March 7, 2023

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

RE: Comments to Mortgagee Letter 2023-03

Dear Commissioner Gordon:

On behalf of our low-income clients, we applaud the servicing policy updates that HUD provided in Mortgagee Letter 2023-03. By expanding access to the waterfall established in response to the COVID-19 pandemic, FHA is minimizing barriers to all borrowers seeking help after a financial crisis. Increasing the partial claim cap to 30% will more effectively help borrowers achieve payment relief. We also appreciate that HUD has made it easier for borrowers to work with the Homeowners Assistance Fund and has extended the availability of COVID relief beyond the end of the national emergency.

HUD should provide further clarification on issues that the Mortgagee Letter did not address. First, HUD should clarify that successors in interest are eligible to receive COVID-19 Recovery Options. We have heard reports of mortgage servicers and National Servicing Center representatives stating that successors in interest are not eligible for COVID-19 options. Because Mortgagee Letter 2023-03 eliminates FHA-HAMP, successors will no longer have any loan modification options available to help them avoid foreclosure if HUD does not clarify availability of its COVID-19 Recovery Option policy. HUD should simply state that successors in interest are eligible for the relief options available under Mortgagee Letter 2023-03.

Second, HUD should provide guidance on how borrowers can access modifications when the best possible COVID-19 Recovery Modification increases their monthly mortgage payment. Mortgagee Letter 2023-03 instructs servicers to offer borrowers the lowest possible modification payment even if it increases the borrower's monthly payment. However, we have heard reports that servicers will not offer a streamlined modification that increases the principal and interest payment because of the restrictions found in 12 C.F.R. § 1024.41(c)(2)(vi)(A)(5). With FHA-HAMP suspended and with interest rates remaining relatively high, an increased payment modification may be the best means of avoiding foreclosure for many borrowers, and those borrowers now will have to access this relief through the COVID-19 Recovery options.

To avoid conflict with 12 C.F.R. § 1024.41(c)(2)(vi)(A)(5), HUD should clarify what servicers should consider to be a "complete application" under RESPA. We recommend that HUD simply state that the borrower completes an application when they provide the servicer with the information needed to access a modification through Mortgagee Letter 2023-03. By doing this,

the loan servicer will no longer face the risk of a RESPA violation when offering a borrower an increased payment modification through Mortgagee Letter 2023-03, because it will instead be evaluating the borrower for all available options based on a complete application.

Third, HUD should clarify that a borrower who submits a financial package in writing should be evaluated for relief under the COVID-19 Recovery Options. Despite the availability of the streamlined process, borrowers may still attempt to submit financial documents. For example, a borrower who wants to trigger the other protections of RESPA (including dual tracking protections) may benefit from sending in documentation. HUD should clarify that if a servicer receives any application packet from a borrower, it should respond by stating that the application is complete, since no additional information is required to evaluate the borrower for the COVID-19 Recovery Options. HUD should make it clear to servicers that borrowers may still be reviewed for COVID-19 Recovery Options even if they have submitted income information that was not necessary for that review.

Thank you for your consideration of these comments. If you have questions, please contact Steve Sharpe, ssharpe@nclc.org.

Sincerely,

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