



August 7, 2020

Len Wolfson
Acting Assistant Secretary for Housing–Federal Housing Commissioner
Department of Housing and Urban Development
451 7th St S.W.
Washington, D.C. 20410

RE: Mortgage Letter 2020-22

Dear Acting Assistant Secretary Wolfson:

We write in response to Mortgage Letter 2020-22, which expanded the relief available to borrowers with COVID-19 hardships. We appreciate that Mortgage Letter 2020-22 includes many of the policy updates we discussed in our comments to Mortgage Letter 2020-06, and we thank HUD for its engagement. The inclusion of streamlined loan modification programs for borrowers impacted by COVID-19 will help borrowers who have recovered financially but who are not eligible for a COVID-19 Standalone Partial Claim. For borrowers without fully-restored incomes, HUD's easing of documentation requirements for COVID-19 FHA-HAMP will remove unnecessary obstacles to avoiding foreclosure.

While we believe the newly-created foreclosure alternatives will help borrowers, the complexity of the new system gives us some concern. Unlike HUD's standard loss mitigation system, Mortgage Letter 2020-22 does not include an explicit waterfall that comprehensively outlines the steps servicers must take in picking the appropriate option for borrowers affected by the pandemic. HUD simply lists the options in order and provides bullet points for each option with the eligibility requirements; however, the descriptions do not consistently link the options together. We recommend that HUD create a specific waterfall chart like it has for its standard loss mitigation options. In addition, HUD should provide Frequently Asked Questions (FAQs) that address issues that advocates and industry participants raise in the coming weeks and months while working through the new system. HUD should also make the examples it provided in its July 29 webinar public because they illustrate HUD's perspective on how the COVID-19 options interrelate.

In order to truly understand how the new system works, HUD must gather data from servicers. HUD should assess through data whether borrowers are accessing assistance, whether all communities are well-served by the programs (especially the communities of color hit hardest by the pandemic), and whether the programs are providing meaningful and effective payment relief to borrowers. In considering the program's performance, HUD must also evaluate complaints from borrowers to the National Servicing Center to see if servicers are complying with the program. If there are structural issues with the program, HUD should amend it. HUD also should share data reports with the public, free of charge, to provide greater transparency and accountability.

We also are concerned about how servicers will clearly communicate options. We know from a recent HUD Office of Inspector General (OIG) report that servicers often do not clearly or accurately communicate available options to borrowers.¹ The updated system, however, entirely depends on servicers talking to borrowers to determine which options should be made available. This initial process

¹ HUD Office of Inspector General (OIG), Some Mortgage Loan Servicers' Websites Offer Information about CARES Act Loan Forbearance That Is Incomplete, Inconsistent, Dated, and Unclear (Apr. 27, 2020), <https://www.hudoig.gov/sites/default/files/2020-04/Single%20Family%20Mortgage%20Forbearance%20Brief.pdf>.

occurs without the exchange of financial documents, even though some documentation may be needed later depending on which options apply. With so much riding on the phone conversation, we urge HUD to develop material to guide the servicers through these conversations. Phone scripts for servicers, developed with an eye to borrower comprehension, are essential for setting expectations of how the calls must be conducted. GSE scripts are developed and revised regularly and made available for review. FHA scripts must be tested to ensure comprehension.

Mortgagee Letter 2020-20, like the previous letter, includes a paragraph stating that it does not confer any rights to borrowers and does not interfere with the lender's private contractual rights. This paragraph is unnecessary, and, in fact, appears to imply that servicers may pursue foreclosure regardless of the requirements of the letter and that the letter's requirements are ultimately optional. In this time of crisis, HUD's message to servicers should be that they must provide relief to help borrowers in accordance with FHA policy. HUD's paragraph provides a contrary message and should be deleted.

Finally, there are still substantive issues for HUD to address in its COVID-19 protocol as discussed in our previous comments to Mortgagee Letter 2020-06. HUD should provide a notice to borrowers outlining the available options. This becomes more important as the options have expanded and involve a greater level of complexity. Such a notice, combined with well-drafted servicer scripts, will improve access and outcomes for homeowners, servicers, and the FHA program. HUD should clearly state that borrowers with pandemic-related hardships need not obtain a COVID-19 forbearance in order to qualify for the COVID-19 modification and partial claim options outlined in Mortgagee Letter 2020-22, especially since many borrowers have not accessed forbearance plans. We understand HUD does not view forbearance as a prerequisite, and the letter should make that clear. HUD should extend forbearance eligibility to borrowers in trial plans who face a COVID-19 related hardship. Homeowners with no control over the COVID-19 pandemic should not be penalized due to a previous hardship.

We appreciate your work on this important national issue and the opportunity to comment on it. For any questions or further discussion, please contact NCLC staff attorney, Steve Sharpe, at ssharpe@nclc.org.

Sincerely,

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