

August 20, 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: Comments to Mortgagee Letter 2021-18

Dear Principal Deputy Assistant Secretary Kolluri:

On behalf of our low-income clients and communities, we write to comment on HUD's response to the COVID-19 pandemic through Mortgagee Letter 2021-18. We appreciate that HUD has provided an avenue for borrowers to access significant payment relief through the COVID-19 Recovery Modification. It is essential, however, that HUD take further steps to ensure that its program operates as intended and that borrowers are able to obtain the relief they need to avoid unnecessary foreclosures.

Specifically, HUD should:

- Remove the unnecessary six-month limit on new forbearance plan terms, to align FHA policy with that of other government-backed loans;
- Clarify which options are available for borrowers who need more than the 25% payment reduction that the COVID-19 Recovery modification targets;
- Ensure that servicers disclose the various loss mitigation options to borrowers before they exit forbearance;
- State when servicers must start communicating with borrowers prior to the end of forbearance;
- Require waiver of late fees consistent with the policies in HUD Handbook 4000.1;
- Address critical issues in the current Handbook 4000.1 that impede loss mitigation for some of the most vulnerable homeowners; and
- Clarify escrow analysis requirements for loan modifications.

I. HUD should remove the unnecessary six-month limit on new forbearance plan terms.

In light of the resurgence of COVID-19 cases, we urge HUD to give all FHA-insured borrowers who start forbearance plans after June 30, 2021 access to a full twelve months of forbearance in line with policies from the Government Sponsored Enterprises (GSEs), the Department of Veterans Affairs (VA), and the Department of Agriculture (USDA).

Starting with Mortgage Letter 2021-15 and continuing with the recent letter, HUD limits forbearance for borrowers accessing plans after June 30, 2021 to six months of relief instead of the standard twelve months pursuant to the CARES Act. Since HUD imposed this six-month limit in June of 2021, we have seen a ten-fold increase in the number of COVID-19 cases. HUD should not put borrowers suffering from the current wave of cases in a relatively worse position than those who may have faced COVID hardships early in the pandemic.

Moreover, HUD's position is an outlier among federal housing agencies. The VA and USDA did not include a similar six-month limitation in their June 2021 announcements to extend the forbearance deadline. The GSEs also have no such limit. HUD should not be alone in imposing an unnecessary time limit on forbearance, especially given how hard FHA-insured borrowers have been hit by the COVID-19 pandemic.

HUD's limit on forbearance for reverse mortgage borrowers (through "HECM extension periods") is problematic for the additional reason that many borrowers will have to rely on Homeowner Assistance Fund (HAF) programs, which still are not fully operational. HAF funds will play a particularly important role for reverse mortgage borrowers, who have fewer loss mitigation options and who are not protected by the CFPB's mortgage servicing regulations. For the foregoing reasons, HUD should revisit its decision and allow full twelve-month forbearance terms for forward and reverse mortgage borrowers.

II. HUD should clarify the options that are available for borrowers who need deeper than 25% payment reductions.

We appreciate that HUD's newly-released COVID-19 Recovery Modification provides significant, targeted payment relief for borrowers who need a loan modification after suffering a COVID-19 hardship. We applaud HUD for adopting a relatively simple modification program that facilitates compliance and transparency.

We know, however, that some borrowers will need more than the 25% reduction in payment that the Recovery Modification targets, and Mortgage Letter 2021-18 does not clearly state what can be done for those borrowers, as both consumer and industry advocates have pointed out. In fact, the updated policies in Mortgage Letter 2021-18 removed reference to the reduced documentation version of FHA-HAMP that was previously available and could clearly provide payment relief beyond the 25% reduction of principal and interest.

Since releasing Mortgagee Letter 2021-18, HUD has indicated that borrowers needing more than 25% reductions in payments can access such relief through the COVID-19 Recovery Modification, specifically through an increased use of the partial claim. The ability to access expanded payment relief through the COVID-19 Recovery Modification, however, is not clear from the text of Mortgagee Letter, which instructs servicers to provide a partial claim until a 25% targeted payment reduction is achieved and not further.

If HUD intends for servicers to use the COVID-19 Recovery Modification to assist borrowers who need deeper payment reduction, it must specifically state this in a Mortgagee Letter. The current version lacks clarity, and as a result, may not be used in the way HUD intends, denying homeowners essential relief. Rather than issuing a Frequently Asked Question (FAQ), which are difficult to find and may be overlooked by servicers that focus on the Mortgagee Letter, HUD should issue a new Mortgagee Letter explaining this rule of the COVID-19 Recovery Modification. The language in a clarifying Mortgagee Letter should explicitly state how borrowers can access the expanded relief and when servicers should offer it. In order to do this effectively, HUD should, as explained below, also develop a script for the servicer's discussion of COVID-19 options in line with the practices required by the GSEs.

III. Require servicers to communicate to borrowers exiting forbearance that multiple loss mitigation options are available, including loan modifications.

HUD should require clear communication from servicers to ensure that borrowers understand their post-forbearance options. Most importantly, **HUD should require servicers to inform borrowers at the outset of their post-forbearance discussions that options are available both to resume monthly payments or obtain a reduced payment.** Under the current system, it is unclear whether servicers will simply offer the partial claim without giving borrowers any other options. If borrowers are not made aware that there are other options beyond the standalone partial claim that provide further relief, 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 deferral out of fear or misinformation.

HUD should also require servicers to mail out a written notice to borrowers before the end of the forbearance period that lists in clear terms the COVID-19 loss mitigation options available. The notice cannot substitute for requiring disclosure of options during a post-forbearance discussion because borrowers will often select their loss mitigation option over the phone. However, a written notice is another means of providing crucial information and may cause additional borrowers to engage with their servicers. The CFPB's new amendments to Regulation X include a written notice requirement before referral to foreclosure; however, it is before the end of forbearance that this information is truly necessary. Moreover, the CFPB's written notice is not sufficiently specific about the options available.

In addition to requiring servicers to inform borrowers of the COVID-19 options over the phone and in writing, with so much riding on the phone conversation, **we urge HUD to develop a model servicer script to guide the conversation with borrowers nearing the end of forbearance.** The script should explicitly address how servicers discuss options for borrowers

who need more than 25% reductions of principal and interest through the COVID-19 Recovery Modification. As explained above, HUD has not provided guidance as to when or how servicers should offer this option to borrowers.

We have heard reports from homeowners and their advocates that servicers are failing to clearly communicate all options to borrowers. HUD's system, however, depends entirely on servicers talking to borrowers to determine which options should be made available. This initial process occurs without the exchange of financial documents, even though some documentation may be needed later depending on which options apply. Accordingly, ensuring written notices and scripts are clear will improve compliance and outcomes for homeowners and the Fund.

IV. HUD should require servicers to start reaching out to borrowers in forbearance at least 30 days before the forbearance ends.

Unlike the GSEs, HUD does not specify when servicers should start discussing post-forbearance options with borrowers who are approaching the end of their forbearance period. Without such timing obligations, borrowers may be dropped from forbearance plans and the protection they provide without understanding the steps that are available to bring their loan current. Mortgagee Letter 2021-18 states that servicers must review borrowers for options after completion of forbearance plans, but it does not require contact before plans expire. As we have heard from advocates in the field, FHA-insured borrowers have been dropped from forbearance plans without any discussion of extension or post-forbearance options. Moreover, recent CFPB data analysis indicates a serious problem with homeowners exiting forbearance in serious delinquency without transitioning into loss mitigation options.

HUD should adopt policies to better promote borrower transition into either extended forbearance or loss mitigation options in line with the GSEs. For example, in Lender Letter 2021-02, Fannie Mae requires "[f]or borrowers who have received a forbearance plan in response to COVID-19, the servicer must begin attempts to contact the borrower no later than 30 days prior to the expiration of the forbearance plan term, and must continue outreach attempts until either QRPC is achieved or the forbearance plan term has expired." **HUD should adopt a similar policy requiring outreach at least 30 days prior to the end of the forbearance.** This outreach requirement can satisfy the live contact requirements of the CFPB's revised Regulation X for COVID-19 hardships and does not require additional action.

V. HUD should require waiver of all late fees in connection with loan modifications, consistent with Handbook 4000.1

According to Mortgagee Letter 2021-18, in connection with implementing each COVID-19 loss mitigation option, "all Late Charges, fees, and penalties are waived except that Mortgagees are not required to waive Late Charges, fees, and penalties, if any, accumulated prior to March 1, 2020."

HUD should eliminate the exception to the late fee waiver policy and require waiver of all late fees. We recognize HUD may have proposed non-waiver of pre-March 1, 2020 late fees in relation to its decision to expand COVID-19 options to borrowers in default prior to March 1,

2020. However, by allowing some late fees to be capitalized, HUD treats borrowers in default prior to March 1, 2020 with COVID-19 hardships worse than other borrowers with non-pandemic hardships. HUD's standard loss mitigation policy is to waive late fees when borrowers complete loss mitigation options. Under FHA-HAMP, "[t]he Mortgagee must waive Late Charges under the original Mortgage as long as the Borrower is on or paying its agreed Loss Mitigation Option." HUD should continue its consistent policy and require waiver of late fees without exception. Notably, Treasury's HAF program is treating arrearages prior to January 2020 on the same footing as those accrued after that date, as long as there has been a COVID hardship. HUD's approach should mirror Treasury's and not distinguish between late fees accrued before or after as long as there has been a COVID era arrearage.

VI. HUD needs to address long-standing modification process issues that may impede access to COVID-19 relief.

Mortgagee Letter 2021-18 does not address all aspects of the loan modification process, and as a result, servicers will still rely on topics covered by HUD's comprehensive Single Family Handbook 4000.1 when Mortgagee Letter 2021-18 is silent. There are two significant issues with Handbook 4000.1 that are relevant to borrowers seeking COVID-19 relief that must be addressed in the short term.

First, 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 loss mitigation without the participation of an absent co-borrower, neither Mortgagee Letter 2021-18 nor Handbook 4000.1 provide 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, 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 a married co-borrower may be unable to secure any cooperation from a spouse due to domestic violence and other legitimate barriers.

Second, HUD must reinstate reduced documentation requirements for borrowers seeking FHA-HAMP. FHA-HAMP remains an important option for borrowers seeking maximum payment relief; however, the current version of Handbook 4000.1 includes language on financial evaluation that has caused servicers to seek unnecessary documentation of expenses.

HUD has already recognized that such documentation is unnecessary. The version of the Handbook 4000.1 that comes into effect on March 31, 2022 fixes the problem. In addition, HUD's version of FHA-HAMP for COVID hardships included with Mortgagee Letter 2021-05 also eliminated unnecessary documents. Unfortunately, when HUD chose to eliminate the COVID version of FHA-HAMP, it eliminated the improved documentation requirements.

HUD should reinstate the reduced documentation version of FHA-HAMP. While we understand the agency's belief that few borrowers will use FHA-HAMP during the pandemic, some may still choose to access it, and they should not face unnecessary barriers to sustainable modification.

VII. HUD should clarify the obligation of servicers to analyze escrow prior to loan modifications.

We appreciate that Mortgagee Letter 2021-18 specifically directs servicers to place into a partial claim or capitalize escrow advances and "a projected escrow shortage amount." By allowing servicers to address shortages in a loan modification, HUD will limit payment shock borrowers can face when loss mitigation does not include shortages. We commend HUD for making this adjustment.

While the requirement may seem implicit in HUD's current COVID-19 guidance, some servicers may interpret this to only require a shortage to be capitalized or placed in a partial claim if there is "a projected escrow amount" and, if an escrow analysis has not recently been done or is not scheduled to be done until after the option is implemented, they do not have to address it. To avoid this ambiguity and guide interpretation of the language, **HUD should provide examples to demonstrate to servicers how escrow shortage calculations will work. In addition, HUD should explicitly state, in line with its policy for FHA-HAMP modifications, that "[t]he Mortgagee must complete a retroactive escrow analysis of the Mortgage" prior to finalizing a loss mitigation option.**

Thank you for your consideration. We look forward to further discussing these issues with you. Please contact Steve Sharpe, Staff Attorney at the National Consumer Law Center, for further discussion at ssharpe@nclc.org.

Sincerely,

The National Consumer Law Center (on behalf of its low-income clients)
Americans for Financial Reform Education Fund
Atlanta Legal Aid Society, Inc.
Center for Community Progress
Center for Responsible Lending
Community Legal Services of Philadelphia
Connecticut Fair Housing Center
Consumer Action
Financial Protection Law Center (NC)
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