**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

Via Overnight

April 22, 2020

Kevin Harrigan
CEO
NewRez LLC
4000 Chemical Road Suite 200
Plymouth Meeting, PA 19462

Dear Mr. Harrigan:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis. We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

**1. Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[1] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[2]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

Thus, to ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you provide the OAG with a detailed explanation of all forbearance and loss mitigation programs that you have in place to address the needs of borrowers struggling in the face of this health and economic crisis. In addition, we request that you immediately implement steps to address staffing limitations and improve customer communication in light of the need to take action quickly, and that you describe these steps in your response to the OAG.

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[1] *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

[2] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

In particular, the OAG recommends mortgage servicers adopt the following procedures for all mortgage loans that you service:

- Place accounts in a 90-day forbearance automatically and where necessary retroactively (or solicit the borrowers immediately by phone or mail to request a COVID-19-related forbearance plan, if federal requirements or other investor restrictions prohibit automatic forbearance) and waive late fees if the homeowner was previously current on their mortgage and misses a payment in the 90 days following the March 7, 2020 declaration of a state of emergency in New York State (New York Executive Order 202);
- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

We also encourage you to take steps necessary to communicate effectively with customers who have limited English proficiency, for example by translating standard written solicitations and sections of your website describing COVID-19-related forbearance programs.

We request that you implement these steps within ten (10) business days of the date of this letter and that you advertise these programs in all communications with homeowners and post them conspicuously on your website. Please confirm within ten (10) business days that you have implemented these above procedures, or similar, alternative measures to ensure affected consumers receive immediate relief consistent with federal and state COVID-19-related laws. The OAG will consider these responses as it responds to consumer complaints and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[3]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[4], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[5]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[6], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

[3] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[4] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[5] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

[6] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[7]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[8], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[7] *See e.g.,* Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

[8] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

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ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

Via Overnight

April 22, 2020

Allen Emerson
CEO
Emigrant Mortgage Company
7 Westchester Place
Elmsford, NY 10523

Dear Mr. Emerson:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis. We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

**1. Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[9] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[10]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

Thus, to ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you provide the OAG with a detailed explanation of all forbearance and loss mitigation programs that you have in place to address the needs of borrowers struggling in the face of this health and economic crisis. In addition, we request that you immediately implement steps to address staffing limitations and improve customer communication in light of the need to take action quickly, and that you describe these steps in your response to the OAG.

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[9] *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

[10] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

In particular, the OAG recommends mortgage servicers adopt the following procedures for all mortgage loans that you service:

- Place accounts in a 90-day forbearance automatically and where necessary retroactively (or solicit the borrowers immediately by phone or mail to request a COVID-19-related forbearance plan, if federal requirements or other investor restrictions prohibit automatic forbearance) and waive late fees if the homeowner was previously current on their mortgage and misses a payment in the 90 days following the March 7, 2020 declaration of a state of emergency in New York State (New York Executive Order 202);
- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

We also encourage you to take steps necessary to communicate effectively with customers who have limited English proficiency, for example by translating standard written solicitations and sections of your website describing COVID-19-related forbearance programs.

We request that you implement these steps within ten (10) business days of the date of this letter and that you advertise these programs in all communications with homeowners and post them conspicuously on your website. Please confirm within ten (10) business days that you have implemented these above procedures, or similar, alternative measures to ensure affected consumers receive immediate relief consistent with federal and state COVID-19-related laws. The OAG will consider these responses as it responds to consumer complaints and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

### 2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[11]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[12], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[13]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[14], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

[11] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[12] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[13] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

[14] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[15]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[16], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[15] *See e.g.,* Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

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Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James

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New York Attorney General

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ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

Via Overnight

April 22, 2020

Bruce Williams
CEO
Shellpoint Partners
55 Beattie Place, Suite 100
Greenville, SC 29601

Dear Mr. Williams:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

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**1. Immediate Relief That Best Serves New York Homeowners**

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The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

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[17] *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

[18] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

In particular, the OAG recommends mortgage servicers adopt the following procedures for all mortgage loans that you service:

- Place accounts in a 90-day forbearance automatically and where necessary retroactively (or solicit the borrowers immediately by phone or mail to request a COVID-19-related forbearance plan, if federal requirements or other investor restrictions prohibit automatic forbearance) and waive late fees if the homeowner was previously current on their mortgage and misses a payment in the 90 days following the March 7, 2020 declaration of a state of emergency in New York State (New York Executive Order 202);
- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

We also encourage you to take steps necessary to communicate effectively with customers who have limited English proficiency, for example by translating standard written solicitations and sections of your website describing COVID-19-related forbearance programs.

We request that you implement these steps within ten (10) business days of the date of this letter and that you advertise these programs in all communications with homeowners and post them conspicuously on your website. Please confirm within ten (10) business days that you have implemented these above procedures, or similar, alternative measures to ensure affected consumers receive immediate relief consistent with federal and state COVID-19-related laws. The OAG will consider these responses as it responds to consumer complaints and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

## 2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[19]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[20], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[21]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[22], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

[19] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[20] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[21] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

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unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[23]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[24], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[23] *See e.g.,* Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

[24] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

Via Overnight

April 22, 2020

John Kontoulis
CEO
Kondaur Capital Corporation
333 South Anita Drive, Suite 400
Orange, CA 92868

Dear Mr. Kontoulis:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis. We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

**1. Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[25] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[26]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

Thus, to ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you provide the OAG with a detailed explanation of all forbearance and loss mitigation programs that you have in place to address the needs of borrowers struggling in the face of this health and economic crisis. In addition, we request that you immediately implement steps to address staffing limitations and improve customer communication in light of the need to take action quickly, and that you describe these steps in your response to the OAG.

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[25] *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

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- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
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The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[27]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[28], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[29]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[30], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

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In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

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Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

Via Overnight

April 22, 2020

David A. Spector
CEO
PennyMac
3043 Townsgate Rd, Suite 200
Westlake Village, CA 91361

Dear Mr. Spector:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

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1. **Immediate Relief That Best Serves New York Homeowners**

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In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[35]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[36], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[37]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[38], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

[35] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[36] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[37] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

[38] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[39]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[40], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[39] *See e.g.,* Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

[40] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

<u>Via Overnight</u>

April 22, 2020

Timothy O'Brien
CEO
Select Portfolio Servicing, LLC
P.O. Box 65250
Salt Lake City, UT 84165-0250

Dear Mr. O'Brien:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis. We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

**1. Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[41] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[42]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

Thus, to ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you provide the OAG with a detailed explanation of all forbearance and loss mitigation programs that you have in place to address the needs of borrowers struggling in the face of this health and economic crisis. In addition, we request that you immediately implement steps to address staffing limitations and improve customer communication in light of the need to take action quickly, and that you describe these steps in your response to the OAG.

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[41] *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

[42] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

In particular, the OAG recommends mortgage servicers adopt the following procedures for all mortgage loans that you service:

- Place accounts in a 90-day forbearance automatically and where necessary retroactively (or solicit the borrowers immediately by phone or mail to request a COVID-19-related forbearance plan, if federal requirements or other investor restrictions prohibit automatic forbearance) and waive late fees if the homeowner was previously current on their mortgage and misses a payment in the 90 days following the March 7, 2020 declaration of a state of emergency in New York State (New York Executive Order 202);
- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

We also encourage you to take steps necessary to communicate effectively with customers who have limited English proficiency, for example by translating standard written solicitations and sections of your website describing COVID-19-related forbearance programs.

We request that you implement these steps within ten (10) business days of the date of this letter and that you advertise these programs in all communications with homeowners and post them conspicuously on your website. Please confirm within ten (10) business days that you have implemented these above procedures, or similar, alternative measures to ensure affected consumers receive immediate relief consistent with federal and state COVID-19-related laws. The OAG will consider these responses as it responds to consumer complaints and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[43]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[44], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[45]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[46], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

[43] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[44] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[45] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

[46] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[47]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[48], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[47] *See e.g.,* Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

[48] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

<u>Via Overnight</u>

April 22, 2020

Rene Jones
CEO
M&T Bank
One M&T Plaza, 8th Floor
Buffalo, NY 14203

Dear Mr. Jones:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis. We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

1. **Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[49] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[50]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

Thus, to ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you provide the OAG with a detailed explanation of all forbearance and loss mitigation programs that you have in place to address the needs of borrowers struggling in the face of this health and economic crisis. In addition, we request that you immediately implement steps to address staffing limitations and improve customer communication in light of the need to take action quickly, and that you describe these steps in your response to the OAG.

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[49] *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

[50] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

In particular, the OAG recommends mortgage servicers adopt the following procedures for all mortgage loans that you service:

- Place accounts in a 90-day forbearance automatically and where necessary retroactively (or solicit the borrowers immediately by phone or mail to request a COVID-19-related forbearance plan, if federal requirements or other investor restrictions prohibit automatic forbearance) and waive late fees if the homeowner was previously current on their mortgage and misses a payment in the 90 days following the March 7, 2020 declaration of a state of emergency in New York State (New York Executive Order 202);
- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

We also encourage you to take steps necessary to communicate effectively with customers who have limited English proficiency, for example by translating standard written solicitations and sections of your website describing COVID-19-related forbearance programs.

We request that you implement these steps within ten (10) business days of the date of this letter and that you advertise these programs in all communications with homeowners and post them conspicuously on your website. Please confirm within ten (10) business days that you have implemented these above procedures, or similar, alternative measures to ensure affected consumers receive immediate relief consistent with federal and state COVID-19-related laws. The OAG will consider these responses as it responds to consumer complaints and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[51]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[52], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[53]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[54], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

[51] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[52] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

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unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[55]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[56], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[55] *See e.g.,* Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

[56] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

Via Overnight

April 22, 2020

Stanley Middleman
CEO
Freedom Mortgage
907 Pleasant Valley Avenue
Mount Laurel, NJ 08054

Dear Mr. Middleman:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis. We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

1. **Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[57] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[58]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

Thus, to ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you provide the OAG with a detailed explanation of all forbearance and loss mitigation programs that you have in place to address the needs of borrowers struggling in the face of this health and economic crisis. In addition, we request that you immediately implement steps to address staffing limitations and improve customer communication in light of the need to take action quickly, and that you describe these steps in your response to the OAG.

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[57] *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

[58] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

In particular, the OAG recommends mortgage servicers adopt the following procedures for all mortgage loans that you service:

- Place accounts in a 90-day forbearance automatically and where necessary retroactively (or solicit the borrowers immediately by phone or mail to request a COVID-19-related forbearance plan, if federal requirements or other investor restrictions prohibit automatic forbearance) and waive late fees if the homeowner was previously current on their mortgage and misses a payment in the 90 days following the March 7, 2020 declaration of a state of emergency in New York State (New York Executive Order 202);
- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

We also encourage you to take steps necessary to communicate effectively with customers who have limited English proficiency, for example by translating standard written solicitations and sections of your website describing COVID-19-related forbearance programs.

We request that you implement these steps within ten (10) business days of the date of this letter and that you advertise these programs in all communications with homeowners and post them conspicuously on your website. Please confirm within ten (10) business days that you have implemented these above procedures, or similar, alternative measures to ensure affected consumers receive immediate relief consistent with federal and state COVID-19-related laws. The OAG will consider these responses as it responds to consumer complaints and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[59]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[60], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[61]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[62], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

[59] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[60] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[61] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

[62] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[63]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[64], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[63] *See e.g.,* Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

[64] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

Via Overnight

April 22, 2020

Terry Smith
CEO
Rushmore Loan Management
15480 Laguna Canyon Rd Ste 100
Irvine, CA 92618

Dear Mr. Smith:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis. We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

**1. Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[65] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[66]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

Thus, to ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you provide the OAG with a detailed explanation of all forbearance and loss mitigation programs that you have in place to address the needs of borrowers struggling in the face of this health and economic crisis. In addition, we request that you immediately implement steps to address staffing limitations and improve customer communication in light of the need to take action quickly, and that you describe these steps in your response to the OAG.

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[65] *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

[66] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

In particular, the OAG recommends mortgage servicers adopt the following procedures for all mortgage loans that you service:

- Place accounts in a 90-day forbearance automatically and where necessary retroactively (or solicit the borrowers immediately by phone or mail to request a COVID-19-related forbearance plan, if federal requirements or other investor restrictions prohibit automatic forbearance) and waive late fees if the homeowner was previously current on their mortgage and misses a payment in the 90 days following the March 7, 2020 declaration of a state of emergency in New York State (New York Executive Order 202);
- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

We also encourage you to take steps necessary to communicate effectively with customers who have limited English proficiency, for example by translating standard written solicitations and sections of your website describing COVID-19-related forbearance programs.

We request that you implement these steps within ten (10) business days of the date of this letter and that you advertise these programs in all communications with homeowners and post them conspicuously on your website. Please confirm within ten (10) business days that you have implemented these above procedures, or similar, alternative measures to ensure affected consumers receive immediate relief consistent with federal and state COVID-19-related laws. The OAG will consider these responses as it responds to consumer complaints and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[67]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[68], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[69]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[70], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

[67] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[68] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[69] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

[70] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[71]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[72], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[71] *See e.g.,* Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

[72] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

Via Overnight

April 22, 2020

Bruce Rose
CEO
Carrington Mortgage Services
1600 S Douglass Rd Ste 200A
Anaheim, CA 92806-5948

Dear Mr. Rose:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis. We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

**1. Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[73] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[74]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

Thus, to ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you provide the OAG with a detailed explanation of all forbearance and loss mitigation programs that you have in place to address the needs of borrowers struggling in the face of this health and economic crisis. In addition, we request that you immediately implement steps to address staffing limitations and improve customer communication in light of the need to take action quickly, and that you describe these steps in your response to the OAG.

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[73] *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

[74] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

In particular, the OAG recommends mortgage servicers adopt the following procedures for all mortgage loans that you service:

- Place accounts in a 90-day forbearance automatically and where necessary retroactively (or solicit the borrowers immediately by phone or mail to request a COVID-19-related forbearance plan, if federal requirements or other investor restrictions prohibit automatic forbearance) and waive late fees if the homeowner was previously current on their mortgage and misses a payment in the 90 days following the March 7, 2020 declaration of a state of emergency in New York State (New York Executive Order 202);
- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

We also encourage you to take steps necessary to communicate effectively with customers who have limited English proficiency, for example by translating standard written solicitations and sections of your website describing COVID-19-related forbearance programs.

We request that you implement these steps within ten (10) business days of the date of this letter and that you advertise these programs in all communications with homeowners and post them conspicuously on your website. Please confirm within ten (10) business days that you have implemented these above procedures, or similar, alternative measures to ensure affected consumers receive immediate relief consistent with federal and state COVID-19-related laws. The OAG will consider these responses as it responds to consumer complaints and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[75]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[76], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[77]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[78], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

[75] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[76] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[77] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

[78] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[79]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[80], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[79] *See e.g.,* Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

[80] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

Via Overnight

April 22, 2020

Joel Goldman
CEO
Bayview Loan Servicing
4425 Ponce De Leon Blvd 5th Floor
Coral Gables, FL 33146

Dear Mr. Goldman:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

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**1. Immediate Relief That Best Serves New York Homeowners**

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The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

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- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

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**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[83]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[84], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[85]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[86], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

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[84] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[85] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

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unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[87]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[88], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

Via Overnight

April 22, 2020

Gregory S. Tornquist
CEO
Central Loan Adminstration & Reporting (CENLAR)
425 Phillips Blvd.
Ewing, NJ 08618

Dear Mr. Tornquist:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

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[90] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

In particular, the OAG recommends mortgage servicers adopt the following procedures for all mortgage loans that you service:

- Place accounts in a 90-day forbearance automatically and where necessary retroactively (or solicit the borrowers immediately by phone or mail to request a COVID-19-related forbearance plan, if federal requirements or other investor restrictions prohibit automatic forbearance) and waive late fees if the homeowner was previously current on their mortgage and misses a payment in the 90 days following the March 7, 2020 declaration of a state of emergency in New York State (New York Executive Order 202);
- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

We also encourage you to take steps necessary to communicate effectively with customers who have limited English proficiency, for example by translating standard written solicitations and sections of your website describing COVID-19-related forbearance programs.

We request that you implement these steps within ten (10) business days of the date of this letter and that you advertise these programs in all communications with homeowners and post them conspicuously on your website. Please confirm within ten (10) business days that you have implemented these above procedures, or similar, alternative measures to ensure affected consumers receive immediate relief consistent with federal and state COVID-19-related laws. The OAG will consider these responses as it responds to consumer complaints and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[91]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[92], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[93]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[94], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

[91] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[92] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[93] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

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unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[95]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[96], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[95] *See e.g.,* Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

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Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

Via Overnight

April 22, 2020

Brian Stauffer
CEO
Selene Finance
9990 Richmond Ave Ste 400
Houston, TX 77042

Dear Mr. Stauffer:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis.  Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps.  But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks.  We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers.  We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis.  We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

**1. Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[97] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[98]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

Thus, to ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you provide the OAG with a detailed explanation of all forbearance and loss mitigation programs that you have in place to address the needs of borrowers struggling in the face of this health and economic crisis. In addition, we request that you immediately implement steps to address staffing limitations and improve customer communication in light of the need to take action quickly, and that you describe these steps in your response to the OAG.

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[97] *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

[98] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

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- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

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**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

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The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[99]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[100], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[101]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[102], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

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Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

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Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

Via Overnight

April 22, 2020

Kevin Brungardt
CEO
RoundPoint Mortgage Servicing
5016 Pkwy Plaza Blvd Suite 200
Charlotte, NC 28217

Dear Mr. Brungardt:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

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The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis. We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

**1. Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[105] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[106]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

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### 2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

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In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[107]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[108], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[109]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[110], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

[107] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[108] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[109] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

[110] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[111]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[112], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[111] *See e.g.*, Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

[112] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James
New York Attorney General

# STATE OF NEW YORK
# OFFICE OF THE ATTORNEY GENERAL


LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU


Via Overnight

April 22, 2020

Mary Beth Gillis
CEO
Midland Mortgage Corporation
501 NW Grand Blvd Ste 600
Oklahoma City, OK 73118

Dear Ms. Gillis:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis. We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

**1. Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[113] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[114]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

Thus, to ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you provide the OAG with a detailed explanation of all forbearance and loss mitigation programs that you have in place to address the needs of borrowers struggling in the face of this health and economic crisis. In addition, we request that you immediately implement steps to address staffing limitations and improve customer communication in light of the need to take action quickly, and that you describe these steps in your response to the OAG.

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[113] *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

[114] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

In particular, the OAG recommends mortgage servicers adopt the following procedures for all mortgage loans that you service:

- Place accounts in a 90-day forbearance automatically and where necessary retroactively (or solicit the borrowers immediately by phone or mail to request a COVID-19-related forbearance plan, if federal requirements or other investor restrictions prohibit automatic forbearance) and waive late fees if the homeowner was previously current on their mortgage and misses a payment in the 90 days following the March 7, 2020 declaration of a state of emergency in New York State (New York Executive Order 202);
- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

We also encourage you to take steps necessary to communicate effectively with customers who have limited English proficiency, for example by translating standard written solicitations and sections of your website describing COVID-19-related forbearance programs.

We request that you implement these steps within ten (10) business days of the date of this letter and that you advertise these programs in all communications with homeowners and post them conspicuously on your website. Please confirm within ten (10) business days that you have implemented these above procedures, or similar, alternative measures to ensure affected consumers receive immediate relief consistent with federal and state COVID-19-related laws. The OAG will consider these responses as it responds to consumer complaints and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[115]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[116], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[117]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[118], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

[115] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[116] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[117] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

[118] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[119]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[120], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[119] *See e.g.,* Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

[120] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

Via Overnight

April 22, 2020

Thomas F. Marano
CEO
Ditech Financial
1100 Virginia Drive, Suite 100A
Fort Washington, PA 19034

Dear Mr. Marano:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis. We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

**1. Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[121] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[122]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

Thus, to ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you provide the OAG with a detailed explanation of all forbearance and loss mitigation programs that you have in place to address the needs of borrowers struggling in the face of this health and economic crisis. In addition, we request that you immediately implement steps to address staffing limitations and improve customer communication in light of the need to take action quickly, and that you describe these steps in your response to the OAG.

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[121] *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

[122] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

In particular, the OAG recommends mortgage servicers adopt the following procedures for all mortgage loans that you service:

- Place accounts in a 90-day forbearance automatically and where necessary retroactively (or solicit the borrowers immediately by phone or mail to request a COVID-19-related forbearance plan, if federal requirements or other investor restrictions prohibit automatic forbearance) and waive late fees if the homeowner was previously current on their mortgage and misses a payment in the 90 days following the March 7, 2020 declaration of a state of emergency in New York State (New York Executive Order 202);
- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

We also encourage you to take steps necessary to communicate effectively with customers who have limited English proficiency, for example by translating standard written solicitations and sections of your website describing COVID-19-related forbearance programs.

We request that you implement these steps within ten (10) business days of the date of this letter and that you advertise these programs in all communications with homeowners and post them conspicuously on your website. Please confirm within ten (10) business days that you have implemented these above procedures, or similar, alternative measures to ensure affected consumers receive immediate relief consistent with federal and state COVID-19-related laws. The OAG will consider these responses as it responds to consumer complaints and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

(“HUD”) and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York’s consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[123]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[124], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[125]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[126], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio (“LTV”) is greater than 100%, forbear the capitalized

[123] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[124] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage (“ARM”), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[125] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae’s Servicing Guide, D2-3.2-05.

[126] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage (“ARM”), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[127]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[128], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[127] *See e.g.*, Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

[128] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

Via Overnight

April 22, 2020

Julio Aldecocea
CEO
Lakeview Loan Servicing, LLC
4425 Ponce De Leon Blvd.
Coral Gables, FL 33146

Dear Mr. Aldecocea:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis. We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

1. **Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[129] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[130]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

Thus, to ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you provide the OAG with a detailed explanation of all forbearance and loss mitigation programs that you have in place to address the needs of borrowers struggling in the face of this health and economic crisis. In addition, we request that you immediately implement steps to address staffing limitations and improve customer communication in light of the need to take action quickly, and that you describe these steps in your response to the OAG.

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[129] *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

[130] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

In particular, the OAG recommends mortgage servicers adopt the following procedures for all mortgage loans that you service:

- Place accounts in a 90-day forbearance automatically and where necessary retroactively (or solicit the borrowers immediately by phone or mail to request a COVID-19-related forbearance plan, if federal requirements or other investor restrictions prohibit automatic forbearance) and waive late fees if the homeowner was previously current on their mortgage and misses a payment in the 90 days following the March 7, 2020 declaration of a state of emergency in New York State (New York Executive Order 202);
- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners’ difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

We also encourage you to take steps necessary to communicate effectively with customers who have limited English proficiency, for example by translating standard written solicitations and sections of your website describing COVID-19-related forbearance programs.

We request that you implement these steps within ten (10) business days of the date of this letter and that you advertise these programs in all communications with homeowners and post them conspicuously on your website. Please confirm within ten (10) business days that you have implemented these above procedures, or similar, alternative measures to ensure affected consumers receive immediate relief consistent with federal and state COVID-19-related laws. The OAG will consider these responses as it responds to consumer complaints and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[131]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[132], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[133]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[134], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

[131] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[132] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[133] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

[134] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[135]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[136], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[135] *See e.g.*, Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

[136] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

Via Overnight

April 22, 2020

Jay Farner
CEO
Quicken Loans, Inc.
1050 Woodward Avenue
Detroit, MI 48226

Dear Mr. Farner:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis. We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

**1. Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[137] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[138]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

Thus, to ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you provide the OAG with a detailed explanation of all forbearance and loss mitigation programs that you have in place to address the needs of borrowers struggling in the face of this health and economic crisis. In addition, we request that you immediately implement steps to address staffing limitations and improve customer communication in light of the need to take action quickly, and that you describe these steps in your response to the OAG.

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[137] *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

[138] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

In particular, the OAG recommends mortgage servicers adopt the following procedures for all mortgage loans that you service:

- Place accounts in a 90-day forbearance automatically and where necessary retroactively (or solicit the borrowers immediately by phone or mail to request a COVID-19-related forbearance plan, if federal requirements or other investor restrictions prohibit automatic forbearance) and waive late fees if the homeowner was previously current on their mortgage and misses a payment in the 90 days following the March 7, 2020 declaration of a state of emergency in New York State (New York Executive Order 202);
- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

We also encourage you to take steps necessary to communicate effectively with customers who have limited English proficiency, for example by translating standard written solicitations and sections of your website describing COVID-19-related forbearance programs.

We request that you implement these steps within ten (10) business days of the date of this letter and that you advertise these programs in all communications with homeowners and post them conspicuously on your website. Please confirm within ten (10) business days that you have implemented these above procedures, or similar, alternative measures to ensure affected consumers receive immediate relief consistent with federal and state COVID-19-related laws. The OAG will consider these responses as it responds to consumer complaints and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[139]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[140], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[141]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[142], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

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[139] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[140] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[141] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

[142] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[143]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[144], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[143] *See e.g.*, Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

[144] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

Via Overnight

April 22, 2020

Glen A. Messina
CEO
PHH Mortgage Corp
1 Mortgage Way
Mount Laurel, NJ 08054

Dear Mr. Messina:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis. We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

**1. Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[145] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[146]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

Thus, to ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you provide the OAG with a detailed explanation of all forbearance and loss mitigation programs that you have in place to address the needs of borrowers struggling in the face of this health and economic crisis. In addition, we request that you immediately implement steps to address staffing limitations and improve customer communication in light of the need to take action quickly, and that you describe these steps in your response to the OAG.

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[145] *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

[146] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

In particular, the OAG recommends mortgage servicers adopt the following procedures for all mortgage loans that you service:

- Place accounts in a 90-day forbearance automatically and where necessary retroactively (or solicit the borrowers immediately by phone or mail to request a COVID-19-related forbearance plan, if federal requirements or other investor restrictions prohibit automatic forbearance) and waive late fees if the homeowner was previously current on their mortgage and misses a payment in the 90 days following the March 7, 2020 declaration of a state of emergency in New York State (New York Executive Order 202);
- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

We also encourage you to take steps necessary to communicate effectively with customers who have limited English proficiency, for example by translating standard written solicitations and sections of your website describing COVID-19-related forbearance programs.

We request that you implement these steps within ten (10) business days of the date of this letter and that you advertise these programs in all communications with homeowners and post them conspicuously on your website. Please confirm within ten (10) business days that you have implemented these above procedures, or similar, alternative measures to ensure affected consumers receive immediate relief consistent with federal and state COVID-19-related laws. The OAG will consider these responses as it responds to consumer complaints and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[147]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[148], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[149]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[150], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

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[147] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[148] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[149] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

[150] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[151]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[152], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[151] *See e.g.,* Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

[152] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

Via Overnight

April 22, 2020

Andrew Cecere
CEO
US Bankcorp
800 Nicollet Mall
Minneapolis, MN 55402

Dear Mr. Cecere:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis. We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

1. **Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[153] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[154]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

Thus, to ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you provide the OAG with a detailed explanation of all forbearance and loss mitigation programs that you have in place to address the needs of borrowers struggling in the face of this health and economic crisis. In addition, we request that you immediately implement steps to address staffing limitations and improve customer communication in light of the need to take action quickly, and that you describe these steps in your response to the OAG.

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- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

We also encourage you to take steps necessary to communicate effectively with customers who have limited English proficiency, for example by translating standard written solicitations and sections of your website describing COVID-19-related forbearance programs.

We request that you implement these steps within ten (10) business days of the date of this letter and that you advertise these programs in all communications with homeowners and post them conspicuously on your website. Please confirm within ten (10) business days that you have implemented these above procedures, or similar, alternative measures to ensure affected consumers receive immediate relief consistent with federal and state COVID-19-related laws. The OAG will consider these responses as it responds to consumer complaints and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[155]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[156], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[157]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[158], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

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unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[159]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[160], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

Via Overnight

April 22, 2020

James Dreibelbis
CEO
Woodforest National Bank
1330 Lake Robbins Dr Ste 100
The Woodlands, TX 77380

Dear Mr. Dreibelbis:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

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**1. Immediate Relief That Best Serves New York Homeowners**

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The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

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[162] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

In particular, the OAG recommends mortgage servicers adopt the following procedures for all mortgage loans that you service:

- Place accounts in a 90-day forbearance automatically and where necessary retroactively (or solicit the borrowers immediately by phone or mail to request a COVID-19-related forbearance plan, if federal requirements or other investor restrictions prohibit automatic forbearance) and waive late fees if the homeowner was previously current on their mortgage and misses a payment in the 90 days following the March 7, 2020 declaration of a state of emergency in New York State (New York Executive Order 202);
- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

We also encourage you to take steps necessary to communicate effectively with customers who have limited English proficiency, for example by translating standard written solicitations and sections of your website describing COVID-19-related forbearance programs.

We request that you implement these steps within ten (10) business days of the date of this letter and that you advertise these programs in all communications with homeowners and post them conspicuously on your website. Please confirm within ten (10) business days that you have implemented these above procedures, or similar, alternative measures to ensure affected consumers receive immediate relief consistent with federal and state COVID-19-related laws. The OAG will consider these responses as it responds to consumer complaints and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[163]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[164], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[165]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[166], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

[163] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[164] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[165] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

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unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[167]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[168], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[167] *See e.g.*, Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

[168] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

Via Overnight

April 22, 2020

Ed Fay
CEO
Fay Servicing, LLC
440 S La Salle St STE 2000
Chicago, IL 60605

Dear Mr. Fay:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis. We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

1. **Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[169] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[170]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

Thus, to ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you provide the OAG with a detailed explanation of all forbearance and loss mitigation programs that you have in place to address the needs of borrowers struggling in the face of this health and economic crisis. In addition, we request that you immediately implement steps to address staffing limitations and improve customer communication in light of the need to take action quickly, and that you describe these steps in your response to the OAG.

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[169] *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

[170] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

In particular, the OAG recommends mortgage servicers adopt the following procedures for all mortgage loans that you service:

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- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

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**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

(“HUD”) and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York’s consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[171]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[172], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[173]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[174], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio (“LTV”) is greater than 100%, forbear the capitalized

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unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[175]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[176], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

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In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

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Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

<u>Via Overnight</u>

April 22, 2020

Bharat Masrani
CEO
TD Bank
1701 Route 70 East
Cherry Hill, New Jersey 08034

Dear Mr. Masrani:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

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COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

**1. Immediate Relief That Best Serves New York Homeowners**

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The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

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[178] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

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- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
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**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

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In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[179]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[180], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[181]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[182], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

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[179] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[180] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[181] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

[182] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[183]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[184], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[183] *See e.g.*, Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

[184] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**


LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU


Via Overnight

April 22, 2020

Greg D. Carmichael
CEO
Fifth Third Bank
Fifth Third Center, 38 Fountain Square
Cincinnati, OH 45263

Dear Mr. Carmichael:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis. We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

1. **Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[185] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[186]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

Thus, to ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you provide the OAG with a detailed explanation of all forbearance and loss mitigation programs that you have in place to address the needs of borrowers struggling in the face of this health and economic crisis. In addition, we request that you immediately implement steps to address staffing limitations and improve customer communication in light of the need to take action quickly, and that you describe these steps in your response to the OAG.

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185 *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

186 *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

In particular, the OAG recommends mortgage servicers adopt the following procedures for all mortgage loans that you service:

- Place accounts in a 90-day forbearance automatically and where necessary retroactively (or solicit the borrowers immediately by phone or mail to request a COVID-19-related forbearance plan, if federal requirements or other investor restrictions prohibit automatic forbearance) and waive late fees if the homeowner was previously current on their mortgage and misses a payment in the 90 days following the March 7, 2020 declaration of a state of emergency in New York State (New York Executive Order 202);
- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

We also encourage you to take steps necessary to communicate effectively with customers who have limited English proficiency, for example by translating standard written solicitations and sections of your website describing COVID-19-related forbearance programs.

We request that you implement these steps within ten (10) business days of the date of this letter and that you advertise these programs in all communications with homeowners and post them conspicuously on your website. Please confirm within ten (10) business days that you have implemented these above procedures, or similar, alternative measures to ensure affected consumers receive immediate relief consistent with federal and state COVID-19-related laws. The OAG will consider these responses as it responds to consumer complaints and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[187]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[188], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[189]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[190], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

[187] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[188] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[189] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

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unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[191]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[192], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[191] *See e.g.*, Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

[192] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

<u>Via Overnight</u>

April 22, 2020

Alessandro P. DiNello
CEO
Flagstar Bank FSB
5151 Corporate Drive
Troy, MI 48098

Dear Mr. DiNello:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis. We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

**1. Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[193] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[194]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

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[193] *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

[194] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

In particular, the OAG recommends mortgage servicers adopt the following procedures for all mortgage loans that you service:

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- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

We also encourage you to take steps necessary to communicate effectively with customers who have limited English proficiency, for example by translating standard written solicitations and sections of your website describing COVID-19-related forbearance programs.

We request that you implement these steps within ten (10) business days of the date of this letter and that you advertise these programs in all communications with homeowners and post them conspicuously on your website. Please confirm within ten (10) business days that you have implemented these above procedures, or similar, alternative measures to ensure affected consumers receive immediate relief consistent with federal and state COVID-19-related laws. The OAG will consider these responses as it responds to consumer complaints and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[195]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[196], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[197]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[198], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

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[196] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

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unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[199]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[200], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[199] *See e.g.*, Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

[200] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James
New York Attorney General

# STATE OF NEW YORK
# OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

Via Overnight

April 22, 2020

Timothy Wennes
CEO
Santander Bank, N.A.
75 State Street 5th Floor
Boston, Massachusetts 02109

Dear Mr. Wennes:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis. We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

**1. Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[201] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[202]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

Thus, to ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you provide the OAG with a detailed explanation of all forbearance and loss mitigation programs that you have in place to address the needs of borrowers struggling in the face of this health and economic crisis. In addition, we request that you immediately implement steps to address staffing limitations and improve customer communication in light of the need to take action quickly, and that you describe these steps in your response to the OAG.

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[201] *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

[202] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

In particular, the OAG recommends mortgage servicers adopt the following procedures for all mortgage loans that you service:

- Place accounts in a 90-day forbearance automatically and where necessary retroactively (or solicit the borrowers immediately by phone or mail to request a COVID-19-related forbearance plan, if federal requirements or other investor restrictions prohibit automatic forbearance) and waive late fees if the homeowner was previously current on their mortgage and misses a payment in the 90 days following the March 7, 2020 declaration of a state of emergency in New York State (New York Executive Order 202);
- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

We also encourage you to take steps necessary to communicate effectively with customers who have limited English proficiency, for example by translating standard written solicitations and sections of your website describing COVID-19-related forbearance programs.

We request that you implement these steps within ten (10) business days of the date of this letter and that you advertise these programs in all communications with homeowners and post them conspicuously on your website. Please confirm within ten (10) business days that you have implemented these above procedures, or similar, alternative measures to ensure affected consumers receive immediate relief consistent with federal and state COVID-19-related laws. The OAG will consider these responses as it responds to consumer complaints and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[203]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[204], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[205]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[206], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

[203] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[204] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[205] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

[206] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[207]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[208], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[207] *See e.g.*, Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

[208] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

<u>Via Overnight</u>

April 22, 2020

Bruce Van Saun
CEO
Citizens Bank
1 Citizens Plaza
Providence, RI 02903

Dear Mr. Van Saun:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis. We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

1. **Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[209] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[210]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

Thus, to ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you provide the OAG with a detailed explanation of all forbearance and loss mitigation programs that you have in place to address the needs of borrowers struggling in the face of this health and economic crisis. In addition, we request that you immediately implement steps to address staffing limitations and improve customer communication in light of the need to take action quickly, and that you describe these steps in your response to the OAG.

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[209] *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

[210] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

In particular, the OAG recommends mortgage servicers adopt the following procedures for all mortgage loans that you service:

- Place accounts in a 90-day forbearance automatically and where necessary retroactively (or solicit the borrowers immediately by phone or mail to request a COVID-19-related forbearance plan, if federal requirements or other investor restrictions prohibit automatic forbearance) and waive late fees if the homeowner was previously current on their mortgage and misses a payment in the 90 days following the March 7, 2020 declaration of a state of emergency in New York State (New York Executive Order 202);
- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

We also encourage you to take steps necessary to communicate effectively with customers who have limited English proficiency, for example by translating standard written solicitations and sections of your website describing COVID-19-related forbearance programs.

We request that you implement these steps within ten (10) business days of the date of this letter and that you advertise these programs in all communications with homeowners and post them conspicuously on your website. Please confirm within ten (10) business days that you have implemented these above procedures, or similar, alternative measures to ensure affected consumers receive immediate relief consistent with federal and state COVID-19-related laws. The OAG will consider these responses as it responds to consumer complaints and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[211]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[212], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[213]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[214], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

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[211] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[212] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[213] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

[214] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[215]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[216], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[215] *See e.g.*, Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

[216] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

<u>Via Overnight</u>

April 22, 2020

Charles W. Scharf
CEO
Wells Fargo
420 Montgomery Street
San Francisco, CA 94104

Dear Mr. Scharf:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis. We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

1. **Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[217] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[218]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

Thus, to ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you provide the OAG with a detailed explanation of all forbearance and loss mitigation programs that you have in place to address the needs of borrowers struggling in the face of this health and economic crisis. In addition, we request that you immediately implement steps to address staffing limitations and improve customer communication in light of the need to take action quickly, and that you describe these steps in your response to the OAG.

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[217] *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

[218] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

In particular, the OAG recommends mortgage servicers adopt the following procedures for all mortgage loans that you service:

- Place accounts in a 90-day forbearance automatically and where necessary retroactively (or solicit the borrowers immediately by phone or mail to request a COVID-19-related forbearance plan, if federal requirements or other investor restrictions prohibit automatic forbearance) and waive late fees if the homeowner was previously current on their mortgage and misses a payment in the 90 days following the March 7, 2020 declaration of a state of emergency in New York State (New York Executive Order 202);
- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

We also encourage you to take steps necessary to communicate effectively with customers who have limited English proficiency, for example by translating standard written solicitations and sections of your website describing COVID-19-related forbearance programs.

We request that you implement these steps within ten (10) business days of the date of this letter and that you advertise these programs in all communications with homeowners and post them conspicuously on your website. Please confirm within ten (10) business days that you have implemented these above procedures, or similar, alternative measures to ensure affected consumers receive immediate relief consistent with federal and state COVID-19-related laws. The OAG will consider these responses as it responds to consumer complaints and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[219]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[220], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[221]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[222], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

[219] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[220] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[221] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

[222] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[223]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[224], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[223] *See e.g.*, Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

[224] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

Via Overnight

April 22, 2020

Sanjiv Das
CEO
Caliber Home Loans
13801 Wireless Way
Oklahoma City, OK 73134

Dear Mr. Das:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis. We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

**1. Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[225] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[226]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

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[225] *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

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- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

We also encourage you to take steps necessary to communicate effectively with customers who have limited English proficiency, for example by translating standard written solicitations and sections of your website describing COVID-19-related forbearance programs.

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**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[227]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[228], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[229]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[230], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

[227] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[228] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[229] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

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unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[231]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[232], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

Letitia James
Attorney General

Jane M. Azia
Bureau Chief
Consumer Frauds & Protection Bureau

<u>Via Overnight</u>

April 22, 2020

Jay Bray
CEO
Mr. Cooper Group Inc.
8950 Cypress Waters Blvd
Coppell, TX 75019

Dear Mr. Bray:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

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We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

**1. Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[233] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[234]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

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[233] *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

[234] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

In particular, the OAG recommends mortgage servicers adopt the following procedures for all mortgage loans that you service:

- Place accounts in a 90-day forbearance automatically and where necessary retroactively (or solicit the borrowers immediately by phone or mail to request a COVID-19-related forbearance plan, if federal requirements or other investor restrictions prohibit automatic forbearance) and waive late fees if the homeowner was previously current on their mortgage and misses a payment in the 90 days following the March 7, 2020 declaration of a state of emergency in New York State (New York Executive Order 202);
- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

We also encourage you to take steps necessary to communicate effectively with customers who have limited English proficiency, for example by translating standard written solicitations and sections of your website describing COVID-19-related forbearance programs.

We request that you implement these steps within ten (10) business days of the date of this letter and that you advertise these programs in all communications with homeowners and post them conspicuously on your website. Please confirm within ten (10) business days that you have implemented these above procedures, or similar, alternative measures to ensure affected consumers receive immediate relief consistent with federal and state COVID-19-related laws. The OAG will consider these responses as it responds to consumer complaints and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[235]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[236], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[237]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[238], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

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[235] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[236] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[237] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

[238] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[239]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[240], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[239] *See e.g.*, Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

[240] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

Via Overnight

April 22, 2020

Brian Moynihan
CEO
Bank of America
100 North Tryon Street
Charlotte, NC 28255

Dear Mr. Moynihan:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis. We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

**1. Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[241] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[242]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

Thus, to ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you provide the OAG with a detailed explanation of all forbearance and loss mitigation programs that you have in place to address the needs of borrowers struggling in the face of this health and economic crisis. In addition, we request that you immediately implement steps to address staffing limitations and improve customer communication in light of the need to take action quickly, and that you describe these steps in your response to the OAG.

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[241] *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

[242] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

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- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

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**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[243]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[244], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[245]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[246], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

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[245] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

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unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[247]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[248], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

Via Overnight

April 22, 2020

Jamie Dimon
CEO
J.P. Morgan Chase
270 Park Ave
New York, NY 10017

Dear Mr. Dimon:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis. We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

**1. Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[249] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[250]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

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[249] *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

[250] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

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- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

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**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[251]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[252], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[253]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[254], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

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[251] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[252] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[253] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

[254] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[255]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[256], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[255] *See e.g.*, Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

[256] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

Via Overnight

April 22, 2020

Toby Wells
CEO
Specialized Loan Servicing
8742 Lucent Blvd STE 300
Highlands Ranch, CO 80129

Dear Mr. Wells:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis. We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

1. **Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[257] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[258]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

Thus, to ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you provide the OAG with a detailed explanation of all forbearance and loss mitigation programs that you have in place to address the needs of borrowers struggling in the face of this health and economic crisis. In addition, we request that you immediately implement steps to address staffing limitations and improve customer communication in light of the need to take action quickly, and that you describe these steps in your response to the OAG.

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[257] *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

[258] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

In particular, the OAG recommends mortgage servicers adopt the following procedures for all mortgage loans that you service:

- Place accounts in a 90-day forbearance automatically and where necessary retroactively (or solicit the borrowers immediately by phone or mail to request a COVID-19-related forbearance plan, if federal requirements or other investor restrictions prohibit automatic forbearance) and waive late fees if the homeowner was previously current on their mortgage and misses a payment in the 90 days following the March 7, 2020 declaration of a state of emergency in New York State (New York Executive Order 202);
- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

We also encourage you to take steps necessary to communicate effectively with customers who have limited English proficiency, for example by translating standard written solicitations and sections of your website describing COVID-19-related forbearance programs.

We request that you implement these steps within ten (10) business days of the date of this letter and that you advertise these programs in all communications with homeowners and post them conspicuously on your website. Please confirm within ten (10) business days that you have implemented these above procedures, or similar, alternative measures to ensure affected consumers receive immediate relief consistent with federal and state COVID-19-related laws. The OAG will consider these responses as it responds to consumer complaints and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[259]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[260], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[261]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[262], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

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[259] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[260] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[261] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

[262] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[263]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[264], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[263] *See e.g.*, Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

[264] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law.  *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b).  The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers.  This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

<u>Via Overnight</u>

April 22, 2020

Jane Fraser
CEO
Citi Mortgage
1000 Technology Drive
O'Fallon, MO 63368

Dear Ms. Fraser:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis. We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

1. **Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[265] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[266]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

Thus, to ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you provide the OAG with a detailed explanation of all forbearance and loss mitigation programs that you have in place to address the needs of borrowers struggling in the face of this health and economic crisis. In addition, we request that you immediately implement steps to address staffing limitations and improve customer communication in light of the need to take action quickly, and that you describe these steps in your response to the OAG.

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[265] *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

[266] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

In particular, the OAG recommends mortgage servicers adopt the following procedures for all mortgage loans that you service:

- Place accounts in a 90-day forbearance automatically and where necessary retroactively (or solicit the borrowers immediately by phone or mail to request a COVID-19-related forbearance plan, if federal requirements or other investor restrictions prohibit automatic forbearance) and waive late fees if the homeowner was previously current on their mortgage and misses a payment in the 90 days following the March 7, 2020 declaration of a state of emergency in New York State (New York Executive Order 202);
- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

We also encourage you to take steps necessary to communicate effectively with customers who have limited English proficiency, for example by translating standard written solicitations and sections of your website describing COVID-19-related forbearance programs.

We request that you implement these steps within ten (10) business days of the date of this letter and that you advertise these programs in all communications with homeowners and post them conspicuously on your website. Please confirm within ten (10) business days that you have implemented these above procedures, or similar, alternative measures to ensure affected consumers receive immediate relief consistent with federal and state COVID-19-related laws. The OAG will consider these responses as it responds to consumer complaints and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[267]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[268], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[269]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[270], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

[267] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[268] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[269] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

[270] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[271]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[272], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

COVID-19 is unprecedented in our history; many American lives will be lost and we will be a society completely altered by the trauma, both psychologically and economically; some may never recover. Now is not the time for business as usual. We must work together to ensure that all New Yorkers can maintain their homes through this crisis, regardless of forces beyond homeowners' control, such as who has decided to purchase or invest in their mortgage loan.

Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[271] *See e.g.*, Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

[272] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

If you have any questions, please contact Assistant Attorney General Elizabeth M. Lynch (at ElizabethM.Lynch@ag.ny.gov or 212-416-6314) or Assistant Attorney General Mark Ladov (at Mark.Ladov@ag.ny.gov or 212-416-8622) for additional information.

On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

Letitia James

Letitia James
New York Attorney General

**STATE OF NEW YORK**
**OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

<u>Via Overnight</u>

April 22, 2020

Michael Roberts
CEO
HSBC USA Inc.
452 Fifth Avenue
New York, NY 10018

Dear Mr. Roberts:

As you know, New Yorkers – along with so many others around the country – are struggling in the face of a global pandemic and the related economic crisis. Fear of losing one's home should not add to the list of worries for those affected by this crisis, particularly when such a consequence is often avoidable.

Many mortgage servicers have taken important actions, voluntarily and in response to government action, to address the needs of consumers and we applaud those first steps. But we all know that more will be needed and that action must be taken swiftly to provide both immediate relief and long-term support for consumers struggling with their mortgage payments. Taking aggressive action now has the potential to shorten the duration and limit the severity of any economic hardship, and an efficient, streamlined process can also reduce strain on servicers when the crisis peaks. We learned the hard way during the last financial crisis – and we are seeing it again now through our response to this public health emergency – that a tepid, piecemeal response that does not meet the challenges of the moment works against everyone's interests.

As New York Attorney General, my office (the OAG) is focused on strengthening the efforts to protect struggling borrowers. We want to work with mortgage servicers to ensure that all homeowners are treated fairly regardless of who owns or services their loan, and that homeowners seamlessly transition back to making affordable monthly payments when COVID-19-related forbearance plans end.

The OAG also intends to hold the servicing industry publicly accountable for meeting its obligations to homeowners during this crisis. We will be doing this by monitoring compliance with emergency laws and regulations, evaluating servicers' performance at implementing

COVID-19 relief programs, and determining which servicers are working most effectively to protect the long-term financial health of New York's homeowners and communities.

Therefore, I am sending you this letter to understand your response plan and (1) request that you provide immediate relief that best serves New York homeowners in accordance with COVID-19-related laws, regulations and guidance, and (2) that you prepare streamlined and appropriate loss mitigation options to address the needs of borrowers who are still struggling at the conclusion of COVID-19-related forbearance plans.

We have learned a lot since the last financial crisis about what works for struggling borrowers, and we should put that knowledge to work now, before it is too late.

1. **Immediate Relief That Best Serves New York Homeowners**

The OAG is focused on ensuring that servicers are providing COVID-19-related forbearance plans and other loss mitigation assistance fairly and effectively, as required by New York State laws and regulations, including Executive Order 202.9[273] and New York State Department of Financial Services' ("DFS") COVID-19-related guidance and emergency regulations.[274]

The OAG has already received complaints from borrowers who have had difficulty contacting their servicer at this critical moment and who have already highlighted that their economic hardship is likely long-term. Servicers who are unable to meet the demand from consumers who are struggling and need help will face additional scrutiny from the OAG and will be held accountable for harm caused to consumers. We recognize that many servicers have not staffed to meet the needs of this crisis and are facing their own challenges as more and more of their employees must work from home. That does not, however, excuse servicers from meeting their obligations to consumers. Servicers must implement alternative measures to address their shortcomings rather than place that burden on consumers.

Thus, to ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you provide the OAG with a detailed explanation of all forbearance and loss mitigation programs that you have in place to address the needs of borrowers struggling in the face of this health and economic crisis. In addition, we request that you immediately implement steps to address staffing limitations and improve customer communication in light of the need to take action quickly, and that you describe these steps in your response to the OAG.

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[273] *See* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.9.pdf

[274] *See* DFS, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, Part 119 of 3 NYCRR ("DFS Emergency COVID-19 Regs") (March 24, 2020), *available at* https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf; DFS Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19) (March 19, 2020), *available at* https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200319_coronavirus_mortgage_relief.

In particular, the OAG recommends mortgage servicers adopt the following procedures for all mortgage loans that you service:

- Place accounts in a 90-day forbearance automatically and where necessary retroactively (or solicit the borrowers immediately by phone or mail to request a COVID-19-related forbearance plan, if federal requirements or other investor restrictions prohibit automatic forbearance) and waive late fees if the homeowner was previously current on their mortgage and misses a payment in the 90 days following the March 7, 2020 declaration of a state of emergency in New York State (New York Executive Order 202);
- Extend the forbearance agreement for additional 90-day periods up to a year if requested by a homeowner who continues to experience a COVID-19-related financial hardship;
- Forgo any requirement that borrowers document that their hardship is COVID-19-related other than a verbal or written affirmation given homeowners' difficulty in reaching their servicers;
- Provide a complete and accurate description of all post-forbearance options for reinstatement when informing customers that they have been automatically placed into a forbearance plan due to missed payments, or when responding to any borrower who requests information about applying for forbearance; and
- Ensure that you have adequate staffing and resources to handle these requests, that you have eliminated long hold times, that homeowners can request relief via e-mail or your website in addition to by phone, and that calls are not being dropped.

We also encourage you to take steps necessary to communicate effectively with customers who have limited English proficiency, for example by translating standard written solicitations and sections of your website describing COVID-19-related forbearance programs.

We request that you implement these steps within ten (10) business days of the date of this letter and that you advertise these programs in all communications with homeowners and post them conspicuously on your website. Please confirm within ten (10) business days that you have implemented these above procedures, or similar, alternative measures to ensure affected consumers receive immediate relief consistent with federal and state COVID-19-related laws. The OAG will consider these responses as it responds to consumer complaints and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

**2. Appropriate Loss Mitigation for Consumers with Long-Term Economic Changes**

We know that forbearance is not a long-term solution to consumers in financial distress. In order to avoid another crisis when the full amount of COVID-19-related forbearance agreements come due, the OAG recommends that servicers should be taking steps now to implement various loan modification options to be offered at least 30-days prior to the conclusion of the forbearance plan. These programs should be streamlined and automatic where possible, to ease the burden on servicers and borrowers alike.

The OAG recognizes that government-backed loans are subject to specific requirements issued by Congress, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development

("HUD") and other agencies in response to COVID-19. These entities have already implemented initial steps to provide a long-term framework for assisting homeowners, such as the emergency modifications announced by Fannie Mae, Freddie Mac and HUD that allow borrowers to defer missed payments to the end of their loan term.

In addition, *all* New York homeowners have a right to comparable long-term relief under New York's consumer protection and mortgage servicing laws, including the recent orders and guidance issued by Governor Cuomo and DFS. To ensure that New York homeowners are effectively protected from financial hardships caused by the COVID-19 crisis, we request that you implement the following loan modification options – or comparable products – to be offered 30 days prior to the conclusion of a forbearance agreement and without any application from the homeowner:

- Where the borrower can resume the pre-COVID-19 monthly principal, interest, taxes and insurance (PITI) payment plus any escrow shortage spread over 60 months, extend the term of the mortgage by the number of months of the forbearance agreement;[275]
- Where the borrower can resume the pre-COVID-19 monthly PITI payment but cannot afford the monthly escrow shortfall repayment, implement the following steps, in order, until the monthly PITI payment reaches the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[276], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months;[277]
- Where the borrower cannot resume the pre-COVID-19 monthly PITI payments, implement the following steps, in order, until the monthly PITI payment is 20% lower than the pre-COVID-19 monthly PITI payment: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[278], whichever is lower; and (iii) extend the term of the loan in monthly increments to 480 months; (iv) where the loan-to-value ratio ("LTV") is greater than 100%, forbear the capitalized

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[275] *See e.g.*, Fannie Mae Extend Modification for Disaster Relief as described in Lender Letter 2017-09R (Nov. 2, 2017).

[276] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

[277] *See e.g.*, Fannie Mae Cap and Extend Modification for Disaster Relief as described in Fannie Mae's Servicing Guide, D2-3.2-05.

[278] Where the note rate is a step-rate, use the final interest of the steps as the note rate. Where the note is an adjustable rate mortgage ("ARM"), use the rate cap of the ARM as the note rate. The post-COVID-19 forbearance modification shall result in a modification with a fixed interest rate.

unpaid principal to a point where LTV is 100%; and (v) forbear an additional amount of up to 30% of the post-step iv, capitalized unpaid principal balance;[279]

- Where the borrower is unable to afford any of payments above, the servicer may offer a modification that requires an application but should implement the following steps, in order, until the monthly PITI payment is 31% of the homeowner's gross monthly income: (i) capitalize the arrears; (ii) set the interest rate to the current Fannie Mae Modification Rate or the note rate[280], whichever is lower; (iii) extend the term of the loan in monthly increments to 480 months; and (iv) forbear up to 30% of the capitalized unpaid principal as a non-interest bearing balloon; if a modification cannot be reached with a PITI payment target of 31%, the servicer may rerun the waterfall with a PITI monthly payment target of no greater than 40% of the homeowner's gross monthly income.

Any harm to borrowers caused by a servicer's failure to implement these or similar programs could violate New York's mortgage servicing regulations and other applicable State and Federal consumer protection laws. New York law prohibits servicers from "engaging in unfair or deceptive or abusive business practices," and requires servicers to "act in good faith and deal fairly" with borrowers, including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R § 419.10.

In addition, servicers should be mindful of homeowners whose delinquencies preceded the COVID-19 pandemic and provide comparable relief. Many of these borrowers – including homeowners who were already applying for mortgage assistance – are likely to suffer further difficulties due to this crisis. Moreover, these borrowers will contribute to the strain on the servicing system that necessitates streamlined resolutions. While these borrowers may need somewhat different solutions, they must also be part of our collective recovery.

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Additionally, it has always been better economically for both the owners of the loans and the homeowners to negotiate an acceptable workout option than to proceed to foreclosure. Such loss mitigation efforts are also required by New York law. *See* 3 N.Y.C.R.R. § 419.7; N.Y. C.P.L.R. 3408(f).

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[279] *See e.g.*, Fannie Mae Flex Modification as described in Fannie Mae's Servicing Guide, D2-3.2-06.

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Please confirm within 30 days whether you have implemented these or alternative measures to ensure affected consumers receive relief at the end of the forbearance period that avoids foreclosure and results in affordable and sustainable mortgage payments as required under New York law. *See* 3 N.Y.C.R.R §§ 419.7(a), 419.10(b). The OAG will consider these responses as it responds to consumer complaints, and evaluates the performance and legal compliance of individual servicers. This will also help us prioritize servicers for additional scrutiny.

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On behalf of my entire office, we appreciate your assistance and look forward to working together to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

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