



Senior Homeowners Are Struggling with HUD's Limits on HECM Loss Mitigation

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The National Consumer Law Center, on behalf of its low-income clients, submits the following examples of reverse mortgage borrowers who are facing the risk of imminent foreclosure and eviction due to difficulty accessing loss mitigation. Most of these examples involve servicers refusing to implement repayment plans or an at-risk extension to resolve property charge defaults. Some involve improper servicer claims of non-occupancy. All of these examples involve vulnerable seniors attempting to save their homes.

HUD Should Clarify its Policy Allowing Servicers to Offer Repayment Plan Once Foreclosure is Initiated.

D.K., Hebron, CT, under 80

Loraine Martinez, Connecticut Fair Housing Center

Many servicers are refusing to offer repayment plans to HECM borrowers in foreclosure because they have the impression that they may still be penalized by HUD if the repayment plan fails. Financial Freedom denied D.K.'s request for a repayment plan and told the foreclosure mediator in late July 2016 it could not offer a repayment plan "citing HUD guidelines that provide for the possibility of revoking the loan's insurance if there were to be a subsequent default. The servicer has determined this too risky and is unwilling to offer repayment plans." (this is taken from the mediator's report, available at:

<http://civilinquiry.jud.ct.gov/DocumentInquiry/DocumentInquiry.aspx?DocumentNo=10821341>)

P. B., Charlotte, NC, under 80

Leah Kane, Legal Services of Southern Piedmont

Ms. B was forced to file Chapter 13 Bankruptcy because her servicer, Financial Freedom, repeatedly refused to allow her to enter into a repayment plan to cure her property charge default and scheduled her home for foreclosure. In January 2016, Financial Freedom said that based on HUD's Mortgagee Letter 2015-11, it could not offer repayment plans for loans in foreclosure. Ms. B requested that Financial Freedom seek a waiver from HUD, but her request was denied. In order to save her home of over 40 years, she is now attempting to pay into a bankruptcy plan.

A. G., Middletown, CT, under 80

Loraine Martinez, Connecticut Fair Housing Center

It is critical that HUD clarify to servicers that they are permitted to offer repayment plans after foreclosure has been initiated. Among other reasons, servicers sometimes wrongfully initiate foreclosure while a borrower is performing on an existing repayment plan. A.G. was performing on a repayment plan when RMS sent a notice of default and referred his loan to foreclosure. In its response to a Notice of Error, RMS stated that it cannot offer A.G. a repayment plan because his loan is in “active foreclosure.”

D. M., Torrington, CT, Age 72

Sarah White, Connecticut Fair Housing Center

D. M. is another example of the problem of servicers initiating foreclosure wrongfully, and then taking the position that they cannot offer a repayment plan once foreclosure has been initiated. D.M. was performing on a repayment plan when Financial Freedom sent a notice of default and referred her loan to foreclosure. Financial Freedom’s counsel told the mediator it cannot review her for a new repayment plan because she is in foreclosure. D.M.’s home has been in her family for more than 100 years, and she raised her 8 children there. She was confused about her obligation to pay taxes and thought she could pay on a monthly basis to the lender, like escrow, which Financial Freedom had allowed her to do for several years without explaining otherwise.

L.B., Westport, CT, under 80

Sarah White, Connecticut Fair Housing Center

Ms. B is yet another HECM borrower who has been put into foreclosure despite being current on a repayment plan to cure her property charge default. Ms. B is current on a repayment plan with Wells Fargo for flood insurance and is current on ongoing taxes and insurance, yet Wells Fargo served her with a summons and complaint initiating a foreclosure. Wells Fargo’s customer service representative told her to “ignore” the summons and complaint.

O. L., Lakeland, FL, Age 92

Lynn Drysdale, Jacksonville Area Legal Aid

Client is very feeble and has a very difficult time getting around. She also has poor eyesight. Her children are trying to help her as much as possible. Her servicer, Financial Freedom/CIT Bank, first filed a non-occupancy case regarding her home of 40 years. They figured out their mistake when we explained she was living in the home, and voluntarily dismissed that foreclosure.

Then they said she failed to maintain insurance for a short period of time. The payment for the Force-Placed Insurance was initially noted as a loan balance transfer that she did not need to repay. Then the servicer unilaterally decided they would seek payment from her instead. She sent them a check but it was 30 cents short. They sent her a bill for the 30 cents. She did not read it correctly because of her limited vision and sent them a check for 3 cents. They foreclosed based upon the 27 cent delinquency. It is difficult to understand why a servicer would initiate

foreclosure in this situation rather than working with the HECM borrower, who clearly could have sent an additional 27 cents.

HUD's Current Loss Mitigation Options Are Too Restrictive. HUD Should Allow Borrowers to Use More than 25% of Surplus Income, Allow Repayment Plans that Extend Past 98% of the MCA, and Agree to Take Assignment of Loans in an Active Repayment Plan.

D. H., Washington, DC; 85 years old

Erik Goodman, Legal Counsel for the Elderly

DH has a default property charge balance of roughly \$13,000. Champion will not offer a repayment plan, because DH's loan is past 98% of the Maximum Claim Amount. DH suffers from dementia and as a result has a court-appointed conservator. His income is \$2,000 per month. He could easily afford to pay \$13,000 back over 60 months while also paying his ongoing property taxes and maintaining homeowner's insurance. The major problem that caused his default – his dementia – has been resolved through the conservatorship. Yet Champion refuses to offer a repayment plan simply because of HUD's policies regarding not accepting loans for assignment when they are in an active repayment plan.

B. J., Rocky Hill, CT, Age 81

Loraine Martinez, Connecticut Fair Housing Center

Ms. J. was performing on a repayment plan when Champion quit accepting her payments in August 2015. Champion initiated foreclosure in February 2016. The tax debt is only about \$5,000. Champion's counsel told the mediator she can't be considered for a repayment plan because she is above 98% MCA and in foreclosure. Champion has since said it will consider her for a repayment plan but only if she makes a substantial down-payment. It remains to be seen whether this senior client will be able to save her home.

C. J., Atlanta, GA, Age 88

J. Rachel Scott, Atlanta Legal Aid Society

Mr. J came to Atlanta Legal Aid for help when he was facing foreclosure on his home due a property charge default. He had struggled to handle his finances after the death of his wife, and did not realize that his reverse mortgage servicer, Reverse Mortgage Solutions, had been required to advance the property taxes in certain years. We also learned that RMS had force-placed homeowner's insurance for certain periods of time where Mr. J had his own insurance coverage in place. Although he was entitled to a refund of those overlapping force-placed premiums, Mr. J still needed to cure a default for certain premium payments and the property taxes RMS had paid. We contacted RMS and requested a repayment plan on his behalf. RMS responded that Mr. J could not obtain a repayment plan because his loan had reached the Maximum Claim Amount. With no other option to save his home, Mr. J was forced to file Chapter 13 bankruptcy. He has now been in a bankruptcy plan for more than a year, successfully paying nearly all of his surplus income towards curing the property charge default. Mr. J's example shows that homeowners can perform on a repayment plan that consumes more than

25% of their surplus monthly income. When necessary to save their home, and especially with effective housing counseling, seniors can make payments that consume all or nearly all of their surplus income. Making these payments and staying in his long-time home was much better for Mr. J than facing eviction. He would not have been able to obtain rental housing for the amount he has had to pay towards the default and ongoing taxes and insurance. Keeping him in his home has been central to preserving his mental and physical health.

L. B., Washington, DC, Age 68

Kerry Diggin, Legal Counsel for the Elderly

LB has a default property charge balance of roughly \$10,500. Reverse Mortgage Solutions accepted LB's budget for a repayment plan. RMS told LB's counsel that they could only give a repayment plan if the loan does not reach the Maximum Claim Amount during the repayment term. However, RMS did the calculation and determined LB would reach the MCA before 60 months. They calculated his surplus income was not high enough to repay the amount in a shorter time.

LB's income is \$1,560 per month. LB provided her counsel with \$2,500 in July 2016 which was placed in escrow. LB has continued to pay \$150 per month into a client escrow account since August 2016. With LB's budget and the money in her client escrow account, LB could afford to pay the \$10,500 back over 60 months while also paying LB's ongoing property taxes and maintaining homeowner's insurance. However, RMS will not approve a repayment plan that extends beyond the date LB reaches the MCA, due to HUD's policy.

V. R., Washington, DC, Age 91

Joanne Savage, Legal Counsel for the Elderly

VR must repay approximately \$6,702 in property charges. Her request to Champion for a repayment plan was denied for three independent reasons: 1) she is in foreclosure; 2) she owes more than \$5,000; and 3) her loan is over the Maximum Claim Amount. VR fell behind in large part because family members in her home were financially exploiting her. With assistance from Legal Counsel for the Elderly and other organizations, she has removed the abusive family members from her home. VR has income to support a repayment plan, and we have helped her obtain property tax exemptions which will make her taxes affordable going forward. Unfortunately, because Champion is refusing to allow her to enter into a repayment plan, she remains at serious risk of losing her home at age 91.

HUD Should Reconsider its Policy of Permissive Loss Mitigation, and Instead Require Servicers to Offer Loss Mitigation to Eligible Homeowners.

B.Y., Bridgeport, CT, under 80

Sarah White, Connecticut Fair Housing Center

Financial Freedom told B.Y.'s housing counselor in late August 2016 that it cannot offer repayment plans to borrowers in foreclosure. It appears that Financial Freedom has made a business decision not to offer repayment plans to any borrowers in foreclosure. This policy will

result in a substantial number of vulnerable seniors facing foreclosure and eviction who could afford a repayment plan.

V.P., Seymour, CT, under 80

Pamela Heller, Connecticut Fair Housing Center

V.P. was making payments to Financial Freedom under an oral repayment plan when they quit accepting them and placed her in foreclosure. Financial Freedom told the mediator in September 2016 that it “does not elect to offer repayment plans pursuant to permissive loss mitigation as outlined in Mortgagee Letter 2016-07” (see <http://civilinquiry.jud.ct.gov/DocumentInquiry/DocumentInquiry.aspx?DocumentNo=11092326>)

J. S., Philadelphia, PA, Age 66

Kimm Tynan, Philadelphia Legal Assistance

Foreclosure counsel claims in mediation that Reverse Mortgage Solutions has made a business decision to not offer repayment agreements to reverse mortgage borrowers in foreclosure. According to RMS’s counsel, the reason for this policy is that, ML 2016-07 notwithstanding, they are “still” being penalized by HUD if they enter into a repayment agreement and the borrower subsequently defaults on the repayment agreement. He said that for HUD’s purposes the case is considered to be in foreclosure for the life of the repayment agreement. He said that HUD cannot penalize them if the borrower files a Chapter 13, and “a Chapter 13 is the same as a 60-month repayment agreement,” so they have simply made a business decision that HECM borrowers in default should file Chapter 13 bankruptcy.

This client had attempted to negotiate a repayment agreement with RMS well before the foreclosure complaint was filed, but they refused that too. Client was diagnosed with breast cancer in September 2015, and her default was caused in part by the cost of her medications. She also had difficulty because a sinkhole in the street caused major plumbing damage that she was responsible for repairing.

HUD Should Allow Servicers to Offer the At-Risk Extension After Foreclosure is Initiated.

C.V., North Haven, CT, Age 86

Sarah White, Connecticut Fair Housing Center
Financial Freedom

C.V. has physical and cognitive disabilities and is presently in a rehabilitation hospital. As a result of her disabilities, she was unaware she had defaulted on her mortgage or was in foreclosure until after the foreclosure date was already set. With the assistance of counsel, she applied for an At-Risk extension. Financial Freedom will not consider her At-Risk extension request because she is in foreclosure, even though she requested it do so as a reasonable accommodation of her disabilities. Financial Freedom states an eligibility requirement for the at-risk extension is that the loan has not been referred to foreclosure. C.V. has a disability discrimination complaint pending with HUD related to Financial Freedom denial of her

reasonable accommodation request and its counsel's statements that her home should be foreclosed on because she would be "better off" in a nursing home. The pending foreclosure sale already delayed her release from the hospital to the rehabilitation hospital because the rehabilitation hospital was concerned she may not have a home with appropriate services to be released to. The pending foreclosure sale may also delay her release from the rehabilitation hospital back to her home as the home care agency is unwilling to commit to provide needed in-home services until the foreclosure is resolved.

G.B., Atlanta, GA, Age 83

J. Rachel Scott, Atlanta Legal Aid Society

Financial Freedom paid Ms. B's nominal property tax and solid waste bills from the origination date of the HECM in 2008 until 2016, when Ms. B's loan was scheduled for foreclosure. Until she received the foreclosure notice, Ms. B understood that the mortgage company was supposed to pay the taxes and solid waste, and thought she was only responsible for the homeowner's insurance. Once she contacted our office and was advised about her obligation for these charges, she readily agreed to make arrangements to repay the bill. However, when she called Financial Freedom, they advised her that she could not be considered for a repayment plan because the loan was in foreclosure.

With intervention by our office, Financial Freedom ultimately agreed to request approval from HUD for a repayment plan to be entered. However, Ms. B also should have been eligible for the at-risk extension based on her age and serious medical conditions. However, Financial Freedom advised that as soon as the loan was referred for foreclosure, even before the "first legal action" to initiate foreclosure had been taken, they were prevented from submitting an at-risk extension request in HERMIT. HUD's policy preventing borrowers from requesting the at-risk extension once foreclosure has been initiated undermines the purpose of the at-risk extension, as it places seriously vulnerable seniors at risk of displacement, which could have a catastrophic impact on their health. In addition, there can be a significant period of time between the referral to foreclosure and the first legal action to initiate foreclosure, during which servicers should (under HUD's policy) be able to submit the at-risk extension request in HERMIT. Often at-risk seniors like Ms. B, due to their disability or illness, do not realize there is a problem with their mortgage until the family sees a notice from the foreclosure law firm. In order to provide reasonable accommodation for disabled seniors, HUD should allow at-risk extension requests to be made even after the first legal action, at any time up to the date of a foreclosure sale.

HUD Should Clarify the At-Risk Extension Recertification Process.

M. R., Washington, DC, Age 94

Amy Mix, Legal Counsel for the Elderly

Ms. R raised her children and grandchildren in her home, and currently lives there with her granddaughter. Ms. R has number of physical health issues and has an aide (combination of Medicaid and private pay) for 18 hours per day. She also has dementia and doesn't respond to any mail or handle her finances herself (so she would not have responded to notices).

We have been working with Ms. R for a long time. We first asked J.B. Nutter to allow her to enter into a repayment plan, and they rejected the request because foreclosure had been initiated. We sought the waiver of the then existing “no repayment plan while in foreclosure” rule, but it was denied because the loan had reached the MCA. Most recently, we helped Ms. R apply for the At-Risk extension. We submitted a letter from a medical social worker, then another version from a doctor at J.B. Nutter’s request. After a couple of court hearings, the At-Risk extension was finally approved. It took several requests for me to get a copy of that approval because they kept sending it to Ms. R directly.

At the status hearing after the At-Risk extension approval, J.B. Nutter asked the court to keep the case open for annual check-ins. The judge denied this request. We are now trying to reach a settlement agreement. However, J.B. Nutter wants to require Ms. R to submit a “new application” for the At-Risk extension each year. HUD’s policy only requires recertification, which implies an automatic continuation of the extension if the hardship conditions continue to exist. Servicers need clarification regarding the recertification process, and should not require burdensome documentation every year. A simple statement from the borrower or the borrower’s counsel that the medical conditions continue to exist should be sufficient for recertification.

O. S., Washington, DC, Age 86

Joanne Savage, Legal Counsel for the Elderly

OS is attempting to re-certify the At-Risk Exemption that she was first granted in 2015. OS initially sent the 2016 exemption application with a brief note from her doctor and a contact number. Financial Freedom sent OS a letter with the key words “Need supporting documentation for at risk extension,” at which point OS with help of family contacted Legal Counsel for the Elderly. After calling FF with the client for guidance, we gathered and submitted detailed medical records from her doctor, identifying diagnoses of (among others) dementia, dizziness and giddiness, muscle weakness, degenerative joint disease in the knee, abnormalities of gait, and proneness to accidental falls.

FF subsequently sent the client another informational request letter, again stating only “Need supporting documentation for at risk extension.” Counsel contacted FF for more information and was told that FF could not accept medical records, but instead would need a doctor letter. Because in our experience at-risk exemptions had been granted on the basis of medical records, whereas it can be difficult and in some cases impossible to obtain a doctor’s letter for clients, I contacted FF again to seek a supervisor. The subsequent rep said that no supervisor

was available, but suggested that a letter from the client or a family member could serve as supporting documentation. Relying on that guidance we submitted such a letter, further detailing OS's condition and the potential impact of foreclosure. FF then contacted counsel by phone to say yet again that additional supporting documentation was needed. The rep could provide no further information about what documentation might suffice, and finally agreed to escalate the matter to a supervisor, telling me I'd get a call back in the coming days. Two days later I have not received that callback. However, Ms. S just received a letter from FF asking for documentation of the hardship and how it impacted her ability to pay the taxes and insurance. FF seems to be imposing a requirement that the at-risk hardship directly relate to the default on taxes and insurance, which is not required by HUD's policy.

F. J., Philadelphia, PA, Age 86
Beth Shay, SeniorLAW Center

Urban Financial submitted At-Risk deferral request to HUD and it was approved. Servicer refused to dismiss foreclosure, however, instead seeking a court order which states that deferral was granted for one year and expires 6/28/17. Case continued on court calendar to 4/13/17.

HUD Should Require Better Verification before Initiating Foreclosure Based on Alleged Non-Occupancy.

M. D., Philadelphia, PA, Age 82
Catherine Martin, Community Legal Services

M.D. was an 82 year old widow with health problems living in Philadelphia, PA. She had a reverse mortgage with Wells Fargo, but failed to maintain the property taxes as her health failed. Wells Fargo paid the delinquent taxes, but foreclosed based on alleged non-occupancy. Ms. D was still living in the property as her primary residence, although she was intermittently hospitalized for a few weeks at a time. I visited her at her home, and she definitely resided in the mortgaged property. Wells Fargo insisted that she sign a non-occupancy form, but the client would not sign because she lived in the property. We provided an affidavit to that effect in hopes that Wells Fargo would discontinue the foreclosure action so she could enter into a repayment plan. We couldn't get anywhere with repayment of the delinquency, because Wells Fargo wanted the non-occupancy form. There was a clear lack of communication among Wells Fargo employees, because some representatives were convinced the foreclosure was about delinquency, when clearly on its face it was erroneously about non-occupancy. This issue was not resolved, but the homeowner passed away during the foreclosure action. It was impossible for the client or me to make any headway in negotiating with Wells Fargo.

E. M., Jacksonville, FL, Age 76

Lynn Drysdale, Jacksonville Area Legal Aid

Nationstar refused to set up a post-judgment repayment plan. Client was able to get Hardest Hit Funds/Elmore funds to pay the back taxes and insurance. Now Nationstar is refusing to dismiss the foreclosure because they claim the home is not occupied, and they will not accept my letter explaining that the client is living in the home. This foreclosure cannot proceed under Florida law. Client has significant health problems.