July 21, 2021 – 2:00-4:00 PM ET

NATIONAL FAIR HOUSING FORUM

Post-COVID Mortgage Forbearance Options and Preventing Discriminatory Foreclosures

***

Speakers: Cashauna Hill, Executive Director, Louisiana Fair Housing Action Center; David Berenbaum, Deputy Assistant Secretary for Housing Counseling, HUD; Nikitra Bailey, Senior Vice President of Public Policy, National Fair Housing Alliance; Rachel Geballe, Supervising Attorney, Neighborhood Economic Justice Project of Brooklyn Legal Services; David Sanchez, Director of Research and Policy, National Community Stabilization Trust

***

CASHUANA HILL [0:00:00]: Good afternoon everyone and welcome to the National Fair Housing Training Academy's National Fair Housing Forum, titled "Post-COVID Mortgage Forbearance Options and Preventing Discriminatory Foreclosures." My name is Cashauna Hill, and I am the Executive Director of the Louisiana Fair Housing Action Center. Since 2015 I have led a team working to fulfill the organization's mission to end discriminatory housing policies and practices through litigation and policy advocacy, as well as to provide fair housing trainings and foreclosure prevention counseling. It is my pleasure that HUD has invited me to serve as the moderator of today's event. We want to note that this forum features information and examples that represent the experiences of the speakers. Comments do not necessarily reflect the policies of HUD. Before we get started, let's review some technical tips and instructions regarding today's event. TJ, I turn it over to you.

TJ WINFIELD [0:01:08]: Hi all. If you are having technical difficulties with audio or video, we recommend that you first sign out of the webinar and sign back in. If you are still having trouble, you can request help in the Q&A Box located on the Zoom Panel section at the bottom of your screen or send an email to nfhta@cloudburstgroup.com. We encourage you to ask questions. You can enter your questions at any time by selecting the Q&A button on the Zoom panel. Please note that due to time constraints, we may not be able to respond to every question today. This webinar is scheduled for two hours and is being recorded. The recording and the transcript will be made available on the NFHTA website on HUD Exchange, along with resources that supplement today's conversation. Back over to you, Cashauna.

MS. HILL [0:02:00]: Thank you, TJ. Let's move on, and I'd like to share the learning objectives for today's forum. Together, we will: Know more about the fair housing foreclosure effects of the pandemic on people of color and others in protected classes. Know the current status of the federal foreclosure moratorium. Know more about current foreclosure and loss mitigation assistance programs. Understand the legal standards for combating foreclosure as a fair housing violation. Have tools to stop foreclosures that violate fair housing laws. Know more about potential partnerships between FHIP and FHAP agencies and local legal aid and housing counseling organizations.

At this time, I want to introduce our panel speakers. We are eager to learn from the experiences of the speakers whose bios are available on the forum page of the NFHTA website. Joining us today we have Nikitra Bailey, David Sanchez, Rachel Geballe and Deputy Assistant Secretary David Berenbaum. Later in the forum, I will ask a few free-flowing questions of each panelist and then open it up to other panelists for additional comments.

I also want to remind you that during today's roundtable discussion you will all have the opportunity to submit questions that we will do our best to address later in today's event. However, please note that not all questions will be able to be answered. Personal questions will not be addressed. If you are in need of assistance regarding a homeowner foreclosure, please call the hotline at 888-995-HOPE (4673). You can submit questions at any time via the Q&A box. Also as a reminder, this event is being recorded and materials, including the slide deck and event recording, will be available on the forum page on HUD Exchange soon after the event. With that I am now going to hand it over to Nikitra.

NIKITRA BAILEY [0:04:47]: Thank you. Good afternoon everyone, I'm Nikitra Bailey, Senior Vice President of Public Policy at the National Fair Housing Alliance. The National Fair Housing Alliance is the voice of fair housing, we work to eliminate housing discrimination and to ensure equal housing opportunity for all people through leadership, education, membership service, public policy initiatives, community development advocacy, and enforcement.

A little bit first about the foreclosure process, we know that the foreclosure process is the legal process by which the mortgage creditor sells the secured property through a public sale, often referred to as an auction to enforce payment of the mortgage debt. The foreclosure process is very state specific and depending upon the jurisdiction it may be judicial or nonjudicial procedure. It is really important as we talk about which type of process your state uses are to know the difference between judicial and nonjudicial. Some of the critical things to know about judicial, it is that this operates as a lawsuit against the borrower. A summons must be served after the complaint, and then the borrower will have a specific number of days to file an incident or respond to the complaint. There is also an opportunity for the creditor and the agent to see if they prevail in litigation and obtain a judgment of foreclosure against the borrower and an order of sale. It is really important in a judicial foreclosure to make sure that the borrower that you're advising has access to an attorney.

In a nonjudicial foreclosure, the lien instrument is a deed of trust and that has the power of trust. Here the creditor is not required to file a complaint in court, they have to just follow the respective state law on the foreclosure procedure, such as filing in land records and serving the borrower with notice of default. The creditor can proceed to sell pursuant to the power of sale in the deed of trust, unless the borrower obtains an injunction from the court prohibiting the sale.

It is really critical in this instance to know which type of state the borrower is in. We know that in some states there are agencies that actually had inhouse relationships with counsel and mortgage default services within the agency itself. However, in other states, the agencies actually use referrals. It is really critical here to make sure that if you are making a referral, you have made an effort to update your list of legal aid providers and the pro bono networks, so that as borrowers reach out for assistance, they can be guided to the necessary help and support that they need.

Here I really want to talk about what's going on in communities of color. We know that COVID-19 has disproportionately impacted Black and Brown communities. Overwhelmingly, Black and Brown people work in the service sector, which has been the hardest sector hit by the global pandemic. We have seen higher incidents of personal illnesses and loss of life, as well as reduction in working hours and loss of pay. We continue to see spikes in unemployment with Black women and Latinas with the highest level of unemployment because of the crisis.

As a result of that, we're seeing a disproportionate level of missed mortgage payments and seeing families show up behind in their mortgage payments. What we are really concerned about, because of this, and as it relates to foreclosure, it is everything that we can do to really help guide families and protect them from some of the potential scams that they might run into as a result of struggling with their mortgage payment.

Part of what we're hopeful for, why we believe that the fair housing community should really pay attention to and care about what's going on in the foreclosure potential catastrophe that's before us is that we need to do everything that we can to really raise awareness and help people appreciate what help and support there is for them and their communities prior to us going over an unnecessary foreclosure cliff.

We're encouraging everyone to really use this as an opportunity to just get out in your communities and to raise awareness for struggling homeowners to really help and guide them to be weary of any types of scams that may come their way. This is usually the time that we see communities just really bombarded with, you know, scam practices that will entice them to possibly look at some types of practices that they think could help them to avoid foreclosures.

One type of practice that we are likely to see, it is this notice around increasing fillings for bankruptcy. It is definitely true that if you file for bankruptcy during this time it is likely to halt your foreclosure, however, it is very critical that community members actually work with an attorney, a bankruptcy attorney, to actually guide them through this process making sure that they're getting the necessary relief and guidance that they need and to stay away from some of the scams that may say you can pay a certain amount of fees and we'll do everything to stop your foreclosure, which may not ultimately result in the resolution that they're hoping for.

Getting back now to how COVID-19 is really just disproportionately affecting communities, when we look at this slide, what we see is the disproportionate levels of impact of families

struggling to actually be able to cover their expenses related to their mortgages. We see that if you look at the column where Black Americans are highlighted that there is a 19.4% higher rate of the families that are reports not being caught up on the mortgage payment. When you look at Hispanic families, it is at 17%, when you look at Asian families, it is 13%.

So we see that again in communities of color, because of the reality that they have been hardest hit by this crisis they are experiencing more difficulty with being able to keep up with their mortgage payments.

Another really important factor that I want to mention here is that the CFPB [Consumer Financial Protection Bureau] has reported that the number of homeowners who are behind on their mortgages has doubled since the beginning of the pandemic. We see 6% of mortgages were actually delinquent as of September 2020 and that was up from 3% in March 2020. So most of the delinquent loans, we have 2.1 million borrowers, were more than 3 months behind on the payment, which signifies a severe economic distress which is very, very alarming.

Coming back to the policy tools and what it is that we can do to prevent and combat discriminatory foreclosures, some protective measures have been put in place to really help us to try to this time avoid some of the calamity we saw during the Great Recession. All of us remember that during the Great Recession, Black and Brown families were steered into dangerous, toxic mortgages even when qualifying for loans on safer, more affordable terms. As a result of that, Black and Brown communities lost one trillion of wealth during the crisis and have yet to recover from the crisis.

Sadly, for those communities we see this crisis falling disproportionately hardest on some of the very hardest hit people who have yet to recover thus far. We were excited to see the proactive measures to really try to help to us really avoid a foreclosure cliff, because during the last crisis foreclosures peaked in Black and Brown communities in 2006, two years before the Great Recession and then almost four years before a lot of the relief came to help our community members.

It is imperative, during this crisis, we use every tool in the toolbox to really help people to stay housed. It is critical important to remind everyone that during this time we're not out of the global pandemic. We see increasing levels of cases of COVID arising in some communities and we see places where there are lags in vaccinations.

We need people to remain housed because of a public health crisis and also because we also don't want to see housing taking away taken away from families, because we know for Black and Brown communities housing is typically homeownership, frankly, the most significant form of wealth that these community members actually have.

A little bit about the CARES Act. The CARES Act provides borrowers with federally backed loans, FHA, DA, USDA, Fanny, Freddie, the right to a forbearance, and the ability to pause their mortgage payment for a specific period, if they're effected by a COVID related hardship. It also established a foreclosure moratorium for federally backed mortgages.

The great thing on this, those with federally backed loans, there was this pause. The challenge, there are many people, particularly outside of those federally backed loans who also need assistance and while some lenders have followed the CARES Act provisions, not all have done so. David will walk us through a little bit more in detail.

Another great thing that's happened is that Congress passed as part of the American Rescue Plan, The Homeowner Assistance Fund. There is 9.9 billion for mortgages and other housing related expenses such as property taxes, property insurance and other utilities. These funds are going to be administered by state housing finance agencies and they're designed to assist borrowers that are not well served by existing loss mitigation programs. Again, we'll get into some details about what those existing loss mitigation programs look like. It is really critical as we talk about the homeowner assistance fund that we get these funds out as Congress has intended. We have yet to see the guidance that we need from the Treasury, so some states don't even have their plans up and implemented yet around the funds. It is critical we get the guidance so that these funds can quickly get into the hands of homeowners so again we do not lose kind of the losses that have been projected.

This slide talks about some of the policies we need to really support some of the hardest hit homeowners. We already talked about increasing access to COVID mortgage forbearances and a critical part is making sure we give borrowers the best post forbearance options suited for their circumstances. Not everybody will need the same solution.

We need to during this time encourage significant communication between borrowers the mortgage services, this is the time that people need to be in communication, and we need to have overcommunication.

We also need to ensure that we're supporting alternatives to foreclosure such as short sales for those that need them. We know with this crisis that a lot of families actually are in homes that have appreciated. It is a hot housing market this go around as opposed to the last go around. One option, it is for families to sell their home if necessary, however that's not something that should be taken lightly. We want to make sure that the priority is on keeping families housed.

We want to do everything we can to prevent the pandemic from negatively impacting credit scoring. We know that credit scoring, it is a major determinant and future credit opportunities, so we need to do everything during this crisis to make sure we don't set people up to a position that they suffer from negative impacts on the credit score as this is a global health pandemic that's not the fault of any of us.

In this slide, we'll talk about policies we need to really improve property and community outcome. We want to make sure that we're prioritizing homeownership, neighborhood destabilization, and destress the REO sales.

We know that we're likely to see the 225,000 to the 500,000 actual finishes this time around. It is critically important that we get these funds out so that we can avoid as many

of these foreclosures as possible and where we're not able to do that, we have to really have a focus on maintaining the homeownership in neighborhoods and really in the hardest hit communities and we have to do everything that we can to get these properties into the hands of owner-occupied occupants.

We have to make sure that banks properly maintain any REOs in communities. We know historically communities of color have found that the maintenance of these properties has not been the same as it has been in white communities that's lowered overall property values in the communities.

We need to make sure that we prevent zombie foreclosures and aggressively address vacancy problems to make sure, again, that we're not designating our neighborhoods as more risky and less safe and making sure that families get the relief that they need. It would be a travesty if during this crisis we see these continued elevations of investors move in and getting access to the foreclosures in our communities as opposed to making sure that family members, people that live in the communities can actually occupy them as owner occupants with purchases.

We need to do everything in our power to make sure that we get these homes back up on the market and for sale to the actual community members themselves. It would be a travesty if we leave in crisis in a worst position than we inherited it.

I will close by just reminding us that again this is a crisis that is a global health pandemic, it is not the fault of any of us and many of the members of black and brown communities are disproportionately in the service sector so they have been hardest hit. Every measure has to be taken to ensure we do everything to stabilize the homeowners themselves in the communities overall. I will pause there. Thank you.

MS. HILL [0:21:03]: That was a great overview of how we got here, where we are, definitely we have some questions. Thank you so much forgetting us started in our discussion today. Our next panelist, David Sanchez, will speak with us about the foreclosure moratoria, forbearance options, and assistance for homeowners.

DAVID SANCHEZ [0:21:29]: Thank you for all being here today and the co-panelists for their presentations. I'm David Sanchez, I'm the Director of Research and Development at the National Community Stabilization Trust.

NCST is a national nonprofit that focuses on issues related to blight and neighborhood stability. We do that in a couple of different ways. The primary thing we do, we run a program that makes distressed properties and foreclosed homes available to sail for nonprofit and mission minded developers who rehab them for owner occupancy. We also conduct federal policy advocacy. I’m a member of our policy team around the areas of increasing access to affordable, sustainable mortgage credit to preventing unnecessary foreclosures and home loss and then in the unfortunate cases when foreclosures occur we respond in way that strengthen communities rather than weaken them. I'm happy to be here with you today.

I will talk through a couple of different things as previewed. I will give you an overview of the current state of the mortgage market. The current state of borrowers in the forbearance. I will talk about what happens, what you have seen so far and what will happen as borrowers exit forbearance, because the amount that a borrower doesn't pay during forbearance has to be paid back one way or another. There is really a threat of foreclosure if a borrower is not able to do that. I'll talk through the state of what's happening with foreclosure moratoriums, what borrowers need to navigate as they're exiting forbearance and I will say a little bit about the options available to borrowers so that they can continue paying their mortgage as the incomes recover after COVID.

Just for some high-level background on the current state of mortgage forbearances, as of May 2021, 1.7 million borrowers were seriously delinquent on the mortgages. As Nikitra highlighted, you know, the CARES Act passed in the beginning of the pandemic gave borrowers with federally backed mortgages gave the rights to mortgage forbearances, it is now extended to 18 months. This is for as mentioned federally backed mortgages, it is about 70% of the mortgage market.

I would say for the remaining 30% of the mortgage market borrowers tend to have similar options, the private market has imitated the forbearance provisions of the CARES Act although oftentimes the length of time of forbearance available to a borrower will be shorter or there may be a few of the other protections that are in the act, they may not apply.

When a borrower needs a COVID related forbearance, for these are specifically for people covered through the CARES Act and the market is kind of applying the principles broadly. There is no formal application, the borrower must simply attest to a COVID related hardship, there is no need to document that hardship, providing bank stubs, you know, pay stubs, anything like that. While during the time where the borrower is in forbearance there is no penalty, fees, interests charged beyond those that are regularly scheduled under the terms of the mortgage and there are certain credit reporting protections especially for borrowers not delinquent on mortgages before they entered into forbearance.

As of May 2021, there are 2 million loans, over 2 million loans on forbearance with the highest concentration of our FHA, VA borrowers, the next highest are borrowers with GSE backed loans and within that 30% of the market that's not covered by the CARES Act they're 580,000 borrowers currently on forbearance.

This just give as this slide, the various sources for this data, for simplicity case I rely on the data from Black Knight. They have a lot of data on the mortgage sphere and particularly they make the platform that many use to service loans.

This chart divides, give as breakdown of seriously delinquent loans depending when that delinquency started. As you see, for borrowers that went delinquent after COVID started the vast majority of the borrowers have taken advantage of forbearance or now may be negotiating loss of mitigation option with their servicer. There are only 33,000 borrowers seriously delinquent that became delinquent after the pandemic began.

However, there are about 150,000 borrowers that were delinquent before the pandemic began that are not a forbearance or taking advantage of the loss mitigation. These are borrowers that are at the highest risk of foreclosure as we come out of this crisis.

As borrowers exit forbearance either because they feel that they're ready to or because they hit the limit of 18 months if it is a federally backed loan or whatever the terms in the private market, whatever the terms of the forbearance are, the service has been asked to invest by the investor, you know, borrowers come out of forbearance and they have to figure out what are they going to do, how are they going how do we restructure the mortgage, make payments essentially to pay back the amount that they weren't paying during forbearance.

We are at a really critical time about the mortgage servicing industry and for all of us that pay attention to it in terms of the massive borrowers exiting forbearance. There are almost 600,000 forbearance plans that are expected to expire in September and October of this year. Black Knight is forecasting that servicers are going to have to process 15,000 forbearance exits per day. If the options are streamlined, if servicers are adequately staffed and well prepared, they may do a totally fine job with this. I think given what we saw with servicer dysfunction after the last crisis many of us are scared about whether services will be really up for this task. It is critical that they do so, and they help borrowers in a timely manner figure out what to do after forbearance.

So far, most borrowers that exited forbearance have begun to make mortgage payments, a little more than half have needed help to do so. I'll say more later about what that what those options or what that help looks like.

I will walk through some of the graphics on the former slide in a larger format. This is the current status of borrowers that entered into forbearance, you know, many there are 7.25 million forbearances in total, the highest peak number was 4.8 million at one given time. Of those who have entered into forbearance, close to half are performing on their mortgage again.

In particular, we do see a number of really stress areas though and while they are not yet really a huge risk to the housing market in terms of increased foreclosure, these are borrowers we have to pay close attention to. I would highlight on the right side of this graphic that there are 333,000 borrowers who have exited forbearance and are delinquent but actively are negotiating loss mitigation with the servicers and then there are 200,000 borrowers that have exited forbearance, are delinquent, and are not currently negotiating litigation with the servicers. Those are the highest risk of foreclosure after forbearance.

This is just a little more of a graphic of when we expect forbearances to be expiring and as I mentioned, we see a huge piece in September and October of this year.

This is a different way of cutting the data on how borrowers are faring after forbearance. Those top bars, the red, the yellow one, those are the borrowers that really are at the highest risk of foreclosure and we see a particular concentration of the borrowers in the

portfolio and private sector markets which are not explicitly covered by the CARES Act. That's definitely someplace for us as all are paying attention to in the next few months.

Just in terms of the current state of forbearance and a foreclosure moratorium, borrowers have time to enter into forbearances if they are effected by COVID, having trouble paying mortgages. The time is winding down, but borrowers still have this option and all they need to do is if they have an online account, many can login and ask for a forbearance that way or you simply need to call your servicer and attest to a COVID hardship verbally.

In terms of what's happening with foreclosure, the CARES Act established an initial foreclosure moratorium for federally backed mortgage. Those are extended by the relevant agencies, through the end of this month, and picking up on August 31st, the CFPB is going to be prohibiting foreclosures with certain exceptions on a borrower's primary residence.

A thing to note, it is you may have you may have notice that had there is a month gap between when the federal foreclosure moratoriums expire and when the CFPB proposal picks up. Fannie and Freddie - they have said they will expect servicers to comply with the CFPB rule during August. That’s a little less clear for servicers of either private label loans or VA loans. We have heard that the biggest servicers, they do intentionally complying voluntarily with this rule, but we need to pay attention to whether services are beginning to file foreclosure on borrowers really outside of the confines of the CFPB rule.

While the CFPB rule is in effect from September through December, they created exceptions or off ramps where services are allowed to file for foreclosure on borrowers and there are three of those off ramps.

Those are the exceptions are for abandoned properties abandoned under a definition enshrined in state law and unresponsive borrowers and then borrowers that submitted a complete application, but do not qualify for loss mitigation options. Those borrowers, we will see people and those circumstances proceeding to foreclosure in some circumstances this year. Of course, in January 2021, CFPB’s rule will expire and that's when we will see the foreclosure fillings, they're projected to tick up. That's when we'll be paying attention there.

After forbearance, borrowers need to make up their pause payments and also pay back any other amounts that are advanced by the servicer. Generally, and this is not always true in the private market, generally a lump sum payment cannot be required so a borrower can't be told by the servicer you have to pay us back all of the money now. Instead, the servicer typically gives an array of different options to the borrower, the first is repayment plan, this is for borrowers who can afford temporarily to pay more than what the mortgage payment was before going on forbearance and we pay back the arrearages over the months.

The second option that borrowers are going to rely on, it is called a deferral, or a partial claim and they're called different things at FHA and the GSEs or by different investors in the market. It takes all of the money that's owed and places it at the end of a loan of the

mortgage and in a noninterest bearing account that's essentially due when you sell the home, when you finish the mortgage, or when you refinance the mortgage. Essentially it takes the money and says we'll get it from you back later.

The other broad bucket of options that are going to be really important for helping borrowers, are loan modifications. Those work differently than deferrals or partial claims because they take the amount that's owed and they capitalize them into the loan and then the loan is restructured, perhaps by extending the term or lowering the interest rate, or through a variety of other tools that really should be geared towards giving a lower monthly payment after the loan modification than they were paying before. That's not true in all circumstances but in general, that's the goal of the loan modification.

If a borrower can't get back on their feet through one of those options, most are going to look to home exit options and a the difference between this crisis and the last crisis, whereas home prices fell precipitously in 2008 and 2009 borrowers didn't have the equity to draw on and if they wanted to sell homes they had to do so through a so called short sale where investors greed to accept less than the full amount of money owed on the mortgage. Borrowers have options. Many borrowers will sell their homes, and we don't think this is a great outcome in terms of involuntary home loss and forced move for families, they are better options than foreclosure. Simply, you know, these home exit options are going to be part of how we mitigate the negative impacts of the crisis, even though I think for any household that can afford it, and would like to stay in their home, a deferral or loan modification would be the preferred outcome.

There’s also short sales, which are instances where borrowers don't have equity or deeds in lieu of foreclosures where you deed over or sign over the rights in the house in exchange of avoiding foreclosure.

I will flag two other issues quickly that will pop up as borrowers are figuring out what to do after forbearance. The first one, it is escrow shortages. Borrowers, who did not pay into the escrow accounts which covers the taxes and insurances, many of them are going to have to make up that money somehow and in some circumstances they can be handled by a loan mod or a deferral but in some circumstances they can't. As you are helping your clients navigate the options, that is something to pay attention to. The last thing I'll say on this slide, it is Rachel in a moment will talk about the fair housing tools for preventing foreclosures, those that are housing counselor, civil legal aid attorneys, there are also tools under RESPA, the Real Estate Settlement Procedures Act to help you to help borrowers including requests for information and notices of error. I'm happy to say more about that later.

I'll talk real quick, I only have a couple of minutes left about what the options that are made available by the various investors for borrowers. We talked about, you know, deferrals and loan modifications at Fannie and Freddie, the options are payment defers or flex modifications, there are a couple of different options available, a standalone partial claim, a standalone loan modification, a partial loan modification or a streamline FHA HAMP that

has deeper repayment plans for borrowers that need it. These are pretty good suites of options. Many are streamlined for COVID. The question is whether in large part either borrowers also have the income to be able to perform under these options and whether services are able to deliver them to borrowers in an efficient way.

Just briefly, on my the last slide, this is a little bit about the option for the PLS or portfolio loan, VA, U.S. Guaranteed, U.S. Guaranteed, I admit, I know the most about the FHA and VA options because of what I have worked on in my career, I will put in the chat or someone else will, if you need to look up the details, the National Consumer Loss Center has made all of the information about the post-forbearance loss mitigation options for borrowers free on the website. It is Chapter 12 of the service loan modification guide and that's where you should go if you're trying to help anyone understand the options available for them and figure out how to perform on the mortgages after forbearance. With that, I will stop. I will send it back to Cashauna. Thank you for listening. I look forward to the questions.

MS. HILL [0:39:36]: Thank you, David. That will tie very nicely into what our next panelist is going to share with us. Our third panelist, Rachel Geballe, will speak to us about case examples and legal tools available for combatting discriminatory foreclosures.

MS. GEBALLE [0:40:00]: Thank you so much. I'm name is Rachel Geballe and I am the Supervising Attorney at Brooklyn Legal Services with our Neighborhood Economic Justice unit. We work with homeowners in foreclosure or at risk for foreclosure. We endeavor to incorporate fair lending analysis and enforcement into all areas of our advocacy.

I put my email address below my picture in Zoom. You should feel free to reach out to me. I'll talk about a lot of things, we won't get into everything, if you have an issue you're thinking about, a case you're thinking about, I love to think about how to address issues, how to plead a complaint, please do send me an email.

I'm so pleased to be here with you today. As homeowner advocates, we know a lot can go wrong for homeowners, as we have already heard today. They come to us not only maybe COVID affected, but as we're looking at the loans, you see the loan is unaffordable, we see that it may be modified previously with a principal balance that's really excessive with services that may not be following the rules that we have been discussing today.

As advocates, we have a lot of tools to work with, we have the consumer protection statutes such as RESPA, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, regulations like the ones that Nikitra and David had discussed today. You may have procedural problems with how a foreclosure began or foreclosure notices that you can address. What I'm going to talk about today, it is fair lending analysis of loans and foreclosure and the ways to use fair lending complaints to assist borrowers.

So why bring fair lending claims in the foreclosure context? The first, and I think most important reason, it is to hold the system and the players accountable. The mortgage market, it is deep in discrimination, and it has been seeped in discrimination for the history

in the country and that goes to origination and it goes to securitization and how mortgages are held and it goes to servicing.

Foreclosure practices themselves, they're often discriminatory and abusive. It is very, very important that the market players who is are doing these things, whether intentionally, with a disparate impact, should be held to account and that those things should be called out and, you know, hopefully we can change the system that has been this way for a long time and also provide relief for the victims.

Another important reason, it is that they are a very powerful tool to gain leverage for your clients. There is a lot of reputational risk, obviously for entities that really may not want to be called out for discrimination. You may if you're in a nonjudicial state you may find yourself when you bring a complaint in court, now you're in a lawsuit, or if you brought a complaint in administrative forum, now the brakes are on and there is going to be discovery, there will be they'll have to produce information and all of a sudden things really slow down for the clients. They maybe they could have been hurdling to the sale and now they have the opportunity to maybe negotiate something that's going to be favorable to them. They can also get really powerful relief in the form of damages and in injunctive relief and attorney fees that are very powerful, powerful tools of leverage for your clients.

This is a map here of New York City, where I practice. It shows the home foreclosure risk, this map happens to be from 2018, but we have been tracking these things for a long time and this is way that the map looks every year. When I talk about how deep the foreclosure market is, the foreclosure practice is in discrimination, this is kind of what I'm referring to. The cross hatched areas are communities of color in New York City, New York City is a segregated place, like many places in this country, and the foreclosures, they're predominantly in communities of color. That's not that is not happenstance, it is not because people that live in those communities has done something wrong, it is because of what happens every day, what happened for many, many years, it is that the communities were pedaled very bad loans and had very discriminatory servicing that has been targeted in the communities. When we say we want to hold entities to account, he want to held them to account for this map.

This is kind of a little bit of a dovetail back. This shows the top four conventional mortgage lenders in 2019, obviously we're not exactly apples and oranges, maybe for the foreclosure map we want to look at lending practices ten years earlier, maybe five years earlier, but as I say, these maps haven't changed a lot in the time we have been tracking them. You can see that the conventional mortgage lender, the loans that may well be healthy loans for people, they are lending in the predominantly White areas of New York City and you see that these things start to create a picture of where the loans are going, where are loans that may be healthy for people versus loans that are extractive. You are going to look at maps later as well so you can see how the how bad the predatory products are going to the cross hatched areas and not to those areas that you can see are getting the conventional mortgage loan.

So there are a few sections of the Fair Housing Act applicable. You will have in addition to the Fair Housing Act, you will have the state fair lending statute and you may have a local statute. In New York, we do have a city law as well. These are sections applicable. 3604 (a) or (f) (1), making housing unavailable. Now this might apply to a deed scam or to an equity dripping loan program that your client is coming to you with now or a servicer who is engaging in servicing practices that are causing people to lose home, making housing appliable would apply. 3604 (B) or (f)(2) deals with term, condition, privileges of sales, provision of services or facilities in connection with the sale. This may apply to a loan that comes to you that had a discriminatory loan that applied to a purchase or discriminatory appraising. 3605 (a) dealing with residential real estate related transactions, including loans that are secured with residential real estate, this is how it will apply to almost everything than you see in this context with homeowners, residential real estate related transactions, they're really the bread and butter of what we're seeing for homeowners.

I'm going to run briefly through a couple of prima facie cases, this is all in the slides and you can download them after the presentation, so you do not need to pour over this right now. First we have - this is a four factor test looking familiar to those that looked at these issue, you see it not only here, you have it from *Matthews v. New Century Mortgage* and *Barkley v. Olympia Mortgage*, and in the Eastern District where I practice and you have the four factor, the plaintiffs are members of the protected class, that they applied for and were qualified for loans, the loans were made ungrossly, unfavorable terms and the transactions were discriminatory. The court here says that they previously held that the fourth element may be established with evidence of intentional targeting.

Under the Fair Housing Act, you have intentional discrimination and disparate impact. Under intentional discrimination, you have disparate treatment, treating people differently based on a protected class and you have targeting - which is targeting a defective product or a defective practice towards a community on the basis of that protected class. That fourth factor goes to any of these, to intentional, disparate impact, it can go to disparate treatment, targeting, and so you can think about this in the context of the problems that you're seeing and there is really a lot of possibilities in terms of how you can plead the case. You may in fact find that what comes to you looks like a neutral practice and that it looks like disparate impact and that's how you plead it and that's how you bring the complaint either in court or in an administrative forum. When you start to dig and you get discovery if you're in court for example you actually find that maybe there emails and maybe there is some advertising that shows really it is a targeted practice or that they were treating people differently. You can end up amending to bring in that intentional element. You do not what you bring at the beginning, it is only really the beginning from what you know and what you can plead well.

In addition to that four-factor case, there is the *Hargraves* test, it is a little bit broader and allows you to plead that the loan terms, the terms of the practice, they're unfair and predatory and that they're intentionally targeted on the basis of race.

This gives you a bit of a broader flavor, getting to you that predatory term which is pretty broad and you think about a lot of the practices that you see, whether they're predatory and in fact targeted here on the basis of race but generally on the basis of a protected class.

Finally, disparate impact, which is about a facially neutral practice that actually or predictably results in a discriminatory effect on a group of persons based on a protected characteristic. You have to make a connection between that neutral practice and the affect you're seeing. You really have to make that connection and a lot of what looks like a neutral practice, when you start holding back the layers of the onion, it may in fact be a targeted practice. This is absolutely a great way to plead your cases, to be really thinking about what neutral practices you see, that actually and predictably, it has that discriminatory effect.

I want to mention tolling theories. You bring the case either in court or administrative forum that each of them have, the statute of limitations, that you should look into the Fair Housing Act, but also state, the local statute, they have different statutes of limitations maybe, but think about the tolling theories, oftentimes when people come to me, they have a discriminatory loan that's really been around for a while they do not know that they have a discriminatory loan, they did not know when they got their loan that it was being marketed on the basis of race. They certainly didn’t they were given documents that were really concealing the nature of their loan and not revealing it at their as they're supposed to.

These tooling theories, they're really powerful, very applicable, the discovery rule has to do with when the complainant or the plaintiff discovers that they had been discriminated against. Equitable tolling has to do with whether the wrong doer is in fact concealed the wrongdoing, and continuing violations, they have to do with whether there is a continuing practice ever discrimination that continues into the tolling period.

Researching your case. This is one of my favorite things to talk about because in the area that we work in with homeowners, there is actually a ton of information that allows you to research your case. A client is going to come to you, and they have a loan that looks like a really bad loan. Maybe it was made by a lender whose name you recognized before the foreclosure crisis, the servicer, you know that that servicer has been treating people really poorly, not following rules that we have been discussing today. The first thing is the client story and the documents.

You may want to do a request for information for additional documents under RESPA just as David mentioned and really understand the clients' story, their closing, what's happened to them, if you're really worried about the foreclosure practice, exactly when they received the statements, when they receive whatever communications, what communications that they had from the lawyer who is bringing the foreclosure, also the real estate record, your clients and others, and foreclosure records, if you are really concerned about an LLC that's been buying up and bringing up foreclosures, for example, something that I'm researching right now, I go to my eFile records from New York State and I'm going to look up that plaintiff and I want to know every case they're bringing.

I may want to map it. The real estate records that we have in New York, they're also digitalized and it really will depend on the jurisdiction. You want to take a look at what was that lender doing at that time period. When is this when is this entity taking assignment of mortgages? What can you find? What can you dig into those records? You also really want to know your own local mortgage market, we looked at a map of New York City and, you know, I have spent a lot of time practicing in New York City, so I know really well what's going on there. We do a lot of maps. I highlighted this. We put it in italics, because the mapping is really crucial. It is really important whether it is whether you're getting or finding a policy entity that can do maps for you, it is really to visualize the information and include a map with your complaint as a really powerful tool.

When talking about origination, we have a HMDA data, we have the website of the companies, sometimes you look at the website of the servicer and this is a map that I hope to show you if I have time a little bit later, and it is all the map, it is all foreclosures in communities of color and on the website it says, oh, we specifically looked to purchase loans in "urban areas." You see that they have trumpeted it on the website or has the person running the program given a speech talking about the intentions are and the targeting? What is their advertising? Where are they advertising? Can you tell?

If the financial areas, they may be offering memoranda, social securitization documents, the FCC has a lot of information, you may find that the government has brought litigation either like the state attorney general, maybe the Department of Justice and you can find those documents and you can talk to the network of advocates, lawyers, housing counselors who know a ton of what's going on in the area and you aggregate that information and make a powerful complaint and you are only limited by your imagination here because there really is just a tons to look at. Helping you to make the case, helping you to really understand what's going on for your clients.

I'll take a moment to talk about a couple of examples, I'm not going to have time to go through probably every single one of these now, I'll try to go through a few. The first set of maps, it is about when you're looking at a foreclosure and you are really concerned about the discriminatory underlying role. I have a couple here. I'll look at the Countrywide map that we use and a complaint, a map from the complaint that we filed against a reverse mortgage lender and a map about WMC second mortgages.

These are two maps of Countrywide refinanced loans that we used in a series of complaints. We get a lot of Countrywide loans still, loans that are sticking around that maybe have never been modified, the particular case that we were seeing come to us over and over again recently, it is interest only loan, interest only for ten years, and they were made in 2007, 2008. What we were getting, people that really kind of didn't understand their loans up until that moment they were suited for foreclosure in 2018.

We're looking at in order to really make this case, we're looking at Countrywide, the lawsuits, the Department of Justice filed against them, looking at these maps, we're looking at things that [Angelo] Mozilo [former CEO of Countrywide Financial] said about the

targeting, speeches that were said where he says I'm targeting communities of color, they were really very open about it in order to make the case. To get leverage from the client, to get their modification, to get them damages for a really destructive loan that they got.

Here is another example of an origination issue that presented itself. You can see this is a loan made by a company called Residential Loan Funding Corporation. This is FHA lending, they made reverses and non-reverses. These are really focused in communities of color. Now, I'm looking not only at this map but at the story that my client is telling me about how her reverse mortgage was not only not only did shelf one, but that she was churned into a second, a violation of the reverse mortgage rules, how she was visited at her home by somebody who was doing door knocking and specifically soliciting her by repeatedly visiting her at her home and looking at this company, doing a lot of Internet search, trying to see and the specific person that came to her house in order to make a complaint that will really show that this company was targeting her on the basis of race.

I just wanted to present this again, just to show you the contrast between for example the last two maps, which were about Countrywide, and the reverse mortgage lender, which you can show, you can see we're really focused in the cross hatched areas and the conventional mortgage lenders that are really avoiding the cross hatched areas and how that story is, about the conventional lenders to really make a vacuum and then what comes in there, it is a predatory lending, it just continues into the present day of really destructive loans in communities of color.

This is another strategy that we used for somebody who is student foreclosure, with a WMC Mortgage. WMC was notorious for making predatory loans. Aou see on the left, f first-lien mortgages on the right, the second-lien loan mortgages on the left, they made a lot of 80/20 backed loan, they make two loans on the same property. In this case, just based on the constellations of what was going on with the client, we didn't bring a separate complaint, but we did assert it as a defense in foreclosure that the lender was not behaving in an equitable manner, because they had taken this predator loan, obviously it was predatory, and they did not come to the court with clean hands. They had unclean hands. It was an equitable argument that we were using that determination and using this map and a lot of other information about WMC to make that argument. It is just another way to really bring that fair lending knowledge into your foreclosure practice.

I just want to wrap up with just a few examples about discriminatory servicing and foreclosure because your case may come, and it may present origination problems and it may also present a servicing problem. Here we have the discriminatory servicing complaint that we did file for quite a few for quite a few complainants based on this lender called, well, it is an entity that was purchasing existing loans called Great Ajax Corp and the proprietary servicer, Gregory Funding, really a predatory servicer, and looking at their website, this is the one that said that they specifically focused in urban areas and they have a pattern and practice of specifically purchasing loans in or that are already in foreclosure.

We looked and we saw that foreclosures are disproportionately in communities of color in New York City and so this may be maybe we structure this as targeting, how they talk about their own practice, we structure it when it talks about disparate impact, they have a mutual practice of purchasing loans in that are in foreclosure and those loans, they're disproportionately communities of color and they service them in a really abusive way, not providing any of the options of the they have forced people in a completed foreclosure and sale.

Just to talk about some other things that we have been looking at, we have been looking at the second mortgages, the 20% mortgages that we look for WMC, they are coming to the surface, who is buying them, and those loans, they're made, they're almost entirely communities of color, those loans, they are themselves discriminatory at the core, servicing them, it is a lot of possibilities and things coming to you, I would say you scratch the surface, and oftentimes, you don't need to scratch the surface. I will go ahead and hand it over to Cashauna.

MS. HILL [1:06:11]: Thank you so much, Rachel. I appreciate that, it is really nice to have the legal perspectives, so that folks know what options are out there as well. We will continue the conversation, we will hear from our final panelist, Deputy Assistant Secretary David Berenbaum will speak about partnerships to combat discriminatory foreclosures. David?

DAVID BERENBAUM [1:06:43]: Thank you so much, Cashauna. It is my pleasure to be here with you, with the National Fair Housing Training Academy and our fair housing colleagues today.

As leaders in the fair housing and also the housing counseling space, each of us must play an important role in creating a real estate and housing finance marketplace where every individual and housing provides equal opportunities and the chance to have experience sustainable homeownership in a society free of discrimination.

HUD and the Office of Housing counseling team and the over 1,650 HUD approved housing counseling organizations across the nation, look forward to actively partnering with you, yes, I'll use the words affirmatively furthering fair housing, so that we breakdown home barriers to homeownership and access and choice for communities of color and all protected classes and groups. We're committed to ensuring the racial equity and housing, narrowing the racial wealth gap, and moving the nation beyond the pandemic through our housing initiatives. It is a new day at the United States Department of Housing and Urban development.

Fair housing, legal service groups, health providers, housing counseling agencies, and a host of other public and private sector groups across the country have come together to create a significant safety net to ensure sustainable homeownership and I'm also going to touch on tenancy, applying the CARES Act, the Homeowner Assistance Fund and the American Rescue Program.

There’s also is unprecedented interagency collaboration. For example, between HUD's Office of Housing, Office of Housing Counseling, FHEO, and the CFPB to bring resources to bare.

Rachel, David, and Nikitra did a wonderful job in their presentations summarizing some of the existing relief efforts, the status of the efforts to ensure sustainable homeownership and as well as legal protections that are afforded to consumers today.

I want to spend a few minutes speaking to you about the Office of Housing Counseling and some of the initiatives and as noted, the partnering activities that are available as we work together. Many of you know that the Office of Housing Counseling was stood up after the Dodd-Frank Relief Bill was passed, now almost a decade ago now. The mission is to help families obtain, sustain, and retain their homes. We accomplish this through a network of HUD agencies, over 1,650 organizations who provide their work through a cohort of certified housing counselors. There is a lot of resource information on the HUD Exchange and on the HUD website. I direct you to look at the links on the PowerPoint that are shared with you. As well we provide grant funding to focus in on priority areas which I will cover briefly in the presentation.

We provide technical assistance and training, not only to the housing counseling community, but to legal service groups and the entire not for profit sector through our ongoing webinars which also are listed on the HUD Exchange. Often our focus today, is of course, on pandemic relief and moving beyond the pandemic and we have a series of recorded programs on all of the various relief efforts underway from the GSEs, the FHA, Veterans and so on that are available to watch on demand.

Now, as we move forward, we're working to certify housing counselors and I'll speak to that during the presentation. In fact, the deadline is August 1 of this year, we are making great progress to achieving that. But more significantly, we're working to build the capacity of housing counseling organizations, talented staff to work with you in the fair housing space.

We have doing that through a number of means, most importantly through marketing and educating consumers to the availability of services to better available to them currently and we have both our own website and social media outlets, where individuals find the housing counseling agency and dial both the toll free number, which is about to receive a significant improvement to direct consumers to national intermediaries, state housing financing agencies, and local housing counseling organizations who provide foreclosure prevention and other services in multi-modal ways, meaning virtual, telephonic, face-to-face, and group sessions.

We're working with the CFPB who similarly has a database on their website and on many of their publications like HUD who have done that in collaboration with a host of federal agencies.

Housing counseling services are quite robust. The core of all counseling sessions is a very detailed assessment of an individual's financial situation and the recommendation of a

budget to move forward. We offer counseling in a host of areas, many going beyond the topics of today's program for the National Fair Housing Training Academy, with the purposes of today, I'll share that mortgage default resolution, also homelessness counseling, particularly with veterans, low to moderate income consumers of color, eviction counseling, reverse mortgage, are all on the increase, particularly in the last few months. There is classroom and group education and in both the individual and group sessions fair housing is an active component of what our organizations provide.

In fiscal year 2020, we reached approximately 960,000 consumers. That was a little bit of a drop. But keep in mind, the pandemic created a need to move from face-to-face counseling in the country to virtual or telephonic. Of course, it impacted the workplace and all of the nature of businesses, social enterprise, for-profit across the country. What's interesting, if you look in the trends for this chart, for fiscal year 2020, it is not surprising that in fact, prepurchase counseling both in individual sessions, as well as in situations dealing with group education was the most prevalent form of counseling.

Consumers at all income levels, and particularly the demographics of the consumers each year, they're about 70% African American, Black, Latinx, Asian Pacific Islander, they were taking advantage of low interest rates and engaging with housing counselors across the country.

This year, we're already trending well above that. We expect to be well over a million consumers counseled and as I noted we capture the counseling information, it shows an increase in eviction and now as we're approaching the expiration of some of the forbearance agreements, more and more in the area of sustainable homeownership or foreclosure prevention.

We are almost ready for this perfect storm. We have offered technical assistance and training to the counselors and many of you are aware of Congress' appropriation of 100 million dollars through the Neighborhood Reinvestment Corp and NeighborWorks America providing housing counselors additional resources to conduct foreclosure prevention activities.

Of our agencies, we collaborate on a national and multistate basis with what's called intermediaries, many of you know who they are – Unidos, the National Community Reinvestment Coalition, there are in fact over 20 that are active in the space. We also fund and collaborate with over 22 growing number of state housing finance agencies, all passing through sorely needed funds to local counseling groups that are on the frontlines right now providing services. The requirement, of course, for the agencies, that they must be a 501 (c)(3) and that they must meet the definition of a HUD approved housing counseling organization. If you're interested in that, it can be found on the HUD website and also the HUD Exchange.

Our organizations, they're committed to advancing fair housing, over 500 of them right now are also working in various ways to affirmatively furthering fair housing. Many FHEO stakeholders, FHIPs and FHAPs, they're HUD funded organizations, and the Fair Housing

of Riverside County, Long Island Housing Services, and Metro Fair Housing Services to mention a few. They're folks that are providing services both in fair housing and housing counseling. For my own experience over 30 years of working in the space, I firmly believe that the issues presented to housing counselors serve as an early warning system to all of is in the fair housing space as well as emerging issues. For example, issues with regard to predatory, discriminatory appraisals, issues with our under evaluation of homes and African American and Latino communities with regard to refinance which steal equity and wealth on an intergenerational basis from consumers and the communities that we serve.

So, as well, during fiscal year 2020, I'll note that over 300,000 families learned about the Fair Housing rights, about fair lending, and about the access, the accessibility issues from, in fact, HUD participating housing counseling organizations. I would like to see that number grow.

Housing counseling includes budgeting, extensive intake to get a sense of a client's situation, it includes a real analysis of what will be an action plan for success for the individual or family, and critically includes follow up with the client. A new focus of the office, in particular this year, it is to ensure that our consumers receive culturally sensitive and linguistically appropriate counseling services. Again, the modality is less important than the quality. We want to make sure that the consumer, whether they're being counseled over the phone or in a face-to-face basis, they have the best in class services that are available to them, but also in the language and also with the appropriate information that's appropriate. Someone who lives in Brooklyn, New York, it is very different from someone living in the Navajo nation. Someone living in a rural area of Appalachia needs a different service than in Milwaukee. So on. There are many different approaches to this and we want to make sure that every constituency, whether it be Asian, Latinx, other, are receiving appropriate counseling delivered in a way that meets the need of the consumer moving forward.

Certification, you have been hearing about certification, and in fact a year ago the certification deadline was extended to August 1st of this year. I am happy to report to you that in fact we are well on our way to realizing a very successful outcome. August 9 through the 12, the Office of Housing Counseling will be having our conference that will be announced today for registration, it will be announced through the HUD we site and through our own interactive programming and distribution lists.

At the program as well, we're going to give a full report out on where we stand today. I'm happy to report that in fact, as of today, over 88% of housing counselors have realized certification. Of the 12% that remain, they represent less than 1% of that national case load I spoke to earlier. We're making great progress of realizing full professional certification. What's the purpose of certification? Under Dodd-Frank it is to make sure that consumers receive best information possible from highly trained professionals who is are capable and who are, in fact, giving consumers information to combat, at the time, the fraud, the problematic lending, the toxic products from the financial crisis. Today the goals remain the same.

We look forward to 100% certification moving forward and a cohort of onboarding for new counselors that are coming into the profession that will elevate the roles of counseling and to be viewed in the same way as realtors, realtists, mortgage bankers, broker, becoming an active part of the entire housing finance and real estate communities.

So again, our impact data can be found on HUD Exchange, I invite to you look at it. We have updated regularly, and we also report out annually to Congress on, in fact, the impact of our work. We have a particular focus right now on in fact the pandemic and natural disasters, we want to make sure we have an immediate response to meet the needs to the communities we're serving. I'll also add, the data is helpful not only for housing counseling groups, but also for fair housing organizations to use, not only with regard to reports or for information on the impact of our work together but also a little bit more so, with regard to grant applications to HUD and other foundations. All of this can be found on the HUD Exchange.

So I'm happy to share with you as well, you know, today HUD announced the availability of fair housing funds that are available to you. In the next few weeks, the comprehensive counseling NOFO will be announced. This year, we'll funding 57.5 million dollars in support for housing counseling activities.

I'm particularly excited about a new initiative to work, to establish meaningful partnerships with Historically Black Colleges and Universities and Minority Serving Institutions, it is a brand-new initiative, 3 million dollars has been set aside to reach the entire communities surrounding the universities, offering more service, and in fact, also creating a channel of employment for the next generation of housing counselors. Stay tuned on that, the NOFO will be released in the very near future.

So I want to speak to rental eviction issues. It is related in many ways to the work we're talking about today. There are many homeowners, there are absentee landlords, others that are struggling with the mortgages and it is impacting not only the tenants in apartment complexes, but the very large number of tenants that are in single family homes and we see emerging illegal eviction practices and illegal predatory discriminatory practices in the space as well and it is an area that we're asking our housing counseling groups to focus in on and we're collaborating with other offices at HUD, such as Multifamily, Single Family, externally with the CFPB and others to ensure that we're providing information and support to address these eviction issues that in all likelihood are illegal. Our goal is to ensure that the consumers tap into the resources from Treasury and elsewhere that are slowly reaching the populations and to make sure that policy guidance and technical assistance tools are really meeting the need.

Outreach is a critical part of our campaign. For those of you that follow HUD, follow FHA, you have been seeing a series of ads to reach out to the FHA consumers that are in arrears on their mortgage and in fact across all platforms, the Office of Housing Counseling has developed an ad toolkit, a booklet and over a dozen different languages for use in the housing community and they're very appropriate for use with the fair housing groups as

well. This is an example of the recent ad that's appeared on Facebook, LinkedIn and a number of groups are using on their own sites as well, social media sites as well.

This is also another example of a themed ad, you have worked hard for your home, now let's take the steps to keep it. That was earlier used, about three months ago, that had a very good response. These ads, they're available on the HUD Exchange and they have had a very strong response from agencies that have used them.

We already heard in quite detail from our earlier speakers, particularly David and Nikitra, some of the steps that FHA has taken to try to sustain homeownership. I want to speak of a recent activity conducted by the Office of Housing Counseling. In early May, we were growing in concern that there are over 340,000 FHA consumers who are more than 60 days late on the mortgage. It was our belief that the consumers, they would easily qualify for the FHA COVID forbearance program as was noted. It was simple as calling your servicer and saying I would like to participate in the program, again, over 300,000 consumers did not take advantage of it. This was despite servicer outreach, this is despite various campaigns and other approaches.

For the first time in HUD's history, the Office of Housing Counseling worked very, very closely with FHA, with our servicing office, with single family housing, and on June 12th, over 340,000 first-class letters were sent to every FHA mortgagor who is 60 days or more behind on their mortgage. We did this because at the time it was not clear what was happening with the extension that was noted earlier for the forbearance options.

I'm happy to report to you, I just learned in fact earlier this week, that that letter produced over 100,000 requests for participation in the FHA forbearance, the COVID forbearance program, a significant right party outcome in that program, one of which we will repeat moving forward and as consumers fall off perhaps the efforts to ensure a transition from forbearance to new mortgage payments in the coming months.

We're also looking at new, innovative efforts to ensure that consumers receive foreclosure prevention counseling and that they also refer to resources for sustainable homeownership. That will include working very closely in new ways from the housing counseling community. Stay tuned on that front.

I want to highlight that, of course, consumers can and should right now request the COVID forbearance. It is the most straightforward, easy, immediate relief for consumers and I will note that moving forward we're in active conversation and look for announcement from HUD on more details of how the waterfall will provide even more support for the consumers moving forward. Last, I want to also note the importance of what was advanced earlier in June. That is, the opportunity for consumers to request the advanced loan modification. That can create significant payment, monthly payment relief, up to 25% for consumers on existing loan payments, what they are in and equal opportunity arears in, it could be placed on the tail end of the loan, in fact, they sell a property, refinance. It is a very strong step forward on the part of FHA and we, again, we are planning to take more steps as was announced by the administration to ensure sustainable homeownership.

Beginning to wind down, I touched on new developments. I'm sorry, it is a bit of a tease, I'm not authorized to speak to them yet. Keep an eye out.

We believe that the safety net of working with FHEO and working with FHIPs and FHAPs and working with advocates in all forums is in the housing counseling industry's interest. Many of the counseling organizations are strong advocates in their own way. We believe that many organizations are developing some very creative loan products that will be made available to give consumer as fresh start beyond the products that were spoken to in today's program. For example, NACA [Neighborhood Assistance Corporation of America] is developing with CRA's support some intriguing loan products that will be made available through their network.

For all of this, you know, I invite to you visit a HUD Exchange website for industry professionals, easy to find, HUDexchange.info/counseling and all of the links available here. I invite to you reach out to the Office of Housing Counseling, we can be a gateway not only for our work, but also other offices at HUD that are equally committed to this focus area right now.

As I said when I began my program, it is a very exciting time to be at HUD. Secretary Fudge, her commitment to racial equity, the fresh look at existing programs, the focus on innovative, important outcomes, the equity assessment that's being conducted across HUD, we look forward to partnering with you to make this real and to make a difference in the communities and I thank you for what you do every day in your community. Back to you.

MS. HILL [1:30:05]: Thank you, Deputy Assistant Secretary Berenbaum. It's a real pleasure to have you here with us today. Thank you for sharing everything that the Office of Housing Counseling has been doing.

Thank you for all the work that you have done doing to keep the homeowners informed during the pandemic. I think that you're right of sort of how we can learn information on the fair housing field to get ahead of issues we'll be seeing. I think that was a great point and certainly from the FHIP agency perspective, I appreciate you making that point.

So with that, we're going to transition into the question-and-answer session of today's conversation. Before we start actually answering questions, I want to remind everyone that you're welcome to submit any questions that you may have in the question-and-answer box, so please do share those questions and we'll try to get to them.

We have gotten several questions already that we will get you, we have also gotten several questions on whether all of the materials presented today will be made available. Just want to remind everyone once again that all of the materials will be made available on the NFHTA resource page on HUD Exchange very shortly after the event wraps up today. You will be able to get all of the slides and all of the materials that you have heard about today.

With that, we will begin to take some questions and actually Rachel, I would like to start with you.

Some of these are questions that folks have already answered maybe in the Q&A box and I want to discuss this question in particular here.

There was a question about the kinds of remedies that might be available using some of the fair housing and fair lending claims when it comes to discriminatory foreclosures and I wonder if you can speak to that.

MS. GEBALLE [1:32:21]: Absolutely. Oftentimes, somebody in the foreclosure, needs modification, and you may find that what you are getting is no modification or the offer is just not affordable, it is just not good enough. It doesn't reflect the harm that the homeowner has suffered.

Oftentimes actually a great modification, it is an outcome that we're looking out for, and it may mean, you know, there is a wrongdoer who is an originator and they are giving a chunk of cash to the servicers so that the servicer can do something better than they usually do and your client can also maybe what they're looking for actually, it is money damages and that's a possibility. Getting out of foreclosure, obviously, is a huge thing that homeowners want and to get on their feet and feel that they have something to move forward with. You can get injunctive relief and if you were to litigate it to the end, that's something that you would be more likely to get. You should be able to reform a loan, you have to litigate to the end, you have to get the trier to think about it, there is possibility when looking at a loan that really had a loan tied to a homeowner that you can think broadly, how is this harm effecting them and what do they really need to sort of return to the place that they would have been, if they had gotten a healthy, positive loan.

MS. HILL [1:34:03]: Thank you so much, Rachel. That is great. I will move over to you, Nikitra, we have a question on real estate owned or REO properties, the question, it is that, you know, what we saw with REOs in the previous housing crisis predicated on the lack of home sales during the recession, so the question asker, they're saying in their experience, they're currently seeing all of the selling very quickly due to the hot market of home sales. Do we have any expectations of any implications in any of the REO space?

MS. BAILEY [1:34:50]: Yes. Thank you. Thank you for the question. We're expecting to see REOs peek at the about the year 2024. We're likely to them peek at an additional 175,000. We're reminding everyone that during this crisis, families have been able to really benefit from rising housing costs, like across the nation, we see housing costs rising all across the nation.

You know, during the Great Recession we saw a total of 8 million overall foreclosures, while we're not likely to see that same amount of foreclosures, the devastation has fallen on communities that have yet to recover during that time. It is very critical that during this time that we see more support for owner-occupants. Right now we know that the Federal Reserve is really investing in about 40 billion dollars per month and mortgage backed securities. We see a lot of activities related to who can access homeownership and who cannot. Because of the discriminatory housing practices in the past and right now, many Black and Brown families lack the down payments that they need to really qualify for a loan.

We want to see really strong down payment assistance so that we can see the consumers be able to get in and purchase the homes in the communities. We also need to make sure we don't see the large massive cells of properties to investors, they're driving up the cost of housing all over the country and we know that it stabilizes communities when the people living in the communities can actually afford to home there.

MS. HILL [1:36:26]: Thank you, Nikitra.

MR. SANCHEZ [1:36:28]: Can I jump in as well?

MS. HILL [1:36:30]: Absolutely. I was just going to ask.

MR. SANCHEZ [1:36:33]: Excellent. My organization, the National Community Stabilization Trust, a thing we do, it is we make a subset of REO, specifically now that the main participants of the program is Freddie Mac, we make those properties available to nonprofits in a community based purchasers. I think that you are absolutely right, we are in a very historically unprecedented supply shortage right now. That applies to distressed properties too. In general, there is a lot of demand for housing, and there is a lot of demand for destressed properties too. We think that in part because the options are better for borrowers and people of equity, we're going to see fewer foreclosures than we did coming out of the last crisis and critically, I will say more of the foreclosure, they will probably be sold to investors earlier on in the process, rather than being taken quote, unquote, in a lender portfolio and becoming REO. I think we can anticipate strong demand for all properties, including distressed properties coming out of this crisis, which cuts both ways. It is true that the problem looks very different than in 2008 and 2009 when we had a glut of REO properties, and no one knew what to do with them. That's the not situation we're in today. Instead, what we're seeing, what Nikitra and others are speaking about in the Q&A about this kind of investor frenzy, I mean, we have risked seeing the convergence of the home from the homeowner occupied stock to rental stock, we have risked see especially if home sale trends continue this year, continued escalation and crisis and lower income borrowers being locked from the market. It is an important space to pay attention to. I would say that the increased demand we see for the properties, it is cutting both ways.

MS. BAILEY [1:38:42]: David is absolutely right. We have to remember we don't see the same levels of property appreciation in Black and Brown communities; we know that appraisal bias is ongoing. Unfortunately, even though we see the opportunity for people to have stronger home equity, we know that those levels of home equity, they're not equal across communities.

MS. HILL [1:39:04]: Thank you. Anyone else have anything to add on that REO issue? Okay. We will move on.

For you, Deputy Assistant Secretary Berenbaum, I would like to ask if there are efforts underway at HUD to ensure that loss mitigation options are provided equitably to all borrowers. I know you spoke to the efforts that have been undertaken to make sure that people know that there is forbearance options and we have spoken about the outreach

that's gone on and wanted to give you an opportunity to speak specifically to efforts that are taking place to ensure that the loss mitigation options are provided equitably to all borrowers.

MR. BERENBAUM [1:39:57]: I want to assure all of the participants today that Secretary Fudge, for that matter, President Biden, a very first day of his administration, issued an executive order directing every agency to work internally to ensure equity, not only through its programming and funding, but also in how we ensure fair housing, equal opportunity, equity, in fact how all of the programs are implemented. Every office at HUD is part of that process. It has begun, it is ongoing, and it is very exciting for all of us right now.

With regard to FHA, in particular in servicing, if, in fact, any member of a FHIP, a FHAP, the public, anyone has a fair housing concern it should be reported immediately to FHEO, the form of a complaint, a challenge, a call to the FHA hotline, it will be acted upon. This is a very important topic for us. For that matter as well, Secretary Fudge is leading an effort, an interagency effort which Melody Taylor, affiliated with the academy is part of, to look at appraising and evaluation issues and FHA is also very much part of that discussion as well.

It connects to the work we do in housing counseling, again because many of the agencies alert us to issues that they are seeing and we in turn are collaborating with the other two offices.

We did note a few questions on the issue of resources, the FHEO, the staffing overall to HUD, if it is okay, I would like to address that too.

I am delighted that the administration, the secretary, they have noted the impact on all of the staff positions that have not been rehired at HUD or replaced over the past eight years to a decade. There was a focus of bringing new talent on to the HUD team and it is a very exciting time and we're looking at ways to speed processes up, and in that way, each office, regardless of who it is, FHAO, housing counseling, anyone else at HUD will have new resources and hopefully new technology to apply to what we do together.

MS. HILL [1:42:36]: Thank you, David, I was coming to you with the question was resources and was going to follow up with that. You read my mind, thank you for sharing that perspective for sure.

So hopping around a little bit, I hope that's okay, Rachel, we're going to come back to you with another legally specific question and of course if anyone has anything to share, you should feel free, but the question is, does disparate treatment have to be intentional for the claim to succeed? The question asker, they say they have read that disparate treatment doesn't have to be intentional, but that the different treatment itself can sort of lead to liability. There is a question here on how to prove disparate treatment.

MS. GEBALLE [1:43:32]: Yes, that's a really great question. Disparate treatment is under the umbrella of intentional discrimination. We talked about intentional discrimination and disparate impact. It is under that umbrella, but if you’re demonstrating a servicer, a service provider, a lender is treating different people differently on the basis of a protected

classification, that would be under that umbrella. You don't have to prove for example that they have negative thoughts or feelings about somebody on the basis of that protected characteristic. But, merely showing that they treated different people differently that would be sufficient. You don't have to show kind of a that that the organization had some intentionality, it is just that it is under that theory. One of the things important about that actually, that you bring a lawsuit, intentional discrimination, it gives you the opportunity to get the punitive damages which disparate impact is not. It does fall under the same that that umbrella, to give you that opportunity.

MS. HILL [1:44:42]: Great. Thank you. Nikitra, coming back to you, you mentioned zombie foreclosures in your presentation, and there was a question, I think you did go ahead and answer what a zombie foreclosure is and there is continuing discussion in the Q&A box because someone offered an additional definition. I just wanted to give you the opportunity to just kind of share what a zombie foreclosure is in case there are other people who also had the same question.

MS. BAILEY [1:45:13]: Sure. It pretty much is a foreclosure that's in limbo, a borrower may have received a notice of default and moved out of the home, but the foreclosure process may not have been completed. The borrower may not need to actually move out of the house. That's part of the kind of limbo status related to a zombie foreclosure and there are two answers that are in the chart if people want to refer to those answers there.

MS. HILL [1:45:47]: Wonderful. Thank you for that. David Sanchez, I think you could speak to this as well as possibly Nikitra, but the question is, the deadline for requesting a forbearance was June 30th and given the statistics, should the deadline be extended and I would also like to add is there any conversation, do people have thoughts on whether the deadline will be changed or has it been changed or extended.

MR. SANCHEZ [1:46:18]: I don't want to get details wrong here. I apologize if I do. My understanding is that FHA has extended the deadline which David had referenced in his presentation for requesting forbearance, I will add that Fannie and Freddie actually do not have a deadline. If you have a Fannie, a Freddie backed loan and you can request forbearance without a deadline.

I do think that continued access to forbearance, it is important. I think over time the agencies need to do thinking about how we use this model and make it kind of it was really expanded significantly for COVID. We have always done forbearance after national disasters, and it is the first time it has been ever really deployed at this scale to prevent a mortgage crisis. I think that the agencies should do some thinking about what are how do we kind of incorporate this permanently in the loss mitigation picture, so that borrowers will have access to forbearance when it is not a pandemic.

MR. BERENBAUM [1:47:18]: If I could jump in there too, David is absolutely right. We have extended, but the core goal at FHA, I suspect also at the other GSEs and the like is that they ensure sustainable homeownership and while the methodology may change from a COVID forbearance to perhaps a different form of waterfall moving forward for servicing

options and loss mitigation, the goals should always remain the same, if you streamlined, let it be easier for the consumers to access, let it be simple so that servicers, that they will have the resources to implement it quickly and I will tell you, once again, there is a lot of thought at FHA going on in this space and to stay tuned.

MS. HILL [1:48:10]: Great. Thank you. Any other thoughts around that question? No? Along those same lines, maybe as a follow up, I know David Sanchez, you had shared with us how people can, you know, begin to approach a lender, a servicer, to ask about forbearance options, you talked about what options are out there. Specifically, can you share a little bit about who people should contact when they are seeking forbearance and of course David Berenbaum, you can speak to this as well, and what should, who should people contact and what should they say when they're approaching a lender, a servicer to ask about forbearance options.

MR. SANCHEZ [1:48:59]: Definitely. You know, I would say for someone who knows what they want, who understands forbearance, it is simple, you just need to request a COVID forbearance from the servicer, you don't have to document the hardship, you have to attest verbally you have been affected by COVID and that's impacting your ability to pay your mortgage. Many servicers are allowing borrowers to enroll in forbearance just on the customer service website, you don't even have to call. Obviously they all accept kind of forbearance applications. They are not really applications but requests over the phone. If someone is having a hard time kind of understanding what options are there and needs more information, that's where some of the explanatory resources that have been put in the chat from the CFPD and HUD's robust housing counseling network is where I would recommend people to turn to. David has more to say about that.

MR. BERENBAUM [1:50:02: Well, thank you David. I welcome the recommendation and I hope that people follow it. Let me simply say, there is a percentage of mortgagors that simply have no trust in mortgage servicers or, in fact, some of what I will describe as the retail forms of assistance that are out there. Earlier, we heard from Nikitra I believe if I'm correct, about scams reemerging in the community. We are receiving real complaints in that space now. As well, you know, if you remember during the financial crisis, even the roadside signs for help call this number, they are reappearing in communities across the nation again. That's very unfortunate and we hope that AGs will work with CFPB across the nation. I will say there are issues of culture, and also practice. I recently spoke [unintelligible] on this issue serving the Asian and Pan-Pacific community, and there is a hesitancy among many of their constituents to call even a government agency, they go to family and faith first. How to bridge that, to build the trust, it is a significant challenge regardless of the roles we play.

I will simply say that housing counseling, particularly diverse constituency of housing counseling organizations, they can play a critical role. A thing I'm advocating for, it for mortgage servicers more right party contact with the housing cousneling should support and it is something that we see investors and FHA and others, including FHA to do more of in the future.

MS. HILL [1:52:01]: Great. Thank you. I would like to ask a question really of everyone now with regard to HUD backed reverse mortgages. The question asker, they're wondering if there are any programs that are available to help people who are in HUD backed reverse mortgages, you know, maybe having difficulties during the pandemic.

MR. BERENBAUM [1:52:33]: I'll jump in there. The simple answer is, if they are at risk of displacement in anyway, many of the national relief programs, they can be used and they should call a housing counseling organization. In fact, many of the larger groups that do pre-origination counseling and reverse mortgages, they are creating what I describe as special units of counselors who have been specially trained to deal with foreclosure risk for the elder population. It is an area where we consider doing much more outreach in as well. Often unfortunately we see situations where is there are legal issues and I will defer to Rachel and others to speak to those. The safety net is ready, available to work with elders who are struggling to sustain their homes.

MS. HILL [1:53:27]: Thank you. That's really helpful. Thank you. Rachel, you want to add anything there?

MS. GEBALLE [1:53:35]: Sure. I think that there are reverse mortgage servicers who are better and reverse mortgagors that are not as good as implementing the regulations around home intention and you know, in light of the presentation that I'm giving, I think you warrant to be aware of who the servicer is, if they're treating your client improperly on the base of race to raise it in a complaint and at least in the geography that I work in, those ones, they're also really targeted on the basis of race. There is a lot to think about reverse mortgages, oftentimes the homeowner, they come to you, maybe they haven't been able to pay their taxes and insurance and they end up in foreclosure for that reason.

Oftentimes, they end up in foreclosure, those are resolvable and unfortunately, they end up with problems in the foreclosure process and you can dig a little deeper and take a note of what that is, what the underlying loan is and it is possible that you can get some other relief for the client so just something to be aware of. We looked at a map that was about a reverse mortgage servicer that was targeted on the basis of race and if you do map them, you find that oftentimes they are targeting certain communities.

MS. HILL [1:55:04]: Thanks, Rachel. Before we wrap up, I want to give you a chance to give additional comments or perspectives on the companies that are raised, is there anything that anyone needs to say before we close. It looks like the answer to that question is no. With that, we're going to closeout today's discussion and it is an absolute pleasure to speak with this very esteemed panel, to have them answer all of your questions. I would like to thank you for all of your participation in the forum and we hope you will join us for the next conversation.

Please do check out the NFHTA website for the description and upcoming information for upcoming forums. Thank you to everyone that made today's event possible and I thank everyone at HUD and our interpreters and our captioner who provided invaluable services to us today.

If you are in need of assistance regarding a home foreclosure, call the hotline at 888-995-HOPE that's 4673. Finally, be on the lookout for a survey that will popup when the training session ends. The survey will allow you to provide valuable feedback on today's event. Your feedback really is critical to improving the forums because the feedback that you provide, it will be implemented in forums going forward. It shouldn't take very long to complete the anonymous survey and we do highly value your input. Thank you all, again. We look forward to seeing you at the next NFHTA forum. Take care.