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Extending Mortgage Forbearance for Conventional Mortgage Loans During COVID-19

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I. INTRODUCTION

In early 2020, COVID-19 took the world by storm, forcing restaurants, gyms, and retail stores to abruptly shut their doors. As a result, many people either lost their jobs or were forced to work remotely. By April 2020, unemployment rates reached a high of 14.7% in the United States. With so many people out of work and bills mounting, homeowners began to question how they would continue to pay their mortgages. Seeking to keep people in their homes and prevent a devastating economic downturn, Congress passed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") on March 27, 2020. The CARES Act imposed a sixty-day foreclosure moratorium on federally backed mortgage loans beginning March 18, 2020 and concluding August 31, 2020. Under this act, the servicer of a federally...
backed mortgage loan that is secured by a first or subordinate lien on residential real property could not initiate any judicial or nonjudicial foreclosure process, move for a foreclosure judgment or order of sale, or execute a foreclosure-related eviction or sale for no less than a sixty-day period. After this period expired, homeowners with eligible mortgage loans could also get a forbearance of up to 360 days if they experienced financial hardship due to COVID-19. Moratoriums extending beyond the sixty-day period enacted by the CARES Act were implemented by loan investors, state legislators, and mortgage companies. For example, on June 20, 2020, New York state implemented a sixty-day moratorium, which prohibited the initiation or enforcement of foreclosure of any residential or commercial mortgage where the property is owned by someone who is facing financial hardship due to COVID-19.

Although the CARES Act covered federally backed mortgage loans, conventional loans were not. Conventional loans are not secured or backed by the federal government, and these loans make up about 30% of the mortgage market. Because there is no federal legislation imposing foreclosure moratoriums for conventional mortgages, this issue is left up to state legislation and individual bank policy.

7. Id.
8. Id.
11. See CFPB LEARN ABOUT, supra note 5 (explaining the difference between conventional and federally backed mortgage loans and describing how conventional mortgage loans are not covered by the CARES Act).
This Note focuses on conventional loans held by the originating bank, and argues that banks should extend mortgage forbearance until states remove COVID-19 restrictions that require businesses to operate at a reduced capacity. This Note proceeds in five parts. Part II provides background information on mortgages, foreclosures, and current policies related to COVID-19. Part III discusses why banks should extend mortgage forbearance. Part IV explains why forbearance should be extended until certain COVID-19 restrictions are lifted. Part V summarizes the arguments of this note and draws a conclusion.

II. BACKGROUND ON MORTGAGES, FORECLOSURES AND POLICY

A mortgage is an agreement between a borrower and a loan servicer that gives a loan servicer the right to take a borrower’s property if a borrower defaults on the loan. Depending on a borrower’s financial circumstances, he or she may get a Federal Housing Association (“FHA”) loan or a conventional mortgage loan. FHA loans are mortgage loans backed by the Federal Housing Association. This means that if a borrower defaults, the FHA reimburses the loan servicer, which reduces risk to loan servicers so that they can offer loans to borrowers with lower credit scores and smaller down payments. In contrast, conventional loans are any loans not backed or guaranteed by the federal government. Since conventional loans are not backed by the federal government, only people with established credit and low levels of debt tend to qualify for them, because there is more risk on the loan servicer if the borrower defaults.

CQHZ] (last visited Feb. 5, 2021) (allowing customers to delay three months of payments and extend the forbearance period for a total of twelve months if needed).

14. See infra Part II.
15. See infra Part III.
16. See infra Part IV.
17. See infra Part V.
19. CFPB UNDERSTAND LOAN, supra note 12.
20. Id.
21. Id.
22. Id.
After a mortgage loan is given to a borrower by a lender, the responsibilities for the loan are passed to the loan servicer.\footnote{Margaret R.T. Dewar, \textit{Comment: Regulation X: A New Direction for the Regulation of Mortgage Servicers}, 63 \textit{Emory L.J.} 175, 181 (2013).} The loan servicer can be the original lender, or a new entity that the original lender has passed the mortgage loan to.\footnote{See id. (explaining that the original entity that gave the borrower a loan may not be the same entity providing the mortgage servicing).} This Note discusses loan servicers that are the original lender, specifically banks.

Loan servicers have many duties and responsibilities.\footnote{See 12 U.S.C. §2605(e) (2018) (outlining duties of servicing a loan and administration of escrow accounts); see also Dewar, supra note 24 (explaining how a servicer’s duties are outlined in the Real Estate Settlement Procedures Act (“RESPA’’)).} For example, loan servicers are responsible for the day-to-day processing of mortgage loans which includes processing payments, communicating with borrowers and investors, and handling escrow accounts.\footnote{Dewar, supra note 24, at 181–82.} A loan servicer is also responsible for the mortgage loan if the borrower defaults.\footnote{See Rosemary Carlson, \textit{What is Defaulting on a Loan?}, \textit{The Balance} (July 13, 2020), https://www.thebalance.com/what-does-it-mean-to-default-on-a-loan-4684116 [https://perma.cc/LH36-FFM6] (explaining that if a borrower defaults on a loan, consequences include late fees, collection procedures, lawsuits or foreclosure).}

A default occurs when a homeowner is unable to make his/her monthly mortgage payment.\footnote{See id. (explaining how after a default, mortgage lenders will often work with homeowners to help avoid foreclosure); see also \textit{How Does Foreclosure Work?}, \textit{Consumer Fin. Prot. Bureau} (2020) [hereinafter CFPB \textit{How Does Foreclosure}], https://www.consumerfinance.gov/ [https://perma.cc/B5KA-TMAD] (explaining that foreclosure is when a lender takes back the property after a homeowner fails to make payments on the mortgage).} After a default, the loan servicer may choose to foreclose on the home, which allows the loan servicer to take back the home, or avoid foreclosure by implementing various loss mitigation options.\footnote{Loss Mitigation Procedures, 12 C.F.R. § 1024.41(f)(i) (2020).} Under federal law, a loan servicer may not foreclose on a home until a borrower is more than 120 days delinquent on the loan.\footnote{See 12 C.F.R. § 1024.41(f)(i) (explaining that loan servicers must wait for a loan to be 120 days in default before initiating foreclosure proceedings).} This rule applies to all loan servicers, with a few exceptions.\footnote{Loss Mitigation Procedures, 12 C.F.R. § 1024.41(f)(i) (2020) (listing reverse mortgages, timeshare plans, coupon books, and small servicers as exemptions to the 120-day rule).} After 120 days, a loan servicer is free to follow state foreclosure laws in order to retake the home.\footnote{See Periodic Statements for Residential Mortgage Loans, 12 C.F.R. § 1026.41(e) (2020) (listing reverse mortgages, timeshare plans, coupon books, and small servicers as exemptions to the 120-day rule).}
The CARES Act forced banks holding federally backed mortgages to suspend foreclosures for sixty days and allowed forbearance for those affected by COVID-19. However, because the CARES Act only affected federally backed mortgages, states passed legislation that put new restrictions on all mortgages, including conventional mortgages.

In early 2020, many states began passing legislation to enact foreclosure and eviction moratoriums. A moratorium is “a postponement of fulfillment of obligations decreed by the state through the medium of the courts or legislature.” States have taken very different approaches in combating COVID-19’s effect on foreclosure. A few states passed legislation temporarily postponing all in-person court proceedings, but did not pass any legislation regarding the suspension of foreclosures. Some states, like Arizona, only passed legislation

34. See Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) §1102, 15 U.S.C.A § 116 (West 2021); see also LEARN ABOUT, supra note 5 (describing the difference between conventional and federally backed mortgages).


38. Compare, Fla. Exec. Order No. 20-94 (suspending any statute providing for a mortgage foreclosure cause of action under Florida law for 45 days), with Md. Exec. Order No. 20-12-17-02 (Dec. 17, 2020) (stating that the foreclosure moratorium will continue until the state of emergency is terminated).

suspending eviction. Other states passed legislation that postponed eviction and foreclosure for various periods of time. South Carolina and Wisconsin were two states with some of the shortest moratorium periods, only lasting about sixty days. Other states do not have a finite end date for their moratoriums. For example, Maryland’s moratorium will last until their state of emergency is lifted or expires. Vermont has gone further and declared that their moratorium will be in place for the duration of COVID-19.

Banks holding conventional mortgages must adhere to state guidelines regarding foreclosure. However, most states do not have a foreclosure moratorium in place that will last the duration of COVID-19. Therefore, what happens with conventional mortgages is largely up

43. See Md. Exec. Order No. 20-12-17-02 (Dec. 17, 2020) (stating that the foreclosure moratorium will continue until the state of emergency is terminated, or the catastrophic health emergency is rescinded).
44. Id.
46. See 12 C.F.R. § 1024.41(f)(2) (2020) (explaining that loan servicers must send notice to a borrower before following applicable law for judicial and non-judicial foreclosure).
to each individual bank’s policy. Banks have taken different approaches when it comes to conventional mortgages and COVID-19.

Some banks are allowing customers negatively affected by COVID-19 to defer their payments through forbearance programs. Forbearance is when a mortgage servicer allows a borrower to defer paying his or her mortgage. The borrower will have to pay these deferred payments back after the forbearance period through different loss mitigation programs, depending on the bank’s policy. Borrowers have to apply to be considered for forbearance, and, if approved, can delay payments for a certain period of time. Although interest will continue to accrue during the deferment period, customers will not be

48. See e.g., JPMORGAN CHASE & CO. supra note 9 (allowing customers to delay up to three monthly payments); BANK OF AM., supra note 13 (allowing customers to delay three months of payments and extend forbearance up to twelve months if needed); Covid-19 Update, WELLS FARGO, https://update.wf.com/coronavirus/home-lending/?_ga=2.156633851.1300462386.1598738364-1313284391.1598738364 [https://perma.cc/TP5V-TTEJ] (last visited Feb. 5, 2021) (allowing forbearance of up to six months).

49. See e.g., BANK OF AM., supra note 13 (allowing customers to delay three months of payments and extend the forbearance period to twelve months if needed); Covid-19 Help and Resources, FIFTH THIRD BANK, https://www.53.com/content/fifth-third/en/covid-19.html [https://perma.cc/M2KS-2GXE] (last visited Feb. 5, 2021) (allowing 180-day payment forbearance which may be extended up to an additional 180 days for customers who experienced hardship from Covid-19); HSBC Mortgage and Home Equity Relief Program, HSBC, https://www.us.hsbc.com/coronavirus-update/mortgage-and-home-equity-loan-support/ [https://perma.cc/WUE9-XC8M] (last visited Feb. 5, 2021) (allowing ninety-day forbearance period that can be extended up to 360 days); JPMORGAN CHASE & CO., supra note 9 (allowing customers to delay up to three monthly payments if affected by Covid-19 as well as waiving associated late fees and suspending foreclosure activity during the assistance period).

50. See e.g., BANK OF AM., supra note 13 (allowing customers to delay three months of payments and extend the forbearance period to twelve months if needed); HSBC, supra note 49 (allowing ninety-day forbearance period that can be extended up to 360 days).

51. See What is Mortgage Forbearance?, CONSUMER FIN. PROT. BUREAU (Aug. 29, 2019) [hereinafter CFPB MORTGAGE FORBEARANCE], https://www.consumerfinance.gov/ask-cfpb/what-is-forbearance-en-289/ [https://perma.cc/EQB3-HFVT] (explaining that forbearance can help home-owners deal with hardships, such as, illness or injury that increases healthcare cost or job loss).

52. See FIFTH THIRD BANK, supra note 49 (allowing customers to select one of four options at the end of the forbearance period: (1) be evaluated for loan modification to move missed payments to the back of the loan, (2) add the missed payments to the end of the loan as a lump sum payment, (3) agree to a repayments plan with the hardship team, or (4) make a lump sum payment after the forbearance period expires; see also HSBC, supra note 49 (explaining that reinstatement, repayment plans and modification are general loss mitigation programs that may be available after forbearance).

53. See HSBC, supra note 49 (explaining that no payments will need to be made during the forbearance period, however afterwards a repayment plan or modification will be instated to make up for past due amounts).
charged any late fees. Banks differ in the amount of time they are allowing customers to delay payments, ranging from 90 to 360 days. Foreclosures are paused during the forbearance period. Some banks require borrowers to pay the full amount owed at the end of the forbearance period, and others allow different repayment programs or mortgage modifications.

Because few states have foreclosure moratoriums that will last the duration of COVID-19, banks should enact policies that extend the forbearance period until COVID-19 restrictions—which require businesses to operate at a reduced capacity—are lifted. As each state eliminates COVID-19 restrictions, the forbearance period should end for property held there. Current bank policies do not go far enough, as forbearance periods only last three to twelve months. Lengthening the forbearance period for borrowers would suspend foreclosures to the advantage of both banks and homeowners.

54. See, e.g., BANK OF AM., supra note 13 (stating there will not be any late charges); HSBC, supra note 49 (stating that during Covid-19 related hardship, late fees will be waived); J.P. MORGAN CHASE & CO., supra note 9 (waiving any associated late fees and suspending foreclosure activity during the assistance period); WELLS FARGO, supra note 48 (stating that during the payment suspension period, late fees will not be charged).

55. See HSBC, supra note 49 (allowing ninety-day forbearance period that can be extended up to 360 days); see also Mortgage Help and Repayment Options, USBANK, https://www.usbank.com/home-loans/mortgage/mortgage-help-and-repayment-options.html [https://perma.cc/55AJ-3W4Q] (last visited Feb. 5, 2021) (allowing customers to defer payments for up to 90 days).

56. See CFPB MORTGAGE FORBEARANCE, supra note 51 (explaining that after forbearance the loan servicer may make the borrower pay back the amount owed at once when payments are due again).

57. See, e.g., BANK OF AM., supra note 13 (requiring some borrowers to pay back the full amount of deferred payments at the end of forbearance); HSBC, supra note 49 (requiring borrowers to pay back past-due payments through reinstatement repayment plans or modification); J.P. MORGAN CHASE & CO., supra note 9 (requiring customers to pay back all missed payments at the end of the forbearance period).

58. See infra Part IV for information on COVID-19 restrictions effecting businesses and employment.

59. See e.g., BANK OF AM., supra note 13 (allowing customers to delay three months of payments and extend their mortgage by three months); HSBC, supra note 49 (allowing ninety-day forbearance period to be extended up to 360 days); J.P. MORGAN CHASE & CO., supra note 9 (allowing customers to delay up to three months of payments); WELLS FARGO, supra note 48 (allowing forbearance of up to six months).

60. See infra Part III.
III. BANKS SHOULD EXTEND THE FORBEARANCE PERIOD FOR HOMEOWNERS

Extending forbearance will benefit banks as well as homeowners. Banks will benefit because the foreclosure process is time-consuming and costly. Homeowners will benefit because they will be able to stay in their homes and become more financially stable. Further, suspending foreclosures through forbearance may help stabilize the economy and housing market.

A. Comparing COVID-19 Conditions to the 2008 Foreclosure Crisis

Although the 2008 Foreclosure Crisis stemmed from a flawed financial system rather than a health crisis, much can be learned from the efforts implemented in 2008. Loan servicers foreclosed on approximately 2.25 million homes in 2008. Foreclosures occurring in 2008 have been attributed to job loss. In response, the federal government took measures to combat the growing number of foreclosures. During their 2008 presidential campaigns, both Hillary Clinton and Barack Obama called for a ninety-day federal moratorium. However, no actual federal moratorium was enacted in response to the financial crisis. Regardless, Fannie Mae and Freddie Mac temporarily halted their foreclosures and pursued modifications for about five months through early 2009.

61. See infra Part III.
62. See infra Part III.B & C.
63. See infra Part III.A & D.
64. See infra Part III.E.
66. Id.
69. Bauer, supra note 37, at 132–33.
70. See id. at 133 (explaining how Fannie Mae and Freddie Mac temporarily halted their foreclosures, thus implementing what equates to a federal moratorium without enacting any moratory legislation).
71. Id.
States also passed legislation to address the increase in foreclosures. Many states enacted new laws deferring or suspending foreclosures to give homeowners a breathing period. The duration of each state’s foreclosure suspension varied. For example, Nevada’s suspension lasted indefinitely, and New Jersey’s lasted six months. Despite federal and state efforts, delinquency rates for residential mortgages went from 2.08% in the first quarter of 2007 to a high of 11.54% in the first quarter of 2010. The U.S. foreclosure rate increased from 1.03% in 2007 to 2.23% in 2010.

State and federal efforts made in 2020 mirror the efforts made during the 2008 foreclosure crisis. Federally, the CARES Act put a foreclosure moratorium on federally-backed mortgages, similar to when Fannie Mae and Freddie Mac temporarily halted foreclosures. In 2008 and 2020, federal efforts addressed federally backed mortgages, leaving conventional mortgage policy up to each state and bank. Like legislation in 2008, state efforts in 2020 also suspended foreclosures for various periods of time. As evidenced by foreclosure statistics from
2007 to 2010, state and federal efforts were not enough to prevent foreclosure rates from rising.\textsuperscript{82} Analysts suggest that legislators and administrators may have misdiagnosed the causes of defaults in 2008, instead proposing that the “primary cause of foreclosure is negative equity in homes coupled with job loss.”\textsuperscript{83} The primary cause of defaults during COVID-19 can also be attributed to job loss when comparing unemployment rates to mortgage delinquency statistics.\textsuperscript{84}

In March 2020, national unemployment rates were at 4.4%, then peaked to 14.7% in April 2020, and have since decreased to 6.7% in December 2020.\textsuperscript{85} Delinquency rates for mortgage loans increased from 4.36% in the first quarter of 2020\textsuperscript{86} to 8.22% in the second quarter of 2020\textsuperscript{87} and then dropped to 5.93% in the third quarter of 2020.\textsuperscript{88} A similar correlation can be seen in the 2008 Financial Crisis when comparing foreclosure moratorium to September 15, 2020; N.H. Emergency Order No. 51 (June 11, 2020), https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/emergency-order-51.pdf [https://perma.cc/4HS5-WATL] (terminating the foreclosure moratorium that had been in place since March 17, 2020); Sup. Ct. of S.C. Order No. 2020-04-30-02 (Apr. 30, 2020), https://www.sccourts.org/whatsnew/displayWhatsNew.cfm?indexId=2491 [https://perma.cc/GSS7-776S] (lifting the eviction and foreclosure moratorium that had been implemented on March 18, 2020 and resuming foreclosure proceedings on May 15, 2020); Wis. Emergency Order No. 15 (Mar. 27, 2020), https://evers.wi.gov/Documents/COVID19/EO15BanonEvictionsandForeclosures.pdf [https://perma.cc/J93L-T5E3] (declaring a foreclosure moratorium that will last for sixty days).

86. DeSanctis, supra note 84.
87. Id.
88. Id.
unemployment rates with delinquency rates. During the Financial Crisis, national unemployment rates went from 5% in December 2007, rose to 10% in October 2009 and remained above 9% throughout 2010. As unemployment remained high in 2010, so did delinquency rates, reaching a high of 11.54% in the first quarter of 2010. The 2008 Foreclosure Crisis shows that there is a correlation between unemployment and delinquency rates. This correlation has been further evidenced by past recessions. If COVID-19 cases increase again, states may reinstate stay-at-home orders and close restaurants, gyms, and other businesses for a certain period of time like in March 2020. This could lead to the unemployment rate increasing again, preventing borrowers from being able to pay their mortgages.

Because of the volatility in employment caused by COVID-19, banks should extend forbearance periods until COVID-19 restrictions that hinder businesses are lifted and businesses can operate at 100% capacity. As discussed above, state and federal efforts to combat foreclosure in 2020, have mirrored those implemented during the 2008 Foreclosure Crisis. Despite the efforts implemented in 2008, the number of delinquencies and foreclosures continued to increase. By

92. Id.
93. See Fred Wright, Commentary: The Effect of New Deal Real Estate Residential Finance and Foreclosure Policies Made in Response to the Real Estate Conditions of the Great Depression, 57 Ala. L. Rev. 231, 239 (2005) (explaining that during the Great Depression widespread unemployment reduced the ability of individuals to meet their mortgage obligations and resulted in an increased number of foreclosures).
94. See generally Lee, supra note 1 (describing what is open and closed in each state due to COVID-19).
implementing longer forbearance periods, banks would be combating unemployment— an issue that is central to borrowers’ ability to make mortgage payments. If banks extend forbearance to last until COVID-19 restrictions limiting the capacity businesses can operate at are lifted, it is likely that many borrowers will be able to return to work, and resume mortgage payments.

B. Foreclosures are Time-Consuming

Banks should extend forbearance periods because this will suspend and help prevent foreclosure. Foreclosing on a property can be a long and tedious process. Under federal law, a foreclosure cannot start until a borrower is more than 120 days delinquent on a loan. After this period, a lender can begin foreclosure proceedings, governed by state law. Foreclosure processes differ by state. There are two ways a loan servicer can foreclose on a home, judicial foreclosure or nonjudicial foreclosure. Judicial foreclosure requires loan servicers to initiate a court action in order to foreclose. Nonjudicial or power of sale law permits foreclosure to occur without a court action. In states that permit nonjudicial foreclosure, the document governing a security interest, either a mortgage or deed of trust, gives the loan servicer the authority to sell the property after a notice of default is given. Each state has different foreclosure laws, so the time it takes to foreclose on a property can vary greatly. Consider the following hypothetical:

97. See Kolomatsky, supra note 4 (discussing how homeowners and renters were still struggling to make monthly housing payments six months into the pandemic).
99. See 12 C.F.R. § 1024.41 (2020) (requiring all loan servicers to wait for a loan to be 120 days delinquent before foreclosing, with some exemptions).
100. Id.
101. See generally CFPB HOW DOES FORECLOSURE, supra note 30 (explaining that state laws on giving notice and scheduling foreclosure sales vary).
102. See id. (explaining that judicial foreclosure requires going through the court system and nonjudicial foreclosure is done without filing a court action).
103. Fox, supra note 68, at 489.
104. Id.
105. Id.
106. See id. (explaining how there has been multiple failed attempts to create a uniform mortgage foreclosure law).
Suppose there is a homeowner named Kevin who lives in Alabama and has a conventional residential mortgage through a bank. Kevin is struggling financially because of COVID-19 and is unable to make his mortgage payment on March 1, 2020. The bank that is the servicer on his loan wants to foreclose. Alabama is one of the thirty states in the United States that allows for nonjudicial foreclosure, so the servicer would not have to go to court in to foreclose.\textsuperscript{107} First, the bank would have to wait for Kevin to be 120 days delinquent on his mortgage, before beginning state foreclosure proceedings on July 1. In Alabama, the lender of the mortgage is required to give notice of the sale of the property.\textsuperscript{108} Notice must be given by publication once a week for three weeks in a row in a newspaper published in the county where the land is located.\textsuperscript{109} The bank complies with Alabama law and put notices in the newspaper on July 1, July 8, and July 15 that Kevin’s property will be auctioned off on July 22. Assuming Kevin does not delay this process by contesting the foreclosure in court, or filing for bankruptcy, the property would be foreclosed and sold on July 22, 2020. This is the earliest that the bank would be able to foreclose, and it is four months and twenty-one days after the original default.

After considering the best-case scenario for a bank trying to foreclose above in a nonjudicial foreclosure jurisdiction, consider a hypothetical of the best-case scenario in a judicial foreclosure jurisdiction. Suppose John has also had some financial trouble due to COVID-19, and he does not make his mortgage payment on March 1, 2020. John lives in Illinois, which only allows for judicial foreclosures.\textsuperscript{110} This means that the bank who is John’s loan servicer would have to go to court to foreclose on the property.

As in Kevin’s case described above, the bank waits 120 days to begin the foreclosure process. On July 1, the bank files a complaint with the Illinois court and a service of summons goes to John, notifying him that foreclosure proceedings have started.\textsuperscript{111} Within thirty days of being served, John is required to file a response to the complaint,\textsuperscript{112} and he does

\textsuperscript{107} Id.
\textsuperscript{108} See \textsc{Ala. Code} § 35-10-13 (2020).
\textsuperscript{109} Id.
\textsuperscript{112} Id. at 5/15-1504(c).
so on August 1, 2020. In Illinois, John has the right of redemption,\(^{113}\) meaning he can pay the entire remaining balance of his mortgage, including accrued interest and fees in order to keep his property.\(^{114}\) This right of redemption period ends either seven months from the date John was served with a summons, or three months from the date of entry of the judgment of foreclosure.\(^{115}\) Assume John’s right of redemption expired on February 1, 2021.

The bank has obtained a judgment for foreclosure from the court, John’s right of redemption has expired and the bank proceeds to sell the home by judicial sale. Notice of sale must be published in the newspaper for at least three consecutive weeks, between forty-five and seven days prior to the sale.\(^{116}\) The bank publishes notice on February 1, February 8, and February 15 that John’s property will be sold on February 22, 2021 at 11:00 am. Thus, the earliest the bank would be able to foreclose in this scenario is eleven months and twenty-one days after default. If John decided to fight this foreclosure by contesting it in court or filing for bankruptcy, the foreclosure could take even longer.

Banks may also see an added delay due to courts being overloaded by filings and the backlog of cases caused by COVID-19.\(^{117}\) At the beginning of the COVID-19, some states postponed court cases for thirty days and shut their doors to the public.\(^{118}\) Although most courts have started conducting operations virtually, technological difficulties and other unforeseen issues could cause further delays.\(^{119}\)

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\(^{113}\) See Bouvier Law Dictionary Rights of Redemption of Mortgage, THE WOLTERS KLUWER BOUVIER LAW DICTIONARY DESK EDITION (Stephen Michael Sheppard, ed.) (2012) (explaining that the equitable right of redemption attaches from the time of notice of default and persists until the moment of foreclosure, requiring the debtor to pay all amounts owed to the creditor in order to redeem their property).

\(^{114}\) See 735 ILL. COMP. STAT. ANN. 5/15-1603 (LexisNexis 2020).

\(^{115}\) Id.

\(^{116}\) Id. at 5/15-1507.


When considering the hypotheticals outlined above, a bank would not be getting paid out from a foreclosure until between four and eleven months after a borrower defaults. In reality, foreclosure takes much longer.\textsuperscript{120} The ten U.S. states with the shortest average foreclosure timelines in the third quarter of 2019 ranged from 201 to 385 days; and the ten U.S. states with the longest average foreclosure timeline ranged from 914 to 1,633 days.\textsuperscript{121} COVID-19 has made this a more time-consuming process. The average time to foreclose increased from the second to the third quarter of 2020 by 21%.\textsuperscript{122} Properties foreclosed upon in the third quarter had been in the foreclosure process an average of 830 days, up from 685 days in the second quarter.\textsuperscript{123}

The time it takes to foreclose is important, because when a borrower has defaulted, but a foreclosure has not yet occurred, the bank is not collecting any money from monthly mortgage payments and is not able to use that money for further investment.\textsuperscript{124} Given the constantly changing economic conditions due to COVID-19, in the time it takes to foreclose on a property, borrowers may become employed and more financially stable allowing them to resume their mortgage payments.\textsuperscript{125} This is especially true during COVID-19, because as time goes on states

\begin{itemize}
\item \textsuperscript{120} See generally ATTOM DATA SOLS., supra note 98 (explaining that states with the longest average foreclosure timelines for the third quarter of 2019 were Indiana (1,633 days), Hawaii (1,626 days), Nevada (1,511 days), New Jersey (1,173 days), and Georgia (1,170 days)).
\item \textsuperscript{121} Id.
\item \textsuperscript{122} Id.
\item \textsuperscript{123} Id.
\end{itemize}
have allowed more businesses to reopen\textsuperscript{126} and a vaccine is becoming available.\textsuperscript{127} Both scenarios put homeowners in a better position to pay their mortgages because homeowners who lost their jobs due to COVID-19 are able to return to work.\textsuperscript{128} Banks may be better served by extending the forbearance period, because borrowers may be able to pay their mortgages sooner than it would take banks to foreclose on their property.

C.  Foreclosures are Costly

Banks should also extend forbearance because foreclosure has many monetary disadvantages.\textsuperscript{129} Foreclosure likely will not make a loan servicer financially whole, as property is usually auctioned off to the highest bidder and sold for less-than-market value, due to a number of factors.\textsuperscript{130} First, foreclosure sales normally require the buyer to tender a cash bid at the foreclosure sale or shortly after.\textsuperscript{131} Secondly, the deadline of a foreclosure date creates time pressures that may make it difficult to obtain an appraisal, search title, or arrange for title insurance, which can be unattractive to potential buyers.\textsuperscript{132} Third, many potential buyers may not be aware that a foreclosure sale is even happening, as notice is only required to be placed in the newspaper, so the number of buyers that show up at auction may be limited.\textsuperscript{133} Along with the issues of getting a fair price for the property, large banks may not be able to collect on the deficiency, the difference between the money owed on the mortgage and


\textsuperscript{127} See Pfizer and Biontech Announce Vaccine Candidate Against Covid-19 Achieved Success in First Interim Analysis from Phase 3 Study, P\textsuperscript{F}IZER Inc. (Nov. 9, 2020), https://www.pfizer.com/news/press-release/press-release-detail/pfizer-and-biontech-announce-vaccine-candidate-against [https://perma.cc/M5KL-Z76Q] (announcing vaccine candidate BNT162b2 was found to be more than 90% effective in preventing COVID-19 in participants).

\textsuperscript{128} U.S. Dep’t of Labor Bureau of Labor Statistics, supra note 125.

\textsuperscript{129} See Cordell, supra note 124, at 11 (explaining that losses from foreclosures include tax and insurance payments, legal and court fees, unpaid mortgage balance, missed interest payments and commissions).


\textsuperscript{131} Id. at 968–69.

\textsuperscript{132} Id. at 970.

\textsuperscript{133} Id. at 970–71.
the price the property sells for at auction. Many states have anti-deficiency statutes, meaning if the sale of the property does not cover the total debt, the bank cannot receive a judgment to collect the rest of the money from the homeowner who defaulted. Losses range from 20 cents to 60 cents on the dollar and lenders typically lose $50,000 or more on one foreclosure. On top of the loss banks take on the actual sale, other costs of foreclosure include tax and insurance payments, commissions paid to real estate agents, utility payments, repair costs, legal and court fees, and missed interest payments.

Consider the following hypothetical using average values of conventional mortgages according to the FHFA (numbers were rounded up for ease of calculation). Matt bought his home in March 2020, and when he bought it the property value was $350,000; he took out a $270,000 loan and the interest rate was 4% which will be fully amortized in thirty years. Matt’s monthly payment, not including property tax or insurance, would be about $1,300 a month. A larger percentage of

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134. See Ariel Olson, Comment: Kicked While They’re Down: Deficiency Judgments and the Great Recession, 67 EMORY L.J. 1273, 1286–89 (2018) (explaining that fourteen states limit the time in which a lender can file a deficiency judgment after foreclosure, eighteen states impose some type of fair value limit on the amount a lender can recover, and seven states prohibit deficiency judgments following foreclosure of a specific type of mortgage).

135. See Geoff Walsh, The Finger in the Dike: State and Local Laws Combat the Foreclosure Tide, 44 SUFFOLK U.L. REV. 139, 144 (2011) (explaining how most states have anti-deficiency laws on the books today and some states limit deficiency claims by requiring use of a property’s fair market value rather than the amount of the winning bid to calculate the borrower’s debt, but other states bar deficiency claims entirely).


137. Cordell, supra note 124, at 11.

138. See National Mortgage Database (NMDB) Aggregate Data, FED. HOUS. FIN. AGENCY (June 29, 2020), https://www.fhfa.gov/DataTools/Downloads/Pages/National-Mortgage-Database-Aggregate-Data.aspx [https://perma.cc/8R6W-AZPJ] (explaining that the average property value for conventional residential mortgages in September of 2019 was $349,600, the average loan amount was $271,200, and the average interest rate was 3.9%).

139. In order to calculate this monthly mortgage payment, this formula is used: $M=P[(1+i)^n]/[(1+i)^n-1]$, where $M = \text{monthly mortgage payment}$; $P = \text{the principal amount}$; $i = \text{monthly interest rate}$; and $n = \text{the number of payments over the lifetime of the loan}$. To calculate Matt’s monthly interest rate, divide his yearly interest rate of 4%, by the number of months in a year, 12. Matt’s monthly interest rate would be $0.04/12=0.0033$. For Matt’s scenario, the calculation is as follows: $1,282.80=270,000[(1+0.0033)^{360}]/[(1+0.0033)^{360}-1]$. See generally, Tanza Loudenback, Here’s Exactly How to Calculate How Much a Mortgage Payment Would Cost You Every Month, BUS. INSIDER (May 30, 2019, 12:07 PM), https://www.businessinsider.in/heres-exactly-how-to-calculate-how-much-a-mortgage-
Matt’s monthly payment will go towards interest than the principal balance at the beginning of his mortgage repayment period, because interest charged is based on the current outstanding balance of the mortgage, which will decrease as more principal is repaid.\textsuperscript{140} This means that the loan servicer of Matt’s loan would be making about $900 a month in interest for the first year of the mortgage, and the amount of interest would decrease in each subsequent year.\textsuperscript{141}

If Matt bought his home in March when COVID-19 closures first started and was unable to make any of his mortgage payments, the bank would be losing roughly $900 a month in interest. Considering the time it takes to foreclose on a property if the bank decided to foreclose on Matt’s house, the process could take four to eleven months,\textsuperscript{142} minimum, and the bank would lose about $3,500 and $9,800 of interest.\textsuperscript{143} The bank would also lose money on the foreclosure sale, since foreclosure sale losses typically range from 20 to 60 cents on the dollar, meaning that John’s house likely would have sold for only $120,000 to $240,000.\textsuperscript{144} When adding the amount of interest in missed payments and the amount of money lost in the foreclosure sale, the loan servicer could lose between about $63,500 and $189,800.\textsuperscript{145} Because John still payment-would-cost-you-every-month/articleshow/69586754.cms [https://perma.cc/W5GH-8E6N] (explaining how to calculate monthly mortgage payments step-by-step).

\begin{itemize}
\item \textsuperscript{141} In order to calculate the amount of interest Matt would be paying the loan servicer every month the formula is \(P(m)= \text{monthly interest amount, where } P= \text{the principal amount and } m= \text{monthly interest rate.}\) To calculate Matt’s monthly interest rate, divide his yearly interest rate of 4\% by the number of months in a year, 12. Matt’s monthly interest rate would be \(0.04/12= 0.0033.\) The calculation for how much Matt will pay in interest is as follows: \(270,000(0.0033)= 891.\) See \textit{id.} (describing the breakdown of monthly mortgage payments and how the amount of interest paid to the loan servicer decreases as the principal balance decreases).
\item \textsuperscript{142} See \textit{supra} Part III.B.
\item \textsuperscript{143} To calculate how much interest Matt owes the loan servicer, multiply the amount of interest by the number of months in missed payments. The calculation for approximately how much Matt would owe in four months is as follows: \(891\times4= 3,564.\) The calculation for approximately how much Matt would owe in eleven months is as follows: \(891\times11= 9,801.\) See Banton, \textit{supra} note 140 (applying calculation from article).
\item \textsuperscript{144} The calculation for 20 cents on the dollar and 60 cents on the dollar for Matt’s home is as follows: \(300,000(0.20)= 60,000 \text{ and } 300,000(0.60)= 180,000.\) This is the amount of money usually lost from a foreclosure sale applied to Matt’s foreclosure. See \textsc{NeighborWorks Am.}, \textit{supra} note 136 (explaining that losses for foreclosure sale range from 20 cents to 60 cents on the dollar).
\item \textsuperscript{145} To calculate the loan servicers loss, add Matt’s missed interest payments to the amount the house sold for in foreclosure. The calculation is as follows: \(3,500+60,000= 63,500 \text{ and } 9,800+180,000= 189,800.\)
\end{itemize}
owed the full $270,000 on his mortgage, the bank would forfeit this amount of money if they were in a state with anti-deficiency laws.¹⁴⁶ Even if the state enforced a deficiency judgment, if the mortgagor was unable to pay their mortgage, it is unlikely that he is going to have the money to pay a deficiency judgment.¹⁴⁷

The bank may be better off financially by extending the forbearance period and suspending foreclosure. For example, instead of foreclosing on Matt’s house, the bank could decide to extend his forbearance period until COVID-19 restrictions related to business capacity were lifted. For the purposes of this hypothetical, let us assume that COVID-19 restrictions in Matt’s state were lifted and businesses opened back up at full capacity in November 2021. That would mean that the bank missed out on twenty-one months of mortgage payments, roughly $18,600 worth of interest.¹⁴⁸ That is significantly less than the amount of money the bank could lose foreclosing on the house. Further, the borrower could have a change in financial circumstances in the time it would take for the bank to foreclose, meaning that the bank could only miss out on a few months’ worth of interest.¹⁴⁹ Because of the financial gamble involved in foreclosure and the history of foreclosures yielding less-than-market value, it may be more advantageous for banks to extend forbearance periods, thus suspending foreclosures.

¹⁴⁶. See Olson, supra note 134 (explaining what states have anti-deficiency statutes).
¹⁴⁸. To calculate how much interest Matt owes the loan servicer, first multiply the monthly interest amount by the number of months in missed payments for the first year. Then subtract the amount of principal Matt owed the first year from the total loan amount to get Matt’s new principal balance. Then calculate how much interest he would owe the following year using this formula, M=P[(1+i)ⁿ]−[(1+i)ⁿ-1]. To calculate Matt’s monthly interest rate, divide his yearly interest rate of 4%, by the number of months in a year, 12. Matt’s monthly interest rate would be .04/12=0.0033. The calculation for the loan servicers missed interest payments are as follows: Year 1 interest: 891x12=10,692. Year 2 interest: principal on loan is 270,000-(391x12) = 265,308; missed payments per month for year two is 265,308(0.0033)=875.5; year two interest for nine months is 9x875.5=7,879.5. Total interest = year 1 interest + year two interest therefore total interest = 18,571. See Banton, supra note 140 (applying calculation from article).
¹⁴⁹. See Bauer, supra note 37, at 143 (explaining the roots of mortgage default as borrowers who have experienced a catastrophic life changing event, such as a health problem, death of a spouse or loss of employment).
Some may argue that banks should not extend forbearance because this hurts banks’ bottom line. Every day that a mortgage is in forbearance, banks are missing out on mortgage payments. This is money that they can invest to boost their profits. Extending forbearance means that banks are not going to be able to invest the money from the monthly mortgage payments and they are going to be holding illiquid assets because they will not be foreclosing on the property either. It is unknown how long COVID-19 restrictions in each state are going to last, so banks could be left holding the bag for months or even years. However, as illustrated in the hypothetical above, banks would likely lose more money in a foreclosure sale than in missed interest payments. Further, even if COVID-19 restrictions lasted five more years with no improvement in employment or the economy, a bank would likely still lose more in a foreclosure sale than in interest. As illustrated in the hypothetical above, a bank would only be losing about $900 in interest every month, totaling to about $9,900 over five years, but at minimum would probably lose about $60,000 in foreclosure.

150. See Cordell, supra note 124, at 11 (describing how costly loss mitigation is, and why banks may be more likely to pursue foreclosure instead).
151. See id. at 11 (explaining how banks lose money from interest when mortgage payments are not met).
152. See Newmyer, supra note 124. (explaining how banks are already putting more money into their reserves in preparation for losses from unpaid loans).
154. The calculation for the loan servicer’s missed interest payments are as follows: Year One interest: 891x12=10,692. Year Two interest: principal paid per month in year one was 1282-891=391; principal on loan was 270,000-(391x12) = 265,308; missed payments per month for year two was 265,308(0.0033)= 875.5; 875.5x12= 10,506 Year Three interest: principal paid per month in year two was 1282-875.5=406.5; principal on loan was 265,308-(406.5x12)= 260,430; missed payments per month for year three was 260,430(0.0033)=859.419x12= 10,313. Year Four interest: principal paid per month in year three was 1282-859.419=422.58; principal on loan was 260,430-(422.58x12)=255,359; missed payments per month for year three was 255,359(0.0033)=842.68x12=10,112. Year Five interest: principal paid per month in year four was 1282-842.68=439.32; principal on loan was 255,359-(439.32x12)=250,087; missed payments per month for year five was 250,087(0.0033)=825.29x12= 9,903.45. See Banton, supra note 140 (applying the monthly mortgage calculation from the article).
155. See NeighboRWORKS Am., supra note 136 (estimating home sale price since foreclosure auctions typically only sell for 20 to 60 cents on the dollar).
D. Pausing Mortgage Payments is Better Than Lowering Monthly Payments

Banks would be better off extending forbearance than modifying homeowner’s loans to lower monthly mortgage payments. During the Great Depression, the Home Owners Loan Corporation (“HOLC”) provided relief to homeowners and security lenders by exchanging federally guaranteed HOLC bonds for home mortgages in default.\(^\text{156}\) The lender would accept HOLC bonds, which had a lower rate of interest than the rate of mortgages they held.\(^\text{157}\) This allowed HOLC to refinance homeowners’ mortgage debt at a more modest interest rate to help assist homeowners in meeting loan obligations.\(^\text{158}\) Despite lowering interest rates for homeowners, HOLC foreclosed on 20% of its refinanced loans, one-third of which were foreclosed for an inability to pay.\(^\text{159}\)

Lowering interest rates was not enough to prevent foreclosure because many homeowners were still unable to pay their mortgages, despite the lower payment.\(^\text{160}\) Instead of lowering interest rates, as was done in the 1930s, banks should extend forbearance periods to give people time to regain employment and become financially stable enough to pay their mortgages. Lowering a homeowner’s payment is not going to enable payment if the homeowner still has no income.\(^\text{161}\) Instead, banks should pause payments through forbearance and once the state in which the property is located has lifted COVID-19 restrictions limiting business capacity, banks should work with the homeowner to modify their loans so that the homeowner can resume payments, and the bank can get paid the money that it is due.

E. Extending Forbearance Benefits the Housing Market

Suspending foreclosures through extended forbearance periods may mitigate the effect that COVID-19 has on the housing market. Foreclosures can lower the prices of other homes nearby because they increase the supply of homes on the market without increasing demand and because foreclosures may diminish the desirability of a

\(^{156}\) Wright, supra note 93, at 242.
\(^{157}\) Id.
\(^{158}\) Id.
\(^{159}\) Id. at 249.
\(^{160}\) See id. (stating that according to HOLT records, 18% of the loans on which it foreclosed were due to a total inability to pay).
\(^{161}\) See id. at 239 (explaining that widespread unemployment reduced the ability of individuals to meet mortgage obligations during the Great Depression).
neighborhood. In one study conducted in Massachusetts, foreclosure sales have prices about 27% lower than comparable properties and each foreclosure lowered the selling price of other properties within a radius of 260 feet by nearly 1%. Another study conducted in New York City from 2000 to 2005 found that each foreclosure depressed the value of homes within 660 feet by 0.9%. The aggregate effect of foreclosures in the same neighborhood can drastically lower the selling prices of homes. By extending forbearance, homeowners have the opportunity to become more financially stable so they can continue making payments in the future. This may prevent a wave of foreclosures from occurring, which would otherwise lower the housing market as seen in the 2008 recession.

One could argue that refusing to extend forbearance—thus foregoing the suspension of foreclosures—would not hurt the economy because banks only have the authority to foreclose on a small percentage of residential mortgages. Conventional mortgages only make up 30% of all residential mortgages and, because of recently enacted legislation, banks are prevented from foreclosing on residential mortgages in certain states. As discussed earlier, many states have enacted legislation

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162. See Daniel Hartley, The Impact of Foreclosures on the Housing Market, ECON. COMMENTARY (Fed. Res. Bank of Cleveland) (Oct. 27, 2010), https://www.clevelandfed.org/newsroom-and-events/publications/economic-commentary/economic-commentary-archives/2010-economic-commentaries/archives/ec-201015-the-impact-of-foreclosures-on-the-housing-market.aspx (explaining that according to his study housing prices within 250 feet of a foreclosure are lowered by about 2% per foreclosure through the disamenity effect and the supply effect is about 0%).

163. John Y. Campbell et al., Abstract: Forced Sales and House Prices, 101 AM. ECON. REV. (2011), https://www.aeaweb.org/articles?id=10.1257/aer.101.5.2108 (explaining that according to his study housing prices within 250 feet of a foreclosure are lowered by about 2% per foreclosure through the disamenity effect and the supply effect is about 0%).

164. Jenny Schuetz et al., Neighborhood Effects of Concentrated Mortgage Foreclosures, 17 J. HOUS. ECON. 306, 319 (Dec. 2008), https://econpapers.repec.org/article/eeejhouse/v_3a17_3ay_3a2008_3ai_3a306_319.htm (explaining how if five homes are foreclosed on in the same neighborhood, a nearby house’s selling price may be lowered by 5%).

165. See Hartley, supra note 162 (explaining how if five homes are foreclosed on in the same neighborhood, a nearby house’s selling price may be lowered by 5%).

166. See supra Part III.A.

concerning foreclosures that banks have to adhere to.\textsuperscript{168} For example, the Florida governor implemented an executive order that suspended and tolled any statute providing for final action at the conclusion of a mortgage foreclosure proceeding under Florida law for proceedings arising from non-payment of that mortgage if the borrower was adversely affected by COVID-19.\textsuperscript{169} This executive order was extended by Executive Order Number 20-211 until October 1, 2020.\textsuperscript{170} This kind of state legislation takes the power out of banks’ hands and, in these states, banks have no power to foreclose until the state foreclosure moratorium is lifted.\textsuperscript{171} This means that the number of mortgages banks would be deciding to foreclose on is even smaller than 30\%, and thus would have a smaller impact on the economy and housing market.

Although the percentage of residential mortgages that banks can foreclose on is currently less than 30\%, foreclosures would still hurt the economy and housing market.\textsuperscript{172} As discussed earlier, even one foreclosure can affect the selling price of the homes around it.\textsuperscript{173} Further, most states that have implemented moratoriums have not extended these to last as long as COVID-19 restrictions on business operations.\textsuperscript{174} Most of these moratoriums began over the summer of 2020, and have since ended.\textsuperscript{175} Therefore, banks have the authority to decide whether they are going to extend forbearance periods or foreclose on the majority of conventional mortgages and their decision can have a large effect on the housing market.

\begin{footnotesize}
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  \item[169.] Fla. Exec. Order No. 20-180.
  \item[171.] See id. (preventing banks from foreclosing when inability to pay is caused by COVID-19).
  \item[172.] See Hartley, \textit{supra} note 162 (describing how foreclosures have a negative effect on the value of property nearby and that it would take several years to transition the stock of households that have recently defaulted in 2010 back to potential home buyers).
  \item[173.] See id. (finding that in neighborhoods with low vacancy rates, foreclosures lower the prices of homes within 250 feet by about 1.6\% per foreclosure).
  \item[175.] See id. (summarizing state legislation regarding moratoriums and foreclosures and listing that most moratoria will end in 2020).
\end{itemize}
\end{footnotesize}
IV. FORBEARANCE SHOULD BE EXTENDED UNTIL COVID-19
RESTRICTIONS REQUIRING REDUCED CAPACITY ARE LIFTED

As a result of COVID-19, many states implemented COVID-19 restrictions that put stay-at-home orders in place and reduced the capacity at which businesses could operate. This has led to unemployment because of a reduction in demand and employee health concerns. As a vaccine is created, and restrictions are lifted, employment should begin to increase, allowing homeowners to renew paying their mortgages. Therefore, banks’ policies on forbearance should extend until the state where the property is located has removed COVID-19-related restrictions requiring businesses to operate at a reduced capacity. Once a state allows businesses to operate at full capacity, banks should end the mortgage forbearance period in that state and work with borrowers to develop a repayment plan.

One may argue that forbearance should be extended until the unemployment rate is back down to pre-COVID-19 numbers, or until a vaccine is created.

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177. See Alexander W. Bartik et al., The Impact of Covid-19 on Small Business Outcomes and Expectations, 117 PROCEEDINGS OF THE NAT’L ACADEMY OF SCI. 17656, 17656 (July 10, 2020), https://www.pnas.org/content/117/30/17656#:~:text=Across%20the%20sample%20of%20small%20businesses%20surveyed%2C%2041.3%25%20of%20the%20sample%20closed%20because%20of%20the%20pandemic.&text=Over%20the%20entire%20sample%20of%20small%20businesses%20surveyed%2C%2041.3%25%20of%20the%20sample%20closed%20because%20of%20the%20pandemic. [https://perma.cc/3YKL-JU58] (finding that of the 5,800 small business surveyed, 43% had temporarily closed, and nearly all were due to COVID-19).


vaccine is widely available. However, extending forbearance by state, and ending forbearance as each state lifts COVID-19 restrictions is better for the following reasons: Although a vaccine has been developed and is being administered to the public, COVID-19 cases continue to rise and new strains of the virus have been discovered. It is unclear if the vaccine will provide long-term immunity or whether new vaccines will need to be developed in order to combat new strains of COVID-19. Therefore, if banks end forbearance periods when a vaccine is widely available to the public, then COVID-19 restrictions may still be in place, thus negatively affecting employment and preventing homeowners from paying their mortgages. Hinging forbearance strictly on the unemployment rate may lead to forbearance lasting much longer than needed since many factors influence unemployment, not just COVID-19. Furthermore, the unemployment rate may not decrease to the low rate it was at pre-COVID-19 for several years.

Some may argue that extending forbearance until state COVID-19 business restrictions are lifted is not a good way to measure forbearance extension because new laws may be implemented re-


181. See Roberto Molar Candanosa, A Covid-19 Vaccine Won’t Mean a Swift End for Wearing Masks or Physical Distancing, NEWS@NORTHEASTERN (Oct. 19, 2020), https://news.northeastern.edu/2020/10/19/a-covid-19-vaccine-wont-mean-a-swift-end-for-wearing-masks-or-social-distancing/ [https://perma.cc/ZM38-9ZEE] (stating that scientists will need to determine whether their vaccines offer lifelong protection, as is the case with vaccines against the measles, or temporary protection, as is the case with the flu vaccines that people should get once a year).

182. See id. (stating that even though a vaccine is developed, other safety measures, such as social distancing and wearing masks, should still be adhered to).


instating limitations on businesses. However, this is a better timeframe for extending forbearance than the other two options discussed above because banks can reinstitute forbearance periods if borrowers are negatively impacted by renewed COVID-19 business restrictions.

V. Conclusion

Extending mortgage forbearance periods may allow borrowers to regain employment and restart paying their mortgages. This is necessary because most state efforts to suspend foreclosures have or will end before COVID-19 restrictions are lifted, leaving policy regarding conventional mortgages largely in the banks’ hands. COVID-19 restrictions are becoming more relaxed and there has been a decrease in unemployment since COVID-19 first peaked in April 2020. This means that many homeowners who were not able to pay their mortgages in April are now employed and able to renew payments, and this will continue to be the case as unemployment decreases. Further, as time has gone on, many businesses and employers have adapted to the new work-from-home platform, meaning that unemployment rates may not increase that rapidly if stay-at-home restrictions need to be implemented again.


187. See U.S. Dep’t of Labor Bureau of Labor Statistics, supra note 125 (describing how the US unemployment rate was 14.7% in March 2020 and dropped to 6.7% in December of 2020).

188. See, e.g., Wright, supra note 93 (comparing unemployment rates to foreclosure rates).

189. See Katherine Guyot & Isabel V. Sawhill, Telecommuting Will Likely Continue Long After the Pandemic, THE BROOKINGS INST. (Apr. 6, 2020), https://www.brookings.edu/blog/up-front/2020/04/06/telecommuting-will-likely-continue-long-after-the-pandemic/ (explaining how up to half of American workers are working from home, and that COVID-19 has accelerated the trend toward telecommuting).
Relying on state efforts to suspend foreclosures does not go far enough. In 2008, states also implemented legislation that suspended foreclosures for various periods of time, similar to the legislation that was passed in 2020. However, this legislation did not prevent foreclosure rates from climbing in 2010 and 2011. Foreclosures have been attributed to job loss, thus having banks extend forbearance until stay-at-home orders and other COVID-19 restrictions are lifted would combat the root of the foreclosure problem, unemployment.

Extending forbearance is a better option for banks than foreclosing on delinquent mortgages, because foreclosures are time-consuming and costly. In the time it takes to foreclose on a property, a homeowner could be in the financial position to continue payments on his or her mortgage. By waiting until COVID-19 restrictions are lifted before requiring homeowners to pay mortgages again, homeowners have more time to regain employment so that they will be financially stable enough to make their mortgage payments.

Banks may be reluctant to implement policies extending forbearance periods until COVID-19 restrictions are lifted because they will be losing money since they will not be receiving mortgage payments every month from homeowners. However, extending forbearance is still a better option than foreclosing for the following reasons. Banks can extend mortgages by the amount of time they were in forbearance so that banks end up getting paid the full amount of the loan. Further, if banks decide to foreclose instead of extend forbearance, then the housing market may become saturated with foreclosed property. This could cause the prices of homes nearby to drop and foreclosed property to sell at an even lower price, meaning banks will lose even more money in foreclosure. Extending forbearance periods would help decrease the

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190. See supra Part III.A.
191. See supra Part III.A.
192. See supra Part III.B.
193. See supra Part III.B.
194. See supra Part III.C.
195. See generally, N.J. Dep’t of Banking & Ins., Covid-19 and Residential Mortgage Relief (Sept. 18, 2020), https://www.state.nj.us/dobi/covid/mortgagerelief.html [https://perma.cc/GGR8-2YVF] (stating that at the end of the forbearance period, some institutions may offer borrowers the option of amortizing the payments over a period of time or over the entire term of the loan).
196. See supra Part III.E.
197. See supra Part III.E.
number of foreclosures seen as a result of COVID-19, benefiting borrowers by letting them keep their homes, and benefiting banks by preventing them from losing money in foreclosure.

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