



**STATEMENT OF THE MASSACHUSETTS MORTGAGE BANKERS ASSOCIATION IN OPPOSITION
TO H.5018: AN ACT TO GUARANTEE HOUSING STABILITY DURING THE COVID-19 EMERGENCY AND
RECOVERY TO HOUSE LEADERSHIP & JOINT COMMITTEE ON HOUSING**

October 13, 2020

On behalf of the Massachusetts Mortgage Bankers Association (MMBA) and our members who provide mortgage financing to consumers, we are writing to express our strong opposition to H.5018 -An Act to Guarantee Housing Stability During The COVID-19 Emergency and Recovery. This legislation provides a tax credit for landlords for rental loss due to COVID-19; establishes rental assistance for LMI households; extends and changes current forbearance procedures; establishes a COVID-19 Housing Stability Recovery Fund and 33-member commission to study the effects of COVID-19 on housing. Some sections of this bill will have an adverse impact to lending and recovery in Massachusetts.

Sections 1-4 should be deleted from this bill in response to Governor Baker's Eviction Diversion Initiative.

Specific Concerns with Sections 5-6:

Background:

As you are aware there have been numerous federal and state laws; regulations; guidance, and secondary market policies protecting consumers and providing financial protections for homeowners impacted by COVID-19. Here is a partial list of actions issued since the state of emergency declared by Governor Baker on March 10th:

- On March 9th a press release was issued by the Board of Governors of the Federal Reserve System, Consumer Financial Protection Bureau, Federal Deposit Insurance Corporation, National Credit Union Administration, Office of the Comptroller of the Currency, and Conference of State Bank Supervisors Agencies encouraging all financial institutions to meet financial needs of customers affected by Coronavirus
- On March 18th FHFA Suspends Foreclosures and Evictions for Enterprise-Backed Fannie Mae and Freddie Mac Mortgages
- On March 18th HUD provided immediate relief for homeowners and suspended all foreclosure and evictions for the next 60 days.
- On March 25th Governor Baker Issues new actions to protect homeowners and low-income tenants from eviction and foreclosure including suspending non-essential evictions
- On March 25th the Division of Banks (DOB) issued new guidance to Massachusetts financial institutions and lenders urging them to provide relief for borrowers and will advocate for a 60-day stay on behalf of all homeowners facing imminent foreclosure on their homes.
- On March 26th the Consumer Financial Protection Bureau (CFPB) issues Statement on Bureau Supervisory and Enforcement Response to COVID-19 Pandemic
- On March 26th the Massachusetts Attorney General issues emergency regulation to protect consumers from harmful debt collection practices during Covid-19 crisis
- On March 27th President Trump signed the CARES Act into law. Under the Cares Act, mortgages that were sold to Fannie Mae, Freddie Mac, Veteran Affairs and USDA must allow consumers facing financial distress due to COVID-19 to have mortgage payments postponed (deferred) for 6-12 months.
- On April 1, HUD issues Mortgage Letter 2020-06 to inform mortgagees of special loss mitigation home retention options available to single family borrowers
- The Boston City Council passed a non-binding resolution calling for the city, state, and feds to place a moratorium on rent and mortgage collection, evictions, and foreclosures
- The CFPB has posted several articles for consumers on mortgage relief, student loan payment relief, how to avoid scams, and online and mobile banking tips for beginners.

- On April 20th Governor Baker signed ***An Act Providing for a Moratorium on Evictions and Foreclosures during the COVID-19 Emergency*** into law. This law established a moratorium on evictions and foreclosures during the governor's COVID-19 emergency declaration. The Division of Banks issued FAQ's providing guidance to consumers for the new law. The Governor extended the moratoriums until **October 17th**.

The MMBA strongly opposes this new legislative initiative as we feel this legislation will adversely impact housing stability, housing recovery, property safety and mortgage lending in Massachusetts.

Concerns with federal regulations, Fannie Mae, Freddie Mac and Ginnie/Mae:

On June 17th the Office of the Controller of the Currency (OCC) issued a [strong statement of federal preemption](#) of pandemic response mandates that have been proposed by state legislatures. In this bulleting the OCC stated:

“While these state and local actions are well-intended, the OCC is concerned that the proliferation of a multitude of competing requirements will conflict with banks’ ability to operate effectively and efficiently, potentially increasing the risk to banks’ safety and soundness and ultimately harming consumers.”

The bulletin then proceeded to remind stakeholders that banks are governed primarily by uniform federal standards and **generally are not subject to state law limitations**; federal preemption derives from the Supremacy Clause of the U.S. Constitution; and therefore federal law preempts state and local laws that impermissibly conflict with banks’ exercise of federally authorized powers under the standard set forth in *Barnett Bank of Marion County, N.A. v. Nelson*.⁵ Consistent with this standard. These include state law limitations on terms of credit, such as the schedule for repayment and interest, amortization of loans, balance, payments due, minimum payments, and term to maturity; disbursements and repayments; and processing, origination, and servicing mortgages. OCC regulations also address interest and non-interest fees.

Several other states such as California (AB 2501 the COVID-19 Homeowner, Tenant and Consumer Relief Law of 2020) have proposed similar efforts which exceed the CARES Act. In terms of secondary market disruption, Fannie Mae and Freddie Mac have specific directives that must be followed in order to provide a uniform functional marketplace for investors in mortgage loans. Government insurers and guarantors (FHA, VA, and USDA) backed by Ginnie Mae have done the same. Adding additional regulations puts at risk the ability to access the secondary market and could cause irreparable harm to Massachusetts home buyers.

As an example, for loans in Ginnie Mae pools, the deferment in this legislation will not adhere to Ginnie Mae guidelines. If a Massachusetts Veteran with a VA loan in a Ginnie Mae pool goes into a deferment under the bill, a lender/servicer would have to purchase the loan out of the Ginnie Mae pool for delinquency.

The MMBA would strongly recommend that there be an exemption for loans that are already covered under the CARES Act. As stated above, there are already federal and state guidance for forbearances and having an exemption would ensure there are no conflicts between procedures for those loans under the CARES Act and secondary market guidelines:

Foreclosure Moratorium:

Section 5 places a moratorium on foreclosures until 12 months after the State of Emergency has ended. Massachusetts is currently in Phase III, Step 2 of the Commonwealth’s reopening plan for lower-risk communities. Across the country the United States is averaging 48,000 new cases per day with most public health experts predicting a spike in the fall and winter. The emergency declaration most likely will not be rescinded until mid-late 2021.

This blanker provision prohibits lenders from enforcing their liens through the foreclosure process unless the property is vacant, regardless of when the serious delinquency occurred. There is no documentation requirement to verify borrowers have experienced a financial hardship due to COVID-19.

Our members have always viewed foreclosure as a last resort. If a lender cannot foreclose under any circumstances for potentially at least 2 years or more, why would a borrower pay their mortgage regardless of financial circumstances?

Generally, a residential foreclosure in Massachusetts takes approximately 24-36 months. If this bill is enacted, the process could extend to 4-5 years or longer, during which time the borrower could stay in the home without making a single payment and without any mandate that they work with the lender to resolve the delinquency. This will cause chaos in the real estate market and do little to help those families who have been affected by the pandemic

Forbearance Provisions:

Section 6 (addition)

The provisions of Sections 5 -8 do not apply to any residential or commercial loan that: (i) is a “Federally backed mortgage loan” under section 4022 of the CARES Act, codified at 15 USC 9056(a)(2), or a “Federally backed multifamily mortgage loan” under section 4023 of the CARES Act, codified at 15 US 9057(f)(2); or (ii) receives a forbearance that is consistent with a “forbearance” provided for under section 4022 of the CARES Act, including terms for (1) the duration of the forbearance and the extending or shortening of a forbearance, (2) the accrual of interest or fees in connection with the forbearance and any extensions, and (3) the requirements for the requesting of a forbearance, and an extension or shortening of a forbearance, by a borrower, and the provision of a forbearance, and any extension or shortening of a forbearance, by the servicer.

Section 6 (b) -documentation and capacity: Many consumers were not adversely impacted from COVID-19 yet this legislation allows anyone to qualify for the moratoriums without proof of financial hardship. In fact, this legislation goes beyond income loss to “any change in economic circumstances” caused in “any way”, “directly or indirectly”. Exactly what does that mean? Technically, any consumer who has had the slightest change in income, even if they still have the financial means to pay rent or mortgage payments, could qualify under this bill. A consumer doesn’t have to document anything to qualify.

Legislation should require individuals financially impacted by COVID-19 provide documentation demonstrating their circumstances to their mortgage holder or landlord in order to receive relief.

Section 6 (b) -escrows: This section would require the mortgage lender to pay any escrows. These amounts along with the mortgage payment, shall be added to the end of the term unless otherwise agreed to by both mortgagor and mortgagee.

According to the Mortgage Bankers Association’s latest Forbearance and Call Volume Survey reported loans now in forbearance decreased by 49 basis points to 6.32% of servicers’ portfolio volume as of October 13, compared to 6.81% the prior week. MBA estimates nearly 3.4 million homeowners are in forbearance plans. Mortgage lenders and servicers are advancing payments to secondary market investors and deferring mortgage payments at unprecedented levels. Requiring lenders to also advance taxes and insurance payments to the end of the mortgage term is creating an unnecessary burden on mortgage lenders, especially without the requirement of documentation establishing the financial need.

Section 7: This section requires mortgage lenders to grant a forbearance for a residential property (defined as 15 units or less) owned by a nonprofit entity.

Section 8: There are several sections which are problematic

Replacement of Section 5B of the Chapter 65 Acts of 2020: (Housing Court jurisdiction):

“Notwithstanding any general or special law to the contrary, the Housing Court shall have sole and exclusive jurisdiction over all civil claims for rent or **mortgage payments due and payable** during the period running from March 10, 2020 until 1 year after the COVID-19 emergency declaration has been lifted. “

A mortgage is a legal contract between a lender and consumer for repayment of the mortgage. The housing court has no jurisdiction to change the terms of mortgage payments. This should only occur between the lender and borrower(s) in conjunction with secondary market guidelines and federal and state regulations.

Replacement of Section 5C of the Chapter 65 Acts of 2020: (violations):

“Violations of this chapter shall constitute unfair or deceptive acts or practices as that term is defined under G.L. c. 93A, § 2 and/or 940 C.M.R. 3.00 et seq., and shall be enforceable by the Attorney General as well as by aggrieved tenants, homeowners, or other occupants in the same manner and to the same extent as other violations of c. 93A. All the remedies of G.L. c. 93A shall be available for violations of all sections of this chapter.”

Mortgage lenders and servicers have been working with their borrowers unable to make their mortgage payments well before the COVID-19 pandemic. The mortgage industry is already deferring an unprecedented amount of payments each month. A lender should not also need to worry if a mistake or a misunderstanding result in a 93A violation.

Section 9: Establishes a COVID-19 Housing Stability Recovery Fund to assist owners of residential units having trouble making housing payments and costs. The MMBA respectfully suggests that property owners who are or were in forbearance be excluded from consideration of funding during forbearance periods.

Section 10: Establishes a 33-member commission to study the effects of COVID-19 on housing. Of the 33 members listed, few are representative of the mortgage and financing industry and the MMBA respectfully requests more participation from this segment should be represented on the commission.

Section 11: Repeals Section 4 in Chapter 65 of the Acts of 2020. This section gave the landlord the right to use the last month security the right to utilize these funds providing proper notification to the tenant.

Section 12: This section establishes that Section 11 shall take effect 90 days after the termination of the Governor’s March 10th declaration of a state of emergency. The language in this section is confusing. There is no Section 11 in the original Chapter 65 of the Acts of 2020 approved on April; 20th. Section 11 of this legislation repeals Section 4.

Final Conclusions:

Sections 5, 6 and 8 of this bill will harm more than it will help the recovery process in Massachusetts. We understand that many consumers have been significantly impacted by COVID-19. Our lenders and servicers are already working with borrowers on forbearances and loan modifications; they are already deferring mortgage payments and working with consumers. This bill goes beyond reasonableness by causing hardship to financial institutions.

This legislation requires:

- A lender must accept the word of any mortgage customer that he/she has experienced a change in their economic circumstances - either directly or indirectly.
- A lender has no right to ask for any documentation of what the change of circumstance is or what the financial impact is.
- A lender has no right to refuse a forbearance request, even if a consumer is still able to make payments.
- A lender must not charge any additional fees or interest for the deferment.
- A lender must defer mortgage and escrow payments until the end of the mortgage term – which could be as long as 30 years.
- A lender must, however, continue to pay real estate taxes and insurance payments.

- A lender must not indicate on a credit report that payments are in forbearance.
- A lender must not start any foreclosure proceedings regardless of a borrower's ability to pay until potentially 2+ years from now.
- A lender who does not correctly comply with any portion of this bill could have the Attorney General, tenants, homeowners, or other occupants bring a claim in court for unfair and deceptive practices resulting in triple damages, attorney costs, damages including emotional distress and loss of license to do business in Massachusetts.

In return:

- A consumer doesn't need to provide **any** documentation that they have experienced a "change in economic circumstances" caused in any way, directly or indirectly by COVID-19.
- A consumer can obtain a forbearance even if they are still able to make mortgage payments.
- A consumer doesn't need to pay real estate taxes or insurance until 12 months after the end of the state of emergency.
- A consumer will not be charged any fees or additional interest.
- A consumer's credit report will not indicate he/she has not made mortgage payments and is in deferral.
- A consumer doesn't need to repay any deferred mortgage payments, real estate taxes or insurance until the end of the loan term.
- A consumer could stay in the home without making a single mortgage payment for 4-5 years and without any mandate that they work with the lender to resolve the delinquency.
- A consumer can file a claim in court against the lender for emotional distress, treble damages, and attorney fees if he/she feels the lender has not complied with this bill.

I would respectfully ask you to consider the following two questions:

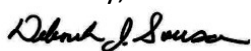
- **Why would any Massachusetts consumer make a mortgage payment?**
- **Why would any lender want to lend in Massachusetts?**

The answers to these questions are extremely problematic for the future of lending in Massachusetts. Recovering from the pandemic will require sacrifices and cooperation from all of us -but it has to be shared. Consumers, lenders, and legislators all need to be part of the solution. Borrowers must document financial hardships and not be allowed to take advantage of the pandemic when they are financially able to make mortgage payments. Lenders must continue to work with borrowers that have been impacted by this terrible crisis and continue to do their part in deferments. Legislators must balance the needs of consumers without causing unrealistic financial burdens on lenders and servicers that will result in hurting the recovery process in Massachusetts.

As you consider the future of this legislation please keep in mind the numerous actions by the Federal Housing Finance Agency, Fannie Mae, Freddie Mac, the Consumer Finance Protection Bureau, The Massachusetts legislature, Governor Baker, the Massachusetts Attorney General, and the Massachusetts Division of Banks to protect consumers impacted by COVID-19 from additional financial hardships. Does legislation this unbalanced in favor of consumers truly enhance what is already in place or does it provide consumers with carte blanche to avoid obligations they could meet?

The MMBA is an association that advocates for the welfare of our members and consumers. Our members are working with consumers to offer payment accommodations for all impacted with COVID-19 during this pandemic. We strongly encourage that any legislation be specifically for consumers that have a documented financial impact due to the COVID - 19 pandemic and not for the general population. Please contact me for questions or additional information.

Sincerely,



Deborah J. Sousa, Executive Director