



October 22, 2018

Branch Chief
Regulations and Paperwork Management Branch
U.S. Department Of Agriculture
1400 Independence Ave. SW
Washington, D.C. 20250

RE: Proposed Changes to Loss Mitigation and Loss Claim Process for the Single Family Housing Guaranteed Loan Program; RIN 0576-AD09

Ladies and Gentlemen:

The Mortgage Bankers Association (MBA)¹ appreciates this opportunity to submit comments on Rural Housing Service's (RHS or Agency) proposed changes to the Single Family Housing Guaranteed Loan Program loss claim process and its loss mitigation servicing requirements. MBA applauds the Agency's efforts to streamline its policies and procedures, enhance the efficiency of its resources, and better align its programs with industry practices.

We support the proposal to eliminate paper based claims submissions, revise the definition of settlement date for deeds-in-lieu to the date title is recorded, and clarify that lenders must adhere to other applicable federal, state and local laws in addition to compliance with Agency guidance.² We also appreciate the Agency's efforts to streamline the loss claim process and believe that a streamlined process could be beneficial to both lenders and RHS.

However, we are concerned that this proposal, as drafted, will result in increased losses for lenders on properties that take a significant time to liquidate following foreclosure sale. Whether or not this concern is a reality depends largely in part on the valuation model employed. Unfortunately, this proposal does not provide enough detail on the valuation model to assuage these concerns.

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 We use the term "lender" to also include servicers of RHS loans

Finally, while we support most of the changes to loss mitigation servicing requirements to provide greater payment relief and better align with industry practice, we believe that the proposal to give lenders discretion over trial payment plan requirements would create a discrepancy with Ginnie Mae's guide and impair lenders' ability to liquidate certain loans from Ginnie Mae pools prior to modification.

LOSS CLAIM PROCESS

The proposed rule amends the loss claim payment process for lenders who have acquired title to property through voluntary liquidation or foreclosure. Under the new framework, lenders would be required to order a market value appraisal 15 days after acquiring title and submit their claim within 45 days of receipt of the appraisal. Loss claims will be paid after acquisition and prior to marketing the REO. This will eliminate the need for REO property disposition plans, different loss claims calculations based on whether the property is sold or remains in the lender's REO portfolio, and claims adjustments based on future recovery.

While MBA generally appreciates the goals of this proposed rule and foresees general positive outcomes from streamlining the claims payment process, the proposal does not provide enough details on the valuation model to allow for a full assessment of the impact of this proposal. The rule indicates that the Agency will employ a loss claim model that "takes into consideration various factors, including market value appraisal, as well as property preservation and disposition costs based on the US Department of Veteran Affairs Management and Acquisition Factor (VA Net Value Factor)."³ More transparency into the underlying algorithm would allow lenders to better model potential outcomes. Without providing more information regarding the Agency's model, it is safe to assume that the risk of loss on properties that take a significant amount of time to sell following acquisition will transfer from RHS to the lender. Realization of additional, unreimbursed expenses incurred by the lender throughout the REO lifecycle will outweigh any benefit associated with earlier claim payment, elimination of REO disposition plans and greater ownership of the manner in which the property is sold.

Additionally, the proposal does not consider occupancy status at the time of appraisal. The requirement to order a market value appraisal 15 days after acquiring title would likely result in many exterior appraisals for properties that are still occupied where eviction has not yet been completed. It is imperative that the appraisal that ultimately determines the claim payment to the lender is performed when the property is vacant. We suggest RHS amend the requirement to base the timing on vacancy status, not when title is acquired as follows:

*Section 3555.354 (b) REO. When the lender acquires title to the property, the lender must order a market value appraisal within 15 days of acquiring title **or vacancy, whichever is later.***

³ 83 Fed. Reg. 164 at 42620

We understand that RHS has piloted the streamlined claim process with several lenders and that participants report positive experiences with the changes. We encourage RHS to publish its findings from this pilot program to help the industry better understand potential effects on their portfolio's loss assumptions on RHS properties that culminate in foreclosure sale. In the event that it is clear that lenders would experience greater losses on its portfolio of delinquent RHS loans, we request that the Agency re-visit this proposed rulemaking to prevent the transfer of risk of loss from the Agency to the lender.

LOSS MITIGATION

The Agency is proposing a series of adjustments to loss mitigation strategies to offer borrowers faster and greater payment relief early in the loss mitigation process and better align with industry practices. MBA supports the following proposed changes:

- Eliminate the requirement for Agency concurrence on formal servicing plans or voluntary liquidation.
- Provide a stand-alone Mortgage Recovery Advance (MRA) for certain borrowers who can continue to make contractual payments but cannot cure the delinquency.
- Clarify capitalization of delinquency amounts for special servicing options.
- Simplify MRA calculations by removing the maximum limit of 12 months PITI and the requirement to reduce the max MRA by the sum of the arrearages advanced to cure the default and any foreclosure costs incurred to that point.

The Agency also proposes to permit lenders discretion in determining whether a trial payment plan is warranted for a traditional servicing loan modification. We appreciate RHS's intent to provide more flexibility for lenders, however doing so could negatively impact a lender's ability to buy the loan out of Ginnie Mae pools under the expanded buyout policy for loans subject to trial payment plans. Under APM 11-13, Ginnie Mae issuers are permitted to repurchase loans that have completed three-month trial payment plans pursuant to an insuring or guaranteeing agency's required trial payment plan that is a condition to a permanent loan modification. By no longer requiring a trial plan prior to modification, there is some ambiguity as to whether or not certain loans would meet Ginnie Mae's buyout requirements. At minimum, RHS should consult with Ginnie Mae prior to issuing a final rule so that Ginnie Mae can amend or clarify their guidance.

CONCLUSION

In conclusion, MBA applauds and commends the direction RHS is taking to streamline its policies and guidance and believes that most of the proposed changes would be very beneficial to borrowers, lenders, and RHS. However, without more information on the changes to the loss claim process, we are unable to determine whether the changes would ultimately help or hurt lenders. We urge RHS to provide more transparency into the valuation model prior to finalizing this proposal. We also urge RHS to consult with

Ginnie Mae prior to finalizing the changes to §3555.303 (b)(3)(v) to ensure that providing lenders discretion to require trial payment plans would not result in unintended consequences to Ginnie Mae issuers.

Please feel free to direct any question to me directly or Sara Singhas, Associate Regulatory Counsel (ssinghas@mba.org).

Sincerely,

A handwritten signature in black ink that reads "Stephen A. O'Connor". The signature is written in a cursive style with a long horizontal line extending from the end.

Stephen A. O'Connor
Senior Vice President
Public Policy & Industry Relations
Mortgage Bankers Association