Responses of Neil M. Barofsky to Questions for the Record from Senator Kamala D. Harris Following the U.S. Senate Committee on Homeland Security and Governmental Affairs Hearing on "Oversight of COVID-19 Financial Relief Packages"

1. Do you think that, in order to avert the pending evictions crisis, we need to provide assistance to homeowners and renters who may be facing housing insecurity?

Yes. Without government support, it is expected that millions of Americans will lose their homes. In the wake of the pandemic, the number of American homeowners missing mortgage payments has increased to staggering heights,[1] and recent reports indicate that in addition to a wave of foreclosures that will otherwise follow, an estimated 20 million renters will be at risk of eviction by the end of September, with that number rising to an estimated 30 to 40 million by the end of this year.[2] Much of the government relief intended to directly help these struggling Americans is already vanishing,[3] and many states have let their protections lapse.[4] As a result, some areas are

[1] The total delinquency rate for conventional mortgage loans reached 6.68% in the second quarter of 2020, the highest rate since 2012, and the delinquency rate for Federal Housing Administration loans, which are designed to assist low-to-moderate income borrowers, reached 15.65%, the highest rate recorded by the Mortgage Bankers Association since it began its survey in 1979. "Mortgage Deliquesces Spike in the Second Quarter of 2020," Mortgage Bankers Association (Aug. 17, 2020), https://www.mba.org/2020-press-releases/august/mortgage-delinquencies-spike-in-the-second-quarter-of-2020.

[2] Derek Thompson, "A Lot of Americans Are About to Lose Their Homes," The Atlantic (July 15, 2020), https://www.theatlantic.com/ideas/archive/2020/07/americas-health-crisis-is-becoming-a-housing-crisis/614149/; Emily Benfer et al., "The COVID-19 Eviction Crisis: an Estimated 30-40 Million People in America Are at Risk," The Aspen Institute (Aug. 7, 2020), https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/.

[3] Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, evictions in most federally-subsidized housing were banned until July 24, 2020, with landlords permitted to issue 30-day eviction notices starting July 25, 2020. Much of the foreclosure moratorium on certain federally-backed mortgages ended August 31, 2020, under the CARES Act and subsequent federal guidance, though some foreclosures continue to be prohibited through the end of the year. In addition, the enhanced unemployment benefits provided for in the CARES Act ended on July 31, 2020.

[4] *See* Ann O'Connell, "Emergency Bans on Evictions and Other Tenant Protections Related to Coronavirus," Nolo, https://www.nolo.com/legal-encyclopedia/emergency-bans-on-evictions-and-other-tenant-protections-related-to-coronavirus.html (last updated Sept. 1, 2020).

already seeing a surge of evictions.[5] Some commentators are noting that the housing crisis is already at our door.[6]

With the threat of mass evictions on the horizon, earlier this week the Centers for Disease Control and Prevention ("CDC") issued an order prohibiting evictions through the end of the year for renters that qualified for a direct stimulus payment under the Coronavirus Aid, Relief, and Economic Security (CARES) Act or expect to earn less than $99,000 in 2020, or $198,000 if filing a joint tax return.[7] But it is still unclear whether the CDC order's conditions are workable or will do enough. The myriad conditions and certifications called for may end up excluding many families from relief, and for those that can navigate the program and do qualify, provisions that will allow the charging of unpaid rent, fees, and interest may end up just kicking the eviction can down the road until after the moratorium expires on December 31, 2020.[8] Although time will tell the effect of this program, some have already pointed out that without affirmative rental assistance and other protections for renters like those contemplated in the Rent Emergencies Leave Impacts on Evicted Families (RELIEF) Act, the CDC order may be largely ineffective.[9]

One thing that is clear, without proactive government intervention for both homeowners and renters, there is a profound risk that the wounds from this crisis will be deep, painful, and

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[5] *See* Matthew Desmond, "The Rent Eats First, Even During a Pandemic," N.Y. Times (Aug. 29, 2020), https://www.nytimes.com/2020/08/29/opinion/sunday/coronavirus-evictions-superspreader.html?referringSource=articleShare (citing surging eviction rates in several states); Phil McCausland, "Evictions in South Carolina Signal Housing Crisis for Renters Nationwide as Homelessness Looms," NBC News (Aug. 10, 2020), https://www.nbcnews.com/news/us-news/evictions-south-carolina-signal-dire-straits-renters-nationwide-homelessness-looms-n1236224.

[6] *See, e.g.*, Christian Weller, "The Coming Housing Crisis Is Already Here," Forbes (July 10, 2020), https://www.forbes.com/sites/christianweller/2020/07/10/the-coming-housing-crisis-is-already-here.

[7] "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19," Centers for Disease Control and Prevention, https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-19654.pdf (last visited Sept. 2, 2020).

[8] *Id*.

[9] Chris Arnold, "CDC Issues Sweeping Temporary Halt on Evictions Nationwide Amid Pandemic," NPR (Sept. 1, 2020), https://www.npr.org/sections/coronavirus-live-updates/2020/09/01/908581048/sweeping-new-eviction-ban-from-trump-administration.

lasting. Losing a home is devastating to individuals and families, not only because the home is often the most significant investment an individual or family possesses, but also because of the greater social impacts as well. For example, research links the loss of a home to an increased likelihood of homelessness, diminished ability of individuals to obtain employment, credit, or other quality housing, and a host of negative health outcomes, including depression, suicide, and anxiety.[10] The effects of evictions are particularity stark—not only are evictions more immediate than foreclosures,[11] but individuals suffering an eviction are also likely to require emergency public and medical services and require child welfare services, among other harms.[12] Children feel these effects particularly hard, with the instability of foreclosures and evictions impacting their physical and mental health for years.[13]

These effects will not be limited to the individuals who lose their homes, but will also extend to their neighbors, their communities, tax bases, and society at large. A well-established body of research shows that when any one home is foreclosed, the property values of nearby homes decline as well.[14] The 12.5 million foreclosures stemming from the last financial crisis are

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[10] *See* Benfer et al., *supra* note 2; Robert Collinson & Davin Reed, "The Effects of Evictions on Low-Income Households" 24-28 (Working Paper, Dec. 2018), https://www.law.nyu.edu/sites/default/files/upload_documents/evictions_collinson_reed.pdf; *see also* Desmond, *supra* note 5.

[11] *See* Desmond, *supra* note 5 ("If you miss a mortgage payment, you typically have 120 days before your bank can initiate the foreclosure process. But if you can't pay your rent, you can lose your home in a matter of weeks.").

[12] *See* Benfer et al., *supra* note 2; Collinson & Reed, *supra* note 10, at 25-26.

[13] *See* Benfer et al., *supra* note 2; Heather Sandstrom & Sandra Huerta, "The Negative Effects of Instability on Child Development: A Research Synthesis," Urban Institute 6, 28-32 (Sept. 2013), https://www.urban.org/sites/default/files/publication/32706/412899-The-Negative-Effects-of-Instability-on-Child-Development-A-Research-Synthesis.PDF.

[14] *See, e.g.*, Daniel Hartley, "The Impact of Foreclosures on the Housing Market," Fed. Reserve Bank of Cleveland (Oct. 2010), https://www.clevelandfed.org/newsroom-and-events/publications/economic-commentary/economic-commentary-archives/2010-economic-commentaries/ec-201015-the-impact-of-foreclosures-on-the-housing-market.aspx. This effect has been attributed both to the fact that foreclosures add to the supply of homes on the market without a corresponding addition to the pool of potential buyers, and the fact that foreclosures impose costs on the surrounding area—the presence of a foreclosed home may diminish the desirability of the neighborhood, for example. *See id.*

estimated to have reduced the property value of over 95 million households.[15] In addition to lower property values, foreclosures have been linked with urban blight and increases in local crime and distress.[16] As a result, entire neighborhoods feel the effects of foreclosures.

Aside from the direct effects on families and communities, we know that an eviction and foreclosure crisis will handcuff the economy. Widespread foreclosures mean that communities lose valuable property taxes used to fund public services, schools, infrastructure, and more.[17] Local governments' losses in tax revenue are compounded by increased costs of managing vacant properties.[18] And it is tough for the economy to grow when you have so many destabilizing factors at play—individuals and families losing homes, lenders losing income, neighbors losing property value, and communities losing tax revenue.

Congress should step in to help prevent these consequences with a robust federal response.[19] One principle we should all agree on is the need to help American communities at risk of a foreclosure and eviction crisis as a result of the pandemic. During the last financial crisis, millions of people lost their homes and we left hundreds of billions of dollars on the table that could have been used to help them.[20] We should not repeat that mistake this time.

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[15] "2013 Update: The Spillover Effects of Foreclosures," Center for Responsible Lending 1 (Aug. 2013), https://www.responsiblelending.org/mortgage-lending/research-analysis/2013-crl-research-update-foreclosure-spillover-effects-final-aug-19-docx.pdf.

[16] *See* Benfer et al., *supra* note 2.

[17] *See id.*

[18] "2013 Update: The Spillover Effects of Foreclosures," *supra* note 15, at 1-2.

[19] The federal government this week temporarily halted evictions, *see* text accompanying note 7, but more action will be needed. *See* Dima Williams, "As The Eviction Moratorium Ends, Here Are The Bills In Congress For More Rent Relief," Forbes (July 25, 2020), https://www.forbes.com/sites/dimawilliams/2020/07/25/as-the-eviction-moratorium-ends-here-are-the-bills-in-congress-for-more-rent-relief/.

[20] *See* Michael Calhoun, "Lessons from the Financial Crisis: The Central Importance of a Sustainable, Affordable and Inclusive Housing Market," Brookings (Sept. 5, 2018), https://www.brookings.edu/research/lessons-from-the-financial-crisis-the-central-importance-of-a-sustainable-affordable-and-inclusive-housing-market/.

2. Should Treasury provide the American public more information about what businesses received PPP loans and who has received loan forgiveness?

Yes. Transparency into which businesses have received Paycheck Protection Program ("PPP") loans and which have received forgiveness is an important component of policing the program. To date, Treasury and the SBA have only released data for loans over $150,000 (and that data with ranges instead of actual amounts for borrowers) and aggregate data for the rest.[21] With 87 percent of borrowers with loans under $150,000, data is being withheld for more than 4.5 million loans.[22] Moreover, the SBA data that has been produced to date appears to contain significant errors and inaccuracies.

The government's implementation of PPP has made it a potential playground for borrower fraud. The SBA's PPP lending applications directed banks to rely solely on borrower certifications of eligibility, with only scant requirements for supporting documentation to verify the attested-to information. Although it is certainly understandable that SBA and Treasury chose such a set-up in order to get the money out quickly and broadly—given the urgent needs many small businesses were facing because of the COVID-19 crisis—they nonetheless may have created ideal conditions for fraud. Just months into the program, the Department of Justice ("DOJ") has announced more than forty criminal prosecutions for fraud, and the SBA's Inspector General has indicated that there are likely far more to come, describing the cases that have so far been brought as just "the smallest, tiniest piece of the tip of the iceberg."[23]

At the same time, because of the vast size of the program, oversight of potential fraud in the program through existing oversight bodies alone will likely be insufficient. Despite the

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[21] *See* SBA, Paycheck Protection Program, Additional Program Information, https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program ("PPP Additional Program Information").

[22] *See id.*

[23] Stacy Cowley, "Spotting $62 Million in Alleged P.P.P. Fraud Was the Easy Part," N.Y. Times (Aug. 28, 2020), https://www.nytimes.com/2020/08/28/business/ppp-small-business-fraud-coronavirus.html.

enormous volume of lending contemplated by the program (which has by now entailed more than 5.2 million PPP loans), the CARES Act left primary responsibility for oversight to the modestly sized SBA Office of the Inspector General ("SBA OIG"), with limited additional funding. With so many loans, one estimate is that each SBA OIG employee would have to review approximately 55,000 loans. As a practical matter, it is unlikely that the SBA OIG alone can provide the necessary oversight over such a vast program.

Transparency can help remedy this lack of resources. Even the limited public disclosures made by Treasury and the SBA to date have exposed flaws in the PPP program design. As described in my co-panelist Danielle Brian's testimony, journalists and nonprofits like hers—the Project on Government Oversight ("POGO")—have been able to analyze the limited and often inaccurate information that has been disclosed and identify significant potential abuses of the program.[24] It is now apparent through their work that there were many borrowers who took advantage of the program who Congress never contemplated would participate, either because they misrepresented their eligibility or because they were not the types of businesses that Congress or the administration intended to help—such as highly profitable law firms or premier sports teams, to name only a few. The recent report from the Majority Staff of the House Select Subcommittee on the Coronavirus Crisis identifies several areas of further concern based on the PPP data provided to the Subcommittee, reporting that over $1 billion in PPP loans went to companies that received multiple loans, more than 600 loans went to companies that have been debarred or suspended from doing business with the federal government, some 11,000 loans raised red flags based on inconsistent identifying information in a borrower's loan application compared to a

[24] *See, e.g.*, Nick Schwellenbach & David Szakonyi, "Whistleblowers Said This Company Is a Fake Small Business. It Got a PPP Loan," POGO (Aug. 3, 2020), https://www.pogo.org/investigation/2020/08/whistleblowers-said-this-company-is-a-fake-small-business-it-got-a-ppp-loan/.

federal database, and that the SBA and Treasury appears to have approved hundreds of loans with missing identifying information on the loan application.[25]

In these circumstances, full and complete transparency to the taxpayers that have funded these programs is essential in order to deter fraud, to better identify those who commit fraud, and to measure the effectiveness of the program, particularly if the program is extended. For example, borrowers would have been less likely to have tried to steal from a program, or to have applied even though they were not qualified, if they knew that their efforts would be publicly exposed. And as noted above, public transparency effectively deputizes the public at large, including nonprofit oversight groups, journalists, and concerned citizens, in rooting out fraudulent participants and bringing program shortcomings to light.

3. How would additional transparency about the PPP program ensure PPP funds are given to the small businesses it was originally intended to help?

Transparency would help identify whether money is getting to the companies that need it most. Without transparency key aspects of the program's efficacy remain unknown. For example, in providing additional funding to the program in April 2020, Congress included language that lawmakers said was intended to drive more loans to smaller and minority-owned businesses. Those provisions responded to widespread concern that funding was not getting to those constituencies. But in addition to not disclosing the information it does have about the overwhelming majority of borrowers, the SBA and Treasury also failed to collect demographic data on the businesses that received PPP loans—a failure of transparency highlighted in a May SBA OIG report showing that such information was required to determine the volume of loans going to rural, women-owned, and minority-owned businesses. As a result of these failures, we

[25] Memorandum from Majority Staff of Select Subcommittee on the Coronavirus to Members of the Select Subcommittee on the Coronavirus Crisis, "Preliminary Analysis of Paycheck Protection Program Data," (Sept. 1, 2020).

cannot measure whether Congress' attempt to drive more lending to minority-owned businesses was effective. In other words, a lack of government transparency about what loans are being made, in what amount, and to whom, has contributed to the difficulty in determining whether the program goals are actually being met, while simultaneously providing cover to those who may have defrauded the program.

Further, the lack of public transparency makes it harder for Congress to enact effective changes to the program. Controversy has surrounded the life of the PPP so far—from concerns about whether banks would participate at its launch, to questions about whether funds were going to the right businesses during the first round of funding, to worries over whether the program's use restrictions were stifling participation by small businesses. Despite the availability of additional funding, the rate of PPP lending significantly declined toward the end of the program, with nearly $134 billion left unclaimed. Assuming that the program is extended in the next round of legislation, without adequate data from SBA and Treasury, policymakers cannot properly determine whether and how to adjust the program—whether there is a supply problem (for example, banks that are reluctant to participate, as at the launch of the program), a demand problem (for example, businesses that are either maxed out, unable to meet the payroll thresholds, or just scared away by politicization of the program), or another problem altogether. Transparency also helps provide a basis for adjustments to the program to take into account changing economic realities. All pertinent data about all pertinent borrowers should be released immediately.

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