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October 23, 2019

Sent via electronic mail (answers@hud.gov)

Brian D. Montgomery
Assistant Secretary for Housing, Federal Housing Commissioner
Department of Housing and Urban Development
451 7th St S.W.
Washington, D.C. 20410

Re: Comment on Mortgagee Letter 2019-15

Dear Assistant Secretary Montgomery:

The National Consumer Law Center submits this comment on Mortgagee Letter 2019-15 on behalf of its low-income clients.

Mortgagee Letter 2019-15 marks a critical improvement in HUD's policy regarding non-borrowing spouses that will allow many vulnerable elderly homeowners to remain in their homes after the death of a reverse mortgage borrower. Before the issuance of this Mortgagee Letter, many non-borrowing spouses faced foreclosure and eviction after the borrowing spouse passed away. HUD created the Mortgagee Optional Election (MOE) to allow non-borrowing spouses to remain in their homes until the borrower's death if they met eligibility criteria and if the lender elected to assign the reverse mortgage to HUD. But certain elements of the MOE program as originally designed in 2015 put relief out of reach for far too many widows and widowers.

Mortgagee Letter 2019-15 has made critical improvements to the accessibility of the program, including removing problematic deadlines, ceasing to require proof of marketable title or a right to remain in the home, and requiring servicers to communicate the existence of the program to borrowers before they pass away, so that non-borrowing spouses can be identified in advance and more likely to obtain a foreclosure deferral under the MOE program. We commend HUD for making these crucial changes, which were much needed and will have a significant benefit.

The remainder of this comment provides feedback on several aspects of the Mortgagee Letter that could be clarified in order to ensure that the policy is implemented logically and fairly. Addressing these issues, either through a follow-up Mortgagee Letter, FAQ, or other similar policy announcement, will allow servicers to more smoothly operationalize the intended policy changes effectuated by Mortgagee Letter 2019-15.

A. HUD should update its model NBS Information Sheet and NBS Fact Sheet, or provide assurance to lenders that adjusting the language of these documents is still in compliance with the Mortgagee Letter.

HUD has made the extremely important decision to require servicers to send information about the MOE program to HECM borrowers along with the annual occupancy certification. On page seven of the Mortgagee Letter HUD clarifies what information must be contained in this outreach effort. HUD then attaches a model NBS Information Sheet and model NBS Fact Sheet as Exhibits A and B to the Mortgagee Letter.

These model forms could be clarified to make them more readily understandable to an average consumer. For example, the NBS Information Sheet asks if the borrower's spouse is "named in the HECM." Many spouses may not understand what this means, and may answer incorrectly. However, the servicer is aware of the borrower or borrowers' names. This question appears to be unnecessary because if the borrower returns the form indicating that he or she is married, and the servicer knows there is only a single borrower on the loan, then clearly there is a non-borrowing spouse. The form goes on to say that the spouse "may be eligible for a deferral." Most consumers will not understand what deferral means, or why it might be needed.¹ Near the bottom of the form, it asks whether the borrower and spouse "meet requirement 2a or 2b in the provided Fact Sheet" – which is confusing – and then asks for unspecified "supporting documentation."²

The NBS Information Sheet also requests extra information, such as the Social Security Number of the non-borrowing spouse, that may make some consumers less likely to complete and return the form due to concerns about providing sensitive personal information. Although this information may be required later for MOE approval after the borrower has passed away, we would suggest that the initial response form only request the basic, essential information for servicers to be able to identify the existence of a non-borrowing spouse.

In Exhibit A to these comments, we suggest a clarified version of the model NBS Information Sheet. Our proposed model includes having the top section pre-filled by the servicer, because the servicer already has the information regarding the property address, FHA Case Number, and most importantly, the identity of the borrower(s) on the loan. Some spouses may not know whether they are a borrower or a non-borrower, especially if they had to attend the loan closing to sign certain documents. HUD should indicate that this version of the model form is acceptable, address the issues discussed above in the model forms, or specifically state that lenders will not be penalized for modifying the forms in the ways suggested here. HUD also do consumer testing of its model form over the next few months, and make any adjustments that would be helpful to promoting consumers' understanding.

B. HUD should clarify that servicers are to apply a liberal standard in identifying non-borrowing spouse contacts, and that failure to correctly fill out the NBS Information

¹ There is also a typo in the block of text midway down the page. The phrase "provided that the mortgagee election to assign the HECM to FHA" should read "provided that the mortgagee elects to assign the HECM to FHA."

² The model NBS Fact Sheet is less confusing, but still contains a great deal of highly technical detail (including a multi-part definition of principal residence) that may confuse many lay people.

Sheet or to return supporting documents before the borrower passes away will not bar a spouse from having the loan assigned through the MOE.

The primary focus of collecting the NBS information should be on readily identifying non-borrowing spouses who may later wish to apply for the MOE program after the borrower's death, and HUD should make clear that servicers should apply a liberal standard in identifying NBS's and creating contacts in HERMIT once an NBS has come forward. To this end, servicers should be encouraged to create NBS contacts if they have the most pertinent information, regardless of whether the NBS form is completed correctly or whether any supporting documentation has been provided. We also think servicers should be able to accommodate senior consumers by creating NBS contacts for spouses identified by telephone or other means besides the NBS Information Sheet.

In addition, nothing in Mortgagee Letter 2019-15 states that returning the NBS Information Sheet is a condition of eligibility for the MOE. However, HUD should clarify that if a NBS form is not returned in certain years, or is returned without supporting documentation, such events pose no barrier to accessing the MOE. Moreover, if an NBS Information Sheet is returned with something filled out incorrectly, but upon later clarification it becomes clear that the NBS meets the definition of an eligible non-borrowing spouse, mistakes in filling out the NBS Information Sheet should not be a barrier to having the loan assigned.

C. HUD should clarify that once a form has been returned showing a non-borrowing spouse, servicers need not continue to send the form every year and spouses need not continue to return the form more than once.

If an NBS Information Sheet is returned once indicating the presence of a non-borrowing spouse, and the servicer creates a non-borrowing spouse "contact" in the HERMIT system, the servicer should not then be required to continue sending the NBS Information Sheet every year, and the spouse should not have to return the form if it is sent in successive years. The servicer should continue to send the NBS Fact Sheet annually, however, to remind the borrower and any non-borrowing spouse about the program eligibility.

D. HUD should provide additional guidance regarding due diligence timeframes and any financial impact of not assigning the loan within the due diligence window.

HUD has adopted a very reasonable policy in Mortgagee Letter 2019-15 by aligning the due diligence timeframe for an MOE assignment with the due diligence timelines for foreclosure. Because these timelines are now aligned, HUD should clarify that extensions of the due diligence timeframes should be available for the MOE assignment just as they are in the foreclosure context. For example, servicers can request extensions on foreclosure due diligence periods when they are working with heirs on a sale or refinance. Two 90-day extensions are available, for a total of one year from the date of the borrower's death. Servicers can also request extensions on foreclosure timeframes when they are working with borrowers on loss mitigation. Since Mortgagee Letter 2019-15 changes the strict deadlines to a due diligence period that will be comparable to the existing foreclosure timelines, HUD should make clear that the same kinds of extensions can be granted in the MOE context for good cause.

Moreover, HUD should explain clearly that the deferral period will still be available until an NBS is determined to be ineligible - that this part of Mortgagee Letter 2015-15 is not superseded. This is important because in some cases, servicers may initiate an MOE assignment to HUD that is ultimately rejected for some reason. Servicers should not be financially penalized during the period of review by HUD or when supplemental documents or information are requested by HUD or its contractor. Otherwise, servicers may feel that the MOE assignment is more of a gamble than foreclosure, a process over which they would have more control and could better account for the amount of the eventual claim payment.

HUD should clarify how an MOE assignment outside of the due diligence timeframe will impact the amount of claim payment in various scenarios. HUD should make clear that in any situation, once a due diligence period has expired, the financial impact on claim payment will be the same whether the servicer forecloses or elects to assign the loan. This is crucial to ensure that servicers are not financially incentivized to foreclose on non-borrowing spouses who are eligible for the MOE program, but rather the financial implications of either decision are the same.

E. HUD should allow servicers to send the NBS Information Sheet and NBS Fact Sheet separately from the occupancy certification if sent within 90 days from the issuance of the Mortgagee Letter or within 60 days of HUD providing clarification on this point.

Reverse mortgage servicers have raised concerns about the fact that Mortgagee Letter 2019-15 appears to have taken effect immediately, including the obligation to send the NBS Information Sheet and Fact sheet along with the occupancy certification. We understand that under bulk mailing programs, some servicers had already sent the occupancy certification forms to a bulk mailer for their September, October, and possibly November mailings when the Mortgagee Letter was issued. We think it would be reasonable to allow a delay of 90 days from the issuance of the Mortgagee Letter for servicers to start sending the NBS forms along with the occupancy verification, and to allow servicers to send the NBS forms separately from the occupancy form for any borrowers whose certification window occurred in this time period. Servicers should be permitted to send the NBS forms within 90 days of the issuance of the Mortgagee Letter or within 60 days after clarification by HUD on this point. However, it is important for HUD to provide such clarification quickly, since the 180-day due diligence window is currently open.

F. HUD should allow non-borrowing spouses to continue with existing loss mitigation (or obtain a new repayment plan) to repay property charge defaults.

HUD has improved the situation for non-borrowing spouses by providing added flexibility regarding the timing of the MOE assignment, including making it clear that property charges in default no longer have to be brought current within 120 days of the borrower's death. However, HUD continues to take the position that a loan may not be assigned to HUD until any property charge default is cured, and that a non-borrowing spouse who defaults on property charges at a later date is not able to obtain loss mitigation. This imposes a significant impediment for many non-borrowing spouses who are often adjusting to a loss of household income after the death of the borrower, may be faced with other large expenses related to the borrower's death and last

illness, and may not have the means to come up with a lump sum payment to cure a property charge balance in such a relatively short period of time.

HUD should change its policy to allow a loss mitigation plan to continue in place if the spouse continues to perform under an existing plan, and to allow a spouse to obtain loss mitigation to cure a property charge default if no plan is currently in place. It is not clear why HUD has not allowed non-borrowing spouses to obtain loss mitigation and has not allowed a loan to be assigned to HUD if an active repayment plan is in place. To the extent HUD is concerned about creating the appearance that a non-borrower is obligated to repay advances on the loan, given that he or she is not in fact a signatory to the HECM contract, this could be dealt with easily through language in the repayment plan that clarifies that a spouse is not obligated to repay the advances, but is doing so in order to prevent enforcement of the lien. Similar wording has been included in loan modifications entered into after a bankruptcy discharge, where no personal liability on the debt exists. But since the HECM is a non-recourse loan in any event, this should not be a significant barrier.

We request an explanation of the reasoning behind HUD's current policy barring loss mitigation for non-borrowing spouses, in order to engage with you on this issue and determine whether other options exist to keep more non-borrowing spouses in their homes.

In conclusion, Mortgagee Letter 2019-15 marks a critical improvement in HUD's policy on non-borrowing spouses. We applaud the agency for making these much needed changes, and look forward to working with you to ensure that the MOE program is implemented as smoothly and effectively as possible. If you have questions regarding the issues raised in this comment letter, please contact Alys Cohen (acohen@nclc.org) or Sarah Mancini (smancini@nclc.org).

Sincerely,

National Consumer Law Center (on behalf of its low-income clients)

Reverse Mortgage
Non-Borrowing Spouse Information Sheet

Instructions: Please provide the information requested below to assist in identifying spouses who may be potentially eligible to remain in the mortgaged property after the death of the last remaining reverse mortgage borrower. Should you have any questions regarding this effort, please contact your loan servicer, _____, at _____ or email _____.

Reverse Mortgage Loan Information	
Street Address	FHA Case Number
City, State, & Zip	Loan Origination Date
Name of Borrower(s)	
Basic Eligibility Questions	
1. Is the borrower identified above: <input type="checkbox"/> Married <input type="checkbox"/> Single <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed	
2. If married, is the borrower's spouse also a borrower on the reverse mortgage? (TIP: If both spouses' names are listed above under "Name of Borrower(s)," that means that our records show that both of you are borrowers on the reverse mortgage.) <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I don't know	
Non-Borrowing Spouse Information	
If a non-borrowing spouse is living in the home at the time of the borrower's death, the non-borrowing spouse <u>may</u> be eligible for a deferral of foreclosure, provided that the mortgage holder <u>elects</u> to assign the loan to FHA. Please provide the following basic information concerning the non-borrowing spouse's potential eligibility for assignment to FHA and deferral of foreclosure after the borrower's death. (If the non-borrowing spouse does not have a Social Security Number, the non-borrowing spouse's Taxpayer Identification Number may be provided.) Note that even if a spouse meets the eligibility criteria, that does not guarantee or require that a mortgage holder will elect to assign the loan to FHA.	
If the Borrower believes there may be an eligible non-borrowing spouse living in the home, please complete the section below and mail this form to the address listed below.	
3. Spouse's Full Name:	
4. Spouse's Social Security Number or Taxpayer Identification Number (If you prefer to provide this information by phone, leave this blank and call us after returning the form):	
5. Spouse's Date of Birth (MM/DD/YYYY):	
6. Date of Marriage (MM/DD/YYYY): (If you have lived with a person in a relationship similar to marriage, consult with an attorney to determine whether you may have been common law married under the law of your state.)	
7. Please check any of these that apply: <input type="checkbox"/> Borrower and Spouse were married at the time the reverse mortgage was obtained <input type="checkbox"/> Borrower and Spouse were engaged in a committed relationship akin to marriage but were not legally permitted to marry before the closing of the reverse mortgage because of the gender of the borrower and spouse. (If this applies, the borrower and spouse would need to legally marry prior to the borrower's death in order for the spouse to possibly obtain a foreclosure deferral).	

Comment [WU1]: This section should be pre-filled out by the servicer, including the names of all borrowers.

Please mail the completed form along with your marriage certificate (if available) to: [address]