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Evidence Matters

Transforming Knowledge Into Housing and Community Development Policy

SUPPORTING
HOMEOWNERS
AND RENTERS
DURING TIMES
OF DISRUPTION

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State Moratoria Support Households Experiencing Financial Hardship

Photo credit: Brian Tomaino





Message From the Assistant Secretary

The COVID-19 pandemic has greatly affected the lives and livelihoods of people worldwide. In response to the pandemic, federal, state, and local governments; businesses and nonprofit organizations; and private citizens have taken extraordinary actions to preserve the safety and welfare of fellow Americans. An area of concern during this crisis has been the impact of the COVID-19 pandemic on the housing markets, one of the most important engines of the U.S. economy. Mortgage delinquencies more than doubled, from a record low of 3.8 percent at the end of 2019 to 8.2 percent by mid-2020. This issue of *Evidence Matters* highlights federal and state efforts to ameliorate the effects of the pandemic on housing markets and the ways in which the Federal Housing Administration (FHA) may assist in the economic recovery.

The federal government, including HUD, has taken unprecedented steps to fight COVID-19 and its related economic turmoil. President Trump signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act in March 2020, which included economic stimulus payments and an expansion of unemployment insurance benefits. The CARES Act requires mortgage servicers to offer up to 12 months of forbearance to any borrower with a loan insured or guaranteed by a federal agency, such as FHA or the Government National Mortgage Association (Ginnie Mae), or purchased by a government-sponsored enterprise. Around 3.7 million loans were in COVID-19-related forbearance plans as of early September 2020.

Similarly, the eviction of renters residing in properties with covered loans or participating in federal housing assistance programs was prohibited through the end of August 2020. President Trump issued an executive order stating, “It is the policy of the United States to minimize, to the greatest extent possible, residential evictions and foreclosures during the ongoing COVID-19 national emergency.” Subsequently, FHA extended its foreclosure and eviction moratorium for insured single-family borrowers through the end of 2020. Most recently, in response to the President’s Executive Order, the Centers for Disease Control and Prevention (CDC) halted residential evictions of covered households through December 2020. Many states have also implemented their own foreclosure and eviction moratoria.

Taking such unprecedented actions did not come without challenges. Ginnie Mae, the Federal Housing Finance Agency, and the government-sponsored enterprises have worked with securities issuers and mortgage loan servicers still responsible for advancing principal and interest to investors even when homeowners do not make their monthly mortgage payments. Landlords unable to collect rent from tenants may struggle to meet their own expenses. Knowledge and enforcement of foreclosure and eviction moratoria has been uneven across households and jurisdictions.

So far, the housing market has proven remarkably resilient, buoyed by record-low interest rates, pent up housing demand, and limited supply. Technological innovation on the part of the industry and regulators has allowed the market to function efficiently even in a primarily virtual environment. In July, new home construction surged to levels not seen since 2016.

A year ago, HUD presented a housing finance reform plan to better manage FHA’s risk and refocus the agency on its mission to promote homeownership and affordable housing for homebuyers who may not have access to affordable mortgage credit through traditional underwriting, including first-time, low- and moderate-income, and minority borrowers. The plan also recognizes the central role that Ginnie Mae plays in facilitating liquidity to support the U.S. government insured and guaranteed mortgage programs and supports Ginnie Mae’s continued modernization efforts. The plan also highlights the unique and important countercyclical role that FHA and Ginnie Mae have played since they were respectively established. With an economic net worth of \$62 billion, FHA has taken several steps over the past decade to manage risk and build capital reserves to an all-time high. Depending on the depth and duration of the current economic turmoil, FHA and HUD may again prove vital to stabilizing the nation’s housing and mortgage markets. Although COVID-19 has impacted all aspects of our lives, this issue of *Evidence Matters* describes just one part of our response: our actions to stabilize the housing financing system and keep Americans in their homes.

— Seth D. Appleton, *Assistant Secretary for Policy Development and Research*

Editor's Note

The housing market helps undergird the U.S. economy, and when the housing market faces challenges, it often generates far-reaching ripples of economic stress. As the COVID-19 pandemic creates new and unfamiliar uncertainties, it is more important than ever to ensure that the housing market and the larger economy remain the powerful engines for growth and prosperity that we have relied on for so many years. This issue of *Evidence Matters* examines the strains on, and supports for, the various actors in the housing market, including renters, homeowners, landlords, mortgage lenders, and investors.

The lead article, “The Federal Government Steps Up in Times of Disruption,” looks at how the current economic situation has affected the housing market and how the federal government has acted to support the market, from renters to end investors. The Research Spotlight article, “The Federal Housing Administration: Bringing the Housing Finance System Out of a Chaotic Situation,” walks through the origins of the Federal Housing Administration and the key role it plays in the United States, with a close look at its role during the Great Recession and what it is doing to blunt the potential negative impacts of the COVID-19 pandemic. In the In Practice article, “State Moratoria Support Households Experiencing Financial Hardship,” we dive deep into actions that Minnesota and Delaware have taken to protect vulnerable renters and homeowners.

This issue of *Evidence Matters* is set in the context of the initial months following the global outbreak of COVID-19. The pandemic and the federal, state, and local responses to it are constantly changing. Therefore, this issue represents a point-in-time snapshot of the state of affairs at the time of publication, and we anticipate that the needs stemming from this crisis, as well as the governmental responses to it, will shift dramatically in the coming weeks and months.

We hope this issue of *Evidence Matters* is a thought-provoking and timely resource for our readers as the country faces an unprecedented crisis. Please provide feedback on any of our issues at www.huduser.gov/forums.

—Heidi Joseph, *Managing Editor*

FEATURE

The Federal Government Steps Up in Times of Disruption

During periods of acute financial and economic disruption, the federal government has traditionally played a vital role in supporting housing markets, particularly through the work of the Federal Housing Administration (FHA) and Ginnie Mae, along with the Federal Reserve and the government-sponsored enterprises (GSEs) the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”). The onset of the novel coronavirus pandemic in early 2020 and state and local government efforts to address the subsequent public health emergency have created significant economic uncertainty. This article explores the effects of current economic conditions on housing; lessons learned from the federal response to the Great Recession that can be applied

to the current situation; and the federal government’s immediate and longer-term actions to help renters, homeowners, landlords, mortgage servicers, and end investors keep people housed and the mortgage finance system functioning smoothly.

A Distinct Disruption

The actions many state and local governments took to control the spread of the novel coronavirus — issuing stay-at-home orders, closing nonessential businesses, and restricting public gatherings — led to a precipitous rise in unemployment. The seasonally adjusted official unemployment rate rose from 4.7 percent in March 2020 to 14.7 percent the following month; by May, the rate was 13.3 percent compared with 3.6 percent one year prior. The

HIGHLIGHTS

- The onset of the COVID-19 pandemic in spring 2020 and the subsequent economic disruption from measures taken to curtail the spread of the virus have had significant health and economic impacts, including implications for housing.
- Policymakers and practitioners have drawn on lessons from past episodes of economic disruption, including the Great Recession and natural disasters, to respond to current housing-related challenges.
- The economy and housing market entered the pandemic in strong positions, and federal interventions to supplement income for those unemployed and underemployed by the pandemic, prevent evictions and foreclosures, fund various forms of housing assistance, and provide liquidity to financial markets have largely kept people housed and kept the housing finance system functioning well.



U.S. Department of Housing and Urban Development

Public housing residents who have had a decrease in income can arrange for an income recertification as soon as possible to potentially prompt rent reduction or a hardship exemption.

total unemployed, as well as all persons marginally attached to the labor force and those employed part time for economic reasons as a percent of the civilian labor force plus those marginally attached to the labor force was 21.2 percent in May 2020 compared with 7.2 percent one year prior; this figure had rebounded to 14.2 percent by August 2020.¹ The surge in pandemic-related unemployment, coupled with ongoing marginal attachment to the labor force for some workers, leaves millions in danger of being unable to pay for basic needs such as housing. These missed payments are often the first domino to fall, triggering a cascade of financial stressors on other components of the system. For example, a missed rent payment puts pressure on a landlord, who might be making payments to a mortgage servicer; the mortgage servicer, in turn, then owes payments (or advances) to investors in mortgage-backed securities. Missed payments at any of these points may also pressure insurance funds and guarantors. Unemployment insurance can mitigate the financial blow of losing a job, allowing renters and borrowers to continue making payments and keeping the system stable, and unemployment claims escalated precipitously in the spring. On February 22, 2020, there had been

2.1 million individuals receiving unemployment insurance benefits.² As of August 29, 2020, the United States had 29.8 million individuals receiving unemployment insurance benefits — 13.3 million with regular state unemployment and 14.5 million covered by the Coronavirus Aid, Relief, and Economic Security (CARES) Act Pandemic Unemployment Assistance.³

Many renters and homeowners are ill-prepared to weather any kind of financial shock, particularly a prolonged one. In a 2019 survey, 63 percent of respondents reported that they could cover a hypothetical \$400 emergency expense using exclusively cash, savings, or a credit card they could pay off at the next statement; nearly 3 in 10 respondents, however, were either unable to pay their household's monthly bills or reported that a modest financial setback would leave them unable to fully cover their bills. In addition, whereas 53 percent of respondents reported having set aside savings for emergency or "rainy day" use, only 18 percent reported having enough money saved to cover three months of household expenses. HUD-assisted renters are especially unlikely to have sufficient savings; in 2017, median annual household incomes were \$10,800 for tenants

in public housing, \$12,500 for voucher recipients, and \$11,160 for tenants in privately owned multifamily units compared with \$36,100 for all renters.⁴

Immediate Relief Actions

Given the magnitude and urgency of the nation's economic need, President Trump signed the CARES Act into law in March 2020. The CARES Act supplemented unemployment benefits with an extra \$600 per month through July 31, 2020, and authorized other forms of assistance to help individuals cover their housing bills, including an extension of state unemployment insurance, unemployment insurance for workers not typically eligible, Economic Impact Payments of up to \$1,200 per adult earning less than \$99,000 per year and \$500 per child under 17 years old, and the Paycheck Protection Program to help small businesses continue to pay their employees.⁵ These efforts, targeted to different groups through different means, offered a temporary boost to income that has helped many households stave off more dire economic fallout from the pandemic. After the supplemental unemployment insurance payments authorized by the CARES Act expired, the Federal Emergency Management Agency began using its Disaster Relief Fund in conjunction with state allocations from the Coronavirus Relief Fund to assist unemployed workers.⁶

The CARES Act also included provisions aimed specifically at relief for housing expenses. Drawing on previous federal experience with housing relief in response to natural disasters, the act requires that mortgage servicers of federally backed loans — those made, insured, or guaranteed by FHA, the U.S. Department of Veterans Affairs (VA), or the U.S. Department of Agriculture (USDA), as well as those purchased or securitized by Fannie Mae or Freddie Mac — offer forbearance for up to six months, plus an additional six months if requested by borrowers with a financial hardship caused by the COVID-19 National Emergency that makes them

unable to pay their mortgage.⁷ Servicers cannot charge additional interest, fees, or penalties beyond what would have been charged if the borrower had made all payments on time and in full. Borrowers may attest to their own hardship.⁸

As of September 15, 2020, 1,365,000 FHA- and VA-insured mortgage loans (11.3% of the total) and 1,361,000 loans backed by Fannie Mae and Freddie Mac (4.9% of the total) were in forbearance. Overall, 3,692,000 loans were in forbearance as of September 15, 2020.⁹ Many borrowers have requested forbearance but have continued to pay; 46 percent of borrowers in forbearance made April payments. As of May 19, 2020, however, only 21 percent had made May payments.¹⁰ By July, 26 percent of borrowers who had entered COVID-19 related forbearance were current on their mortgage payments.¹¹ Black Knight's report on September 8, 2020, estimated a combined monthly advance on principal, interest, taxes, and insurance of \$6.3 billion on active forbearance plans.¹² Don Layton,

senior industry fellow at Harvard's Joint Center for Housing Studies, notes that there is a kind of overlap in the forbearance and income assistance components of the CARES Act. In essence, the extra income authorized by the Act should be helping borrowers to pay their mortgages and avoid forbearance, which likely contributes to the latter's lower-than-expected takeup rate.¹³

FHA also implemented the COVID-19 National Emergency Partial Claim, an option servicers can use after the COVID-19 forbearance period ends. This partial claim will help eligible homeowners who have been granted special COVID-19 National Emergency forbearance to reinstate their loans by authorizing servicers to advance funds on the homeowners' behalf. The partial claim defers the repayment of those advances through an interest-free subordinate mortgage that borrowers do not have to repay until their first mortgage is paid in full.¹⁴ For borrowers who are affected by COVID-19 but are ineligible for the partial claim, FHA developed a streamlined loss mitigation

waterfall that reduces barriers to keeping borrowers in their homes.¹⁵

As a group, renters earn lower incomes than homeowners and are more likely to be affected by pandemic-related unemployment. To help renters, the relief targeted to homeowners is also available to landlords renting out one- to four-unit properties that are financed by Freddie and Fannie, which accounts for approximately one-third of the nation's rental units. The CARES Act also provides relief for holders of FHA multifamily mortgages.¹⁶ For borrowers holding FHA-insured multifamily mortgages or participating in other HUD multifamily housing programs who are experiencing financial hardships because of COVID-19, servicers must grant up to 90 days of forbearance when borrowers request assistance.¹⁷ In addition, the CARES Act requires owners or agents of these properties to cease evicting tenants for nonpayment of rent for 120 days, and landlords cannot charge late fees or penalties for late payments. Tenants remain responsible for paying rent for this period in



In July, HUD announced the "Eviction Protection and Stability Toolkit" to curate resources aimed at keeping families stably housed and mitigating economic hardships caused by the COVID-19 pandemic.



U.S. Department of Housing and Urban Development

The CARES Act provided forbearance to owners of FHA-insured multifamily properties.

full.¹⁸ FHA has extended its foreclosure and eviction moratorium for single-family homes through December 31, 2020, and FHA and the Federal Housing Finance Agency (FHFA) have extended their moratoria on foreclosures on federally backed single-family mortgages through the same period.¹⁹ The Federal Reserve Bank of Atlanta estimates that the CARES Act moratorium covers between 28.1 percent and 45.6 percent of rental units.²⁰ With broader coverage effective September 4, 2020, the Centers for Disease Control and Prevention (CDC) and the U.S. Department of Health and Human Services issued an order under the Public Health Service Act that temporarily halts residential evictions to prevent the spread of COVID-19. Tenants, lessees, and residents covered by the order must declare under penalty of perjury that, despite their best efforts, they are unable to pay their rent in full because of a loss of employment or income or extraordinary out-of-pocket medical expenses.²¹ Renters receiving HUD-funded assistance who have lost income can arrange an income recertification as soon as possible to receive a possible rent reduction or hardship exemption.²²

In July 2020, HUD announced the Eviction Protection and Stability Toolkit,

which provides documents and resources from HUD, FHFA, and the Consumer Financial Protection Bureau that encourage engagement between tenants holding housing choice vouchers and their landlords before the moratorium expires, assist with establishing repayment agreements, and help landlords receive mortgage relief with the aim of keeping families stably housed and mitigating the economic hardships that the COVID-19 pandemic has caused.²³

Local governments can use Community Development Block Grant (CDBG) program funds to “prevent, prepare for, and respond to coronavirus.”²⁴ The CARES Act made a total of \$5 billion available, with \$2 billion allocated under the regular CDBG formula and an additional allocation of \$1 billion to states based on factors such as public health needs, the risk of coronavirus transmission, the number of coronavirus cases compared with the national average, and economic and housing market disruptions, among others. The remaining \$2 billion, less \$10 million designated for technical assistance, has been allocated to state and local governments according to similar factors.²⁵

The CARES Act also provided an additional \$4 billion in funding for Emergency Solutions Grants to local

governments to “prevent, prepare for, and respond to coronavirus, among individuals and families who are homeless or receiving homeless assistance and to support additional homeless assistance and homelessness prevention activities to mitigate the impacts created by coronavirus,” with the flexibility to extend assistance to individuals earning up to 50 percent of the area median income.²⁶ Localities can use these grants for activities such as operating emergency shelters, issuing vouchers for hotel or motel stays, providing essential services to people experiencing homelessness, and rehousing individuals experiencing homelessness.²⁷

The U.S. Department of the Treasury and Federal Reserve have also acted to bolster liquidity in markets, including mortgage markets, by expanding lending programs to support businesses and banks’ business lending, increasing the purchase of corporate debt, and lending to boost the circulation of dollars, among various other efforts to support the economy.²⁸ The CARES Act also allocated \$150 billion to fund the Treasury’s Coronavirus Relief Fund (CRF). Local governments can use these funds for various purposes, including housing assistance.²⁹ For example, Collin County, Texas, has designated \$30 million in CRF funds to the Collin Cares Assistance Program, which provides households financially impacted by COVID-19 with 3 months of financial assistance, of up to \$2,500 per month, for housing, utility, and nutrition costs.³⁰ In March 2020, the Federal Reserve pledged to purchase at least \$500 billion in Treasury securities and \$200 billion in mortgage-backed securities.³¹ Ginnie Mae created a special COVID-19 Pass-Through Assistance Program as a last-resort resource to help issuers meet their pass-through principal and interest obligations to end investors through advances.³² As participants in the Ginnie Mae program, issuers are required to pass through principal and interest on time and in full to investors regardless of whether homeowners pay their monthly mortgage installments.

Through the summer of 2020, with the help of these interventions, no surge in evictions or foreclosures has occurred, and the mortgage market possessed sufficient liquidity to protect institutions and keep the housing finance system viable. In fact, as of August 2020, HUD reported that “housing market activity began to rebound as buyers took advantage of record-low mortgage rates and the economy reopened more broadly,” with purchases of new and existing single-family homes at their strongest pace since December 2006 and construction of new single-family homes increasing 7.4 percent over the previous year.³³ Most of these interventions, however, are temporary, and although the economy shows signs of improvement — for example, unemployment rates have decreased — the pandemic persists, and a number of housing-related challenges remain or are likely to emerge in the future.

Emerging and Future Challenges

Many of the temporary measures initiated at the beginning of the pandemic have expired, although some have been extended. For example, FHA and FHFA have extended their moratoria on foreclosures and evictions that, along with the CDC order, are in effect through the end of 2020; in addition, federal agencies have been directed to use their powers and available funds to minimize evictions.³⁴ The extension or expiration of temporary measures along with other variables, such as the pace of recovery and associated changes in employment rates, new or extended income supports, and the impacts of the novel coronavirus and efforts to contain it, will shape the scope and scale of future housing-related challenges at each stage of the housing provision and financing system.

Many renters have been helped through these income supports, eviction moratoria, and supports for their landlords. As these supports expire or are exhausted, however, many may have difficulty paying off deferred rent in addition

to their current rent bills. As certain sectors of the economy recover, decreasing unemployment may lessen this burden. As eviction proceedings resume, renters risk being forced from their homes and assuming numerous associated costs, including increased health risks, difficulty securing new housing, and moving costs. If tenants are unable to pay rent for an extended period or if units remain vacant, landlords without sufficient reserves and who have no forbearance coverage of their own may be unable to pay their mortgages, taxes, insurance, and maintenance expenses. Under these conditions, some landlords may be forced to sell their properties.

Similarly, homeowners may also have difficulty resuming mortgage payments and making up for payments deferred during forbearance. Borrowers with

GSE, FHA, USDA, and VA-backed loans who resume monthly payments will be able to repay missed payments when the home is sold or refinanced or when the loan reaches maturity, but borrowers with mortgages that are not federally backed might not have that option.³⁵ Because interest rates currently are low, which can offer borrowers some relief, FHFA and FHA have also tailored eligibility for purchases and no-cash out refinances, allowing some borrowers coming out of forbearance to apply for lower interest rates after only three months of resumed payments.³⁶ In addition to potentially ongoing employment and income challenges, however, lender overlays are shrinking the credit box, and some borrowers may find refinancing difficult.

Because most of the federal initiatives described above prohibit requiring



The safe, stable, and affordable housing supported by federal programs such as FHA's multifamily housing programs helps individuals shelter at home, maintain social distancing, and quarantine when needed.

Photo courtesy of Premier Senior Living



The CARES Act provided an additional \$4 billion in funding for Emergency Solutions Grants to local governments to mitigate the impact of the novel coronavirus for individuals experiencing homelessness.

renters and borrowers to document their hardship (the CDC order requires a signed affidavit), it is possible that people have received assistance that they did not need. That many borrowers receiving forbearance have continued to make payments indicates that they may have requested forbearance out of an expectation or possibility of need but have been able to continue making payments for now. Layton believes, based upon observing how borrowers behaved after 2008 and in various disasters, that the vast majority of borrowers want to pay their mortgage obligations on time, and that very few are “games players” who are trying to take advantage of a situation. Overall, he believes, the populace is acting responsibly thus far.³⁷ However, borrowers who have started forbearance but do not yet need it face a potential self-inflicted problem: they could exhaust their eligibility, leaving themselves with no recourse for forbearance if they experience a future financial hardship.

Mortgage lenders and mortgage servicers also may face financial consequences

if borrowers cannot pay. Even if their borrowers are getting forbearance, servicers are still obligated to pay end investors, potentially creating a liquidity crunch for the servicers that could bankrupt them and ultimately hurt borrowers and tenants.³⁸ The aftermath of the Great Recession saw an increase in nonbank servicers, which may be more susceptible to liquidity pressures because they tend to have fewer reserves, less borrowing ability (from the Federal Reserve), and higher borrowing costs than do banks.³⁹ FHFA is alleviating some of this pressure by capping servicers’ responsibility to four months and giving GSEs expanded authority to purchase loans in forbearance.⁴⁰ As of early June 2020, FHFA Director Mark Calabria reports that even if forbearance rates increased dramatically to 15 percent (which FHFA does not project), thereby increasing advance obligations to \$1.2 billion, nonbank mortgage servicers of GSE loans would have sufficient capital.⁴¹ American Enterprise Institute resident fellow Ed Pinto notes that as of early August 2020, mortgage servicers had thus far been able to meet their

obligations thanks to a combination of lower-than-expected forbearance take-up, cash flow from refinancing prepayments and revenue as borrowers took advantage of low interest rates, and reduced borrowing costs for the servicers themselves.⁴² If the situation worsens considerably as emergency measures expire and the economic effects of the pandemic continue, however, claims on mortgage insurance funds and guarantors may increase, eroding and perhaps surpassing revenue and reserves. John Weicher, Hudson Institute senior fellow and director of the Center for Housing and Financial Markets, suggests that if this scenario occurs, there needs to be “forgiveness all around” — that the FHA Mutual Mortgage Insurance (MMI) Fund, for example, should be allowed to use its reserves, and beyond those reserves, which were designed to address a smaller-scale shock, should exercise its permanent and indefinite line of credit from the U.S. Department of the Treasury to weather the pandemic.⁴³ Pinto offers a different suggestion, saying that the shock exposes the excessive risk carried

in FHA loans and the need to reduce that risk by lowering debt-to-income ratios, shortening mortgage terms (from 30 years to 20 years to pay off a greater share of the principal at the beginning of the loan), and making only purchase loans.⁴⁴ Fortunately, the MMI Fund is in its best position in more than a decade to withstand a shock, with a capital ratio of 4.84 percent, well above the congressionally mandated 2 percent.⁴⁵

Continuing eviction moratoria, forbearance, and other uncertainties and instabilities in housing markets may dissuade investors from housing finance, but federal government actions such as committing to backstop the MMI Fund or to tying the expiration of eviction moratoria to the federal pandemic emergency declaration, for instance, can provide investors with greater certainty.⁴⁶ Layton says that, for renters, “if eviction moratoria are handled reasonably well in terms of being there during the pandemic crisis but ending in a reasonable manner, then I don’t believe it would have some permanent negative impact on the rental housing market. But if it is not ended reasonably — perhaps too early on one hand or lasting well past the official end of the pandemic national emergency on the other, then it could become very problematic.”⁴⁷ The long-term impact of FHFA’s pandemic-related policies on the GSEs, including their capital reserves, is still unclear. Both Fannie Mae and Freddie Mac have hired financial advisors as they examine the possibility of exiting conservatorship.⁴⁸

Some claim that the state and local eviction moratoria are unnecessary, do not consider the existence of temporary federal relief programs, and introduce long-term unintended consequences. Some of these unintended consequences may include landlords delaying maintenance and upgrades to their properties because of a lack of cash flow; delayed mortgage payments that negatively impact the owners of those mortgages; landlords postponing the property tax payments needed to fund local schools,

fire departments, parks, and local police departments; landlords increasing rents or security deposits to recoup lost revenue and out of fear of future moratoria; and a reduction in the number of affordable housing units constructed. Joel Griffith, a research fellow at the Heritage Foundation, writes, “Those efforts represent an abdication of core government responsibilities; namely, enforcement of private contracts and protection of private property. Forcing property owners to provide free housing is a subtle form of expropriation of private property without just compensation.”⁴⁹ Efforts to supplement income or provide rental assistance to help residents affected by the pandemic pay their rent may therefore be the preferred way to keep people in their homes, reducing evictions while compensating landlords.

Among the additional ongoing challenges for policymakers, researchers, and industry stakeholders are the data limitations associated with a fast-moving financial disruption. The difficulty of acquiring reliable data exacerbates a situation that is already considerably uncertain. For example, uncertainty about the servicing costs of new loans and liquidity pressures may cause credit standards to tighten. Evidence exists that the economic impacts to date have led lenders to add overlays beyond previous lending standards, making it harder for borrowers with lower credit scores, for example, to qualify for purchases or refinance loans.⁵⁰ (For more about this emerging challenge and responses, see “The Federal Housing Administration: Bringing the Housing Finance System out of a Chaotic Situation,” p.12.)

Lessons From Past Disruptions

Weicher stresses that the current health and economic circumstances are truly unprecedented. Certain aspects of the pandemic are similar to those of the 1918 influenza epidemic, and some aspects resemble those of the Great Depression, but today’s institutional and financial frameworks are dramatically different from what existed then.⁵¹

The current economic disruption also differs significantly from the Great Recession in that it did not emerge from the housing or housing finance markets; however, relevant lessons from the response to the recession as well as other disruptions, such as natural disasters, could still be applied today. The experiences, institutional arrangements, and relationships forged during and after the Great Recession are already informing institutional responses to the pandemic-induced disruption. Frank Vetrano, senior advisor at HUD, notes that experience with loss mitigation during the recession, even if not directly applicable to current circumstances, allows policymakers and industry stakeholders to craft responses using a toolbox rather than starting from a blank slate.⁵² Karen Hoskins, vice president of national homeownership programs and lending at NeighborWorks America, says that there are now established relationships between housing counselors and lenders formed during and after the 2008 financial crisis to help homeowners.⁵³

The current disruption, rooted in often-abrupt, pandemic-related employment and income loss in what was otherwise a strong economy, resembles in many ways the aftermath of a natural disaster. Accordingly, FHA, VA, USDA, and FHFA have modeled their implementation of forbearance policies on their responses to the hurricanes of 2017. However, although the pandemic and the hurricanes are similar in that their onset was sudden, the hurricane model assumes that the period of increased unemployment is relatively brief and that prestorm employment and income levels are soon restored, says Vetrano. The period of high unemployment levels triggered by the pandemic is already longer than that following a typical natural disaster. Moreover, in the case of the pandemic, workers in certain industry sectors may be less likely to be able to return to their previous jobs, and they may remain unemployed or be underemployed when their forbearance ends.⁵⁴ If renters and borrowers are

unable to pay their bills beyond forbearance, the risks of widespread foreclosure and eviction will persist, and problems similar to those of the Great Recession could develop. In that case, renters and borrowers as well as mortgage lenders and servicers may need protections and assistance. Consumer protection regulations established following the Great Recession should prevent the problematic practices that emerged during the foreclosure crisis in the late 2000s. The liquidity issues that nonbank mortgage companies (both origination and servicing) experienced during the Great Recession, which led to failures and requests for aid, suggest that these companies may need continued support if defaults increase or the credit that they rely on to originate mortgages tightens precipitously. Nonbank mortgage companies originate and service a large share of the loans guaranteed by FHA and VA and securitized in pools guaranteed by Ginnie Mae.⁵⁵

Evidence indicates that federal guarantees played an important role in helping stakeholders weather the Great Recession. Passmore and Sherlund find that counties with higher participation rates in government mortgage programs — in particular, higher levels of FHA participation — experience better economic outcomes than do counties more reliant on bank portfolio and private-label security loans, including smaller increases in unemployment, smaller declines in purchase originations, and smaller increases in mortgage delinquency. Not only were the government-backed loans issued in the runup to the crisis of higher credit quality than those backed by private-label securities (although these would have the strictest credit standards after the crisis), they also remained available throughout the recession, whereas private-label securitized loans largely disappeared. Passmore and Sherlund therefore conclude that government-backed securitization provides vital liquidity for “maintaining credit flows and economic growth during financial turmoil.”⁵⁶ Present circumstances, in

terms of credit quality, market shares, and other factors, differ from those during and immediately after the Great Recession in significant ways that would affect the applicability and impact of such interventions today.

Lessons can also be drawn from Great Recession programs aimed at helping borrowers who have defaulted or are at risk of defaulting on their mortgages. After examining various interventions during the Great Recession, McCoy concludes that, whenever possible, lenders should modify loan terms to lower monthly payments. Earlier interventions showed greater success in preventing redefault, suggesting that lenders should not delay in implementing modifications. McCoy also notes that keeping homeowners in their homes whenever possible, or at least keeping homes occupied, can help avoid foreclosures and the problems associated with vacancy and excess inventory. Research shows that participation in the Home Affordable Modification Program (HAMP) lowered redefault rates, but the program made fewer modifications than expected. Through paid subsidies to incentivize modifications, HAMP lowered borrowers’ monthly payments to 31 percent of gross monthly income for five years by lowering interest rates and, if necessary, extending the loan term or forbearing or forgiving loan principal.⁵⁷ Agarwal et al. find that the shortfall in modifications resulted largely from low rates of modifications from a few large intermediaries for reasons specific to those entities.⁵⁸ There are, however, consequences associated with modifications for borrowers, including negative impacts on credit. If modifications reach a high volume, they can affect the cost of credit for borrowers broadly.

Hardest Hit Fund programs were also used during the Great Recession to aid distressed borrowers. A study by Moulton et al. finds that temporary mortgage payment assistance through the Hardest Hit Fund was associated with a reduction of 28 percentage

points in the probability of default at 48 months after the start of assistance. The effect was not driven by reduced mortgage balance, and the effect is larger for those who were underwater when assistance began.⁵⁹ Studies by Agarwal et al., Ganong and Noel, Hembre, and Scharlemann and Shore support the conclusion that increased liquidity from a loan modification in the present is more helpful to borrowers than decreased debt burden in the long run.⁶⁰ The Hardest Hit Fund did not reach borrowers as quickly as expected, particularly in Florida. There, the Office of the Special Inspector General for the Troubled Asset Relief Program finds that insufficient comprehensive planning and oversight and a lack of targets slowed implementation — conclusions that could be relevant for policymakers.⁶¹

Conclusion

The U.S. economy and housing markets were in strong positions entering the pandemic. This strong foundation, along with federal interventions such as income supplementation, protections for renters and borrowers, purchases to promote liquidity, and grants to local governments, have been essential for keeping people in their homes and keeping the housing finance system functioning well. Many of these interventions have been temporary and are currently or nearly exhausted or expired. Additional interventions and policies may be needed to continue to meet these goals. Although the pandemic and its related economic distress are in many ways unprecedented, policymakers can draw from past experiences — in particular, federal responses to natural disasters and the Great Recession — to inform future policies. **EM**

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The Federal Housing Administration: Bringing the Housing Finance System Out of a Chaotic Situation

A More Economical, Dependable, and Sounder Source of Home Mortgage Credit

The United States' current housing finance system was forged during the depths of the Great Depression; it was designed to stimulate private investment to bolster the economic recovery and increase employment. Before the 1930s, mortgage borrowers typically made interest-only payments for three to five years before requiring a balloon repayment of the principal. Borrowing more than half the value of the house often required a second loan with a high interest rate.¹

These short term, interest-only loans had to be refinanced frequently, which was difficult if home prices declined or financial institutions became distressed. Nominal home prices peaked in 1925 and fell 30 percent by 1933.² By then, more than one in five American workers was unemployed.³ In 1933, 1,000 homes entered foreclosure every day. The foreclosure rate exceeded 1 percent of all mortgages each year from 1931 to 1935. At the start of 1934, nearly 44 percent of urban, owner-occupied homes with a mortgage were in default.⁴

In response to the economic crisis, Congress created the Home Owners' Loan Corporation in 1933 to purchase and refinance delinquent mortgages. The following year, the National Housing Act of 1934 created the Federal Housing Administration (FHA) to encourage new home lending. These new agencies allowed borrowers to finance a larger share of the property value in a single loan. Loans required full amortization, meaning that the principal and interest would be repaid in regular

fixed payments over the life of the loan. Long loan terms and low interest rates reduced borrowers' monthly payment burden. Private industry would not participate in such a radical experiment in mortgage underwriting without government support, and direct lending would explode the federal debt. Instead, an insurance program would "use the power of government to establish the conditions under which private initiative could feed itself and multiply its own benefits."⁵

FHA's first annual report summarized its mission:

The mutual mortgage insurance system as established by the National Housing Act aims to provide the millions of home owners in the country with a more economical, dependable, and sounder source of home-mortgage credit.

It was designed to bring the home-financing system of the country out of a chaotic situation, and to restore it on an improved basis, able to meet the legitimate demands of the borrowing public, and to provide for the revival of home-building activity which is so essential to the recovery program.⁶

FHA gradually reduced downpayment requirements further and extended loan terms to create the 30-year, fixed-rate, self-amortizing loan that dominates modern American housing finance. The liberalization of mortgage products and underwriting democratized homeownership, which increased from 46 percent in 1920 to 62 percent by 1960. In addition, FHA has reprised its countercyclical role several times. Figure 1 shows that FHA annually insures new loans worth, on average, roughly

HIGHLIGHTS

- Created in 1934 under the National Housing Act, the Federal Housing Administration expands homeownership by providing millions of homeowners underserved by the conventional market with access to a stable source of home mortgage credit.
- FHA helped stimulate mortgage lending during the Great Recession by boosting the refinancing of conventional mortgages, resulting in more affordable housing costs for more than 1.6 million conventional borrowers between 2006 and 2012.
- FHA's capacity to withstand the COVID-19 pandemic's economic fallout remains strong and it has taken several steps to ensure mortgage credit availability during the current situation.

\$1 for every \$144 in total value of real estate held by households, although that ratio varies over the business cycle. Since World War II, FHA's share of the mortgage market has increased by more than 5 percentage points in a single year four times (in 1948, 1958, 1970, and 2008), each time in response to a recession.⁷ Residential investment is a primary driver of broader economic cycles.⁸ FHA's unique position to simulate mortgage lending helps ameliorate recessions and jump-start economic recoveries.

The National Housing Act also established the Mutual Mortgage Insurance (MMI) Fund to finance FHA's mortgage insurance. The MMI Fund is intended to be self-supporting, with borrowers paying premiums sufficient to cover investors' claims if a borrower defaults. "Mutual insurance" generally refers to an insurance company that is owned by its policyholders and in which profits are returned as dividends. Between 1943 and 1991, FHA returned similar "distributive shares" after a loan was repaid. FHA suspended dividends after actuarial reviews found that the MMI Fund had a negative economic net worth, meaning that the present

value of projected losses on existing loans exceeded the existing capital resources of the fund and the present value of projected revenue. Each book of business must have a negative credit subsidy (that is, a positive economic value) or require appropriations under the Federal Credit Reform Act of 1990. In addition, the Cranston-Gonzalez National Affordable Housing Act of 1990 requires the MMI Fund to maintain a capital ratio (defined as the economic net worth as a share of the insurance in force) of at least 2 percent.⁹ The net worth, and therefore the level of required capital reserves, is based on the expected risk to the fund, which is a function of both the credit quality of insured borrowers as well as assumptions about the future of the economy.¹⁰

Current FHA premiums are designed to cover expected losses of 5 percent, which would be incurred “during normal business cycles, which would include mild recessions,” and an additional 1 percent that builds the MMI

Fund’s capital reserves to cover unexpected losses.¹¹ The first independent actuarial review of the fund posited a Great Depression-type scenario of declining home prices and interest rates and an unemployment rate reaching 20 percent, but it notes that “we assume that the social purpose of the Fund is such that it should not be expected to withstand such a calamity.”¹² More recently, the U.S. Government Accountability Office discussed the balance between risk to the fund and the mission of FHA:

A minimum capital requirement that is too low may result in FHA taking on too much risk and having an insufficient capital buffer to withstand an economic downturn without requiring supplemental funding. On the other hand, FHA also has a statutory operational goal to provide mortgage insurance to traditionally underserved borrowers—such as low-income, minority, and first-time home buyers—and

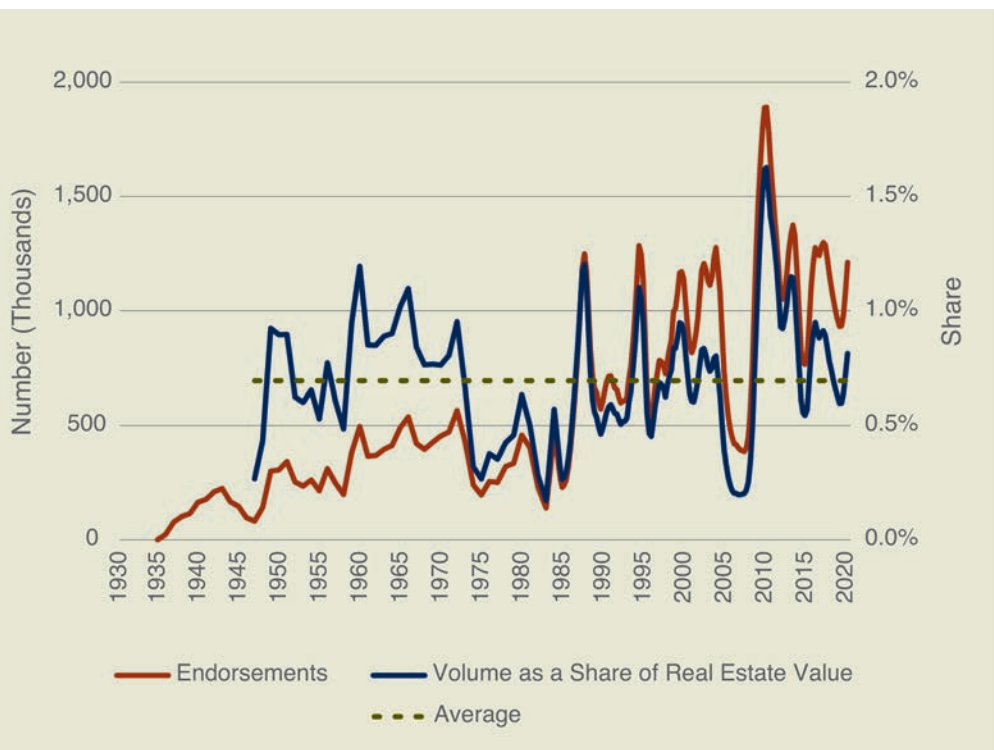
historically has played a role in stabilizing housing markets during economic downturns. Setting a minimum capital requirement that is too high may limit FHA’s ability to serve the borrowers for which it was intended or play its market-stabilizing role, because it might require FHA to charge insurance premiums that many borrowers cannot afford or impose underwriting standards they cannot meet.¹³

Neither Congress nor FHA has explicitly specified the economic conditions the MMI Fund should be able to withstand.¹⁴

If losses overwhelm the MMI Fund, FHA has “permanent indefinite authority” to draw funds from the U.S. Department of the Treasury under the Federal Credit Reform Act. This explicit government guarantee is integral to the ability of FHA to support the mortgage market; even if the MMI Fund is in the red, investors will remain confident that the federal government is backing FHA and that mortgage insurance claims will continue to be paid. Lenders therefore will continue to underwrite FHA-insured loans. Similarly, the U.S. Department of the Treasury explicitly backs the guarantees of the Government National Mortgage Association (Ginnie Mae), which supports the secondary market for mortgages insured by FHA or other federal agencies. Together, these agencies provide liquidity to the mortgage market, boosting demand for homes and forestalling a repeat of the debt-deflation spiral of the Great Depression.

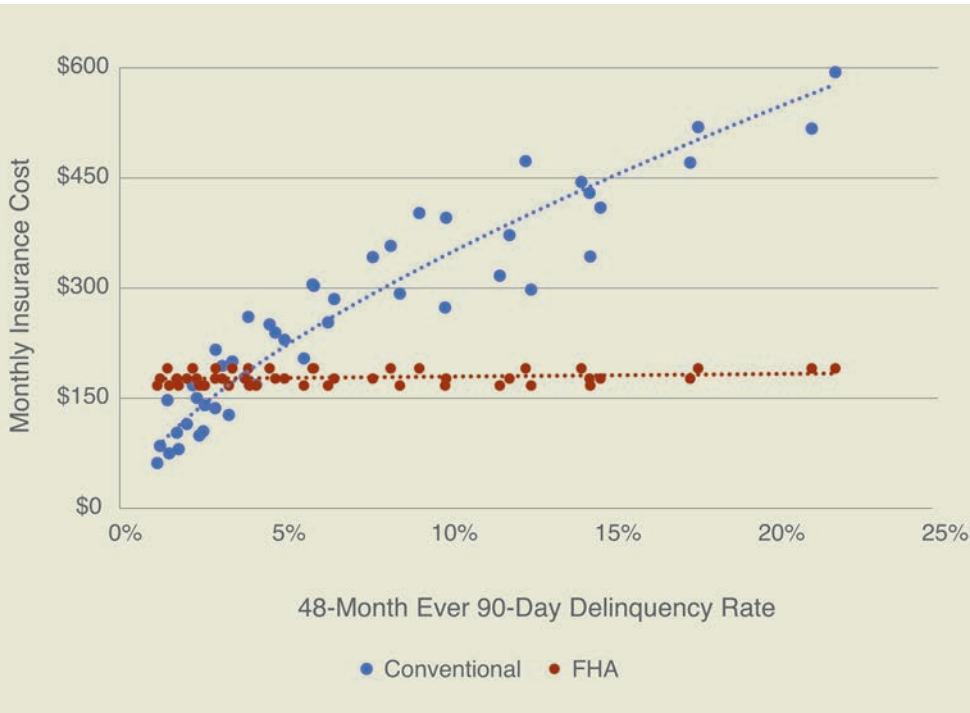
FHA also distinguishes itself from other entities in that it does not need to earn a return on its capital reserves. The Federal Housing Finance Agency notes that the cost of holding capital, including both the level of capital and a target return, is “by far the most significant” component of the guarantee fees charged by the government-sponsored enterprises (GSEs) the Federal National Mortgage Association (Fannie Mae)

Figure 1. Historical FHA Lending Volume



Sources: Federal Housing Administration, Single Family Data Warehouse; U.S. Department of Housing and Urban Development. 1979. “1979 Statistical Yearbook”; U.S. Census Bureau. “Statistical Abstract of the United States: 1987” (www.census.gov/library/publications/1986/compendia/statab/107ed.html). Accessed 10 September 2020; Federal Reserve, Flow of Funds, Table B.101 Balance Sheet of Households and Nonprofit Organizations.

Figure 2. FHA and Conventional Price/Risk Comparison, June 2020



Note: Assumes \$250,000 purchase price with a downpayment of 10 percent or less and a credit score greater than or equal to 620. GSE loan-level price adjustments annualized by a factor of 5. Upfront FHA mortgage insurance premium financed in the loan amount with a 3.4 percent interest rate. Delinquency rates based on FHA books of business from 2011 through 2015.

Sources: Federal Housing Administration; Genworth Mortgage Insurance. 2019. "Monthly Premium MI (BPMI)-Fixed (Effective Date: June 4, 2018)"; Fannie Mae. 2020. "Loan-Level Price Adjustment (LLPA) Matrix," 11 June.

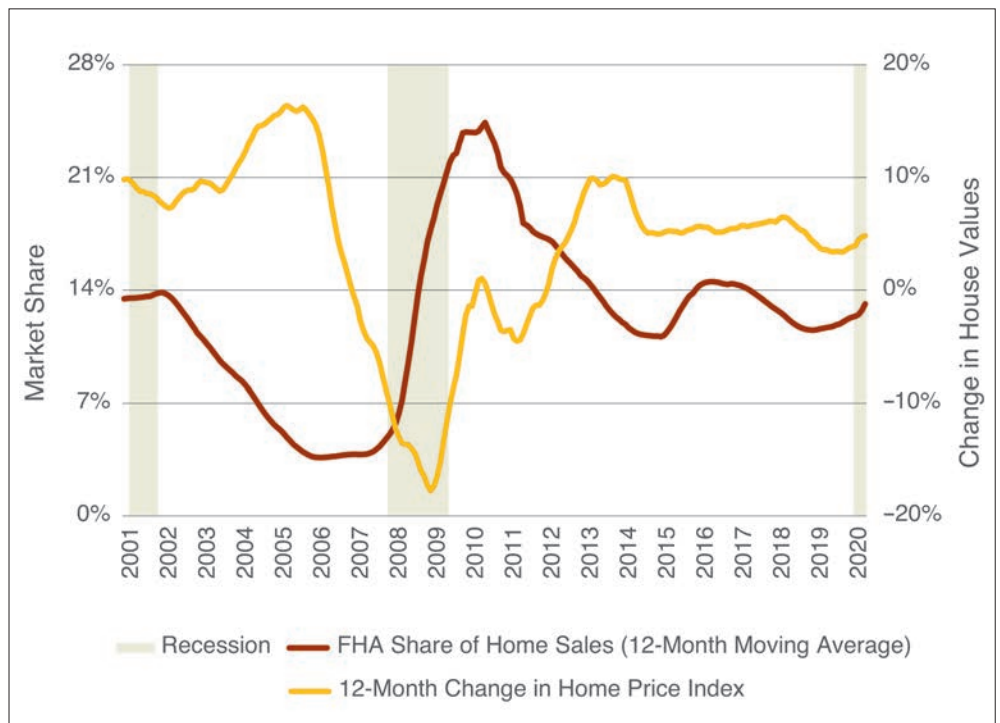
premium and an upfront premium that may be financed in the loan amount, regardless of his or her downpayment, credit score, or debt burden. By contrast, the combination of risk-based private mortgage insurance premiums and loan-level price adjustments that the GSEs levy varies from \$60 to \$600 per month. As a result, higher-risk borrowers will find FHA-insured loans less expensive than conventional mortgages.

Many higher-risk borrowers include first-time homebuyers and minority households that otherwise might have difficulty accessing affordable mortgage credit. Between 2015 and 2018, two-thirds of loans endorsed by FHA (82% of endorsed purchase loans) went to first-time homebuyers, and more than 35 percent went to minority borrowers. By comparison, only 20 percent of loans acquired by GSEs (40% of purchase loans) in the same period went to first-time homebuyers, and roughly 22 percent went to minority borrowers. Enabling new homebuyers to enter the market allows existing homebuyers to sell and fosters greater liquidity,

and the Federal Home Loan Mortgage Corporation (Freddie Mac).¹⁵ The cost of capital can be up to 29 times greater than the costs directly related to their expected credit losses.¹⁶ As Bunce et al. said, "The freedom from having to earn a private risk-adjusted profit is FHA's principal cost advantage over the [private mortgage insurers] in serving riskier borrowers."¹⁷

Despite its cost advantage, FHA generally complements rather than competes with the conventional market and private mortgage insurance companies because FHA pools risk across borrowers with minimal variation in pricing. The conventional market, on the other hand, typically charges higher-risk borrowers more than lower-risk borrowers. Figure 2 shows that an FHA borrower purchasing a \$250,000 house would pay less than \$200 a month in insurance premiums, including both an annual

Figure 3. FHA's Countercyclical Market Share



Sources: Federal Housing Administration, Single Family Data Warehouse; CoreLogic®, Real Estate Analytics Suite.

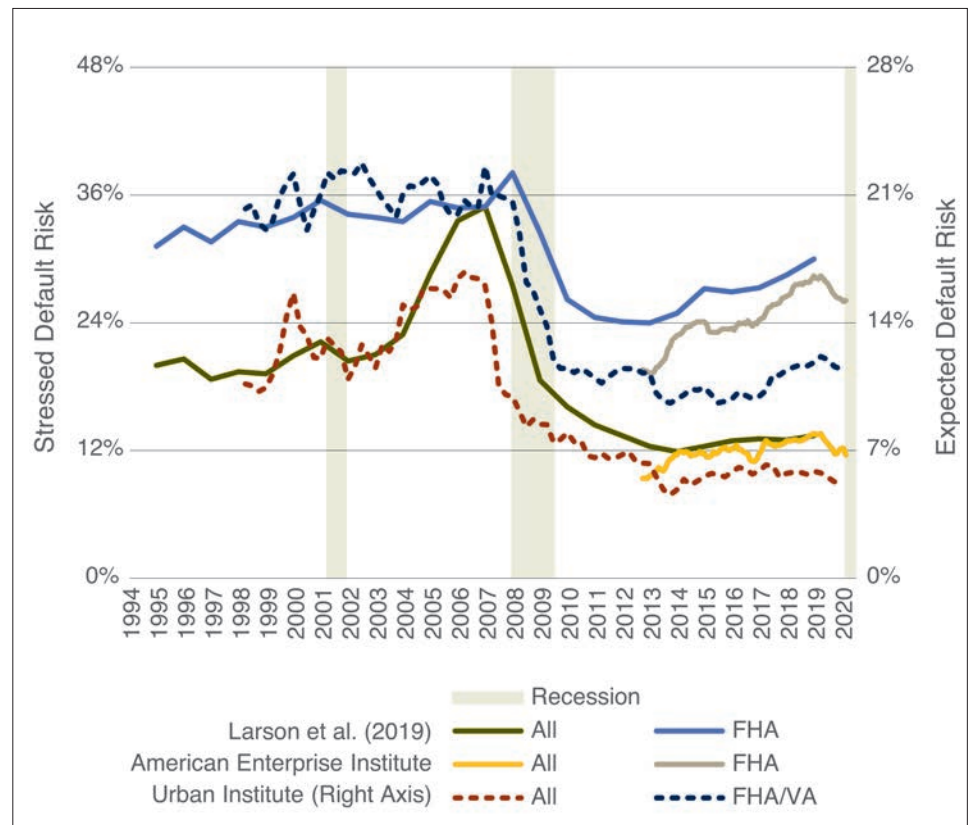
particularly in a depressed market.¹⁸ As HUD stated in its 2019 housing finance reform plan, “Generally, FHA facilitates earlier entry points into homeownership for [first-time homebuyers] than conventional mortgage loans. This is FHA’s most important contribution to the American housing market.”¹⁹

The Great Recession

Many considered FHA a vestigial part of the American housing finance system at the start of the millennium; a New Deal relic at a time when Wall Street was managing risk through derivatives and other sophisticated financial instruments. In 2006, FHA helped finance less than 4 percent of home purchases (figure 3) and was almost entirely absent from the nation’s hottest housing markets. For example, fewer than 2,300 FHA-insured home purchase loans were originated in the entire state of California in 2006, accounting for approximately 1 in 260 home sales. But as the housing market collapsed and the country entered the Great Recession, FHA’s market share spiked to a quarter of all home purchases. In addition, FHA refinances of conventional mortgages, including many unsustainable subprime loans, increased from 33,000 in all of 2005 to 36,000 *per month* in 2009. Between 2006 and 2012, FHA helped more than 1.6 million conventional borrowers take advantage of falling interest rates to lower their housing costs. Moody’s Analytics estimates that were it not for FHA, 2.4 million fewer homes would have been sold in 2011, and sales prices would have fallen an additional 19 percent.²⁰

FHA’s market share ballooned in part because of a dramatic statutory increase in loan limits. The Economic Stimulus Act of 2008 effectively increased the nationwide “floor” from \$200,160 to \$271,050 and the high-cost area “ceiling” from \$362,790 to \$729,750. However, base loan amounts greater than the earlier limits accounted for only 15 percent of the increase in FHA lending between 2006 and 2009 and only 12 percent of overall FHA lending through 2013. The

Figure 4. Credit Risk of FHA vs. Overall Market



Sources: William Larson, Morris Davis, Stephen Oliner, and Benjamin Smith. 2019. “A Quarter Century of Mortgage Risk,” Working Paper 19-02, Federal Housing Finance Agency; American Enterprise Institute. “Mortgage Risk Index” (www.aei.org/housing/mortgage-risk-index/). Accessed 10 September 2020; Urban Institute. 2020. “Housing Credit Availability Index.”

growth in FHA lending did not significantly displace conventional lending, leading to an increase in overall credit availability. The conventional market had sufficiently recovered to replace FHA lending when the limits expired in 2014 and were replaced by a new statutory formula under the Housing and Economic Recovery Act.²¹

FHA’s market share is countercyclical primarily because its underwriting standards are the industry’s least procyclical.²² Figure 4 shows three measures of the average credit risk of FHA loans and the overall market over time, independent of the risk related to the economic environment. In keeping with its public mission to serve marginal homebuyers, FHA loans are generally higher-risk products. This fact, however, does not mean that FHA-insured mortgages have historically been the riskiest loan products.

In fact, FHA-insured loans that closed between 2002 and 2010 were less likely to default than privately insured loans with similar borrower and loan characteristics.²³

Figure 4 shows that FHA did not experience a dramatic deterioration of underwriting standards during the housing boom. By contrast, private mortgage-backed securities and mortgage insurance companies underestimated and underpriced risk.²⁴ Passmore and Sherlund found that areas more reliant on government or GSE mortgage channels before the Great Recession experienced smaller declines in employment, automobile sales, home sales, and mortgage originations as well as lower rates of mortgage delinquency.²⁵ As they observed, “The persistence of better outcomes with higher pre-crisis use of FHA/VA lending is consistent with a view that less procyclical government

Figure 5. Economic Value of the Mutual Mortgage Insurance Fund (Forward Loans)



Note: Adjusted using the Personal Consumption Expenditures price index.
Source: Federal Housing Administration, Annual Actuarial Reviews.

underwriting standards and credit risk pricing — backed by a securitization outlet with the full faith and credit of the government — can stimulate additional economic activity during and after a financial crisis.”²⁶

Figure 4 also shows that FHA did not tighten underwriting standards as much as the conventional market did during the Great Recession, although it did take several important steps to reduce losses. Annual insurance premiums increased from 0.50 percent to 1.55 percent between 2008 and 2013 and were levied for the life of the loan.²⁷ The minimum downpayment requirement for a borrower with a credit score of less than 580 increased to 10 percent. Most important, the Housing and Economic Recovery Act of 2008 prohibited seller-funded down-payment assistance. FHA’s fiscal year (FY) 2016 actuarial review estimated that these loans cost the MMI Fund \$16.5 billion.²⁸

Lenders restricted FHA’s “credit box” by imposing overlays, such as minimum credit score requirements, that further reduced losses but also limited credit availability beyond FHA’s stated underwriting standards.

Despite these steps to reduce losses, the Great Recession took a severe toll on the MMI Fund (figure 5). In 2019 dollars, the economic net worth of FHA-insured forward loans fell from \$25.4 billion, or 6.4 percent of the insurance in force, in FY 2007 to $-\$14.8$ billion (-1.2%) just 5 years later. Although the MMI Fund still held roughly \$30 billion in capital reserves, the projected losses on existing books of business required a \$1.7 billion draw from the U.S. Department of the Treasury in 2013 under federal accounting rules. As Weicher observed, “The goal of 2.0% was not expected to be sufficient to withstand a major economic downturn, and that expectation has now been fulfilled.”²⁹

If FHA had been a private mortgage insurance company, it would have been declared insolvent and forced into bankruptcy. In fact, three private mortgage insurance companies failed during the Great Recession. Distressed mortgage insurers became less likely to approve insurance applications, restricting the availability of conventional mortgage credit.³⁰ Private mortgage insurance underwriting standards were tightened, particularly in the most distressed housing markets.³¹ By law, the GSEs require credit enhancement — typically private mortgage insurance — to purchase loans with low downpayments. The GSEs themselves are also private companies with shareholders. If these financial institutions become distressed, conventional credit becomes more expensive and less available. Szymanoski et al. noted that “profit-maximizing lenders do not only raise prices when lending becomes riskier in areas experiencing economic downturns,

instead, they tighten underwriting to ration the number of mortgages made in such an area. FHA, on the other hand, maintains its presence in all markets, providing stability and liquidity in markets experiencing recession.”³² The explicit government guarantee given to federal agencies such as Ginnie Mae and FHA, along with sister mortgage insurance programs administered by the U.S. Department of Veterans Affairs and the U.S. Department of Agriculture, grant them a special role in stabilizing the economy.

The housing finance reform plan released by the Trump administration in 2019 acknowledged the important roles of FHA and Ginnie Mae: “When the mortgage market contracts and private capital recedes, HUD must maintain stability in the nation’s housing finance system by continuing to serve as a countercyclical buffer.”³³ FHA also helps expand homeownership by increasing access to mortgage credit among those underserved by the conventional market:

While FHA was created to counter the collapse of the housing finance market during the Great Depression, its mission now includes the promotion of affordable housing opportunities and homeownership, specifically for buyers not served by traditional underwriting. Then, as now, FHA facilitated access to credit for borrowers from lenders and also increased investor confidence to purchase mortgages.³⁴

FHA’s market share has declined in the years since the Great Recession. Lower-risk borrowers have found lower mortgage pricing in a recovering conventional market. As the administration’s housing finance reform plan stated, “When the economy is strong and markets are well-functioning, HUD must avoid competing with other government-supported programs and private capital, and take steps to provide housing finance support to low- and moderate-income families that cannot be fulfilled through traditional underwriting.”³⁵ Additional FHA lending

at this point may exacerbate home price appreciation.³⁶

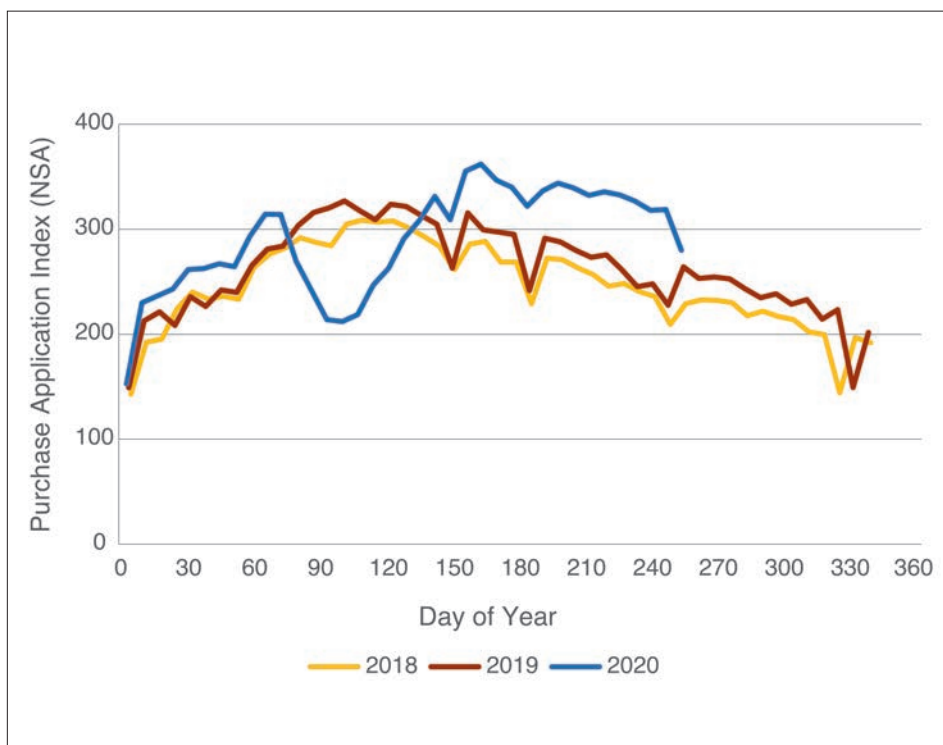
At the same time, lenders have lifted credit overlays that restricted higher-risk borrowers from obtaining FHA insurance. Together, these trends have increased the average credit risk of more recent FHA endorsements. However, FHA risk remains substantially lower than it was before the Great Recession. Each forward loan book of business for the past 10 years has had a positive economic value, with an average credit subsidy rate of –3.89 percent.

Pandemic Recovery

After the longest economic expansion in American history, FHA’s MMI Fund is in a strong position to weather the economic turmoil stemming from the COVID-19 pandemic. According to the FY 2019 actuarial review, the economic net worth of the MMI Fund reached an all-time high of \$62 billion, and the capital ratio was 4.8 percent, the highest level since 2007. Excluding reverse mortgages, the MMI Fund’s economic value would be \$66.6 billion, with a capital ratio of 5.4 percent. The report estimates that a “protracted slump” or “severely adverse” economic scenarios would create losses of 5.2 percent and 6.9 percent, respectively, of forward loan insurance in force. Yet the fund’s claims-paying capacity (its capital resources and the present value of projected revenue) stood at 8.2 percent, sufficient to weather even another Great Recession-level event.³⁷ The most recent budget estimates indicate that the fund holds \$72.4 billion in capital resources, of which \$17.5 billion is held in the financing account for expected losses and \$54.9 billion is held in the capital reserve account.³⁸ Before the outbreak of the pandemic, the FY 2020 forward loan book of business was projected to have a credit subsidy rate of –2.27 percent.

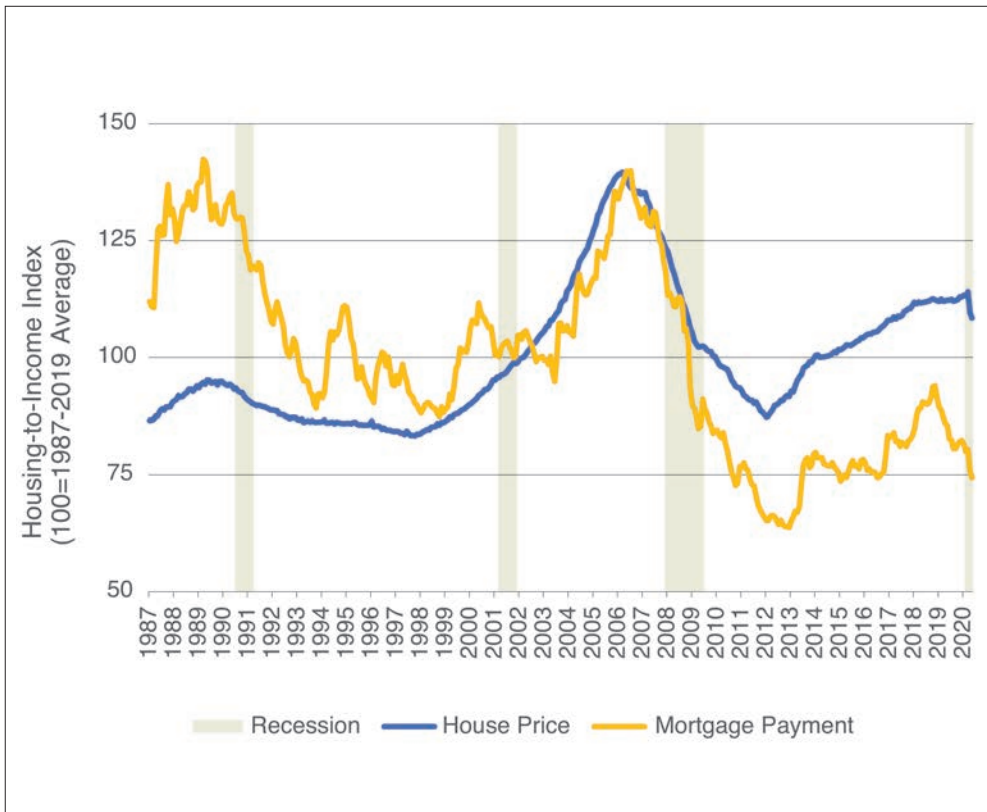
Projected losses and net worth, however, are highly dependent on forecasted house price appreciation, which is a lagging indicator of the strength of the economy and health of the MMI Fund. “Because the MMI Fund Capital Ratio is so closely tied to [house

Figure 6. Purchase Mortgage Applications in the Pandemic



NSA=Non-Seasonally Adjusted
Source: Mortgage Bankers Association®, Weekly Mortgage Applications Survey.

Figure 7. Housing Payment Burden



Sources: S&P/Case-Shiller National Home Price Index; Freddie Mac, Primary Mortgage Market Survey; Bureau of Labor Statistics, Average Weekly Earnings of Private Employees.

price appreciation], it shares the same tendency to overstate, then understate swings in the economy.³⁹ The Federal Housing Finance Agency’s purchase-only house price index rose more than 5.7 percent in the four quarters ending in March. But the future of the housing market through the COVID-19 pandemic and its aftermath is extremely uncertain.

At the start of 2020, homebuying rates were slightly above average. The total number of homes sold in January and February was nearly 10 percent above the average in the same months between 2000 and 2019. By May, however, home sales had plummeted to 30 percent below normal. The Pending Homes Sales Index from the National Association of REALTORS® and the Weekly Mortgage Applications Survey by the Mortgage Bankers Association indicate a substantial rebound, suggesting that the pandemic delayed rather than depressed the 2020 homebuying season (figure 6).

FHA has taken several steps to ensure that mortgage credit remains available during the crisis. FHA modified its property valuation policies to allow exterior and desktop appraisals for most single-family forward loans through August 2020 to facilitate social distancing.⁴⁰ FHA will also insure qualified loans that were underwritten following FHA standards but placed into forbearance before endorsement due to financial hardship related to the pandemic.⁴¹ Excluding streamline refinances, FHA endorsed nearly 231,000 loans in the second quarter of 2020, nearly identical to the number endorsed during the same period a year earlier. However, higher-risk borrowers have been negatively affected; endorsements to borrowers who spend more than half of their income on debt payments were down 14 percent, and borrowers with credit scores of less than 620 were down 34 percent. The extent to which these patterns are caused by reduced demand for mortgage credit among

these borrowers or the return of credit overlays by lenders is not clear. As of July 2020, lending to first-time homebuyers and minority borrowers has not suffered. FHA is also supporting the mortgage market by allowing existing borrowers access to historically low interest rates through refinancing. More than 81,000 FHA borrowers utilized a streamline refinance in the second quarter to reduce their interest rate by 2.5 percentage points on average, lowering principal and interest payments by \$152 per month.

The pandemic will likely cause significant economic disruption over the next few years. It took a full decade after the Great Recession for the U.S. gross domestic product to return to its potential as estimated by the Congressional Budget Office (CBO). CBO now forecasts that the economy will recover to its prepandemic level by mid-2022, but it will again remain below potential with elevated unemployment.⁴² Fannie Mae forecasts that home sales will be down 7 percent from the previous year, rebounding in 2021 but remaining 4 percent lower.⁴³

The pandemic may also exacerbate existing trends in housing affordability. Figure 7 compares two measures of housing costs. The first shows the ratio of home values to the average weekly earnings of production and nonsupervisory workers, indexed to the average ratio between 1987 and 2019. The second shows a similar index, but it captures the effect of mortgage interest rates on monthly housing payments. In early 2020, home prices relative to incomes were more than 10 percent higher than their long-run average, but the financing cost was roughly 20 percent below average. This divergence reflects a constrained housing supply that is driving up values but is offset by low interest rates. These trends are likely to continue. New home construction rates never fully recovered from the Great Recession. At the same time, Fannie Mae predicts that the average interest rate on a conventional 30-year fixed-rate

mortgage will continue to fall to less than 3 percent through 2021. Low interest rates greatly benefit borrowers who can qualify for mortgage credit, but higher home values require a larger downpayment, which creates a wealth barrier to homeownership. By insuring against the risk of default associated with low downpayment lending, FHA allows more households to take advantage of historically low financing costs.

Future house prices will be determined by whether the economic disruption has a greater effect on housing supply or housing demand. Fannie Mae forecasts that home prices will continue to rise, albeit more modestly than before. CoreLogic, however, predicts that prices will fall nearly 7 percent over the next year.⁴⁴ CoreLogic also anticipates widespread home price declines affecting every state. If a significant downturn in housing occurs, then FHA will likely be called on once again to stabilize the economy, as it has done repeatedly over the past 86 years. **EM**

— Kevin A. Park, HUD Staff

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cancelled when the amortized loan balance is scheduled to reach 78 percent of the original property value under the Homeowners Protection Act of 1998. Even though FHA insurance insures the full amount of the loan for the life of the loan, it implemented a similar premium cancellation policy in 2001 (Mortgagee Letter 2000-38). The policy was rescinded in 2013 (Mortgagee Letter 2013-04).

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State Moratoria Support Households Experiencing Financial Hardship

The economic uncertainty created by the COVID-19 pandemic has caused housing insecurity among a growing number of families who are facing a loss of income and the inability to make their rent or mortgage payments. Implementing short-term eviction and foreclosure moratoria can alleviate some of the immediate impacts of economic upheaval and help homeowners and renters remain in their homes. On August 8, 2020, President Trump signed an executive order to minimize evictions and foreclosures resulting from pandemic-induced financial hardship. The order directs federal agencies to examine the public health impacts of halting evictions; identify federal funds for temporary financial assistance to renters and homeowners; and offer assistance to public housing agencies, affordable housing owners, landlords, and federal grant recipients to prevent evictions and foreclosures.¹

Many states and localities have also enacted eviction and foreclosure moratoria in response to the COVID-19 pandemic.

A statewide moratorium can be more effective than multiple actions by local government officials and agencies, which may stop some phases of eviction but not all. Eviction moratoria designed to halt all phases of eviction, including notices to vacate, filings, court hearings, and the physical execution of eviction by a law enforcement officer, also can be more effective at protecting public health during the pandemic and supporting vulnerable households. A moratorium that only halts court hearings, for example, would not prevent landlords from issuing notices, which could cause tenants to leave and potentially become homeless. Banning physical evictions while allowing court hearings to proceed can damage tenants' credit and hinder their ability to secure new housing.² Strong moratoria also prohibit late fees to protect residents from additional financial hardship. Minnesota and Delaware are among the states that have implemented successful moratorium policies to prevent spikes in homelessness at a time when sheltering in place is critical. The two states have also used allocations from

HIGHLIGHTS

- **Minnesota enacted an eviction moratorium and an avenue for tenants to file complaints.**
- **Delaware halted all eviction processes, including filings and hearings, and prevented utility companies from terminating service or issuing late fees due to nonpayment.**
- **Minnesota and Delaware offer rent and mortgage relief to prevent homelessness and maintain stability for those impacted by the COVID-19 pandemic.**

the Coronavirus Relief Fund (CRF) under the Coronavirus Aid, Relief, and Economic Security (CARES) Act to finance housing assistance to help families remain in their homes even after the moratoria are lifted.

Minnesota Suspends Evictions During Its Peacetime Emergency

The COVID-19 pandemic hit at a time when Minnesota's housing market was already strained.³ According to a 2019 report from Minnesota Housing Partnership, 1 in 4 Minnesotans are cost burdened (meaning that they are paying more than 30 percent of their income on housing costs), including 44 percent of the state's 611,160 renter households and nearly 20 percent of its 1.54 million owner households.⁴ The COVID-19 pandemic has left more Minnesotans suffering from lost income and unable to afford housing costs. The state's unemployment rate grew from 2.9 percent in March 2020 to 9.9 percent in May 2020.⁵ More than 941,000 Minnesotans applied for unemployment insurance benefits between March 16, 2020, and September 7, 2020.⁶

As COVID-19 cases began emerging in Minnesota, the state worked quickly to institute protections to mitigate the virus' spread and help people shelter in their homes without being evicted.⁷ Ten days after declaring a state peacetime emergency on March 13, 2020, Governor



Josh Nguyen, Minnesota Housing

The Minnesota Attorney General's Office contacts landlords who may have violated the state's moratorium and works to resolve the situation. (Greenway Terrace in Ramsey, Minnesota.)



Minnesota Housing

Minnesota's eviction moratorium includes enforcement mechanisms such as fines for those who violate the regulations.

Tim Walz issued Executive Order (EO) 20-14, which placed a moratorium on nonemergency evictions and writs of recovery.⁸ The moratorium prohibited property owners, mortgage holders, or others from filing an eviction order if, after March 1, 2020, a household continued living in the property after receiving a lease termination notice, after the redemption period for a residential foreclosure ended, after a tenant violated a provision in the lease, or after nonpayment of rent. All landlords had to suspend lease terminations and notices to vacate except in emergency cases in which the tenant endangered the safety of residents or others on the premises, based on clarifying language in EO 20-73.⁹ Sheriffs were prohibited from physically evicting tenants except under very limited circumstances involving criminal activities or the endangerment of others.¹⁰ Assistant Attorney General Katherine Kelly noted that EO 20-14 halted the issuance of writs of recovery, and even if a landlord had a writ of recovery, sheriffs were ordered not to execute it.¹¹

Jennifer Ho, commissioner of Minnesota Housing, noted that EO 20-14

“was based on a public health need, and not just the health of those who are financially impacted by COVID-19. It really was designed to have a broader reach.” Tenants were not required to submit documentation to landlords proving financial hardship because of COVID-19. Because the order did not suspend rent payments, Governor Walz and Ho have encouraged those who are able to pay their rent to continue doing so and those who are not to communicate with their landlords. Rather than assisting only some renters while displacing others, said Ho, EO 20-14 was designed to be broad in coverage to prevent evictions and additional homelessness. As EO 20-14 was being developed, homeless shelters were also trying to deconcentrate quickly to slow the spread of COVID-19, which made protecting residents from eviction even more vital.¹²

Although EO 20-14 did not offer a foreclosure moratorium for homeowners and landlords with mortgages, it “requested” that financial institutions suspend all pending and future foreclosures and related evictions resulting from a residential property owner’s

decrease in income or increase in out-of-pocket medical expenses caused by the pandemic. It also “strongly urged” financial institutions to avoid imposing late fees or other penalties for late mortgage payments.¹³ Many financial institutions “want to do the right thing by their customers,” and Minnesota has been successful in getting banks to consider strategies to keep homeowners in their homes, said Ho.¹⁴ On July 2, 2020, the offices of Attorney General Keith Ellison and the governor announced an agreement with 31 Minnesota financial institutions to offer mortgage relief for property owners who were financially impacted by COVID-19 but were not covered by the CARES Act. Offering protections similar to those of the CARES Act, the agreement includes a 90-day forbearance period for single- or multifamily mortgage holders effective July 1, 2020.¹⁵ According to Sadaf Rahmani, policy research associate at the Minnesota Attorney General’s Office (AG’s Office), lenders cannot initiate foreclosure proceedings on residential property owners who have applied for payment forbearance under this agreement. “Foreclosures are expensive for banks and credit unions as well, and avoiding them makes the most financial sense,” Rahmani added.¹⁶ Rather than requiring a lump-sum payment at the end of the forbearance, participating financial institutions are allowing single-family homeowners to either tack on the missed or reduced payments over the lifetime of the loan or extend the maturity of the loan to compensate for the missed payments. In addition, participating financial institutions will suspend all late fees for missed mortgage payments and will not report late or missed payments to credit bureaus.¹⁷ Such measures offer the flexibility and relief that many residential property owners need to make ends meet during the pandemic.

EO 20-14 did not relieve tenants of their obligation to pay rent, a provision that supported landlords who rely on rent to make mortgage payments.¹⁸ HousingLink — a nonprofit organization

that collects data, information, and resources on affordable housing in Minnesota — conducted a nonstatistical survey in June 2020 among renters with active user profiles on the HousingLink website to gauge their ability to pay rent in the midst of the pandemic. The survey determined that 72 percent of renters (out of 907 respondents) had remained current on their rent payments since the start of the pandemic. However, 26 percent of renters (out of 639 respondents) indicated that they would not be able to continue paying rent without the weekly \$600 in federal unemployment insurance benefits, which expired on July 31, 2020.¹⁹ Libby Murphy, deputy policy director for the Minnesota Housing Partnership, attributes some of the strong rent collections in spring 2020 to the addition of these federal unemployment insurance benefits to the state’s unemployment insurance, which offers up to a maximum of \$740 in benefits per week.²⁰ With questions mounting about what would happen after the federal CARES

unemployment benefits expired, President Trump took unilateral action on August 8, 2020, signing an executive memorandum to extend federal unemployment insurance benefits totaling \$400 per week, with a federal contribution of 75 percent and a state contribution of 25 percent.²¹

Overcoming Challenges

Having mechanisms in place to encourage compliance with moratoria can help states achieve positive outcomes. Minnesota’s EO 20-14 granted the AG’s Office the authority to enforce its provisions.²² A person who “willfully” violated the order was guilty of a misdemeanor — a criminal offense — with a fine of up to \$1,000 or imprisonment for up to 90 days. The AG’s Office enforces civil laws and could enforce EO 20-14 through its section 8.31 authority, whereby violators of the order would face a civil penalty of up to \$25,000 per violation.²³ According to Kelly, instances of legal action against landlords were rare, and in most

cases, “gaining compliance through a mutual agreement was much more productive in the long term than just threatening legal action.” The AG’s Office resorted to legal action in only a few cases in which landlords attempted self-help evictions through actions such as shutting off utilities or changing locks. In these cases, the AG’s Office successfully filed temporary restraining orders to require landlords to restore utilities and unlock doors.²⁴

Under EO 20-14, tenants who believed their landlords were wrongly evicting them could complete an online complaint form on the AG Office’s website. After receiving the form, the AG’s Office contacted the tenant and the landlord by phone. The team gathered facts from tenants and advised them of their rights and protections under the order. Next, the team collected information from landlords and determined whether EO 20-14 was being violated. The calls to landlords were often lengthy, said Kelly, because the AG’s



Minnesota Housing

To keep residents stably housed, the original eviction moratorium halted lease terminations, notices to vacate, filings, and physical evictions carried out by law enforcement.



Delaware State Housing Authority

Delaware's Sixth and Twenty-Third Modifications to the emergency declaration prohibit landlords from charging late fees and interest on residential rental units.

Office sought to explain the rationale behind EO 20-14 and the individual situations of the tenants.²⁵ The AG's Office does not ask tenants if they have been affected by COVID-19 medically, financially, or otherwise because the orders do not require tenants to be impacted by COVID-19 or prove financial hardship to be protected from eviction. Kelly indicated, however, that "almost all tenants [who] report violations...tell us that they have been impacted by COVID in some way (financially, health-wise, disruptions in the rental marketplace, etc.)."²⁶

From March 2020 through the first week of July 2020, the AG's Office received 900 tenant complaints that landlords were violating the moratorium.²⁷ Nearly half of the complaints came from tenants who were unable to pay their rent because they lost their jobs and were told by their landlords to either pay their rent or move out. Some complaints came from tenants whose landlords wanted them to move

at the end of their lease despite their being unemployed or unable to find another housing arrangement. Reports also came from tenants whose landlords falsely told them that the moratorium only protected them if they could prove that they were directly affected by COVID-19.²⁸ According to Kelly, most of these complaints were resolved after the AG's Office called the landlords to inform them about the rules of the order, because many landlords were unaware of the suspension.²⁹ Nonprofit organizations such as HousingLink and the Minnesota Multi Housing Association were also vital resources for educating landlords and tenants about the moratorium; they hosted webinars, issued guidance on mediation, shared COVID-19 preparedness resources, and created tenant/landlord hotlines.³⁰

Some housing organizations have predicted that demand for homeless services and assistance will increase.³¹ Murphy anticipates that more families will experience housing instability and

doubling up as a result of the financial challenges caused by COVID-19. Although EO 20-14 prohibited landlords from filing evictions, some still occurred, Murphy said. Once someone has an eviction on their record, their likelihood of experiencing housing instability, housing cost burdens, or homelessness increases.³² Unlike many states, Minnesota courts can order that eviction case records be expunged at the request of a tenant if the court determines that the case is "sufficiently without basis in fact or law."³³ Many tenants, however, are unaware that they can ask for expungement during their court hearing. Once the eviction hearing is complete, requesting expungement is difficult, Murphy explained.³⁴

In May 2020, Minnesota Management and Budget predicted a bleak economic outlook for the state, depending on the trajectory of several factors such as the pandemic and state revenue.³⁵ Stakeholders are concerned about how to meet the state's future need for

affordable housing. Minnesota lacks approximately 114,000 units that are affordable to households earning 30 percent of the area median income.³⁶ Small-building landlords supply 6.2 million rental units in the United States, many of which are a natural source of affordable housing for low-income renters. Landlords of such units are as vulnerable to economic shocks as their tenants. Without a reliable stream of rent payments, some small landlords may default on their properties, sell them to new owners who may convert the rentals into personal housing, or sell them to investment groups that may renovate the units and increase the rent, thereby making them unaffordable to those in need.³⁷ If the state is not increasing housing opportunities, “we will certainly see people experiencing homelessness more frequently and for longer durations,” Murphy noted.³⁸

EO 20-14 lacked a grace period for late rent payments and allowed late fees to accrue.³⁹ Murphy pointed to the need for a more formal procedure to

notify tenants of the past due amount owed, due dates, and the consequences of nonpayment. In addition, making tenants aware of resources available to them for financial or legal assistance is critical to preventing future evictions. EO 20-14 also did not preclude landlords from reporting delinquent rent payments to credit bureaus, which can negatively affect tenants’ credit scores and their ability to access housing in the future.⁴⁰

Keeping Residents Stably Housed

Effective August 4, 2020, Governor Walz rescinded EO 20-14 and EO 20-73 and issued EO 20-79, which allows evictions in limited circumstances, such as if a tenant damages the property or if a landlord or landlord’s family member will be moving into the rental property. Landlords must give tenants seven days’ notice of their intent to file for eviction to allow tenants and landlords a chance to resolve the matter without court action. In addition, officers can begin executing writs that were issued before

March 24, 2020, when EO 20-14 was enacted. This order remains in effect until the state peacetime emergency is rescinded.⁴¹ On September 11, 2020, Governor Walz extended the peacetime emergency through October 12, 2020, which may be extended again on or before its expiration.⁴²

Because Minnesota has a projected budget shortfall, the state has shifted its attention toward the federal CARES Act rather than a new state appropriation as a source of emergency housing assistance, said Ho.⁴³ On July 14, 2020, Governor Walz and Lieutenant Governor Peggy Flanagan announced the COVID-19 Housing Assistance Program to prevent homelessness and maintain stability for those affected by the pandemic. Funded through CRF under the CARES Act, the \$100 million program will be administered by local organizations that will conduct eligibility screening and outreach and process applications and payments. To be eligible for the program, applicants must be Minnesota residents; have an income at or below 300 percent of the federal poverty level; have a past due housing expense incurred between March 1, 2020, and December 30, 2020; and be unable to make the payment because of unemployment, illness, or another issue related to COVID-19. The funds, dispersed directly to landlords, mortgage servicers, utility companies, or manufactured home park owners, can be used toward rent and mortgage payments, manufactured lot rents or home payments, utilities, homeowner association dues, homeowner’s insurance, and other costs as approved by Minnesota Housing.⁴⁴

Emergency Solutions Grants (ESG) have been another vital source of support to prevent homelessness and help those experiencing homelessness because of COVID-19. In addition to \$22.8 million received at the state level, several counties and cities in Minnesota also received ESG funding and allocated some of their dollars toward housing assistance.⁴⁵



Delaware State Housing Authority

To ensure residents would have no disruption in utility service, Delaware requires utility companies to offer four-month payment plans for customers with past due accounts due to the COVID-19 pandemic.



Delaware State Housing Authority

Tenants can participate in an alternative dispute resolution process, which helps to prevent evictions and resolve cases without formal trials.

Delaware Enacts an Eviction and Foreclosure Moratorium

As the COVID-19 pandemic took hold in Delaware, residents began to feel the economic effects. From March 2020 to May 2020, Delaware’s unemployment rate increased from 5 percent to 15.9 percent.⁴⁶ Unemployment claims set a state record, and the unemployment office fielded an “overwhelming” number of calls and questions about the unemployment claims process.⁴⁷ Between March 14 and March 28, 2020, the number of filed unemployment claims in the state rose from 472 to 19,137.⁴⁸ Effective March 13, 2020, Governor John Carney declared a state of emergency due to the public health threat of COVID-19, and on September 3, 2020, he extended the emergency declaration for a sixth time.⁴⁹ Shortly after Governor Carney issued the initial declaration, public policy scholars at the University of Delaware determined that more than 136,000 Delawareans hold low-wage occupations that are

“at high risk for COVID-19-related job loss.”⁵⁰ Delaware residents were already experiencing housing cost burdens before the pandemic began. The National Low Income Housing Coalition reported that 78 percent of very low-income renters in Delaware were cost burdened, paying more than 30 percent of their income on housing costs. In addition, 23 percent were extremely low-income renters, and 76.1 percent had severe cost burdens, paying more than 50 percent of their income on housing costs.⁵¹ Recognizing the potentially serious consequences if Delawareans lost their housing as a result of COVID-19, on March 24, 2020, Governor Carney issued the Sixth Modification of the Declaration of a State of Emergency enacting an eviction and foreclosure moratorium.⁵²

The Sixth Modification protected tenants from any “action for summary possession,” which is Delaware’s eviction process covering the notice of termination, filing, court hearing, and

writ of possession or physical eviction.⁵³ John Whitelaw, advocacy director at the Community Legal Aid Society, Inc., noted that the Sixth Modification shut down the Justice of the Peace Court (JP Court), which hears eviction cases in Delaware. From March 17, 2020, to July 1, 2020, all eviction processes were frozen, including new filings and cases in which a final judgment had been issued but no writ had been executed.⁵⁴ The Sixth Modification allowed landlords to file for evictions only on tenants they deemed to have caused irreparable harm or threat to others or the property.⁵⁵ Court actions and eviction orders that commenced before the state of emergency began were granted a 31-day extension from the date the governor lifts the emergency declaration. In addition, constables had to wait seven days from the termination of the emergency declaration before executing writs of possession for tenants who had received final judgments on eviction before the state of emergency. Landlords were

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Legal Aid Organization Assists North Carolinians Facing Eviction

Many low-income tenants facing eviction lack legal representation, which can lead to unfavorable outcomes for tenants and limit their knowledge about available programs and resources that could help them pay their rent and avoid eviction.¹ Several legal aid organizations across the nation offer free legal aid and advocacy for low-income households and partner with other community organizations to prevent homelessness and increase access to affordable housing. Pisgah Legal Services (PLS), which currently serves 11 counties in Western North Carolina, is one such organization.² According to Robin Merrill, managing attorney at PLS, the organization's homelessness prevention program is one of its largest initiatives, with both a rental component and a homeownership component to prevent evictions and foreclosures.³ Staff attorneys at PLS represent people who are facing eviction or foreclosure or who are living in substandard housing conditions as well as those who need help with obtaining or maintaining their eligibility for housing subsidies.⁴

North Carolina began experiencing the economic impacts of the COVID-19 pandemic in April 2020; the state received 494,728 initial claims for unemployment benefits that month, with 395,794 of these claims indicating the COVID-19 pandemic as the reason for job loss.⁵ On May 30, 2020, Governor Roy Cooper enacted a moratorium on evictions for nonpayment or late payment of rent that expired on June 20, 2020. During the effective period, the moratorium prohibited landlords from imposing late fees, interest, or other penalties on tenants. The moratorium also granted tenants a six-month grace period beginning on June 20, 2020, to pay overdue rent as well as the opportunity to arrange payment plans with utility companies to pay past due accounts over the course of at least six months.⁶ Merrill indicated, however, that many landlords are unaware of the grace period, and landlords may find the moratorium's language confusing, especially when determining past due amounts and whether to prorate past due rent for the effective period.⁷

North Carolina courts resumed hearing summary ejectment actions on June 22, 2020, and PLS expects a flood of eviction cases because landlords were still able to file for eviction while the moratorium was in effect.⁸ On June 30, 2020, sheriffs again became responsible for executing writs of possession.⁹ As of mid-July 2020, North Carolina's state court system had a backlog of approximately 10,000 eviction cases. Summary ejectment cases typically must be scheduled within 7 days of filing, but because of the backlog, the courts now have 30 days to schedule cases. As of July 2020, most of the cases involve the simple nonpayment of rent, Merrill said. Anticipating a growing need for legal services, PLS has been training more pro bono attorneys. PLS maintains a strong relationship with the clerk's office in Buncombe County, the largest county that it serves. This relationship has been helpful in gathering copies of complaints with summary judgments and the contact information of defendants so that PLS can inform them of the services that it offers.¹⁰

In her role as chair of the board of the North Carolina Housing Coalition, Merrill strongly advocates offering rental assistance at local, state, and federal levels. She is concerned that landlords may not be able to make their own mortgage payments. Although the moratorium delayed rent payments, it also caused the rent debt to grow, which increased uncertainty and instability for landlords and tenants alike. Before the pandemic, PLS maintained an information table in the Buncombe County Courthouse for those needing legal services. Keeping those resources accessible during the pandemic is critical, so PLS has begun using virtual platforms such as Facebook Live and other social media outlets to publicize its services. Several landlords have expressed appreciation to PLS for connecting clients to monetary resources through public rental assistance programs, the United Way, local churches, or other privately funded programs. As the massive backlog in eviction cases increases the need for legal representation, the legal services and public outreach that PLS offers will be critical to helping families maintain housing stability during periods of uncertainty.¹¹

¹ Susan Fleurant and Colleen Healy Boufides. 2020. "Eviction Expungement: A Civil Legal Tool to Improve Housing Stability and Health," The Network for Public Health Law.

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prohibited from assessing late fees or interest on unpaid rent.⁵⁶ On March 30, 2020, and April 30, 2020, Governor Carney signed the Eighth Modification and Fourteenth Modification of the emergency declaration, respectively, which extended the same protections to owners of manufactured homes on leased land and holdover tenants. Landlords could not require holdover tenants to pay more than the monthly rental amount under their previous rental agreement. The Fourteenth Modification required landlords to prorate tenants' rent for each day of the holdover.⁵⁷

The Sixth Modification also protected owner-occupied properties of one to four units from foreclosure and prohibited late fees and interest. Financial institutions that initiated residential mortgage foreclosure actions before the state of emergency began had to extend deadlines to at least the 31st day following the termination of the emergency declaration. The modification also halted the sheriff sales of properties that received final judgment on foreclosure before the state of emergency until a date no earlier than 31 days after the governor lifts the emergency declaration. If a residential property had been the subject of foreclosure action and sold at a sheriff sale before the state of emergency, law enforcement officers could not execute writs of recovery until at least the 31st day after the governor lifts the emergency declaration. Delaware also instituted protections for residents to ensure no disruption in their utility services. Residential utility companies such as electric, water, natural gas, telephone, and cable and internet providers could not terminate service or charge late fees. The Sixth Modification granted the Delaware Public Service Commission the authority to enforce these mandates and penalize any violations.⁵⁸

Mitigating a Backlog of Cases

A major challenge under the Sixth Modification was that the JP Court was

unaware of how many eviction cases were in its backlog. Effective July 1, 2020, language pertaining to evictions, foreclosures, and utilities in the Sixth and Fourteenth modifications was deleted and replaced by the Twenty-Third Modification. Unlike the Sixth Modification, the Twenty-Third Modification allows eviction filings and mortgage foreclosure actions to proceed.⁵⁹ According to Whitelaw, the Twenty-Third Modification and the JP Court order “were really designed not so much to move cases quickly but to get a sense of how many cases they’re going to have to deal with. So it’s more about being able to get a handle on what’s going on than

Delaware also instituted protections for residents to ensure no disruption in their utility services. Residential utility companies could not terminate service or charge late fees.

it is about scheduling new cases quickly.”⁶⁰ The Twenty-Third Modification reopened the JP Court, which issued an order to resume accepting filings and supporting documents indicating that the property under consideration is not covered by the federal CARES Act moratorium on evictions.⁶¹ Law enforcement officers still may not physically evict tenants and homeowners because of sheriff sales, writs of possession, or actions for ejectment while the emergency declaration remains in effect unless the JP Court determines that “enforcement is necessary in the interest of justice.”⁶² As of September 1, 2020, the court had not formalized a process for making this determination. In addition, late fees

and interest for residential rental units may not be charged or accrue while the emergency declaration is in effect. Holdover tenants as well as residents who own manufactured homes on leased land are still protected from physical eviction.⁶³

As the JP Court begins addressing its backlog of cases, stakeholders must adapt the resolution process to the pandemic by developing new ways to mediate cases and direct tenants to available resources. Although several eviction cases have been filed as of July 1, 2020, this backlog of cases will take time to resolve. Few trials have been scheduled, and, because of the heavy caseload, eviction cases will not be heard for at least 12 weeks after the governor lifts the emergency declaration. Even so, the extreme backlog could create further delays in issuing judgments. The Twenty-Third Modification permits the JP Court to determine whether cases can be resolved using other methods. Through an online dispute resolution and an alternative dispute resolution and mediation, the JP Court aims to prevent unnecessary evictions and resolve as many cases as possible without holding formal trials. Whitelaw predicted that the bulk of these cases will stem from nonpayment of rent rather than rules violations. The alternative dispute resolution process in the Twenty-Third Modification will be vital to connecting tenants who are past due on their rent to the Delaware State Housing Authority (DSHA) to obtain financial assistance to resolve the cases.⁶⁴

Landlords generally support rental assistance measures because such funding would help them make their mortgage payments and keep them afloat financially. Without rental payments, “there will be some landlords who can’t pay [their mortgage] obligation,” Whitelaw stated.⁶⁵ Although some lenders have been willing to grant landlords interest-only payments and mortgage deferrals, they take these actions only on a case-by-case basis. The Delaware Apartment Association

(DAA), a nonprofit organization representing multifamily housing owners, managers, and developers, supports state allocation of funding for rental assistance. Through information and resource sharing, DAA is currently focused on ensuring that members give residents appropriate information on applying for rental assistance programs and navigating unemployment benefits to help them manage financial hardship.⁶⁶

Preventing a Wave of Evictions

Whitelaw emphasized that the state's actions kept people in their homes. As of early September 2020, "we have not had an eviction crisis in Delaware, in large part because of the intervention of the governor and the court system," he stated. Without grace periods to pay past due balances, however, the state could witness a surge in evictions. Whitelaw predicted a new wave of evictions among those who relied on the

weekly \$600 federal unemployment benefit to meet their basic needs. "The reduced amount of federal unemployment benefits will not be sufficient for many tenants to be able to pay rent and obtain other necessities, but it is certainly better than a complete elimination of the benefit," he said.⁶⁷

Programs to mitigate future evictions will be critical for keeping residents stably housed when the emergency declaration is lifted.⁶⁸ The Twenty-Third Modification stipulates that the resolution process can include housing support services, as determined by DSHA, "if requested by either party or the Court."⁶⁹ On July 1, 2020, DSHA and the Delaware Department of Justice announced a partnership to develop a comprehensive plan focused on educating homeowners and renters on the eviction and foreclosure process. The two agencies will partner to offer integrated services, including

financial assistance, to help residents affected by COVID-19 retain their homes.⁷⁰ The state received approximately \$15 million in federal funding for direct housing assistance, \$2.33 million of which was ESG funds under the CARES Act to mitigate the spread and impact of COVID-19 on those experiencing homelessness, receiving homeless assistance, or at risk of becoming homeless.⁷¹ In addition to the federal support, DSHA and the Delaware Department of Justice plan to allocate \$250,000 and \$100,000, respectively, to support public awareness and advocacy organizations.⁷²

In late March 2020, DSHA announced the Delaware Housing Assistance Program (DE HAP) for renters facing financial hardship because of COVID-19. Initially, DSHA allocated \$2 million for DE HAP, and New Castle County contributed \$500,000 of its CARES Act CRF to the program.⁷³



The Delaware Emergency Mortgage Assistance Program offers eligible low-income homeowners at risk of foreclosure up to \$5,000 paid directly to the mortgage servicer.

Unable to meet the high demand for financial assistance, DSHA temporarily stopped taking applications, but on August 10, 2020, DSHA reopened the program with \$40 million combined from the state and New Castle County's CRF. Under the revised guidelines, eligible renters can receive up to \$5,000 to pay past due rent or current rent, with payments made directly to the property owner. Applicants must be Delaware residents and have a postpandemic household income at or below 60 percent of the area median income for the county in which they live. With a new application portal on DSHA's website, landlords and property owners must submit applications on tenants' behalf. In addition, through DSHA's existing Delaware Emergency Mortgage Assistance Program (DEMAP), low-income homeowners in the state at risk of losing their homes to foreclosure because of a pandemic-related job loss, reduced work hours, or unpaid leave can receive up to \$5,000 per household paid directly to the mortgage servicer. By collaborating with HUD-approved housing counseling agencies in Delaware who will process DEMAP applications, DSHA is working to ensure the efficient distribution of assistance.⁷⁴

Payment plans for past due utilities can also offer relief for residents struggling with financial hardship. The Twenty-Third Modification requires every public, nonprofit, and municipal utility that operates water, wastewater, gas, or electric service in Delaware to offer a four-month payment plan to customers with past due accounts who indicate that they have been affected by illness, healthcare costs, reduced income, or job loss because of COVID-19. Although some utility companies may request proof of COVID-19 impact, they cannot apply eligibility criteria such as installment plan history, and customers are not required to make a deposit or downpayment to enroll in the plan.⁷⁵

Nonprofit and philanthropic organizations have also emerged as an additional avenue of support for families affected

by the pandemic. The Delaware COVID-19 Emergency Response Initiative has raised funds for several nonprofit organizations that provide social services, emergency assistance, food, and virtual educational resources to families and individuals across the state. A vital component of this initiative is an assessment to determine how nonprofit organizations can sustain assistance given the long-term impacts of the pandemic and allocate funding to have the most impact across the state.⁷⁶

Conclusion

Ensuring that families have safe places to call home during the COVID-19 pandemic will remain a priority of HUD Secretary Ben Carson and President Trump. As stated in President Trump's EO, families who are dislocated from their homes may have to live in homeless shelters where maintaining social distance is difficult, double up with family members, or travel to other states, putting their health at risk.⁷⁷ Minnesota and Delaware's moratoria offered some of the nation's more stringent policies to help families avoid housing instability and financial hardship. Under their original moratoria, both states halted the filing and court processes for hearing eviction cases and prohibited law enforcement from physically evicting tenants. Minnesota's eviction moratorium includes enforcement mechanisms such as fines, whereas Delaware's moratorium prohibited utility companies from terminating service. The protections offered by moratoria are temporary, and some of them have expired, so the states expect to see a flood of evictions when the moratoria are fully revoked. If Minnesota and Delaware rescind the moratoria, the recent order from the Centers for Disease Control and Prevention and the U.S. Department of Health and Human Services will protect residents from eviction due to nonpayment of rent through December 31, 2020.⁷⁸ Both states have reopened courts and have begun to assess the backlog of cases. Emergency rental and mortgage assistance financed through CRF in both states as well as extended unemployment

insurance benefits can help families pay for housing needs, and, in turn, help landlords recoup financial losses. As states lift moratoria, resource sharing across state agencies and nonprofit and legal aid organizations will be critical in raising awareness among tenants and landlords about programs available to assist them. **EM**

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Additional Resources

- The Joint Center for Housing Studies (JCHS) of Harvard University hosts a repository of COVID-19 resources categorized by government resources, eviction and mortgage relief, JCHS COVID-19 research, and additional resources. www.jchs.harvard.edu/covid-19-resources.
- “Household Pulse Survey Phase 2: Measuring Social and Economic Impacts during the Coronavirus Pandemic” by the U.S. Census Bureau, surveys households on how the pandemic has affected their education, employment, food security, health, and housing, among other topics. www.census.gov/programs-surveys/household-pulse-survey.html.
- “Assessing Options for Federal Rental Assistance to Stabilize Renters During the Pandemic” (2020), by Martha Galvez, Kathryn Reynolds, Jorge Morales-Burnett, and Yipeng Su with Solomon Greene, examines several federal rental assistance programs and finds that the Housing Choice Voucher and Emergency Solutions Grants programs offer the most promise for delivering efficient and equitable rental relief. www.urban.org/sites/default/files/publication/102676/assessing_options_for_federal_rental_assistance_during_pandemic_2.pdf.
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- “Getting Landlords and Tenants to Talk: The Use of Mediation in Eviction” (2020), by Brian Bieretz, Kimberly Burrowes, and Emily Bramhall, examines how housing courts use mediation as an alternative to traditional court proceedings and highlights best practices for using landlord-tenant mediation more widely. www.urban.org/sites/default/files/publication/101991/getting-landlords-and-tenants-to-talk_3.pdf.
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- “State and Local Rental Assistance,” by the National Low Income Housing Coalition, tracks city, state, and philanthropic rental assistance programs created during the COVID-19 pandemic. nlihc.org/rental-assistance.
- “The COVID-19 Eviction Crisis: An Estimated 30-40 Million People in America are at Risk” (2020), by Emily Benfer, David Bloom Robinson, Stacy Butler, Lavar Edmonds, Sam Gilman, Katherine Lucas McKay, Zach Neumann, Lisa Owens, Neil Steinkamp, and Diane Yentel, compiles existing housing research and data related to the COVID-19 pandemic to estimate future eviction filings and housing insecurity and presents policy solutions to mitigate displacement. www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/.

For additional resources archive, go to www.huduser.gov/portal/periodicals/em/additional_resources_2020.html.

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