National Consumer Law Center
Fighting Together for Economic Justice

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March 24, 2020

Brian Montgomery
Acting Deputy Secretary
Department of Housing and Urban Development
451 7th St S.W.
Washington, D.C. 20410

Re: Comment on Mortgagee Letter 2020-04
Urgent steps to protect reverse mortgage borrowers during the COVID-19 public health crisis

Dear Deputy Secretary Montgomery:

We write in response to the issuance of Mortgagee Letter 2020-04, to ask that HUD take certain steps to ensure the ongoing housing stability of borrowers who have taken out reverse mortgages under FHA's Home Equity Conversion Mortgage (HECM) program, and their non-borrowing spouses, in light of the current COVID-19 public health emergency. Older Americans face the greatest risk from the current pandemic, and any housing instability will exacerbate the health risk for those borrowers as well as for the community at large.

HUD's sound decision to put in place a 60-day moratorium of all foreclosures and evictions of FHA-insured mortgages is an important first step. We ask that, with respect to reverse mortgage borrowers, HUD further protect this vulnerable population by taking these crucial steps:

- Make clear that the reasonable diligence deadline for servicers to initiate an assignment through the MOE program for surviving spouses also has been extended by 60 days, and consider further extensions as needed;
- Direct servicers to make property charge payments only where no repayment arrangement, extension, or tax foreclosure moratorium has been granted by the taxing authority, because otherwise it will put many homeowners at risk of reverse mortgage foreclosure at a time when the taxing authority was not threatening to foreclose;
- When servicers do make tax payments on behalf of HECM borrowers during the state of emergency, provide for an additional 6-month delay in taking the first legal action to foreclose, so that homeowners have the opportunity to repay the advances, and encourage full use of loss mitigation to prevent avoidable foreclosures;
- Expand access to loss mitigation for qualified homeowners by extending all deadlines related to acceptance of loss mitigation options, including the return of any loss

mitigation agreements, and by allowing for new repayment plans when borrowers default during the national emergency; and

- Extend the foreclosure and eviction moratorium announced on March 18th to at least six months, with a commensurate extension of reasonable diligence deadlines imposed on mortgagees.

The World Health Organization recently declared COVID-19 a "pandemic." The CDC has recommended that individuals over 60, and those with existing health concerns, avoid large gatherings and non-emergency travel. The spread of the virus within the United States has created widespread concern and has led to closure of schools, courts, and many places of business due to the fact that immediate social distancing is necessary to mitigate the likely toll in human lives related to the spread of this disease. Many homeowners have been laid off from jobs or are unable to work due to elevated risk factors.

These interruptions in income and restrictions on travel outside of the home will lead to new challenges for reverse mortgage borrowers, including defaults on property charges, defaults on existing repayment plans, and an inability to obtain assistance from legal advocates or housing counselors. The elderly population of reverse mortgage borrowers is at even greater risk from the virus if they attempt to attend a court hearing related to a foreclosure or eviction or leave their homes to seek legal assistance. Moreover, the restriction of large public gatherings is likely to chill the bidding on foreclosure auctions in communities around the country.

Further delaying foreclosures for a period of time, and extending all related deadlines, makes sense for humanitarian, public health, and financial reasons. We know that the aftermath of this crisis will extend well beyond 60 days, especially the financial consequences. As a result, we urge HUD to extend the moratorium to six months and to consider extending further as needed. We hope this timeframe will give borrowers and mortgagors the time they need to address the payment issues that will arise.

In addition to extending the moratorium, HUD should clarify the impact of Mortgagee Letter 2020-04. HUD's March 18th Mortgagee Letter states, "In addition, deadlines of the first legal action and reasonable diligence timelines are extended by 60 days." This should apply to mortgagees' reasonable diligence timeframe to submit an assignment through the Mortgagee Optional Election (MOE) program by extending that deadline by 60 days. Mortgagee Letter 2019-15 implemented a "reasonable diligence" timeframe of 180 days from the latter of the death of the borrower or issuance of the mortgagee letter. The 180-day window from issuance of the mortgagee letter would have expired March 21, 2020. HUD should clarify, through a mortgagee letter or FAQ, that the MOE submission due diligence window has indeed been extended from March 21 for another 60 days. Depending how long the public health emergency lasts, a further extension may be necessary.

HUD also should issue guidance on property charge defaults. It is reasonable to expect a new wave of defaults on homeowner payments for taxes and insurance as a result of the public health emergency. A number of states have property tax bills that come due in March or April. It is to be expected that many seniors will be unable to make their tax bill payments by these deadlines, whether because of illness, loss of income, or the fact that it is not safe for them to leave their homes to travel to the taxing authority's offices. Some states and localities are discussing extensions of the deadlines due to the public emergency. HUD should direct mortgagees not to advance any property tax payments if the taxing authority in question has granted a broad extension or tax foreclosure moratorium related to the crisis or has approved an individual grace period or payment plan with the particular borrower. In such a situation, the taxes should not be deemed delinquent, and a servicer should not advance the funds.[1] Advancing payments in this circumstance would unnecessarily increase homeowners' debts and cause avoidable foreclosures. When taxes go unpaid and no extension has been granted by the taxing authority, mortgagees should advance the charges but should be given an additional six-month delay in taking the first legal action to foreclose, and should be encouraged to make use of all available home retention options to help the borrower cure the default over time.

Finally, many reverse mortgage borrowers who are presently attempting to obtain a repayment plan or who are active in a repayment plan to cure a property charge default may struggle as a result of the pandemic. HUD should direct servicers to extend any deadline to accept a repayment plan through 60 days after the conclusion of the public health emergency. HUD also should instruct servicers to allow borrowers who may default on a repayment plan to be considered for a new or recalculated payment plan, regardless of whether they owe more than $5,000 in arrears.

In response to this pandemic, government agencies and municipalities have taken significant steps to address the serious health concerns. We commend HUD for taking the crucial first step of imposing a foreclosure and eviction moratorium, but more assistance is needed to adequately protect borrowers through this crisis, and we ask that the agency take these further steps to protect reverse mortgage borrowers. If you have any questions, please reach out to Alys Cohen at acohen@nclc.org or Sarah Mancini at smancini@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.
California Reinvestment Coalition
Center for Community Progress
Center for NYC Neighborhoods
Coast to Coast Legal Aid of South Florida
Community Legal Services (Philadelphia, PA)
Connecticut Fair Housing Center
Consumer Action
Consumer Federation of America
Empire Justice Center

[1] Mortgagee Letter 2018-08 at 2 (Oct. 22, 2018) (defining taxes as "current" when they are paid prior to delinquency as defined by the local taxing authority).

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