

Comments of the National Consumer Law Center, on Behalf of its Low-Income Clients,
to the U.S. Department of Housing and Urban Development

On the Draft Home Equity Conversion Mortgage Sections of Single Family
Housing Policy Handbook 4000.1

Posted on the Federal Housing Administration's
Office of Single Family Housing Drafting Table

Submitted Electronically

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I. Introduction

The National Consumer Law Center,¹ on behalf of its low-income clients, submits these comments on the draft of the HECM Handbook, Section 4000.1. In addition to this narrative comment, we are submitting the excel template with suggested line edits to particular handbook sections.

The reverse mortgage program was created by Congress to allow older homeowners to tap into their home equity without increasing the risk of displacement. In implementing the program, HUD is tasked with a dual mission of preserving stable homeownership for HECM borrowers, enabling them to age in place, while also protecting the MMI fund. All of our comments on the draft Handbook are intended to help HUD promote this dual purpose in its administration of the HECM program.

HUD should provide clear guidance to mortgagees originating and servicing this complex loan and increase protections for older homeowners and surviving spouses of reverse mortgage borrowers. Towards that end, we have included a slate of recommendations to improve the draft Handbook. Among the recommendations, we suggest that HUD:

- Expand access to housing counseling for older consumers and reverse mortgage borrowers. This includes post-closing housing counseling for borrowers whose LESA accounts will be depleted in the near future;
- Provide meaningful access for Limited English Proficiency (LEP) consumers to the HECM program, loss mitigation and foreclosure prevention options. Ensure that mortgagees provide oral interpretation and/or written communication of vital documents;
- Expand electronic signature provisions to protect older adults from fraud, scams and identity theft;
- Update the financial assessment guidelines to account for COVID-19 related hardships;
- Advance property charges for borrowers who outlive the funds available in a fully-funded LESA account. Provide notice and access to housing counseling for borrowers whose LESA account will be exhausted in the near future;
- Require that mortgagees make multiple attempts to contact a borrower who fails to return an occupancy certification and accept verbal certification of occupancy;

¹ The **National Consumer Law Center, Inc. (NCLC)** is a non-profit Massachusetts Corporation, founded in 1969, specializing in low-income consumer issues, with an emphasis on consumer credit. On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of practice treatises on consumer credit laws and unfair and deceptive practices. NCLC attorneys have written and advocated extensively on all aspects of consumer law affecting low-income people, conducted trainings for tens of thousands of legal services and private attorneys, and provided extensive oral and written testimony to numerous Congressional committees on various topics. In addition, NCLC attorneys regularly provide comprehensive comments to federal agencies on the regulations under consumer laws that affect low-income consumers.

- Require that servicers take action to communicate with heirs within 30 days after notice of the borrower's death;
- Clarify that the failure to properly respond to a certification request prior to the death of a borrower does not prevent a non-borrowing spouse from establishing that they are an Eligible NBS; and
- Create a new loss mitigation option allowing a mortgagee to defer calling a loan due and payable if there is a property charge arrearage of up to \$25,000 in connection with a COVID-19 related hardship.

We appreciate the opportunity to provide comments on the draft Handbook, and look forward to discussing these recommendations with agency staff.

II. Origination Issues

A. Counseling Requirements at Origination

To be eligible for a FHA-insured HECM reverse mortgage, borrowers must obtain adequate counseling from an independent third party that is not directly or indirectly associated with the mortgage transaction. Mortgagees are required to provide every potential HECM borrower with a list of HUD-approved counseling agencies. Five of these counseling agencies must be in the borrower's local area or state and at least one agency must be located within a reasonable driving distance of the prospective borrower's residence for face-to-face counseling. The other referrals must include HUD intermediaries providing counseling nationwide.

The HECM counseling protocol covers a wide range of issues that counselors must review with potential borrowers, including key features of the loan, the borrower's obligation to pay property charges, the loan's impact on public benefits, and alternatives to reverse mortgages. Despite a detailed counseling protocol that emphasizes discussion of borrowers' unique financial circumstances, the length of counseling sessions has declined steadily over the years to ninety minutes or less. An AARP funded survey found that counseling sessions by exam-tested counselors who followed detailed counseling protocols took on average two to three hours.²

The length of the sessions, mode of delivery, capacity to deliver on site counseling, and quality of counseling vary across agencies. For example, though the counseling protocol expresses a preference for face-to-face delivery of counseling, many agencies have limited capacity to provide such counseling on site if the consumer requests it.³

HUD should revise and expand the list of Participating Agencies consumers receive from mortgagees. The draft handbook (at 2) simply requires contact information but consumers would benefit from a detailed list of the consumer-friendly features and resources available at each agency. This includes translation and interpretation services, accommodations for

² Donald Redfoot, et al., AARP, Reverse Mortgages: Niche Product or Mainstream Solution? Report on the 2006 AARP National Survey of Reverse Mortgage Shoppers (2007) at 90-95, available at http://assets.aarp.org/rgcenter/consume/2007_22_rev mortgage.pdf.

³ See HUD Handbook 7610.1, § 4-15.

consumers with disabilities, and the availability of home visits for consumers who are mobility impaired but prefer face-to-face rather than telephone counseling. For consumers with disabilities, the list should indicate whom the consumer should contact to request accommodation, if different from intake personnel.

Beyond the draft Handbook, HUD should ensure that counseling provided to older adults is comprehensive and delivered in a form that best educates consumers about the complexity of the product. Some forms of counseling, such as that delivered over the telephone where the counselor cannot see or judge the comprehension of the client through visual cues, may be less effective than other forms of delivery for certain consumers. Limited English proficient consumers, for example, may benefit from face to face counseling with translation and interpreter services nearby, even if telephone translation is available.

While the pandemic necessitates caution and distance, some consumers prefer to meet face-to-face to discuss the product with a counselor who can respond to any confusion, and follow up with visible signs of distress that may indicate incapacity or coercion of a third party off-screen or otherwise unseen. The list of Participating Agencies should include at least two agencies, if available, within driving distance of the prospective borrower's residence. Moreover, HUD should determine whether the Participating Agencies truly have the capacity to provide on site counseling, as required. To preserve the independence of the counseling agency and to discourage steering, the list of Participating Agencies should indicate, and mortgagees should inform borrowers that they must initiate communication with a counseling agency on their own.

We recognize that HUD is expanding the number of agencies and counselors that can provide default HECM counseling. Such counseling will be essential for helping older borrowers who are behind on property charges. Helpfully, according to the *HUD Housing Counseling Guidelines for HECM Borrowers with Delinquent Property Charges*, assistance available for borrowers will extend to those who are not in compliance with other obligations, such as occupancy or maintenance.

We support providing more technical assistance, support and resources to housing counseling organizations for all forms of HECM counseling. HUD's recent announcement of funding grants is a first step. Along with the expansion of resources, HUD should evaluate the delivery of HECM counseling services. Given the complexity of the loan, a one time, up front counseling session may be inadequate. Borrowers need ongoing access to information and encouragement to reach out to counselors post-closing with questions or concerns, or to clear up any confusion. A one-time follow up by counseling agencies 60 days after the counseling session is not enough. In addition to origination and default related counseling, agencies should be funded to provide assistance during the life of the loan. As discussed below, post-closing housing counseling will be most useful to borrowers whose LESA accounts are about to be depleted. This counseling can prepare borrowers to resume payment of property charges and avoid default. Such proactive counseling is necessary as consumers' resources may be limited due to financial strain caused by the pandemic.

B. Language Access for LEP Older Adults

The complexity and opacity of HECM loans calls for enhanced protections for consumers who speak English with limited proficiency. According to the 2017 American Community Survey, approximately 25.9 million individuals, roughly 9% of the U.S. population, were considered limited English proficient (LEP). Older adults who are not proficient in English have difficulty navigating the financial marketplace generally, and are more exposed to fraud and scams in their own language.⁴ While marketing may occur in a consumer's preferred language, transactional documents and subsequent contact (oral or written) is English-only. LEP older consumers need better access to mortgage-related information in their preferred language.

HUD's Language Access Plan aims to expand access to HUD's program and activities for LEP consumers consistent with Executive Order 13166.⁵ The multi-year plan prioritizes translation of vital documents and important information, such as mortgagee letters, notices and forms, to ensure meaningful access to HUD programs and activities.⁶ However, HUD's effort in this regard with respect to mortgage documents is just at the beginning stages. LEP consumers considering reverse mortgages or facing default on existing mortgages need access to information in their preferred language now. Where translated documents are not available, LEP borrowers must resort to relying on friends and family members – and sometimes children – to convey crucial financial information. Placing the burden of interpreting technical, legal, or financial information on individuals who lack financial expertise compromises the consumer's ability to make a well-informed decision. Moreover, sensitive financial information will be revealed to the third party who is helping with the translation, possibly subjecting the elder to fraud and identity theft.

HUD must engage lenders and servicers in its efforts to ensure meaningful access for LEP consumers to HUD programs, loss mitigation and anti-foreclosure options. Lenders and servicers should give LEP consumers translated documents and high quality oral interpretation. This includes the program disclosures required by the draft Handbook (at 14, line 20), which describe the key options and features of the HECM program. Information regarding fees and charges to obtain the loan (at 2, line 28) should also be disclosed in the consumer's preferred language. Where the draft Handbook calls for a Fannie Mae form, lenders can turn to the Mortgage Translations Online Clearinghouse to obtain some translated materials. HUD can work with the enterprise to translate other high priority documents such as Fannie Mae Form 1009. At a minimum, the Handbook should include in the HECM section the communication standard outlined for forward mortgages, which states that mortgagees must take reasonable steps to provide meaningful access to LEP individuals, such as providing oral interpretation and/or written communication of vital documents.⁷ In addition, HUD should quickly update its website with sample loan documents in the most common non-English languages as identified in its Language Access Plan.

⁴ See, e.g., HUD files charge alleging that California foreclosure rescue companies scammed Hispanic homeowners, HUD archives, HUD No. 16-002 (Jan. 12, 2016), <https://archives.hud.gov/news/2016/pr16-002.cfm>.

The draft Handbook should be amended to require that lenders ask potential borrowers about their language preference at their first interaction with the customer. This information should be noted on HERMIT and memorialized on loan documents. This information should travel with the borrower's file for the life of the loan, including if the loan is assigned to HUD. Once the borrower's language preference is noted, mortgagees will know that important notices such as the property charge delinquency notice will be more effective if sent in both English and the borrower's preferred language.

C. Special Protections Needed for Electronic Signatures

Older adults are often vulnerable to fraud and scams perpetrated by caregivers, family members and strangers. With the COVID-19 pandemic, abusers can have heightened access to older adults who are isolated or confused. An abuser who exercises coercive control over an older adult through deception or intimidation can force an elder to take out a reverse mortgage and then access the loan proceeds. Moreover, older adults with cognitive decline are more susceptible to financial exploitation; and such exploitation is unlikely to be discovered by loved ones who are distanced from the elder due to COVID-related concerns. Electronic transactions, especially when they occur over the Internet and the borrower is at a location remote from the mortgagee, are likely to exacerbate these dangers unless HUD imposes stringent protections.

Electronic signatures and the provision of electronic records provide some convenience for older consumers who are computer savvy. But the use of electronic media can also facilitate fraud. In an online transaction, an abuser can easily pretend to be the older consumer whose home is being mortgaged and use the invisibility of the remote electronic transaction to mask the fact that the elder has not agreed to the transaction. While a physical signature applied to a paper writing can be forged, forgery is more difficult if the signing takes place in the same room as the mortgagee's representative. An electronic signature—which involves only an electronic symbol or process—can be applied electronically by anyone, with few protections against that forgery in the opaque electronic world. The danger of forgery presented by allowing electronic signatures for HECM mortgages can be somewhat ameliorated by requiring stringent standards for mortgagees to authenticate the older consumer's agreement to the transaction.

The federal Electronic Signatures in Global and National Commerce Act (E-Sign)⁸ provides some limited protection against online-facilitated fraud and error in several important ways. The first is by requiring that consumers must consent to receive writings electronically by *demonstrating* their ability to access the electronic records. The second protection is by allowing actions applied electronically to qualify as an “electronic signature” only if those actions meet a variety of independent requirements (including that the electronic process was attached to or

⁵ HUD, Language Access Plan 2021-2026, available at <https://www.hud.gov/sites/dfiles/FHEO/documents/HUD%20Language%20Access%20Plan.pdf>.

⁶ Id. at 14.

⁷ HUD Handbook 4000.1, § III.A.2(iv)(A).

⁸ 15 U.S.C. §§ 7001–7031.

logically associated with the record, and actually executed by the person, with the intent to sign that record). The state Uniform Electronic Transactions Act (UETA), must also be followed for the state requirements for enforceable contracts to be considered met when the transaction is accomplished electronically.⁹

Unfortunately, the provisions in E-Sign and UETA—by themselves—will often not protect an elderly consumer from being defrauded by an abuser able to impersonate the consumer through a remote online transaction for a reverse mortgage. This potential necessitates that HUD provide substantial protections to these transactions.

However, E-Sign's § 15 U.S.C. § 7004(b) limits the measures that a federal agency can take to protect consumers in electronic transactions. That section permits a federal agency to add to the "accuracy, record integrity, and accessibility" of electronic records only if the requirement "(i) serves an important governmental objective and (ii) is substantially related to that objective."¹⁰ Given the governmental objective to ensure that reverse mortgages are obtained only by older homeowners whose homes are used as security, rather than by an abuser or a fraudster, HUD should articulate additional, clear requirements in this Handbook. To survive a possible challenge that additional protections required for electronic transactions may violate § 7004(b), HUD should apply the authentication requirements to both real world, non-electronic, transactions, as well as to those completed through remote electronic means.

1. Consent. First, HUD should require that the older consumer *actually receive the disclosures and the contract itself* (everything required to be provided in writing) before allowing the mortgagee to request a signature. In other words, the important disclosures and the contract itself, which in a physical world transaction would be handed to the consumer before she is asked to sign them, must have been delivered electronically to the consumer before she is asked to sign them.

Mortgagees should be prohibited from requesting the borrower's binding signature on the mortgage documents until there is a determination that the borrower has electronically received all of these documents. If the disclosures and the contract were provided to the borrower in an electronic format, rather than on paper, then the consumer must have provided E-Sign consent before receiving the electronic documents.¹¹ Importantly, this provision of E-Sign requires that the consumer must *demonstrate* the ability to receive electronic records before they can be

⁹ The Uniform Law Commission (formerly known as the National Conference of Commissioners on Uniform State Laws) approved and recommended for enactment the Uniform Electronic Transactions Act (UETA) in 1999, and all but three states have enacted either a uniform version of UETA or UETA with amendments. See <http://uniformlaws.org> along with a list of the states that have adopted it. While Illinois, New York, and Washington have not enacted UETA, they have enacted legislation related to electronic transactions. See 5 Ill. Comp. Stat. §§ 175/1-101 to 175/99-1 (Electronic Commerce Security Act); N.Y. State Tech. Law §§ 301 to 309 (McKinney) (Electronic Signatures and Records Act); Wash. Rev. Code §§ 19.34.010 to 19.34.903 (Washington Electronic Authentication Act).

¹⁰ 15 U.S.C. § 7004(b)(3)(A).

¹¹ 15 U.S.C. § 7001(c).

provided electronically. This ensures that the consumer has access to the computer hardware and software necessary to see and retain the writings provided electronically.¹²

Mortgagees should be prohibited from allowing consumers to consent to receive electronic records or apply an electronic signature to a reverse mortgage using the mortgagee's computer hardware. If the older consumer lacks her own computer to access and retain the records related to a reverse mortgage, that is a good indication that the consumer is likely not computer savvy, and that the transaction may be defrauding the elder. This could occur, for example, if a representative of the mortgagee comes to the borrower's home and has the borrower consent to receive the documents using the tablet or laptop of the representative. HUD should affirmatively require that the borrower's E-Sign consent and electronic signature can only be executed on the electronic hardware that belongs to the borrower.

To that end, we recommend that the draft Handbook's section on Origination/Processing relating to ensuring that disclosures are provided (at 4, lines 18-27) should be amended by rewriting the second sentence as follows (new language in bold): "In addition, the Mortgagee ~~provide must~~ **must ensure that the Borrower has consented to receive the electronic record of** ~~provide~~ all required federal and state disclosures **in a manner that demonstrates that the Borrower can access and retain the records before** ~~to~~ beginning the process of entering into a reverse mortgage through electronic means." While the E-Sign Act requires a disclosure that writings received in an electronic format can also be provided in paper form on request,¹³ the Mortgagee should emphasize this right to Borrowers up front.

2. Intent to Sign. Mortgagees should also be required to establish the Borrower's *specific intent* to electronically sign the reverse mortgage documents when those documents are provided electronically. E-Sign does not permit parties to be required to use electronic media, and section 5 of the state law UETAs, **explicitly permits electronic signatures to be binding** only when both parties have agreed to conduct the transaction by electronic means.¹⁴ HUD can ensure that this requirement is met by amending the second sentence in Section (c) (at 8, line 17), to add the bolded language: "The use of electronic signatures is voluntary, **and the mortgagee must ensure that the HECM Borrower has agreed to conduct the transaction electronically and to use electronic signatures.**" Additionally, at the end of this paragraph, the following sentence should be added: "**The Borrower's signature can be requested only after the HECM borrower has received all of the disclosures required to be provided in writing, and the Mortgagee has determined that the Borrower intends to enter into the HECM transaction.**"

3. Security Procedures. Ensuring that the borrower is agreeing to a remote transaction taking place electronically can be accomplished through the stringent use of security procedures, as is already done throughout the mortgage industry. To accomplish this we recommend the following changes (at 8, line 22 to 9, line, 27):

¹² *Also see*, National Consumer Law Center, Consumer Banking and Payments Law (6th ed. 2018), §11.4.

¹³ 15 U.S.C. § 7001(c)(1)(B)(i).

¹⁴ Unif. Elec. Transactions Act § 5(b). National Consumer Law Center, Consumer Banking and Payments Law (6th ed. 2018), § 11.3.2.

- Subsection (c)(i) should be amended to add at the end: **“Mortgagees are responsible for employing security procedures (as defined by the Uniform Electronic Transactions Act, as enacted in the Borrower’s state) to ensure the authenticity of the consumer’s consent and electronic signature.”**
- Subsection (c)(iv) should be amended to add the bolded words: **“The Mortgagee must ensure that the process for electronically signing authorized documents provides for the document to be presented to the signatory in the same form as the signatory demonstrated consent to receive electronic records under E-Sign’s consent process, before an electronic signature is obtained. The Mortgagee must ensure that the signatory can see the entire document before the electronic signature is applied, and that the electronic signature is attached to, or logically associated with the document that has been electronically signed.”**
- Subsection (c)(v) should be amended to add the bolded language: **“The Mortgagee must be able to prove that the signer had the intent to sign the document and the Mortgagee has certified that the document is true, accurate, and correct at the time signed. Electronic signatures are valid under the E-SIGN Act only if they are ‘executed or adopted by a person with the intent to sign the record.’ “**
- The non-bulleted language after the third bullet of subsection (c)(v) should be rewritten as follows: **“The mortgagee must establish that it ascertained independently directly from the signatory the Intent to use an electronic signature. Once the intent to use an electronic signature has been established, the intent to sign each document may be established by, but is not limited to:”**

We agree with and approve of the authentication and attribution requirements included in the draft Handbook.

D. Update Financial Assessment guidance related to COVID-19 Hardship

HUD’s financial assessment criteria have generally had a positive impact on curbing property charge defaults. Financial assessment evaluates potential borrowers’ ability to meet ongoing obligations for property charges in a timely manner. The financial assessment includes residual income and credit history analyses. Depending on the results of the financial assessment, mortgagees may require funds to be set aside for payment of property charges over the life expectancy of the borrower. A Life Expectancy Set-Aside (LESA) for the payment of property charges may be fully or partially funded by the HECM proceeds, depending on the outcome of the assessment.

Older adults will seek reverse mortgages to address the financial fallout from the COVID-19 pandemic. Limited resources and high unemployment early in the pandemic put a strain on household budgets, especially of elders who depended on family contributions to household expenses. While a variety of government programs provided financial relief and other

assistance, many consumers still fell behind on their financial obligations and this will be reflected in their credit profile. Low-income older adults living on fixed or limited income in particular had less of a financial cushion heading into the pandemic and likely benefited most from relief and other assistance.

The assessment criteria as outlined in the draft Handbook do not adequately address the financial impact of the COVID-19 pandemic. While it references forbearance and student loan relief, the draft handbook does not provide enough guidance on how mortgagees should assess COVID-related hardship, or account for relief or subsidy payments. Consumers lost income for taking care of children or grandchildren during the pandemic, for example. That reduction of income may be temporary or permanent, but likely resulted in derogatory credit or property charge payment history if the elder lacked a financial buffer. At a minimum HUD should update the draft Handbook to make clear that a COVID-related hardship is an extenuating circumstance (at 81, line 15) or that a (long-term) subsidy may be a compensating factor (at 129, line 8). Further, the agency can provide detailed guidance for frequently encountered issues, much like it did for documenting unemployment as an extenuating circumstance. HUD should also streamline documentation requirements as many COVID-related assistance programs reduced documentation requirements to remove barriers to assistance and distribution of resources.

III. Servicing issues

A. Servicing of Life Expectancy Set-Asides

HUD created the financial assessment and LESA requirements to address the significant problems with borrowers defaulting on property charges. This was a significant problem in HECMs originated prior to 2015. HUD's changes have been effective in the short-term to significantly reduce property charge defaults. However, in the long term, the failure to require adequate pre-loan counseling around LESAs or adequate post-closing servicing and counseling creates a risk of another property charge foreclosure crisis: that which will occur as borrowers exhaust the funds available in a LESA. Housing counselors have already begun to see this problem arise, with the first group of HECMs that were closed with a LESA (in late 2015) now reaching about 6 years of tenure, and funds beginning to be exhausted. Although the goal of a LESA is to set aside an amount that will last throughout the borrower's life expectancy, it is understood that some borrowers will live longer, and in some instances the property charges will increase. Thus it should have been anticipated from the outset that LESAs will be exhausted in some circumstances. HUD has not adequately addressed this looming problem.

The Handbook (at 146, 254) requires servicers to give borrowers written notice that the borrower is responsible for payment of property charges if the funds in the LESA are insufficient to cover the required property charges. The fundamental structure of LESA's, creating a situation where the borrower might be suddenly required to pay property charges if the available funds are exhausted, creates a significant risk of foreclosure. Borrowers who enter into a HECM with a fully-funded LESA are not likely to understand (or to remember years down the line) that

they can potentially be required to pay property charges after having them paid for many years. The present HECM counseling is not adequately informing borrowers about this possible scenario. In order to address this problem, HUD should change its policies so that if a borrower outlives the funds available in a LESA, future property charges will be advanced by the servicer and covered by the eventual insurance claim, without requiring the borrower to repay these amounts. This would be akin to making an "At Risk Extension" available to all borrowers who have a fully-funded LESA if the LESA funds are exhausted. In the alternative, extremely proactive servicing and post-closing housing counseling are necessary to prepare borrowers to deal with resuming payment of property charges. Simply providing written notice that the borrower is responsible for payment of property charges when the LESA is exhausted is woefully insufficient. HUD should require servicers to begin communicating actively with the borrower and attempting to refer them to a housing counselor beginning at least two years prior to the expected exhaustion of the LESA funds.

With regard to a partially-funded LESA, the draft Handbook (at 255) currently requires servicers to take certain steps to communicate with the borrower within 30 days of receiving a property charge bill if the LESA balance is zero or is insufficient to pay the bill. This is far too late. As discussed above with respect to a fully-funded LESA, servicers must be required to communicate with a borrower proactively beginning at least 2 years prior to the expected exhaustion of a partially-funded LESA. Regular telephone communication with the borrower, beginning immediately after loan closing, and beginning a relationship with a post-closing housing counselor, would be even more effective for planning ahead for exhaustion of the LESA. Post-closing housing counseling could also help by advising the borrower to periodically check for additional homestead exemptions that might become available as the borrower ages, which can reduce the property tax bill and make the LESA last longer. The counselor could also help the borrower to comparison shop for affordable homeowner's insurance and create a budget that factors in monthly savings for upcoming annual lump-sum property charges.

Moreover, HUD should do more on the front end with respect to pre-loan counseling to alert potential borrowers that exhaustion of the LESA could be a significant issue during the term of the loan. Counselors adhering to protocols outlined in the Housing Counseling Handbook 7610.1 would not review this issue in-depth with consumers. Nor would older consumers know to keep track of LESA accounts based on HUD's form disclosures. For example, HUD's *Reverse Mortgage Borrower Obligations* and *A Checklist for Borrowers* (Appendix C.7 and C.8 of Housing Counseling Handbook 7610.1) do not mention LESA accounts or how they work, or the potential that the borrower may have to assume responsibility for the payment of property charges in the future despite the existence of a LESA. Indeed, borrowers may expect that an account labeled a Life-Expectancy Set Aside would mean that servicers would cover the charges during the borrower's lifetime. For clarity and simplicity, HUD should rename the account a property charge set-aside to alert consumers to the function of the account, and the fact that the funds can be depleted. Counselors should be required to explain the function and limits of the account and develop an action plan to pay property charges if the account is exhausted.

B. Occupancy verification

The draft Handbook (at 271) continues HUD's existing insufficient requirements around verifying occupancy. Servicers are required to send an annual occupancy certification form within 30 days before or after the anniversary date of the loan. However, the draft Handbook does not require sufficient steps a servicer should take when a borrower fails to return the annual occupancy certification. Older borrowers fail to return the occupancy certification for a number of reasons. Dementia and other cognitive impairments can be a factor. Temporary health-related absences from the home can also be a factor.

HUD should set out a number of steps a servicer must take if the borrower fails to return the occupancy certification, prior to requesting due and payable status from HUD, and HUD should carefully review compliance with these steps prior to authorizing a servicer to call the loan due and payable based on non-occupancy. First, servicers should be required to make at least three attempts to communicate with the borrower and any designated alternate contact by phone. If they connect by phone, servicers should be permitted to accept a verbal occupancy certification. After phone attempts, servicers should be required to send a property inspector to knock on the door and leave a door hanger, on at least two occasions.

Examples abound of servicers calling a loan due and payable due to alleged non-occupancy when the home is in fact still occupied by the borrower. Servicers should not be permitted to call a loan due and payable based upon the sole fact that a borrower failed to return an occupancy verification. Rather, the servicer must be permitted to call a loan due and payable on this basis only if the servicer has a reasonable basis to believe the borrower is not occupying the home, after making an in-person visit to the property, leaving a door hanger, making multiple phone attempts to reach the borrower and any designated alternate contact, and determining whether the utilities have been disconnected or the home has been boarded up or otherwise appears abandoned.

During the pandemic, HUD allowed verbal occupancy certifications to be used. This should be continued after the pandemic. Finding and returning the occupancy certification form can be challenging for some older borrowers. If a borrower confirms by phone that they are living in the home, this should be sufficient. At a minimum, verbal occupancy certifications should be acceptable if the servicer is notified that the borrower has a health or cognitive impairment that makes it difficult for them to return the paper certification. HUD should require servicers to ask questions aimed at determining whether any such impairments exist that would require a reasonable accommodation.

C. Notice to heirs

The draft Handbook (at 291) continues and expands an extremely problematic requirement that HUD has imposed on servicers: the duty to provide notice to the heir, estate, or other party within 30 days of the Borrower's death. Although HUD has a vested interest in requiring prompt action after a borrower's death, it is untenable to require servicers to send a letter within 30 days

of the death. Despite diligent efforts, there will be occasions when a servicer is not aware of the borrower's death within that 30-day window. Servicers should be required to take action to communicate with heirs within 30 days after **notice** of the borrower's death. The Handbook uses this much more appropriate deadline with respect to providing notice to a non-borrowing spouse that will continue in a deferral period- the servicer must send a notice within 30 days after receiving notice of the last surviving Borrower's death.

We are concerned that the obligation to notify heirs within 30 days of the death (rather than 30 days after notice of the death), and financial penalties for missing this deadline, pose a significant threat to the financial viability of the HECM servicing industry. Already, HECM servicing has been significantly consolidated. The HECM product fills an extremely important role in allowing older adults to age in place and maintain stable housing with a reasonable quality of life. We are concerned about any threat to the industry.

D. Deferral and MOE Assignments for Non-Borrowing Spouses

HUD has made significant improvements to its policies aimed at preventing displacement of non-borrowing spouses. We commend the agency for taking these steps. Several additional changes are needed to ensure that the policies fulfill their intended goal.

In Mortgagee Letter 2019-15, HUD imposed a requirement that for case numbers issued prior to August 4, 2014, the servicer must annually ask the borrower to identify whether there is a non-borrowing spouse in the home. This is extremely important in order to identify non-borrowing spouses in advance so that the servicer can communicate with them immediately after the death of a borrower. We could not locate this requirement in the draft Handbook. If it is not incorporated, it should be. The requirement to send an Eligible Non-Borrowing Spouse Annual Certification (at 272) appears to apply only to borrowers that identified themselves as being married with an Eligible NBS at origination. HUD should add in this section the requirement to send the annual request form created in ML 2019-15 at page 7. HUD should clarify, however, that the failure to properly respond to this certification prior to the death of a borrower does not prevent the non-borrowing spouse from establishing that they are an Eligible NBS after the borrower's death.

HUD should require servicers to mention the potential availability of a Deferral Period and MOE Assignment in all letters sent to the borrower's estate or heirs due to death of the borrower (at 291, line 6). This could be accomplished by adding a bullet point after line 15 that reads, "provide evidence that an Eligible Non-Borrowing Spouse is residing in the home, in order to qualify for a deferral of due and payable status."

We commend HUD for providing in the draft Handbook that the Deferral period begins automatically upon death of the borrower for non-borrowing spouses, both for case numbers issued before and after August 4, 2014. The Deferral period continues while the mortgagee completes the required MOE Assessment (page 288, line 32).

E. Property Inspections

HUD (at 292) requires the mortgagee to perform a monthly visual inspection of the home when a HECM is in Due and Payable status. HUD should consider reducing this requirement to once every six months in all instances, and should **not** require inspections when a borrower is performing under a Repayment Plan or At-Risk Extension. When a borrower is communicating with a servicer and performing on loss mitigation there is no reason to believe the borrower has vacated the home. Requiring the monthly inspections adds an unnecessary charge to the loan balance every month, which can add up to a substantial drain on the homeowner's equity or a substantial cost to the fund.

We recommend changing this paragraph to read, "When a HECM is in Due and Payable status, the Mortgagee must perform a visual inspection of the property securing the HECM once every six months to determine whether the property is vacant. The Mortgagee shall stop performing visual inspections when a HECM borrower is performing on a Repayment Plan or At-Risk Extension." Or, HUD could change its policy to make clear that a servicer must rescind the due and payable status of the HECM upon approval of a Repayment Plan.

F. Ordering appraisals

For HECMs with a case number assigned on or after September 19, 2017, the mortgagee is required to have an appraisal with an effective date that is no more than 30 days before the sale (Handbook at 294, line 1). This results in mortgagees having to spend unnecessary funds paying for duplicative appraisals. It also makes it very difficult for heirs (or borrowers) to obtain a timely payoff quote from the servicer if they are attempting to sell the home and satisfy the HECM before a scheduled foreclosure sale. There is no good reason why the appraisal should need to be obtained within 30 days prior to the foreclosure date. HUD should modify this requirement to a reasonable date, at least allowing for up to 6 months from the date of the appraisal to the foreclosure date.

Moreover, HUD should generally review its appraisal requirements to remove unnecessary appraisals, particularly where the function of such an appraisal can be accomplished through more economical computer valuation methods or BPOs. Unnecessary appraisals syphon away home equity from the HECM borrower or their heirs and may also cause a drain on the MMI fund when claims are filed. We look forward to discussing this issue with you in detail.

G. Property charge loss mitigation

Property charge loss mitigation is extremely important to fulfill HUD's dual mission of protecting stable homeownership so that older homeowners can avoid displacement, while also protecting

the MMI fund. If done properly, loss mitigation can fulfill both of these goals. It can only be done properly if it is combined with robust and well-funded HECM default housing counseling and immediate relationship building between the servicer and borrower after the HECM closing. In order to preserve intergenerational wealth, particularly as it impacts homeowners of color, HUD should devote significant attention to improving its HECM servicing and loss mitigation policies.

Property charge loss mitigation is an area where greater attention is needed to review and revise HUD's policies so as to maximize the cure of property charge defaults and prevent property charge foreclosures in all possible cases. We look forward to discussing these issues with the agency in detail.

HECM Default Housing Counseling

HUD wisely requires (at 287) the mortgagee to refer the Borrower to a HUD-approved housing counseling agency prior to submitting a due and payable request when obligations of the HECM are not being met by the borrower. However, HUD should make this requirement more meaningful by adding a requirement that the servicer send the borrower's contact information to a HUD-certified housing counselor trained in HECM default counseling, so that the counseling agency can also attempt to contact the borrower directly before a mortgagee calls the loan due and payable.

Notification to the HECM Borrower of a Missed Property Charge Payment

Clearer and more effective communication with HECM borrowers regarding missed property charge payments is one of the most important issues for HUD to address. In the draft Handbook (at 295) HUD discusses the notification that must be sent to the borrower within 30 days of the mortgagee receiving notification that a borrower has failed to make a required property charge payment. This notification must identify certain loss mitigation options, specifically a HECM refinance, local assistance programs, and disposition options including sale of the property or a deed in lieu of foreclosure.

If these options are not available, have been declined by the borrower, or have been otherwise exhausted, only then, it appears, may the mortgagee review the borrower for a Repayment Plan or At-Risk Extension (see Handbook page 296, line 13).

This is the wrong policy. HUD should require mortgagees to inform borrowers that a Repayment Plan or At-Risk Extension option may be available in the first communication regarding a property charge default. There is no justification for mentioning sale or deed in lieu of foreclosure prior to mentioning home retention options. Similarly, HUD should not appear to impose any requirement that other options be exhausted prior to evaluating a borrower for a repayment plan.

Requesting Due and Payable

HUD's current policy, memorialized in the draft Handbook (at 296, line 4), requires mortgagees to send a Due and Payable request to HUD within 30 days of sending the notice of unpaid Property Charges to the borrower. This essentially requires dual tracking. The servicer must

begin to initiate foreclosure within 30 days, even if the borrower indicates an interest in loss mitigation. HUD should change this policy so that if a borrower indicates an interest in avoiding foreclosure, the servicer can delay sending a request for Due and Payable for 120 days in order to review and evaluate the borrower for loss mitigation options before initiating foreclosure and incurring foreclosure-related costs such as appraisal fees, attorney's fees, and foreclosure fees.

Permissible Loss Mitigation Options

In the draft Handbook (at 296, line 13) HUD lists the available, permissive loss mitigation options as Repayment Plan and At-Risk Extension. HUD should create additional loss mitigation options, including the following:

- **COVID-19 Optional Delay of Due and Payable Status.** HUD should allow a mortgagee to defer calling a loan due and payable if there is a property charge arrearage of up to \$25,000 as of the point in time when the COVID-19 Optional Delay is approved. In order to be eligible for this option, a borrower must have experienced a hardship directly or indirectly related to the COVID-19 pandemic. The mortgagee should refer the borrower to HECM default housing counseling so that the HUD-certified housing counselor can create a budget to ensure that the borrower will pay the property charges the next year. The counselor should also help the borrower determine if all applicable property tax exemptions have been obtained, if cheaper homeowner's insurance could be available, and any other resources to improve the feasibility of the budget.
- **Minimum Payment Plan.** For borrowers who are not able to afford a Repayment Plan that cures the entire property charge arrearage balance over 60 months, the mortgagee should determine the annual cost for property taxes, homeowner's insurance, and HOA or condo dues. The borrower should be required to make a monthly payment that will cover the expected cost for these property charges for one year. The mortgagee would collect this monthly payment and advance the next year's property charges when they come due. Each year the Minimum Payment Plan would be recalculated so as to maintain a payment sufficient to cover the property charges for each year. In this way, the property charge arrearage would not increase beyond the amount owed at the time the Minimum Payment Plan was first created.

HOA and Condo Fees

The draft Handbook (at page 296, line 29) does not permit a mortgagee to include HOA or Condo fees in a repayment plan, even if the mortgagee has been required to advance those payments. Mortgagees are required to advance HOA or Condo fees in states in which such fees can result in a super-priority lien. In any instance when a mortgagee has been required to advance the HOA or Condo fees, they should be permitted to include them in a Repayment Plan. There is no good reason to exclude these required property charge payments from Repayment Plan calculations. These charges cover necessary expenses such as maintenance of common spaces, hazard insurance coverage, and often water or other utilities. For the same reason, HUD should not require the mortgagee to subtract amounts owed for HOA or Condo fees (see page 297, line 13).

Repayment Plan Calculations

HUD's repayment plan calculations are overly complex and can result in an unaffordable monthly payment if the borrower does not have the benefit of a housing counselor. HUD should require servicers to refer the borrower to a HECM default housing counselor in all cases, so that the counselor can help the borrower create a detailed budget, look for all possible savings (including things like unutilized senior homestead exemptions), and determine what amount of monthly Repayment Plan payment the borrower can afford.

In addition, HUD should simplify the determination of the length of the Repayment Plan. Instead of requiring the servicer to base the length of the repayment plan on a calculation of the borrower's monthly surplus income (Handbook at 297, line 16-36), the mortgagee should be required to offer the borrower a 60-month Repayment Plan option, and to permit the borrower, in consultation with a housing counselor, to elect a shorter term. Note that in all cases with a formal Repayment Plan the borrower's arrearage exceeds \$2,000. For small default balances of under \$2,000, the servicer is permitted to offer the borrower a flexible repayment arrangement, which may include a shorter repayment period.

In situations where the borrower defaults on a repayment plan and needs a new, recalculated repayment plan, HUD should make two changes. First, HUD should permanently remove the \$5,000 cap for a successive repayment plan (Handbook at 300, line 7). Second, HUD should always allow the maximum 60-month period for a recalculated or new repayment plan. HUD should **not** require mortgagees to subtract the months previously spent in a Repayment Plan from the 60-month maximum (page 299, line 11).

Requiring cure within 30 days of the borrower's death

In the draft Handbook, HUD requires that any Repayment Plan or loss mitigation options cease immediately when the borrower dies (at 300, line 20). This policy should be changed to allow an Eligible Non-Borrowing Spouse to continue in an existing Repayment Plan or At-Risk Extension.

Moreover, heirs should still have a six-month period following the death of the borrower to market the home for sale or determine if they can otherwise satisfy the HECM. The property charge arrearage will be added to the loan balance. We have heard of many examples of heirs attempting to sell homes with significant equity, but they are denied a six-month time frame because of the property charge default. This can lead to significant loss of home wealth, without any necessary justification. In order to promote and preserve intergenerational wealth, HUD should allow heirs a reasonable chance to satisfy the HECM after the borrower's death in **all** cases.

Homeowner's Assistance Fund Programs

HUD should take all available steps to encourage mortgagees to provide information to HECM borrowers regarding programs that can help to cure a property charge default, especially Homeowners Assistance Fund (HAF) programs. The draft Handbook references Hardest Hit Funds programs at page 306, line 29, which should be replaced by reference to HAF.

Moreover, instead of allowing for a 45-day extension to the timeframe to commence foreclosure upon **approval** (at 307 line 2), the Handbook should provide for at least a 60-day extension of the deadline to initiate foreclosure upon notice that the homeowner has applied for a HAF program. The mortgagee should be permitted to delay foreclosure indefinitely upon receipt of a communication from the HAF program administrator indicating the conditional eligibility of the homeowner (the I-record). At that time, the mortgagee should only be required to commence the foreclosure process within 60 days of being informed later that the borrower was ultimately deemed not to be eligible (which will be rare, after a conditional approval). State HAF programs are only just beginning to take applications. In order to maximize the possible receipt of HAF Funds to avoid foreclosure, HUD should be extremely lenient with the foreclosure deadline when a borrower is applying for HAF.

Cash for Keys

The Handbook (at 309) allows a cash for keys payment of up to \$3,000 when there has been a successful deed in lieu of foreclosure or move-out agreement with a bona fide tenant. We urge HUD to consider all available ways to make cash for keys payments more often used in lieu of foreclosure. This should include conversations with reverse mortgage servicers and advocates representing borrowers and heirs.

Moreover, cash for keys payments in exchange for vacating the property should be available to any occupant of the home after a foreclosure sale - not merely to persons who can execute a deed in lieu of foreclosure or present evidence that they are a non-relative of the borrower with an arm's length lease. It is very common for multi-generational households to be living in a home secured by a HECM. Any family member who is living in the home should be eligible to accept a cash for keys agreement in connection with vacating the home without the need for an eviction filing. Even when the occupant is a family member (rather than an arms' length tenant), there is a cost savings to HUD from avoiding the need for an eviction.

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Deadlines to foreclose

The draft Handbook provides (at page 310, line 11) that the mortgagee may take an extension of the deadline for first legal action to foreclose for property charge loss mitigation. Mortgagees interpret HUD's overall policies to be such that a mortgagee may only take this extension if the mortgagee has approved a borrower for a Repayment Plan or At-Risk Extension. HUD should clarify its policies to allow for an extension in order to **review** the borrower for all options.

IV. Conclusion

Thank you for the opportunity to submit comments on the draft Handbook. We request an opportunity to discuss these recommendations with agency staff. Please reach out to Odette Williamson, owilliamson@nclc.org, and Sarah Mancini, smancini@nclc.org, with any questions regarding these comments.