

POST-PANDEMIC FORECLOSURE LANDSCAPE



December 8, 2021

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MARTY, WHATEVER HAPPENS



DONT EVER GO TO 2020!

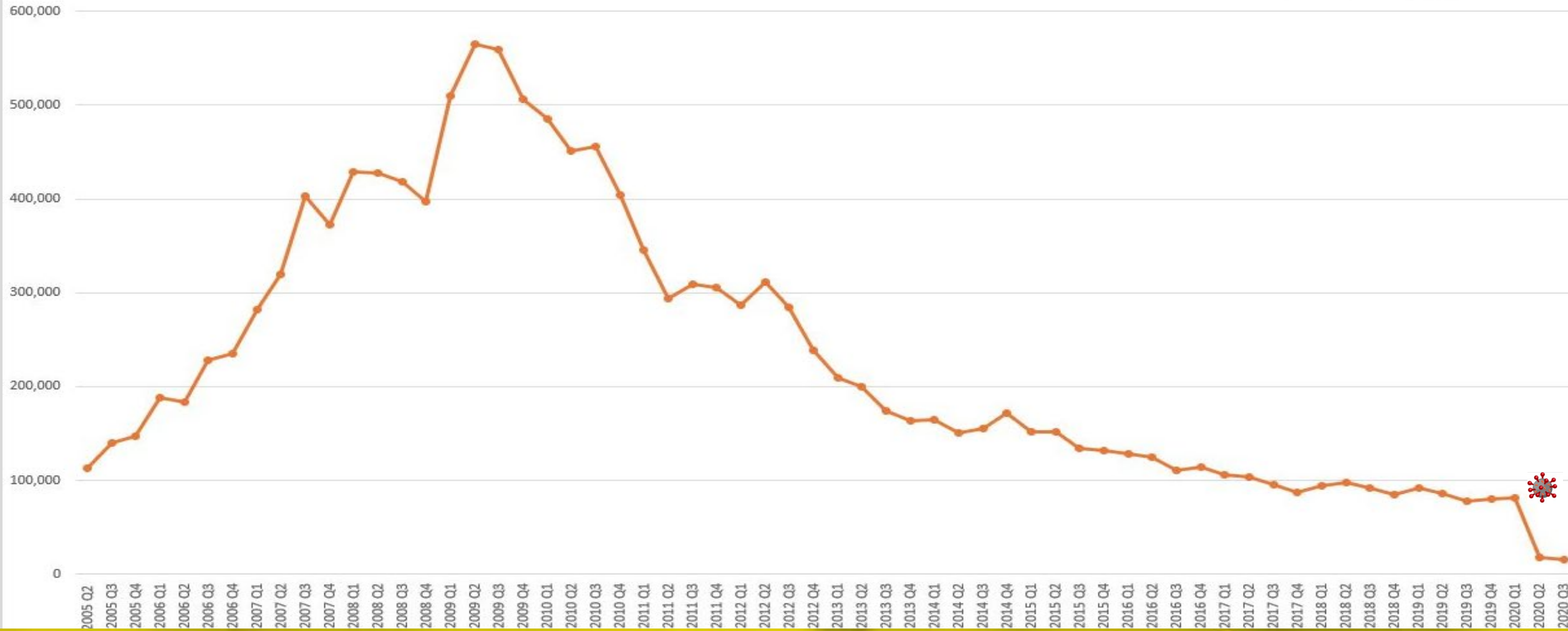
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The Pandemic Foreclosure Landscape

U.S. Foreclosure Starts



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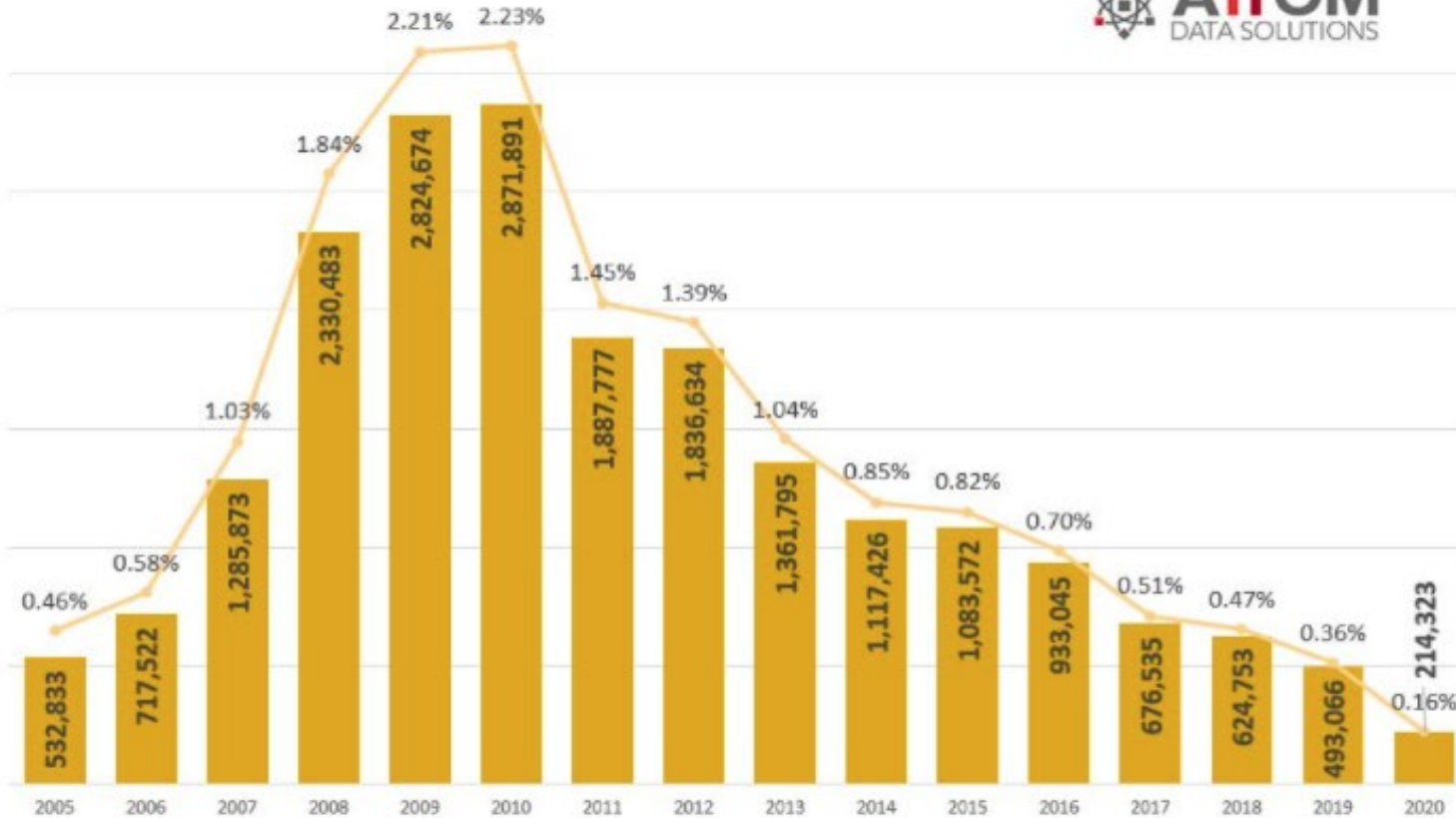
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16-Year Low in 2020

by ATTOM Staff | Jan 14, 2021 | Foreclosures, Most Recent Articles

U.S. Historical Foreclosure Activity and Rates

■ U.S. Properties with Foreclosure Filings — Foreclosure Rate (Pct of Housing Units)



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THE MORTGAGE LOAN PLAYERS

Borrower



Investor



Servicer

Regulated by HUD

Regulated by FHFA
(Federal Housing
Finance Agency)

- **Private**
 - Conventional
- **Government**
 - ➔ • FHA (Federal Housing Administration)
 - VA (Veterans Administration)
 - USDA (U.S. Dept of Agriculture)
- **Government Sponsored Entity**
 - ➔ • FNMA (Fannie Mae)
 - FHLMC (Freddie Mac)
 - GNMA (Ginnie Mae)
 - SLM Corp (Sallie Mae)

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Published: March 23, 2021 at 2:19 p.m. ET

—
By Eleanor Laise

Some 14.5 million single-family home loans are privately owned, with no federal backing, and occupy a gray area when it comes to government programs delaying foreclosure proceedings and granting payment forbearance



A real-estate broker inspects a foreclosed home in Miami. JOE RAEDLE/GETTY IMAGES

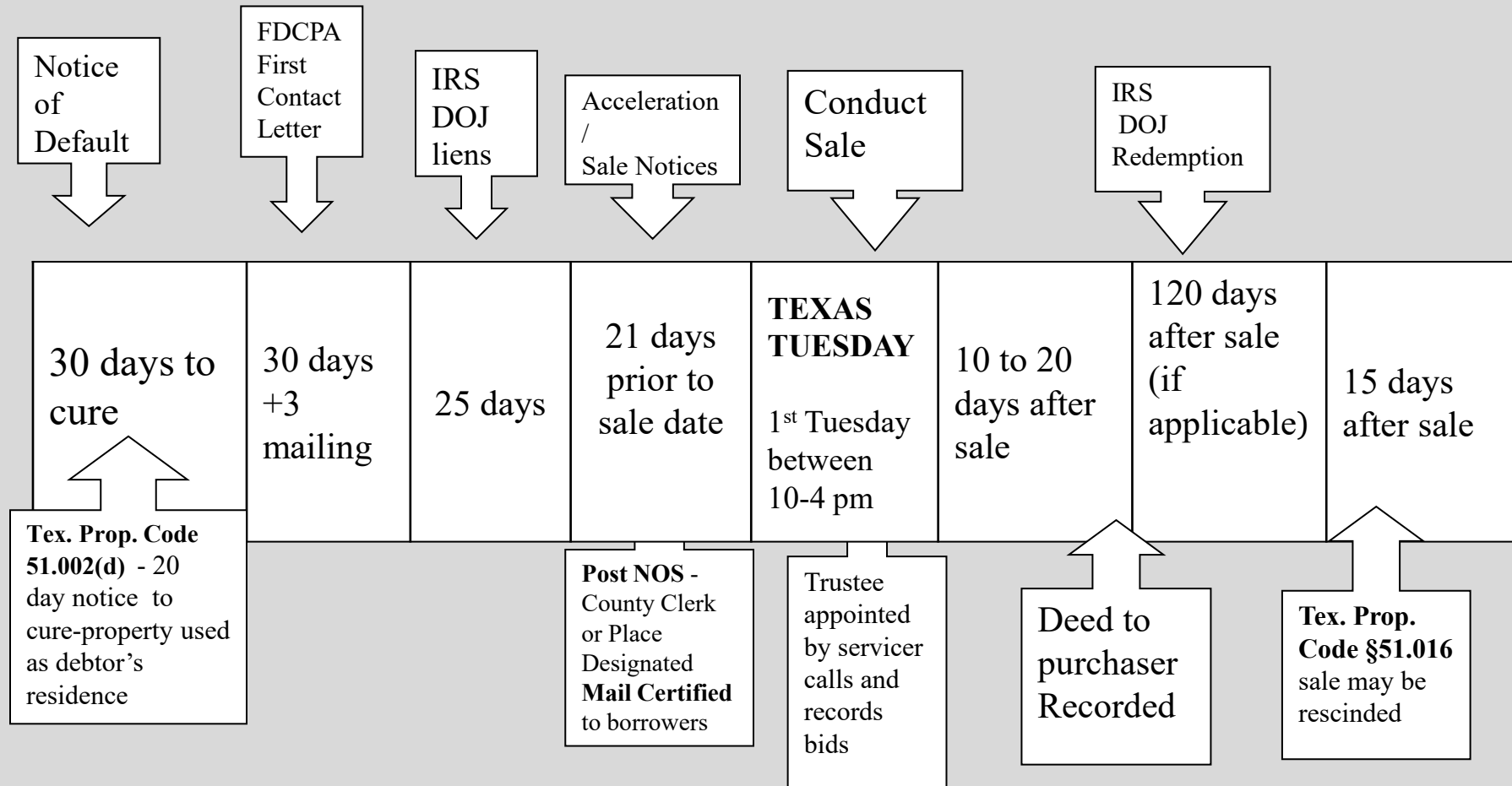
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TEXAS

TEXAS NON-JUDICIAL FORECLOSURE TIMELINE



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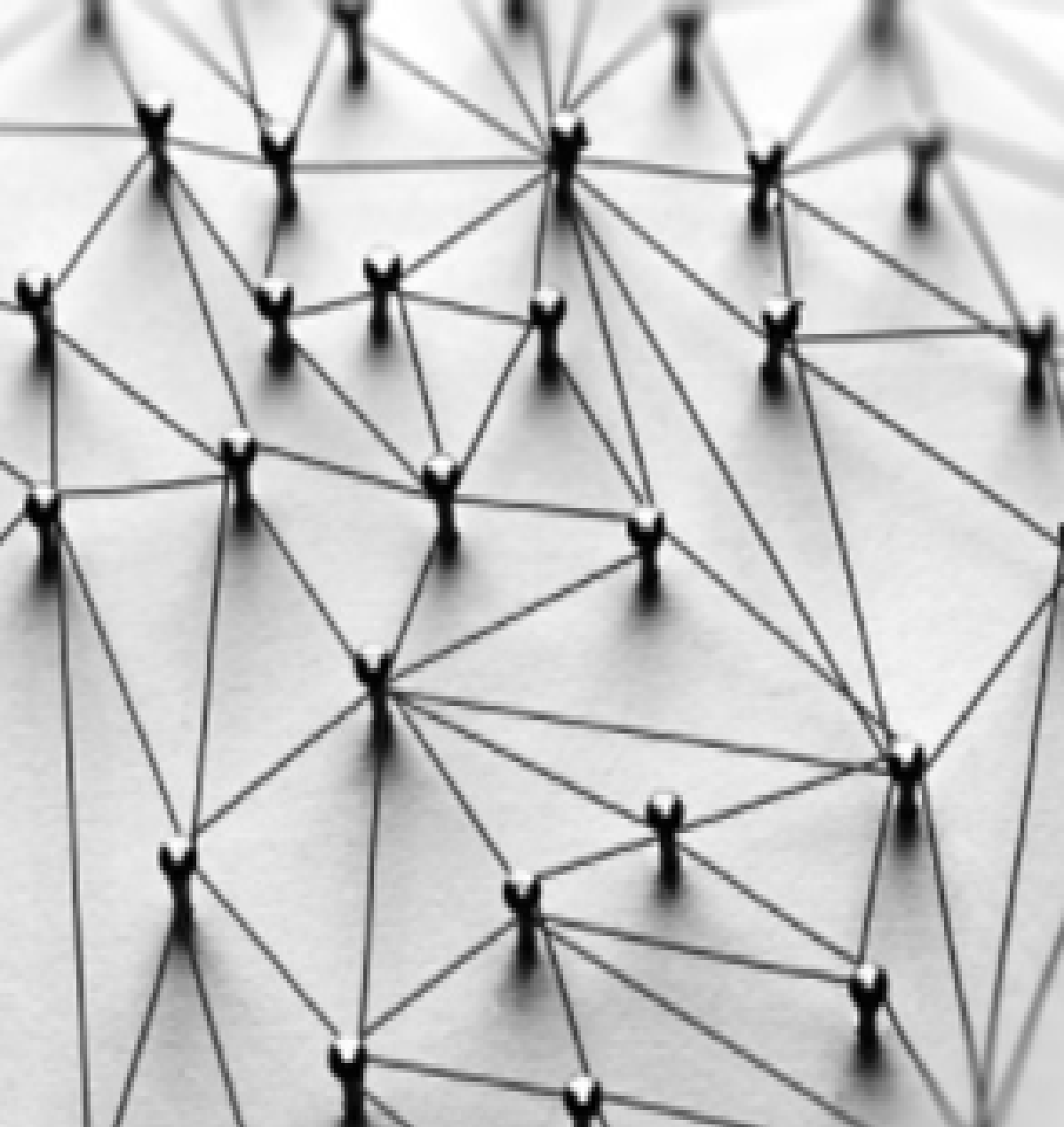
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TEXAS NON-JUDICIAL FORECLOSURE TIMELINE

Ways to Stop a Non-Judicial Foreclosure sale

- Payoff/Reinstate (even if accelerated)
- File Bankruptcy
- Death
 - Statute of Limitations tolled one year
- File Lawsuit, including TRO
 - *2 month minimum delay*



Texas Foreclosures

- **COVID 19- Government Impact**
- **COVID-19 -Forbearance**
- **COVID-19 – Loss**

Mitigation

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REGULATING ENTITIES

Federal Government

- Executive (President Issuing Orders)
 - COVID 19= National Emergency
- Judicial (Cases Interpreting)
- Legislative
 - CARES ACT -- CARES ACT (Round 2) -- AMERICAN RESCUE PLAN ACT of 2021
- Agencies
 - CDC (Center for Disease Control) -Distancing & mask guidelines --FHFA (Federal Housing Finance Agency)

Texas State Government

- Executive (Governor Issuing Orders)
 - COVID 19 = Emergency
- Judicial (*Texas Funding vs. Harris County and Lina Hidalgo*)
- Zoom court hearings, distancing & mask guidelines
- Legislative (2021 session is concluded)

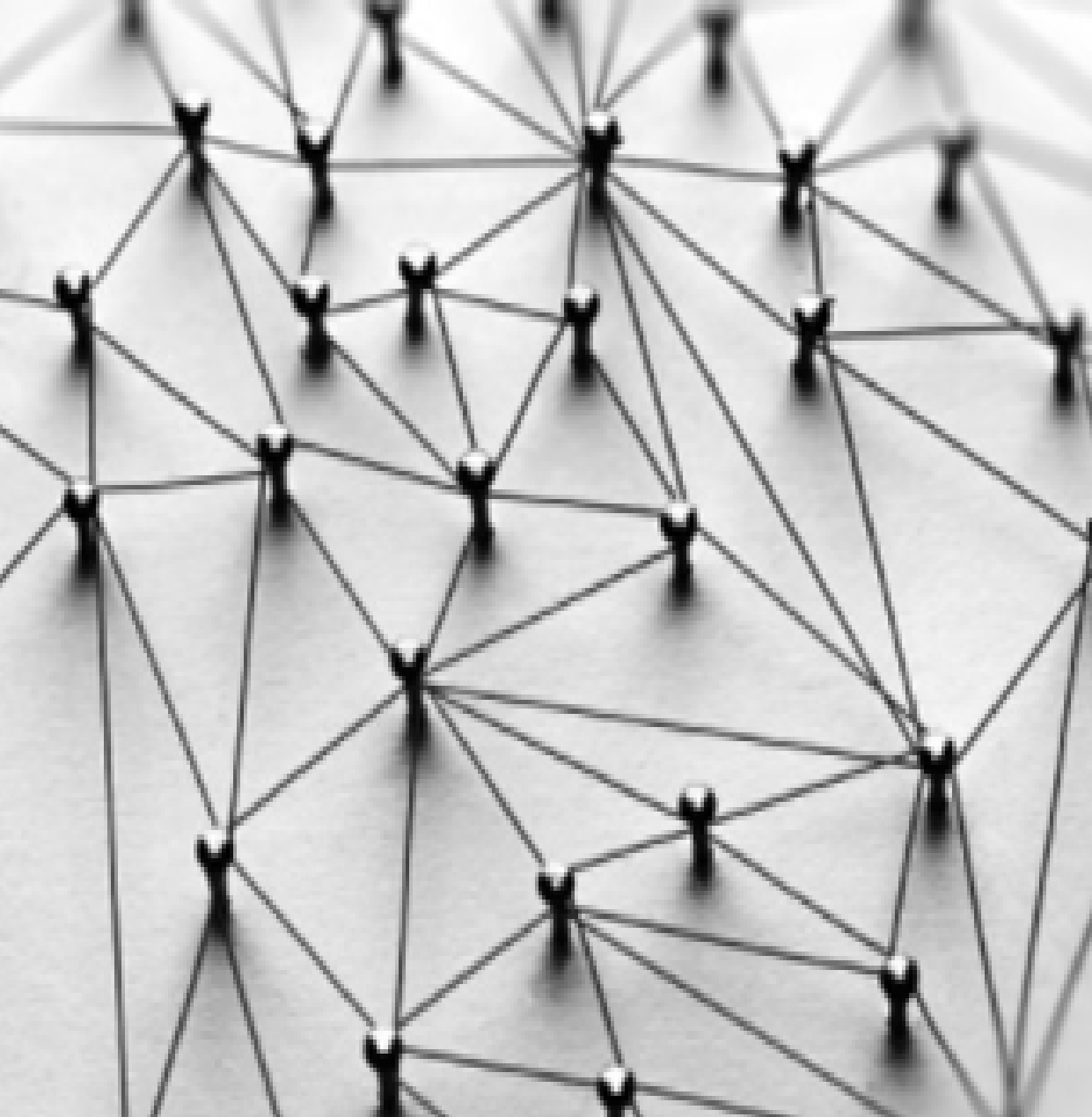
Texas Local Government

- 254 Counties (Each with their own local directives on masks, distancing, group size limits, subject to state orders)

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COVID 19 –Federal Legislative Impact

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PRESIDENTIAL EXECUTIVE ORDERS

- **Executive Order** (Day 1)

- Extends Foreclosure and Eviction moratoriums through March 31, 2021.
 - * Directed to CDC, FHA, VA, USDA, FHFA

- **Executive Order** (2/16/2021)

Extension of COVID-19 Forbearance and Foreclosure Protections for Homeowners

- Extends foreclosure moratorium for homeowners through June 30, 2021;
- Extends mortgage payment forbearance enrollment window to June 30, 2021
- Provides up to 6 months of additional mortgage payment forbearance, in 3 month increments, for borrowers who entered forbearance on or before June 30, 2021.

CARES ACT

The Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, 134 Stat. 281 (2020)

- \$2.2 trillion economic stimulus bill
- Signed into law March 27, 2020
- Largest economic stimulus package in U.S. history
- Among other things, protected those with federal-backed mortgages (Fannie/Freddie/VA/USDA) from foreclosure until August 31, 2020.
- The CARES Act provided 12 months of forbearance, but federal entities extended that to 18 months.
- Prohibited eviction from rental units that participate in federal assistance programs.
- On August 26, 2021 Supreme Court issued opinion blocking CDC holding “[i]f a federally imposed eviction moratorium is to continue, Congress must specifically authorize it.” See *Alabama Ass’n of Realtors, et al. v. Dep’t of Health and Human services, et al.* Case No. 11A23, 594 U.S. ____ (2021).

CARES ACT (Round 2)

Passed December 21, 2020 as part of the Bipartisan-Bicameral Omnibus COVID Relief Deal

Appropriated \$25 billion for rental assistance (allowed landlords to apply on behalf of their tenants)

Did not extend the foreclosure moratorium

However, moratorium has been extended by FHFA as to government backed loans several times

- March 18 to May 18, 2020
- May 18 to June 30, 2020
- June 30 to August 31, 2020
- August 31st to December 31, 2020
- December 31 to March 31, 2021
- March 31 to June 30, 2021
- June 30 to August 31, 2021

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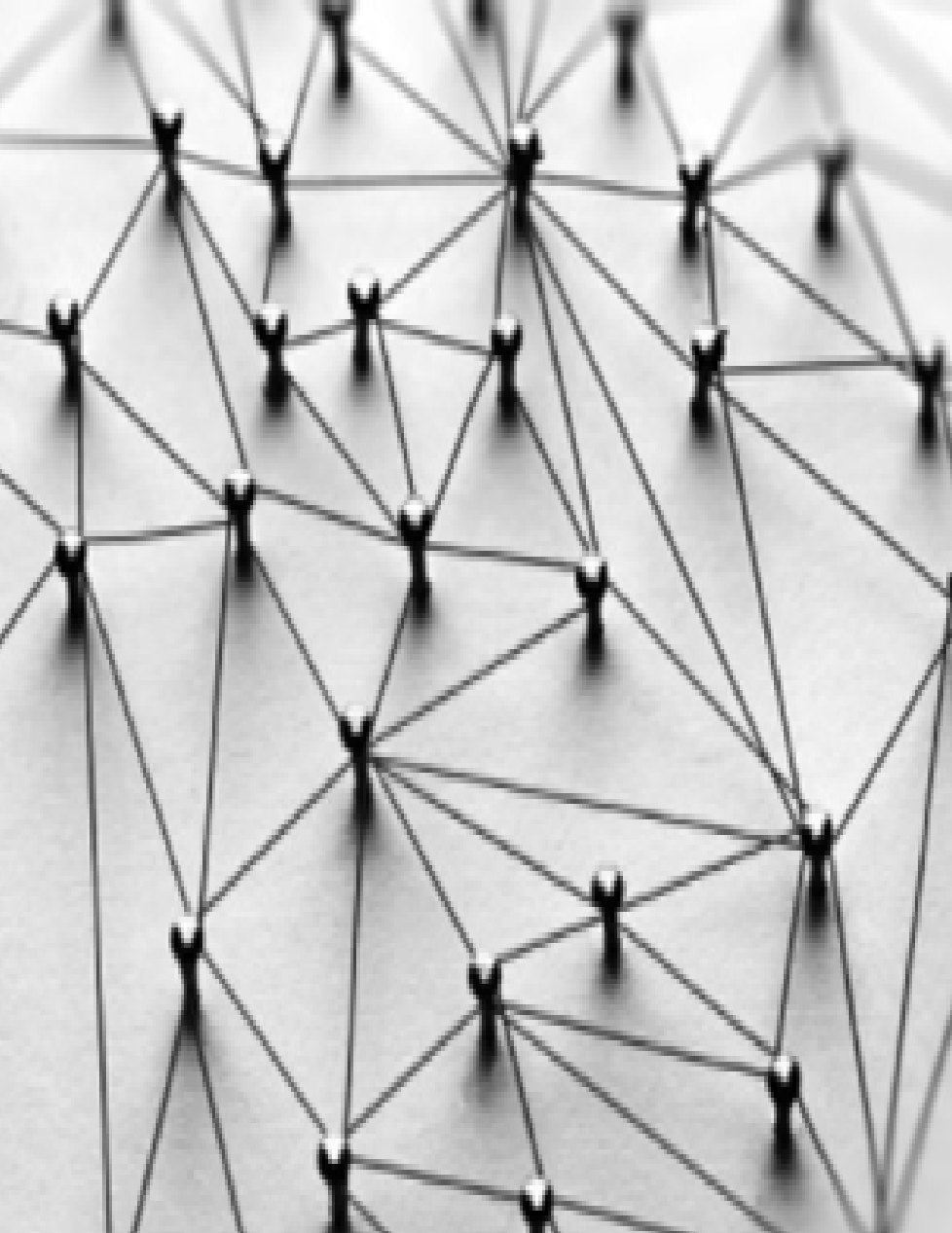
American Rescue Plan Act of 2021 (ARP)

\$1.9 trillion economic stimulus bill

- Signed into law March 11, 2021
- Extends expanded unemployment benefits with weekly \$300 supplement through Labor Day (September 6, 2021)
- Does **not** directly extend the foreclosure moratorium but provides funding for housing
- \$21.6 billion for Homeowners Assistance Fund for states and local government to provide grants to homeowners to prevent default/foreclosure
- Funds can also be used to pay for flood insurance premiums, HOA dues, utilities--anything that averts foreclosure

EVICTIIONS

- On August 3, 2021, the Centers for Disease Control and Prevention (CDC) issued a fourth extension of the eviction moratorium effective through October 3, 2021, after the previous CEC eviction moratorium expired on July 31, 2021.
- On August 26, 2021 Supreme Court issued opinion blocking CDC holding “[i]f a federally imposed eviction moratorium is to continue, Congress must specifically authorize it.” See *Alabama Ass’n of Realtors, et al. v. Dep’t of Health and Human services, et al.* Case No. 11A23, 594 U.S. ____ (2021).
- The CDC was relying on Section 361(a) of the Public Health Services Act, but the Court found the argument a “stretch” and noted “It strains credulity to believe that this statute grants the CDC the sweeping authority it asserts.”



COVID 19 Forbearance

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FORBEARANCE – A Prospective

Many borrowers whose mortgages went into forbearance when the CARES Act passed are now seeing that protection expire. According to Black Knight, about 1.14 million borrowers were still in forbearance at the start of November. That's down from a pandemic peak of 1.7 million homeowners.

<https://www.bankrate.com/mortgages/what-to-do-if-your-mortgage-forbearance-is-ending/>



By Andy Walden

January 22, 2021 | Data & Analytics, Servicing

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CFBP FORBEARANCE STATISTICS

Foreclosures are surging now that Covid mortgage bailouts are ending, but they're still at low levels

KEY POINTS

- Pandemic-related mortgage bailouts are ending, and foreclosures are now rising
- Loans placed in forbearance early in pandemic (March and April 2020) will exit September/October 2021
- Foreclosure starts jumped 32% in the third quarter of this year from the second quarter and were 67% higher than the third quarter of 2020.
- The foreclosure numbers should stay relatively low because of aggressive modifications by lenders and also because of high levels of home equity.

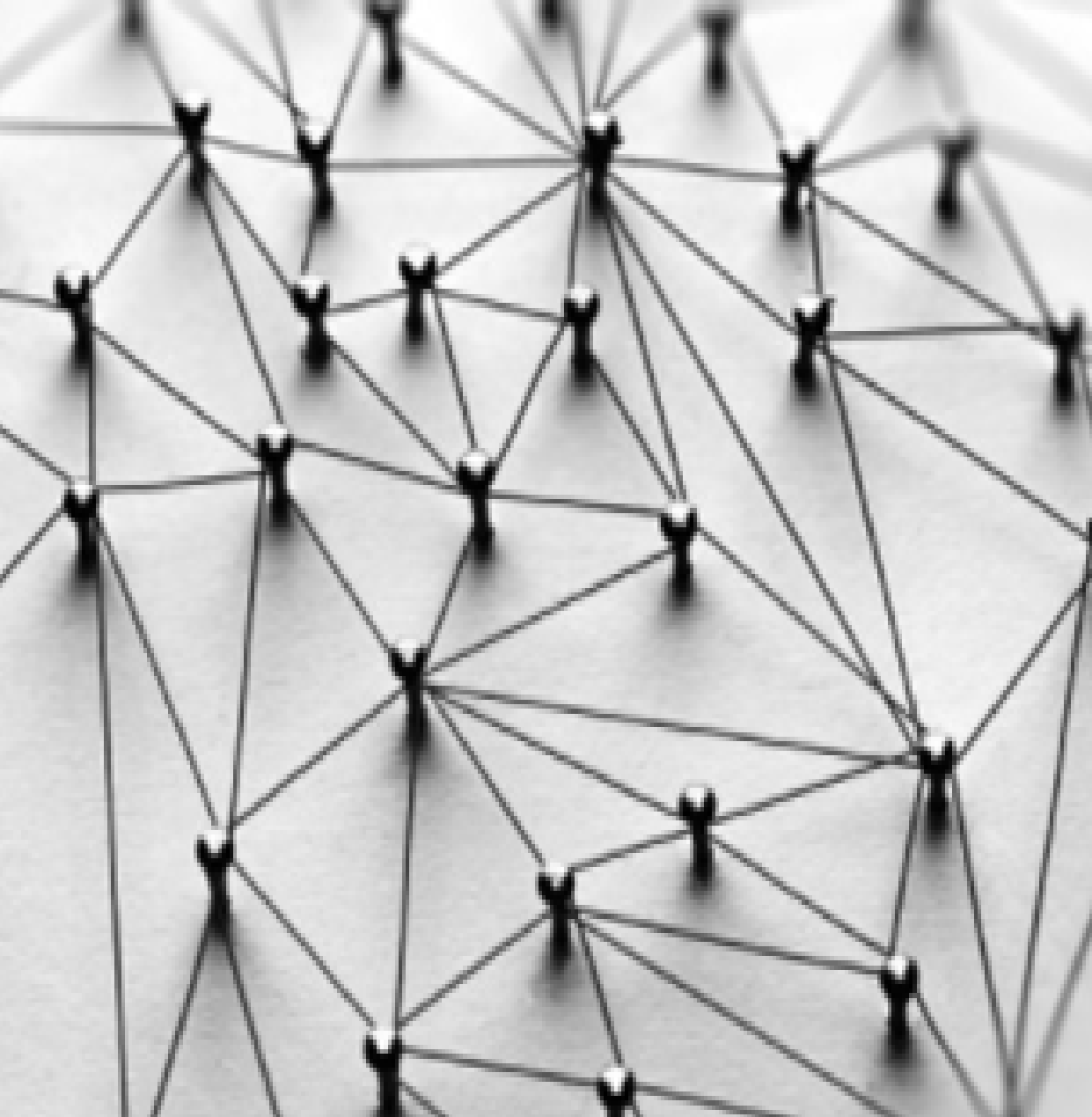
As of October 14, 2021 per

<https://www.cnbc.com/2021/10/14/foreclosures-surge-67percent-as-covid-mortgage-bailouts-expire.html>

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COVID 19 –Loss Mitigation

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TRADITIONAL LOSS MITIGATION – RETENTION

- **Delinquency Deferral** Bring loan current by deferring past due amounts to future date, typically with some debt forgiveness
- **Forbearance** Bring loan current by deferring past due amounts to future date (loan maturity, sale, refinance)
- **Loan Modification** Bring loan current by changing original loan terms, payment amount, interest rate, term)
- **Payoff** Pay entire loan in full in lump sum payment
- **Repayment Plan** Pay past due amounts over set period in addition to current monthly mortgage payments
- **Reinstatement** Pay all past due amounts in lump sum (loan current)

TRADITIONAL LOSS MITIGATION- LIQUIDATION

- **Deed in Lieu of Foreclosure**

(Mortgage Release)

Lender accepts property in full or partial satisfaction of debt

- Preserves right of foreclosure (title defects)
- Vacate in “broom swept” condition by date certain

- **Short Sale**

(Pre-Foreclosure sale)

Lender accepts less than full payoff amount

- No junior liens; or
- Agreements of all junior lienholders to release liens

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TRADITIONAL LOSS MITIGATION – GOVERNMENTAL ENTITIES

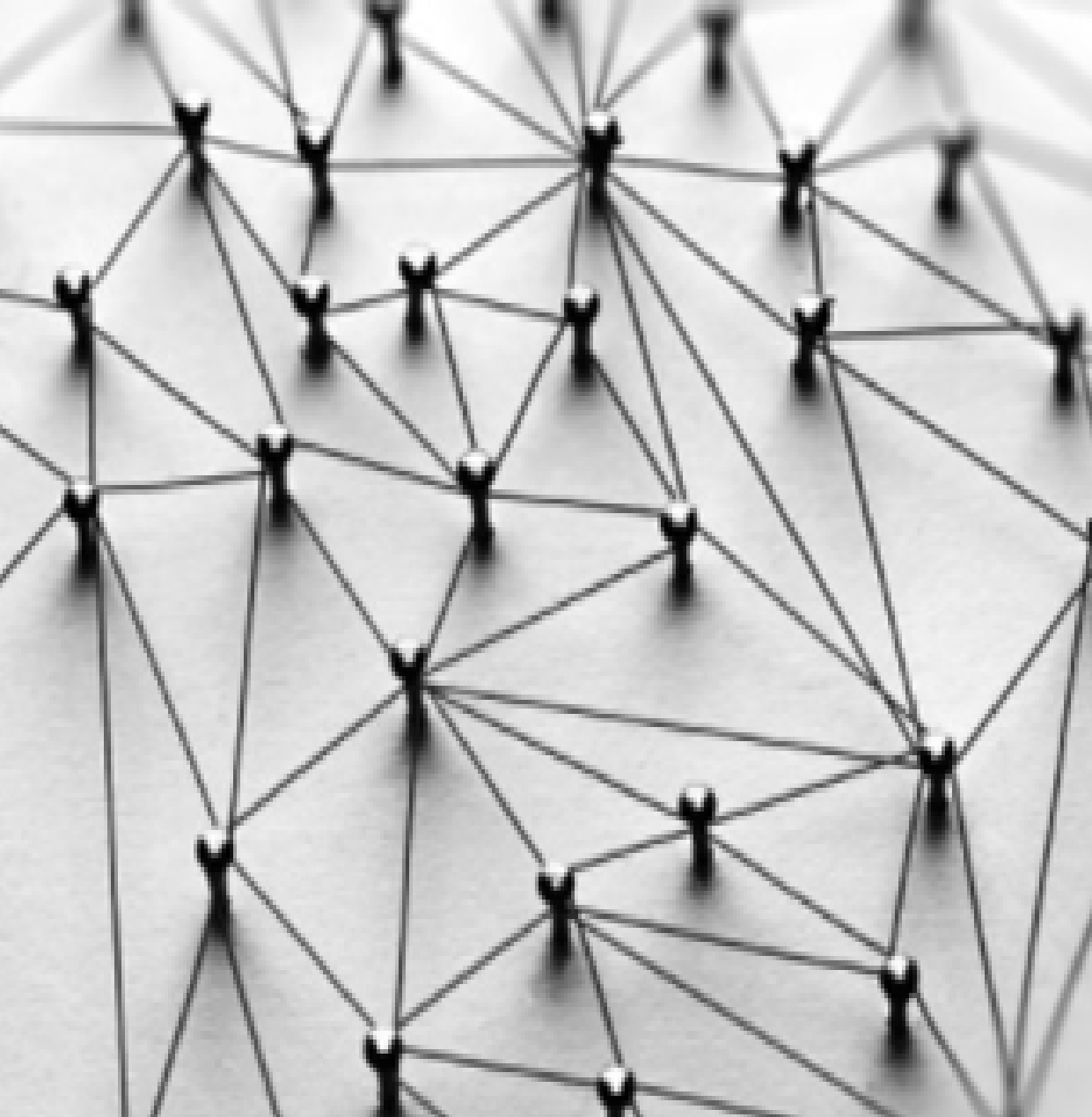
LOAN MODIFICATION

- **Conventional**
 - Traditional Modification
- **FHA**
 - Standalone Modification
 - Standalone Partial Claim
 - Modification with Partial Claim
- **FNMA/FHLMA**
 - Flexible Modification
- **USDA**
 - Traditional Modification
 - SLS Modification
 - SLS Modification with MRA
 - Standalone MRA
- **VA**
 - Traditional Modification
 - VA Affordable Modification

COVID-19 LOSS MITIGATION OPTIONS

Streamline Loan Modification

- Brings loan current by changing terms of original mortgage, such as term, interest rate, payment amount
 - Streamline Flex Modification (FNMA/FHLMC)
 - COVID 19 Standalone Modification (FHA)
 - Disaster Modification (VA)
 - Extend Modification (conventional)
 - Cap and Extend Modification



COVID 19 – Dec 2021

CFPB Temporary Rules

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CFPB CHANGES TO REGULATION X (RESPA Servicing Rules)

12 CFR Part 1024// Docket No. CFPB 2021-0006

Focus:

- In spring of 2021, the CFPB amended Regulation X to assist mortgage borrowers affected by COVID effective August 31, through December 31, 2021
- The final rule established temporary procedural safeguards to help ensure that borrowers have a meaningful opportunity to be reviewed for loss mitigation before the servicer can make the first notice or filing required for foreclosure on certain mortgages.
- Impacts Borrowers currently delinquent not in active forbearance/loss mitigation, requiring early intervention by servicers

- It also allowed servicers to offer certain streamlined loan modifications based on the evaluation of an incomplete loss mitigation application, potentially allowing homeowners, including those exiting forbearance to enter affordable solutions faster
- Finally, the rule required servicers to increase their outreach to borrowers before initiating foreclosure and tell borrowers key information about their repayment or other options when they communicate with borrowers who are exiting forbearance or struggling to make mortgage payments. The CFPB will be monitoring for compliance with these rules.
- As of now, these temporary rules are scheduled to expire on December 31, 2021
- https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-efforts-response-coivd-19-pandemic_white-paper_2021-11.pdf

CFPB CHANGES TO REGULATION X (RESPA Servicing Rules)

12 CFR Part 1024// Docket No. CFPB 2021-0006

- Applies to:
 - Loans secured by principal residence
 - Could include abandoned if principal residence
- Exemptions:
 - Small Servicers (12 CFR 1024.30(b)(1); 12 CFR 1026.41 (e)(4))

CFPB COMPLIANCE BULLETIN WARNS MORTGAGE SERVICERS: UNPREPARED IS UNACCEPTABLE

12 CFR Part 1024 Bulletin 2021-02: (4/1/2021)

- CFPB will **closely monitor** how servicers
 - engage with borrowers
 - respond to borrower requests, and
 - process applications for loss mitigation
- CFPB **expects** that servicers
 - Be proactive –*reach out to borrowers*
 - Work with borrowers (*compiling information for loss mitigation options*)
 - Address language access (*EEOC implications*)
 - Evaluate information fairly process (*consider income from public assistance, child support, alimony, in accord EEOC*)
 - Promptly handle inquiries
 - Prevent avoidable foreclosures

CFPB CHANGES TO REGULATION X (RESPA Servicing Rules)

12 CFR Part 1024// Docket No. CFPG 2021-0006

Pre-Foreclosure review period to December 31, 2021

- Exceptions:
 - Completed loss mitigation review and borrower not eligible for non-foreclosure option; or
 - Made certain efforts to contact borrower and borrower non-responsive

CFPB CHANGES TO REGULATION X (RESPA Servicing Rules)

12 CFR Part 1024// Docket No. CFPG 2021-0006

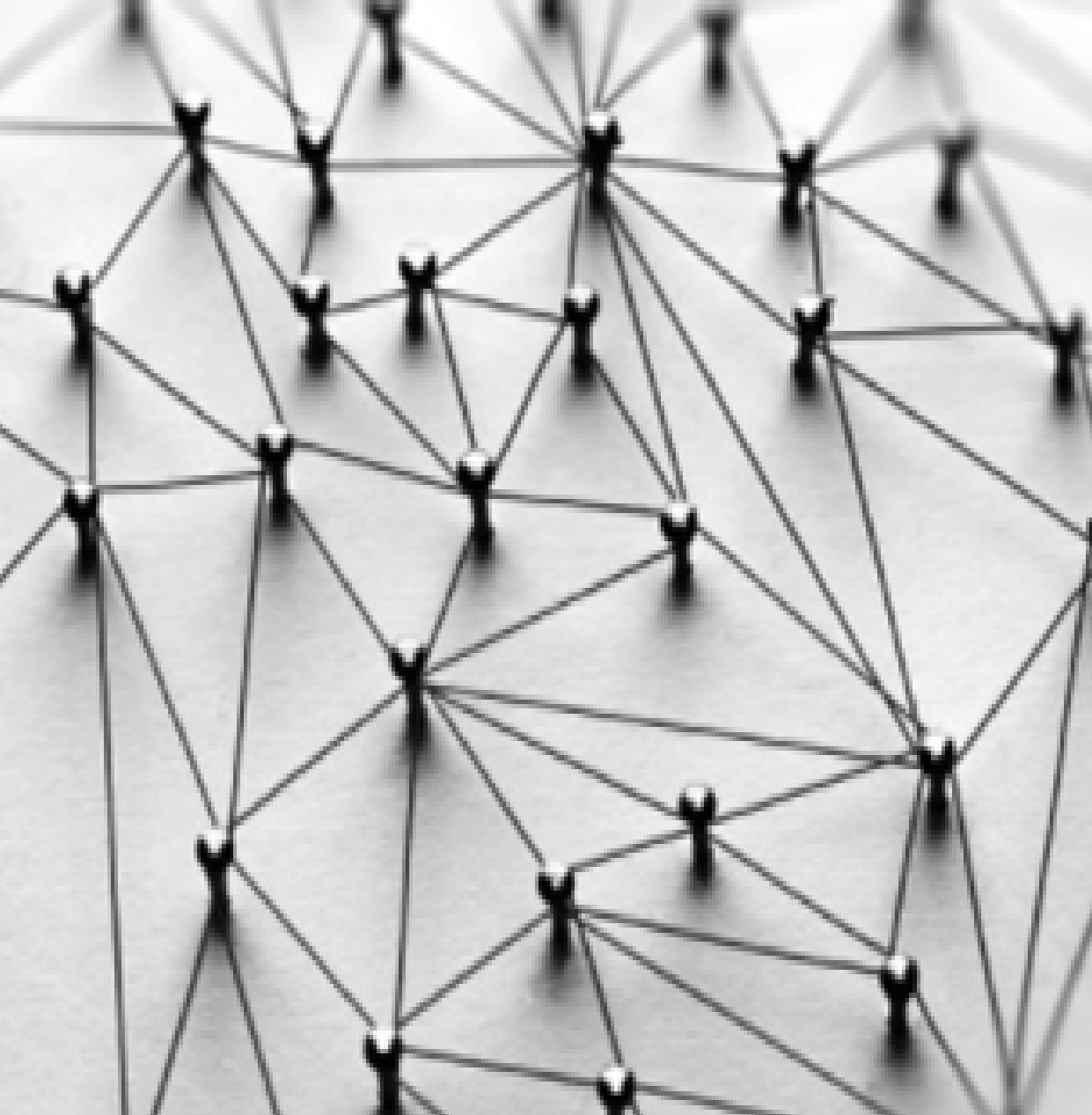
Streamlined Loan Modification for COVID 19 hardship upon evaluation of INCOMPLETE loss mitigation application

- must be available to borrower experiencing COVID 19 hardship
- cannot increase monthly required principal and interest payments and cannot extend term by more than 480 months from effective date of modification
- deferred amounts may not accrue interest
- no loan modification fee, service must waive all existing late charges, penalties, stop payment fees, similar charges upon borrower acceptance of loan modification

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COVID 19 –Texas

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TEXAS Homeowner Assistance Fund Plan

Texas will receive \$842,214,006 from the HAF

Funds Awarded:	\$842,214,006
Administration (Maximum):	\$126,332,10

Launch within 8 weeks of Treasury approval; all funds disbursed by 9/30/2026

Administered by Texas Department of Housing and Community Affairs (TDHCA)
on behalf of US Treasury

One program: Texas Homeowner Reinstatement Program
Structured as non-recourse grant

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TEXAS Homeowner Assistance Fund Plan

Max Amount per household: \$30,000

Prioritized Eligible Uses:

Mortgage/housing loan reinstatement (including escrows), including up to 3 months of additional mortgage payment assistance

Property taxes and homeowner's insurances (hazard/mortgage), if escrowed

Condominium/homeowners' association fees, if escrowed

One disbursement per payee

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TEXAS Homeowner Assistance Fund Plan

Eligible Homeowners

Owned home on or before January 1, 2020

Currently own and use for residential use

Experienced financial hardship after January 1, 2020 (documented attestation)
material reduction in income
material increase in expenses (medical, utilities) related to COVID 19

At least 60 days delinquent (per documented by payee or agent)

Sign required documents/agreed to HAF Plan terms

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- [Emergency Order 44 – Issued 11/10/2021](#)

Replaces the 42nd Emergency Order; With the closing of the Texas Eviction Diversion Program, this order requires certain language and actions in proceedings concerning evictions for nonpayment of rent.

STATE BAR *of* TEXAS

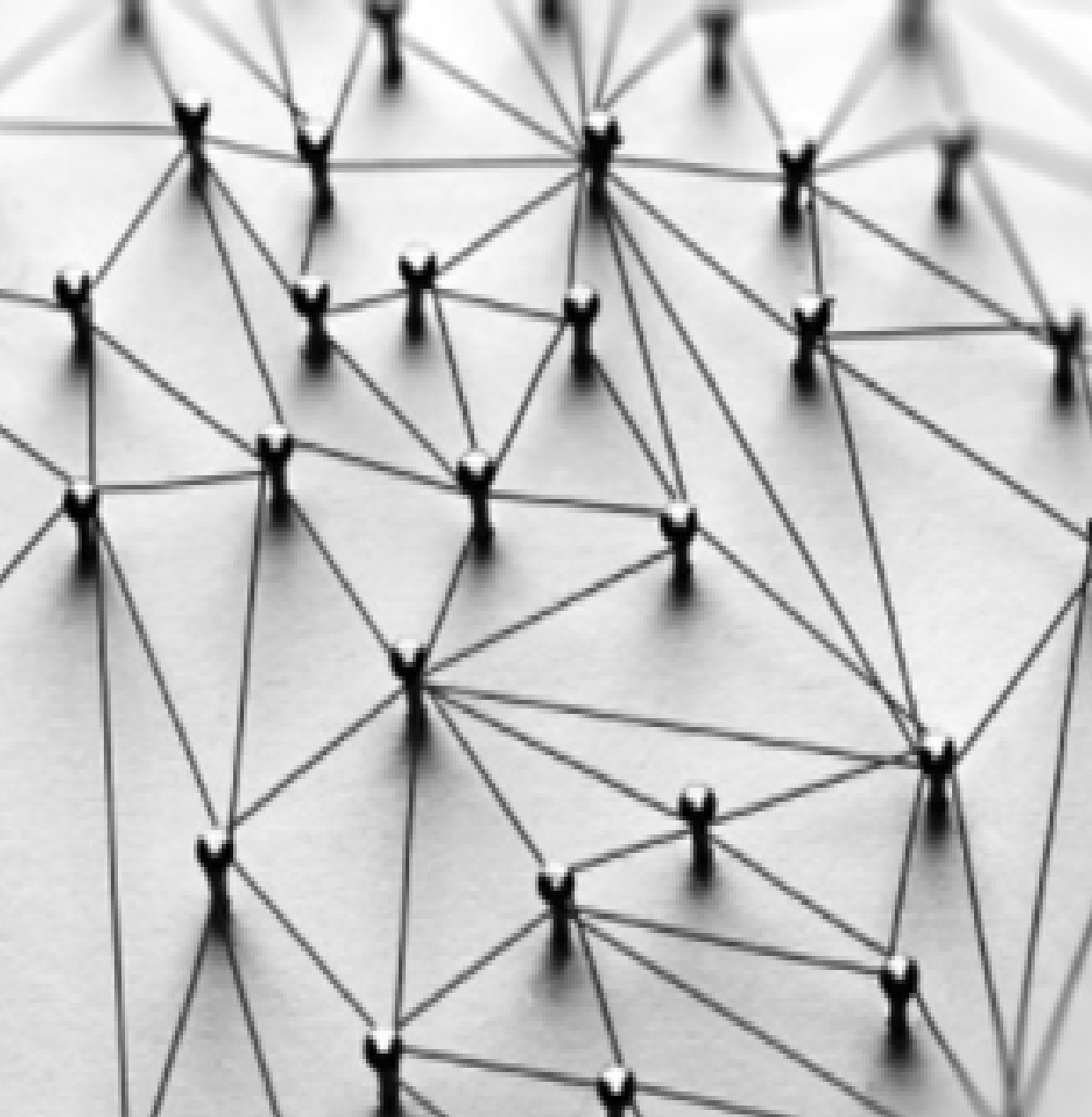
Dear Member,

The Texas Supreme Court has issued its [44th Emergency Order](#) of the COVID-19 pandemic. In it, the court recognizes the Texas Eviction Diversion Program has closed to new applications. The order requires specific language to be included in citations relating to eviction from residential property for nonpayment of rent; requires trial courts to allow representatives from volunteer or legal aid organizations to be present or provide assistance to eligible litigants; and includes other provisions relating to evictions.

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COVID-19 What to Expect in 2022

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Q3 2021 U.S. Foreclosure Activity Begins To See Significant Increases As Foreclosure Moratorium Is Lifted

<https://www.prnewswire.com/news-releases/q3-2021-us-foreclosure-activity-begins-to-see-significant-increases-as-foreclosure-moratorium-is-lifted-301399980.html>

Average Time to Foreclose Nationwide Increases 11 Percent From a Year Ago; U.S. Foreclosure Starts Increase 67 Percent From a Year Ago

IRVINE, Calif., Oct. 14, 2021 /PRNewswire/ -- **ATTOM**, licensor of the nation's most comprehensive foreclosure data and parent company to RealtyTrac (www.realtytrac.com), the largest online marketplace for foreclosure and distressed properties, released its Q3 2021 U.S. Foreclosure Market Report, which shows there were a total of 45,517 U.S. properties with **foreclosure filings** — default notices, scheduled auctions or bank repossessions — up 34 percent from the previous quarter and 68 percent from a year ago.

The report also shows there were a total of 19,609 U.S. properties with foreclosure filings in September 2021, up 24 percent from the previous month and up 102 percent from September 2020.

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MOVING FORWARD

After forbearance ends:

- Resume contractual payments with delinquency deferred to end of loan
- Sell property as long as current seller's market continues
- Enter into loan modification with lower monthly payments
- participate in \$10 billion dollar mortgage payment relief approved by Congress

CFPB, The Fed, FDIC and other agencies will watch for compliance with COVID-19 protections

KEY TAKEAWAYS

- The statement issued Wednesday makes clear the agencies will apply their respective supervisory and enforcement authorities to protect homeowners and address any compliance failures.

<https://nationalmortgageprofessional.com/news/>

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We can't suspend evictions and foreclosures forever

Opinion by Jim Parrott and Laurie Goodman for CNN Business Perspectives

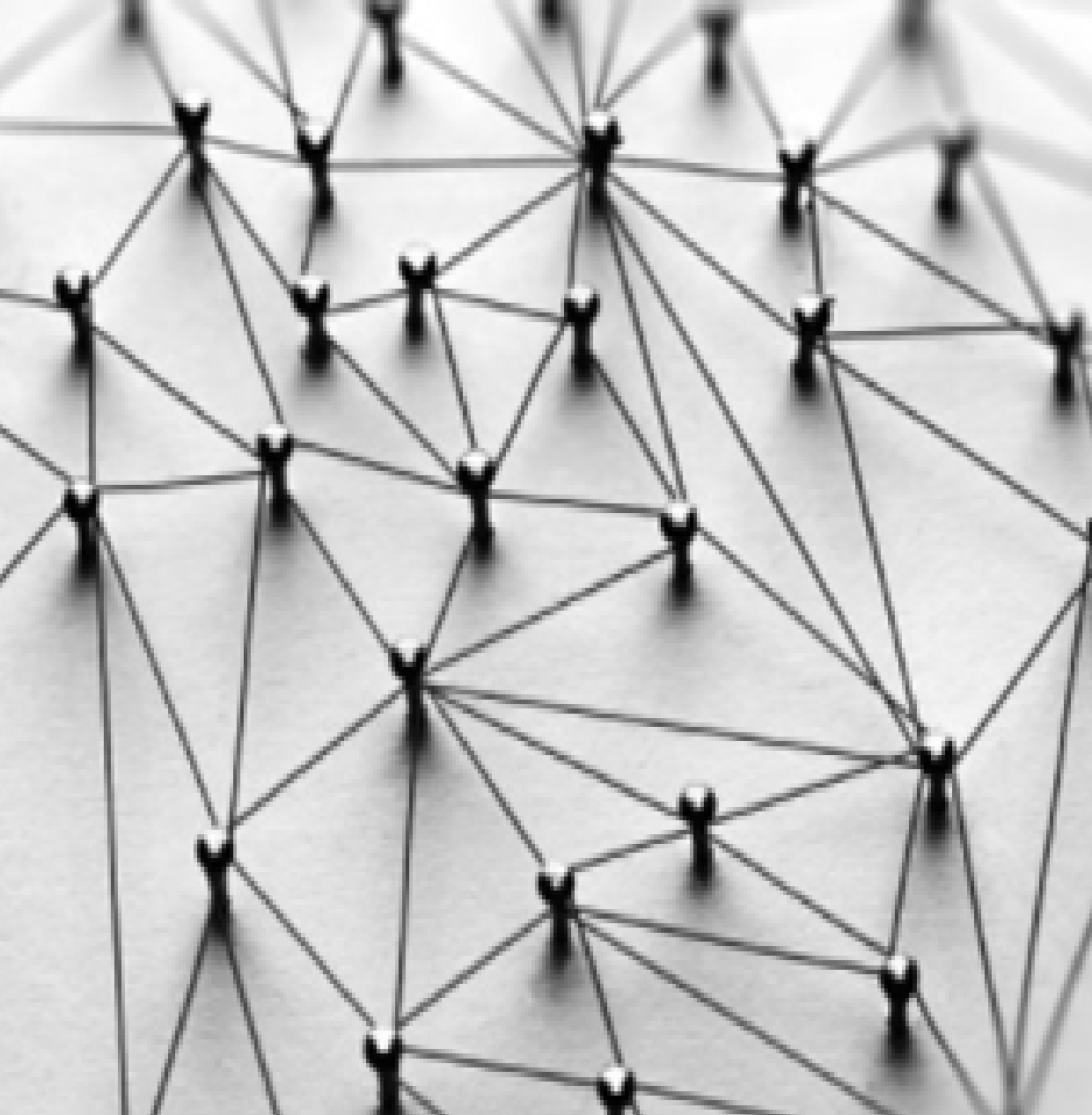
Updated 10:59 AM EDT, Sat March 27, 2021

Struggling homeowners are currently provided up to eighteen months of forbearance. After their period of forbearance ends, those who can afford their old mortgage payment will pick it back up again, tacking the unpaid amount to the end of the mortgage; while those who can't afford it will be offered a modified loan with a lower monthly payment. Congress has also appropriated \$10 billion in mortgage payment relief, which will likely go towards deeper assistance for those for whom the existing relief isn't enough. Only those homeowners unable to make ends meet under any of these options will lose their homes. And, of these, only those with little to no equity are likely to be forced into foreclosure or another form of distressed sale.

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