

September 11, 2020

US Department of Housing and Urban Development
451 7th Street S.W.
Washington, DC 20410

Re: FHA Single-Family Housing Policy Handbook; Servicing and Loss Mitigation

Dear Sir or Madam:

The Mortgage Bankers Association (MBA)¹, American Bankers Association (ABA)², and Housing Policy Council (HPC)³ (the Associations) appreciate the opportunity to submit joint comments on the proposed changes to the *Servicing* section of the Federal Housing Administration (FHA) Single-Family Housing Policy Handbook. The Associations commend the steps that FHA and the Department of Housing and Urban Development (HUD) have taken to update its servicing and loss mitigation policies, further aligning with the GSEs.

Attached in the transmittal is the Associations' Feedback Response Spreadsheet providing our collective and aligned comments in the requested format. Additionally, the Associations would like to use this opportunity to urge HUD to consider several high level recommendations regarding key servicing issues that continue to play a significant role in the cost and availability of FHA loans, as well as some general comments on the Handbook content and rollout plan. These requests include:

- Reform the foreclosure timeline structure
- Reform the conveyance process by allowing direct conveyance

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,300 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mba.org.

² The American Bankers Association is the voice of the nation's \$21.1 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$17 trillion in deposits and extend nearly \$11 trillion in loans.

³ The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers, mortgage and title insurers, and technology and data companies. HPC advocates for the mortgage and housing marketplace interests of its members in legislative, regulatory, and judicial forums. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth-building for families.

- Further enhance the Claims Without Conveyance of Title (CWCOT) program following ML 20-21
- Consider additional enhancements to the loss mitigation process and associated waterfall
- Repeal the face-to-face interview requirement
- Allow a reasonable period of time to implement changes in the handbook

I. Foreclosure and Conveyance Process

There are several aspects of the FHA foreclosure and conveyance process that increase both the costs and uncertainty of servicing FHA loans. We believe that there are several reforms FHA could make to its foreclosure timelines and property preservation requirements that would create greater certainty, lower costs and, in conjunction with other on-going initiatives, result in greater access to affordable FHA credit. These recommendations are discussed briefly below.

1. Foreclosure Timelines

Currently, FHA's dual performance standards (First Legal and Reasonable Diligence) reduce a servicer's flexibility/accountability for managing the entire foreclosure timeline and conflict with other consumer protection regulations. A servicer who missed the first legal standard by five days but makes up the difference once foreclosure has been initiated will face penalties amounting to thousands of dollars in interest curtailments despite the fact that *HUD incurred no actual losses* that were directly related to the servicer's performance. It is also difficult to comply with certain Consumer Financial Protection Bureau loss mitigation requirements and HUD's First Legal requirements, leaving lenders to navigate an uncertain extension process.

In the long-term, FHA could promote access and affordability of their loans for potential borrowers through regulatory changes that eliminate the separate timeline for first legal action and replace it with a single state-specific timeline standard for the overall foreclosure process. The GSEs currently use a single timeline standard to determine acceptable servicer performance, while also tracking efficient early engagement with delinquent borrowers, and FHA adoption of a similar process would increase servicer efficiencies without affecting the consumer protections enshrined in state and federal laws.

The Associations understand that regulatory changes to the first legal standard are likely to take some time. In the short term, FHA should consider taking immediate steps to

expand, extend and streamline “automatic extensions” to the first legal deadline in order to address the timing challenges posed by federal loss mitigation requirements.

2. Property Preservation and Conveyance

FHA is unique in its property preservation and conveyance procedures. Typically, servicers convey properties to other entities that insure or invest in mortgages within 24 hours of foreclosure sale or redemption. FHA requires servicers to convey within 30 days of the later of foreclosure sale or receipt of marketable title. Servicers must ensure the property is vacant and in “conveyable condition” and maintain it until the claim is paid by HUD, rather than the date on which the claim is filed and title is conveyed to HUD.

Unclear standards of “conveyable condition,” inadequate allowance for repairs and extended timeframes between conveyance and payment further exacerbate the uncertainties regarding the servicer’s potential exposure to foreclosure-related losses. The uncertainty and cost of this process have contributed to the addition of credit overlays, and to a contraction in the number of financial institutions that are willing to expose themselves to these servicing risk. Unnecessarily tight standards and fewer lenders reduce the population of creditworthy borrowers who can be served.

While the Associations have previously requested that FHA consider adopting a direct conveyance model similar to that of the GSEs, we recognize the challenges associated with a business change of this magnitude. Therefore, we would ask that FHA work with the industry to overhaul the conveyance process, including a commitment to the regulatory changes required to shorten the timeframe from foreclosure to conveyance. A redesign of the conveyance process should include evaluation of an approach by which FHA would accept conveyance of properties in poor condition, with the expectation that FHA would perform an “as-is” post-conveyance REO sale. Such a move could reduce the severity of REO losses to FHA and would certainly have a positive impact on communities affected by vacant properties that contribute to blight and depreciation. In conjunction with this consideration of a specific process for FHA to accept damaged properties should be a more streamlined and uniform application of simplified property preservation standards executed through FHA’s own vendor network, with the goal to eliminate costly and time-consuming negotiations over allowable expenses and overages.

II. Further enhance the CWCOT program following ML 20-21

1. Provide servicers with a 120-day extension of the conveyance deadline to complete a post-foreclosure CWCOT sale

ML 20-21 provides a 60-day extension of the conveyance deadline for completion of a post-foreclosure, third-party sale, with an additional 30-day extension for closing if a

contract has been signed. Prior to ML 20-21, FHA would routinely approve two consecutive 60-day extensions to the conveyance deadline to conduct a post-foreclosure, third-party sale. This practice provided servicers with up to 150 days to sell a property to a third party instead of conveying it to HUD. ML 20-21 shortened the time period to obtain a sales contract in a post-foreclosure sale from 150 days to 90 days. Based on our members' experience, shortening the time period by 60 days will result in fewer post-foreclosure third-party sales and thwart the objectives that many of the other CWCOT enhancements were designed to achieve.

2. Allow properties with surchargeable damage to sell via CWCOT

Properties with surchargeable damage are not eligible to be sold via CWCOT sale. By excluding properties with surchargeable damage from the program, HUD forgoes the cost savings and administrative benefits of the CWCOT. FHA should allow properties with surchargeable damage to be sold via CWCOT, with a requirement that servicers reduce their final claim by the amount necessary to repair the damage. This will increase and expedite the liquidation of properties through CWCOT sales—reducing property preservation and holding costs for FHA and servicers—while also ensuring that HUD does not bear the cost of surchargeable damage.

III. Further enhance the Loss Mitigation Waterfall

1. Align FHA's documentation requirements with CFPB rules

The proposed FHA loss mitigation documentation requirements conflict with CFPB standards and current FHA program guidance, which provide distinct documentation standards across home retention programs, as well as streamlined disposition and traditional disposition options. For example, the relevant forms of documentation needed for traditional disposition options are unnecessary for home retention and streamlined disposition options. However, in order to complete a loss mitigation request, borrowers must provide all information needed to be evaluated for both retention and non-retention options, regardless of the borrower's particular circumstances. This requirement effectively eliminates streamlined preforeclosure sales (PFS) options, as the full documentation needed for traditional PFS must be gathered from all borrowers.

The inability to evaluate a borrower for a specific loss mitigation option and the requirement to gather information that may not be germane to a borrower's desires greatly increases the application burden for all borrowers applying for loss mitigation assistance, and will lead to greater borrower disengagement, increased confusion and complaints, and, ultimately, more foreclosures.

2. Fix guidance regarding the availability and administration of FHA-HAMP for

Imminent Default Borrowers

FHA explicitly states that Borrowers in Imminent Default are eligible for FHA-HAMP Loss Mitigation Options. FHA also states that, to be eligible for FHA-HAMP, a loan must be due for “three or more full monthly payments” upon execution of the FHA-HAMP documents. And, when administering the FHA-HAMP-required trial payment plan, FHA instructs that the Trial Payment Plans must be posted to the loan when sufficient funds accumulate in suspense to cover a contractual payment.

In cases of Imminent Default, a fundamental conflict exists between the requirements that a loan be three payments past due at the time the FHA-HAMP documents are executed and that trial plan payments be posted to the loan as contractual payments accumulated in suspense. If a Mortgagee applied trial plan payments as contractual payments accumulated in suspense for a Borrower facing Imminent Default, in many cases the Borrower’s loan would not be three payments past due at the end of the trial plan payment when the FHA-HAMP option is executed. This process renders the FHA-HAMP option unavailable to Borrowers, which presumably not the result FHA intends.

We believe that FHA intends for Borrowers facing Imminent Default to receive FHA-HAMP assistance in the event that they qualify. As such, we recommend one of the following technical corrections:

1. Allow trial plan payments for imminent default borrowers to be held in suspense, or
2. Eliminate the minimum delinquency requirement associated with FHA-HAMP.

IV. Face-to-Face Requirements

HUD requires servicers to attempt a face-to-face meeting with a Borrower no later than the 61st day of delinquency, unless exempt under 24 CFR §203.604(c). The employee representing the servicer at the face-to-face meeting must have authority to propose and negotiate repayment plans. This requirement was adopted almost 40 years ago and is no longer necessary or appropriate in light of the current collection, delinquency assistance, and loss mitigation requirements. In 2007, HUD agreed that the face-to-face meeting requirement was obsolete and stated that a proposed rule comprehensively revising Section 203.604 would be forthcoming. However, there has been no action to rescind the face-to-face meeting requirement.

While we understand that the change would require new regulation, the Associations reiterate MBA’s request from the August 27, 2014 letter to Commissioner Galante that HUD revise Section 203.604 and eliminate the face-to-face requirement. In light of the handbook project, FHA has the opportunity to reconsider all of its servicing policies and

we believe eliminating the face-to-face meeting requirement would be a positive step. In the short term, we urge the FHA to make changes that do not require rulemaking change but would greatly ease the burden on servicers. Specifically, we urge HUD to eliminate the requirement that the employee representing the servicer at face-to-face interviews with the borrower have the authority to propose and accept repayment plans and to permit third party contractors to fulfill the requirement.

V. **General Handbook Issues**

We urge FHA to ensure that the Handbook is Easy to Navigate and has an Effective Content Management System. In particular we recommend:

- The draft Handbook is organized using a multi-layered hierarchical numbering system. That organizational system is hard to use and may lead to confusion among future users. The Associations strongly recommend HUD consider simplifying the organizational structure of the finalized Handbook. In addition, we recommend breaking out sample forms from the main text into exhibits to make the Handbook more reader-friendly.
- Many terms are capitalized in the Handbook but are not defined, and many are defined within the Handbook, but not included in the Glossary. Moreover, it appears that some terms are defined differently in the Servicing section than the Origination section. The Associations strongly recommend defining terms consistently across all sections of the Handbook and ensuring that all terms are defined in the Glossary.
- As most users will access the final Handbook online, the Associations urge HUD to establish an effective online content management system that will be easy to use and include links to relevant sections and definitions. Furthermore, HUD could archive sections of the Handbook that have been superseded by newer guidance in a convenient format that is readily accessible.

VI. **Provide 180 Days to Implement the Handbook**

The Associations strongly recommend that once HUD has published a finalized Handbook that HUD provide servicers with at least 180 days to implement any required changes. The number of policy changes in the Handbook are substantial and it is critical to allow sufficient implementation time after finalization. We also request that the new requirements contained in the revised handbook apply to servicing actions and activities that occur after the effective date and not before.

Conclusion

Thank you for the opportunity to comment on the changes to the Handbook and to provide the above recommendations on important servicing reform issues. We look forward to working with HUD on these issues and others as part of our broader body of work intended to bring greater certainty and clarity to the FHA single family program and to expand lender participation and consumer access. Should you have questions or wish to discuss this issue further, please contact Sara Singhas at ssinghas@mba.org or (202) 557-2826 or Darnell Peterson at 202-557-2922 or via email at dpeterson@mba.org. Additional contacts are Sharon Whitaker 202-663-5321 at swhitaker@aba.com and Meg Burns at meg.burns@housingpolicycouncil.org or 202-589-1926.

Sincerely,

American Bankers Association
Housing Policy Council
Mortgage Bankers Association