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

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January 19, 2021

The Honorable Mark A. Calabria
Director
Federal Housing Finance Agency
400 7th Street, SW
Washington, DC 20024

Dear Director Calabria:

We write to seek further clarification of the Federal Housing Finance Agency's (FHFA) policy regarding loan sales by Fannie Mae and Freddie Mac (the Enterprises) during the COVID-19 pandemic.

We first inquired about protections for homeowners whose loans were sold in nonperforming loan (NPL) sales or reperforming loan (RPL) sales after learning that the Enterprises had conducted multiple such sales during the COVID-19 pandemic. Unless the Enterprises required purchasers to provide protections at least as strong as those provided to Enterprise-backed borrowers, borrowers who had their loans sold would lose the forbearance protections Congress provided and the foreclosure moratorium that the Enterprises have extended through at least January 31, 2021.

In your December 17, 2020 response, you wrote to us that the Enterprises were scheduled to complete the sale of 94,200 homes by the end of 2020, but you failed to answer critical questions about what those sales would mean for the 94,200 families who own these homes. Your response did not clarify how many of the borrowers whose loans were sold would retain the foreclosure protections and the ability to request forbearance that these borrowers possessed before the sale. In addition, no explanation was given for why FHFA and the Enterprises determined it was appropriate to take away the Congressionally-granted forbearance option from up to 94,200 homeowners, or why these borrowers should no longer be protected by a foreclosure moratorium that, in your own words, "keeps borrowers safe during the pandemic."¹ We are therefore writing to seek clarity on FHFA's and the Enterprises' policy and authorities.

Please provide direct and responsive answers to each of the following questions no later than January 29, 2021.

1. How many of the sold 94,200 loans were or will be resecuritized into Enterprise-backed securities and retained the foreclosure and forbearance protections that the Enterprises provide?
2. How many of the sold 94,200 loans will not be resecuritized into Enterprise-backed securities and will not retain the foreclosure and forbearance protections that the Enterprises provide? Of the loans not resecuritized, how many loans are NPLs and how many are RPLs?

¹ "FHFA Extends Foreclosure and REO Eviction Moratoriums," December 2, 2020, available at <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-Foreclosure-and-REO-Eviction-Moratoriums-12022020.aspx>.

3. Your response recognized that NPL buyers must evaluate borrowers for loan modification, but did not mention RPL sales. When RPL loans are not resecuritized into Enterprise-backed securities, are there any requirements for RPL buyers to evaluate borrowers for loan modifications?
4. After the Coronavirus Aid, Relief, and Economic Security (CARES) Act provided borrowers with forbearance protections, how did FHFA establish that it was legally permissible to remove these CARES Act forbearance protections as part of any loan sale?
5. Did FHFA consider the consequences for the 94,200 homeowners and their families who would lose the foreclosure and forbearance protections that the Enterprises provide prior to authorizing each NPL or RPL sale that would extinguish such protections, and did the FHFA consider requiring loan purchasers to maintain the minimum Enterprise-guaranteed protections for loans that were sold? If not, why not?
6. Your response stated that FHFA was not able to modify or retract NPL or RPL transactions that were already in process, which appears to suggest that no requirements for forbearance or foreclosure protections were included in the contracts. Is there any law that would restrict or prevent FHFA or the Enterprises from attempting to negotiate an amendment to the completed sales agreements to require NPL and RPL purchasers to honor the forbearance and foreclosure protections that were available to borrowers prior to the loan sale? If so, please explain which law or laws are applicable. If there are no legal barriers, what, if anything, would prevent FHFA from asking the Enterprises to consider negotiating such amendments with all private purchasers of NPLs and RPLs sold during the pandemic in order to restore borrower protections?
7. Your response stated that homeowners are notified by the seller and buyer that their loan servicing was transferred when their loan is sold. Were the 94,200 homeowners whose loans were sold during the COVID-19 pandemic notified of the continuation or loss of the foreclosure and forbearance protections available to them? If not, how will FHFA and the Enterprises ensure that these families are aware of protections that exist or that no longer apply?
8. In your response, you said that FHFA will require the Enterprises to pause all NPL and RPL offerings through at least January 31, 2021, as FHFA and the Enterprises review their loan sale policies during the pandemic. If FHFA determines that note sales can proceed, how will FHFA ensure that no homeowner loses the foreclosure and forbearance protections they would have been guaranteed had their loan not been sold?

At a time when the pandemic is reaching record levels and millions remain unemployed, it is more important than ever to ensure that all families can stay safely in their homes. Indeed, the pandemic has shown us that for many families, a safe, affordable, and decent home may be the single best form of personal protective equipment.

Therefore, we urge you to make full use of all of your authorities to ensure that families are protected.

Sincerely,



Sherrod Brown
United States Senator



Jack Reed
United States Senator