COMMENTS

to the
U.S. Department of Housing and Urban Development

on

Mortgagee Letter 2018-05 (August 15, 2018)

by

Americans for Financial Reform

Consumer Action

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

National Fair Housing Alliance

National Housing Law Project

UnidosUS

Foreclosure Prevention and Consumer Rights Legal Aid Clinic, University of Puerto Rico School of Law

North Carolina Justice Center

One Stop Career Center of PR, Inc.

Pontifical Catholic University of Puerto Rico

September 14, 2018

Via E-mail to answers@hud.gov

We, the undersigned national and local organizations working with FHA homeowners in disaster areas, appreciate the opportunity to comment on HUD's Mortgagee Letter 2018-05. Through the Mortgagee Letter, HUD seeks to create an expedited process for borrowers to access loss mitigation through the Disaster Standalone Partial Claim, which provides a partial claim to address past due payments without changing the loan's term or interest rate. We are glad that HUD has recognized the need for expedited loss mitigation in disaster situations; however, the Disaster Standalone Partial Claim is unnecessarily limited in its scope.

By only focusing on homeowners who have maintained or increased income, HUD ignores the reality that full recovery from a disaster is a long process. As a result, the Disaster Standalone Partial Claim will not provide relief for the many people still struggling in disaster areas that have not fully recovered. The program is also unnecessarily limited to Puerto Rico and the U.S. Virgin Islands despite the fact that many other areas of the country still face the aftermath of recent disasters.

Moreover, as with HUD's standard modification process for FHA-insured loans, HUD's expedited program includes vague and unnecessary eligibility requirements that will impose unnecessary barriers to loss mitigation. As with standard loss mitigation options, servicers likely will continue to require extensive documentation from borrowers as a result of this vague guidance. HUD must generally revisit documentation requirements in all loss mitigation; however, eliminating unnecessary document requests is especially important now since borrowers in disaster areas face increased obstacles to obtaining documents. HUD also should clarify that homeowners are owner occupants even if they have been temporarily displaced from their homes and are taking steps to be able to return.

Finally, HUD must recognize and take steps to address the broader foreclosure crisis in Puerto Rico. Hurricane Maria exacerbated an already severe housing crisis. Without targeted steps, Puerto Rico's housing market is in danger.

1. **HUD must expand the scope of the Disaster Standalone Partial Claim.**

Under Mortgagee Letter 2018-05, a borrower in a disaster area is only eligible for the Standalone Disaster Partial Claim if "[t]he Mortgagee confirms that the Borrower's income (e.g., wages, social security, pension, annuity, etc.) is equal to or greater than it was prior to the Disaster."

This is unnecessarily limited in scope as it ignores the realities of disaster recovery. By focusing only on those borrowers who have equal or greater income than prior to the disasters, HUD fails to recognize that many borrowers, especially low- to moderate-income borrowers with FHA-insured loans, will not have fully restored income yet may still be able to afford their mortgage payment.

Rather than require equal or greater income, HUD should allow for the Disaster Standalone Partial Claim if the borrower can establish that she has recovered a substantial portion of her income, such as 80%. This will allow more borrowers to be reached. If a borrower in such a financial circumstance needs additional relief, that person can apply for a standard loan modification through FHA's waterfall, but will also have the option of the Disaster Standalone Partial Claim.

2. **The eligibility requirements for HUD's Disaster Standalone Partial Claim include vague and unnecessary requirements.**

In addition to requiring that the borrower's wages are equal to pre-disaster rates, which we believe is unnecessarily limited, HUD separately requires that "[t]he Borrower demonstrates the ability to resume total monthly mortgage payments of Principal, Interest, Taxes, and Insurance (PITI)."

If HUD continues to require the borrower to establish that the income is the same as pre-disaster levels, there is no reason to separately require that the borrower demonstrate an ability to resume payments. If a borrower's income level is the same and the loan was not more than sixty days behind as required in ML 2018-05, the separate requirement of ability to resume payment is duplicative and unnecessary. Adding another hurdle undermines the goal of an expedited process.

The requirement is also extremely vague. HUD provides no guidance on what constitutes an ability to resume payment or how a borrower demonstrates ability to resume payment. Even if HUD expands eligibility to borrowers with somewhat decreased income, that requirement nevertheless should remain a bright line rule that is calibrated to ensure affordability without this vague additional requirement.

Unfortunately, when HUD has imposed vague loss mitigation requirements outside the disaster context, we have seen servicers impose overly burdensome requirements in response. For example, in response to Mortgagee Letter 2016-14, borrowers have faced requests for grocery bills and for copies of all utility bills. Simply put, when HUD imposes vague requirements, servicers overcompensate and require too much from borrowers.

3. **Since many borrowers in disaster areas will need to access standard FHA loss mitigation, HUD must fix the significant issues created by Mortgagee Letter 2016-14.**

Borrowers have faced significant problems since the release of Mortgagee Letter 2016-14. We have enclosed two letters to HUD that outline burdensome requests that servicers have imposed. Unfortunately, HUD has taken no action to address the vague rules of ML 2016-14 and homeowners continue to receive demands from servicers to produce a wide range of bills and receipts prior to any loss mitigation review, along with overbroad requests for documenting hardship. Such requests unnecessarily impede FHA loss mitigation and deter participation in the program.

These continued issues will disproportionately impact borrowers in disaster areas who face additional challenges in obtaining documents. Servicers, who believe these burdensome documentation requests are required by HUD, also have expressed a desire for clarification on this issue and would benefit from a more streamlined process.

4. **HUD should make any targeted disaster relief programs permanent and should extend their coverage to additional areas.**

According to Mortgagee Letter 2018-05, the relief it provides applies only to areas of Puerto Rico and the U.S. Virgin Islands, and it sunsets by May 1, 2019. This position underestimates the continued economic hardships that borrowers face in areas of Texas, California, and Florida as a result of recent disasters. In addition, other areas in our country have been and will soon be affected by similar challenges, such as the impending storm in the Carolinas and Virginia. A broader standard should be established based on specific jurisdictions or disaster declarations or based on a FEMA declaration standard.

Moreover, given the prolonged nature of disaster recovery, assistance included in Mortgagee Letter 2018-05 should not expire by May 1, 2019; rather, it should become a permanent component of HUD Handbook 4000.1.

5. **HUD should clarify that homeowners are owner-occupants even if they have been unable to return to their homes or have had to evacuate the island temporarily while they rebuild.**

Puerto Rico is still, to a great extent, a sea of blue tarps. Many homeowners are in the process of trying to rebuild but are unable to live in their homes while they do so. Some have had to temporarily evacuate the island in order to find shelter, educate their children, or otherwise take care of their family needs. Yet, they intend to return to their properties once rebuilding has adequately progressed. HUD should clarify that homeowners are owner-occupants as long as they have not transferred their primary residence on a permanent basis, whether they are living with another family elsewhere on the island or have evacuated to the mainland to await their home's rebuilding. If needed, HUD could put a time limit on this, such as 18 months, or set a standard focused on "reasonable efforts to rebuild."

6. **HUD must take additional, significant steps to address the broader foreclosure crisis in Puerto Rico.**

Hurricane Maria exacerbated an already existing foreclosure crisis in Puerto Rico. Puerto Rico's economic recession led to depopulation and the loss of jobs, which induced a decline of home equity values and an increase in foreclosures. Median household income has declined by 5 percent, from $21,458 in 2005 to $20,078. This income per capita is lower than any of the states in the mainland United States. According to the US Department of Labor, in August 2017, just one month before Hurricane Maria made landfall, Puerto Rico's unemployment rate was 10%, compared to 4.4% in the mainland US.

Still, the number is much higher than any other state. With respect to home value, according to the U.S. Census Bureau, the median home value for Puerto Rico in 2016 had declined 16 percent (or $21,747) from the median home value of $133,647. This trend clearly illustrates the island's depressed housing market prior to Hurricane Maria. Puerto Rico's housing stock was already depreciating when it was further damaged by Hurricane Maria.

The effects of the 2006–2016 economic crisis and the impact of Hurricane Maria further depreciated Puerto Rico's housing market, which led many families to either leave Puerto Rico, stay within their damaged homes, or move to live with other families within the island. Perhaps the clearest indicator of the housing crisis is that from 2005-2016 (pre-Hurricane Maria) Puerto Rico lost about 45,880 households while adding 115,197 net housing units. Because of this clear imbalance between the increase in the supply of housing and a sharp decline in demand for housing, Puerto Rico's median home values have declined across the island between 20 and 30 percent since 2005, and in some areas up to 70 percent.

In order to address the housing crisis in Puerto Rico, HUD must provide solutions for homeowners who were facing challenges even pre-Maria. Many of those homeowners can qualify for loss mitigation if made available to them. Other measures, such as principal reduction, would also help stabilize the market.

In addition, advocates working with Puerto Rican borrowers have seen significant non-compliance with the rules that apply to FHA-insured loans. Given this non-compliance and the magnitude of the foreclosure crisis on the island, HUD should specifically examine how servicers are handling FHA-insured loans on Puerto Rico and should pursue non-compliance through the agency's administrative process.

We appreciate the opportunity to comment on this important guidance, and we look forward to discussing this with you in further depth.

Sincerely,

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LEGAL AID SOCIETY OF SOUTHWEST OHIO, LLC
AN AFFILIATE OF THE LEGAL AID SOCIETY OF GREATER CINCINNATI

Sept. 22, 2016

VIA ELECTRONIC MAIL

Ivery M. Himes
Director, Office of Single Family Asset Management
U.S. Department of Housing and Urban Development
451 7th Street S.W.
Washington, DC 20410

RE: Mortgagee Letter 2016-14 and HUD's Process for Comments

Dear Ms. Himes:

We are writing to follow up on our September 14, 2016 phone conversation on Mortgagee Letter 2016-14. We value our relationship with you, and we appreciate your willingness to meet with us and discuss the letter.

We are concerned that HUD did not provide a process for gathering input from consumer advocates prior to the release of Mortgagee Letter 2016-14. As we discussed during our call and explain below, Mortgagee Letter 2016-14 includes policy updates on loss mitigation that would benefit greatly from the insight and experience of consumer advocates, who are immersed in the details of loss mitigation. As you know, we were very active in the drafting process for the Single Family Housing Policy Handbook, and this included providing extensive comments and meeting with you in person to discuss the impact of your policies on borrowers.

On behalf of our clients and communities, we urge HUD to consult consumer advocates in advance of any further changes in loss mitigation policy. We believe that HUD improved the handbook as a result of our input, and we continue to have insight based on our experience to provide on the issues raised in Mortgagee Letter 2016-14.

HUD's new policy regarding borrower financial income provides a clear example of a change that would have benefitted from input from consumer advocates before release. We do not necessarily object to the use of IRS National Collection Standards in the loss mitigation process. In fact, use of the standards may help the process by providing a clear and reasonable baseline for everyone to use.

However, HUD's new policy is ambiguous on how borrowers are going to be directed to use the IRS standards. It is especially problematic that the new policy adds language supporting the need for borrowers to provide receipts for basic household expenses. The language from the mortgagee letter does not clearly state that the IRS standards are a default figure or even preferable to expense receipts.

Based on our experience and based on the lack of clarity in HUD guidance, this system will cause significant problems for borrowers. It is unlikely that servicers will clearly communicate to borrowers that they can use the IRS standards. Instead, it is likely that expense receipts are going to be requested, even though the IRS standards do not require this. These requests will severely slow down loss mitigation reviews. Given the importance of timely reviews and the increased costs and unnecessary foreclosures that result from untimely reviews, the changes could cause significant harm without this crucial clarification.

If HUD wants servicers to routinely use the IRS standards, the policy should state this position clearly and make it clear that servicers should only request receipts when a borrower seeks to claim an expense that exceeds the standards. To assist in this process, servicers should build the IRS guidelines directly into their forms and computer systems and include this guideline information on all notices and applications forms sent to borrowers regarding loss mitigation.

By putting the IRS standards on equal footing with expense receipts, as the current policy appears to do, borrowers will not know which to use and many loss mitigation opportunities that benefit the Fund and homeowners may be lost.

In addition, HUD's treatment of income from non-borrowers who reside in the property for loss mitigation purposes remains unclear. Borrowers should have the ability to include non-borrower household income in their loss mitigation applications, and HUD's guidance should provide such flexibility. The Mortgagee Letter only addresses what must be included and remains silent on the permissive use of non-borrower income. We ask HUD to make the permissive use of non-borrower household income more clear.

We look forward to working with you more on these issues.

Sincerely,

Alys Cohen
Geoff Walsh
Staff Attorneys
National Consumer Law Center

Steven Sharpe
Senior Attorney
Legal Aid Society of Southwest Ohio, LLC

MEMO TO: Ivery Himes, Director, Office of Single Family Asset Management and Matt Martin, Director, Servicing & Loss Mitigation

FROM: Steven Sharpe, Legal Aid Society of Southwest Ohio, LLC; Geoff Walsh and Alys Cohen, National Consumer Law Center

RE: Mortgagee Letter 2016-14

DATE: August 11, 2017

We want to thank you for our April 26, 2017 meeting, and we wanted to follow up on issues from the field regarding the FHA loss mitigation process. Since the release of Mortgage Letter 2016-14, we have raised concerns that HUD's revised policies on evaluation of living expenses and hardship will lead to overly burdensome document requests and not to the more streamlined process HUD seeks to achieve. We detailed these concerns in our September 22, 2016 letter, which we have attached.

Unfortunately, as detailed below, we now have examples of lenders asking borrowers upfront for extensive documentation of monthly bills, including food receipts, without any mention of IRS collection standards. Such requests are overwhelming and impede loss mitigation. HUD must clarify its policy to avoid unnecessary requests.

Financial Analysis in Mortgagee Letter 2016-14

Mortgagee Letter 2016-14 directed Mortgagees in limited circumstances to confirm borrowers' monthly living expenses with supporting documentation. This requirement to document expenses was subject to two significant limitations (ML 2016-14, pp. 3-4). First, it applied "when the existing total mortgage payment (PITI) is equal to or less than 31 percent of the Borrowers' current gross monthly income." *Id.* Second, it provided that borrowers with current monthly payments below 31% of their gross income could use IRS collection standards to support their stated necessary expenses as an alternative to providing "bills and receipts." *Id.* The IRS collection standards provide monthly allowances for specific living expenses, such as food, personal care, and other items, that the IRS deems to be reasonable. Taxpayers seeking to reach an agreement with the IRS on past due taxes can rely on these allowances without having to provide any documentation or other proof.

It is important to note that the analysis of borrower living expenses in the FHA loss mitigation waterfall only affects whether a borrower can afford to make a repayment or forbearance plan instead of receiving a loan modification. Under the waterfall, once the borrower moves to the modification step of the waterfall, living expenses no longer impact the terms of an FHA-HAMP modification. Such a limited role for analysis of living expenses promotes streamlined decisions and, as a result, benefits borrowers and the fund. We are concerned that HUD's emphasis on living expenses in Mortgage Letter 2016-14 implicitly overstates their role and ultimately makes the waterfall less clear.

Nonetheless, in light of Mortgagee Letter 2016-14's limitations on documenting living expenses, it appears that HUD intended any requirement to document expenses with bills and receipts to apply in very unusual circumstances. This would be in situations where the borrower applying for loss mitigation already had a fairly affordable payment and where that borrower chose to use bills and receipts to document expenses instead of referring to the IRS collection standards. Only a borrower with one or more unusually high expenses would choose to provide bills rather than rely on the IRS standards.

Because the mortgagee letter appears to offer "bills and receipts" and the IRS collection standards as equal alternatives, without clarifying that the IRS standards could serve as the default option, we have been concerned that there would be an increase in homeowners being asked to document expenses through bills and receipts where the IRS collection standards would have served just as well with many fewer transaction costs. Moreover, we feared that servicers would lose sight of the narrow scope of the requirement to document expenses and instead demand that borrowers produce a wide range of bills and receipts up front and as part of every loss mitigation application. Such requests unnecessarily impede FHA loss mitigation and deter participation in the program.

Unfortunately, our fears have been realized. We have seen numerous instances of unnecessary and burdensome documentation requirements for FHA borrowers seeking loss mitigation. Below we have outlined instances of such unnecessary requests.

Although the borrowers in the instances cited below were generally able to access FHA loss mitigation due in large part to the assistance of experienced attorneys or housing counselors, most homeowners do not have access to this type of assistance. As a result, the recent developments in response to ML 2016-14 likely are creating significant barriers to loss mitigation for many struggling FHA homeowners. Moreover, they are likely to lead to HUD's payment of unnecessary claims.

As we explained above, HUD should follow its modification waterfall and clarify the limitation of the role of living expenses in the borrower evaluation of loss mitigation. If HUD is going to continue to require lenders to confirm monthly living expenses when the existing payment is less than 31% of the borrower's income, HUD should clearly state lenders must only require receipts if the borrower claims an expense larger than the IRS collection standards and that expense may have an impact on the collection alternative. A borrower claiming such a high expense should be notified specifically about the option to use the IRS collection standards before having to submit receipts. Consistent with the waterfall, the servicers' evaluation of living expenses, including any reliance on the IRS collection standards, should not push a borrower out of eligibility for an FHA-HAMP loan modification when the borrower otherwise meets the waterfall requirements.

Stories from the Field

Recent complaints that we have received from housing counselors and attorneys have involved requests for receipts and statements for basic living items like food and utilities. It is incredibly burdensome (and often not possible) for borrowers to provide those receipts. We understand that lenders may need to inquire into large expenses that exceed the IRS collection standards. However, such requests are happening in situations that do not involve such claims and also where no expense analysis is required. Below we have outlined instances of such requests that place unfortunate barriers to loss mitigation reviews.

We have received several examples involving PNC Mortgage and its recently tightened document policies. PNC's response to the loss mitigation application of Jeremy and Kristina F. from Cincinnati, Ohio was so overwhelming that Mr. and Ms. F. wanted to stop the process immediately. We have attached a copy of the notice that the Mr. and Ms. F. received. In it, PNC requests a copy of every single utility bill that the Mr. and Ms. F have (water, sewer, trash, gas, electric, home phone, internet, cable, and cell phone) in addition to a request for documentation of food expenses. Nowhere on the notice does it mention that the Mr. and Ms. F. may use the IRS collection standards. Without the help of Stephanie Moes, an experienced advocate from the Legal Aid Society of Southwest Ohio, Mr. and Ms. F. would have quit the process and HUD would have paid an unnecessary claim.

We have received confirmation from other advocates that PNC is sending out such overly broad document requests. Loraine Martinez from Connecticut Fair Housing Center stated that PNC has asked for every single utility bill to approve a loan modification for her client. Eric Sirota with the Community Preservation Clinic at the University of Illinois College of Law has had to address similar requests by PNC. Finally, in mediating cases, Andrew Ault from Indiana Legal Services explained that PNC also has asked for substantial documentation for hardship.

PNC Mortgage is not the only company that has imposed unreasonable document requests on borrowers. According to Jennifer Gordon, the Director of Housing Counseling and Education at York Community Action Corporation in Sanford, Maine, Bank of America told a borrower client to provide receipts for items. When he could not provide a receipt for a particular expense, including expenses for food and gas, Bank of America asked for a letter of explanation. This occurred even though the borrower submitted a financial package that included a detailed list of expenses. Luckily, the borrower was working with an experienced housing counselor and reached a resolution. However, most do not have an advocate to work with them.

Midland Mortgage recently sent a notice to a client of the Indianapolis Neighborhood Christian Legal Clinic, asking for cell phone bill, cable bill, electric bill, gas/heating bill, auto insurance bill, and a water/sewage bill along with "recent receipts, bills, invoices, canceled checks, or monthly statements showing transportation-related expenses . . . or public transportation costs" and "recent receipts, bills, invoices, canceled checks, or monthly statements showing medical and prescription costs." We have attached the notice with this memo. Chase Haller, the attorney with the Neighborhood Christian Legal Clinic working on the case, was able to get Midland to waive this requirement for his specific client after strongly objecting to Midland. Most borrowers will not have a strong advocate but will instead be overwhelmed by the excessive requests. It is important to note that Midland waived the requirement after determining that the borrower's payment was more than 31% of the borrower's income. Because the payment was more than 31% of income, Midland should never have asked for the documents in the first place.

Midland Mortgage also requested such expansive documentation of living expenses from a client of Elizabeth Preuss, a housing counselor with HomeOwnershipCenter in Utica, New York. In addition, Midland demanded that the borrower provide years of banks statements to show that the borrower suffered a hardship after her ex-boyfriend left her and she could no longer count on his income. Finally, Midland demanded a letter from the home's previous owner because Midland did not trust the previous owner's notarized signature. Such requests are extremely picky and do nothing but impede loss mitigation.

MidFirst Bank also put up unnecessary barriers to a loan modification by turning the IRS collection standards on their head. As we have discussed, the IRS collections standards should make the process more efficient by allowing a borrower to use the standards without providing documentation. Documentation should only be required if the borrower wants to claim a higher amount. To the contrary, a client of Daniel Bahls from Community Legal Aid in Springfield, MA received the following request from MidFirst:

> proof of her personal expenses for food, clothing and other items. Her total is $300.00 below the standard per the IRS. Need proof that she only spends $270.00 a month as she states on her application form - receipts, bank statements with the food/personal care items marked, or invoices, etc.

The client is extremely low-income and only received $270 a month in Food Stamps. Requiring her to prove that she only spends a particular amount of money goes against HUD's purposes for using the collection financial standards. Moreover, there was no indication that the servicer considered whether her payment was under 31% of her income, which should be a threshold matter.

Inefficient and burdensome documentation requests extend beyond expenses. A recent Chase borrower that Steve Sharpe represented from Hamilton, Ohio was asked to explain a decade-old paid off mortgage loan from Bank of America that showed up on a credit report. Chase's request did not clearly identify the loan and only stated that it was from Bank of America. With the help of an advocate, the borrower was able to identify and explain that the loan was for a home that the borrower sold years previously. While the particular situation was resolved, this type of request creates confusion.

Unclear Hardship Standards

The lack of clarity in Mortgagee Letter 2016-14's policies extends beyond the guidance on "bills and receipts." Mortgagee Letter 2016-14 also adds vague language related to borrower hardship and how it is documented. For years, borrowers have been able to verify hardship through a written statement explaining their situation. This long-time standard of written hardship statements should be continued. HUD's additional guidance on hardship lacks clarity on what is allowed and what is necessary.

Unfortunately, the above story from Utica, New York in which the lender asked for years of bank statements to show hardship suggests that Mortgagee Letter 2016-14 is also leading to overly burdensome requests on hardship. To avoid this, HUD policy should continue to allow signed statements, such as the one included with the GSE's Uniform Borrower Assistance Form 710, as sufficient proof of hardship.

Mortgage Industry Concerns on Mortgagee Letter 2016-14

Mortgage industry representatives have agreed that ML 2016-14 imposes unnecessary burdens on loss mitigation. In response to the recent Federal Register notice HUD issued regarding Executive Order 13777, the Consumer Mortgage Coalition (CMC), a trade association of national residential mortgage lenders, servicers, and service providers, focused on the issues with Mortgagee Letter 2016-14. In its comments, the CMC stated:

> In August 2016, FHA published new loss mitigation requirements via Mortgagee Letter 2016-14 that increase the application burden and documentation burden on distressed consumers who need assistance. In fact, these changes run contrary to guiding principles for the future of loss mitigation published by HUD, FHFA, and the CFPB in response to the expiration of the HAMP program. Interestingly, FHA's press release of these policy changes described them as "streamlining" the application process. On the contrary, these changes accomplish the opposite: increased application burden and increased documentation burden, both of which will surely result in fewer loss mitigation plans and more foreclosure losses.[1]

[1] Comments of Consumer Mortgage Coalition, Docket No. FR-6030-N-01, Reducing Regulatory Burden; Enforcing the Regulatory Reform Agenda Under Executive Order 13777 (June 12, 2017).

While we disagree with the CMC's exact interpretation of ML 2016-14 that follows this quote, we agree with CMC that ML 2016-14 imposes unnecessary burdens on loss mitigation.

Solutions

These examples show that lenders are not reading the guidance from Mortgagee Letter 2016-14 in a tailored way that limits requests for receipts to situations in which the borrowers have a low debt-to-income ratio and are claiming a large expense. Instead, some lenders are making burdensome document requests without informing borrowers of the option to use the IRS collection standards and without performing an upfront evaluation of the borrower's monthly payment compared to the borrower's income.

To address these unnecessary document requests, HUD should conduct further training and should work with lenders that have instituted policies that will unnecessarily limit loss mitigation. It is possible that many lenders have instituted overly strict policies to avoid the possibility of HUD claiming non-compliance, as the letter from CMC suggests. HUD should work with lenders to clarify the meaning of Mortgagee Letter 2016-14 and eliminate these concerns.

In addition, we ask HUD to issue a clarification of the policies set out in Mortgage Letter 2016-14. This can be done in an FAQ or a new Mortgagee Letter. If HUD is going to continue to require verification of expenses when the borrower's current monthly payment exceeds 31% of income, then HUD should clearly state that receipts for living expenses are only necessary if 1) the borrower claims an expense larger than the IRS collection financial standards and 2) the claimed expense would have an impact on the collection alternative offered. If the borrower claims a higher expense and the servicer asks for receipts, the servicer must also inform the borrower that he or she could use the IRS standards as an alternative. Instead of asking for receipts upfront, the lender should complete a loss mitigation evaluation before requesting any receipts and then ask for receipts only if necessary. Consistent with the FHA waterfall, the servicers' evaluation of living expenses, including the IRS collection standards, must not push a borrower out of eligibility for an FHA-HAMP loan modification when the borrower otherwise meets the waterfall requirements.

Furthermore, HUD should revise its guidance on documenting financial hardship. Borrowers have been able to document hardship through the preparation of a signed hardship statement, which gives them an opportunity to explain and document their situation. This system has worked well because many hardships are complicated and challenging to document. HUD's system should not take away a borrower's ability to use a hardship statement to explain complicated situations, and HUD's guidance should explicitly allow documentation by signed statement.

Moreover, HUD's guidance should not overly limit the types of hardships that allow for loss mitigation. The Uniform Borrower Assistance Form 710 that applies for GSE mortgages lists several types of specific hardships beyond the generic increase in living expenses or loss of income. This form accounts for the complicated nature of borrower hardships and does not unnecessarily limit what counts as a hardship.

We look forward to working with you more on these issues.

Sincerely,

Alys Cohen

Steven Sharpe

Geoff Walsh

ATTACHMENTS

- September 22, 2016 Letter to HUD Regarding Mortgagee Letter 2016-14 (2 pages)
- Notice from PNC Bank (5 pages)
- Notice from Midland Mortgage (5 pages)

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LEGAL AID SOCIETY OF SOUTHWEST OHIO, LLC
AN AFFILIATE OF THE LEGAL AID SOCIETY OF GREATER CINCINNATI

Sept. 22, 2016

VIA ELECTRONIC MAIL

Ivery M. Himes
Director, Office of Single Family Asset Management
U.S. Department of Housing and Urban Development
451 7th Street S.W.
Washington, DC 20410

RE: Mortgagee Letter 2016-14 and HUD's Process for Comments

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We are concerned that HUD did not provide a process for gathering input from consumer advocates prior to the release of Mortgagee Letter 2016-14. As we discussed during our call and explain below, Mortgagee Letter 2016-14 includes policy updates on loss mitigation that would benefit greatly from the insight and experience of consumer advocates, who are immersed in the details of loss mitigation. As you know, we were very active in the drafting process for the Single Family Housing Policy Handbook, and this included providing extensive comments and meeting with you in person to discuss the impact of your policies on borrowers.

On behalf of our clients and communities, we urge HUD to consult consumer advocates in advance of any further changes in loss mitigation policy. We believe that HUD improved the handbook as a result of our input, and we continue to have insight based on our experience to provide on the issues raised in Mortgagee Letter 2016-14.

HUD's new policy regarding borrower financial income provides a clear example of a change that would have benefitted from input from consumer advocates before release. We do not necessarily object to the use of IRS National Collection Standards in the loss mitigation process. In fact, use of the standards may help the process by providing a clear and reasonable baseline for everyone to use.

However, HUD's new policy is ambiguous on how borrowers are going to be directed to use the IRS standards. It is especially problematic that the new policy adds language supporting the need for borrowers to provide receipts for basic household expenses. The language from the mortgagee letter does not clearly state that the IRS standards are a default figure or even preferable to expense receipts.

Based on our experience and based on the lack of clarity in HUD guidance, this system will cause significant problems for borrowers. It is unlikely that servicers will clearly communicate to borrowers that they can use the IRS standards. Instead, it is likely that expense receipts are going to be requested, even though the IRS standards do not require this. These requests will severely slow down loss mitigation reviews. Given the importance of timely reviews and the increased costs and unnecessary foreclosures that result from untimely reviews, the changes could cause significant harm without this crucial clarification.

If HUD wants servicers to routinely use the IRS standards, the policy should state this position clearly and make it clear that servicers should only request receipts when a borrower seeks to claim an expense that exceeds the standards. To assist in this process, servicers should build the IRS guidelines directly into their forms and computer systems and include this guideline information on all notices and applications forms sent to borrowers regarding loss mitigation.

By putting the IRS standards on equal footing with expense receipts, as the current policy appears to do, borrowers will not know which to use and many loss mitigation opportunities that benefit the Fund and homeowners may be lost.

In addition, HUD's treatment of income from non-borrowers who reside in the property for loss mitigation purposes remains unclear. Borrowers should have the ability to include non-borrower household income in their loss mitigation applications, and HUD's guidance should provide such flexibility. The Mortgagee Letter only addresses what must be included and remains silent on the permissive use of non-borrower income. We ask HUD to make the permissive use of non-borrower household income more clear.

We look forward to working with you more on these issues.

Sincerely,

Alys Cohen
Geoff Walsh
Staff Attorneys
National Consumer Law Center

Steven Sharpe
Senior Attorney
Legal Aid Society of Southwest Ohio, LLC

PNC MORTGAGE[SM]

A Division of PNC Bank, National Association

Loss Mitigation Contact Information:
PNC Mortgage, B6-YM09-02-2
3232 Newmark Drive
Miamisburg, OH 45342-5421
1-888-224-4702

LOAN NUMBER [redacted]
DATE January 17, 2017

JEREMY [redacted]
KRISTINA [redacted]

Property Address:
4566 PATRON CT
CINCINNATI, OH 45238

Your Loss Mitigation application has been received and additional information is required to complete your application.

Your Loss Mitigation application has been received and additional information is required to complete your application:

We understand borrowers sometimes face challenges when it comes to making their payments. Your request for hardship assistance has been received by our Loss Mitigation Department; however we need additional information from you to complete your application and evaluate your request for hardship assistance.

Here is a list of information you need to provide to PNC to complete your application:

The following information must be received by February 16, 2017 or we will not be able to proceed further with your request for hardship assistance.

Borrower : [redacted] JEREMY

Document : **4506-T (Request for Transcript of Tax Return)**

What are the issues you need to resolve with this document?	Check as you resolve the issue
Line 3 is incomplete or incorrect.	☐
We need the most recently revised 4506-T form fully completed. Note: Line 5 should include the following information: PNC Mortgage, 3232 Newmark Drive, Miamisburg, OH 45342.	☐
The signature attestation box is not checked. Please check and re-submit.	☐

Document : **1040 - Federal Individual Tax Form for Year: 2015**

What are the issues you need to resolve with this document?	Check as you resolve the issue
Your signature and/or date is missing from page 2.	☐

Document : **Personal Bank Statements for Account # ending in: 5031**

continue to next page

To request information or notify us of an error regarding your account, please send a written request/notice to
PNC Mortgage
PO Box 8807
Dayton, OH 45401-8807

What are the issues you need to resolve with this document?	Check as you resolve the issue
We need a copy of your 12/2016 to 1/2017 bank statement (all pages, all accounts, front and back), which reflects your name, along with name and address of financial institution. Internet printouts are not acceptable.	☐
We need documentation for the source of funds for the following deposit(s): All (RDC Deposits)	☐

Document : **Hardship Verification**

What are the issues you need to resolve with this document?	Check as you resolve the issue
We need documentation of your hardship as stated in your hardship letter.	☐

Document : **Income-Wage Earner EMPLOYER: [redacted]**

What are the issues you need to resolve with this document?	Check as you resolve the issue
We need copies of one month's worth of your most recent consecutive paystubs including year-to-date earnings. If paystubs are handwritten, we will need your year-to-date earnings and deductions from your employer.	☐
The documentation that you submitted is illegible. Please submit a new copy.	☐

Document : **Utility Water Bill**

What are the issues you need to resolve with this document?	Check as you resolve the issue
We need your most recent bill.	☐

Document : **Utility Sewer Bill**

What are the issues you need to resolve with this document?	Check as you resolve the issue
We need your most recent bill.	☐

Document : **Utility Trash Bill**

What are the issues you need to resolve with this document?	Check as you resolve the issue
We need your most recent bill.	☐

Document : **Utility Gas Bill**

What are the issues you need to resolve with this document?	Check as you resolve the issue
We need your most recent bill.	☐

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PNC MORTGAGE℠
A Division of PNC Bank, National Association

Document : **Utility Electric Bill**

What are the issues you need to resolve with this document?	Check as you resolve the issue
We need your most recent bill.	☐

Document : **Utility Home Phone Bill**

What are the issues you need to resolve with this document?	Check as you resolve the issue
We need your most recent bill.	☐

Document : **Utility Internet Bill**

What are the issues you need to resolve with this document?	Check as you resolve the issue
We need your most recent bill.	☐

Document : **Utility Cable Bill**

What are the issues you need to resolve with this document?	Check as you resolve the issue
We need your most recent bill.	☐

Document : **Utility Cell Phone Bill**

What are the issues you need to resolve with this document?	Check as you resolve the issue
We need your most recent bill.	☐

Document : **Letter of Explanation**

What are the issues you need to resolve with this document?	Check as you resolve the issue
If a request does not apply, we need a signed and dated statement to that effect.	☐

Document : **Other Doc Type: Verification of expenses**

What are the issues you need to resolve with this document?	Check as you resolve the issue
We need verification of monthly food, housekeeping supplies, apparel & services, personal care products & services & any other miscellaneous expenses you may have.	☐

Document : **Child Care**

What are the issues you need to resolve with this document?	Check as you resolve the issue

continue to next page

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PNC Mortgage
PO Box 8807
Dayton, OH 45401-8807

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LOAN NUMBER [redacted]
DATE January 17, 2017

We need a copy of a current statement from your child care provider confirming payments made.	☐

Document : **Expense Verification**

What are the issues you need to resolve with this document?	Check as you resolve the issue
We need documentation of your monthly payment of $ 505	☐

Document : **Expense Verification**

What are the issues you need to resolve with this document?	Check as you resolve the issue
We need documentation of your monthly payment of $ 30	☐

Borrower : **[redacted], KRISTINA**

Document : **Income-Wage Earner EMPLOYER: [redacted]**

What are the issues you need to resolve with this document?	Check as you resolve the issue
We need copies of one month's worth of your most recent consecutive paystubs including year-to-date earnings. If paystubs are handwritten, we will need your year-to-date earnings and deductions from your employer.	☐
The documentation that you submitted is illegible. Please submit a new copy.	☐

Please fax or mail the requested information. The requested information must be received by February 16, 2017 or we will not be able to proceed further with your request for hardship assistance.

You can fax the requested information to 855-288-3974 or you can mail the requested information directly to us at the following address:

PNC Mortgage
Central Receipts – Loss Mitigation
Mail Stop: B6-YM10-01-1
3232 Newmark Dr.
Miamisburg, Ohio 45342

Additional information you should know:

We will attempt to reach you by telephone frequently to obtain the requested information and answer any questions that you may have regarding this request for additional information.

Failure to submit all the required information may result in ineligibility for a foreclosure prevention alternative and the foreclosure proceedings may continue, including referral to foreclosure if the mortgage loan was not previously referred.

If you have another mortgage loan secured by this property, please consider contacting the servicer of that loan to discuss their available loss mitigation options.

continue to next page

To request information or notify us of an error regarding your account, please send a written request/notice to
PNC Mortgage
PO Box 8807
Dayton, OH 45401-8807

Here is how you can reach us if you have questions or need assistance:

Our goal is to help you make informed decisions regarding your home loan, and we are available to support you through this process. If you have any questions, please contact your representative HEATHER M at 1-888-224-4702 ext. 937-072-0061. Representatives are available Monday through Friday, 8:00 a.m. to 5:00 p.m. You can also visit us online at www.pnc.com/mortgage; navigate to the Customer Service Center and click the "Having Trouble Making Payments" link.

If you would like additional counseling, you may consider contacting the HOPE Hotline at 1-888-995-HOPE. A project of the nonprofit Homeownership Preservation Foundation, the HOPE Hotline connects homeowners with HUD-approved housing counselors, who offer assistance at no charge.

This is an attempt to collect a debt and/or enforce our lien. Any information obtained will be used for that purpose unless prohibited by applicable law. However, if this debt has been discharged or if you are protected by the automatic stay in bankruptcy, we are not attempting to collect the debt from you personally, and if we have obtained relief from the automatic stay, we will only exercise our rights against the property itself. By providing this notice we do not waive any applicable exemptions from state or federal collection laws.

If you are requesting loss mitigation, please note that normal collection and/or foreclosure activity will continue on your loan to the extent allowed by law while your request is being reviewed. Any information requested may be necessary to determine your eligibility for loss mitigation options. There may be additional fees or costs, that have been incurred but that are not included in this document because they have not yet been applied to your account. To the extent there are fees we are permitted to recover from you under the terms of the note and mortgage, or other agreement you have entered into, you will be responsible for these fees and costs when they are applied to your account.

There is a possibility of your Mortgage being included in a Single Family Loan Sale or being foreclosed upon if loss mitigation is not viable, unsuccessful, denied, or unable to be considered if you fail to fully respond to the request for additional information.

To request information or notify us of an error regarding your account, please send a written request/notice to

PNC Mortgage
PO Box 8807
Dayton, OH 45401-8807

Midland Mortgage
A Division of MidFirst Bank

June 12, 2017

[redacted]

Your Application Status:
Incomplete

We need additional information from you before we can review your application.

You Must Respond By: 7/12/2017

[redacted]

Dear Homeowner:

You have taken the first step toward getting your mortgage payments back on track by applying for mortgage assistance. We know how important your home is to you, and that's why it is important for us to work together to determine if you're eligible for a mortgage assistance program.

More information is needed before we can evaluate your application for assistance.

As of the date of this letter, we don't have all of the information required to evaluate your application for mortgage assistance. **If we do not receive all of the information listed below by 7/12/2017 your application for a mortgage assistance program will be determined to be incomplete and may be denied.**

Required Document	**Document Examples**
Application Form	Complete and sign the application for assistance form that is available from www.MyMidlandMortgage.com.
Cell Phone bill	Recent bills for cell phone service.
Cable bill	Recent bills for cable, satellite, and/or streaming TV services.
Electric bill	Recent utility bills for electricity.
Gas/Heating bill	Recent gas or heating utility bills.
Auto Insurance	Recent bill for car insurance.
Gas or Transportation costs	Recent receipts, bills, invoices, canceled checks, or monthly statements showing transportation-related expenses such as vehicle maintenance or repair bills, gasoline expenses, or public transportation costs.
Medical and Prescriptions	Recent receipts, bills, invoices, canceled checks, or monthly statements showing medical and prescription costs. Please do not include detailed personal medical information.

Water/Sewage bill	Recent utility bills for water and/or sewer service.

Failure to submit a complete application by 7/12/2017 may reduce the protections afforded to you by federal law. Please see the included Important Notices for details on your rights.

Please keep in mind that if your property also has a second mortgage, or other mortgage loans, you should consider contacting those servicers to discuss their mortgage assistance options.

We're here to help and look forward to working with you.

Please call us at 1-800-552-3000 Monday through Friday from 8 a.m. to 5 p.m. if you have any questions regarding the information we have requested or the status of your loan. Additionally, if you have already met all of the requirements listed above and have not heard from us within 2 business days, please call us.

Sincerely,

Midland Mortgage, *a Division of MidFirst Bank*

Notice: If you have received a bankruptcy discharge of the debt secured by the Mortgage/Deed of Trust, or you are currently in bankruptcy under the protection of the automatic stay, this letter is not an attempt to collect the debt from you personally and is for informational purposes only. If your loan was in default at the time MidFirst Bank acquired the servicing of your loan, and you have not filed bankruptcy or received a discharge of the debt secured by the Mortgage/Deed of Trust, we are required to advise you that this communication is from a debt collector, this is an attempt to collect a debt, and any information obtained will be used for that purpose.

How to Send Your Documents to Us

You may send us your documents using any of the methods described below.

To ensure your documents are added to your application, it's important for you to clearly write your name, loan number, and daytime telephone number on every page of your documents and correspondence.

If you need a standard form (such as a hardship affidavit), go to www.MyMidlandMortgage.com and select the "Help & Forms" option located in the top menu bar. If you sign into your account first, you will only be presented with the forms which are specific to your loan type.

Ways to Send Documents	Helpful Instructions & Tips
Fax 1-405-767-5815	There's no need to attach a cover sheet - just be sure your loan number is clearly written on each page you fax to us.
dac@midfirst.com	You can email or text scanned or digital images of your documents to us. *If you have a mobile phone with a camera, you can take individual photos of each page of your document(s) and send them to us by email or by sending a text message to our email address.*
www.MyMidlandMortgage.com	You can upload scanned or digital images of your documents to our website. Sign in to our website, select Delinquency Assistance from the top menu bar, and then select Submit Supporting Documents.
Midland Mortgage Attn: DAC P.O. Box 268806 Oklahoma City, OK 73126-8806	Regular mail is typically the slowest method for you to send documents to us. Please consider using a quicker method if you are able to do so. ***When mailing documents, send photocopies (do not send original documents).***

Call Us with Questions

Call us at **1-800-552-3000** if you have questions regarding the documents requested, or if you need us to provide you with any of the forms. We can assist you Monday through Friday from 8 a.m. to 9 p.m. (Central Time).

Important Notices

Your Right to Appeal

Your right to appeal our decision regarding your eligibility for a mortgage assistance program is dependent upon when we receive your complete application. If we do not receive your documents by the deadline given in the enclosed letter, you could lose certain rights, including the right to appeal; and ultimately, you may lose the opportunity to be considered for a mortgage assistance program.

- If Midland received your complete application 90 days or more before a scheduled foreclosure sale, if there is no foreclosure sale date scheduled, if the foreclosure process has not begun, or if you have not already been afforded an appeal period, then you may file an appeal of our determination of your application.
- You are allowed one appeal on your first complete application received after January 10, 2014.
- If you are eligible for an appeal, you will receive a letter that contains information on how to appeal, any requirements for making an appeal, and the amount of time you have to file an appeal. If you appeal, we will provide a notice of our determination within 30 days.

Other Borrower Protections

Certain protections afforded to you under federal law are triggered by a complete application; therefore, it is in your best interest to submit a complete application as early in the delinquency and foreclosure process as possible. In addition to your appeal rights (see above), initiation of the foreclosure process may be delayed if a complete application is received before the 121st day of delinquency. If the foreclosure process has already begun, but we receive your complete application 37 days or more before the scheduled sale, we will not proceed with the foreclosure sale until you have been evaluated for available assistance options.

Property Appraisal

We may order an appraisal to determine the subject property's value and charge you for this appraisal (if program rules allow charging you for this appraisal). If an appraisal is obtained as part of the evaluation of your application for assistance, we will promptly give you a copy of any appraisal, even if your loss mitigation assistance plan does not complete. The appraisal report may be in the form of an appraisal, Automated Valuation Model (AVM), or Broker's Price Opinion (BPO). You may pay for an additional appraisal for your own use at your own cost.

Additional Mortgage Loans

If you have any additional mortgage loans on the same property, we also encourage you to contact the servicers of those loans to discuss available assistance options with them.

Collection and/or Foreclosure Activity

Until you bring your loan current or other payment arrangements are made, collection and/or foreclosure efforts may continue on your loan. If your loan is in foreclosure, and documents are not received in sufficient time for us to perform a complete evaluation of your application for assistance, we cannot guarantee any pending foreclosure proceedings can be suspended.

- If Midland received your complete application 38-89 days from a foreclosure sale, we will evaluate your application, but there are no rights to appeal our determination of your application.
- If Midland received your complete application 37 days or less to a foreclosure sale, there are no rights to appeal our determination of your application, and Midland is not required to evaluate your application; however, we may choose to evaluate your application if time permit

Frequently Asked Questions

Q: After I submit a complete application, what happens next?

We will evaluate your complete application to determine if you are eligible for a mortgage assistance program. If we discover that additional information is needed, we will let you know what is required to continue with our evaluation. In order to facilitate the loss mitigation process, please know that we will try to contact you by phone to review your application and answer any questions you may have and to clarify questions we may have about your application.

Q: Why do you pull a credit report? Will my credit score affect my ability to receive assistance?

We pull your credit report during our review to confirm your monthly credit obligations and expenses. Your credit score is not included in the report and is not taken into consideration for home-retention mortgage assistance programs; however, it may be a factor with specific short sale programs.

Q: How long will it take for you to determine my eligibility for an assistance program?

Generally, your eligibility for an assistance program will be determined within 30 days of our receipt of your complete application. Depending upon your loan type, investor guidelines, and your individual circumstances, we may also need to secure approval from a third party. Third parties may include Fannie Mae, Freddie Mac, a Government Insurer (such as FHA, VA, or RHS), a Private Investor, and/or a Mortgage Insurance Carrier.

Q: What mortgage assistance programs am I eligible for?

Your loan will be evaluated for every assistance program that may be available to you based upon your individual circumstances and your loan's investor and insurer guidelines.

Q: How long are the documents I submit as part of my application valid?

Any income verification documents that you submitted as part of your application are valid for 60 days. They are considered to be time-sensitive documents since they must provide us with an accurate representation of your current financial situation and individual circumstances.

Q: If I am offered a mortgage assistance plan, does the offer expire?

Yes. If you qualify for a mortgage assistance plan, the terms and conditions of the plan offered – including any deadline for you to accept the offer – will be clearly communicated to you in the plan documents.

Q: What if a foreclosure sale has already been scheduled for my property?

We will take reasonable steps to suspend the sale upon receipt of a complete application. Even if you are approved for a mortgage assistance program prior to a scheduled foreclosure sale, there are times when a court with jurisdiction over the foreclosure proceeding (if any) or public official charged with carrying out the sale may decline our request.

Q: What if I have questions or want to check the status of my application?

Please call us at 1-800-552-3000 if you have any questions. We can assist you Monday through Friday from 8 a.m. to 5 p.m. Central Time.

Q: Are there additional resources for struggling homeowners?

Yes. We recommend that you talk to a HUD-approved housing counselor. They are experts in foreclosure prevention and are trained to provide education and support that could assist you in overcoming financial issues. Housing counseling services are usually provided free of charge. Please use the following resources to locate a HUD-approved housing counselor near you:

- **HUD:** 1-800-569-4287 (or TTY 1-800-877-8339) or www.hud.gov/counseling
- **Homeowner's HOPE™ Hotline:** 1-888-995-HOPE (4673) or http://www.hopenow.com