

# United States Senate

WASHINGTON, DC 20510

October 1, 2020

The Honorable Kathleen Kraninger  
Director  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, D.C. 20503

Dear Director Kraninger:

We write to you regarding the Consumer Financial Protection Bureau (Bureau)'s recent public enforcement actions against mortgage originators offering Veterans Administration (VA)-guaranteed loans. We are deeply concerned by the Bureau's failure to obtain restitution for consumers who were targeted by these companies' deceptive marketing practices.

The VA helps servicemembers, veterans, and eligible surviving spouses become homeowners by guaranteeing a portion of home loans. VA home loans are provided by certain pre-approved private lenders, including banks and mortgage companies. By guaranteeing a portion of the loan, the VA enables the lender to provide servicemembers, veterans, and eligible surviving spouses with loan terms that are more favorable than would otherwise be available in the marketplace.

Unfortunately, because of extended travel and multiple relocations, often related to their service, servicemembers and veterans are particularly vulnerable to scams. The VA and the Bureau have long been aware of one such scam: direct-mail advertisements that contained inadequate disclosures or misleading and deceptive statements pertaining to VA home loans. For instance, in 2016, the Bureau released a snapshot of servicemember complaints and highlighted that veterans had reported receiving misleading advertisements.<sup>1</sup> And in November 2017, the VA and the Bureau issued a "Warning Order" alerting servicemembers and veterans to offers of mortgage refinancing that contained deceptive or false advertising.<sup>2</sup>

In response to the VA's continuing concerns about unlawful advertising in the market, the Bureau brought public enforcement actions against eight different mortgage lenders for deceptive and misleading advertising of VA mortgages. Between July 2020 and September 2020, the Bureau announced consent orders against Sovereign Lending Group, Inc., Prime Choice Funding, Inc., Go Direct Lenders, Inc., PHLoans.com, Inc., Hypotec, Inc., Service 1<sup>st</sup> Mortgage, Inc., Accelerate Mortgage, LLC, and ClearPath Lending Inc. In each case, the Bureau found that the originators' advertisements contained false, misleading, or inaccurate statements that violated the Consumer Financial Protection Act's prohibition against deceptive acts and practices, the Mortgage Acts and Practices Advertising Rule, and Regulation Z.<sup>3</sup> In each case, violators were

---

<sup>1</sup> [https://files.consumerfinance.gov/f/documents/112016\\_cfpb\\_OSA\\_VA\\_refinance\\_snapshot.pdf](https://files.consumerfinance.gov/f/documents/112016_cfpb_OSA_VA_refinance_snapshot.pdf)

<sup>2</sup> <https://www.blogs.va.gov/VAntage/43234/va-and-the-consumer-financial-protection-bureau-warn-against-home-loan-refinancing-offers-that-sound-too-good-to-be-true/>

<sup>3</sup> <https://www.consumerfinance.gov/about-us/newsroom/cfpb-settles-eighth-mortgage-company-deceptive-loan-advertisements-servicemembers-veterans/>.

required to pay a civil penalty and follow guidelines to prevent future violations. The Bureau collected approximately \$2.8 million in civil penalties from these eight violators, but did not require any of these companies to provide restitution to harmed consumers. However, the consent orders for at least one of the originators notes that “millions of advertisements” were sent to consumers, while another notes that “thousands of consumers” have obtained mortgages through the originator and the advertisements affected the decisions of many more, indicating that at least some consumers may have been victim to false advertising.<sup>4</sup>

In these cases, like others under your and Mr. Mulvaney’s leadership, it appears that the Bureau departed from the well-established operating procedure and the legal standard for restitution. The Ninth Circuit set forth the standard for restitution in Bureau cases in *CFPB v. Gordon*. As the court explained, restitution is “‘a form of ancillary relief’ that a court can order ‘[i]n the absence of proof of actual damages.’” Restitution is measured by “the full amount lost by consumers” or the amount that “reasonably approximates the defendants’ unjust gains.”

In prior cases involving deceptive advertising, the Bureau has obtained restitution for all consumers who enrolled in a service in response to a deceptive advertisement.<sup>5</sup> If the Bureau is unable to determine the appropriate amount of restitution, then the Bureau can still seek disgorgement as a remedy<sup>6</sup>—*i.e.*, the companies have to return any profit they generated from the deceptive advertisements.<sup>7</sup> Either way, whether through restitution or disgorgement, the Bureau should not allow companies to retain the profits derived through marketing practices that target our veterans.

As servicemembers, veterans, and their families make sacrifices for our country, they expose themselves to a number of financial risks and challenges; the Bureau must be clear that it is looking out for them in return. We are concerned that there has been no effort to ensure that thousands of servicemembers and veterans are made whole or at least compensated for damages caused by unscrupulous lenders seeking to profit by misleading homeowners.

Given our concerns, we request a response to the following questions:

---

<sup>4</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_service-1st-mortgage-inc\\_consent-order\\_2020-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_service-1st-mortgage-inc_consent-order_2020-09.pdf).  
[https://files.consumerfinance.gov/f/documents/cfpb\\_clearpath-lending-inc\\_consent-order\\_2020-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_clearpath-lending-inc_consent-order_2020-09.pdf).

<sup>5</sup> See *CFPB v. Morgan Drexen, Inc.*, Case No. 8:13-cv-01267 (C.D. Cal.) (\$77 million of restitution represented the total amount of fees paid by consumers who enrolled in the debt relief program in response to a deceptive advertisement, regardless of whether the consumers had received any services); see also *In re T.D. Bank, N.A.* (No. 2020-BCFP- 0007) (Aug. 8, 2020) (consent order required approximately \$97 million in restitution for deceptive advertising and other claims); *In re Equifax, Inc.*, ((No. 2017-CFPB-0001) (Jan, 3, 2017) (consent order required Equifax to pay \$3.8 million in restitution for deceptive representations to consumers); *In re TransUnion*, (No. 2017-CFPB-0002) (Jan 3, 2017) (consent order required TransUnion to pay \$13.9 million for deceptive representations to consumers); *In re First Nat’l Bank of Omaha*, (2016-CFPB-0014) (Aug. 25, 2016) (consent order required bank to provide \$27.75 million to 257,000 consumers for deceptive marketing and other claims relating to credit card add-on products).

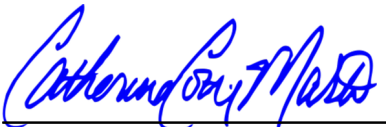
<sup>6</sup> 12 U.S.C. § 5565(a)(2)(D).

<sup>7</sup> See *CFPB v. Klopp*, 957 F.3d 454, 467 (4th Cir. 2020) (“Disgorgement [is] the payment of profits arising from improper conduct”); *CFPB v. Gordon*, 819 F.3d 1179, 1195 (9th Cir. 2016) (“Disgorgement is a remedy in which a court orders a wrongdoer to turn over all profits obtained by violating the law.”).

1. Please elaborate on the Bureau's decision not to require restitution or redress for consumers.
2. What is the standard that the Bureau applied in the above cases to determine whether to provide restitution?
3. Is the standard for restitution that the Bureau applied in the above cases different than the standard applied by courts and in prior Bureau settlements? If so, what is the case law or legal support for the Bureau's new restitution standard?
4. For each of the eight cases:
  - a. Did the Bureau seek out evidence about individuals who were harmed by these deceptive practices? If not, why?
  - b. What did Bureau career staff in Enforcement recommend for damages, restitution, disgorgement, other remedies, or civil penalties?
  - c. Did political appointees overrule career staff's recommendations for action, including penalties, damages, restitution, disgorgement, other remedies, or civil penalties?

We look forward to hearing back from you regarding this matter within 30 days of receipt of this letter. For more information, please contact Carol Wayman at 202.224.3150 or at [Carol.Wayman@cortezmasto.senate.gov](mailto:Carol.Wayman@cortezmasto.senate.gov).

Sincerely,



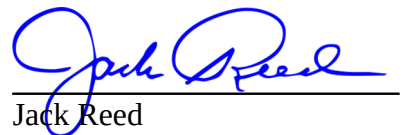
Catherine Cortez Masto  
United States Senator



Sherrod Brown  
United States Senator



Charles E. Schumer  
United States Senator




Jack Reed  
United States Senator




---

Jon Tester  
United States Senator




---

Chris Van Hollen  
United States Senator




---

Elizabeth Warren  
United States Senator



---

Richard Blumenthal  
United States Senator



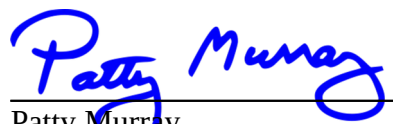
---

Richard J. Durbin  
United States Senator



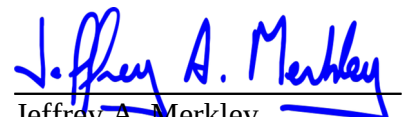
---

Tina Smith  
United States Senator



---

Patty Murray  
United States Senator




---

Jeffrey A. Merkley  
United States Senator



---

Robert Menendez  
United States Senator



---

Amy Klobuchar  
United States Senator



Tammy Duckworth  
United States Senator



Mark R. Warner  
United States Senator