MAXINE WATERS, CA
CHAIRWOMAN

PATRICK MCHENRY, NC
RANKING MEMBER

# United States House of Representatives
## Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

June 21, 2021

The Honorable Marcia L. Fudge
Secretary
U.S. Department of Housing and Urban Development
451 7th Street, SW
Washington, D.C. 20410

The Honorable Thomas J. Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Ave, SW
Washington, D.C. 20250

The Honorable Denis R. McDonough
Secretary
U.S. Department of Veterans Affairs
810 Vermont Ave, NW
Washington, D.C. 20420

Mr. Dave Uejio
Acting Director
Consumer Financial Protection Bureau
1700 G St. N.W.
Washington, D.C. 20552

The Honorable Mark A. Calabria
Director
Federal Housing Finance Agency
400 7th Street, SW
Washington, D.C. 20219

Secretary Fudge, Secretary Vilsack, Secretary McDonough, Acting Director Uejio, and Director Calabria:

On April 5, 2021, the Consumer Financial Protection Bureau (CFPB) issued a Notice of Proposed Rulemaking under the Real Estate Settlement Procedures Act to provide mortgage servicing protections for borrowers affected by the COVID-19 emergency. I commend CFPB for its attention to mortgage servicing issues at such a critical time, as many borrowers' forbearance periods are set to expire as early as September 2021. However, I write to highlight the outstanding risks of foreclosure to communities, including to Black and Latinx borrowers who have been disproportionately affected by the pandemic-induced economic downturn, to suggest enforcement priorities for CFPB to consider in its oversight of servicer compliance with the rule, and to urge an extension of the federal foreclosure moratorium through August 2021.

As the emergency federal foreclosure moratorium is set to end on June 30, 2021, I write to urge the Department of Housing and Urban Development (HUD), the Federal Housing Finance Administration (FHFA), the Department of Agriculture (USDA), and the Veterans Administration (VA) to administratively extend their moratoria on foreclosures at least until the CFPB is able to finalize and implement its mortgage servicing rule. This extension is critical to ensure homeowners do not experience a lapse in protections and face unnecessary foreclosures before the CFPB implements its rule and before housing counseling funds and Homeowner Assistance Funds provided through the American Rescue Plan Act have reached communities and households. Any lapse in coverage threatens to have a disproportionate impact on lower income homeowners and homeowners of color who stand to gain the most from these protections and assistance.

I am concerned about servicers' ability to effectively communicate with borrowers about available mortgage assistance options. As advocates have pointed out, "a substantial number of borrowers who fell behind on their loans during the pandemic did not access forbearance."[1] In fact, according to an April 2020 report from the HUD Office of Inspector General, as well as an investigation conducted by House Financial Services Committee Staff, some servicers failed to inform borrowers that they could obtain up to one year of forbearance as provided by the CARES Act and provided misleading, inaccurate, or incomplete information to borrowers on their websites.[2] Legal services attorneys and housing counselors have also raised concerns about communication failures by servicers as borrowers exit forbearance without understanding their rights to extend forbearance or to request post-forbearance options that can help them avoid foreclosure.[3] This raises ongoing questions about the efficacy of servicers' current conversations with borrowers, as these options are being communicated almost entirely over the phone.

Although vaccinations have increased protections against the coronavirus itself, measures addressing systemic financial risks remain to be seen in the fallout of the pandemic crisis. This is especially true for communities that have historically faced exclusion or discrimination in mortgage lending and that are experiencing lower vaccination rates.[4] Earlier this month, CFPB reported that homeowners of color continue to face significant challenges.[5] While only 18% of mortgage borrowers are Black or Latinx, they are nearly three times as likely as White borrowers to report being behind on their mortgage payments or having a mortgage in forbearance.[6] More than one-third (33%) of borrowers in forbearance and 27% of delinquent borrowers are Black or Latinx.[7] As we saw in the aftermath of the Great Recession, the risks of mass foreclosures go beyond the individual borrower and systemically affect entire communities as forbearance and mortgage delinquency are often concentrated in communities of color and low-income communities.[8] Indeed, in a January 2021 analysis, the National Bureau of Economic Research found that "forbearance rates are significantly higher in areas with larger shares of minorities and a larger shares of Blacks [during the COVID-19 crisis]."[9] As we saw in the last recession, any

[1] National Consumer Law Center, *Letter to Acting Director Uejio* (Jan. 28, 2021).
[2] House Committee on Financial Services, *Protecting Homeowners During the Pandemic: Oversight of Mortgage Servicers' Implementation of the CARES Act*, 116th Cong. (July 13, 2020).
[3] National Consumer Law Center, *Letter to Acting Director Uejio re: Proposed Regulation X Changes to Allow Streamlined Loan Mod Offers During and Immediately after the COVID-19 Pandemic* (Mar. 12, 2021).
[4] Gloria Oladipo, *Black and Latino communities are left behind in Covid-19 vaccination efforts*, The Guardian (Jun. 12, 2021).
[5] Consumer Financial Protection Bureau, *CFPB Issues Reports Detailing Mortgage Borrowers' Continuing COVID-19 Challenges* (May 4, 2021).
[6] *Id*.
[7] *Id*.
[8] Center for Responsible Lending, *Collateral Damage: The Spillover Costs of Foreclosures* (Oct. 24, 2012).
[9] Susan F. Cherry et al., *Government and Private Household Debt Relief During COVID-19*, National Bureau of Economic Research (Jan. 2021).

lapse in foreclosure protections at this time stands to threaten the housing stability and wealth building opportunities for generations of households of color.

CFPB's proposed rule would prohibit mortgage servicers from initiating foreclosure on loans secured by a borrower's principal residence until after December 31, 2021, with some exceptions. However, the current administrative foreclosure moratorium ends on June 30, 2021, and CFPB's rule is not expected to be implemented until August of 2021. This timing presents a gap in critical protections and relief for borrowers. While this gap could result in servicers expediting efforts to initiate foreclosures before a final rule takes effect, especially for borrowers who have not been able to access forbearance options during the pandemic, the gap is expected before full implementation of the Homeowner Assistance Fund and deployment of housing counseling funding that were provided through the American Rescue Plan Act to assist struggling homeowners. Therefore, as previously stated, I encourage an extension of the current foreclosure moratorium and ask that the CFPB move to finalize the rule as soon as possible to close the gap and promptly give homeowners more certainty about their options, including by issuing an interim final rule if necessary.

I appreciate the current rules, which prohibit servicers from initiating foreclosure until a homeowner is more than 120 days behind on payments.[10] However, as the CFPB's proposed rule points out, this current 120-day pre-foreclosure period will have expired for most borrowers while they were in forbearance, leaving them with no protection under the proposed rule if their forbearance ends after December 31, 2021. Consumer groups are advocating that CFPB should institute a grace period that is 120 days after a borrower's forbearance ends or until December 31, 2021, whichever is later. I agree that borrowers exiting forbearance in 2022, due to the circumstances brought about by pandemic forbearance options, should have the same protections as borrowers under the current rules. I encourage CFPB to use its authority to the greatest extent possible to provide the maximum length of time for foreclosure protections, allowing homeowners and servicers adequate time to request, process, and provide affordable loan modifications.

If servicers fail to effectively communicate to borrowers their full rights, it will be important for CFPB to take swift enforcement action to ensure borrowers are protected against foreclosure and the risk of losing their homes. No borrower should face an avoidable foreclosure simply because their servicer failed to inform them of all available loss mitigation options. Specifically, I urge CFPB to notify servicers of the consequences they will face if they take any of the following actions: fail to provide clear, timely, and accurate information to homeowners about their post-forbearance options; fail to conduct adequate borrower outreach; unduly delay reviewing loan modification applications; engage in improper foreclosure-related activity; unlawfully discriminate against borrowers; or supply inaccurate, adverse information to credit reporting agencies. In addition, I urge CFPB to require servicers to notify borrowers about how to access mortgage assistance through the Homeowner Assistance Fund program that Congress passed in the American Rescue Plan, as well as about local HUD-approved housing counseling agencies and

[10] 12 C.F.R. 1024.41(f)

legal services organizations that are available to help borrowers who are struggling to remain current on their mortgages.

Thank you for your timely attention to this request. I look forward to working with you to build a fair and just mortgage servicing system for homeowners during the pandemic.

Sincerely,

MAXINE WATERS
Chairwoman

cc: The Honorable Patrick McHenry, Ranking Member