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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

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November 10, 2020

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

Dear Director Calabria:

We are writing regarding recent loan sales by Fannie Mae and Freddie Mac (the Enterprises) which could put thousands of homeowners at risk of further delinquency or foreclosure.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act requires Fannie Mae and Freddie Mac to provide borrowers up to two 180-day forbearances. Additionally, the Federal Housing Finance Agency (FHFA) and the Enterprises have created a number of post-forbearance options to help borrowers return to regular payments. FHFA has also extended the Enterprises' foreclosure moratorium for all Enterprise-backed loans, ensuring that no Fannie Mae or Freddie Mac borrower will lose their home, which could unnecessarily threaten their health, during this pandemic.

But Fannie Mae and Freddie Mac have both recently sold large numbers of loans they previously guaranteed to private investors. In October, Freddie Mac sold more than 2,900 homes with nonperforming loans¹, while Fannie Mae has sold more than 37,800² homes with reperforming loans and is offering to sell another 6,300.³ Unlike Fannie Mae and Freddie Mac, private purchasers of these loans are under no obligation from Congress to provide forbearance to borrowers. Unless FHFA requires the Enterprises to secure contractual representations, warranties, or covenants obligating the new owners to continue offering the same loss mitigation

¹ "Freddie Mac Sells \$464 Million in NPLs," Freddie Mac, October 5, 2020, available at http://www.freddiemac.com/seasonedloanofferings/docs/freddie_mac_sells_464_million_in_npls.pdf; "Freddie Mac Sells \$18 million of NPLs in Extended Timeline Pool," Freddie Mac, October 19, 2020, available at http://www.freddiemac.com/seasonedloanofferings/docs/freddie_mac_sells_18_million_NPLs_extended_timeline_pool.pdf.

² "Fannie Mae Announces Results of Sixteenth Reperforming Loan Sale Transaction," Fannie Mae, August 25, 2020, available at https://www.fanniemae.com/newsroom/fannie-mae-news/fannie-mae-announces-results-its-sixteenth-reperforming-loan-sale-transaction?_ga=2.99709211.447564408.1604012187-464519392.1592587383; "Fannie Mae Announces Results of Seventeenth Reperforming Loan Sale Transaction," Fannie Mae, October 13, 2020, available at https://www.fanniemae.com/newsroom/fannie-mae-news/fannie-mae-announces-results-seventeenth-reperforming-loan-sale-transaction?_ga=2.128086409.447564408.1604012187-464519392.1592587383.

³ "Fannie Mae Announces Eighteenth Sale of Reperforming Loans," Fannie Mae, October 15, 2020, available at https://www.fanniemae.com/newsroom/fannie-mae-news/fannie-mae-announces-eighteenth-sale-reperforming-loans?_ga=2.103896581.447564408.1604012187-464519392.1592587383.

options offered by the Enterprises, these new owners are also under no obligation to offer borrowers the post-forbearance options the Enterprises created, and no obligation to pause foreclosures during the pandemic. Foreclosure is an all-too-common outcome for borrowers in nonperforming loans. More than one-third of occupied homes that are sold in nonperforming loan sales are foreclosed on.⁴ As a result of these loan sales, borrowers could face unnecessary foreclosures during the pandemic that they may not have faced if their loan had not been sold out from under these enhanced protections.

We have repeatedly supported FHFA's decision to extend a foreclosure moratorium for Fannie Mae and Freddie Mac borrowers to ensure that no one is threatened with losing their home during a public health crisis. But FHFA's decision to allow these sales to proceed undermines the foreclosure and forbearance protections it has put in place and could deny tens of thousands of families the protections they and Congress thought they had.

Please respond to the following questions by November 20, 2020:

1. Was FHFA aware of Fannie Mae and Freddie Mac's loan sales prior to the announcement of these sales?
2. Are homeowners whose loans have been sold through nonperforming or reperforming loan sales protected from foreclosure by FHFA's foreclosure moratorium? If so, please describe how the Enterprises and FHFA will ensure that servicers comply with this moratorium. If not, please explain why FHFA believes it is appropriate to remove what FHFA has otherwise determined are necessary foreclosure protections during a pandemic.
3. Freddie Mac's press release announcing its nonperforming loan sales states that loan purchasers "are required to honor the terms of existing loss mitigation agreements and solicit distressed borrowers for additional assistance except in limited cases and ensure all pending loss mitigation actions are completed."⁵ Does this mean that Freddie Mac servicers are required to exhaust loss mitigation options prior to a nonperforming loan sale, and are purchasers required to offer forbearance on the terms provided in the CARES Act and loss mitigation options at least as favorable as the Enterprises' loss mitigation options? If so, please describe how Freddie Mac and FHFA will ensure that the purchasers comply with CARES Act and Enterprise requirements. If not, why not?
4. Fannie Mae's press release announcing its reperforming loan sales states that buyers are required "to offer loss mitigation options designed to be sustainable to any borrower who may re-default within five years following the closing of the reperforming loan sale."⁶ Do these loss mitigation requirements include a requirement for purchasers to extend forbearance and post-forbearance loss mitigation to any borrower whose loan was previously guaranteed by Fannie Mae and who would be eligible for forbearance but for the sale of their loan? If so, how will Fannie Mae and FHFA ensure that purchasers comply with this requirement? If not, why not?

⁴ "Enterprise Non-Performing Loan Sales Report," FHFA, December 2019, available at https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/Dec-2019_NPL-Sales-Report.pdf.

⁵ "Freddie Mac Sells \$464 Million in NPLs."

⁶ "Fannie Mae Announces Results of Sixteenth Reperforming Loan Sale Transaction."

5. Is there any law or regulation that prevents the Enterprises from securing contractual representations, warranties, or covenants obligating the new owners to continue offering the *same* loss mitigation options, without exception, offered by the Enterprises? If so, please specify precisely which provisions. If not, please explain why FHFA is not insisting on such contractual representations, warranties, or covenants to help families stay in their homes.
6. How have the Enterprises ensured that borrowers are notified of their loan sale and, if they retain forbearance and foreclosure protections, are notified of their protections? What redress is available to borrowers if servicers do not follow any of these servicing requirements?
7. Will FHFA permit the Enterprises to conduct additional nonperforming or reperforming loan sales? If so, why?

Fannie Mae and Freddie Mac loan sales should not leave homeowners with fewer protections in the middle of a public health crisis. FHFA must act to ensure that no homeowner is removed from the protections that Congress and FHFA put in place. Thank you for your prompt attention to this matter.

Sincerely,



Sherrod Brown
United States Senator



Jack Reed
United States Senator