Testimony of Marcia Griffin, President & Founder of HomeFree-USA

On behalf of Housing Counselors

Before the House Financial Services Subcommittee on Oversight and Investigations

For a hearing entitled, "Virtual Hearing - Protecting Homeowners During the Pandemic: Oversight of Mortgage Servicers' Implementation of the CARES Act"

July 16, 2020

Good morning. My name is Marcia Griffin and I am the President and Founder of HomeFree-USA, and I appreciate this opportunity to appear before you to raise the alarm that my industry colleagues in housing counseling and I share about the plight of homeowners in the pandemic.

I) Overview:

In this testimony, I will share feedback on trends and issues the housing counselors are seeing in CARES Act-related mortgage servicing at this early stage of the economic impacts of the pandemic. For example, there is a continued prevalence of pressure for lump sum repayments, confusion about available payment options, and whether or if a consumer qualifies for a payment deferral. I will also highlight the need for federal coordination to provide guidance and accountability, and the complete abandonment of consumers in non-federal loans.

II) Context: How Housing Counselors Backstop the Mortgage Industry.

I want to emphasize the importance of housing counselors in the context of this discussion about mortgage servicing during the pandemic. HUD-approved housing counseling agencies, like my company, HomeFree-USA are primarily mission-based entities that seek to provide ordinary people with the tools, guidance, and solutions they need to achieve and sustain their housing goals. We administer programs that help get renters credit ready for mortgage approval and mentally ready for homeownership. Through classes, one-on-one guidance and an easy-to-follow plans, housing counselors help aspiring homeowners achieve their dream. We also administer programs to help existing homeowners avoid mortgage delinquency and foreclosure. I often describe this work as a type of marriage counselor that helps homebuyers and homeowners work with their lender or mortgage servicer in times of stress. Achieving and sustaining homeownership is the most important financial and family investment for the consumer we counsel.

A. Counselors Serve to the Benefit of Lenders, Services, Investors and Guarantors.

In a distressed situation, housing counselors consider their task a success each time it can help a loan get back into a successful repayment status and avoid a preventable foreclosure. Although much less rewarding but sometimes necessary, we are able to help a consumer through the sad business of a "graceful exit" – a short sale or a deed in lieu of foreclosure. Whether it is putting a loan back into repayment status or negotiating a graceful exit, servicers and lenders derive a significant economic benefit from our services, as we take on the burden of facilitating resolution by organizing documentation and working with the borrower ahead of calls with the servicer. This frees up servicer time and expense because communications with the borrower are conducted more productively and efficiently.

According to the U.S. Congress Joint Economic Committee, the average foreclosure costs homeowners, neighbors, lenders, and local governments $77,934.[1] Lenders lose an average of 12-19 percent of the home's value in foreclosure and spend about $50,000.[2] If housing counselors are able to prevent an avoidable foreclosure or assist a troubled borrower regain payment status, the value to lenders, investors and guarantors is enormous.

Today, each federal agency, regulator and most servicers and lenders include reference to the availability of HUD approved housing counseling agencies to provide assistance to backstop their operational issues in communicating with consumers. This is often without compensation to counselors. Nonetheless, counselors are here to help the consumers and have an unbiased and clear view into the process and challenges in helping COVID-impacted borrowers sort out their housing issues.

During the financial crisis, Congress called upon housing counselors as part of the National Foreclosure Mitigation Counseling (NFMC) Program. Borrowers in NFMC were three times more likely to perform under a new or existing loan than those who were not counseled.[3] According to the report to Congress on the National Foreclosure Mitigation Counseling program (NFMC), homeowners who received NFMC counseling were nearly twice as likely to receive a mortgage modification. The modifications received by NFMC-counseled homeowners were deeper—$176/more per month, on average—and more sustainable -- 67% more likely to remain current after 9 months.[4] Our organizations are a longterm resource for struggling homeowners.

B. Counselors are a Cost-Effective Means to Deliver the Assistance and Require Supplemental Funding.

Based on our experience, it costs housing counseling agencies approximately $325 or to assist distressed homeowners needing affordable loan workouts (or graceful exits) with their servicers. The average amount of time spent is 10 hours per client.[5]

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[1] Mortgage News Daily, *Foreclosures Cost Lender, Homeowners, the Community Big Bucks*, June 2, 2008: http://www.mortgagenewsdaily.com/622008_Foreclosure_Costs.asp.

[2] See the 2007 Joint Economic Report. Report 110-251. 110th Congress. 18 December 2007. Available here https://www.jec.senate.gov/public/_cache/files/3d0074ec-4be8-478b-9b4a-b77efa40be9c/the-2007-joint-economic-report-1810-.pdf and "Process, Data and Costs of Mortgage Foreclosure. Congressional Research Service. Updated 20 October 2008. Available at https://www.everycrsreport.com/files/20081020_RL34232_ca7cd14c3c1dd6baedd148c2d9a48327722a17e8.pdf

[3] "National Foreclosure Mitigation Counseling Program: Final Congressional Update." 13 July 2018. NeighborWorks. Available at https://www.NeighborWorks.org/Documents/HomeandFinance_Docs/Foreclosure_Docs/NFMC_Docs/Congressional-Repts/2018-NFMCCongressionalReport16.aspx

[4] "National Foreclosure Mitigation Counseling Program,: Congressional Update," 12 2012. NeighborWorks. Available at http://www.nw.org/network/foreclosure/nfmcp/documents/2012DecemberCongressionalReport_000.pdf

[5] National Foreclosure Mitigation Counseling Program: Final Congressional Update." 13 July 2018. NeighborWorks. Available at

The GSEs, at FHFA's behest, recently introduced a chart detailing incentive fees they were willing to pay servicers over and above their regular default servicing payment. The incentive is in an amount between $500- $1000 per loan for completed repayment plans, payment forbearances/COVID-19 payment forbearances, and Flex Modifications.[6] The servicers receive a $500 incentive fee to help certain GSE-supported loan become re-performing in a repayment plan, but counseling agencies rarely receive these funds. We argue that these incentive fees should be paid to the counseling agency which assisted the servicer toward these resolutions.

Today, about 4.2M homeowners, or roughly 9 percent of all homeowners are in some form of mortgage forbearance or CARES Act payment forbearance.[7] While new forbearances are leveling off, we anticipate a modest increase once unemployment benefits run out which would cause the percentage to tick closer to 11 percent. Assuming one out of 10 homeowners need more advice and help in setting up repayment terms, the housing counseling industry needs at least $220M for one year and $700 million for a full program to address the needs of housing consumers in this crisis.

C. How are Counselors Compensated? The Legal Limitations on "Fee for Service" model.

Under existing program rules, HUD prohibits HUD-approved housing counselors from charging a fee to consumers facing foreclosure.[8] This includes borrowers who have taken a COVID or CARES Act related payment forbearance or forbearance. We continue to support this prohibition; however, it creates a necessity for organizations like ours to seek additional support for this critical function we serve.

In FY 2020, HUD appropriated $53M to HUD-approved housing counselors. This would permit the counselors to serve about 163,000 individuals nation-wide if that was the only means of support. Instead, counselors in HUD-approved agencies generally provide about 1.1 million counseling units per year, of which about a fifth (about 210,00) are related to distressed homeowners needing to resolve or prevent a delinquency.

To supplement our operations, counselors are the beneficiaries of philanthropic support from a number of industry-related players and appreciate their vital contributions to the mission of sustainable homeownership.[9] However, philanthropic support is an unreliable means of on-

https://www.NeighborWorks.org/Documents/HomeandFinance_Docs/Foreclosure_Docs/NFMC_Docs/Congressional-Repts/2018-NFMCCongressionalReport16.aspx

[6] See LL-2020-09, June 10, 2020. https://singlefamily.fanniemae.com/media/23091/display

[7] MBA Forbearance and Call Volume Survey as of June 28, 2020.

[8] HUD Housing Counseling Program Handbook (7610.1), Chapter 7. May 2010. Available at https://www.hud.gov/sites/documents/76101TRNHSGH.PDF

[9] HUD FY 2017 9902 Housing Counseling Data, All numbers are either workshop attendees or counseling sessions.
Housing Counseling Delivers: Housing counseling helps America's housing consumers :

Number of counseling and education:	1,121,957
Number of low and moderate income:	669,631 (73%)
Prepurchase Educational Workshop Attendance	188,948
Prepurchase counseling	258,461
Resolving or Preventing Delinquency	219,801
Rental Counseling	105,965
Reverse Mortgage Counseling for Elderly	95,839

going support, particularly in times of economic stress and does not begin to cover the need. Housing counseling agencies are in the business of preventing foreclosures, limiting borrower stress, and helping the mortgage industry to be more successful.

III) Widespread issues the housing counselors are seeing in CARES Act-related mortgage servicing.

In my work at HomeFree-USA and my colleagues' work at the National Housing Resource Center, we cannot point to any particular large, national servicer for egregious deficiencies in their program. We believe that a servicer is only as good as their least trained consumer-facing employee. Instead, we want to provide the Committee with information about emerging patterns which we have observed in the first three months of CARES Act payment forbearances.

A. Observed Patterns of Servicer Deficiencies.

To date, the counseling industry has not undertaken an empirical study of the issues most commonly raised by consumers regarding CARES Act mortgage servicing. While improvements have been made by servicers, the anecdotal evidence from the first three months of activity since passage of the CARES Act reveals that there are still deficiencies in servicer training and performance. More outreach to vulnerable homeowner is needed.

Here are a few of the items we want to highlight from the past three months:

- Pressure for lump sum repayment at the end of the forbearance period continues.
- Homeowners call us who have not called the servicer because they are intimidated by past experiences.
- Scare tactics intended to prevent borrowers from accessing forbearances. We have found this with non-federal mortgages not covered by the CARES Act.
- Denial of CARES Act or other forbearance requests due to the loan delinquency status or recent resolution (in trial payment or otherwise recent modification).
- Lack of communication from servicer confirming that a forbearance was approved and for how long.
- Long call wait times and non-responsive or unattended email boxes.
- Consumer distrust of the servicer.
- Consumers not contacting the servicer to request forbearances.

First, notwithstanding the declarations from the FHFA and HUD that a single, lump sum payment is not required, we are still seeing consumers being given unclear instructions on their repayment options. Consumers report being offered the lump sum repayment first and needing to prove why they cannot afford that option. In extreme cases, we are seeing servicers demand that unemployment support be paid immediately towards the arrearage. Servicers' communications seem to exert pressure on the consumer to select a lump sum repayment that frustrates a productive conversation about other options or causes an early end to the conversation because the consumer is so upset.

Second, consumers have noted that when calling to request a discussion about payment forbearance options, servicer scripts start with a lump sum payment at the end of the forbearance period and scare the consumer from taking advantage of the CARES Act relief. They accomplish this outcome by telling the consumer they will be required to repay the arrearage in a lump sum, or that taking advantage of a forbearance could prevent them refinancing their loan in the future.

Third, our counselors have had veterans who were denied a forbearance on their VA loans. We are seeing consumers who claim that they have been denied forbearances for what they thought was a federally-backed loan, but it turned out to be a portfolio loan. We have seen challenges for homeowners who have recently gone through a loan modification or were delinquent heading into COVID-related furloughs. Much of our assistance to date has been assisting borrowers who were improperly denied forbearance, and only approved with the intervention of a housing counselor. More and specific guidance around recently impaired loans should be provided.

Fourth, we spoke to a number of consumers who felt like they were in limbo. They requested a CARES Act payment forbearance but had not received verification from the servicer that the forbearance request was received and granted. We think this lack of communication is partially responsible for the high (but recently declining) number of borrowers who have requested forbearances, but nonetheless paid their loan in April and May. Similarly, there is still widespread confusion about the length of the payment forbearance that was granted- three months, six months? A year?

Related, we have spoken to consumers who have called their servicer, gotten through and asked about payment options only to find that they were put in CARES Act payment forbearance without regard to their affirmative request. This unrequested forbearance could impair the consumer's credit rating (potentially), their ability to request a refinancing loan, and their ability to qualify on a loan for a home.

Fifth, the call times and responsiveness of servicers to the demands of the consumer is seriously lacking. By the time a consumer comes to us, they have already invested a number of hours into this process and are frustrated and upset. Our work generally takes an additional 10 hours of time with that borrower to get to a resolution. This is an unreasonable demand on consumers time when a majority of the borrowers should be offered repayment options that allow the arrearage to be deferred to the end of the loan.

Last, and it must be emphasized, borrowers are fatigued, stressed and frightened. Consumer trust in their lender and the banking system is low. Sentiment that the lender has the borrower's best interest in mind in even lower. For a significant proportion of borrowers we assist, the relationship with the servicer is too fraught with mistrust and fear for the consumer to undertake alone. I get calls from pastors, caregivers, health centers asking for us to help a vulnerable person navigate the complex issues of mortgage finance. People of color are particularly vulnerable to the sense of distrust in their servicer communications and rely more heavily on intermediaries like ourselves to help them advocate for the best outcome.

B. The Worst Is Yet To Come.

We expect the financial condition of many homeowners to change radically when the forbearance periods start to expire at calendar year end. About half of the loans in forbearance are scheduled for their first discussion about repayment in the next month. We expect most consumers will seek to renew/extend their payment forbearance. As we approach the six month mark, the nine month mark and the 12 month mark, we expect the need for more significant proportion of borrowers to be counseled through repayment options or to engage in loss mitigation will increase exponentially.

Servicers do not have capacity to handle the individualized support needed to get a loan back into performing status (standard repayment or loss mitigation). They have not scaled up appropriately and need to invest more than they have. It is our observation that the servicers are finding it difficult to scale up because of the existing strain on the business due to the need to advance the first four months or more of payments.

The biggest problem will be for homeowners who return to work but have a reduced income. There will be the need for aggressive and affordable loan modification for these borrowers. We know about the challenges we had in the foreclosure crisis with documenting HAMP loans and getting affordable loan modifications. We do not have a HAMP equivalent today and servicers will have to provide loan modifications on scale. Housing counselors will play a critical role in helping homeowners through this complicated time.

Knowing that the servicers will once again be inundated with consumer communication, now is the time to take decisive and affirmative action. We look forward to hearing the servicers' plans to take the time that every consumer deserves to work through their loan repayment options, but suspect that it will not match our sense of the commitment needed.

Consumers who will be extending payment forbearances to the entire year are going to skew towards the most distressed borrowers. Higher and higher percentages of these borrowers will be hard to reach and may be unresponsive to servicers' requests. We are uniquely positioned to help this population of borrowers and anticipate about that about one in 10 borrowers in payment forbearance will need special attention.

C. We Fear Economic Circumstances That Drive A Misalignment of Interests Resulting in Anti-Consumer Behavior.

The servicers represent the interest of the lenders and investors by contractual obligation. They do not bear any responsibility to act in the best interest of the consumer. That said, lenders and investors are generally perceived to be interest- aligned with the borrower because of the joint incentive to get a borrower into repayment status rather than bear the costs of foreclosure or other asset dispositions (deed-in lieu or short sale). But may not always be the case. As home price appreciation increases, we could see a true misalignment of interests that could drive anti-consumer behavior and lead to avoidable foreclosures or pressure to sell the home. A lender may calculate that the home is worth a great deal more than the outstanding mortgage and decide that offering the home on the inventory-starved market may yield more profit than would be lost in the administrative burden of eviction and foreclosure. In this instance, the servicer is not incentivized to work with the borrower on affordable repayment options.

This condition of anti-consumer behavior would not be immediately apparent to industry observers. Instead, the likelihood is that servicers would be able to shield themselves from immediate inquiry by masquerading the practice with excuses about overwhelmed phone lines and emails or placing blame on unclear guidance from the lenders and federal guarantors.

For example, we know that a servicer, lender, and guarantor's interests are best served when consumers make a lump sum payment of loan arrearages. This is why we are seeing the continued pressure on consumers to make lump sum payments, even though they are not required and often not in the best interest of the COVID-impacted borrower. The experience the industry thus far in the pandemic is indicative of cracks in the assumption that anti-consumerist behavior is not sound business.

IV) The Lack of Federal Coordination and Affirmative Action Plans To Address Problems Is Concerning.

Housing counselors are very appreciative of this opportunity to share our concerns about the lack of federal oversight that is responsive to the crisis on the ground in mortgage lending. We have deeply valued the conversations we have had with the CFPB and HUD, and the commitment of these talented and generous civil servants who we trust genuinely care about homeowner outcomes. We fear that they are not empowered to use the full resources of their agencies to be able to respond to the crisis at hand.

We observe no effective coordination between CFPB, FHFA, and HUD to pursue trend analysis on identified consumer problems with servicers. We would have expected that a significant aspect of such a plan, if it existed, would be to discern widespread problems and work quickly to release updated guidance, in real time, to resolve issues. We can and should be able to do better- especially by planning ahead now.

A. The Limitation of the CFPB's Consumer Complaint Database and FHFA and HUD Access to the Same.

One effort we note is the ability for FHFA and HUD to have access to the CFPB Consumer Complaint database. As far as we can tell from conversations with the CFPB, this is passive access that is not part of a formal plan to regularly convene to troubleshoot observed or reported issues in mortgage servicing. We support the Complaint database, but it has significant limitations for this particular crisis.

First, public-facing information from the database is difficult to obtain. As only the CFPB, FHFA and HUD have full access to the system, they are the only ones who can use the full power of its possibility. As recently written by our friends at the National Community Reinvestment Coalition's study of COVID-related complaints in the database, "The narratives that are included with the CFPB Complaints are a limited but instructive window into the cause of the complaint. Narratives can take up to 60 days to appear in the dataset if the consumer both volunteers a narrative and consents for it to be released."[10]

Second, the CFPB does not require and does not advocate for any particular response by the servicer in response to the consumer's complaint. Instead, servicers are only held to meeting deadlines and extensions thereto. Only after the full exchange can the CFPB understand when, how, and if a resolution of the consumer's issues was obtained. In this respect the Complaint database is a significant lagging indicator of problems.

Third, the database captures a subset of the problems consumers face with respect to mortgage servicing. Generally, consumers who report to the CFPB have a modest degree of sophistication and self-advocacy skills. In our experience, mortgage issues are significantly under-reported in the database. Many of our consumers have never heard of the Complaint database and may not have the means to enter a complaint. We are committed to working to remedy the situation by advising all counselors to submit complaints for capture to the CFPB and have been welcomed by the CFPB to do so.

B. Limitations of the Regulatory Exam and Audit Process.

We need stronger supervisory and enforcement activity conducted by the CFPB, FHFA (for the Enterprises) and HUD. Bad actors and unacceptable practices need to be subject to enforcement penalties. However, similar to the Complaint Database, it is a lagging indicator of problems and not well suited to giving rise to pro-active adjustments to prevent poor outcomes for consumers. The CFPB is not following up on individual complaints and making sure that consumer appropriate solutions are found to these complaints. We expect that the problems in CARES Act repayment issues will be include a significant number of consumers with similar problems (unlike the more traditional loss mitigation work). It is hard to predict what those will be this early in the process, but when they emerge, the problem is ripe for the agencies to understand and intervene with information, adjustments in policy, and regulatory guidance to course correct immediately.

V) Borrowers in Non-federally Backed Loans Need Help.

One of the most challenging aspects of our work in the time of COVID is assisting borrowers who do not have the benefit of the CARES Act payment forbearance. It has been very difficult to explain to borrowers that their loan is not eligible for relief under the CARES Act based on decisions that may not have been in their control (for example, the decision to keep a loan on portfolio or sell into a private label security). These borrowers who do not have a government-backed loan are at a serious disadvantage relative to their neighbors with government-backed loans, even though their economic circumstances may be identical.

Working with servicers of these non-federally backed loans is similarly challenging. There is a patchwork of non-binding applicable guidance from the bank regulators and some pro-active State Attorneys General have sought to intervene on these borrowers in particular

[10] Richardson, Jason. "COVID-19 and the CFPB Consumer Complaint Database." National Community Reinvestment Coalition. 9 July 2020. Available at https://ncrc.org/covid-19-and-the-cfpb-consumer-complaint-database/?mc_cid=b5c3095233&mc_eid=9b8766b3d0

jurisdictions. As a pro-consumer industry, we support efforts to extend CARES Act payment forbearance to all borrowers, along with repayment terms that allow for low or no-cost gradual repayment over time or at the conclusion of the loan.

In the absence of widespread adoption of CARES Act payment forbearance and generous repayment options, we implore the industry to create some equitable standards that would be widely adopted. Improved servicer representative scripts, better frameworks for affordable loan modification, and increased financial support for housing counseling would go far to improve the situation. These efforts will ensure that homeowners get the best possible outcomes, servicers can work more efficiently, and investors will avoid unnecessary additional loses.

VI) Conclusion

We appreciate this opportunity to illuminate our concerns about COVID-related mortgage servicing and the need for housing counseling intervention. Being given a seat in this august panel to advocate on behalf of America’s homeowners is very much appreciated.