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

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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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