



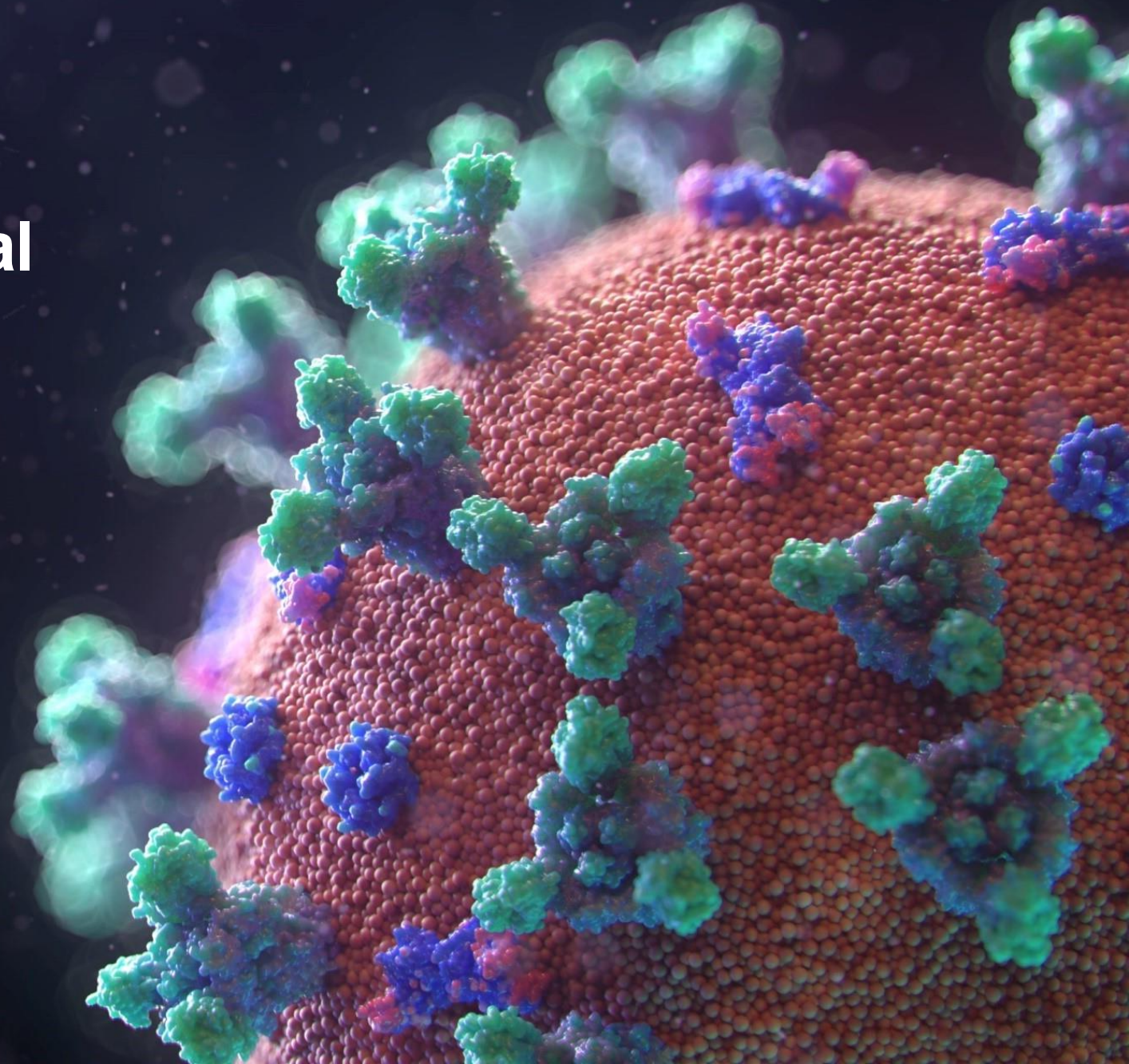
Navigating the Residential Mortgage Landscape During COVID-19: What Lenders and Servicers Should Know About the CARES Act

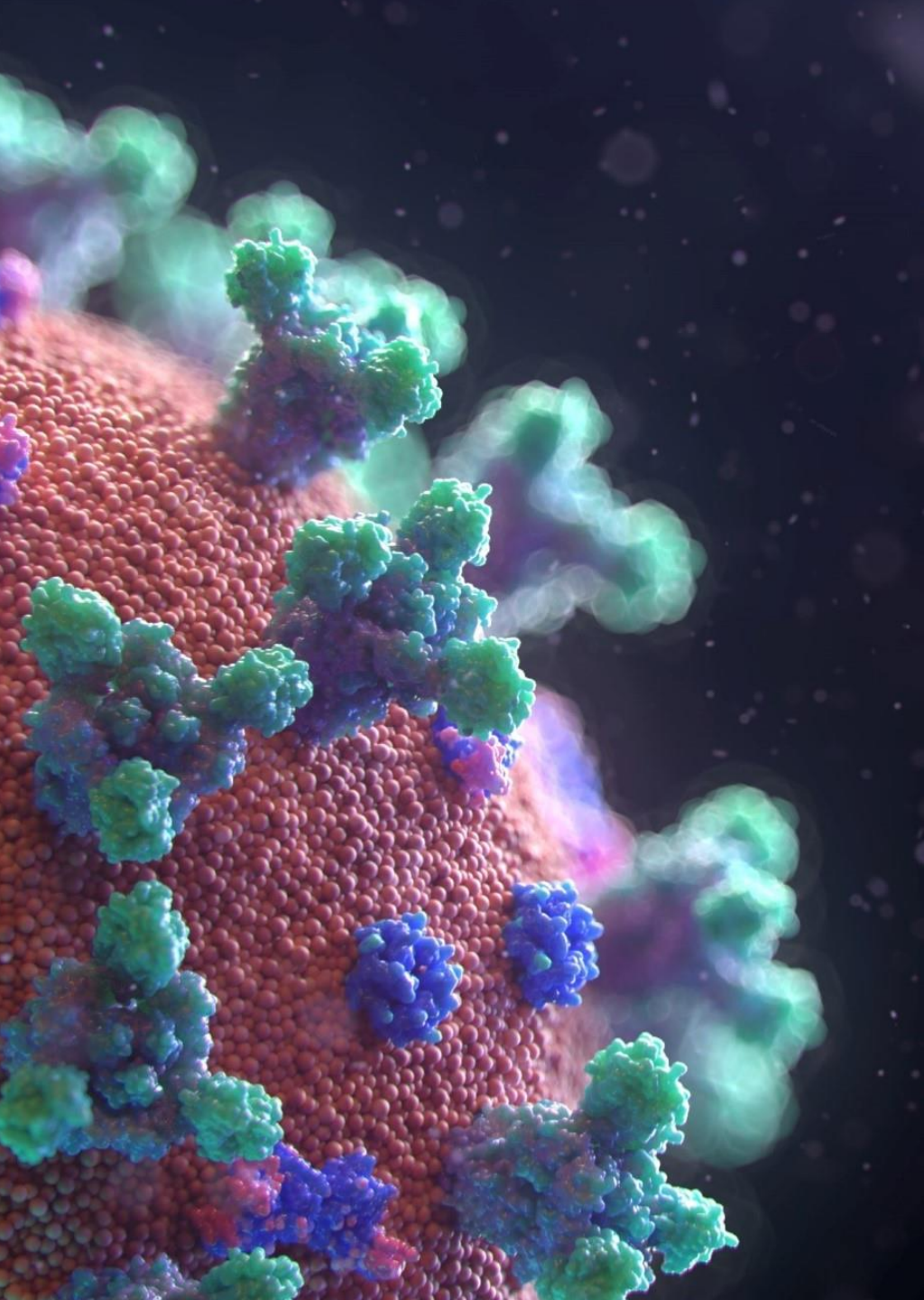
David Bizar
Tonya Esposito
Anne Dunne

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Speakers



DAVID BIZAR
Litigation Partner
BOSTON



TONYA ESPOSITO
Litigation Partner
WASHINGTON DC



ANNE DUNNE
Litigation Associate
BOSTON

Agenda



1 | Overview of the CARES Act

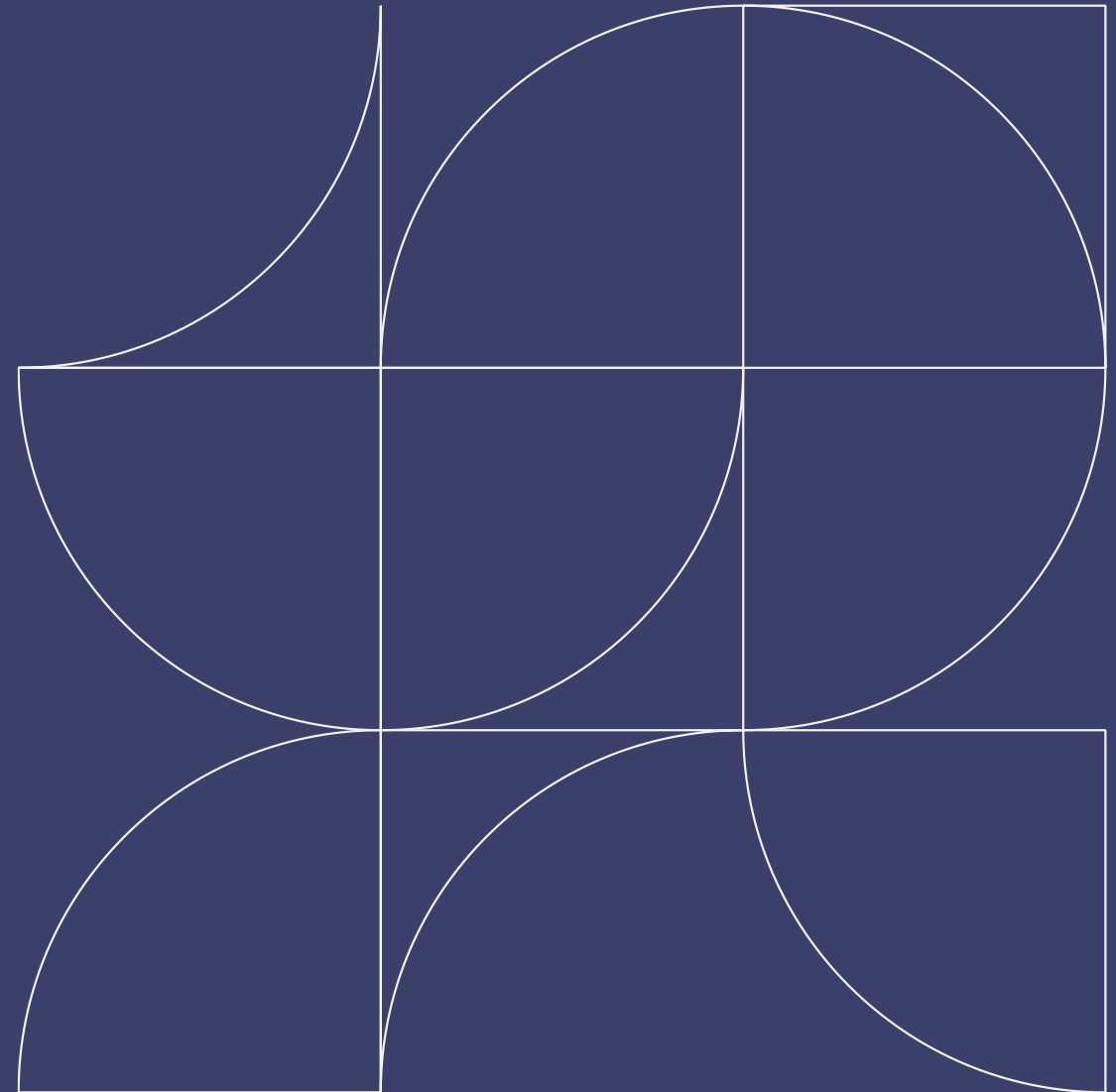
2 | Credit Protection

3 | The CARES Act and the Mortgage Industry

4 | Foreclosures and Evictions During COVID-19

5 | Takeaways and Considerations

Overview of the CARES Act



Overview of the CARES Act



The Coronavirus Aid, Relief, and Economic Security (“CARES”) Act

- Signed into law on March 27, 2020
- Aimed at reducing the economic impact of COVID-19
- Authorizes \$2.1 trillion in aid to various sectors of the economy
- Comprehensive legislation that includes, among other things:
 - credit protection
 - residential mortgage loan and residential property provisions

Overview of the CARES Act



Mortgage-Related CARES-Act Provisions

- **Section 4021:**
 - Credit Protection During COVID-19
- **Section 4022:**
 - Foreclosure Moratorium and Consumer Right to Request Forbearance
- **Section 4023:**
 - Forbearance for Multi-Family Property Owners with Federally-Backed Loan
- **Section 4024:**
 - Temporary Moratorium on Eviction Filings

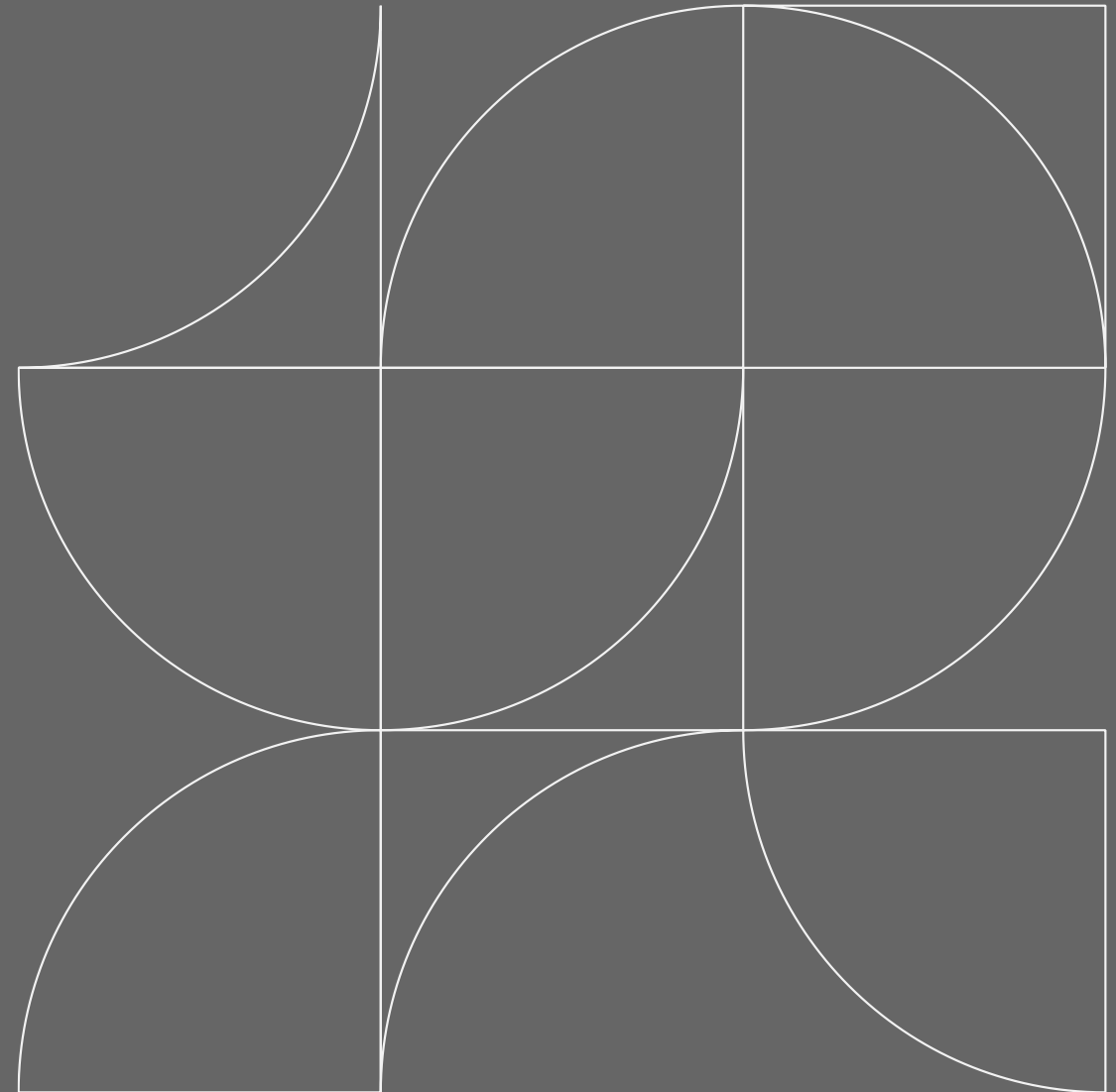
Overview of the CARES Act



Mortgage-Related CARES-Act Provisions

- We will cover each of CARES Act Sections 4021 – 4024 in turn as we discuss:
 - credit reporting on behalf of landlords, lenders and servicers
 - forbearance relief available to borrowers
 - foreclosure and eviction moratoriums

Credit Protection During COVID-19



Credit Protection During COVID-19



Section 4021: Modification of the FCRA

- The CARES Act modifies the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq (“FCRA”) by precluding furnishers of information (including lenders/servicers) from reporting the accommodation
- Per this modification, furnishers must continue to report the consumer using the consumer’s account status (current or delinquent) at the time the accommodation began
- If a consumer brings an account current during an accommodation, the account must be reported as current

Credit Protection During COVID-19



Section 4021: Modification of the FCRA

- The CARES Act requires lenders and servicers to be careful in evaluating a borrower's credit information and status when providing information to the credit reporting agencies to ensure regulatory compliance and minimize litigation risk
- We discuss these in context below

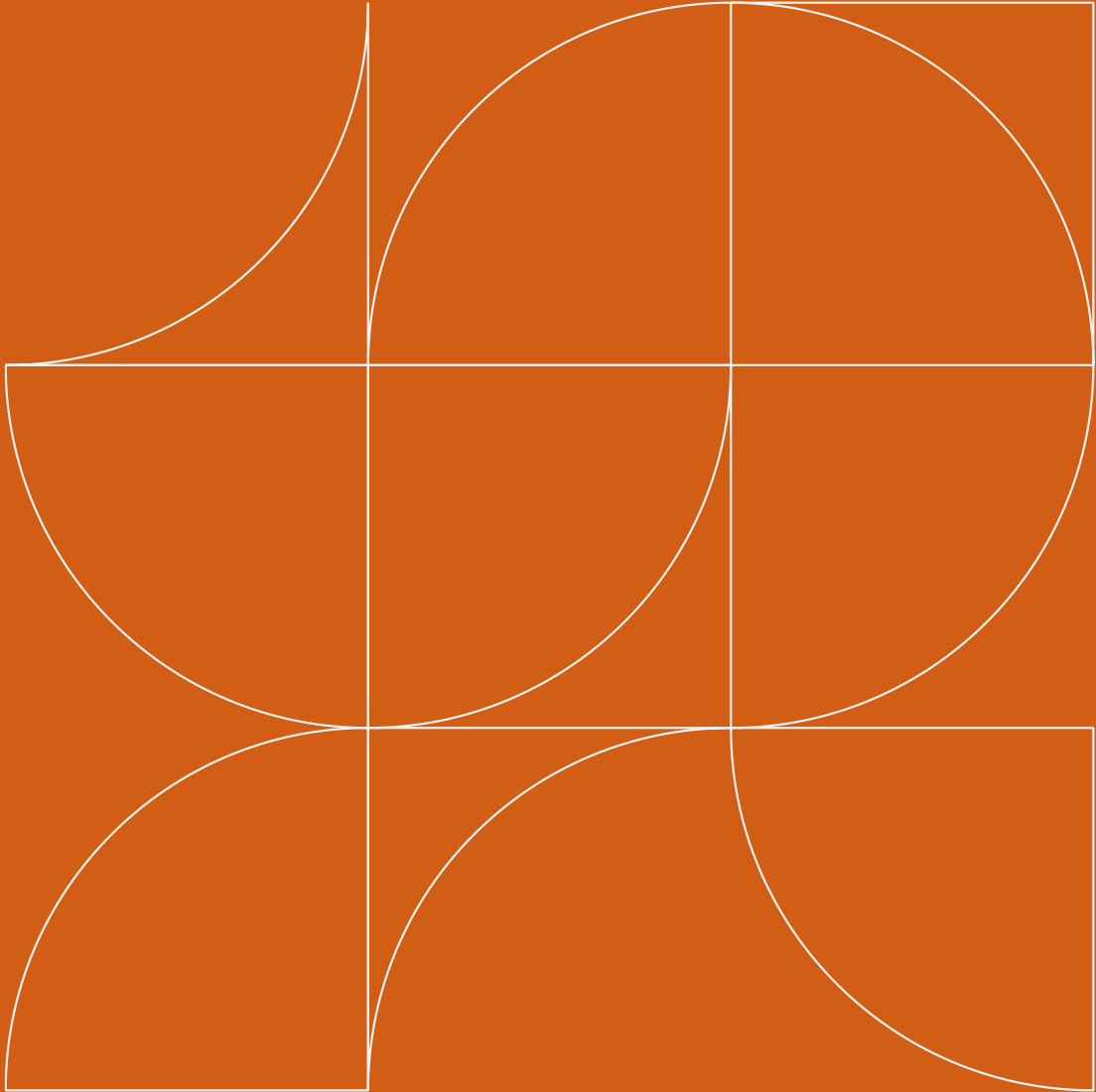
Credit Protection During COVID-19



Section 4021: Modification of the FCRA

- In response to these changes, the Consumer Financial Protection Bureau (“CFPB”) issued a non-binding policy statement where it announced a “flexible” supervisory and enforcement approach for compliance with the FCRA and Regulation V
- The CFPB stated it does not intend to cite in an examination or bring an enforcement against furnishers that exceed deadlines to investigate consumer disputes so long as they make good faith efforts to do so as quickly as possible
- While this likely insulates furnishers from an enforcement action by the CFPB, a consumer would still have a private right of action.

The CARES Act and the Mortgage Industry



Residential Mortgages



Section 4022: Foreclosure Moratorium and Borrower Right to Request a Forbearance

- Residential borrowers who have a federally-backed mortgage loan may request relief in the form of a forbearance
- “Federally-backed” is defined in the CARES Act as one that is secured by a first or subordinate lien on residential real property, including individual units of condominiums and cooperatives, designed principally for the occupancy of one-to four families that meets one of the following six criteria:

Residential Mortgages



Definition of “Federally-Backed”

- “Federally-backed” is defined in the CARES Act as one that is secured by a first or subordinate lien on residential real property, including individual units of condominiums and cooperatives, designed principally for the occupancy of one-to four families that meets one of the following six criteria:
 1. Insured by the Federal Housing Administration (FHA) under title II of the National Housing Act;
 2. Insured under the National Housing Act section 255, which addresses home equity conversion (i.e., reverse) mortgage loans insured by the FHA;

Residential Mortgages



Definition of “Federally Backed”

3. Guaranteed under the Housing and Community Development Act of 1992 sections 184 or 184A, which address loans related to Native American families and housing authorities and loans related to Native Hawaiian families and authorities;
4. Guaranteed or insured by the U.S. Department of Veterans Affairs (VA);
5. Made, guaranteed or insured by the U.S. Department of Agriculture (USDA); or
6. Purchased or securitized by the Federal Home Loan Mortgage Corporation (Freddie Mac) or Federal National Mortgage Association (Fannie Mae).

Residential Mortgages: Single- to Four- Family Properties



Details of the Forbearance Relief: Borrowers

- During the covered period, residential borrowers with federally-backed mortgages may temporarily postpone their mortgage payments
- A forbearance of up to 180 days may be extended by an additional 180 days if requested
 - Borrower must affirm that he or she is experiencing a financial hardship due to the COVID-19 national emergency
 - No further documentation or proof is required
 - Borrower may shorten or halt the forbearance period at any time by contacting the servicer

Residential Mortgages: Single- to Four- Family Properties



Details of the Forbearance Relief: Lenders and Servicers

- During the forbearance period, a lender or servicer may not assess fees, penalties or interest, that would not have been charged to a borrower if he or she made timely payments under the terms of their mortgage contract.
- If a lender or servicer makes an accommodation under the CARES Act, it must, as a furnisher, continue to report the account as current if the borrower fulfills the terms of the accommodation under the CARES Act Section 4021.
- If the account was delinquent before the accommodation was made, the furnisher is permitted to continue reporting the account as delinquent unless the account is brought current.
- The reporting requirements under CARES Act Section 4021 apply to consumer accounts between January 31, 2020 through 120 days after the end of the COVID-19 national emergency

Residential Mortgages: Multi-family Properties



Section 4023: Forbearance for Multifamily Property Owners with Federally-Backed Loans

- Provides relief for “federally backed multi-family borrowers” defined as “a borrower of residential mortgage loan that is secured by a lien against a property comprising 5 or more dwelling units”
- This includes any first or second mortgage loan secured by a lien on the property comprised of 5 or more dwelling units and is made or insured, guaranteed, supplemented or assisted in any way by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or any such agency.
- It also includes such mortgages that are purchased or securitized by Freddie Mac or Fannie
- It does *not* include loans for temporary financing such as a construction loan

Residential Mortgages: Multi-family Properties



Section 4023: Credit Reporting for Multifamily Property Owners with Federally-Backed Loans

- Multi-family borrowers are prevented from charging late fees or penalties or evicting any tenants for non-payment of rent during the forbearance period, and upon completion of the forbearance must provide all tenants with a 30 day notice prior to requiring a tenant to vacate.
- The above-discussed consumer credit reporting protections pursuant to Section 4021 above apply here:
 - If a servicer or lender makes an accommodation under the CARES Act, it must, as a furnisher under the FCRA, continue to report the account as current if the consumer fulfills the terms of the accommodation
 - However, if an account was delinquent before the accommodation was made, the furnisher is permitted to continue reporting the account as delinquent unless the account is brought current.

Residential Mortgages: Multi-family Properties



Section 4023: Forbearance for Multifamily Property Owners with Federally-Backed Loans

- Multi-family borrowers may request a forbearance either orally or in writing, triggering a duty by the servicer to document the hardship and provide an initial 30-day forbearance
- Financial hardship is not defined in Section 4023
- There is no specific requirement to demonstrate a hardship
- The forbearance may be extended for up to 2 additional 30 day periods, upon request by the borrower during the covered period and at least 15 days before the expiration of the initial 30 day forbearance
- No moratorium on foreclosures of these mortgages
- The “covered period” is defined on the date on which the CARES Act became law (March 27, 2020) until the sooner of December 31, 2020 or the termination of the date of the COVID-19 national emergency.

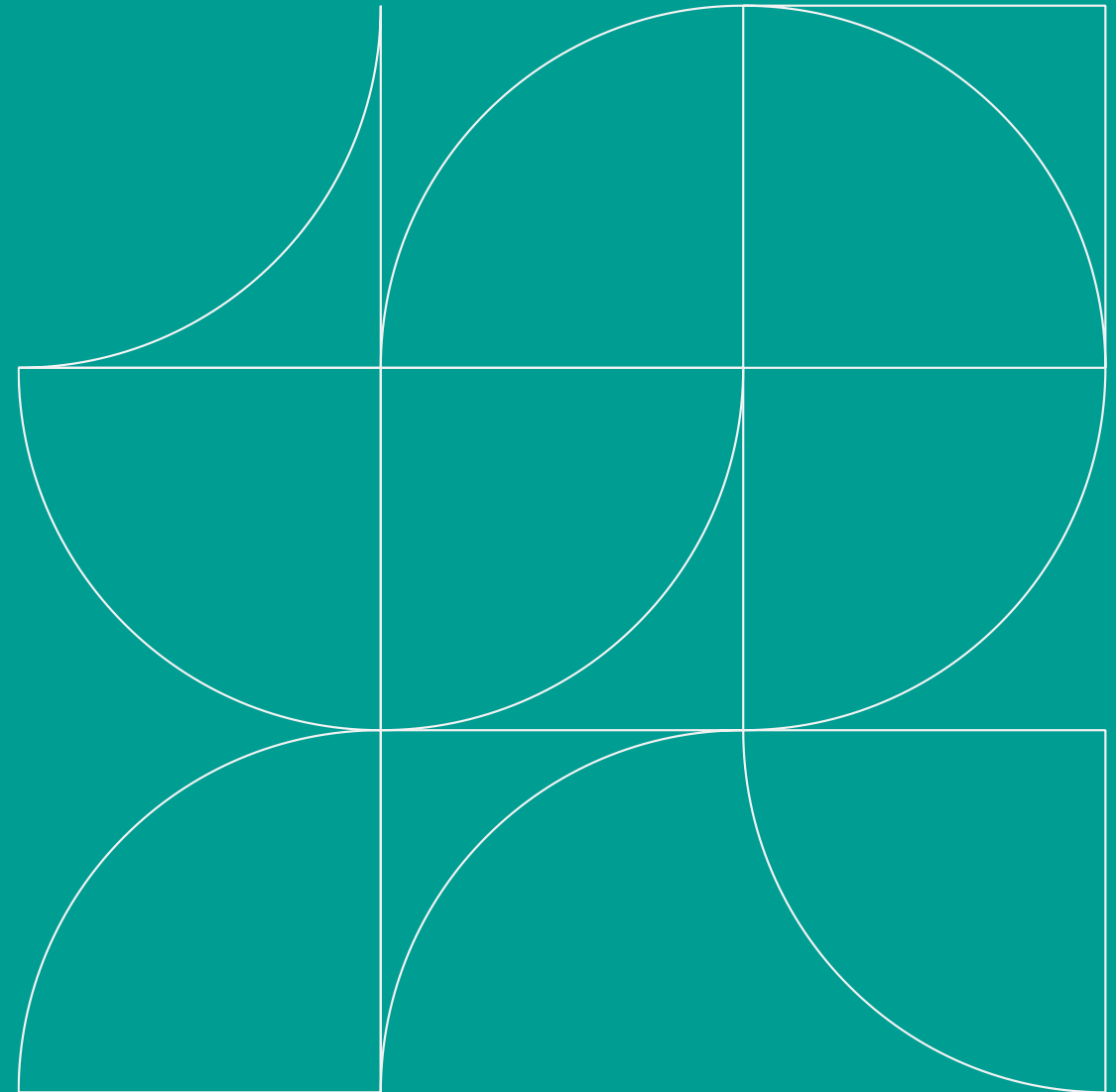
All Residential Mortgages



Sections 4022 and 4023: “Covered Period”

- Unlike §4023 of the CARES Act, §4022 does not define the term “covered period”
- Prior drafts of §4022 contained a definition of “covered period” that was identical to that contained in §4023:
 - The “covered period” is defined on the date on which the CARES Act became law (March 27, 2020) until the sooner of December 31, 2020 or the termination of the date of the COVID-19 national emergency
- This definition was struck from §4022 of the final text of the CARES Act

Foreclosures and Evictions During COVID-19



Foreclosure Moratorium Under the Cares Act



Comparing Sections 4022 and 4023

- The CARES Act includes a blanket foreclosure moratorium on servicers of 1-4 family federally-backed mortgage loans for 60 days beginning on March 18, 2020. This includes:
 - initiating a foreclosure
 - moving for judgment; and
 - executing a foreclosure
- The CARES Act does not include a foreclosure moratorium for federally-backed multi-family mortgages.

State Foreclosure Moratoriums



Both judicial and non-judicial foreclosure states are issuing moratoriums

- Iowa (judicial)- Governor's Proclamation, March 22, 2020: temporarily suspending the provisions of the Iowa Code allowing for the commencement or continued prosecution of foreclosure proceedings. Suspension remains in effect for the duration of the Governor's proclamation of emergency
- New Hampshire (non-judicial): Governor's Emergency Order 4 pursuant to Executive Order 2020-04, March 4, 2020: prohibits all forms of foreclosure during emergency declaration.

CARES Act Eviction Moratorium



Section 4024 governs the eviction moratorium

- In order to determine how the moratorium may impact a specific property, there are three questions which must be considered:
 1. Does the property fall under the moratorium provision?
 2. What does the CARES Act prohibit?
 3. What is the enforcement mechanism?
- We cover each of these questions in turn

Does the Moratorium Apply?



Section 4024(a)

- The moratorium applies to properties that either:
 - A. participate in:
 1. a covered housing program as defined in the Violence Against Women Act (“VAWA”); or
 2. the rural housing voucher program; or
 - B. have a-
 1. federal backed mortgage loan; or
 2. federally backed multifamily mortgage loan.

What does the Moratorium Prohibit?



Section 4024(b)

- During the 120-day period beginning with the date of enactment, a lessor may not:
 1. make, or cause to be made, any filing to *initiate* a legal action to recover possession of a dwelling from a tenant for nonpayment of rent or other fees or charges; or
 2. charge fees, penalties, or other charges to the tenant related to such nonpayment of rent.
- Upon expiration of the 120-day period, a lessor may not require a tenant to vacate sooner than 30 days after providing notice.
- The moratorium does not effect eviction proceedings filed before the date of enactment

How will the Moratorium be Enforced



How will the moratorium be enforced?

- As of the date of this webinar, the enforcement mechanism is unknown.
- Some potential scenarios:
 1. The administrator of a covered program may take action; or
 2. a tenant may use the act as a defense in a proceeding brought by a landlord in violation of the moratorium.
- We will closely monitor enforcement of this provision and provide timely updates.

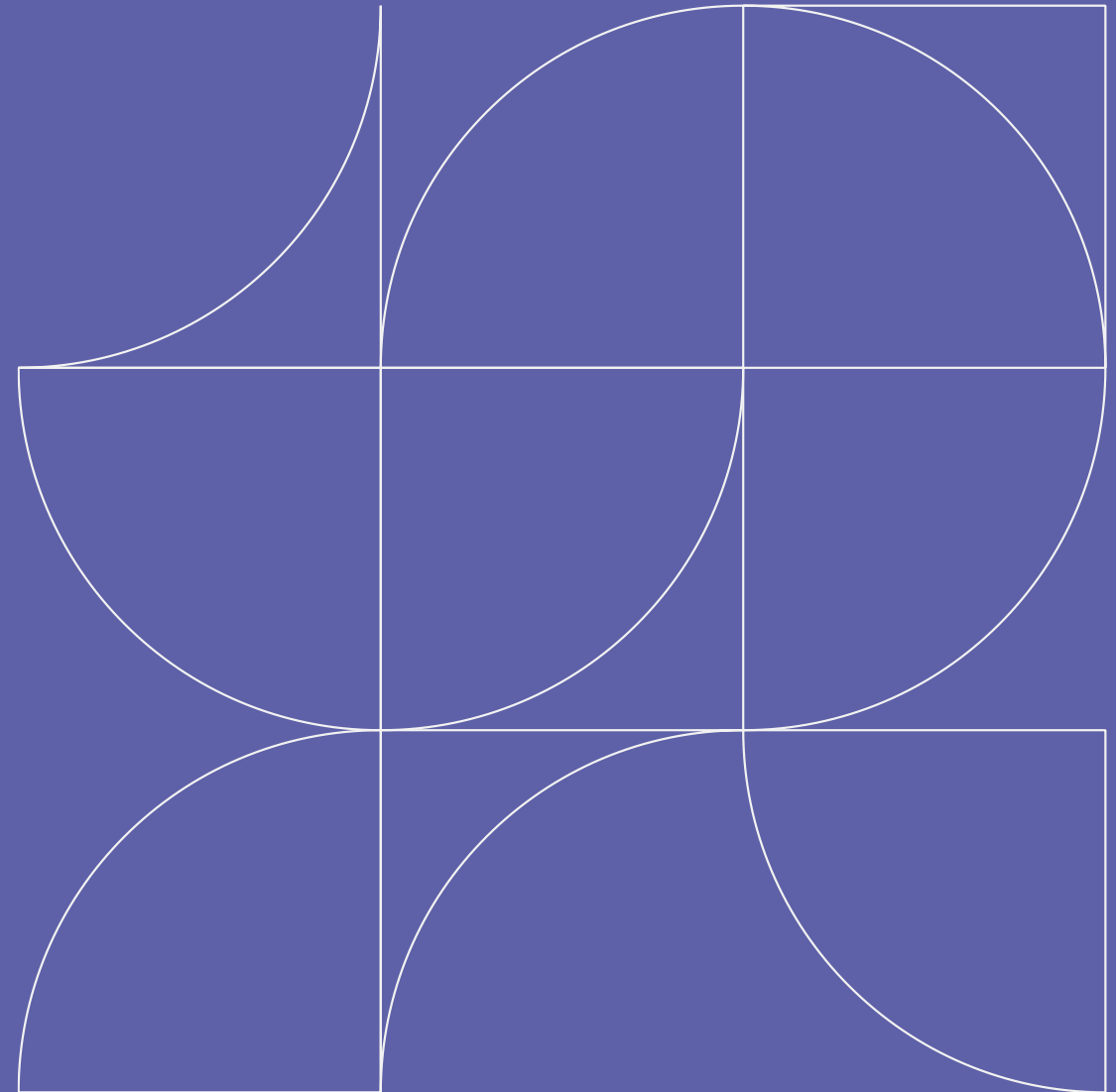
State Eviction Moratoriums



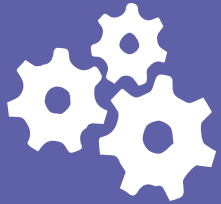
A number of states have issued broad eviction moratoriums

- District of Columbia- D.C. Superior Court Coronavirus Advisory, March 13, 2020: the Court has suspended evictions of all tenants and foreclosed homeowners.
- Kentucky- Governor's Executive Order 2020-257, March 25, 2020: Orders cessation of enforcement of orders of eviction for residential premises for the duration of the state of emergency declared on March 6, 2020.
- Maine- Emergency Order and Notice Maine Supreme Court, March 18, 2020: no proceedings will be scheduled or heard for eviction cases through May 1, 2020.
- New Hampshire- Governor's Emergency Order 4 pursuant to Executive Order 2020-04, March 4, 2020: all evictions suspended during emergency declaration.

Takeaways and Considerations



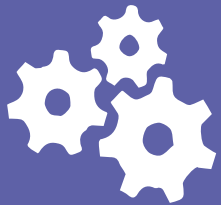
How many residential mortgages are affected?



Official numbers have not been released

- While no official figures have been released, it is estimated that about 62% of first lien mortgages are federally backed
- Lenders and servicers have seen a surge in forbearance requests since the CARES Act was passed

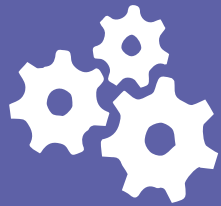
What about those missed payments?



Who is footing the bill?

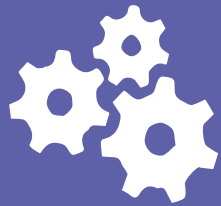
- The CARES Act does not include monetary relief, either for borrowers or for the mortgage industry.
- The Act merely suspends the borrowers' obligations to make their payments to their mortgage servicers during the forbearance period, while saying nothing about the concomitant obligations that the servicers may have to the investors of the mortgage loans and other interested constituencies.
- Congress is being lobbied to enact subsequent legislation aimed specifically at the mortgage industry to address additional funding and/or lending programs to avoid substantial financial damage to the industry.

What happens after the forbearance period expires?



- The CARES Act does also not provide for what happens upon the termination of the forbearance period.
- In the absence of additional bailout legislation, it is a reasonable assumption that a significant percentage of the borrowers who availed themselves of the forbearance relief will be unable or unwilling to immediately pay their arrearages that accrued during the forbearance period.
- At that point, they would be in default under their mortgage contracts, with up to a year of missed payments.
- Traditionally, mortgage defaults of long duration have been dealt with through voluntary modifications, or foreclosures.

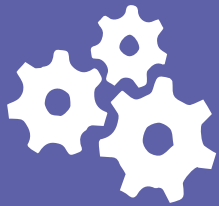
What about non-federally backed residential mortgages?



Inter-agency guidance issued

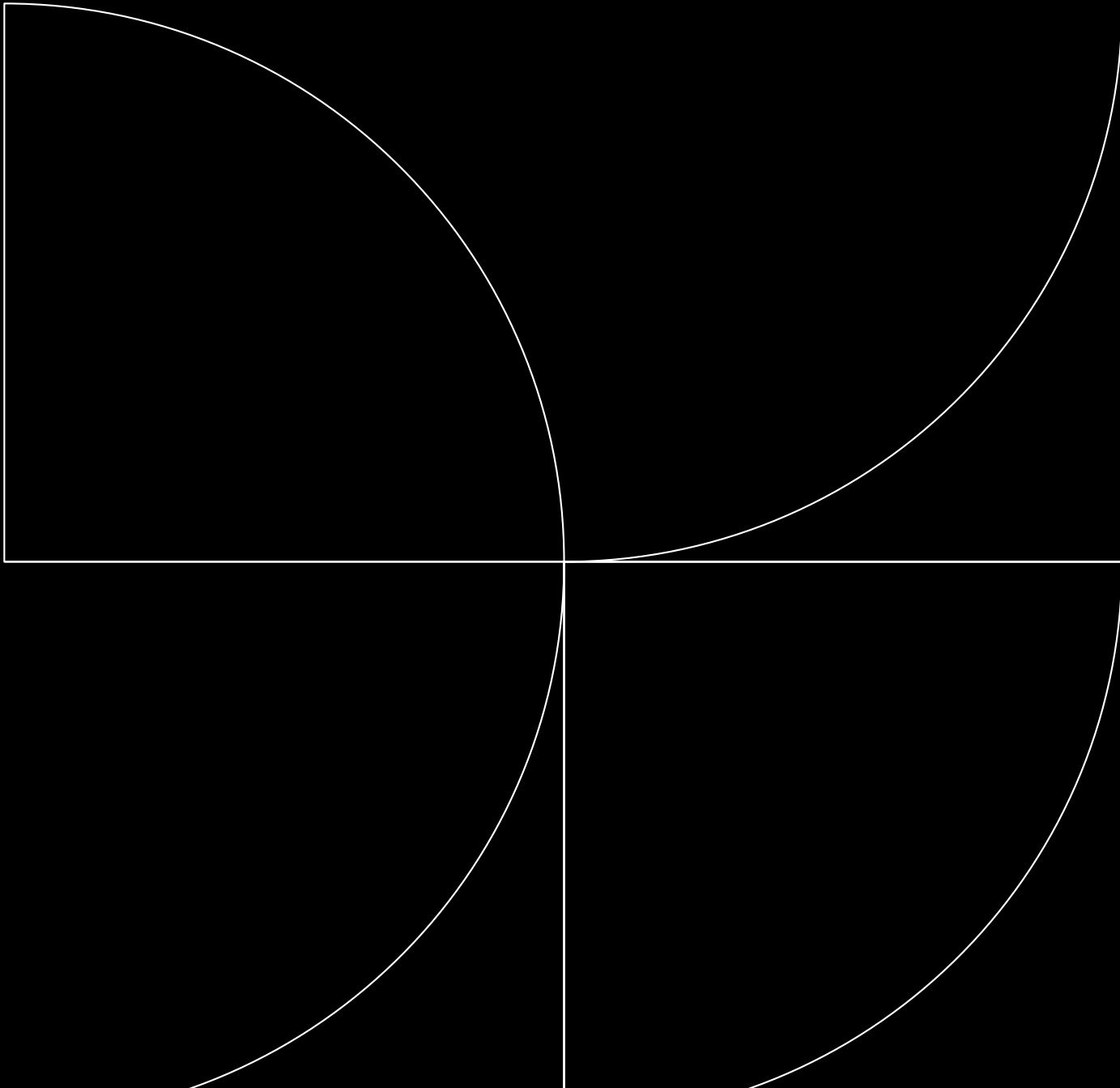
- Non-federally backed residential mortgage loans are not subject to the CARES Act
- Lenders and servicers are nonetheless subject to the inter-agency guidance issued by the Consumer Financial Protection Bureau, the Federal Deposit Insurance Corporation, the Federal Reserve Board, the National Credit Union Association, the Office of the Comptroller of the Currency, and the Conference of State Bank Supervisors, encouraging financial institutions to work prudently with borrowers who are unable to make payments due to the effects of COVID-19.

Thoughts About Compliance and Litigation Exposure



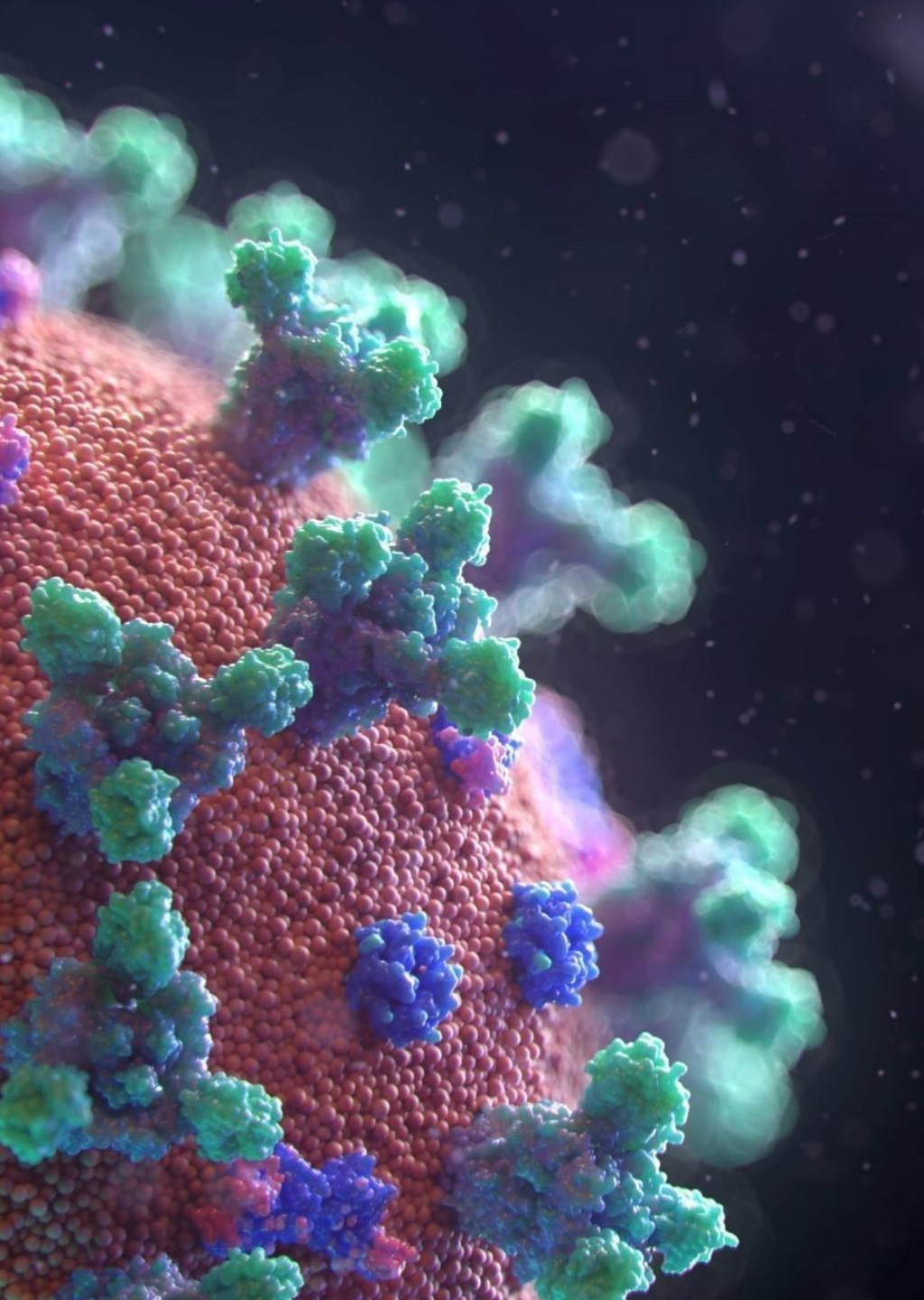
Potential Litigation

- Inaccurate record keeping and account management can lead to potential CARES Act violations
- Unlike HAMP, borrowers can request a forbearance orally or in writing without any further attestation. It is of paramount importance that these requests are timely and accurately documented
- While the CFPB has announced a flexible enforcement policy, we anticipate a spike in claims filed by consumers under the FCRA's private right of action
- As enacted, the CARES Act does not contain restrictions on debt collection. Prior versions contained significant restrictions on collections. Additional legislation regarding debt collection may be forthcoming



Questions?

Thank you



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