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

Re: Comment to Mortgagee Letter 2021-03 addressing COVID-related deadlines and issues for HECM borrowers and spouses

Dear FHA Leadership and Staff:

We write in response to the issuance of Mortgagee Letter 2021-03. We appreciate the steps taken in this Mortgagee Letter, as well as the recently announced moratorium extension through June 30, 2021, to expand the FHA foreclosure moratorium in order 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 risk from the current pandemic, and any housing instability will exacerbate the health and safety risk for those borrowers as well as for the community at large.

Throughout the pandemic, HUD has made extremely important adjustments to help protect HECM borrowers, including its extensions of the foreclosure moratorium and the deadline to request the COVID-19 forbearance, as well as issuing temporary 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 extensions and waivers, and respectfully ask that HUD take the additional actions described below to protect vulnerable homeowners.

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.

1) HUD Should Set the Stage for a Sustainable Exit from the Moratorium by Extending the Forbearance Request Window Beyond the End of the Moratorium and Allowing an Extension of the Foreclosure Deadline for Loss Mitigation Review.

Data collected from reverse mortgage servicers reflect that roughly half of the 26,694 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. Even after the peak of the pandemic crisis has passed and the foreclosure moratorium is lifted, it will take additional time for consumers to make arrangements to bring their reverse mortgage accounts into good standing or for heirs to sell or refinance in order to pay off the loan. Servicers are likely to be inundated by requests for loss mitigation review. 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.

HUD should ensure that the time period in which to request a forbearance (known in this context as a "HECM extension period") extends at least 180 days past the end of the foreclosure moratorium. Many HECM borrowers have not requested an extension period during the moratorium because they are not aware of the risk of foreclosure. Because HECM borrowers do not have a regular mortgage payment schedule and think of their loans as "payment-free," they often are not aware of the risk of foreclosure due to unpaid property charges. Once foreclosure letters start coming, many vulnerable homeowners will realize only then that they need to seek help. HUD should allow servicers to offer a HECM extension period during the 180-day period when pre-foreclosure notices will start to arrive, which will delay the need to initiate foreclosure while the servicer communicates with the homeowner regarding options and next steps and the homeowner and servicer work together to make arrangements.

In addition, HUD should allow an extension of foreclosure deadlines for servicers that are communicating with a borrower regarding loss mitigation to cure a property charge default. The current rules, requiring a servicer initiate foreclosure within a specified period thereafter, leads to the kind of dual tracking that has been prohibited for forward mortgage borrowers. Servicers are simultaneously trying to evaluate a borrower for possible loss mitigation in one department, while another department is proceeding with foreclosure in order to comply with the applicable deadlines. 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 reducing unnecessary appraisal fees and legal fees that begin to mount when the foreclosure clock is ticking. It also allows the homeowner to try to finalize a loss mitigation plan without the risk that a foreclosure will proceed where home retention is possible.

This extension is needed because, if a borrower contacts the servicer near the end of the 180-day window to commence the first legal action (which often happens when pre-foreclosure notice letters arrive in the mail), the servicer will need a cushion of time to evaluate that borrower for loss mitigation options. If HUD allows borrowers to request a HECM extension period any time during that 180-day window after the moratorium ends, that would alleviate some pressure. However, some borrowers may need to apply for a repayment plan rather than a HECM extension period. Moreover, even outside of the pandemic, the fact that servicers are required to call the loan due and payable within 30 days after a property charge advance requires HECM servicers to dual track elderly borrowers rather than allowing for a loss mitigation review period. HUD should make a permanent adjustment to the HECM servicing rules in order to address problems that are not new, but are exacerbated by the pandemic.

Senior borrowers may be more likely to experience diminished capacity, memory issues, and other disabilities that can often make it more difficult to understand the default, or to promptly participate in loss mitigation and provide the necessary information for loss mitigation review. These challenges may also be exacerbated by the pandemic, which has limited the personal and financial support provided by family members and also caused significant mental stress on senior borrowers.

We urge HUD to provide a 90-day extension (comparable to the marketing extension) for a servicer to review a borrower for loss mitigation options and work through the options with the borrower or spouse. Such extension should be available 1) to delay the deadline to submit a due and payable request, if the borrower requests loss mitigation before the loan has already been called due, or 2) to extend the deadline for the servicer to take the first legal action to initiate foreclosure, if the borrower requests loss mitigation after the loan has been called due and payable. Such an extension would allow vulnerable HECM borrowers to have a meaningful opportunity to engage in a review of loss mitigation options and engage in the loss mitigation process while avoiding the kind of dual tracking that is prohibited for forward mortgages.

HUD should also clarify, as it did in prior Mortgagee Letters during the pandemic, that the deadline for first legal action to foreclose may be extended for such additional time as may be approved by the Secretary. HUD should also clarify that extensions that are normally available for HECMs, such as the marketing extension for a property to be sold, can be granted consecutively, after the expiration of the COVID-related extension periods. Although HUD may intend to allow requests for additional extensions, there is no such language included in Mortgagee Letter 2021-03 or 2021-05. This omission may lead to confusion as to whether additional extensions may be submitted. Where a consumer is making efforts to engage in loss mitigation, or to sell their home or refinance the reverse mortgage, additional time should be available before the servicer is required to foreclose. Such extensions of time should be liberally granted in order to mitigate the devastating effects of the pandemic, particularly among the often isolated senior population.

2) 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.

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 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 completely 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.

- ***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 forborne payments deferred to the end of their loan or capitalized. Yet HECM borrowers who defaulted on a repayment plan or defaulted on 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. *HUD could implement a waterfall analysis to consider what options should be made available based upon the senior borrower's circumstances, age, and arrearage balance.*

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

- Extend the window to request a HECM forbearance to 180 days after the end of the foreclosure moratorium;
- Allow servicers to request a delay of the deadline to (a) call the loan due and payable, or (b) initiate foreclosure, in order to review a borrower for loss mitigation;
- Clarify that the deadline to foreclose may be extended by the Secretary for other reasons;
- 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; and
- Provide an option that allows for a permanent deferral of property charges that went unpaid during the pandemic.

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. The extended moratorium will help many older homeowners avoid foreclosure and homelessness, especially if additional adjustments described in this letter can be made to ensure a sustainable exit once the moratorium ends. If we can provide additional information, please contact Alys Cohen, 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
Central Jersey Legal Services
Claims and Issues Group, Inc.
Community Legal Services, Inc. of Philadelphia
Connecticut Fair Housing Center
Consumer Action
Financial Protection Law Center
Foreclosure Prevention Clinic- Legal Aid Clinic, Pontifical Catholic University of Puerto Rico
Instituto de Educación Práctica- Puerto Rico Bar Association
Jacksonville Area Legal Aid, Inc.
Joseph Albanese, Attorney at Law
Legal Aid Chicago
Legal Aid Services of Oregon
Legal Aid Society of Southwest Ohio, LLC
Legal Assistance of Western New York, Inc.
Michigan Poverty Law Program
Nassau/Suffolk Law Services
National CAPACD- National Coalition for Asian Pacific American Community Development
National Fair Housing Alliance
National Housing Law Project
Neighborhood Legal Services (Pennsylvania)
New Jersey Citizen Action
SeniorLAW Center
Woodstock Institute