

January 17, 2019

Secretary Sonny Perdue  
United States Department of Agriculture  
1400 Independence Ave., S.W.  
Washington, DC 20250

Dear Secretary Perdue,

On behalf of the low-income clients and communities we represent, we urge the United States Department of Agriculture (USDA) to issue a stay of all judicial and non-judicial foreclosure activity on direct and guaranteed single family home loans during the government shutdown. This stay should include the tolling of any timelines for borrowers to obtain the loss mitigation options available under these programs. Because the Department plays a critical role in approving alternatives to foreclosure in both programs, homeowners are unable to obtain loan assistance while key parts of the agency are closed. A comprehensive stay is warranted until the agency reopens and works through any backlog of foreclosure alternatives.

Since the Department has not publicly taken any position on foreclosure activity during the shutdown, there is no reason to believe that foreclosure filings, motions, and sales have completely stopped at this time. This includes activity on direct loans that are often handled by private, contract attorneys in state courts.

The Department has an explicit role in approving special servicing alternatives in both of the single family mortgage programs. Without an operational Centralized Servicing Center (which, according to its website, has ceased work during the shutdown), USDA direct borrowers seeking assistance do not have any way to discuss foreclosure alternatives or have their loss mitigation requests considered. Homeowners face time limits to submit appeals and other documents in order to protect their rights to be considered for loss mitigation. Without access to the process, homeowners will face avoidable foreclosures.

Courts have consistently held that the Department's right to foreclose on a direct loan is conditioned upon the Department's compliance with its statutory and regulatory duties to consider homeowners for loss mitigation and approve the options for which they are eligible. With the Centralized Servicing Center not functioning with adequate staff to process and consider homeowners for these options, the USDA cannot properly fulfill these duties.

For guaranteed loan borrowers, servicers who do not have a waiver must obtain USDA approval of loss mitigation options. If foreclosure timelines continue to run without the USDA available to consider loss mitigation requests from such servicers, the resulting delays in review are likely to lead to foreclosures on borrowers who qualify for a foreclosure alternative. While Consumer Financial Protection Bureau rules requiring a pause in the foreclosure process may help some borrowers who have submitted complete applications, they will not cover everyone who needs help. Moreover, since the USDA cannot now timely approve requests for assistance and since the agency has not issued any guidance on the shutdown, servicers may consider the borrower requests to be stale and require that borrowers resubmit information for review, which could cause significant problems for borrowers facing foreclosure timelines.

In many U.S. federal court districts the Department of Justice (DOJ) has already requested stays of proceedings in which the DOJ represents a federal agency. The federal courts are routinely approving these stay requests. In light of the stays of actions in which the DOJ represents a federal agency such as the USDA directly in federal courts, it is appropriate that proceedings in which the USDA is a party but is represented by contract counsel in federal and state courts also should be stayed. Given the unavailability of the Department's key loss mitigation staff, the Department cannot participate appropriately in foreclosure litigation in any forum.

In order to avoid unnecessary foreclosures on borrowers who would have received assistance but for the government shutdown, we urge the Secretary to issue a stay on foreclosure activity and toll borrower deadlines during (and for a reasonable period following) the shutdown.

Sincerely,

Advocates for Basic Legal Equality, Inc. (Ohio)

Americans for Financial Reform Education Fund

California Reinvestment Coalition

Center for NYC Neighborhoods

Center for Responsible Lending

Connecticut Fair Housing Center

Consumer Action

Empire Justice Center (New York)

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Legal Aid Society of Southwest Ohio, LLC

Mountain State Justice, Inc. (West Virginia)

National Community Reinvestment Coalition (NCRC)

National Consumer Law Center (on behalf of its low-income clients)

National Fair Housing Alliance

National Housing Law Project

Woodstock Institute

cc: Anne Hazlett, Assistant to the Secretary for Rural Development  
Joel Baxley, Administrator, Rural Housing Service  
Roger Glendenning, Deputy Administrator, Rural Housing Service