

United States Senate

WASHINGTON, DC 20510

September 02, 2020

The Honorable Kathleen Kraninger
Director
Consumer Financial Protection Bureau
1700 G St. N.W.
Washington, D.C. 20552

Dear Director Kraninger:

We write concerning your failure to ensure that borrowers are receiving timely and accurate information regarding their options to access mortgage relief and avoid foreclosures during the novel coronavirus 2019 (COVID-19) pandemic. As Director of the Consumer Financial Protection Bureau (CFPB or the Bureau), you are in charge of the agency with authority to regulate mortgage servicers, including how servicers handle mortgage forbearance. Your agency has the duty and the authority to take actions that ensure families can stay in their homes and prevent a series of irreversible foreclosures. But you are failing to meet your responsibilities. Instead of taking proactive steps to make sure that borrowers are aware of their options for mortgage assistance when they need it, the Bureau has been coddling the largest banks and mortgage servicers while doing virtually nothing to help borrowers.

We are seeking information about how your agency plans to end its inaction and ensure that borrowers are made aware of available mortgage relief options and how to access them. Failure to do so will result in an unnecessary and preventable wave of foreclosures and displacements during a public health and economic crisis.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law in March and provided borrowers with federally-backed mortgages the right to request a forbearance for up to 360 days by submitting a request to their mortgage servicer and affirming “financial hardship during the COVID-19 emergency.”¹ Additionally, multiple agencies, including the Federal Housing Finance Agency (FHFA), U.S. Department of Housing and Urban Development (HUD), U.S. Department of Veterans Affairs (VA), and the U.S. Department of Agriculture (USDA) have separately instituted foreclosure moratoria for single-family borrowers with mortgages backed by the federal government.² These important protections have provided

¹ CARES Act, Section 4022, <https://www.congress.gov/116/plaws/publ136/PLAW-116publ136.pdf>.

² Federal Housing Finance Agency, “FHFA Extends Foreclosure REO Eviction Moratoriums,” press release, August 27, 2020, <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-Foreclosure-and-REO-Eviction-Moratoriums.aspx>; Department of Housing and Urban Development, “FHA Extends Foreclosure and Eviction Moratorium for Homeowners Through Year End,” press release, August 27, 2020, https://www.hud.gov/press/press_releases_media_advisories/HUD_No_20_134; Department of Veterans Affairs, “Extended Foreclosure Moratorium for Borrowers Affected by COVID-19,” August 24, 2020, <https://www.benefits.va.gov/HOMELOANS/documents/circulars/26-20-30.pdf>; Department of Agriculture, “USDA

much-needed economic relief for many borrowers, but recently released data show that millions of borrowers are likely unaware that they are eligible for this relief.³ Moreover, borrowers of color and lower-income borrowers are most likely to be unaware of the relief options available.⁴

An initial inquiry from our offices revealed potential problems. We requested information from 11 major mortgage servicers about how they were ensuring borrowers experiencing financial hardship could take advantage of forbearance protections. The responses “reveal[ed] a number of problems in the notification process,” to eligible borrowers, and that “materials ... often do not inform eligible homeowners of their specific legal rights and present a menu of post-forbearance options.”⁵ These findings echoed a report from the Office of the Inspector General at HUD, which found that servicer webpages focused on forbearance “provided incomplete, inconsistent, dated, and unclear guidance to borrowers related to their forbearance options under the CARES Act.”⁶ Similarly, under a separate review, the FHFA Inspector General found “incomplete and/or unclear information about forbearance and repayment on 14 of the 20 websites of the large servicers and generally limited to no information on forbearance and repayment on the remaining 40 websites,” of medium and small servicers.⁷

The available data highlight the insufficiency of the current efforts to make borrowers aware of this relief. According to an analysis by the Urban Institute, “530,000 homeowners who became delinquent after the pandemic began did not take advantage of forbearance, despite being eligible to ask for the plan.”⁸ And last month, Fannie Mae released the results of its National Housing Survey, a study of the impact of COVID-19 on consumers’ financial and housing needs.⁹ The results showed that an astonishing 56 percent of lower income borrowers were unaware of these options.¹⁰ Additionally, 65 percent of Hispanic borrowers and 51 percent of Black borrowers

Extends Foreclosure and Eviction Relief on Single Family Housing Direct Loans,” press release, June 23, 2020, <https://www.rd.usda.gov/node/17811>.

³ Fannie Mae, “COVID-19: The Need for Consumer Outreach and Home Purchase/Financing Digitization – National Housing Survey,” August 2020, <https://www.fanniemae.com/resources/file/research/housingsurvey/pdf/covid19-consumer-impact-nhs-q22020.pdf>.

⁴ *Id.*

⁵ Letter from Senators Elizabeth Warren, Sherrod Brown, and Bob Menendez to Senators Mitch McConnell and Charles Schumer, June 3, 2020, [https://www.warren.senate.gov/imo/media/doc/2020.06.03%20Letter%20to%20Leadership%20on%20Homeowner%20Protections%20\(1\).pdf](https://www.warren.senate.gov/imo/media/doc/2020.06.03%20Letter%20to%20Leadership%20on%20Homeowner%20Protections%20(1).pdf).

⁶ Office of Inspector General, “Some Mortgage Loan Servicers’ Websites Offer Information about CARES Act Loan Forbearance That Is Incomplete, Inconsistent, Dated, and Unclear,” Apr. 27, 2020, <https://www.hudoig.gov/reports-publications/topic-brief/some-mortgage-loan-servicers-websites-offer-information-about>.

⁷ Federal Housing Finance Agency, Office of Inspector General, “Oversight by Fannie Mae and Freddie Mac of Compliance with Forbearance Requirements Under the CARES Act and Implementing Guidance by Mortgage Servicers,” July 27, 2020, <https://www.fhfaig.gov/sites/default/files/OIG-2020-004.pdf>.

⁸ Urban Institute, “Six Facts You Should Know about Current Mortgage Forbearances,” Jung Hyun Choi and Daniel Pang, August 18, 2020, <https://www.urban.org/urban-wire/six-facts-you-should-know-about-current-mortgage-forbearances>.

⁹ Fannie Mae, “COVID-19: The Need for Consumer Outreach and Home Purchase/Financing Digitization – National Housing Survey,” August 2020, <https://www.fanniemae.com/resources/file/research/housingsurvey/pdf/covid19-consumer-impact-nhs-q22020.pdf>.

¹⁰ *Id.*

were not familiar with relief options compared to just 41 percent of white borrowers.¹¹ These data, and the stark disparities they reveal, indicate that efforts to date by servicers, and by the government agencies responsible for protecting consumers – most notably, the CFPB – have failed to ensure that homeowners are aware of relief options.

The CFPB bears the primary responsibility for these failures, which began immediately after the CARES Act was passed. On April 3, 2020, seven days after the CARES Act was signed into law, the CFPB joined banking regulators in issuing a statement to essentially inform mortgage servicers that the Bureau would not enforce certain violations of the law. Specifically, the policy statement noted that the agencies “do not intend to take supervisory or enforcement action against servicers,” for violating the rules specified in Regulation X for mortgage servicers, “including providing several different notices to borrowers on specific timelines,” provided the servicers are making “good faith efforts” to do so.¹² The Bureau made no such adjustment for timelines that apply to consumers.¹³

Moreover, in the recent Interim Final Rule on mortgage servicing, the Bureau failed to ensure that homeowners who are coming out of forbearance will have a chance to receive a sustainable payment arrangement prior to the start of the foreclosure process.¹⁴ Nor has the Bureau required servicers to notify homeowners of the availability of CARES Act forbearances.

In addition, the CFPB has not taken any substantial steps beyond creating the coronavirus mortgage and housing website to inform consumers about mortgage relief options.¹⁵ Although the website is an important resource, most consumers are likely unaware of its existence, and this online resource will not reach many of the borrowers most in need of this crucial information, including those who do not have dependable broadband services, are not comfortable using technology or do not know to search the Bureau’s website for this information.

Congress included the right to request forbearance in the CARES Act so that every eligible homeowner would be protected from losing their home if they experienced financial hardship during this crisis. The responses of the CFPB, servicers, and other entities have made it clear that Congress must do more to ensure that these protections remain accessible.¹⁶

¹¹ *Id.*

¹² Consumer Financial Protection Bureau, “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.

¹³ Written Testimony of Alys Cohen to the U.S. House Committee on Financial Services, Subcommittee on Oversight and Investigations, July 16, 2020, <https://financialservices.house.gov/uploadedfiles/hhr-116-ba09-wstate-cohena-20200716.pdf>.

¹⁴ *Id.*

¹⁵ Consumer Financial Protection Bureau, “Mortgage and housing assistance during the coronavirus national emergency,” <https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/>

¹⁶ Letter from Senators Elizabeth Warren, Sherrod Brown, and Bob Menendez to Senators Mitch McConnell and Charles Schumer, June 3, 2020, [https://www.warren.senate.gov/imo/media/doc/2020.06.03%20Letter%20to%20Leadership%20on%20Homeowner%20Protections%20\(1\).pdf](https://www.warren.senate.gov/imo/media/doc/2020.06.03%20Letter%20to%20Leadership%20on%20Homeowner%20Protections%20(1).pdf).

But there are several steps the Bureau can and must immediately take to use its existing authority to help borrowers.

First, the Bureau must immediately clarify that it will aggressively enforce existing regulatory requirements for servicers to notify borrowers of options to avoid foreclosure after they are in default for a certain period. In particular, the Bureau must ensure that servicers promptly send the required notice to borrowers by the 45th day of delinquency informing them of their options, including those under the CARES Act or any proprietary relief program. The Bureau's "acting in good faith" allowance is an invitation for servicers to break the law without consequence. The CFPB must do better.

To ensure that its enforcement efforts are clear and consistent, the Bureau should issue additional guidance to servicers, including a model notice, to specify procedures for notifying borrowers of their available options before a borrower ends up in delinquency.

Second, the CFPB should use its resources, including its existing relationships with servicers, to mount a strong public awareness campaign to ensure that borrowers are aware of available forbearance relief. This awareness campaign should be targeted to minority borrowers, borrowers with limited English proficiency, and borrowers with household incomes of less than \$50,000, who are presently being hit hardest by the pandemic, the economic collapse, and the failure of CFPB to enforce the law. The campaign should include outreach through print media, radio, and television in those specific communities and partnerships with community organizations that serve them.

These actions are now even more important. As the pandemic-induced economic collapse enters its sixth month, homeowners who lost their jobs and are relying on unemployment benefits to make ends meet had their weekly benefits cut in half.¹⁷ Senate Republicans and the Trump Administration are refusing to pass another urgently needed federal relief bill. Given this inaction, it is essential that the Bureau use every single tool at its disposal to ensure these individuals are aware of and understand their options to keep their homes during this unprecedented global pandemic.

To better understand the CFPB's existing efforts in this area as well as the Bureau's plans for the future, I ask that you respond to the following by no later than September 16, 2020.

1. Describe the extent of the Bureau's existing efforts to ensure borrowers are aware of their right to request forbearance, including the types of media used and the nature of the markets covered.
2. Has the Bureau targeted any of its mortgage relief awareness efforts to lower-income communities? If yes, please describe those efforts. If not, please explain why.

¹⁷ New York Times, "End of \$600 Unemployment Bonus Could Push Millions Past the Brink," Ben Casselman, July 21, 2020, <https://www.nytimes.com/2020/07/21/business/economy/coronavirus-unemployment-benefits.html>.

3. Beyond including multiple language translations for certain materials on its website, what steps has the Bureau taken to target its mortgage relief awareness efforts to communities of color and limited English proficiency borrowers, especially Black and Latino homeowners?
 - a. Has the Bureau partnered with housing counselors and other local organizations that work directly with these communities?
 - b. Has the Bureau conducted outreach geared towards individuals without computer or internet access, such as using newspapers, radio, and other local media to advertise the relief?
4. What specific guidance has the Bureau provided to mortgage servicers regarding informing borrowers of mortgage relief opportunities?
 - a. Has the Bureau provided suggested language to mortgage servicers to use in written and oral communications to borrowers that would outline available forbearance options?
 - b. Has the Bureau provided any model language in multiple languages or encouraged servicers to provide these communications in multiple languages?
5. In response to the large number of borrowers who are unaware of forbearance options, what plans does the Bureau have to expand awareness efforts, including awareness of:
 - a. The terms of the forbearance, and
 - b. The post-forbearance options for dealing with missed payments?
6. Following the Bureau's implementation of the "Prioritized Assessments," supervisory approach during the COVID-19 pandemic, how many mortgage servicers have been examined and what actions has the Bureau taken in response?

Sincerely,

/s/
Elizabeth Warren
United States Senator

/s/
Sherrod Brown
United States Senator

/s/

Chris Van Hollen
United States Senator

/s/

Robert Menendez
United States Senator

/s/

Jack Reed
United States Senator