January 28, 2021

David Uejio
Acting Director
Consumer Financial Protection Bureau
1700 G St. NW
Washington, DC 20552

Dear Acting Director Uejio:

On behalf of the low-income clients and communities we represent, we urge the Bureau to take immediate action to prevent a wave of COVID-19-related foreclosures, likely to be concentrated in low-income communities and communities of color. The pandemic continues to harm homeowners, and according to a December 2020 Brookings Institution report, the crisis is worsening for Black and Latinx borrowers.[1] The Bureau should focus on urgent responses to the crisis rather than embarking on a general rulemaking on disaster-related servicing.

As the pandemic rages on, current policies, including the relaxing of industry oversight by the Bureau and federal banking agencies as reflected in an April 2020 Supervisory Guidance,[2] leave homeowners vulnerable to foreclosure. There also remain many questions about whether the assistance programs currently available need to be improved to enable homeowners to avoid unnecessary foreclosure. We urge the Bureau to take the following steps on a top-priority basis:

- Clarify that Regulation X provides a 120-day cushion between the end of COVID forbearance to initiation or continuation of foreclosure proceedings to ensure that alternatives to foreclosure are fully evaluated.
- State, pursuant to the Bureau's UDAAP authority, that it is unfair to require residential mortgage borrowers, regardless of whether their mortgage is federally backed, to pay a lump sum at the end of a COVID forbearance period.
- Work with the other financial regulatory agencies to confirm industry standards regarding forbearance availability and post-forbearance options, including that borrowers must, at a minimum, be offered a deferral of their forborne payment until the end of the loan or other solution that maintains the previous principal and interest payment if they can afford to resume the pre-COVID payments and other loss mitigation if they cannot, regardless of whether the borrower has been reviewed for loss mitigation prior to the forbearance.

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[1] Yung Chun and Michal Gristein-Weiss, Brookings Institution, *Housing inequality gets worse as the COVID-19 pandemic is prolonged* (Dec. 18, 2020), https://www.brookings.edu/blog/up-front/2020/12/18/housing-inequality-gets-worse-as-the-covid-19-pandemic-is-prolonged/.

[2] Joint Statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the COVID-19 Emergency and the CARES Act (April 3, 2020), https://files.consumerfinance.gov/f/documents/cfpb_interagency-statement_mortgage-servicing-rules-covid-19.pdf ("Supervisory Guidance").

- Create an *Office of the Homeowner Advocate* to provide individual homeowners with a direct means of obtaining assistance to prevent foreclosures.
- Prevent dual tracking while a borrower is in the application process for any federal or state based homeowner assistance program (such as the Housing Assistance Fund proposed in S. 3620), by clarifying that an application to the state housing finance agency or other entity operating such a program is an "application" under RESPA for purpose of Regulation X's dual tracking rules.
- Convene a cross-agency workgroup to ensure data collection and analysis of COVID-19 loss mitigation performance data (such as the loan-level data referred to in H.R. 6835, 116th Congress), including the rates of successful loss mitigation outcomes among different racial and linguistic groups.

These steps are necessary to avoid a deep foreclosure crisis and will take a significant investment of resources by the Bureau to implement. The Bureau should invest in these steps rather than moving to create disaster rules that would require significantly greater study to be ready for implementation.

One of the issues that urgently needs to be addressed is why a substantial number of borrowers who fell behind on their loans during the pandemic did not access forbearance and whether they will be seeking loss mitigation when the foreclosure processes restart.[3] It is also important to understand why a sizable share of borrowers have exited forbearance only to find themselves behind on their payments. The Bureau needs to evaluate the different approaches the agencies took to promote forbearance and post-forbearance options to determine what caused borrower confusion, non-responsiveness, and redefault. Many questions also remain about how the many new loss mitigation procedures developed by the agencies[4] will work for borrowers needing permanent loss mitigation solutions, and how these approaches line up with the Bureau's existing servicing rules. We are also concerned about whether borrowers who exit a deferral will be surprised by escrow shortages that increase their monthly payments to unaffordable levels.

For all of these reasons, the Bureau should not embark on a rulemaking on disaster-related servicing at this time. Instead, it should focus its energy on helping the borrowers who are in need right now. These steps are urgent, and time is of the essence.

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[3] See National Consumer Law Center, *A Looming Crisis: Black Communities at Greatest Risk of COVID-19 Foreclosure* (July 2020), https://www.nclc.org/images/pdf/special_projects/covid-19/IB_Covid_Black_Forbearance_Foreclosure.pdf.

[4] Highlights of the agencies' recent changes include their steps to streamline access to forbearance in response to the CARES Act. Fannie Mae and Freddie Mac developed scripts to help servicers communicate assistance to borrowers in addition to issuing lender letters. FHA expanded the means borrowers could use to communicate acceptance of forbearance to servicers. The government agencies and the Enterprises also created new options to assist borrowers exiting forbearance to avoid foreclosure. Fannie Mae and Freddie Mac implemented a COVID-19 deferral program after initially using their standard disaster options. They streamlined their Flex Modification requirements and expanded on existing systems for making offers without the need for financial information. FHA created a new waterfall of options that borrowers could access without submitting any financial information, including three new foreclosure-avoidance alternatives. The USDA and VA also adjusted their processes.

We appreciate your work on these important issues. For any questions or further discussion, please contact NCLC staff attorneys, Alys Cohen, acohen@nclc.org, or Steve Sharpe, ssharpe@nclc.org.

Sincerely,

**National Organizations**
Americans for Financial Reform Education Fund
Center for Community Progress
Center for Responsible Lending
Consumer Action
Consumer Federation of America
The Leadership Conference on Civil and Human Rights
NAACP
National Association of Consumer Advocates
National Association for Latino Community Asset Builders
National Community Reinvestment Coalition (NCRC)
National Community Stabilization Trust
National Consumer Law Center (on behalf of its low-income clients)
National Council of Asian Pacific Americans (NCAPA)
National Fair Housing Alliance
National Housing Law Project
National Housing Resource Center
Prosperity Now
UnidosUS
U.S. PIRG

**State and Local Organizations**
ACTION-Housing, Inc. (PA)
Bet Tzedek Legal Services (CA)
California Reinvestment Coalition
Charlotte Center for Legal Advocacy (NC)
Clarifi (PA)
Community Legal Services, Inc. (Philadelphia, PA)
Connecticut Fair Housing Center
Empire Justice Center (NY)
Greater Boston Legal Services - on behalf of its low-income clients (MA)
HACE (PA)
Intercommunity Action, Inc. (PA)
Intercultural Family Services, Inc. (PA)
Jacksonville Area Legal Aid, Inc. (FL)
Lancaster Lebanon Habitat for Humanity (PA)
Legal Aid Society of Southwest Ohio
Michigan Poverty Law Program

Mid-Minnesota Legal Aid
Mountain State Justice (WV)
NHS Brooklyn, CDC, Inc.
NID Plainfield (NJ)
North Carolina Justice Center
Philadelphia Unemployment Project (PA)
Philadelphia VIP (PA)
Public Counsel (CA)
SeniorLAW Center (PA)
St. Martin Center Inc. (PA)
Vermont Legal Aid, Inc.
York Habitat for Humanity, Inc. (PA)