

November 4, 2021

Lopa P. Kolluri
Principal Deputy Assistant Secretary Office of Housing
Federal Housing Administration
Department of Housing and Urban Development
451 7th St S.W.
Washington, D.C. 20410

RE: COVID-19 Waterfall Drafting Table Comments

Dear Principal Deputy Assistant Secretary Kolluri:

On behalf of our low-income clients and communities, we have attached our comments to the loss mitigation waterfall that HUD posted to its drafting table on September 27, 2021. We have provided our comments in the spreadsheet HUD supplied on the drafting table and in a separate document.

In general, we support the proposal, which we believe will provide significant payment relief and support borrowers facing COVID-19 hardships. We have identified five additional COVID-19 loss mitigation issues that HUD should urgently address. The first two points are addressed in the attached waterfall comments, and the final three are issues that we previously raised and remain unresolved.

First, **HUD should clarify in the text of the Mortgagee Letter how servicers should provide payment relief for borrowers who need deeper relief.** We know that some borrowers will need more than the 25% reduction in payment that the Recovery Modification targets; however, the proposed mortgagee letter text does not clearly state what options are available for those borrowers. While HUD has addressed this issue in a Frequently Asked Question (FAQ), the FAQs are hard to find and may be overlooked by servicers focusing on the text of a mortgagee letter.

We propose that HUD provide sequential relief for borrowers needing more than the 25% reduction in principal and interest that the initial modification offer targets. HUD's system should first extend the mortgage term to 40 years if that was not already part of the original offer. If such a term extension is insufficient or has already been used, HUD should then require full use of any remaining partial claim. This process is consistent with the process provided in the draft mortgagee letter and should be incorporated in the mortgagee letter explicitly.

Second, **HUD should increase the availability of 40-year loan modifications to borrowers who have defaulted on previous loss mitigation options.** According to HUD's proposed mortgagee letter, a borrower cannot access a 40-year loan modification term if the borrower has no available partial claim capacity remaining because of previous loan workouts. A 40-year mortgage term could provide significant help to those borrowers who have already reached their

partial claim maximum but still need deeper relief; however, HUD's policy limits the availability of the 40-year term.

In our comments, we propose options for HUD to consider that would increase the availability of the 40-year term. One involves an interpretation of the partial claim statute that allows HUD to eliminate the requirement that a borrower cannot access the 40-year term if there is no remaining partial claim available. This change would help all borrowers who have defaulted on any previous loan modifications. Alternatively, HUD could allow borrowers with COVID-19 hardships to access the full statutory maximum for partial claims rather than the lesser amount allowed in the draft mortgagee letter. This alternative will help borrowers who have only defaulted on previous COVID-19 loss mitigation but would provide less relief for borrowers who have defaulted on non-COVID-19 plans. As a result, we prefer the first alternative.

Third, **HUD should specifically require servicers to inform borrowers at the outset of their post-forbearance discussions that options are available both to resume monthly payments or to obtain a reduced payment.** Under the current system, it is unclear whether servicers will simply offer the partial claim without informing borrowers that other options are available. If borrowers are not made aware that there are other options beyond the standalone partial claim, there is a significant risk that, for fear of losing their homes, they will tell their servicers they can afford the current payments, even if they cannot. Borrowers should not choose the option of deferral out of fear or misinformation.

Fourth, **FHA should provide servicers with specific language they must use when they make the initial Recovery Mod offer if the Target Payment is achieved without exhausting the maximum available Partial Claim.** This language is intended to communicate that additional payment relief is available if needed. Specifically, if the Target Payment is achieved, but Partial Claim funds are still available, the servicer should be required to communicate to the borrower, "You have been approved for a loan modification with a monthly payment of [modified payment]. If this payment is not affordable, we have another option that would reduce the payment more. Can you afford [modified payment]?" If the Target Payment is achieved through Step 4, the servicer may inform the borrower that the additional payment reduction would be obtained by extending the term from 30 years to 40 years.

Finally, **HUD must better address the needs of homeowners remaining in the home who are seeking loss mitigation after a separation or divorce.** For an existing borrower who is seeking a loss mitigation without the participation of an absent co-borrower, neither Mortgagee Letter 2021-18 nor Handbook 4000.1 provides clear exceptions to the general rule that all borrowers must participate in loss mitigation. This lack of clarity promotes unnecessary home loss, which hurts servicers and borrowers as well as the FHA insurance fund.

HUD must implement a clear policy of not requiring participation or signature of absent co-borrowers after a divorce, a separation, in cases of domestic violence, or when a never-married co-borrower has relinquished all interest in the home. The policy must take into account the fact that co-borrowers who were never married may separate, and that a married co-borrower may be unable to secure any cooperation from a spouse due to domestic violence and other legitimate barriers.

We appreciate your work on this important national issue and the opportunity to comment on it. For any questions or further discussion, please contact NCLC staff attorney Steve Sharpe, at ssharpe@nclc.org.

Sincerely,

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