United States Senate
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
WASHINGTON, DC 20510–6075

October 22, 2020

The Honorable Kathleen Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20503

Dear Director Kraninger:

I am writing regarding the needs of those mortgage borrowers who face a long-term loss of income as a result of the coronavirus (COVID-19) pandemic.

Since the pandemic began and people across the country have dealt with its economic impacts, millions of homeowners have entered forbearance as their incomes have fallen or become uncertain. In June, the Mortgage Bankers Association estimated that 4.3 million homeowners were in forbearance.[1] Many of those homeowners have begun to exit forbearance or are nearing the end of the first 180-day forbearance period provided for borrowers with federally-backed mortgages in the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Some borrowers will be able to resume their regular payments by using the deferral or partial claim processes set up by Fannie Mae, Freddie Mac, FHA, or their private lender, in part because the Consumer Financial Protection Bureau's (CFPB) June 2020 Interim Final Rule made changes in the servicing process to facilitate deferrals. But other borrowers will be unable to resume their prior payments and will need more time to enter a modification with their servicer to make their payments more affordable.

The modification process can take time, and during that time, I am concerned that mortgage servicers may already be putting borrowers on track for foreclosure. Under current rules, servicers can begin the foreclosure process when a borrower becomes 120 days delinquent. While the CARES Act provides that servicers are not to report borrowers as delinquent to credit reporting agencies if the loan was current before entering forbearance, servicers and agencies backing federally-backed loans still consider the borrower delinquent for servicing purposes during forbearance under the CFPB's servicing rules. As a result, at the end of the first 180-day forbearance period, a borrower could be immediately considered eligible for and a servicer could pursue foreclosure if the forbearance is not renewed.

While program-specific loss mitigation requirements, including requirements put in place by Fannie Mae and Freddie Mac, require outreach to borrowers prior to initiating foreclosure proceedings, those timelines may be shorter than the 120-day period that typically precedes a foreclosure. In addition, if a servicer begins foreclosure prior to satisfying those requirements, a homeowner cannot rely on those rules to delay the foreclosure and seek assistance. Further, given the large volume of borrowers that

[1] https://www.mba.org/2020-press-releases/june/share-of-mortgage-loans-in-forbearance-increases-to-855

servicers need to contact within a short window, it may be difficult to ensure that outreach is timely, successful, and meets program requirements.

Additionally, servicers of loans that are not federally backed are only required to adhere to the CFPB's servicing requirements, which allow foreclosures to begin and foreclosure-related fees to be charged at the end of a first forbearance period if the borrower did not make payments during forbearance. This could affect a significant number of borrowers. When forbearances reached their peak, more than 10 percent of mortgages held in a bank's portfolio or in a private-label security were in forbearance.[2] CFPB and other federal banking regulators also extended flexibilities on the timelines for delivering certain notices to mortgage borrowers earlier this year, which could mean borrowers receive delinquency and loss mitigation notices later than normal, making it harder to enter a modification before foreclosure begins and fees accrue.[3]

It is unlikely that borrowers will understand how quickly foreclosure could begin. If servicers begin the foreclosure process before the borrower has an opportunity to either extend their forbearance or be evaluated for an appropriate modification, it could add unnecessary costs for borrowers, make it harder to complete a request for assistance, and risk triggering foreclosures that could threaten families' and neighborhoods' recovery from the pandemic. The CFPB has taken a number of steps to address other mortgage servicing challenges during this pandemic. I would like to request a staff briefing to better understand what steps the CFPB will take to ensure that no borrower who is able to remain in their homes is improperly foreclosed upon or further financially burdened during this pandemic.

Thank you for your prompt attention to this critical issue.

Sincerely,

Sherrod Brown
Ranking Member

[2] Id.
[3] 85 FR 39055