



August 13, 2020

Honorable Kate Brown
Office of the Governor
900 Court Street, Suite 254
Salem, OR 97301-4047

Dear Governor Brown:

Our organizations, representing the housing and real estate finance industry, together **urge you not to extend the “emergency period” applicable to recently enacted legislation (HB4204 and HB4213) beyond the current sunset date of September 30, 2020.**

We deeply appreciate your work as well the efforts of legislative leaders during the COVID-19 coronavirus pandemic. However, this legislation was passed and enacted in a matter of days. This haste precluded adequate and appropriate opportunity for stakeholder input from consumers, state and federal regulators, and industry.

Consequently, for example, the new law undermines ongoing efforts to assist homeowners and renters because it creates duplicative – and sometimes contradictory – requirements to those already mandated by the federal *CARES Act* and the policies of the federal government’s affordable housing programs. It also imposes unwarranted burdens on already struggling rental property owners and will likely increase pandemic-related losses for lenders.

These issues have the potential to significantly limit access to credit for Oregon borrowers by disrupting the securitization market that provides needed liquidity for the mortgage market, increasing the size of losses for struggling rental property owners, and discouraging lending and the development of additional housing in Oregon. In addition, by not aligning the law to the federal standards, it could potentially prevent Oregon families from taking advantage of ongoing improvements to these programs.

Extending the emergency period would only exacerbate the adverse impacts of the new legislation. Therefore, as you consider whether to extend the emergency period, please review the following:

- The new laws effectively ignore other actions mandated or voluntarily taken thus far in the pandemic to help borrowers and tenants affected by the pandemic. Lenders and servicers

do not profit from foreclosure and the industry exhausts every option ahead of initiating any such action. The interests of consumers and the real estate finance industry are aligned in making every effort to keep homeowners in their homes.

- The *CARES Act* mandated forbearance and an eviction moratorium, which the Federal Housing Finance Agency (FHFA) and the Department of Housing and Urban Development (HUD) have extended beyond the timeframes specified in the Act.
 - State and federal prudential regulators, and the *CARES Act*, have proactively provided supervisory and accounting relief to encourage lenders to modify loans to help borrowers weather the pandemic.
 - Fannie Mae, Freddie Mac, FHA, the Veterans Administration, and the Rural Housing Service of the Department of Agriculture, have provided – and continue to improve – many options to help customize end of forbearance opportunities for homeowners and housing providers. Also, federal program policy has been developed, and continues to improve, renter assistance and protections.
 - These entities, along with the Consumer Financial Protection Bureau (CFPB), have quickly issued, and continue to update, detailed requirements for working with consumers to implement these critical programs and these guidance documents even include scripts for call center staff to prevent borrower confusion about their options. In addition, federal regulators have stood up consumer websites with informational videos, and other tools, often translating them into Spanish.
 - As a result, the hard work of the industry has resulted in as many as 4.3 million residential mortgage forbearances nationwide.
- By ignoring efforts to date, the new law effectively penalizes these efforts of lenders and property owners, particularly undercutting the efforts of lenders and landlords that have already been stretched to the limit in helping borrowers and tenants, by imposing additional cumbersome, conflicting approaches that may be more than they can bear. There is no recognition that lenders and landlords have been working with borrowers and tenants for months now.
 - In addition, several unintended consequences have been created by the new law's failure to enact a safe harbor for residential or multifamily loans backed by these federal agencies. For example, the legislation limits options for borrowers facing financial challenges by locking them into the limited state mandates that conflict with other available protections, creating confusion among borrowers and renters regarding the help that is available to them.
 - The law increases costs to lenders and servicers which may lead to high costs for Oregon borrowers. This outcome would come at precisely the wrong time as it would impede the economic recovery from the pandemic and impact those who want to take advantage of historically low interest rates to refinance their loans. For example:
 - The requirement for multifamily lenders to defer payments until the end of the term of the loan mandates that an interest-free loan to multifamily borrowers, which imposes an unwarranted burden on lenders, and an extension of the emergency period would only increase the size of that unwarranted burden.
 - The law already mandates that property owners provide up to six months of rent-free housing, without a fair opportunity to collect unpaid rents, a burden that would increase with any extension of the emergency period, which will impact rental housing availability as multifamily housing developers and lenders are already expressing concern over these legislative events and pulling out of planned developments.

- The law's lack of clarity unnecessarily injects regulatory and legal uncertainty into residential and multifamily mortgage lending. For example, the bill provides no guidance on how to properly satisfy disclosure requirements to borrowers of their rights under the new law, which must be completed by August 29, 2020.
- The law's retroactive application on foreclosures to March 3, 2020, leaves in legal limbo those non-pandemic related foreclosures that were already initiated and completed for nonpayment months earlier.
- The law's interference with the ability of multifamily lenders to mitigate risk by taking traditional approaches specified in loan agreements. For example, implementing lock-box procedures will only amplify the pandemic's impacts on those lenders.
- By legislating changes to contractual terms of existing lending agreements, requiring forbearance and other borrower relief options not consistent with existing contractual obligations, the new law potentially conflicts with the Contracts Clause of the U.S. Constitution.
- The law also disproportionately disadvantages Oregon's state-licensed lending institutions, which are a vital source of affordable mortgage credit for the consumers and businesses which rely on them.

Extending the emergency period would only exacerbate the adverse impacts of the new legislation. For these and other reasons, we again urge you not to extend the provisions of recently enacted legislation (HB4204 and HB4213) beyond the current sunset date of September 30, 2020.

Thank you for your consideration.

Respectfully,

American Bankers Association
 American Financial Services Association
 Commercial Real Estate Finance Council
 Consumer Data Industry Association
 Housing Policy Council
 Independent Community Bankers of America
 Mortgage Bankers Association