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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

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November 30, 2022

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Dear Director Chopra:

I am writing regarding recent news reports of mortgage servicers attempting to collect or foreclose on long-dormant second mortgages, which is putting homeownership at risk for families across the country.

Before the 2008 financial crisis, enactment of new mortgage standards, and the creation of the Consumer Financial Protection Bureau (CFPB), many aspiring homeowners struggling to afford their first home were given unaffordable mortgage products with inadequate underwriting and disclosures. Those products included “piggyback” mortgages, where a high-cost second mortgage was issued at purchase to help the borrower cover the cost of the home. When the financial crisis hit and home prices fell by as much as 60 percent, underwater borrowers struggled to rework their first mortgages and save their homes.¹ During this time, many of the lenders on second mortgages wrote them off, at least for their accountants and their taxes, as uncollectable.

Too many struggling homeowners didn’t get the help they needed during the crisis, but some were able to keep their homes through modifications, help of programs like the Hardest Hit Fund, or even the pain of bankruptcy, and remain in their homes today. Those homes have since regained or even exceeded the value they lost in the recession, helping to stabilize the financial lives of the families who were able to keep them. But legal aid attorneys report a growing trend in which mortgage servicers of these pre-2008 second mortgages, written off by lenders as worthless during the crisis, are now trying to collect payments or foreclose based on those second mortgages now that homes have greater value.² In many cases, homeowners thought the second lien was modified along with the first, or were told that the loan had been charged off. Borrowers report that they have not received statements for these second loans for an extended period, sometimes 10 or more years, but are now being threatened with foreclosure. Servicers may even be acting on behalf of debt buyers, who purchased the second mortgages for pennies on the dollar in the hope that a few would eventually repay.

¹ “Evaluating the Housing Market Since the Great Recession,” CoreLogic, February 1, 2018, available at <https://www.corelogic.com/wp-content/uploads/sites/4/2021/06/report-special-report-evaluating-the-housing-market-since-the-great-recession.pdf>.

² National Consumer Law Center Coalition Letter to CFPB Director Chopra RE: Zombie Second Mortgages, September 27, 2022, available at <https://www.nclc.org/wp-content/uploads/2022/09/Coalition-letter-to-CFPB-re-zombie-second-mortgages.pdf>.

A recent news story highlighted two families who thought their second mortgages had been resolved a decade ago, only to receive foreclosure notifications in recent months from second mortgage servicers who had not previously contacted the families.³ These families, with the help of legal aid attorneys, are now fighting to save the homes they've had for more than 15 years.

Servicers' attempts to collect or foreclose based on these long-silent second loans – sometimes called “zombie loans” because they were presumed to be dead – could be a violation of multiple state and federal consumer protection laws and threaten affordable homeownership for families when housing is increasingly unaffordable for far too many. I urge you to review second mortgage servicing practices of the servicers and debt collectors you supervise, as well as any consumer complaints regarding second mortgages, and to take appropriate action if individual or systemic violations are found.

Thank you for your prompt attention to this important issue and for your continued work to safeguard affordable, sustainable homeownership for American families.

Sincerely,



Sherrod Brown
Chairman

³ “Zombie Debt”: Homeowners face foreclosure on old mortgages,” Michael Hill, Associated Press, November 20, 2022, available at <https://www.usatoday.com/story/money/2022/11/20/zombie-debt-foreclosure-mortgages-explained/10726148002/>.