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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

LAURA SWANSON, STAFF DIRECTOR
BRAD GRANTZ, REPUBLICAN STAFF DIRECTOR

June 23, 2021

Mr. Dave Uejio
Acting Director
Consumer Financial Protection Bureau
1700 G St. N.W.
Washington, D.C. 20552

Dear Acting Director Uejio:

I am writing regarding the Consumer Financial Protection Bureau's (CFPB) proposed rule on Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X.

More than 2.1 million homeowners remain in mortgage forbearance and will exit forbearance in the coming months.¹ Servicers may be overwhelmed by the large number of borrowers contacting them for assistance within a short window. As we saw during and after the 2008 financial crisis, when servicers' systems are overwhelmed, individual homeowners suffer the consequences. Today, Black and Latino homeowners are more likely to be in forbearance than white homeowners, putting them at even greater risk of foreclosure if servicers do not take sufficient steps to help homeowners successfully exit forbearance into sustainable mortgage payments.²

In light of these heightened risks and the existing disparities in protections based on who owns or guarantees a loan, it is essential that the CFPB establish a uniform servicing standard that provides protections for all homeowners exiting a COVID-19 related forbearance to ensure consistent, fair treatment and equitable outcomes for all homeowners. I support the CFPB's effort through this rule to provide enhanced protections for homeowners, regardless of who owns or guarantees their loan. The CFPB's proposal to align minimum servicing requirements and allow for streamlined refinances to provide immediate relief will help facilitate quicker exits from forbearance for more borrowers in a way that is more consistent across homeowners and will make the most effective use of servicers' limited capacity.

While I support these uniform tools that will speed relief and minimize the burden on homeowners, the CFPB must also ensure that a streamline option is not the only option available to borrowers who need more help immediately. Homeowners who need deeper relief should be evaluated for

¹ "Mortgage Monitor: April 2021 Report," Black Knight, available at https://cdn.blackknightinc.com/wp-content/uploads/2021/06/BKI_MM_Apr2021_Report.pdf.

² "Characteristics of Mortgage Borrowers During the COVID-19 Pandemic," CFPB Office of Research Special Issue Brief, May 2021, pg. 5, available at https://files.consumerfinance.gov/f/documents/cfpb_characteristics-mortgage-borrowers-during-covid-19-pandemic_report_2021-05.pdf.

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all available loss mitigation options and given the best chance to stay in their homes. It is also essential that any homeowner who receives a streamlined post-forbearance loan solution have the opportunity to be evaluated for a fully documented loan modification based on their individual circumstances. Homeowners should not be locked out of the opportunity to get this relief simply because they accessed a less targeted option based on a partial application for assistance.

I also urge the CFPB to ensure that no homeowner exits forbearance into foreclosure. Existing rules require a loan to be at least 120 days past due before a servicer can proceed to foreclosure. But, because a loan is considered past due for servicing purposes while it is in forbearance, this 120-day period would already have passed by the time a homeowner's forbearance ends. As a result, without additional intervention, homeowners could exit forbearance directly into foreclosure.

Under the proposed rule, servicers would not be permitted to file for or pursue a foreclosure prior to December 31, 2021, unless they have made a minimum number of attempts to contact the homeowner regarding a post-forbearance option. As the CFPB recognizes, it is essential that, after a forbearance ends, there is sufficient time for a borrower to receive relief and their servicer makes multiple efforts to provide that relief prior to beginning the foreclosure process. I urge the CFPB to adopt a rule that will ensure that all homeowners are contacted through multiple avenues and presented with options to exit forbearance into sustainable payments or other foreclosure avoidance options before a servicer pursues foreclosure. I further urge the CFPB to work with other federal agencies to ensure that homeowners with federally-insured or – guaranteed loans or loans guaranteed by Fannie Mae or Freddie Mac are protected from new foreclosure filings until the CFPB's rule can take effect to ensure that no homeowner needlessly enters foreclosure during a lapse in protections.

Borrowers must also receive accessible, accurate information about their options. At the beginning of the pandemic, news reports³ and analyses from Inspectors General documented that homeowners received incomplete or inaccurate information about the forbearance process.⁴ This confusion cannot be repeated as homeowners exit forbearance. As part of its rule and consumer resources, the CFPB must ensure that homeowners are receiving clear, accurate communication

³ "Homeowners fear they may owe hefty lump-sum payment on mortgages," Khristopher J. Brooks, CBS News, April 28, 2020, available at <https://www.cbsnews.com/news/homeowners-mortgage-holders-balloon-payment-coronavirus-forbearance/>.

⁴ "Some Mortgage Loan Servicers' Websites Offer Information about CARES Act Loan Forbearance That is Incomplete, Inconsistent, Dated, and Unclear," Office of the Inspector General for the U.S. Department of Housing and Urban Development, April 27, 2020, available at <https://www.hudoig.gov/sites/default/files/2020-04/Single%20Family%20Mortgage%20Forbearance%20Brief.pdf>; see also "Oversight by Fannie Mae and Freddie Mac of Compliance with Forbearance Requirements Under the CARES Act and Implementing Guidance by Mortgage Servicers," Office of the Inspector General for the Federal Housing Finance Agency, July 27, 2020, available at <https://www.fhfaig.gov/sites/default/files/OIG-2020-004.pdf>.

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from their servicers and that written communications are provided whenever possible to ensure that information is consistent.


Finally, I urge the CFPB to continually monitor servicing outcomes across all loan types, and to serve as a source of reliable data on borrower outcomes, especially for loans in private-label securities. As we saw following the 2008 financial crisis, inconsistent servicing requirements in different private-label securities made it more difficult and more confusing for homeowners to access relief. This enhanced servicing rule will help to address the inconsistencies across loan types and servicers. We will not be able to evaluate the effect across loan types, however, unless there is sufficient data on servicing outcomes. It is therefore critical that the CFPB maintain and serve as a reliable source of data on servicing outcomes for loans in private-label securities, as well as agency mortgage loans, which often report more servicing outcomes data.

Please move forward quickly to put these protections in place to serve homeowners who will exit forbearance in the months ahead. Thank you for your continued commitment to protecting homeowners who have been set back by the COVID-19 pandemic.

Sincerely,



U.S. Senator



U.S. Senator