March 10, 2023

The Honorable Sandra L. Thompson
Director
Federal Housing Finance Agency
400 7th Street, SW
Washington, DC 20219

Priscilla Almodovar
Chief Executive Officer
Fannie Mae
Midtown Center
1100 15th Street, NW
Washington, D.C. 20005

Michael J. DeVito
Chief Executive Officer
Freddie Mac
8200 Jones Branch Drive
McLean, VA 22102

RE: GSE note sale reforms

Dear Director Thompson, Ms. Almodovar, and Mr. DeVito:

On behalf of the clients, communities, and neighborhoods we represent, we urge the Government Sponsored Enterprises (GSEs) and the Federal Housing Finance Agency (FHFA) to reform their note sale programs to ensure that borrowers avoid unnecessary foreclosure.

As discussed in a recent letter from five U.S. Senators and in a recent report from the National Consumer Law Center, the GSEs have sold around 700,000 loans in non-performing loan (NPL) and reperforming loan (RPL) pools since 2015. During the height of the COVID pandemic, Fannie Mae sold off 99,100 reperforming loans, the highest total for any year.

When their loans are sold, the homeowners lose access to streamlined foreclosure alternatives created to help homeowners save their homes. Instead of accessing GSE loss mitigation offerings and their clear eligibility rules, borrowers whose loans are sold are left with weak and opaque options developed by the investors who take over these loans. GSE guidelines that describe the loss mitigation options that the buyer of the loan must offer are so vague that they do not ensure that meaningful home retention options will be available.

As pointed out in the letter from the U.S. Senators, the GSEs' data shows that a staggering 60% of the 115,000 non-performing loans that were subject to data reporting ended in foreclosure. While note sale reports have claimed that borrowers with loans that are sold do not fare worse than other borrowers, NCLC’s recent report shows that the GSEs’ data claims are based on an outdated control group and do not reflect accurate conclusions based on today’s market. Moreover, even though some of the loans are marketed to nonprofits, small investors, and minority- and women-owned businesses in an effort to promote home retention, this is only a very small fraction of note sales. There also appears to be a lack of public data on the loan status outcomes for such loans. Because the loans are overwhelmingly sold to private investors, GSEs' note sale programs have added another pipeline for the increased participation of Wall Street firms in the single-family rental business. This pipeline takes homes off the market for families and has led to increased rent and fees on already burdened tenants.

To minimize the loss of vital loss mitigation options for homeowners with GSE loans and promote home retention, FHFA must implement further guardrails on the note sale program, including:

Pre-sale protections

- Exclude from sales loans that are in a forbearance plan, including a COVID-related forbearance plan;
- Prohibit the sale of any loan that is in default until the servicer completes an evaluation for all GSE loss mitigation options, including COVID-19 options, offers eligible borrowers a loss mitigation plan, and documents the evaluation;
- Mandate that before a loan is designated for sale, the GSE must notify the borrowers that this action is anticipated and that the loan will not be sold unless the current servicer has considered the delinquent borrower for all applicable GSE loss mitigation options and offered the borrower a plan if eligible;
- Require the GSEs to offer and enhance opportunities for nonprofits and local government entities to purchase the notes on reasonable terms and require these purchasers to provide affordable home retention, preservation, and purchase opportunities.

Post-sale protections

- Require purchasers to offer the GSE payment deferral program to eligible borrowers;
- Require purchasers to use the lower of the current market interest rate or the existing loan interest rate when offering the borrower a loan modification;
- Require purchasers to offer loss mitigation options that aim to provide a set reduction, such as 20%, in the borrower’s monthly payments;

Transparency and accountability

- Provide updated data analysis for nonperforming loans with relevant benchmark periods on loan performance post-sale;
- Report performance data for reperforming loans;
- Provide loan and purchaser-related data including unpaid principal balance on the loan, purchaser type, property location, and loan status outcomes; and
- Ensure that data reporting includes demographic data, including race and ethnicity.

We look forward to working with you, and we appreciate any opportunity to further discuss reforms to the note sale program. If you have any questions, please contact Steve Sharpe, ssharpe@nclc.org, and Andrea Bopp Stark, astark@nclc.org.

Sincerely,

National Consumer Law Center (on behalf of its low-income clients)
Americans for Financial Reform Education Fund
Center for Community Progress
Center for New York City Neighborhoods, Inc. (NY)
Center for Responsible Lending
Community Legal Services of Philadelphia (PA)
Connecticut Fair Housing Center
Consumer Action
Consumer Federation of America
Empire Justice Center (NY)
Grounded Solutions Network
The Leadership Conference on Civil and Human Rights
Legal Aid Chicago (IL)
Legal Aid Society of Southwest Ohio, LLC
Lincoln Institute of Land Policy
Local Initiatives Support Corporation
Mountain State Justice, Inc. (WV)
National Coalition for Asian Pacific American Community Development (National CAPACD)
National Community Stabilization Trust (NCST)
National Fair Housing Alliance
National Housing Law Project
National Housing Resource Center
NC Justice Center
NHS Brooklyn CDC, Inc. (NY)
Preserving City Neighborhoods HDFC (NY)
Prosperity Now
Revolving Door Project
SeniorLAW Center (PA)
Unidos US