumers

During previous natural disasters, government shutdowns, or other similarly destabilizing events, the financial industry has provided financial assistance to some affected consumers, particularly those having temporary difficulties repaying their mortgages, credit cards, or other loans.[6] For example, financial institutions have agreed to defer payments, limit late or other fees, and extend credit to ease consumer financial struggles. In response to the coronavirus pandemic, many banks have recently announced measures to offer various forms of assistance to affected consumers.[7] However, the COVID-19 pandemic is more widespread than previous events, affecting consumers across the country; therefore, financial industry responses may differ from the past.

This section begins with a discussion of loan forbearance, a common form of consumer relief. It then describes other types of assistance that financial institutions could provide to impacted consumers.

Loan Forbearance

Loan forbearance plans are agreements allowing borrowers to reduce or suspend payments for a short period of time, providing extended time for consumers to become current on their payments and repay the amounts owed. These plans do not forgive unpaid loan payments. Loan forbearance plans between consumers and financial institutions usually include a *repayment plan,* which is an agreement allowing a defaulted borrower to repay the amount in arrears and become current on the loan according to an agreed upon schedule. Repayment plans take many shapes. For example, these plans may include a requirement that all suspended payments are to be due at the end of the loan forbearance period; the past due amount is to be added to the regular payment amount over the year after loan forbearance ends; or payments are to be added to the end of the loan's term. Interest or fees may or may not accrue during the loan forbearance period.

As loan forbearance and repayment plans are generally offered to consumers experiencing a temporary hardship, they have become a common form of consumer relief during the COVID-19 pandemic. During this pandemic, many businesses might be closed either by mandate (e.g., restaurants, concerts, or sporting event venues) or facing significant revenue declines due to social distancing efforts (e.g., more space between people at open stores or restaurants) or changes in consumer behavior (e.g., airlines, hotels, and the travel industry). Many of these disruptions may be temporary, lasting only for the duration of the pandemic. Many financial institutions offer loan forbearance plans as an option for consumers who have experienced job loss or temporary income loss but may be able to continue to repay their credit obligations after the disruption ends. In addition, financial institutions may see loan forbearance plans as a good option for consumers at this time because these plans often do not involve renegotiating contracts.[8] Loan forbearance may be a less viable option to deal with the financial ramifications

[6] Some of these efforts that require changes in credit contracts may be more difficult for institutions to implement.

[7] For example, Amanda Dixon, "List of Banks Offering Help to Customers Impacted by the Coronavirus," *Bankrate,* April 8, 2020, at https://www.bankrate.com/banking/coronavirus-list-of-banks-offering-help-to-customers-financial-hardship/.

[8] Many mortgage services can offer workouts that do not involve renegotiations of the original mortgage contract. See Fannie Mae's servicing guide's section on loan forbearance at https://servicing-guide.fanniemae.com/THE-SERVICING-GUIDE/Part-D-Providing-Solutions-to-a-Borrower/Subpart-D2-Assisting-a-Borrower-Who-is-Facing-Default-or/Chapter-D2-3-Fannie-Mae-s-Home-Retention-and-Liquidation/Section-D2-3-2-Home-Retention-Workout-

of the pandemic if it causes prolonged disruptions, such as persistent elevated levels of unemployment or permanent business closures.

Other Relief Options Available to Consumers

Loss mitigation (or workout options) refers to a menu of possible options financial institutions may offer to help a distressed borrower become and stay current with loan payments and avoid default. Loan forbearance is one type of loss mitigation. *Loan modifications* are another type of loss mitigation that renegotiates the contract with concessions to the borrower. These concessions can take the form of principal balance reductions, interest rate reductions, term to maturity extensions, or some combination of such options.

Financial institutions or loan servicers generally weigh the costs and benefits of the various loss mitigation options and offer borrowers the least costly option from a business perspective.[9] Loan forbearance can be the least costly option when the duration of consumer hardship is temporary and short, and the lender can be paid back quickly. Loan modifications may also be beneficial to the lender under circumstances when the costs to modify and retain the loan are lower than the costs of default. If a borrower's circumstances, such as becoming disabled or long-term unemployed, make it difficult for servicers to offer a workout option, the lender may find options such as debt collection, auto repossession, foreclosure, or wage garnishment a less costly way to resolve the default. Finally, various contractual arrangements that loan servicers are obligated to follow may dictate servicer actions from the time the loan became distressed until resolution. These arrangements may limit servicers' authorities and options.

Financial institutions can provide other types of relief to consumers, such as agreeing to limit late or other fees and offering new credit or loan products. For example, a consumer can refinance out of a distressed mortgage into a new mortgage contract, potentially pulling equity out of their home to repay arrears and accumulated penalties.[10] Generally financial institutions would choose to extend new credit only if they determine that the borrower is in a good position to pay the loan back in the future. During the COVID-19 pandemic, some banks have decided to limit new credit to consumers due to increased economic risk.[11]

Loss mitigation procedures provided by financial institutions or loan servicers are regulated in order to help protect consumers. For example, during the 2008 financial crisis, many consumers had trouble paying their mortgages due to unemployment and decreasing house prices. When mortgage delinquency and foreclosure rates rose, federal regulators identified pervasive documentation issues at many mortgage servicers, which became an issue when a large number of consumers defaulted.[12] In response, the Consumer Financial Protection Bureau (CFPB), using

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Options/D2-3-2-01-Forbearance-Plan/1042399011/D2-3-2-01-Forbearance-Plan-09-18-2018.htm. See Freddie Mac's servicing guide's section on loan forbearance at https://guide.freddiemac.com/app/guide/content/a_id/1001217.

[9] Loan servicers receive fees to manage loans for owners (e.g., lenders or investors) after origination, such as billing and other loan services. Loan servicers are often responsible for administering loss mitigation on behalf of the owner if full payment is paid.

[10] The availability of refinance options depends on the market value of the home at the time of borrower default. The market value of the home, which would be used as collateral, would need to be high enough to cover the outstanding balance of the new loan. The new mortgage may also have an interest rate that is higher than current market rates to better reflect the greater credit risk of the recently defaulted borrower.

[11] For example, see Kate Berry, "JPMorgan halts home equity loans due to coronavirus," *American Banker*, April 16, 2020, at https://www.americanbanker.com/news/jpmorgan-halts-home-equity-loans-due-to-coronavirus.

[12] U.S. Government Accountability Office, *Mortgage Foreclosures: Documentation Problems Reveal Need for Ongoing Regulatory Oversight*, GAO-11-433, May 2011, at https://www.gao.gov/assets/320/317923.pdf.

its authority under the Real Estate Settlement Procedures Act (RESPA; P.L. 93-533, implemented by Regulation X),[13] issued the RESPA Mortgage Servicing Rule in January 2013. Among other things, the rule created an obligation for mortgage servicers to establish consistent policies and procedures to contact delinquent borrowers, provide information about mortgage loss mitigation options, and evaluate borrower applications for loss mitigation in a timely manner.[14]

Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136)

This section of the report discusses various relief provisions of the CARES Act for borrowers and consumer lenders. **Table 1** presents a summary of CARES Act provisions that pertain to loan forbearance by consumer credit type.[15] In addition, other provisions of the CARES Act, which help financial institutions cope financially when experiencing increased loan losses, will be discussed. Lastly, this section discusses legislative policy issues relating to consumers missing loan payments.

Table 1. Relevant CARES Act Provisions and Consumer Protections, by Consumer Credit Type

Type of Consumer Credit	Owner of Loan	CARES Act Section	CARES Act Consumer Protection
Mortgages	Government-backed (e.g., held by Fannie Mae or Freddie Mac or insured by the Federal Housing Administration or Department of Veterans Affairs)	Section 4022	Right to request forbearance for up to a year; lender is to report on-time payment history.
	Not government-backed (e.g., held by a bank or other investor)	N/A	No consumer forbearance right, up to lender whether to offer forbearance; if consumer obtains agreement with lender for payment relief, lender is to report on-time payment history.
Student Loans	Federally owned (i.e., loans made under the William D. Ford Federal Direct Loan program and Federal Family Education Loan (FFEL) program held by the Department of Education)	Section 3513	Right to request forbearance and no interest accrued through September 30, 2020; lender is to report on-time payment history.
	Private	N/A	No consumer forbearance right, up to lender whether to offer forbearance; if consumer obtains agreement with lender for payment relief, lender is to report on-time payment history.

[13] For more information on Regulation X, §1024.41, Loss mitigation procedures, see https://www.consumerfinance.gov/policy-compliance/rulemaking/regulations/1024/41/.

[14] Consumer Financial Protection Bureau (CFPB), "Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X)," 78 *Federal Register* 10695-10899, February 14, 2013.

[15] For more information on Title IV of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136), which contains a number of provisions aimed broadly at stabilizing the economy and helping affected households and businesses, see CRS Report R46301, *Title IV Provisions of the CARES Act (P.L. 116-136)*, coordinated by Andrew P. Scott.

Type of Consumer Credit	Owner of Loan	CARES Act Section	CARES Act Consumer Protection
Auto Loans, Credit Cards, and Other Types of Consumer Credit	All	N/A	No consumer forbearance right, up to lender whether to offer forbearance; if consumer obtains agreement with lender for payment relief, lender is to report on-time payment history.

Source: The Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136).

Mortgage Forbearance

The CARES Act includes some measures[16] to provide temporary forbearance relief for certain affected mortgage borrowers—those with "federally backed" mortgages.[17] Section 4022 allows borrowers with federally backed mortgages to request forbearance from their mortgage servicers (the entities that collect payments and manage the mortgage on behalf of the lender/investor) due to a financial hardship caused directly or indirectly by COVID-19. The borrower must attest to such hardship, but no additional documentation is required. Servicers must grant forbearance for up to 180 days and must extend the forbearance up to an additional 180 days at the borrower's request. Either period can be shortened at the borrower's request. The servicer may not charge fees, penalties, or interest beyond what would have accrued if the borrower had made payments as scheduled.

The CARES Act mortgage provisions potentially raise the question of what happens after the forbearance period. The act does not address how repayment should occur. Servicers are to negotiate repayment terms with borrowers, subject to existing requirements or any additional guidance provided by the entity backing the mortgage.

Federal Student Loan Forbearance[18]

Federal loans to support students' postsecondary educational pursuits are currently available under the William D. Ford Federal Direct Loan (Direct Loan) program and the Federal Perkins

[16] Section 4022 provides for forbearance and a foreclosure moratorium for federally backed single-family mortgages. Section 4023 allows multifamily borrowers with federally backed multifamily mortgage loans to request a forbearance from their lender for a period up to 30 days, which can be extended for two more 30-day periods. To qualify for this option, the borrower must have been current on their mortgage as of February 1, 2020, and must contact the loan servicer to access the forbearance. Also, a multifamily borrower who enters into a forbearance is prohibited from evicting a tenant for the duration of the forbearance.

[17] The forbearance provisions in the CARES Act apply to federally backed mortgages. Several federal agencies insure or guarantee single-family mortgages, multifamily mortgages, or both, including the Department of Housing and Urban Development (HUD) through the Federal Housing Administration (FHA) and the Section 184 and Section 184A programs for Native Americans and Native Hawaiians, respectively; the Department of Veterans Affairs (VA); and the U.S. Department of Agriculture (USDA) (which also directly originates some mortgages). Additionally, the government-sponsored enterprises (GSEs) Fannie Mae and Freddie Mac purchase eligible single-family and multifamily mortgages and guarantee securities backed by those mortgages. The CARES Act provisions cover all of these, including FHA-insured reverse mortgages.

[18] For more information about federal student loan debt relief in the context of COVID-19, see CRS Report R46314, *Federal Student Loan Debt Relief in the Context of COVID-19*, by Alexandra Hegji.

Loan program. Loans were previously available through the Federal Family Education Loan (FFEL) program, and some of those loans remain outstanding.[19]

Due to the current economic situation, many consumers may have trouble repaying their federal student loans. In response, Section 3513 of the CARES Act suspends all payments due and interest accrual for all loans made under the Direct Loan program and for FFEL program loans held by the Department of Education through September 30, 2020.[20] A suspended payment is to be treated as if it were a regularly scheduled payment made by a borrower for the purpose of reporting information about the loan to a consumer reporting agency and toward specified loan forgiveness (e.g., public service loan forgiveness) or loan rehabilitation programs. In addition, involuntary collections on defaulted loans are suspended through September 30, 2020.

Consumer Credit Reporting

Consumers can harm their credit scores when they miss consumer loan payments, and lower credit scores can impact their access to credit in the future.[21] Section 4021 of the CARES Act requires financial institutions to report to the credit bureaus that consumers are current on their credit obligations if they enter into an agreement to defer, forbear, modify, make partial payments, or get any other assistance on their loan payments from a financial institution and fulfil those requirements.[22] The covered period for this section starts on January 31, 2020, and extends to the later of 120 days after enactment or 120 days after the national emergency declared by the President on March 13, 2020, terminates. Before this law was enacted, lenders could choose whether to report loans in forbearance as paid on time; with this law, these options are no longer voluntary for the lender.[23]

Some affected consumers may still experience harm to their credit record because the CARES Act does not give consumers a right to be granted forbearance for many types of consumer loans (such as auto loans, credit cards, and mortgages and student loans not covered by the CARES Act; see **Table 1**). Although many financial institutions have announced efforts to provide assistance to affected consumers, lenders have discretion whether to enter into an assistance

[19] Part B, part D, and part E of Title IV of the Higher Education Act of 1965 (20 U.S.C. §1087a et seq.; §1071 et seq.; §1087aa et seq.).

[20] For March 13, 2020, through September 30, 2020, the Administration has set interest rates on federally held student loans (including Perkins Loan program loans) to 0%, and borrowers will not be required to make payments due on their loans.

[21] For more information on the credit reporting industry, see CRS Report R44125, *Consumer Credit Reporting, Credit Bureaus, Credit Scoring, and Related Policy Issues*, by Cheryl R. Cooper and Darryl E. Getter.

[22] If the consumer were delinquent before the covered period, then the furnisher would maintain the delinquent status unless the consumer brings the account or obligation current. The covered period starts on January 31, 2020, and extends to the later of 120 days after enactment or 120 days after the national emergency declared by the President on March 13, 2020, terminates. For more information, see CFPB, *Statement on Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act and Regulation V in Light of the CARES Act*, April 1, 2020, at https://files.consumerfinance.gov/f/documents/cfpb_credit-reporting-policy-statement_cares-act_2020-04.pdf.

[23] Before the CARES Act passed, lenders had various options to mitigate the impact on consumers' credit scores and future credit access following disasters or catastrophic events. For example, furnishers may use special codes to report delinquencies due to special circumstances. See CFPB, *Natural Disasters and Credit Reporting: Quarterly Consumer Credit Trends*, November 2018, at https://files.consumerfinance.gov/f/documents/bcfp_quarterly-consumer-credit-trends_report_2018-11_natural-disaster-reporting.pdf. In addition, if lenders and consumers enter into loan forbearance agreements, then furnishers have the option to report to the credit bureaus that these consumers are current on their credit obligations.

agreement with an individual consumer. Therefore, the ability of consumers to protect their credit scores could vary.

Bank and Credit Union Loan Loss Related Provisions

Other provisions in the CARES Act are intended to reduce or remove potential disincentives related to accounting and capital requirements that banks may face when deciding whether to grant a forbearance for non-federally backed loans. When the inflow of payments on loans unexpectedly decreases, as happens when unanticipated forbearances are granted, banks must account for this by writing down the value of the loans. The lost value must be reflected with a reduction in income or value of the bank's capital, which can be thought of as the bank's net worth. Banks face a number of requirements to hold minimum levels of capital; if the value were reduced, the bank eventually would fail to comply with those requirements.[24] Thus, these accounting and capital requirements may make a bank hesitant to grant a forbearance (if it judges that the borrower will ultimately be able to make payment) or cause a bank to put off accounting for realized losses at a later date. Sections 4012, 4013, and 4014 of the CARES Act may mitigate these concerns.

Certain small banks can elect to be subject to a single, relatively simple—but relatively high—capital rule called the Community Bank Leverage Ratio (CBLR).[25] Bank regulators are authorized to set the CBLR between 8% and 10%. Prior to the enactment of the CARES Act, it was set at 9%. Section 4012 directs regulators to lower it to 8% and give banks that fall below that level a reasonable grace period to come back into compliance with the CBLR. As a result, qualifying banks are to be able to write down the value of more loans before they reach the minimum CBLR level. This relief expires the earlier of (1) the date the public health emergency ends or (2) the end of 2020.

When a lender grants a loan forbearance, it may be required to record it as *troubled debt restructuring* (TDR) in its accounting.[26] Generally Accepted Accounting Principles (GAAP)[27] require the lender to reflect in its financial records any potential loss as a result of a TDR.[28] Section 4013 requires federal bank and credit union regulators to allow lenders to determine if they should suspend the GAAP requirements for recognizing any potential COVID-19-related losses from a TDR related to a loan modification. This relief expires the earlier of (1) 60 days after the public health emergency declaration is lifted or (2) the end of 2020.

Another feature of bank and credit union accounting is determining the amount of *credit loss reserves*, which help mitigate the income overstatement on loans and other assets by adjusting for expected future losses on related loans and other assets.[29] In response to banks' financial

[24] For more information, see CRS In Focus IF10809, *Introduction to Bank Regulation: Leverage and Capital Ratio Requirements*, by David W. Perkins.

[25] For more information, see CRS Report R45989, *Community Bank Leverage Ratio (CBLR): Background and Analysis of Bank Data*, by David W. Perkins.

[26] Shannon M. Beattie, "Accounting News: Trouble Debt Restructuring," *FDIC Supervisory Insights*, Summer 2012, pp. 26-38, at https://www.fdic.gov/regulations/examinations/supervisory/insights/sisum12/sisummer12-article4.pdf.

[27] For more information, see Corporate Finance Institute, *What is GAAP?*, at https://corporatefinanceinstitute.com/resources/knowledge/accounting/gaap/.

[28] Financial Accounting Standards Board (FASB), *FASB Accounting Update: Receivables—Troubled Debt Restructurings by Creditors (Subtopic 310-40)*, Financial Accounting Series: No. 2014-14, August 2014, at https://asc.fasb.org/imageRoot/90/52428090.pdf.

[29] Federal Deposit Insurance Corporation (FDIC), *Proposed Interagency Policy Statement on Allowances for Credit Losses*, Financial Institution Letter, FIL-59-2019, October 17, 2019, at https://www.fdic.gov/news/news/financial/2019/

challenges during and after the 2007-2009 financial crisis, the Financial Accounting Standards Board[30] promulgated a new credit loss standard—Current Expected Credit Loss (CECL)—in June 2016.[31] CECL requires earlier recognition of losses than the current methodology. All public companies were required to issue financial statements that incorporated CECLs for reporting periods, beginning on December 15, 2019. Section 4014 gives banks and credit unions the option to temporarily delay CECL implementation until the earlier of (1) the date the public health emergency ends or (2) the end of 2020.

Consumer Loans From Individuals' Retirement Accounts

Individuals can save for retirement by investing in certain retirement accounts with tax advantages, such as 401(k)s, and can take out loans from those accounts. Section 2202 of the CARES Act postpones the payments on those loans, much like a forbearance. Specifically, for new or existing loans, the due dates for payments due on or after the bill's enactment through December 31, 2020, are extended by one year; subsequent payments are also delayed by one year. For more information on CARES Act provisions related to pensions and retirement, see CRS In Focus IF11482, *Retirement and Pension Provisions in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)*, by John J. Topoleski and Elizabeth A. Myers.

Policy Issues

Some consumer advocates argue that during the COVID-19 pandemic, Congress could do more to help consumers experiencing financial hardship. Some consumers may not receive loan forbearance for credit obligations outside of those with rights under the CARES Act. In addition, consumers may continue to incur bank fees and face issues relating to debt collection and negative credit reporting. For this reason, other legislative proposals would prevent creditors and debt collectors from collecting on delinquent loans, charging fees and interest, or reporting negative information to the credit bureaus during the coronavirus pandemic period.[32] Some financial institutions would likely incur significant costs under these proposals. Some proponents of these proposals argue that the federal government may consider compensating financial institutions for these losses in order to implement these policies.[33] On the other hand, other types of government policies outside of the financial industry, such as unemployment insurance or small business aid to keep people employed, can also target impacted Americans.

Non-Legislative Federal COVID-19 Responses

In addition to legislative responses, financial regulatory agencies have taken other steps to respond to the COVID-19 pandemic by encouraging loan forbearance and other financial relief options for impacted consumers. On March 9, 2020, federal and state financial regulators coordinated a guidance statement to the financial industry, encouraging it to help meet the needs of consumers affected by the virus outbreak.[34] The regulators stated that "financial institutions

fil19059.html.

[30] The FASB is an independent, private not-for-profit organization that sets accounting and reporting standards. See, FASB, *About the FASB*, at https://www.fasb.org/facts/index.shtml.

[31] For more information, see CRS Report R45339, *Banking: Current Expected Credit Loss (CECL)*, by Raj Gnanarajah.

[32] For example H.R. 6379 §§103, 110, 111; S. 3565; and S. 3508.

[33] For example H.R. 6379 §103.

[34] Federal Reserve et al. "Agencies Encourage Financial Institutions to Meet Financial Needs of Customers and Members Affected by Coronavirus," press release, March 9, 2020, at https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200309a.htm. Since this statement was released, two updates to this guidance have been

should work constructively with borrowers and other consumers in affected communities," as long as they employ "prudent efforts that are consistent with safe and sound lending practices." This statement was similar to financial regulators' past statements during disruptive events, such as natural disasters and government shutdowns.[35]

Beyond this statement, financial regulatory agencies have used existing authorities to issue new COVID-19 guidance to help financial firms support consumer needs during this time. Regulatory guidance does not force a financial institution to take any particular action for consumers (such as offering loan forbearance), but it can increase the incentives or reduce the disincentives of taking such actions.

Consumer Regulatory Guidance

When processing these loan forbearance or other consumer relief requests, financial institutions must ensure that they are acting fairly and complying with the law. For mortgage loan forbearance requests, financial institutions must comply with RESPA mortgage servicing standards.[36] In addition, for all consumer loan forbearance or relief requests, financial institutions must also ensure that they are complying with fair lending laws. The main federal consumer financial regulator in the United States is the CFPB, which implements and enforces federal consumer financial law while ensuring that consumers can access financial products and services.[37]

In response to the COVID-19 pandemic, the CFPB issued new guidance about complying with legal requirements during this period of increased loan forbearance requests. The CFPB released additional guidance on regulatory compliance with Regulation X during the mortgage loan transfer process.[38] In addition, the CFPB announced a new joint initiative with the Federal Housing Finance Agency (FHFA) to share mortgage servicing information to protect borrowers.[39] The FHFA is to share information with the CFPB about forbearances, modifications, and other loss mitigation initiatives undertaken by Fannie Mae and Freddie Mac. In combination with CFPB consumer complaints, these data would help the CFPB monitor whether mortgage servicers are complying with the law when they offer these relief options to impacted customers. In addition to mortgage servicing guidance, federal and state financial regulatory agencies also

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announced. See Federal Reserve et al., "Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Consumers Affected by the Coronavirus," press release, March 22, 2020, at https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20200322a1.pdf; and Federal Reserve et al., "Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Consumers Affected by the Coronavirus (Revised)," press release, April 7, 2020, at https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20200407a1.pdf (hereinafter cited as Federal Reserve et al., Revised Interagency Statement, April 7, 2020).

[35] Federal Reserve et al., "Regulators Encourage Institutions to Work with Borrowers Affected by Government Shutdown," press release, January 11, 2019, at https://www.occ.gov/news-issuances/news-releases/2019/nr-ia-2019-4.html.

[36] For more information on Regulation X, §1024.41, Loss mitigation procedures, see https://www.consumerfinance.gov/policy-compliance/rulemaking/regulations/1024/41/.

[37] P.L. 111-203. For more information on the CFPB, see CRS In Focus IF10031, *Introduction to Financial Services: The Bureau of Consumer Financial Protection (CFPB)*, by Cheryl R. Cooper and David H. Carpenter.

[38] CFPB, "Bulletin 2020-02 - Compliance Bulletin and Policy Guidance: Handling of Information and Documents During Mortgage Servicing Transfers," April 24, 2020, at https://files.consumerfinance.gov/f/documents/cfpb_policy-guidance_mortgage-servicing-transfers_2020-04.pdf.

[39] CFPB, "CFPB and FHFA Announce Borrower Protection Program," press release, April 15, 2020, at https://www.consumerfinance.gov/about-us/newsroom/cfpb-fhfa-announce-borrower-protection-program/.

instructed financial institutions that for all consumer credit products, "when working with borrowers, lenders and servicers should adhere to consumer protection requirements, including fair lending laws, to provide the opportunity for all borrowers to benefit from these arrangements."[40]

The CFPB has also issued guidance to temporarily reduce regulatory burden by delaying industry reporting requirements for mandatory data collections[41] and providing flexibility on timing requirements.[42] The agency also stated that while continuing to do its supervisory work,[43] it would work with affected financial institutions in scheduling examinations and other supervisory activities to minimize disruption and burden as a result of operational challenges due to the pandemic.[44] These efforts to reduce regulatory burden aim to allow financial institutions more bandwidth to work with impacted consumers and provide them with financial relief during the pandemic.

Financial institutions can also provide other types of relief to consumers, such as offering new credit or loan products, so a consumer can pay their loan payments, medical bills, or other expenses to maintain their standard of living during the pandemic period. For this reason, financial regulators have encouraged financial institutions to provide small-dollar loans to affected consumers.[45] However, financial institutions generally would choose to extend new credit only if they were to determine that the borrower is in a good position to pay the loan back in the future, and there may be a significant amount of uncertainty in making such a determination during this pandemic. Therefore, it is unclear whether this guidance will encourage financial institutions to provide small-dollar loans to many consumers.[46]

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[40] Federal Reserve et al., Revised Interagency Statement, April 7, 2020, p. 5.

[41] CFPB, "CFPB Provides Flexibility During COVID-19 Pandemic," press release, March 26, 2020, at https://www.consumerfinance.gov/about-us/newsroom/cfpb-provides-flexibility-during-covid-19-pandemic/.

[42] CFPB, *CFPB Paves Way for Consumers Facing Financial Emergencies to Obtain Access to Mortgage Credit More Quickly*, April 29, 2020, at https://www.consumerfinance.gov/about-us/newsroom/cfpb-paves-way-consumers-facing-financial-emergencies-access-mortgage-credit-quickly/; CFPB, *Statement on Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act and Regulation V in Light of the CARES Act*, April 1, 2020, at https://files.consumerfinance.gov/f/documents/cfpb_credit-reporting-policy-statement_cares-act_2020-04.pdf.

[43] Bryan Schneider, *Supervisory Work Continues with a Commitment to Protecting Consumers*, CFPB, April 1, 2020, at https://www.consumerfinance.gov/about-us/blog/supervisory-work-continues-commitment-protecting-consumers/.

[44] CFPB, "Statement on Bureau Supervisory and Enforcement Response to COVID-19 Pandemic," press release, March 26, 2020, at https://files.consumerfinance.gov/f/documents/cfpb_supervisory-enforcement-statement_covid-19_2020-03.pdf.

[45] Federal Reserve et al., "Federal Agencies Encourage Banks, Savings Associations and Credit Unions to Offer Responsible Small-Dollar Loans to Consumers and Small Businesses Affected by COVID-19," press release, March 26, 2020, at https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200326a.htm.

[46] Banks have demonstrated interest in providing certain small-dollar financial services, such as direct deposit advances, subprime credit cards, and overdraft protection services. In these cases, banks may face regulatory disincentives to providing these services because bank regulators and legislators have sometimes demonstrated concerns about banks providing these products. For example, before 2013, some banks offered deposit advance products to consumers with bank accounts, which were short-term loans paid back automatically out of the borrower's next qualifying electronic deposit. Because of this sustained use and concerns about consumer default risk, in 2013, the Office of the Comptroller of the Currency (OCC), FDIC, and Federal Reserve issued supervisory guidance, advising banks to make sure deposit advance products complied with consumer protection and safety and soundness regulations. See OCC, "Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products" 78 *Federal Register* 70624, November 26, 2013; FDIC, "Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products," 78 *Federal Register* 70552, November 26, 2013; and Federal Reserve, "Statement on Deposit Advance Products," CA 13-7, April 25, 2013. Many banks subsequently discontinued offering deposit advances. More recently, financial regulators have taken steps to encourage banks to reenter the small-dollar lending market. In October

Financial Institution Regulatory Guidance

A variety of financial institutions make different types of credit available to consumers. In particular, bank and mortgage institutions are subject to various regulatory controls to ensure they are operating in a safe and sound manner while complying with relevant laws.[47] In response to COVID-19, regulators have issued guidance to signal to financial institutions that it is acceptable to take certain actions that may temporarily weaken their financial positions without facing regulatory actions.[48]

Guidance for Depository Institutions

The banking regulators—the Federal Reserve, Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the National Credit Union Administration (NCUA)—have worked together to issue guidance and updates to the financial institutions they regulate about how those institutions should work with customers who are negatively impacted by COVID-19.

Regulators' efforts to deal with the potential effects of COVID-19 began in early March with attempts to ensure that depository institutions were adequately planning for potential risks. On March 6, 2020, the Federal Financial Institutions Examination Council (FFIEC)[49] updated its influenza pandemic guidance to minimize the potentially adverse effects of COVID-19.[50] The guidance identifies business continuity plans as key tools to address pandemics and provides a comprehensive framework to ensure the continuation of critical operations. Since then, regulators have built on this guidance to encourage financial institutions to take actions to continue to serve customers financially affected by the virus. On March 13, 2020, the Federal Reserve, the OCC, and the FDIC issued guidance identifying ways to assist customers, including waiving fees, offering repayment accommodations, extending payment due dates, increasing credit card limits, and increasing ATM withdrawal limits.[51] Repayment accommodations include allowing

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2017, the OCC rescinded the 2013 guidance and issued a new bulletin to encourage their banks to enter this market in May 2018. See OCC, Core Lending Principles for Short-Term, Small-Dollar Installment Lending, May 23, 2018; and OCC, "Rescission of Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products," 82 *Federal Register* 196, October 12, 2017. In November 2018, the FDIC solicited advice about how to encourage more banks to offer small-dollar credit products, see FDIC, "Request for Information on Small-Dollar Lending," 83 *Federal Register* 58566, November 20, 2018. It is unclear whether these efforts will encourage banks to enter the small-dollar market with a product similar to deposit advance.

[47] For more on financial regulators and the institutions they regulate, see CRS Report R44918, *Who Regulates Whom? An Overview of the U.S. Financial Regulatory Framework*, by Marc Labonte.

[48] For more information on bank regulators' responses to COVID-19, see CRS Insight IN11278, *Bank and Credit Union Regulators' Response to COVID-19*, by Andrew P. Scott and David W. Perkins. In addition, the Federal Reserve has provided liquidity to financial markets in response to COVID-19. For more information, see CRS Insight IN11259, *Federal Reserve: Recent Actions in Response to COVID-19*, by Marc Labonte.

[49] The Federal Financial Institutions Examination Council (FFIEC) is a formal U.S. government interagency body comprising financial regulators "empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions." For more, see http://www.ffiec.gov.

[50] FFIEC, "Interagency Statement on Pandemic Planning," March 6, 2020, at https://www.ffiec.gov/press/PDF/FFIEC%20Statement%20on%20Pandemic%20Planning.pdf.

[51] For more, see Federal Reserve, "Supervisory Practices Regarding Financial Institutions Affected by Coronavirus," SR 20-4 / CA 20-3, March 13, 2020, at https://www.federalreserve.gov/supervisionreg/srletters/SR2004.htm; OCC, "Pandemic Planning: Working With Customers Affected by Coronavirus and Regulatory Assistance," OCC Bulletin 2020-15, March 13, 2020, at https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-15.html; and FDIC, "Regulatory Relief: Working with Customers Affected by the Coronavirus," Financial Institution Letter (FIL) 17-2020,

borrowers to defer or skip payments or extending payment due dates to help consumers avoid delinquencies, which is a form of forbearance.[52]

Regulators can also use incentives to encourage financial institutions to work with consumers and offer repayment accommodations. Recent regulatory guidance signaled to financial institutions that certain activities with consumers would be eligible to earn credit toward their performance assessments under the Community Reinvestment Act (CRA; 12 U.S.C. §2901), which encourages banks to extend credit to the communities from which they accept deposits by considering this factor in applications to bank regulators to expand operations, such as through mergers and acquisitions.[53] On March 19, 2020, banking regulators issued a new statement encouraging depository institutions to continue working with affected customers and communities—particularly those that are low- and moderate-income—by providing favorable CRA consideration for activities including "offering payment accommodations, such as allowing borrowers to defer or skip payments or extending the payment due date, which would avoid delinquencies and negative credit bureau reporting, caused by COVID-19-related issues."[54]

Guidance for the Housing Finance System

The many federal agencies involved in housing finance have taken actions to encourage or authorize financial institutions to offer forbearance to mortgage borrowers affected by COVID-19.[55]

Government-Sponsored Enterprises

Fannie Mae and Freddie Mac, commonly referred to as government-sponsored enterprises (GSEs), provide liquidity to the housing finance market by purchasing mortgages from lenders and subsequently guaranteeing the default risk linked to their issuances of mortgage-backed securities (MBS, a process known as securitization).[56] In 2008, Fannie Mae and Freddie Mac

March 13, 2020, at https://www.fdic.gov/news/news/financial/2020/fil20017.pdf.

[52] Regulators also encouraged financial institutions to offer loan repayment accommodations through more explicit regulatory relief. On March 22, 2020, the financial regulators issued an interagency statement to allow banks to provide certain modifications to loans without designating them as troubled debt restructurings (TDRs). Under accounting principles, a TDR designation could have negative consequences for a bank's financial and regulatory reporting requirements. On April 7, 2020, the agencies issued revised guidance that included information about Section 4013 of the CARES Act, which allows banks flexibility in accounting related to TDRs. For more, see FDIC, "Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus," March 22, 2020, at https://www.fdic.gov/news/news/press/2020/pr20038a.pdf.

[53] For more on the Community Reinvestment Act, see CRS Report R43661, *The Effectiveness of the Community Reinvestment Act*, by Darryl E. Getter.

[54] Federal Reserve, FDIC, and OCC, "Joint Statement on CRA Consideration for Activities in Response to COVID-19," March 19, 2020, at https://www.fdic.gov/news/news/financial/2020/fil20019a.pdf.

[55] The banking regulators mentioned above (the Federal Reserve, OCC, FDIC, and NCUA) influence the mortgage market through their oversight of banks. For example, regulators influence the underwriting standards that banks use and set capital requirements that apply to mortgages and mortgage-backed securities (MBS) held by banks. The Securities and Exchange Commission (SEC) oversees, among other things, the selling of securities to the public. The SEC has disclosure and registration standards that, in some cases, apply to MBS. Additionally, the CFPB regulates certain bank and nonbank participants in the mortgage market and administers certain rules intended to protect consumers, including requirements that lenders verify a borrower's ability to repay the mortgage and standards related to mortgage servicing. The CFPB also has authority under additional federal consumer laws to regulate parts of the mortgage market.

[56] For more on securitization and the housing finance system, see CRS Report R42995, *An Overview of the Housing Finance System in the United States*, by N. Eric Weiss and Katie Jones.

were placed under conservatorship by their primary regulator, FHFA. The FHFA also regulates the Federal Home Loan Bank (FHLB) system, which is also a GSE, and comprises 11 regional banks that provide wholesale funding to its members—mortgage lenders, such as banks, credit unions, and insurance companies.

On March 18, 2020, Fannie Mae issued guidance signaling to Fannie Mae single-family mortgages borrowers affected by COVID-19 that they could request mortgage assistance by contacting their mortgage servicer—this guidance was updated with the enactment of the CARES Act and includes forbearance for up to 12 months with no late fees.[57] Similarly, Freddie Mac issued guidance to provide mortgage relief options in line with the CARES Act that include loan modifications and mortgage forbearance for up to 12 months.[58]

Federal Housing Agencies

The Federal Housing Administration (FHA)[59]—an agency within the Department of Housing and Urban Development (HUD)—as well as the Department of Veterans Affairs (VA)[60] and the Department of Agriculture (USDA),[61] each have loan programs that insure or guarantee loans for certain mortgages. Ginnie Mae is a federal government agency that issues MBS linked to mortgages whose default risks are guaranteed by the FHA, VA, and USDA. Ginnie Mae guarantees its MBS investors timely principal and interest payments.

On April 1, 2020, HUD instructed mortgage servicers for mortgages with FHA insurance to extend deferred or reduced mortgage payment options (forbearance) for up to six months. In addition, they must provide an additional six months of forbearance if requested by the borrower. This mandate implements provisions contained in the CARES Act.[62] On April 8, 2020, the VA issued a circular that similarly aligns with CARES Act provisions. Through its home loan program, the VA stated that borrowers may request forbearance from their servicer on VA-guaranteed loans or VA-held loans, including Native American Direct Loans or Vendee loans, if they are facing financial hardship from COVID-19.[63]

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[57] Fannie Mae, "Fannie Mae Assistance Options for Homeowners Impacted by COVID-19," March 18, 2020, at https://www.fanniemae.com/portal/media/corporate-news/2020/covid-homeowner-assistance-options-7000.html.

[58] Freddie Mac, "Our COVID-19 Response," at http://www.freddiemac.com/about/covid-19.html.

[59] FHA, an agency within HUD, provides mortgage insurance on loans that meet its requirements (including a minimum down payment requirement and an initial principal balance below a certain threshold) in exchange for fees, or premiums, paid by borrowers. If a borrower defaults on an FHA-insured mortgage, FHA will repay the lender the entire remaining principal amount it is owed. FHA is the largest provider of government mortgage insurance. For more on FHA-insured mortgages, see CRS Report RS20530, *FHA-Insured Home Loans: An Overview*, by Katie Jones.

[60] VA provides a guaranty on certain mortgages made to veterans. If a borrower defaults on a VA-guaranteed mortgage, VA will repay the lender a portion (but not all) of the remaining principal amount owed. Because it is limited to veterans, the VA loan guaranty program is smaller and more narrowly targeted than FHA. For more on VA-guaranteed mortgages, see CRS Report R42504, *VA Housing: Guaranteed Loans, Direct Loans, and Specially Adapted Housing Grants*, by Libby Perl.

[61] USDA administers a direct loan program for low-income borrowers in rural areas and a loan guarantee program for low- and moderate-income borrowers in rural areas. If a borrower defaults on a USDA-guaranteed loan, USDA repays the lender a portion (but not all) of the remaining principal amount owed. The USDA program is more narrowly targeted than FHA in that it has income limits and is limited to rural areas. For more on USDA-guaranteed mortgages, see CRS Report RL31837, *An Overview of USDA Rural Development Programs*, by Tadlock Cowan.

[62] HUD, "HUD Issues New CARES Act Mortgage Payment Relief for FHA Single Family Homeowners," April 1, 2020, at https://www.hud.gov/press/press_releases_media_advisories/HUD_No_20_048.

[63] Veterans Benefits Administration, "Extended Relief Under the CARES Act for those Affected by COVID-19," April 8, 2020, at https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_20_12.pdf.

Mortgage Servicers

After the passage of the CARES Act, the federal banking agencies and state bank regulators issued a joint statement encouraging mortgage servicers to continue to work with homeowners affected by COVID-19.[64] Much of this guidance aligns with the CARES Act provisions for federally backed mortgages, but many banks issue mortgages that are not federally backed; therefore, they are not required to offer mortgage forbearance. This guidance, while not binding, encourages financial institutions to consider ways to work with consumers through short-term forbearance programs similar to the ones established in the CARES Act.

Policy Issues

Some observers argue that the federal financial regulators could do more to promote fair access to consumer relief options during the COVID-19 pandemic.[65] Although recent guidance from financial regulators mentioned fair lending concerns,[66] some commentators argue that to ensure fair treatment when consumers apply for loan relief options or become delinquent, additional more detailed guidance to financial institutions about how to comply with consumer protection and fair lending laws during the COVID-19 pandemic would be helpful.[67] In addition, with its data partnership with FHFA, some argue that the CFPB could compile and make public information on how many consumers are accessing relief options and how the frequency of use varies based on type of financial institution.[68] These types of data could help policymakers determine whether relief requests are allocated appropriately or whether additional measures should be considered to help those in need.

Forbearance Implications for the Financial System

The large economic impact of the COVID-19 pandemic affects the financial system in many important ways. For example, if many consumers were to miss loan payments, this would have negative consequences on banks and other financial institutions.[69] These institutions have worked to comply with the CARES Act and relevant regulatory guidance during the COVID-19 pandemic period to provide loan forbearance and other flexibilities to distressed consumers. However, the potential strain on the financial system might make it challenging for institutions to provide this

[64] Federal Reserve et al., "Federal agencies encourage mortgage servicers to work with struggling homeowners affected by COVID-19," April 3, 2020, at https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200403a.htm; CFPB, "The Bureau's Mortgage Servicing Rules FAQs related to the COVID-19 Emergency," April 3, 2020, at https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rules-covid-19_faqs.pdf.

[65] Kate Berry, "CFPB Urged to Take More Active Role in Coronavirus Response," *American Banker*, March 30, 2020, at https://www.americanbanker.com/news/cfpb-urged-to-take-more-active-role-in-coronavirus-response (hereinafter cited as Berry, "CFPB Urged to Take More Active Role in Coronavirus Response").

[66] Federal Reserve et al., Revised Interagency Statement, April 7, 2020, p. 5.

[67] Rich Cordray, "White Paper: Immediate Actions For CFPB To Address COVID-19 Crisis," *Medium*, April 6, 2020, at https://medium.com/@RichCordray/cfpbwhitepaper-193a5aed0d75; and Jon Hill, "Pandemic's Fallout May Include Heightened Fair Lending Risk," *Law 360*, March 30, 2020, at https://www.law360.com/banking/articles/1258333/pandemic-s-fallout-may-include-heightened-fair-lending-risk? (hereinafter cited as Cordray, "Immediate Actions for CFPB to Address COVID-19").

[68] Cordray, "Immediate Actions for CFPB to Address COVID-19."

[69] Banks are also exposed to business loan delinquencies and defaults. For more information, see CRS Insight IN11348, *Bank Exposure to COVID-19 Risks: Business Loans*, by David W. Perkins and Raj Gnanarajah.

support, and these efforts may be insufficient to provide widespread assistance without direct government intervention.[70]

This section of the report describes which types of financial institutions hold different types of consumer loans and how the CARES Act or different financial regulatory regimes may impact consumer's access to loan forbearance. It also discusses how private sector institutions may be significantly impacted by missed consumer loan payments and the economic impact of the COVID-19 pandemic.

Consumer Loans Owners

A consumer's ability to get a forbearance and under what terms may be significantly influenced by what type of institution owns the loan. These various institutions—including banks and credit unions, private nonbank financial institutions, GSEs, and the federal government—are subject to different laws, regulations, and business considerations.[71] In addition, different types of loans—such as mortgages, student loans, and other consumer debt—are subject to different regulations and legal mandates related to forbearance.

Mortgages[72]

Of the $11.2 trillion dollars of mortgages outstanding on one-to-four-family homes at the end of 2019, 63% of mortgage loans in the United States were held or insured by the federal government and therefore covered by the CARES Act's consumer right to be granted loan forbearance, as shown in **Figure 1**.[73] Most of these "federally backed" mortgages were held by GSEs or in mortgage pools backed by GSEs or other agencies (such as Fannie Mae, Freddie Mac, and Ginnie Mae). Banks held almost $2.7 trillion in mortgage loans, nearly 24% of the total, and credit unions held over $572 billion, making up 5%. The remaining 8% are mostly held by a variety of nonbank financial institutions, such private issuers of MBS,[74] real estate investment trusts, nonbank lenders, and insurance companies. Mortgage servicers can be banks and nonbanks.

[70] House Financial Services Committee Chairwoman Maxine Waters has introduced H.R. 6321, which would reimburse creditors for incurred costs due to consumer loan forbearance.

[71] GSEs are entities chartered by Congress with certain mandates. The GSEs chartered to support the mortgage market and mortgage holders discussed in this report are Fannie Mae, Freddie Mac, and Ginnie Mae. For more information, see CRS Report R44525, *Fannie Mae and Freddie Mac in Conservatorship: Frequently Asked Questions*, by N. Eric Weiss and Darryl E. Getter; and CRS Report R42995, *An Overview of the Housing Finance System in the United States*, by N. Eric Weiss and Katie Jones.

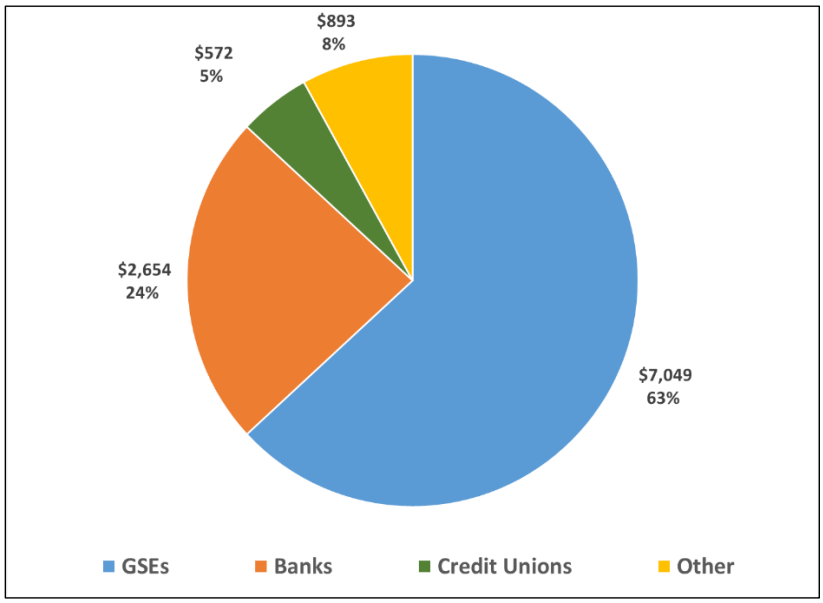
[72] Amounts outstanding include all loans secured by one-to-four-family residential properties, including junior liens and home equity lines of credit. Junior lien mortgages are second mortgages on a property; junior lien mortgages have a lower priority than the first lien mortgage in the event of a default.

[73] Federal Reserve, "Financial Accounts of the United States – Z.1, 2019: Q4 release," March 12, 2020, at https://www.federalreserve.gov/releases/z1/.

[74] Issuers of mortgage-backed securities buy pools of mortgages and sell securities to investors that offer payments based on the repayment of the underlying loans.

Figure 1. Amounts of Mortgages Outstanding, by Holder

(dollar amounts outstanding in billions)



Source: Federal Reserve, "Financial Accounts of the United States – Z.1, 2019: Q4 Release," March 12, 2020, at https://www.federalreserve.gov/releases/z1/.

Notes: Government-sponsored enterprises (GSEs) amount includes mortgages owned by the GSEs or mortgage pools backed by the GSEs or other agencies.

Nonmortgage Consumer Loans

In contrast, most nonmortgage consumer loans are not covered by the CARES Act. At the end of 2019, the amount of consumer loans outstanding was nearly $4.2 trillion dollars.[75] Over $1.6 trillion (39% of the total) were student loans; about $1.2 trillion (29%) were auto loans; nearly $1.1 trillion (26%) were credit card debt; and $258 billion (6%) were other consumer installment loans.[76] As shown in **Figure 2**, four types of institutions hold the vast majority of this debt: (1) banks—about $1.8 trillion, or 42% of the total; (2) the federal government—more than $1.3 trillion, or 31%; (3) finance companies—$537 billion, or 13%; and (4) credit unions—$482 billion, or 12%.[77] Analysis of other data sources indicate all, or nearly all, of the $1.3 trillion of consumer debt held by the federal government is student loan debt.[78]

[75] Federal Reserve, "Financial Accounts of the United States – Z.1, 2019: Q4 release," March 12, 2020, at https://www.federalreserve.gov/releases/z1/.

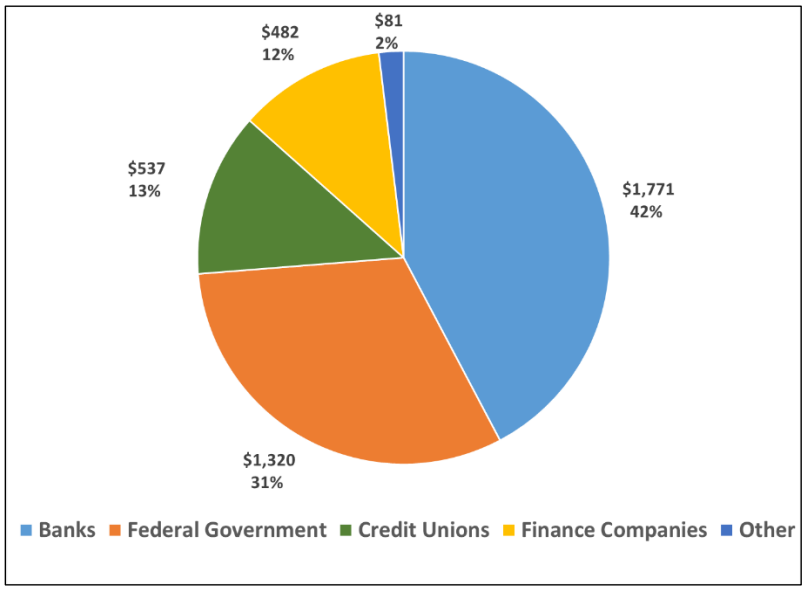
[76] Federal Reserve, "Financial Accounts of the United States – Z.1, 2019: Q4 release," March 12, 2020, at https://www.federalreserve.gov/releases/z1/.

[77] Federal Reserve data distinguish between credit card, student loan, auto loan, and other installment loan debt on household balance sheets but do not distinguish between types of consumer loans as assets on the institution balance sheets. Banks and credit unions report the value of the loans on their balance sheets, which is not the same as the amounts outstanding. Presenting those statistics may give context to how many of each type of loan these institutions hold. In turn, that information may give a sense of how many of these types of loans held by institutions are likely to be considered and guided by bank and credit union regulator rulemaking and guidance documents aimed at encouraging these institutions to work with borrowers.

[78] Department of Education, Office of Student Aid, Federal Student Loan Portfolio data, at https://studentaid.gov/data-center/student/portfolio.

Figure 2. Amounts of Consumer Loans Outstanding, by Holder

(dollar amounts outstanding in billions)



Source: Federal Reserve, "Financial Accounts of the United States – Z.1, 2019: Q4 Release," March 12, 2020, at https://www.federalreserve.gov/releases/z1/.

Federal student loans are generally eligible for CARES Act loan forbearance relief. For other types of nonmortgage credit—such as auto loans, credit cards, and private student loan—banks, credit unions, and finance companies are large players. In these markets, the CARES Act does not guarantee a right to loan forbearance; therefore, financial institutions are to have discretion about whether to offer consumers various loss mitigation options based on what is most profitable for the institution. Although banks and credit unions are regulated to ensure they are operating in a safe and sound manner, nonbank finance companies generally are not subject to this type of regulation. In addition, all institutions must comply with fair lending and other consumer laws when offering loss mitigation options, but supervision and enforcement of these laws may vary based on the institutions' regulatory regime. For these reasons, different financial institutions may respond to consumers' requests for relief options in varying ways. In addition, the financial impact of missed consumer loan payments may vary by institution.

Potential Impacts on Banks and Mortgage Servicers

Many financial institutions may be impacted by missed consumer loan payments due to the COVID-19 pandemic. Two industries that will be significantly impacted are banks and mortgage servicers.

Potential Impacts on Banks

A bank's main business is to make loans and buy securities using funding it raises by taking deposits.[79] A bank earns money largely through borrowers making payments on their loans and securities issuers making payments on securities, along with charging fees for certain services. In

[79] For more background on banking, see CRS In Focus IF10035, *Introduction to Financial Services: Banking*, by Raj Gnanarajah and David W. Perkins.

addition to accepting deposits, a bank also raises funds by issuing debt (such as bonds) and capital (such as stock). Unlike deposits and debt that place specific payment obligations on a bank, payments on capital can generally be reduced, delayed, or cancelled, and the value of capital can be written down.[80] Thus, if incoming payments unexpectedly stop, capital allows a bank to withstand losses to a point. However, if a bank exhausts its capital reserves, it could face financial distress and potentially fail.

A significant portion of a typical bank's assets consists of loans to households, which consumers use to purchase houses, cars, and other consumer goods.[81] Thus, when consumers unexpectedly stop making payments on their loans, such as during a loan forbearance, this can cause banks to incur losses. Current data on U.S. bank balance sheets suggest that as a whole, the banking industry is comparatively well positioned to withstand losses on household debt due to low exposure to mortgage loans and high capital buffers relative to historic norms.[82] Yet, individual banks differ across the business models they choose to deploy, and some banks specialize in a particular loan type, such as mortgage or consumer loans.[83] CRS analysis suggests that some banks have a high exposure to consumer loans; therefore, if consumers miss loan payments, these banks could be especially vulnerable.[84] These high-exposure banks tend to be smaller than an average bank. These financial considerations could also limit banks' abilities to provide relief options to consumers during the COVID-19 pandemic.

Potential Impacts on Mortgage Servicers

After a mortgage has been originated, a mortgage servicer carries out various administrative tasks, including collecting payments from borrowers and remitting the principal and interest to the owner (e.g., lender, investor); processing the loan title once paid in full; and administering loss mitigation (e.g., forbearance plans or foreclosure resolution on behalf of the lender) when payments are not made.

Mortgage servicers are often required to advance payments to securities holders, even if borrowers do not make payments on time. Because of this obligation, there are rising concerns about the impact of a large volume of forbearances on mortgage servicer liquidity. Some of the federal housing agencies have taken steps to address potential liquidity issues. The FHFA and Ginnie Mae have recently announced a number of measures to facilitate liquidity by making it easier for mortgage lenders and servicers to receive various forms of short-term cash advances.

GSE Servicers: On March 23, 2020, the FHFA announced that it would allow flexibility in some of the appraisal and employment verification requirements for new mortgages purchased by

[80] For more information on bank capital requirements, see CRS In Focus IF10809, *Introduction to Bank Regulation: Leverage and Capital Ratio Requirements*, by David W. Perkins.

[81] Home loans and consumer loans can be owned directly by a bank or pooled into groups and sold to investors or other banks. Many banks own a significant amount of MBS that are backed by the federal government through GSEs, such as Fannie Mae or Freddie Mac. For more information on MBS, see CRS Report R42995, *An Overview of the Housing Finance System in the United States*, by N. Eric Weiss and Katie Jones.

[82] For more information on the impact of mortgage and consumer loan delinquencies and defaults, see CRS Insight IN11336, *Bank Exposure to COVID-19 Risks: Mortgages and Consumer Loans*, by David W. Perkins and Raj Gnanarajah.

[83] For more information about bank business model variation and regulation tailoring, see CRS Report R45051, *Tailoring Bank Regulations: Differences in Bank Size, Activities, and Capital Levels*, by David W. Perkins.

[84] CRS Insight IN11336, *Bank Exposure to COVID-19 Risks: Mortgages and Consumer Loans*, by David W. Perkins and Raj Gnanarajah.

Fannie Mae and Freddie Mac until May 17, 2020.[85] The FHFA announced on April 21, 2020, that Freddie Mac and Fannie Mae would limit the obligation of mortgage servicers to advance payments to the GSEs for loans that are in forbearance to four months of payments, allowing servicers to forgo remitting payments after that time frame.[86] Similarly, the FHFA announced on April 22 that the GSEs would be allowed to purchase qualified loans in forbearance to facilitate market lending.[87]

Ginnie Mae Servicers: Approved financial institutions that service mortgages underlying Ginnie Mae MBS are among the servicers that are required to remit timely payments to investors, even when monthly payments are not received from borrowers. As consumers are allowed to defer payments and others involuntarily miss payments due to financial hardship, Ginnie Mae servicers—particularly nondepository servicers—could face significant liquidity shortages. On March 27, 2020, Ginnie Mae announced a last resort financing option, the Pass-Through Assistance Program, to allow servicers facing shortfalls to request a cash advance to meet the scheduled payments to investors.[88] These measures apply to single-family mortgages. Ginnie Mae also announced that similar programs are expected for reverse mortgages and multifamily mortgages in the near term.

Consumer Awareness and Education Issues

Most households rely on credit to finance some expenses because they do not have enough assets saved to pay for them.[89] Some consumers may not be aware of their right to loan forbearance for certain loan obligations or other relief options their financial institution is offering, so these efforts might not reach the most in need. In addition, an increase in COVID-19 pandemic-related scams might further confuse or harm consumers.

Consumer Awareness of Their Relief Options

Communication and financial education may play an important role in consumers receiving forbearances or other assistance. Many consumers may not realize that the CARES Act gives

[85] FHFA, "FHFA Directs Enterprises to Grant Flexibilities for Appraisal and Employment Verifications," March 23, 2020, at https://www.fhfa.gov/media/PublicAffairs/Pages/FHFA-Directs-Enterprises-to-Grant-Flexibilities-for-Appraisal-and-Employment-Verifications.aspx. The FHFA also announced that it was allowing the GSEs to enter into additional dollar roll transactions, which allow investors to sell MBS to a GSE in exchange for cash with an agreement to repurchase a similar MBS at some point in the future. This provides MBS investors, such as depositories, with temporary cash loans to meet any pressing liquidity needs. See FHFA, "FHFA Authorizes the Enterprises to Support Additional Liquidity in the Secondary Mortgage Market," at https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Authorizes-the-Enterprises-to-Support-Additional-Liquidity-in-the-Secondary-Mortgage-Market.aspx.

[86] FHFA, "FHFA Addresses Servicer Liquidity Concerns, Announces Four Month Advance Obligation Limit for Loans in Forbearance," April 21, 2020, at https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Addresses-Servicer-Liquidity-Concerns-Announces-Four-Month-Advance-Obligation-Limit-for-Loans-in-Forbearance.aspx.

[87] FHFA, "FHFA Announces that Enterprises will Purchase Qualified Loans in Forbearance to Keep Lending Flowing," April 22, 2020, at https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-that-Enterprises-will-Purchase-Qualified-Loans.aspx.

[88] Ginnie Mae, "Ginnie Mae addresses servicer liquidity issues," March 27, 2020, at https://www.ginniemae.gov/newsroom/GinnieInBrief/Pages/Post.aspx?PostID=40.

[89] For more information, see CRS Report R45813, *An Overview of Consumer Finance and Policy Issues*, by Cheryl R. Cooper.

consumers a right to loan forbearance in certain circumstances, and that their financial institutions can provide loan forbearance, access to credit, or other assistance.

Both government agencies and financial institutions can play an important role communicating with impacted consumers. The CFPB has published resources for consumers financially affected by the COVID-19 pandemic, including those having trouble paying their bills or experiencing loss of income.[90] Fannie Mae and Freddie Mac have created a new portal for consumers to find out whether these GSEs own the consumer's mortgage loan and whether consumers are thus eligible for loan forbearance and other relief options.[91] Many financial institutions also have conducted outreach to consumers to let them know about their possible options.

Some observers argue that the federal government agencies could do more to ensure appropriate communication with consumers during the COVID-19 pandemic. For example, a recent HUD study from their Office of Inspector General (OIG) found that CARES Act loan forbearance information to consumers from FHA mortgage servicers was often incomplete, inconsistent, outdated, and unclear.[92] Some argue that more guidance to financial institutions about how to comply with relevant consumer protection laws and to share best practices during the coronavirus pandemic may be helpful.[93] In addition, the federal regulatory agencies could also prioritize supervisory exams around COVID-19 pandemic communication efforts to better ensure appropriate conduct.

Managing Consumer Relief Requests

In addition to financial considerations, concerns also exist about whether the financial industry can process a potentially large volume of loan forbearance requests. Due to the notably fast economic downturn, reports suggest that many consumers are having trouble meeting their loan obligations and are requesting loan forbearance or other relief options at an "extremely high call volume."[94] Meeting this large demand would be challenging for financial institutions during normal times. During the Coronavirus Disease 2019 (COVID-19) pandemic, reports suggest that many mortgage servicers and banks may also be having difficulties staffing their customer service call lines due to new social distancing guidelines.[95] Some companies may have employees work from home and need to adjust to employees with slower internet speeds or daytime caregiving responsibilities. Other companies may continue to work from call centers; however in order to maintain recommended space between employees, fewer people may be answering phone calls at any given time.

[90] CFPB, *Protecting your Finances During the Coronavirus Pandemic*, at https://www.consumerfinance.gov/coronavirus/.

[91] For Fannie Mae's loan lookup tool, see https://www.knowyouroptions.com/loanlookup. For Freddie Mac's loan lookup tool, see https://ww3.freddiemac.com/loanlookup/.

[92] Letter from Brian T. Pattison, Assistant Inspector General for Evaluation, Office of Inspector General (OIG), to Joseph M. Gormley, Deputy Assistant Secretary for Single Family Housing, HUD, "Some Mortgage Loan Servicers' Websites Offer Information about CARES Act Loan Forbearance That Is Incomplete, Inconsistent, Dated, and Unclear," April 27, 2020, at https://www.hudoig.gov/sites/default/files/2020-04/Single%20Family%20Mortgage%20Forbearance%20Brief.pdf.

[93] Berry, "CFPB Urged to Take More Active Role in Coronavirus Response."

[94] Miriam Cross, "How Banks Prepared Call Center Reps to Handle Surge in Volume—from Home," *American Banker*, April 5, 2020, at https://www.americanbanker.com/news/how-banks-prepared-call-center-reps-to-handle-surge-in-volume-from-home; and Kevin Wack, "Is Mortgage Industry Equipped to Implement Washington's Forbearance Plan?" *American Banker*, March 29, 2020, at https://www.americanbanker.com/news/is-mortgage-industry-equipped-to-implement-washingtons-forbearance-plan.

[95] Heather Kelly, "Press 1 for Frustration: Customers Run into Record Phone Waits as Companies Grapple with Worker Safety," *Washington Post*, April 15, 2020, at https://www.washingtonpost.com/technology/2020/04/14/customer-service-coronavirus/.

Consumer Scams

Since February 2020, concerns about financial fraud scams related to the COVID-19 pandemic have increased. Driven by fear and confusion about the COVID-19 pandemic, as well as an increased dependence on internet and phone-based communication while "social distancing," more fraud schemes seem to be appearing.[96] On February 10, 2020, the Federal Trade Commission (FTC) published a warning about rising COVID-19 pandemic scams,[97] and it has since then published additional consumer resources.[98] In addition, on March 26, 2020, a bipartisan group of 34 Senators sent a letter to the FTC urging it to inform and assist senior citizens affected by COVID-19-related fraud.[99]

Some of these consumer scams focus on consumer financial products or services.[100] On March 16, 2020, Ranking Member Patrick McHenry and other members of the House Financial Services Committee sent a letter to CFPB Director Kathleen Kraninger expressing their concerns about the increasing number of elder financial fraud cases due to misinformation related to the COVID-19 pandemic, and they requested an update to applicable guidance for financial institutions.[101] Since this letter, the CFPB has published COVID-19 pandemic scam resources for consumers on its website.[102]

[96] Federal Trade Commission (FTC), "FTC Data Shows Jump in Coronavirus-related Complaints from Consumers," press release, March 31, 2020, at https://www.ftc.gov/news-events/press-releases/2020/03/ftc-data-shows-jump-coronavirus-related-complaints-consumers.

[97] Colleen Tressler, *Coronavirus: Scammers Follow the Headlines*, FTC, February 10, 2010, at https://www.consumer.ftc.gov/blog/2020/02/coronavirus-scammers-follow-headlines.

[98] For example, see Colleen Tressler, *FTC: Coronavirus Scams, Part 2*, FTC, March 19, 2010, at https://www.consumer.ftc.gov/blog/2020/03/ftc-coronavirus-scams-part-2; Alvaro Puig, *Coronavirus Stimulus Payment Scams: What You Need to Know*, FTC, April 20, 2020, at https://www.consumer.ftc.gov/blog/2020/04/coronavirus-stimulus-payment-scams-what-you-need-know; and Jennifer Leach, *Thinking Critically about Coronavirus News and Information*, FTC, March 26, 2020, at https://www.consumer.ftc.gov/blog/2020/03/thinking-critically-about-coronavirus-news-and-information. For more information on recent scam alerts from the FTC, see https://www.consumer.ftc.gov/features/scam-alerts. To report debt relief scams, see https://www.ftccomplaintassistant.gov/#crnt&panel1-1.

[99] Letter from Amy Klobuchar, United States Senator, et al. to Joseph Simons, Chairman of the FTC, March 26, 2020, at https://www.klobuchar.senate.gov/public/_cache/files/9/d/9d39eefd-fd0f-403b-bb52-18dc991e5be0/0C48AFF73825130F9AD7AE0B97CAC7F4.03.26.20-letter-to-ftc—seniors-and-covid-19-scams.pdf.

[100] For example, Discover has found it more challenging to identify fraud while call center staff work from home. See Michael Moeser, "Discover Takes New Approach to Fraud as Coronavirus Drives more Online, Phone Applications," *American Banker*, April 21, 2020, at https://www.americanbanker.com/news/discover-takes-new-approach-to-fraud-as-coronavirus-drives-more-online-phone-applications.

[101] Letter from Patrick McHenry, Ranking Member of the House Financial Services Committee, et al. to Kathleen Kraninger, Director of the CFPB, March 16, 2020, at https://republicans-financialservices.house.gov/uploadedfiles/2020-03-16_cfpb_seniors.pdf.

[102] The CFPB's resources for COVID-19-related financial scams can be found at Erin Scheithe, *Beware of scams related to the coronavirus*, CFPB, March 27, 2020, at https://www.consumerfinance.gov/about-us/blog/beware-coronavirus-related-scams/; and Lois Greisman and Michael Herndon, *Avoid Scams while Finding Help During Quarantine*, CFPB, April 7, 2020, at https://www.consumerfinance.gov/about-us/blog/avoid-scams-find-help-during-quarantine/.

Conclusion

During the COVID-19 pandemic, Congress and various financial regulators have taken significant actions to require, incentivize, and encourage lenders to grant loan forbearances and other types of relief to financially impacted consumers. However, despite these major actions, the impact of these efforts on consumers and financial firms is still unclear due to uncertainty about the pandemic's persistence. If the economic ramifications of the COVID-19 pandemic causes prolonged disruptions, such as persistent elevated levels of unemployment or permanent business closures, loan forbearance may become a less viable option. In this scenario, Congress may choose to consider additional types of assistance to consumers and financial institutions.

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