COMMUNITY
Home Lenders Association, Inc.
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April 2, 2020

Small Lender Protections in IMB Servicer Credit Facility

The Honorable Steven Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Mr. Jerome Powell
Chairman
Federal Reserve
2051 Constitution Avenue
Washington, DC 20418

The Honorable Ben Carson
Secretary
Department of Housing & Urban Development
451 7th Street NW
Washington, DC 20410

The Honorable Mark Calabria
Director
Federal Housing Finance Agency
400 7th Street SW
Washington, DC 20219

Dear Secretary Mnuchin, Chairman Powell, Secretary Carson, and Director Calabria:

Two weeks ago, we wrote requesting prompt action to ensure liquidity for independent mortgage bankers (IMBs), through establishment of broadly available advances or credit facilities for IMB servicers, in order to respond to significantly increased mortgage advance responsibilities arising from the coronavirus.

We appreciate Ginnie Mae's announcement last Friday that it is establishing a Pass-Through Assistance Program (PTAP), which is an excellent start in addressing this issue. However, with Congressional adoption last week of a requirement to provide up to a full year's forbearance for all agency mortgage loans to any borrower making a request and affirming hardship, a new concern has arisen with respect to smaller IMB mortgage loan originators, relating to the sale of their loans to investors or aggregators.

Specifically, smaller mortgage loan originators are experiencing significant problems selling agency loans where the borrower is utilizing the new forbearance requirement in their first payment due after the loan closes. This is creating significant new financial risk and liquidity demands – and threatens small lenders' ability to originate new loans, to the detriment to existing homeowners and potential homebuyers.

Therefore, CHLA is requesting that any credit facility or advance made available to a mortgage servicer that purchases loans from a loan correspondent should be conditioned on that servicer treating purchased loans that are or go into forbearance as if the borrower made payments on time. Effectively, such a servicer could not refuse to purchase a loan, offer inferior terms and conditions, or impose post-purchase fees or penalties solely due to such forbearance status.

Such a policy would ensure that for servicers receiving an advance or credit facility that buy loans from smaller loan originators. the benefits are passed along to those lenders and the consumers they serve.

<u>Explanation of the Problem</u>

A significant number of Independent mortgage bankers (IMBs) originate federal agency mortgage loans (FHA, RHS, VA, Fannie Mae, and Freddie Mac), and sell these closed loans service-released to consolidators that retain the servicing for a fee. Federal agency mortgage loans are the loans that are subject to the "CARES Act" requirement to offer forbearance when requested.

In the normal course of business, these IMB's utilize their warehouse loan facilities and aggregate loans, typically for a period between 7 and 30 days – after which they sell these loans to aggregator/investors.

However, in the event a borrower fails to make the first payment of a recently closed loan (exercising their new right to forbearance), the standard whole loan purchase agreement between a loan originator and a loan purchaser would provide that such an early payment default (EPD) would violate the covenant to deliver a performing loan. The problem is that aggregators typically decline to purchase non-performing loans – particularly now in the current environment with the coronavirus and new forbearance requirement significantly adding to advance responsibilities on their existing book of loans.

Furthermore, warehouse banks that advance funds to these smaller IMB's are generally not designed or equipped to provide financing on transactions for more than 30 days, the typical period from loan closing to sale to an aggregator. In the event of an intervening EPD, the non-servicing originator would then be contractually required to advance increasingly large amounts of cash to reduce the warehouse bank's exposure to the defaulted transaction. With no outlet to dispose of the transaction within 60 days, in most cases, the IMB is covering the entire balance of the defaulted transaction.

While IMB's are adequately capitalized to meet liquidity demands in the normal course of business, this new difficulty in selling loans creates problems with the covenants in their whole loan purchase agreement and under their warehouse facility. Moreover, we are not aware of any discussions or consideration to create a credit facility for non-servicer IMB loan originators to address this problem.

One potential solution is to include a provision in a next Phase IV coronavirus legislation to prevent purchasers of loans from loan correspondents from refusing to buy loans where the borrower exercised the forbearance option in the "Cares Act" or from treating such loans differently solely because of this.

However, we would point out that since aggregator reluctance to purchase loans is based primarily on liquidity concerns relating to servicing advances (as opposed to credit risk), advances or a liquidity facility to aggregators should address that concern – so they should not refuse to buy loans with EPDs.

Therefore, we believe you should address this problem - and protect smaller loan originators - by including, as a requirement of any servicer advance or credit facility that you might implement, that such credit be conditioned on a mortgage loan purchaser being prohibited from refusing to buy mortgage loans (or offering inferior pricing or terms) based solely on borrowers exercising their right to forbearance pursuant to the "CARES Act." (The right to do so based on fraud would be preserved).

Put simply, we believe it is fair that the benefit of any advances or credit facility for servicers that purchase loan servicing from smaller originators should be extended to those same originators and the consumers they serve. In turn, this would preserve small lender loan origination in this difficult period.

Sincerely,

COMMUNITY HOME LENDERS ASSOCIATION