

January 21, 2022

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

Re: Need for Guidance to Protect Homeowner Assistance Fund Applicants from Foreclosure

Dear Director Chopra:

The undersigned civil rights, consumer and community organizations urge the Consumer Financial Protection Bureau (CFPB) to take immediate action to prevent avoidable home foreclosures for borrowers who apply for mortgage assistance from the Homeowner Assistance Fund (HAF) program. Specifically, we ask that the CFPB use its authority to issue guidance halting foreclosures for 60 days when a homeowner has submitted an application for HAF funds and the servicer has been notified by the HAF administrator. This protection is especially crucial at this time because federal assistance intended to help borrowers bring delinquent mortgages current will often be imminently available through state HAF implementation.

Around [800,000 homeowners](#) are still in forbearance periods. Because the automatic pre-foreclosure protections of the Bureau's mortgage servicing rule expired at the end of 2021, borrowers may face foreclosure as soon as they exit forbearance. Servicers are now permitted to initiate foreclosure immediately after the end of the forbearance unless a borrower submits a complete application packet, something that few borrowers will be doing because of the industry-wide shift to a streamlined modification framework. HAF funds are essential to helping many of these struggling homeowners bring their loans current, obtain an affordable payment and avoid foreclosure.

The risks are even greater for homeowners of color. Data from the U.S. Census Bureau's Household Pulse Survey for Weeks 34-39 (July 21-Oct. 11, 2021) show that while 7.6% of white homeowners on average reported being in a household with mortgage delinquency, for the same period 12.6% of homeowners of color on average reported being in households that were delinquent. Preventing unnecessary foreclosures where HAF funds may be available would provide crucial protections in communities of color.

Market data demonstrate the need for a foreclosure pause for HAF applicants. Almost half of homeowners more than 90 days behind on mortgage payments and not in forbearance currently have no loss mitigation plan, according to a [recent report](#) from the Federal Reserve Bank of Philadelphia. The report also highlighted the particular vulnerability of homeowners with private-label and portfolio loans, which comprise some 30 percent of the mortgage market. Of homeowners in those market segments who are 90+ days delinquent, only 20% and 35% respectively are receiving home-retention options due to the more limited availability of such assistance in those sectors. As a result, they may be more likely to lose their homes through foreclosure or other means. Moreover, November 2021 data from the Mortgage Bankers Association (MBA) show that increasing numbers of borrowers are seeking payment reductions

after a forbearance, rather than resuming their regular monthly payment. In fact, the MBA numbers highlight that requests for modifications are greater than resummptions of regular payments for the first time since June 2020. A [Black Knight report](#) with November 2021 data found that there were over one million homeowners in serious delinquency, 2.5 times more than at the start of the pandemic, with the MBA November report showing a similar figure. The Black Knight report also showed 800,000 forbearance exits during the previous 60 days, with nearly 560,000 homeowners remaining in unresolved post-forbearance loss mitigation.

Recent data on FHA borrowers from the [Neighborhood Watch database](#) show that over 450,000 FHA borrowers are seriously delinquent. Among reverse mortgage borrowers, almost 30,000 of these older borrowers have property charge defaults, that is, defaults on their property taxes, homeowners insurance, or other regular fees associated with owning their homes. Although reverse mortgage loans are not covered by the Bureau's loss mitigation rules, they are included in many state HAF plans. More than 10,000 reverse mortgage borrowers already are in foreclosure, but only around 3,500 have requested a COVID-19 extension. All of these indicators point to the potential for a significant number of preventable foreclosures during the pandemic, especially among homeowners of color, older homeowners and those with low and moderate incomes, unless mortgage servicers align their loss mitigation protocols with HAF programs.

While foreclosures will likely be ramping up this month, HAF programs have seen significant delays. A few states have very limited pilot programs running, and a handful are slowly starting to open, but the Treasury Department is still reviewing most states' proposed HAF plans. As of January 6, 2022, only 22 of the 53 participating states and territories have received approval of their HAF plans from the Treasury Department, with only a few states (thirteen) accepting HAF applications. States and territories cannot open their application portals until they receive approval from Treasury and then finalize vendor agreements, servicer collaboration agreements and other administrative and logistical details. As a result, borrowers in most jurisdictions will not even be able to apply for HAF assistance before the end of this month or February at the very earliest.

Because of these ongoing delays, once borrowers are able to apply for HAF they may already be facing a first legal action in a foreclosure proceeding or even be in active foreclosure. Without protection against the initiation or continuation of foreclosure, HAF applicants may end up losing their homes unnecessarily or, at a minimum, will face additional foreclosure-related fees and charges added to their loan accounts, which will make resolution of their delinquency more difficult and costly. Even if a borrower with recently added foreclosure charges is able to get approved for HAF assistance, use of these limited aid dollars to reimburse such costs is an unnecessary - and avoidable - drain on this critical part of the American Rescue Plan, where funding already is insufficient to meet the expected need in many jurisdictions.

We also are engaging with HUD, the GSEs, USDA and VA on this issue, urging the agencies to issue guidance to their respective servicers that requires a pause of at least 60 days in any foreclosure activity once a servicer receives notification that a borrower has applied for HAF assistance and is conditionally eligible. Even if the agencies adopt this approach, however, their guidance may not become effective for some time and will not protect borrowers with non-federally backed loans. The Bureau's involvement would create a level playing field in the

mortgage market and ensure that all borrowers have the time necessary to avail themselves of critical federal mortgage assistance.

We therefore urge the CFPB to communicate to mortgage servicers that they must pause foreclosure activity for at least 60 days after being notified that a borrower has applied for HAF assistance and meets conditional program eligibility (as shown, for example, by receipt of an “I-record” transmitted from the HAF program administrator to the servicer via the Common Data File). This common-sense approach to preventing unnecessary foreclosures during a pending HAF application aligns with the Bureau’s overall approach in the mortgage servicing regulations, which limit foreclosures when a homeowner is seeking loss mitigation. It also would help prevent a further widening of the racial homeownership gap.

We would greatly appreciate the opportunity to meet with the Bureau about our proposal and any other alternatives you see to address the significant number of borrowers who remain in seriously delinquent status as of January 2022. Thank you for your attention to these extremely important issues. If you have any questions related to this letter, please contact Alys Cohen, Staff Attorney at the National Consumer Law Center, at acohen@nclc.org.

Sincerely,

National Organizations

Americans for Financial Reform Education Fund
Center for Community Progress
Center for Responsible Lending
Consumer Action
National CAPACD- National Coalition for Asian Pacific American Community Development
National Consumer Law Center (on behalf of its low-income clients)
National Fair Housing Alliance
National Housing Law Project
National Housing Resource Center
National Women's Law Center
Prosperity Now
UnidosUS

State and Local Organizations

American Debt Resources, Inc. (NY)
Brooklyn Legal Services Corporation A (NY)
California Reinvestment Coalition
CCCS of Buffalo (NY)
Charlotte Center for Legal Advocacy (NC)
Civil Justice, Inc. (MD)
Community Legal Services of Philadelphia (PA)
Connecticut Fair Housing Center
Empire Justice Center (NY)

Financial Protection Law Center (NC)
Foreclosure Prevention Legal Aid Clinic, University of Puerto Rico
Frank H. Hiscock Legal Aid Society (NY)
Greater Boston Legal Services, on behalf of its low-income clients (MA)
Housing and Economic Rights Advocates (CA)
Housing and Family Services of Greater New York, Inc.
Hudson River Housing (NY)
Human Development Services of Westchester, Inc. (NY)
Legal Action Chicago (IL)
Legal Aid Bureau of Buffalo, Inc. (NY)
Legal Aid Society of Southwest Ohio, LLC
Legal Aid Society of the District of Columbia
Legal Services of New Jersey
Long Island Housing Services, Inc. (NY)
Mountain State Justice (WV)
New Jersey Institute for Social Justice
New York Legal Assistance Group
North Carolina Justice Center
Ohio Poverty Law Center
Pisgah Legal Services (NC)
Vermont Legal Aid, Inc.