A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend, on an emergency basis, the COVID-19 Response Supplemental Emergency Amendment Act of 2020 to include mortgage lenders as covered entities, require notice of approved deferral applications, and to clarify the amount a landlord may require a tenant to repay following the deferral period.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Mortgage Relief Emergency Amendment Act of 2020”.

Sec. 2. Section 202 of the COVID-19 Response Supplemental Emergency Amendment Act of 2020, effective April 10, 2020 (D.C. Act 23-286; 66 DCR ___), is amended as follows:

(a) Strike the term “mortgage servicer” everywhere it appears and insert the term “mortgage lender” in its place.

(b) Subsection (a) is amended as follows:

(1) The lead-in language is amended by striking the phrase “that holds mortgage servicing rights to” and inserting the phrase “that makes” in its place.

(2) Paragraph (1) is amended to read as follows:

“(1) Grants at least a 90-day deferral of the monthly payment of principal and interest on a mortgage for borrowers; and”.
(c) Subsection (d) is amended by adding a new paragraph (3) to read as follows:

“(3)(A) A mortgage lender who approves an application for deferment pursuant to this section shall, within 15 days after the effective date of this act, provide notice of all approved applications to the Commissioner on a form prescribed by the Commissioner and such notice shall include the percentage of mortgage deferment approved for and accepted by each borrower. After the initial submission prescribed herein, a mortgage lender who approved an application for deferment pursuant to this section shall provide the Commissioner with a list of all new approvals in 15-day intervals for the duration of the public health emergency and for 60 days thereafter. The Commissioner may request information on the number and nature of approvals between 15-day intervals.

“(B) The Commissioner shall maintain a publicly available list of approved commercial mortgage loan deferral applications. The requirement of this subparagraph may be satisfied by posting to the Department of Insurance, Securities, and Banking website.”.

(d) Subsection (g) is amended as follows:

(1) The lead-in language is amended by striking the phrase “tenant:” and inserting the phrase and inserting the phrase “tenant shall, within 5 days of the approval, provide notice of the deferral to all tenants, and:” in its place.

(2) Paragraphs (1) and (2) are amended to read as follows:

“(1) Shall provide a reduction in the rent charged for the property to any qualified tenant during the period of time in which there is mortgage deferral in place. The amount of the reduction shall be proportional to the deferred mortgage amount paid by the borrower to the
mortgage lender as a percentage of total expenses reported in the borrower’s 2019 Income and Expense report provided to the Office of Tax and Revenue; and

“(2) May require the qualified tenant repay the difference in the amount of the rent as stated in the lease and the reduced rent, without interest or fees, within 18 months, or at the end of the lease term, whichever occurs first; and”.

(3) A new paragraph (3) is added to read as follows:

“(3) The borrower shall not report to a credit bureau any delinquency or other derogatory information that occurs as a result of a qualified tenant’s repayment pursuant to subsection (g)(2) of this section.”.

(e) Subsection (k) is amended as follows:

(1) The subsection is designated as subsection (l).

(2) Paragraph (3) of the newly designated subsection (l) is amended to read as follows:

“(3) “Mortgage lender” means any person makes a mortgage loan to any person or who engages in the business of servicing mortgage loans for others or collecting or otherwise receiving mortgage loan payments directly from borrowers for distribution to any other person. A mortgage lender does not include the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association.”.

(3) Paragraph (4) is repealed.

(f) A new subsection (k) is added to read as follows:
“(k) A mortgage lender that violates the provisions of this section shall be subject to penalties prescribed in section 19 of the Mortgage Lender and Broker Act of 1996, effective September 9, 1996 (D.C. Law 11-155; D.C. Official Code § 26-1118).”.

Sec. 3. Fiscal impact statement.


Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).
MEMORANDUM

TO: Councilmember Kenyan R. McDuffie
FROM: Nicole L. Streeter, General Counsel
DATE: April 18, 2020
RE: Legal sufficiency determination for the Mortgage Relief Emergency Amendment Act of 2020

The measure is legally and technically sufficient for Council consideration.

The legislation amends section 202 of the COVID-19 Response Supplemental Emergency Amendment Act of 2020: to provide that the requirements of section 202 apply to mortgage lenders and mortgage servicers; to require a mortgage lender to notify the Commissioner of Banking, Insurance, and Securities of each deferment the mortgage lender provides; and to clarify the amount of a rent reduction a borrower receiving a deferral of the borrower’s mortgage payments must provide to a qualified tenant.

I am available if you have any questions.

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1 Effective April 10, 2020 (D.C. Act 23-286; 67 DCR __).
2 “Mortgage lender” means any person who makes a mortgage loan to any person or who engages in the business of servicing mortgage loans for others or collecting or otherwise receiving mortgage loan payments directly from borrowers for distribution to any other person. A mortgage lender does not include the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association.”
3 “Qualified tenant” means a tenant of a property owned or controlled by a person or entity receiving a mortgage deferral under subsection (a) of this section that has notified the landlord of an inability to pay all or a portion of the rent due as a result of the public health emergency.”
FISCAL IMPACT STATEMENT

TO: The Honorable Phil Mendelson  
Chairman, Council of the District of Columbia

FROM: Jennifer Budoff, Budget Director

DATE: April 21, 2020

SHORT TITLE: Bill 23-735, the Mortgage Relief Program Emergency Amendment Act of 2020

TYPE: Emergency

REQUESTING OFFICE: Councilmember Kenyan R. McDuffie

Conclusion
Bill 23-735, the “Mortgage Relief Emergency Amendment Act of 2020,” would not have an adverse impact on the District’s fiscal year 2020 budget or four-year financial plan.

Background
This emergency legislation would make several changes that are both substantive and clarifying in nature to Section 202 of the “COVID-19 Response Supplemental Corrections Emergency Amendment Act of 2020.” Section 202 requires residential and commercial mortgage servicers to develop a mortgage deferment program for borrowers who can demonstrate evidence of a financial hardship resulting from the COVID-19 public health emergency.

This emergency bill replaces the term “mortgage servicer” with “mortgage lender” wherever it appears and defines the latter term. Mortgage servicers is the company that issues mortgage statements and manages the day to day tasks of managing a loan. In contrast, a mortgage lender is the financial institution that lends the money.

Bill 23-735 would clarify that the deferment applies to the borrower’s monthly payment of principal and interest. It would require that mortgage lenders report to the Commissioner of the Department of Insurance, Securities, and Banking (DISB) on the mortgage deferrals they have issued, including the percentage of applications approved. The mortgage lender would have to transmit this information to the Commissioner every 15 days during the public health emergency and for 60 days thereafter, beginning on the effective date of the emergency, unless the
Commissioner requests it more frequently. DISB would also be required to make a list of commercial properties that receive mortgage deferrals publicly available in order to notify tenants.

This legislation requires a landlord who receives a deferral to provide notice of the deferral to all tenants within 5 days of the deferral’s approval. It would also clarify the rent reduction that tenants are entitled to if their landlord receives a mortgage deferral. The landlord would only be required to reduce the portion of the rent that pays the property’s mortgage. This means that tenants would not receive a deferral on the portion of their rent that their landlord uses to pay for their unit’s water and sewer services, for example. The landlord may require the tenant to repay whatever rent reduction they receive, without interest or fees, within 18 months, or at the end of the lease term, whichever occurs first, but the landlord would be prohibited from reporting any delinquency related to this repayment to a credit bureau.

Lastly, this legislation would create an enforcement mechanism. Mortgage lenders who violate the provisions of Section 202, as amended, would be subject to the penalties in Section 19 of the “Mortgage Lender and Broker Act of 1996.” Namely, the DISB Commissioner could suspend or revoke the offending mortgage lender’s license, impose a civil penalty of up to $25,000 per violation, recommend that the Corporation Counsel of the District of Columbia take appropriate action in the Superior Court of the District of Columbia, or seek damages including restitution.