



Preserving and Expanding Low-Income Homeownership

Administrative Recommendations for the Biden Administration from Community Legal Services (Philadelphia, PA)

Community Legal Services (CLS) provides free legal assistance to low-income Philadelphians. CLS's Homeownership and Consumer Rights Unit represents and advises clients in a range of matters to preserve their homes and maintain economic security, including mortgage foreclosure, tax foreclosure, debt collection, payday lending, student loans, and predatory lending schemes. CLS also educates borrowers on their rights, trains attorneys and housing counselors on mortgage foreclosure and other debt collection issues, and advocates for laws and programs to protect consumers from unfair and predatory lending practices. This memo includes administrative recommendations on behalf of our low-income homeowner clients.

We welcome the Biden-Harris administration's public commitment to ensuring that all Americans have access to affordable, stable housing, and to addressing the racial wealth gap resulting from systemic discrimination in housing and access to credit. We urge the Biden-Harris administration to take swift action on the following reforms to increase fairness for borrowers and help keep consumers in their homes.

Restore our Nation's Commitment to Fair Housing

Communities redlined in the past, including neighborhoods where many of our clients live, are also suffering the brunt of the COVID-19 pandemic. We urge the Biden-Harris administration to restore the U.S. Department of Housing and Urban Development's (HUD's) mission of ensuring fair housing by taking the following steps:

- Appoint a HUD Secretary and staff with demonstrated extensive experience in, and commitment to, fair housing and racial equity. Our clients and the communities we serve need HUD to live up to its stated mission to create strong, sustainable, inclusive communities, free from discrimination. In the Housing and Consumer Rights Unit, we work extensively with low-income homeowners affected by HUD policy on FHA loans and HUD-insured reverse mortgages. We look forward to continuing to work with a HUD that is receptive to input from FHA borrowers and homeowner advocates, and that considers the impact of its policies on achieving the goals of racial and economic justice.
- Reinstate HUD's 2013 Disparate Impact rule. The Trump administration released a final rule in September which severely weakened the ability to challenge systemic racism through a disparate impact claim under the Fair Housing Act. Such claims are crucial to fighting housing discrimination and segregation by lenders, insurers and others. The final rule, which has been preliminarily enjoined by a District Court in Massachusetts for

violating the Administrative Procedures Act, should be rescinded immediately.

- Reinstate HUD's 2015 Affirmatively Furthering Fair Housing rule. In July, the Trump administration terminated HUD's rule under the Fair Housing Act, put into effect in 2015, which had created guidance and procedures for how states and localities should correct discriminatory housing practices. The 2015 rule should be restored to focus state and local governments and agencies on the work of undoing the harms caused by racial segregation and housing discrimination.
- Establish a cross-Administration task force to develop a coordinated plan on supporting and sustaining homeownership in communities of color. Addressing entrenched discrimination in housing and opportunity and the racial wealth gap will require coordination across the federal government. The Biden-Harris administration should ensure that all federal agencies touching on housing coordinate in order to maintain focus on these issues. As part of this plan, HUD and the FHFA must preserve disparate impact standards and the duty to Affirmatively Further Fair Housing, and vigorously enforce fair lending and fair housing laws.
- Require mortgage lenders and servicers to provide language access for borrowers with limited English proficiency (LEP), including collecting language preference on applications, providing translated documents, and offering oral interpretation. We work with many LEP borrowers who were taken advantage of by lenders and brokers who took advantage of their inability to understand the terms of their loans, or who could not access home retention solutions in the event of a default. HUD and FHFA should ensure that originators and servicers of its loans provide borrowers with language access.

Help Homeowners Affected by COVID

Many of our clients have FHA, Fannie Mae and Freddie Mac mortgages. We appreciate the safeguards that federal agencies have put into place during the COVID-19 pandemic for borrowers with government-backed mortgages. As the pandemic intensifies and many of our clients are still dealing with lost employment income, we urge the Biden-Harris administration to take these actions to ensure that mortgage borrowers will not face a foreclosure crisis in the midst of the health and economic crises:

- Extend the foreclosure moratorium for six months and the availability of forbearances for COVID-related hardship beyond 2020. HUD announced a moratorium on foreclosure activity on all HUD-backed mortgages through December 31, 2020, and borrowers facing a COVID-related hardship may request a forbearance until that date. The FHFA has extended its moratorium through January 2021. However, it is now clear that the pandemic will continue well into 2021. Borrowers continue to be impacted by the accompanying economic crisis, and no one should lose their home in the midst of this health crisis. HUD and the FHFA should announce extensions of the foreclosure moratoria for six months into 2021, and HUD should remove the December 31 deadline



to request a COVID forbearance.

- Require mortgage companies to provide automatic forbearance to homeowners who are 60 days late on their mortgage during the COVID-19 emergency. Currently, under guidance from HUD and FHFA, borrowers experiencing a COVID-related hardship must affirmatively request a forbearance from their lender. In July, the FHFA Office of Inspector General released a report finding that only 50% of eligible borrowers were aware of the availability of forbearances.¹ Enrollment in a forbearance is necessary to access some of the special loss mitigation solutions announced by HUD and FHFA once borrowers are back on their feet. In order to make sure that borrowers who need forbearances do not fall through the cracks, HUD and FHFA should issue guidance requiring lenders to automatically enroll borrowers who are at least 60 days late on their mortgage during the crisis in forbearances.

Improve Mortgage Servicing of FHA-insured Mortgages

A significant proportion of our clients have FHA loans, which have been the primary means for Black and Latinx families to achieve homeownership for over a decade. According to HMDA data, nearly 55 percent of Black and Latinx borrowers buying their homes used FHA-insured loans in 2014 and 2015.² HUD's oversight of loss mitigation (foreclosure prevention alternatives) for FHA borrowers is crucial in avoiding unnecessary loss of homes and wealth in low income communities and communities of color. HUD can make improvements to FHA loss mitigation by issuing updated guidance on these issues:

- HUD should better address the needs of homeowners remaining in the home who are seeking loss mitigation after a separation or divorce, or who were not married to the coborrower. Many of our clients have difficulty accessing loan modifications when their divorce is not finalized or they were never married to their co-borrower, even when they have full ownership of the home. HUD must implement a clear policy of not requiring participation or signature of absent co-borrowers after a divorce, separation, in cases of domestic violence, or when a never-married co-borrower has relinquished all interest in the home.
- HUD should allow for the inclusion of nonborrower household member income in qualifying for an FHA-HAMP modification without requiring the non-borrower to be added to the loan. We frequently help clients who rely in part on income from a household member, such as a young adult child or roommate, but where it is inappropriate to add them to the loan. HUD should adopt a policy for FHA loan modifications similar to the HAMP policy that was successfully implemented throughout

¹¹ "Oversight by Fannie Mae and Freddie Mac of Compliance with Forbearance Requirements Under the CARES Act and Implementing Guidance by Mortgage Servicers," Document ID OIG-2020-004, July 27, 2020. Available at <https://www.fhfaig.gov/StatusReport/oversight-fannie-mae-and-freddie-mac-compliance-forbearance-requirements-under-cares>

² "Do Minorities Pay More for Mortgages?" Neih Bhutta and Aurel Hizmo, Jan. 2020, <https://www.federalreserve.gov/econres/feds/files/2020007pap.pdf>



the mortgage market, where non-borrower income could be considered without requiring the non-borrower to assume the loan.

- HUD should strengthen the role of the National Servicing Center (NSC). In cases where servicers fail to provide borrowers with loss mitigation they are entitled to receive, the NSC should specifically direct servicers to address these errors and should provide written notice to borrowers regarding its communications with servicers. Having a clear and effective escalations pathway is crucial to ensuring that FHA borrowers are able to obtain the loss mitigation for which they are eligible.
- HUD should refrain from conducting any further distressed asset sales under programs such as the Distressed Asset Stabilization Program (DASP). When hundreds of FHA loans in Philadelphia were sold through DASP, many homeowners who should have been eligible for FHA loss mitigation fell through the cracks without any advance notice.³ Given the serious consequences of loan sales for borrowers and communities, HUD should consider a loan sale program as an option only when the insurance fund is under a clear financial threat and other options have been exhausted. HUD must provide more detailed ongoing data showing how loans perform after sales. Finally, before implementing any further sales, HUD must complete the notice and comment process mandated by the Administrative Procedure Act (APA).
- HUD should finalize its proposal to restore language to the FHA form Note and Mortgage that incorporates mandatory loss mitigation regulations into the homeowner's contract with the lender. Courts around the country, including in Pennsylvania, had relied on this language in stopping lenders from foreclosing on mortgages without following FHA rules. Although HUD proposed restoring it in response to an outcry from homeowner advocates, it has not yet done so. HUD should restore the language as soon as possible.

Strengthen Oversight of Reverse Mortgages for Seniors

CLS helps many clients facing foreclosure on HUD-insured Home Equity Conversion Mortgages (HECMs). Often, the lender is foreclosing because it advanced taxes, insurance, or other property charges the homeowner cannot quickly repay. In some cases, our client is the surviving non-borrowing spouse or other heir of the HECM borrower. The COVID pandemic has made it more difficult for our clients to deal quickly with property tax and insurance problems, and submit paperwork necessary to qualify for relief programs under HUD's strict requirements. HUD should strengthen HECM protections to prevent unnecessary foreclosures and ensure that the COVID-related relief is extended to HECM borrowers, by taking the following actions:

³ "Opportunity Denied: How HUD's Note Sale Program Deprives Homeowners of the Basic Benefits of Their Government-Insured Loans," by Geoff Walsh, National Consumer Law Center <https://www.nclc.org/issues/opportunity-denied.html>. The report includes an examination of DASP loans in Philadelphia's Mortgage Foreclosure Diversion Program.



- HUD should clarify that COVID extensions in Mortgagee Letters 2020-27 and 2020-06 should apply to all deadlines relevant to a HECM loan, including the Non-Borrowing Spouse deadlines in Mortgagee Letter 2019-15. For those Non-Borrowing Spouses who do not meet the initial strict deadline, HUD should also clarify that they can provide the certification later and still qualify for the Mortgagee Optional Election Assignment.
- HECM borrowers who cannot repay tax and insurance advances may still avoid foreclosure under the At-Risk Extension if they are at least 80 years old and submit evidence of a critical circumstance such as terminal illness or long-term disability. Currently HUD requires the annual submission of medical documentation to renew the at-risk extension, which can lead to elderly borrowers being removed from the program and facing foreclosure on their homes. Obtaining medical documentation to submit to HUD, which is never easy, is even harder during the pandemic. HUD should waive the At-Risk Extension renewal requirement altogether during the national emergency, or in the alternative, clarify that the HECM Extension Period tolls the deadline for the annual recertification deadline for the At-Risk Extension.
- HUD should waive or extend the sixty-month total limit on repayment plans for tax and insurance defaults in Mortgagee Letter 2015-11. HECM borrowers who qualified for a COVID-19 forbearance should be able to get into a new sixty-month repayment plan at the end of the forbearance. No HECM borrower should lose their home for having availed themselves of a COVID-19 forbearance.

Reestablish the CFPB's Central Role In Protecting Mortgage Borrowers

The mission of the CFPB is to make sure that consumers of all income levels and backgrounds have the information they need to make decisions about their financial lives and to protect them against abuse, deception, and discrimination in the marketplace. Since its creation, the CFPB has played a crucial role in developing and enforcing regulations that protect homeowners. The CFPB now has the chance to return to this crucial work, thereby reducing the pervasive power imbalance our low-income clients face in the mortgage marketplace, which perpetuates poverty and racial inequity over generations. We ask that the Biden-Harris administration:

- Restore the mission of the CFPB through a focus on consumer protection and strengthening racial and economic justice in the mortgage market. Recent CFPB settlements with mortgage companies that violate consumer protections have been little more than slaps on the wrist. In April, the CFPB, Federal Reserve, FDIC, NCUA, and OCC announced that they would be lenient with servicers that did not adhere to servicing rules. Now that servicers have had time to adjust their business to the realities of the COVID pandemic, it is time to prioritize borrower protections. The CFPB should end its weakened approach to mortgage servicer supervision and enforcement.
- Rescind the proposed “seasoned” qualified mortgage (QM) rule. The Dodd-Frank Act prohibits creditors from making a mortgage without first determining the borrower’s



ability to repay it.⁴ Borrowers are prohibited from raising violations of this rule for mortgages that meet the QM definition of affordability. The CFPB's proposed rule would qualify an unaffordable mortgage as a QM as long as the borrower managed to pay it for three years, even if that was the result of draining savings, borrowing from family members, or neglecting other necessary bills. We are concerned that this proposed rule will prevent borrowers, especially those in low income communities of color targeted by predatory lenders, from defending against foreclosures on unaffordable loans as they would otherwise be able to do.⁵ The proposed seasoned QM rule should be rescinded and the QM rule reviewed to ensure that it includes an individualized assessment of a borrower's ability to repay.

For more information, please contact Rachel Labush (rlabush@clsphila.org)

⁴ 15 U.S.C. § 1639c(a)(1).

⁵ 15 U.S.C. § 1640(k)(1).

