



**National
Consumer Law
Center**

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NATIONAL HEADQUARTERS
7 Winthrop Square, Boston, MA 02110
(617) 542-8010

WASHINGTON OFFICE
Spanogle Institute for Consumer Advocacy
1001 Connecticut Avenue, NW, Suite 510
Washington, DC 20036
(202) 452-6252

NCLC.ORG

October 13, 2020

FHA Commissioner Dana Wade
U.S. Department of Housing and Urban Development
451 7th St, S.W.
Washington, D.C. 20410

Re: Addressing COVID-related issues for HECM borrowers and spouses

Dear Commissioner Wade:

We write to request that HUD take certain steps to ensure the ongoing housing stability of borrowers who have taken out reverse mortgages under FHA's Home Equity Conversion Mortgage (HECM) program, and their non-borrowing spouses, in light of the current COVID-19 public health emergency. Older Americans face the greatest risk from the current pandemic, and any housing instability will exacerbate the health risk for those borrowers as well as for the community at large. HUD has made extremely important adjustments recently to help protect HECM borrowers, including issuing waivers of the limit on successive repayment plans for balances over \$5,000 and the waiver of the 90-day requirement for non-borrowing spouses to establish title or a right to remain. We commend the agency for issuing these waivers, and respectfully ask that HUD take the additional actions described below to protect vulnerable homeowners.

1) HUD Should Eliminate the October 30th Deadline for Approval of the Initial COVID-19 HECM Extension Period

Mortgagee Letter 2020-06, which implemented the CARES Act forbearance requirements for FHA-insured loans, imposed the following restriction: "Mortgagees may approve the initial COVID-19 Forward Forbearance or HECM Extension Period no later than October 30, 2020." However, under the requirements of the CARES Act, a forbearance may be requested at any time during the "covered period," which is defined to end on the sooner of (1) the termination date of the coronavirus national emergency or (2) December 31, 2020. There is no indication that the national emergency is expected to end by October 30, 2020. HUD's current October 30th deadline would improperly curtail borrowers' rights to CARES Act forbearance by imposing an earlier deadline than afforded by the Act.

Due to the foreclosure moratorium in effect until December 31, 2020, many HECM borrowers may not yet realize that they are at risk of foreclosure or that they need to request the HECM extension by FHA's deadline. We understand that HECM servicers have seen very low numbers

of requests for the HECM extension to date, and that they are concerned about having to aggressively pursue foreclosure starting on January 1, 2021 against many vulnerable seniors who were unaware of any deadline to request the extension period.

We urge HUD to amend its policy to eliminate the October 30, 2020 deadline in ML 2020-06 in order to implement the full protection of the CARES Act. Moreover, since HUD has extended the foreclosure moratorium through December 31, 2020, it should allow HECM borrowers to request a HECM Extension Period through the first quarter of 2021. Many HECM borrowers will not realize they need to reach out to their servicer to request help until they get a foreclosure notice or filing. Allowing servicers to offer an extension period after the moratorium ends will reduce the potential for displacement of older Americans who may not yet realize they are at risk of foreclosure, but who are the most vulnerable to the impacts of the coronavirus if they are displaced from their homes.

2) HUD Should Clarify that the Extension Periods Provided Under the Foreclosure Moratorium and the HECM Extension Run Consecutively with any other Extensions Normally Available for HECMs, Including the Marketing Extension

It appears there is still confusion concerning implementation of the extension timelines provided in connection with the COVID-19 pandemic. This uncertainty relates both to the 90-day extension after expiration of the foreclosure moratorium (ML 2020-27) and to the HECM Extension Period (ML 2020-06). We urge HUD to adopt policies and appropriate HERMIT updates to allow servicers to input these extension periods, followed by any other applicable extensions, consecutively.

Mortgagee Letter 2020-27 extends the deadlines for the first legal action and reasonable diligence timelines by 90 days from the date of expiration of the foreclosure moratorium, but does not specify that this extension is in addition to any other extensions that may otherwise apply for the loan. Similarly, the HECM Extension Period provided in ML 2020-06 does not specify whether this period runs consecutively or concurrently with other extensions that might be available for the loan.

Of particular concern is the extension needed for heirs to sell the property after the death of a borrower. Heirs may be prevented or delayed in taking the necessary action such as filing probate actions or listing the home for sale due to the pandemic. We understand that servicers are uncertain whether the 90-day moratorium extension or the 180-day HECM extension could be followed by the otherwise-available marketing extensions to allow the heirs a meaningful opportunity to be able to sell the property. HUD should clarify that both of these COVID-related extension periods are in addition to any other extensions that may otherwise be available for heirs or borrowers to satisfy a HECM loan, and the periods should run consecutively, not concurrently. HUD should also make appropriate updates in HERMIT to enable servicers to input these extensions in a consecutive manner, so that after the COVID risks decline, heirs will be able to work on probate filings and marketing the home for sale.

3) HUD Should Clarify that the Extension Periods Provided Under the Foreclosure Moratorium and the HECM Extension Apply to all Deadlines

The extensions provided in ML 2020-27 and ML 2020-06 should apply to all deadlines relevant to a HECM loan. The 90-day extension in ML 2020-27 relates to the deadlines for first legal action and reasonable diligence. The HECM Extension Period in ML 2020-06 provides an extension for calling the loan due & payable, or, for loans already due & payable, an extension of deadlines relating to foreclosure and claim submission. However, there are other HECM deadlines that should also be permitted an extension due to the effects of the COVID-19 pandemic. While this list is not intended to be exhaustive, three types of deadlines are of particular importance:

a) Non-Borrowing Spouse Deadlines. For loans issued after 8/4/2014 with an Eligible Non-Borrowing Spouse identified at origination, we commend HUD for its recent 12-month waiver of the requirement to establish title or legal right to remain within 90 days of the borrower's death. Under this waiver, the NBS should enter the deferral period without the necessity to provide documentation of good and marketable title or a legal right to remain. HUD should also clarify that failing to return a certification within 30 days after notice of the borrower's death can be cured by providing the certification at a later time. Having returned the certification within 30 days is not part of the definition of an Eligible Non-Borrowing Spouse under 24 CFR § 206.55(c), and the current requirement makes it more difficult for non-borrowing spouses of post-2014 HECMs to remain in their homes than for those with pre-2014 loans. In addition, there may be significant challenges for spouses being able to meet these short deadlines during the pandemic. Short of clarifying that late compliance is no barrier to entering a deferral period, HUD should clarify that the COVID extension periods apply to extend this deadline as well.

In addition, for loans issued prior to 8/4/2014, Mortgagee Letter 2020-06 allowed servicers to take an extension of the reasonable diligence deadline for the Mortgagee Optional Election for 180 days, and an additional 180 days upon request. However, we have heard from servicers that there is currently not a way to enter such an extension for the MOE deadline in HERMIT. We hope HUD will address that issue as soon as possible.

b) Renewal of the At-Risk Extension. We are concerned that the most vulnerable HECM borrowers – those over 80 with critical health conditions who qualify for the At-Risk Extension – are having difficulty obtaining an updated doctor's letter in order to recertify their ongoing eligibility for the program. Consumer advocates have reported that many doctors are not conducting in-person appointments, and many of our senior clients do not have the technological ability to participate virtually. Seniors with critical health conditions are also most vulnerable for serious consequences of contracting the virus, and need to shelter in place and avoid environments where they may be at risk (including doctor's offices). HUD should waive the renewal requirement altogether during the national emergency, or in the alternative, clarify that the HECM Extension Period tolls the deadline for the annual recertification deadline for the At-Risk Extension.

c) Deadline to Make Repairs. We understand from servicers that borrowers with repair set-asides have been delayed in being able to make the required repairs due to the pandemic. Many senior borrowers may not feel safe having contractors or inspectors coming into their homes due to the serious risks of COVID-19. HUD should clarify that the deadline for the borrower to make required repairs may be extended for a reasonable time after the conclusion of the Covid-19 public health emergency.

4) HUD Should Clarify that There are No Documentation or Evidentiary Requirements for the 2nd HECM Extension Period to be Granted

With some loans now approaching the expiration of the initial 6-month HECM Extension Period, additional clarification is urgently needed concerning the granting of the second 6-month extension. ML 2020-06 states that this second extension period “may be approved by HUD,” but does not specify what needs to be submitted to support the request. The CARES Act provides that the forbearance “shall be extended for an additional period of up to 180 days at the request of the borrower.” In order to appropriately implement the mandate of the Act, no documentation should be required, and HUD should grant all such requests. Even for the servicer-requested automatic extension for loans already due & payable, we urge HUD to clarify that no documentation is required for the second 6-month HECM Extension Period to be granted.

5) HUD Should Extend the Waiver of the \$5,000 Limit for Successive Repayment Plans

On April 14, 2020, HUD issued a temporary waiver of the ML 2015-11 requirement that a recalculated repayment plan cannot be approved if the property charge balance exceeds \$5,000. This waiver allows mortgagees to offer a recalculated repayment plan for property charges regardless of the total outstanding arrearage. However, like the deadline to request the HECM Extension Period, this waiver is set to expire on October 30, 2020 and should be extended.

The \$5,000 limit on recalculated repayment plans imposes a significant barrier for many HECM borrowers to be able to repay a property charge default balance when they would otherwise be able and willing to do so. The potential impact of this limit is even more severe during the ongoing coronavirus pandemic. With the national emergency ongoing for the foreseeable future, most homeowners experiencing related hardships will not have recovered in time to request a recalculated repayment plan by October 30, 2020. Borrowers suffering COVID-19 related hardships may struggle to make their repayment plan payments, as well as to afford the ongoing property charges that accrue during the national emergency. Although HUD policy allows borrowers to request the HECM Extension Period for up to a year, the \$5,000 limit for a recalculated repayment plan at the end of the forbearance term is likely to prevent many older homeowners from accessing loss mitigation to cure the property charges that may have been advanced during that forbearance period. HUD should make the waiver of the \$5,000 limit permanent, and allow borrowers to obtain recalculated repayment plans regardless of the property charge balance. At the very least, this waiver should be extended for one year after the end of the pandemic and the expiration of the COVID-19 forbearance/extension periods.

6) HUD Should Clarify that a New Repayment Plan Calculation at the End of a HECM Extension Period May Allow for a New 60-Month Term

In addition to extending the waiver of the \$5,000 limit on recalculated repayment plans, HUD should waive the 60-month total term limit on successive repayment plans. ML 2015-11 states: “no mortgagor may be given more than 60 months . . . total to repay any and all advances.” Where a repayment plan is recalculated, some servicers interpret HUD’s policy to be that the term cannot exceed 60 months from the beginning of the first repayment plan. During the pandemic, borrowers with COVID-related hardships may request forbearance/extension for up to a year, during which they are not actively making repayment toward the property charge default. At the end of the extension period, limiting a recalculated repayment term to the total of 60 months from the date of the first repayment plan would likely have a significant and detrimental impact on the number of borrowers who are able to qualify. In order to accommodate the unique circumstances brought about by the pandemic, and effectuate meaningful loss mitigation following a forbearance/extension period, this 60-month total limit should be waived. A recalculated repayment plan should allow for a new 60-month term to be granted, or at least allow for the total term to be extended by the length of the extension period.

We have discussed these issues with the reverse mortgage servicers and the National Reverse Mortgage Lenders Association, and it is clear that servicers share many of the same concerns we have expressed in this letter. We look forward to the convening of a joint stakeholder meeting involving both industry and consumer advocates with HUD staff in the near future, to discuss these and other pressing issues impacting HECM lenders and borrowers.

If we can provide any more information regarding these issues, please reach out to Alys Cohen of the National Consumer Law Center’s Washington Office at (acohen@nclc.org).

Sincerely,

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Housing and Economic Rights Advocates
Jacksonville Area Legal Aid, Inc.
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