November 5, 2021

Ms. Lopa Kolluri, Principal Deputy Assistant Secretary for Housing
Ms. Julienne Joseph, Deputy Assistant Secretary for Single Family Housing
Office of Housing / Federal Housing Administration
Department of Housing and Urban Development
451 7th Street SW
Washington, D.C. 20410-8000

Re: Request for COVID-19 foreclosure timeline clarifications to promote modifications

Dear Ms. Kolluri and Ms. Joseph:

Thank you for your continuing efforts to help struggling FHA borrowers through the COVID-19 crisis and for your willingness to engage with stakeholders about FHA's policies to achieve this goal.

We appreciate FHA's recent Frequently Asked Questions clarifying that, under the Handbook, servicers that determine that the CFPB's safeguard regulations require a delay in foreclosure until December 31, 2021 may obtain an automatic 90-day extension from that point to file first legal by noting the reason for the delay in the servicing notes.

We believe, however, that FHA should issue a clarifying mortgagee letter (ML) or waiver stating that servicers may obtain the 90-day extension if they note that they cannot demonstrate with confidence that the loan fulfills any of the three Reg. X safeguards because they do not have evidence that any of them have been met.

First, such a clarification would save valuable FHA and servicer staff time. We are concerned that the amount of time dedicated to loan-level documentation and review will interfere with FHA's and servicers' ability to help the hundreds of thousands of FHA borrowers who need post-forbearance solutions. Since FHA staff will not need to respond to questions from servicers about whether particular loans may obtain the 90-day delay, and since servicer staff will not need to spend time scouring the histories of borrower visits to lender branches or websites to document that the no-contact safeguard does not apply, such a clarification would help borrowers keep their homes.

Second, the clarification would ensure that servicers receive the extension of time they need to work with borrowers. Some servicers are concerned that they will not be able to provide proof that a borrower did not contact them during the applicable period and so will not be able to take advantage of the 90-day extension, even though they cannot use the safeguard because they are not certain that the borrower did not in fact contact them in some fashion. As a result, these servicers are concerned that they would need to file first legal before January 27, 180 days after FHA's foreclosure moratorium expired, even though this would not give them enough time to complete a standalone Recovery Partial Claim or Recovery Modification for the borrower.

By the same token, we believe that the ML or waiver should extend the 90-day timeframe to 180 days, which would make the timeframe for first legal action after the expiration of the Reg. X temporary measures equivalent to the timeframe allowed after the FHA moratorium. As an alternative, FHA could state that the servicer can obtain a second 90-day extension following the initial one simply by submitting the request and stating that the additional time is necessary to provide the borrower a sufficient opportunity to receive a loss mitigation solution.

Finally, we believe that the ML or waiver should extend the timeline for servicers to complete loss mitigation options for borrowers to 180 days after forbearance exit, rather than the 120 days that is currently permitted. We recognize that HUD's 120-day deadline is a performance standard for servicers and not an eligibility cutoff for borrowers. Given the significant numbers of FHA-insured borrowers in seriously delinquent status, it is unreasonable at this time to expect completion of the paperwork for all of these borrowers in 120 days. This is especially true given servicer reliance on third parties and the need for borrowers to execute documents at a difficult time. We are pleased that FHA will provide servicers loan-level exceptions to the 120-day requirement, but FHA and servicers would better spend the time completing the solutions rather than documenting and requesting extensions, plus some servicers may not request extensions.

Thank you for your consideration of our views. If you have any questions about this letter, please contact Steve Sharpe at National Consumer Law Center (ssharpe@nclc.org) or Meg Burns at Housing Policy Council (Meg.Burns@housingpolicycouncil.org).

Sincerely,

Center for Responsible Lending
Housing Policy Council
National Consumer Law Center (on behalf of its low-income clients)