

January 21, 2022

Secretary Marcia Fudge  
U.S. Department of Housing and  
Urban Development  
451 7th St SW  
Washington, D.C. 20410

Secretary Denis McDonough  
U.S. Department of Veterans Affairs  
810 Vermont Ave, NW  
Washington, D.C. 20420

Secretary Tom Vilsack  
U.S. Department of Agriculture  
1400 Independence Avenue, SW  
Washington, D.C. 20250

Acting Director Sandra L. Thompson  
Federal Housing Finance Agency  
400 7th Street, SW  
Washington, D.C. 20219

Dear Secretaries Fudge, McDonough, and Vilsack and Acting Director Thompson:

The undersigned civil rights, consumer and community organizations urge FHFA, FHA, VA and USDA to take immediate action to prevent avoidable home foreclosures for borrowers who apply for mortgage assistance from the Homeowner Assistance Fund (HAF) program. Specifically, we ask your agencies to use their authority to issue rules halting foreclosures for 60 days when a homeowner has *submitted an application* for HAF funds and the servicer has been notified by the HAF administrator. This protection is especially crucial at this time because federal assistance intended to help borrowers bring delinquent mortgages current will be imminently available through state HAF implementation. We also urge your agencies to ensure that homeowners who receive reinstatements from HAF but still need payment reductions will remain eligible for loan modifications.

Around [800,000 homeowners](#) are still in forbearance periods. Because the automatic pre-foreclosure protections of the Consumer Financial Protection Bureau's mortgage servicing rule expired at the end of 2021, borrowers may face foreclosure as soon as they exit forbearance. Servicers are now permitted to initiate foreclosure immediately after the end of the forbearance unless a borrower submits a complete application packet, something that few borrowers will be doing because of the industry-wide shift to a streamlined modification framework. HAF funds are essential to helping many of these struggling homeowners bring their loans current, obtain an affordable payment and avoid foreclosure.

The risks are even greater for homeowners of color. Data from the U.S. Census Bureau's Household Pulse Survey for Weeks 34-39 (July 21-Oct. 11, 2021) show that while 7.6% of white homeowners on average reported being in a household with mortgage delinquency, for the same period 12.6% of homeowners of color on average reported being in households with mortgage delinquencies. Preventing unnecessary foreclosures where HAF funds may be available would provide crucial protections in communities of color.

Market data demonstrate the need for a foreclosure pause for HAF applicants. Almost half of homeowners more than 90 days behind on mortgage payments and not in forbearance currently

have no loss mitigation plan, according to a [recent report](#) from the Federal Reserve Bank of Philadelphia. Moreover, November 2021 data from the Mortgage Bankers Association (MBA) show that increasing numbers of borrowers are seeking payment reductions after a forbearance, rather than resuming their regular monthly payment. In fact, the MBA numbers highlight that requests for modifications are greater than resumptions of regular payments for the first time since June 2020. A [Black Knight report](#) with November 2021 data found that there were over one million homeowners in serious delinquency, 2.5 times more than at the start of the pandemic, with the MBA November report showing a similar figure. The Black Knight report also showed 800,000 forbearance exits during the previous 60 days, with nearly 560,000 homeowners remaining in unresolved post-forbearance loss mitigation.

Recent data on FHA borrowers from the [Neighborhood Watch database](#) show that over 450,000 FHA-insured borrowers are seriously delinquent. Among reverse mortgage borrowers, almost 30,000 of these older borrowers have property charge defaults, that is, defaults on their property taxes, homeowners insurance, or other regular fees associated with owning their homes. Although reverse mortgage loans are not covered by the Bureau's loss mitigation rules, they are included in many state HAF plans. More than 10,000 reverse mortgage borrowers already are in foreclosure, but only around 3,500 have requested a COVID-19 extension.

The MBA report for the third quarter of 2021 showed 597,283 conventional loans and 107,467 VA loans in serious delinquency. We also understand that approximately 65,000 borrowers with USDA guaranteed loans are in seriously delinquent status.

All of these indicators point to the potential for a significant number of foreclosures during the pandemic, especially among homeowners of color, older homeowners and those with low and moderate incomes, unless mortgage servicers align their loss mitigation protocols and timelines for government-backed loans with HAF programs.

While foreclosures will likely be ramping up this month, HAF programs have seen significant delays. A few states have very limited pilot programs running, and a handful are slowly starting to open, but the Treasury Department is still reviewing most states' proposed HAF plans. As of January 6, 2022, only 22 of the 53 participating states and territories have received approval of their HAF plans from the Treasury Department, with only a few states (thirteen) accepting HAF applications. States and territories cannot open their application portals until they receive approval from Treasury and then finalize vendor agreements, servicer collaboration agreements and other administrative and logistical details. As a result, borrowers in most jurisdictions will not even be able to apply for HAF assistance before the end of this month or February at the very earliest.

Because of these ongoing delays, once borrowers are able to apply for HAF they may already be facing a first legal action in a foreclosure proceeding or even be in active foreclosure. Without protection against the initiation or continuation of foreclosure, HAF applicants may end up losing their homes unnecessarily or, at a minimum, having additional foreclosure-related fees and charges added to their loan accounts, which will make resolution of their delinquency more difficult and costly. Even if a borrower with recently added foreclosure charges is able to get approved for HAF assistance, use of these limited aid dollars to reimburse such costs is an

unnecessary - and avoidable - drain on this critical part of the American Rescue Plan, where funding already is insufficient to meet the expected need in many jurisdictions.

We urge your agencies to direct mortgage servicers to pause foreclosure activity for at least 60 days after being notified that a borrower has applied for HAF assistance and meets conditional program eligibility (as shown, for example, by receipt of an “I-record” transmitted from the HAF program administrator to the servicer via the Common Data File). This common-sense approach to preventing unnecessary foreclosures when HAF applications are pending aligns with the Administration’s approach of coordinating the foreclosure prevention work of all of its agencies, including the Treasury Department, and is also consistent with the overall approach in the Bureau’s mortgage servicing regulations, which limit foreclosures when a homeowner is seeking loss mitigation. It also would help prevent a further widening of the racial homeownership gap, a key aspect of the racial justice goals of the Biden Administration.

We also urge your agencies to allow borrowers access to COVID-19 loan modifications even if they have reinstated their loans through HAF. Many borrowers who receive HAF funds will still need payment relief to avoid re-default. Your agencies’ modification programs can provide such payment relief since they already allow access to modifications in situations of imminent default. Borrowers in this circumstance—at risk of re-defaulting after a HAF-funded reinstatement—should be deemed eligible for payment relief through modification under the imminent default model. COVID-19 loss mitigation options also should be updated to provide this flexibility for borrowers who have received HAF funds.

We would greatly appreciate the opportunity to meet with your agencies about our proposal and any other alternatives you see to address the significant number of borrowers who remain in seriously delinquent status as of January 2022. Thank you for your attention to these extremely important issues. If you have any questions related to this letter, please contact Alys Cohen, Staff Attorney at the National Consumer Law Center, at [acohen@nclc.org](mailto:acohen@nclc.org).

Sincerely,

**National Organizations**

Americans for Financial Reform Education Fund

Center for Community Progress

Center for Responsible Lending

Consumer Action

National CAPACD- National Coalition for Asian Pacific American Community Development

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

National Housing Law Project

National Housing Resource Center

National Fair Housing Alliance

National Women's Law Center

Prosperity Now

UnidosUS

(cont'd)

### **State and Local Organizations**

American Debt Resources, Inc. (NY)  
Brooklyn Legal Services Corporation A (NY)  
California Reinvestment Coalition  
CCCS of Buffalo (NY)  
Charlotte Center for Legal Advocacy (NC)  
Civil Justice, Inc. (MD)  
Community Legal Services of Philadelphia (PA)  
Connecticut Fair Housing Center  
Empire Justice Center (NY)  
Financial Protection Law Center (NC)  
Foreclosure Prevention Legal Aid Clinic, University of Puerto Rico  
Frank H. Hiscock Legal Aid Society (NY)  
Greater Boston Legal Services, on behalf of its low-income clients (MA)  
Housing and Economic Rights Advocates (CA)  
Housing and Family Services of Greater New York, Inc.  
Hudson River Housing (NY)  
Human Development Services of Westchester, Inc. (NY)  
Legal Aid Bureau of Buffalo, Inc. (NY)  
Legal Action Chicago  
Legal Aid Society of Southwest Ohio, LLC  
Legal Aid Society of the District of Columbia  
Legal Services of New Jersey  
Long Island Housing Services, Inc. (NY)  
Mountain State Justice (WV)  
New Jersey Institute for Social Justice  
New York Legal Assistance Group  
North Carolina Justice Center  
Ohio Poverty Law Center  
Pisgah Legal Services (NC)  
Vermont Legal Aid, Inc.