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July 23, 2021

FHA Resource Center  
Department of Housing and Urban Development  
451 7th St S.W.  
Washington, D.C. 20410  
*VIA EMAIL: [answers@hud.gov](mailto:answers@hud.gov)*

Re: Comment to Mortgage Letter 2021-15 addressing COVID-related deadlines and issues for reverse mortgage borrowers

Dear FHA Leadership and Staff:

We write to comment on the reverse mortgage-related policies announced in Mortgage Letter 2021-15. We appreciate the steps taken in this Mortgage Letter, as well previous mortgagee letters, to extend the FHA foreclosure moratorium and the window for borrowers to request a forbearance. These extensions have been necessary to ensure the ongoing housing stability of borrowers in FHA's Home Equity Conversion Mortgage (HECM) program, and their non-borrowing spouses, in light of the current COVID-19 public health emergency. At the same time, HECM borrowers remain at significant risk of unnecessary foreclosure without additional action. Older people face the greatest health risk from the current pandemic and have experienced significant financial impacts as well.

Data collected from reverse mortgage servicers reflect that roughly half of the approximately 30,000 HECM borrowers currently in default on property charges fell behind after March 1, 2020. The high number of these recent defaults is undoubtedly related to the severe impacts on the economic well-being of low-income seniors, many of whom were supplementing fixed incomes with part-time work or support from working family members. Very few of these borrowers have yet requested a COVID forbearance or entered into any loss mitigation option to permanently address the property charges and bring the loan out of default. Servicers are likely to be inundated by requests for loss mitigation review when the moratorium ends. In addition, many courts, legal services, and other services have accumulated significant backlogs during the pandemic. As a result, consumers seeking to sell or refinance to pay off the reverse mortgage are likely to continue to experience delays in their ability to file probate, obtain property appraisals, seek medical care and opinions, and seek legal assistance in order to do so.

To address these concerns, we urge HUD to take the following steps to protect borrowers.

**1) HUD Should Provide a Window of Time for Servicers to Initiate Foreclosure After the Expiration of the Forbearance, Rather than Requiring them to Begin the Foreclosure Process during a Forbearance.**

*HUD should ensure that the time period for servicers to make the “first legal action” to initiate foreclosure is no sooner than 180 days after the end of the forbearance or “HECM extension period.”* For loans that were already called due and payable, the current rules spelled out in the HERMIT Release Notes 6.4 require a servicer to take the first legal action by the end of the extension period. Continuing this requirement would subject reverse mortgage borrowers to the kind of dual tracking that has been prohibited for forward mortgage borrowers. In order to make the first legal action deadline, servicers would have to refer the loan to a foreclosure law firm and order an appraisal well before the end of the forbearance.

Because of the extremely large backlog in severely delinquent mortgages that has built up during the moratorium, foreclosure law firms are expecting a surge in foreclosure cases in the coming months. Foreclosure filings for forward mortgages will mostly be delayed until December 31, 2021 by the RESPA rule. Because of concerns about the large backlog and the expected surge in foreclosures around the beginning of 2022, the lack of any additional time to initiate foreclosure at the end of a forbearance period is placing pressure on reverse mortgage servicers to get their cases in line for foreclosure before forward mortgage borrowers. Thus, the implication of the current policy requiring HECM servicers to take first legal action to initiate foreclosure by the expiration of the forbearance period is that vulnerable senior homeowners will be among the least protected and the first to face foreclosure when the moratorium expires.

ML 2021-15 provides a crucial extension of time for HECM borrowers to make the initial request for a HECM extension period until September 30, 2021. Although the data indicates that many HECM borrowers have been impacted by the pandemic, a very small percentage have requested the HECM extension period so far--probably because they do not understand the default status of their loans and have not been receiving notices concerning foreclosure during the FHA moratorium. For this reason, the additional two-month period for HECM borrowers to request the COVID extension at the end of the moratorium is an important protection to prevent foreclosure for some of the most vulnerable homeowners. However, because of the HERMIT policy requiring first legal action immediately at the end of any HECM extension period, many HECM servicers are reluctant to grant any COVID extension requests during the additional window from June 30 to September 30. If they do grant an extension period, they expect to nonetheless begin incurring foreclosure-related expenses early in the 6-month period. Thus, this valuable protection afforded by ML 2021-15 may be meaningless for senior HECM homeowners unless the HERMIT system is updated to give servicers a reasonable amount of time after the COVID forbearance/extension in which to initiate foreclosure.

An additional period of 180 days after the expiration of a HECM extension period is a reasonable time for the first legal action deadline in light of the significant effects of the pandemic.

Servicers need a cushion of time to evaluate HECM borrowers for loss mitigation options, and are likely to be overloaded with such evaluations as the moratorium and existing COVID forbearance periods are ending. Although servicers are typically able to prepare a case for the first legal action within 90 days, this timeline is likely to be delayed by the expected backlogs among FHA appraisers and foreclosure law firms during the coming months.

Relieving the pressure on servicers to initiate the first legal action while they may be simultaneously communicating with a borrower about a potential repayment plan would save money for the MMI Fund by minimizing unnecessary appraisal fees and legal fees that begin to mount when the foreclosure clock is ticking. It will also allow the homeowner to try to finalize a loss mitigation plan without the risk that a foreclosure will proceed where home retention is possible.

**2) HUD Should Allow HECM Extension Periods Initiated after June 30, 2021 to Continue Through June 30, 2022.**

As discussed above, providing additional time during which borrowers may request a forbearance after the expiration of the foreclosure moratorium is particularly important for HECM borrowers. Although many property charge defaults occurred after March 1, 2020 and senior HECM borrowers have been impacted by the pandemic, most of these borrowers have not yet requested a forbearance, and are less likely to understand the status of the loan or the need to contact their servicer to discuss their options until they receive notices concerning foreclosure. However, a HECM borrower who now requests a forbearance will only be afforded a 6-month forbearance period (if the servicer is even willing to grant the request for the reasons discussed above). By contrast, a borrower who requested a forbearance on June 30, 2021 was able to receive an extension for up to 12 months, through June 30, 2022. However, a borrower who requested a forbearance only a day later, on July 1, 2021, was eligible only for a forbearance for 6 months, through January 1, 2022. This has a particularly detrimental effect for HECM borrowers, most of whom have not yet requested a forbearance due to being less aware of their default status or the risk of foreclosure during the moratorium.

We understand HUD's concerns about not having forbearance periods extending too far into 2022. However, limiting new forbearance requests to 6 months is likely to further exacerbate the problem of HECM servicers accelerating foreclosures against elderly homeowners in order to beat the expected foreclosure surge at the beginning of 2022. We urge HUD to allow new forbearance requests to be extended for longer than 6 months, and at least allow them to run through June 30, 2022, consistent with forbearances requested by June 30, 2021.

**3) HUD Should Clarify that the Deadlines for First Legal Action and Reasonable Diligence Are Extended "By" 180 Days from the Expiration of the Foreclosure Moratorium**

ML 2021-15 provides that: "Deadlines for the first legal action and Reasonable Diligence Time Frame are extended *to* 180 days from the date of expiration of this moratorium." Although HUD may have intended for such deadlines to be extended by 180 days after the expiration of the

foreclosure moratorium, the plain language reading of this provision suggests that all deadlines must be met by 180 days after the moratorium. For example, a servicer normally has a reasonable diligence deadline of 27 months to complete a foreclosure action in Maine (see Mortgagee Letter 2016-03, Attachment 1). But a literal reading of ML 2021-15 would provide that the reasonable diligence deadline is only extended “to” 180 days from the expiration of the moratorium. Without further clarification, servicers may interpret ML 2021-15 as requiring that all reasonable diligence deadlines must be met (and foreclosure actions completed) by January 27, 2022, and may accordingly take immediate action to foreclose against elderly HECM homeowners in order to meet such a deadline.

As this is likely not the effect that HUD intended, we urge clarification to be provided as soon as possible to specify that the deadlines are extended “by” 180 days - rather than “to” 180 days - after the expiration of the foreclosure moratorium.

#### **4) HUD Should Expand the Permanent Home Retention Options for HECM Borrowers Exiting the Foreclosure Moratorium or a COVID-19 Forbearance**

*In addition to the extension of deadlines discussed above, we urge HUD to ensure that meaningful loss mitigation options are available for HECM borrowers at the expiration of the moratorium and COVID forbearances, as have been put in place for forward mortgages. The COVID-19 pandemic has exposed some of the preexisting problems with the HECM loss mitigation regime. Addressing these problems will prevent avoidable foreclosures during the pandemic and also make the program stronger for the long term.*

Additional relief options are still needed to prevent a spike in foreclosures on senior HECM borrowers after the foreclosure moratorium and COVID forbearance periods have expired, including:

- ***HUD Should Provide a HECM Loss Mitigation Option Involving Permanent Deferral of Property Charge Arrears***

*In light of the devastating impact of the COVID-19 pandemic, and the potential risk of foreclosure and displacement of our most vulnerable homeowners, we urge HUD to implement a loss mitigation option for HECMs comparable to options available for forward mortgages allowing for defaults to be capitalized into the loan balance or otherwise deferred. Forward mortgage borrowers who obtained a forbearance due to a COVID-19 related hardship have the forbore payments deferred to the end of their loan or capitalized. Yet HECM borrowers who defaulted on a repayment plan or property charges during the pandemic are offered only a short-term repayment plan. Even more than forward mortgage borrowers, HECM borrowers need the opportunity to have charges that went unpaid during the pandemic carried on the loan balance (as part of an eventual claim) and not required to be cured in a short-term repayment plan.*

Even beyond the impacts of the pandemic, vulnerable HECM borrowers in default on property charges need expanded options to avoid foreclosure. A significant number of the HECMs with ongoing property charge defaults are loans that were originated prior to the 2015 Financial

Assessment rules. Many of these HECM borrowers with legacy loans may struggle to afford a repayment plan, but have the ability to manage their ongoing property expenses if given the opportunity for a fresh start. The existing At-Risk Extension is available only under very narrow circumstances where both borrowers are over age 80. We propose that HUD offer an additional option to defer an arrearage balance subject to ongoing property charges being paid on time. This could be implemented by allowing the mortgagee to defer calling the loan due and payable, or to rescind the due and payable status, for HECM borrowers who experienced a hardship related to the COVID-19 pandemic and owe property charges of up to \$25,000.

- ***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***

*HUD should clarify that a HECM servicer may offer a new or recalculated 60-month repayment plan after a forbearance/extension, rather than being limited to 60 months from the start of the first repayment plan.* ML 2015-11 states: “no mortgagor may be given more than 60 months . . . total to repay any and all advances.” This language has led to confusion. Where a repayment plan is recalculated, some servicers take the position 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 required to continue making repayment toward the property charge default. At the end of the forbearance/extension period, limiting a recalculated repayment term to the total of 60 months from the date of the first repayment plan is likely to have a significant and detrimental impact on the number of borrowers who are able to qualify.

For example, if a borrower was in a 60-month repayment plan to cure a default balance of \$6,000, her monthly payment would be \$100 per month. Assume that she paid on that plan for 4 months and then defaulted due to a COVID-related loss of income and entered a 12-month forbearance. Some servicers interpret HUD’s rule to then require her to pay off the remaining balance over 44 months (subtracting the 16 months that have passed since her plan was first calculated). To make matters worse, a typical borrower might have incurred new property charges during the pandemic; here we will assume \$2,000 in additional advances. Paying off the balance of \$7,600 over 44 months would increase her monthly payment to \$173 per month. For a typical HECM borrower living on fixed income, this kind of increase could make the plan unaffordable. In order to accommodate the unique circumstances brought about by the pandemic, and effectuate meaningful loss mitigation following a forbearance/extension period, a new or recalculated repayment plan should be calculated over a new 60-month term.

*In addition, HUD should permanently remove the \$5,000 cap on arrears for allowing a successive repayment plan if a borrower defaults on their first plan.* Many borrowers who defaulted on an existing repayment plan due to a pandemic-related hardship will need a recalculated repayment plan. Data from servicers show that the average property charge arrearage balance is roughly \$9,300. The cap should be removed to ensure as many borrowers as possible are able to take advantage of the repayment plan option.

**Summary.** In summary, HUD should take the following actions to protect HECM borrowers from unnecessary foreclosures:

- Update the HERMIT system to allow servicers 180 days after the expiration of a COVID forbearance/extension in which to meet the first legal action deadline;
- Allow COVID Forbearance/Extensions initiated after June 30, 2021 to be extended through June 30, 2022;
- Clarify that the deadlines for First Legal Action and Reasonable Diligence are extended “by” 180 Days from the expiration of the Foreclosure Moratorium;
- Provide an option that allows for a permanent deferral of property charges that went unpaid during the pandemic; and
- Allow for a new 60-month term for any new or recalculated repayment plans, and permanently remove the \$5,000 cap on successive repayment plans.

We appreciate the opportunity to provide feedback on HUD’s extension of the COVID-19 foreclosure moratorium and planning for the end of the moratorium. If we can provide additional information, please contact Alys Cohen, [acohen@nclc.org](mailto:acohen@nclc.org). Thank you for your attention to these issues.

Sincerely,

National Consumer Law Center, On Behalf of Its Low-Income Clients  
Americans for Financial Reform Education Fund  
Atlanta Legal Aid Society, Inc.  
CAARMA Consumer Advocates Against Reverse Mortgage Abuse  
Center for Responsible Lending  
Chicago Volunteer Legal Services  
Community Legal Services, Inc. of Philadelphia  
Connecticut Fair Housing Center  
Consumer Action  
Consumer Federation of America  
Financial Protection Law Center  
Great Lakes Consumer Law Firm, LLC  
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Legal Aid Chicago  
Legal Aid Society of Southwest Ohio, LLC  
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