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MORTGAGE BANKERS ASSOCIATION

American Bankers Association

July 5, 2019

HUD Regulations Division, Office of Housing
Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410-8000

RE: Federal Housing Administration (FHA): Single-Family Loan Sale Program; Advance Notice of Proposed Rulemaking and Request for Public Comment; Docket No. FR–6051–A–01

Ladies and Gentlemen,

The Mortgage Bankers Association (MBA)[1] and the American Bankers Association (ABA)[2] are jointly writing to provide feedback on FHA's Single-Family Loan Sale Program ("SFLS" or the "Program"). We applaud FHA for its intention to transition the SFLS from a demonstration program to a permanent one and appreciate the opportunity to provide recommendations on ways to improve and expand the Program. The SFLS program has helped stabilize communities and provided tens of thousands of borrowers, for whom all FHA prescribed loss mitigation efforts have failed, a second chance to save their homes and avoid foreclosure while producing a better financial outcome for taxpayers. The Program has placed limits on foreclosures following loan sales and other borrower protections during the demonstration period to ensure that any loan sale program offers both benefits to the Mutual Mortgage Insurance Fund (the "Fund") and to the communities served by FHA insurance. As FHA evaluates the Program going forward, it is important to strike an appropriate balance between protecting the Fund, the interests of communities and the need to ensure borrowers are fairly treated.

SFLS reduces loss to the Fund by relieving FHA of the high costs of maintaining and marketing foreclosed properties. The program also allows the Fund to limit its losses on defaulted loans by selling them after all FHA foreclosure avoidance options have been exhausted. In its 2016 Annual Report to Congress, HUD estimated that SFLS program sales saved the Fund an estimated $2.4 billion above the alternative REO program.[3] Programs such as SFLS and Claims without Conveyance of Title provide a crucial alternative to the conveyance process – a complicated process which is time consuming and expensive for both servicers and FHA. The

[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 $18 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard nearly $14 trillion in deposits, and extend more than $10 trillion in loans.
[3] 2016 Federal Housing Administration Annual Report to Congress, at https://www.hud.gov/sites/documents/2016FHAANNUALREPORT1.PDF

FHA's inefficient conveyance process causes properties to remain vacant longer, which adversely affects neighborhoods and increases maintenance and repair costs. The higher property preservation costs then adversely impact the Fund as well as FHA servicers.

FHA can make changes to the SFLS to expand loan eligibility and encourage more servicer participation. Key obstacles to servicer participation include:

- Restrictive eligibility criteria that limit the number of loans eligible for participation which minimizes the effectiveness of the program,
- Administrative burdens incurred in responding to irregularly scheduled sales with short response timeframes,
- Inability to obtain timely answers from FHA to questions that arise in assembling a loan package,
- Excessive costs due to:
    - high rates of loan fallout,
    - delays in receiving payment of interim servicing advances from purchasers, and
    - disputes over contract issues.

The following are our recommendations for improving the Program and expanding participation. These comments are based on the experiences of active participants in the SFLS program.

Recommendations

1. **Establish a regular schedule of loan sales**

Infrequent and irregular Program sales with short response timeframes strained both servicer and FHA resources. Servicers had to assemble teams quickly – taking resources away from other areas – in order to review and prepare for such sales. FHA similarly had to divert resources in order to support a loan sale which caused delays or an increased backlog in other areas. For example, participating servicers reported that their pending supplemental claims fell further behind when FHA diverted claims staff to process claims related to loan sales.

If the program is formalized — as it should be given its benefit to borrowers and the Fund — FHA should maintain a consistent schedule for Program sales. This will increase predictability and provide servicers with sufficient time to identify eligible loan populations. A predictable schedule would help mitigate the costs and resources associated with assembling offers by, among other things, allowing for staff training and efficiencies in staffing allocation. Predictable sales would also serve to reduce the administrative burden on FHA and allow for better allocation of staff resources.

2. **Maintain consistent eligibility criteria across sales and lock qualified loans as of a specific date**

The SFLS demonstration program was inefficiently structured. Eligibility criteria changed from sale to sale which made it more difficult for servicers to identify and screen loans within the short response timeframe.

In addition, the substantial amount of time between identification of qualified loans and sale resulted in high fallout rates as many loans no longer met the eligibility criteria at the time of sale. A participating servicer estimated that about 20% of loans submitted for inclusion in SFLS later fell out of the eligible loan population. For loans that fall out or are not awarded in a sale, servicers report experiencing difficulty and delays in reinstating FHA insurance. To reduce fall out, the population of qualified loans should be locked as of a specific date. FHA should provide guidance for how changes that occur after that date (such as loss mitigation activity or surchargeable damage) should be handled.

3. **Expand loan eligibility criteria**

Given the substantial cost savings to the Fund from a well-functioning asset sale program, eligibility criteria should be expanded to encourage broader participation. We suggest the following changes:

- Expand eligibility to loans secured by properties with surchargable damage (provided the damage is insured or the FHA claim is reduced by the estimated amount to repair), loans secured by mobile homes, loans in bankruptcy and loans with resolved title claims.
- Eliminate or loosen the LTV and Maximum Missed Payment restrictions. The addition of these caps has materially decreased the number of loans that can participate in the Program.
- Eliminate vacancy minimums.
- Eliminate Borrower Risk Scoring from the eligibility criteria.

In addition, we recommend the following policy changes:

- Expand Broker Price Opinions (BPO) requirements to permit use of distressed property comparable to determine value.
- Require a new valuation prior to sale if there is a material change to the condition of the property determined by monthly property inspection results.

4. **Revise reps and warrants.**

Participating servicers reported spending significant resources in lengthy and expensive conflict resolution over contractual representations/warranties (reps and warranties). Some reps and warranties were not based on objective criteria and none of them contained a materiality provision. Repurchase demands can be received years after a loan sale, even for technical breaches that did not materially affect the value of the loans.

FHA should modify the purchase agreements to:

- Include sunset date of six months for all representations and warranties,
- Limit repurchase demands only to breaches of representations and warranties that materially and adversely affected the value of a mortgage loan, and
- Remove the representation/warranty regarding "surchargeable" damage, since it is subjective and not typical for non-performing loan sales.

5. **Revise SFLS claims policies**

We offer the following recommendations for claims policy:

- Reimburse BPO and due diligence expenses for offers that met eligibility criteria but are not ultimately included in sale and for loans that fall out of eligibility.
- Provide automatic extensions to First Legal and Reasonable Diligence timeframes for loans that fallout or are not included on award list.
- Eliminate the requirement that the tax and insurance disbursements be prorated based on the claim filing date. This requirement does not follow industry practices for non-performing loan sales and creates significant challenges because different tax authorities have different tax periods.
- Extend payment of interest from 30 days following the eligible claim submission start date to 60 days to align with the claim filing window.

6. **Purchaser/Bidder Comments**

We offer the following comments and feedback from the perspective of SFLS purchasers/bidders:

- Larger pool sizes are preferred to minimize negative impact of fixed transaction costs on the bid.
- Reduce the post-sale reporting period to 3 years.
- Modify Participating Servicer Agreements to clearly define requirements and timeframes as follows:
  - Establish a clear deadline for delivery of collateral files to the purchaser to include the endorsed Note or lost note affidavit if original Note not available, and executed Assignment of Mortgage.
  - Establish a clear deadline for the submission of trailing expenses by the prior servicer for reimbursement.
  - Provide clear transfer instructions with time limitations for submitting documentation and expense reimbursement.
  - Require documentation be updated for the interim servicing period to include servicing notes and loss mitigation actions since the date of transfer.
  - Clarify violations that would trigger repurchase/re-conveyance.

- Establish a servicing fee for award loans based on current market costs for the interim servicing period.

7. **Recommendations for additional FHA resources**

Additional FHA resources could improve the efficiency of the Program and make it easier for servicers to participate. For example:

- Provide dedicated, trained staff to respond timely to issues or questions from participants.
- Provide an automated process for supplemental claim submissions.
- Dedicate additional resources to assist with error code resolution and supplemental payment processes.

Conclusion

The SFLS Program maximizes recoveries to the MMI Fund, reduces claim costs, minimizes the time that assets are held by FHA, and helps keep borrowers—otherwise headed to foreclosure—in their home. FHA can enhance this important program and increase participation by revising SFLS policies and expanding loan eligibility criteria. We thank FHA for the opportunity to offer comments and feedback and would welcome the opportunity to meet with FHA representatives to discuss our suggestions in more detail. If you have any questions regarding our recommendations, please feel free to contact MBA's Sara Singhas, Director, Loan Administration, at (202) 557-2826 and ABA's Sharon Whitaker VP, Real Estate Lending, at (202) 663-5321.

Sincerely,

Pete Mills
Senior Vice President,
Residential Policy and
Member Engagement
Mortgage Bankers
Association

Rod J. Alba
Sr. Vice President,
Mortgage Finance
American Bankers
Association