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MORTGAGE BANKERS ASSOCIATION

February 6, 2023

The Honorable Julia Gordon
Assistant Secretary for Housing and Federal Housing Commissioner
Federal Housing Administration
U.S Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

RE: Mortgage Bankers Association's (MBA) Response to the Federal Housing Administration (FHA)'s Updated Single-Family Default Servicing Regulatory Priorities

Dear Commissioner Gordon,

The Mortgage Bankers Association (MBA)[1] has been a strong and longstanding advocate for modernizing the Department of Housing and Urban Development's (HUD) Federal Housing Administration (FHA) regulations.[2] We have reviewed HUD's recently announced regulatory priorities in the Office of Management and Budget's Fall 2022 Unified Agenda and Regulatory Plan.[3] Our industry currently faces many challenges to increase and preserve access to affordable homeownership. Accordingly, we offer additional insights and recommendations for HUD to consider in response to the unified agenda with the shared goal of continuing to reform FHA's default servicing regulatory policies to encourage greater participation.

One of the most significant remaining barriers to expanding participation in the FHA program has been the HUD regulations that govern the servicing of delinquent FHA mortgages. Today,

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[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 390,000 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 more than 2,100 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

[2] *See* Appendix A (attaching links to previous comment letters and policy recommendations MBA has submitted on specific issues over the years).

[3] Agency Rule List, OFFICE OF MANAGEMENT AND BUDGET, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Fall 2022), https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=2500&csrf_token=0027AC2DFD81AA93A68037950D4F591FA58AFDE93C5A14545B56EEC0053D577FF0EF41874AC88E33318EEF65F8BB3BCEBB7E.

we reiterate our longstanding request that HUD pursue rulemaking efforts to eliminate those burdens and decrease regulatory risk.

As market and industry conditions continue to evolve, MBA and its membership believe HUD should modernize its regulatory default servicing framework and further HUD's mission by:

1. Finalizing the increased 40-year term for loan modifications to provide borrowers access to sustainable home retention solutions to preserve homeownership;
2. Establishing a permanent Single Family Loan Sale and provide borrowers an additional opportunity to complete loss mitigation, while expanding conveyance alternatives;
3. Expediting reform of servicing claim curtailments requirements to reduce the cost to service a nonperforming FHA loan and improving front-end pricing;
4. Eliminating unnecessary regulation prescribing engagement with Single Family mortgagors in default;
5. Eliminating the partial claim as a subordinate lien to improve the borrower's loss mitigation experience and reduce administrative costs;
6. Amending the partial claim regulation to impose reasonable consequences for documentation delays instead of requiring servicers to completely remit all partial claims funds paid;
7. Allowing servicers to market properties with surchargeable damage through the Claims Without Conveyance of Title (CWCOT) Program to allow potential homeowners to purchase additional homes below market values;
8. Permitting direct conveyance of foreclosed properties with surchargeable damage to increase the supply of affordable housing and avoid a lengthy foreclosure process.

Once implemented, these changes will reduce costs, lower risk, and expand lender participation in the FHA program. They will allow HUD to protect the Mutual Mortgage Insurance Fund (MMIF) and local communities, while ensuring mortgage servicers are compliant with HUD's servicing policies. Importantly, these changes will also strengthen the value of Ginnie Mae Mortgage Servicing Rights (MSRs), which is critical for lenders and servicers to advance FHA's mission and provide stable access to credit for the communities FHA intends to serve.

I. In Response to HUD's Fall 2022 Unified Agenda and Regulatory Plan

a. Finalize the Increased 40-Year Term for Loan Modifications

First, we encourage HUD to finalize its recent proposal to allow modification terms up to 480 months before March 2023.[4] To overcome the challenge of today's high-interest rate

[4] Increased 40-year Term for Loan Modifications, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, 87 Fed. Reg. 19037 (April 2022), available at https://www.govinfo.gov/content/pkg/FR-2022-04-01/pdf/2022-06875.pdf.

environment, servicers need additional tools to preserve homeownership and achieve an affordable payment for borrowers that cannot be reached with a standard modification term of up to 360 months (or 30 years). Immediate action is necessary to allow FHA to establish an extended modification term as a permanent fixture in FHA's suite of loss mitigation options, even as a standalone option and especially for borrowers who may have maximized their allowable partial claim.

MBA welcomes FHA's recently announced expansion of the COVID-19 Recovery Loss Mitigation Options as a step in the right direction to preserving the critical features that delivered effective payment relief for borrowers throughout the pandemic. Suspending FHA-HAMP and updating FHA's Presidentially Declared Major Disaster Areas waterfall provides borrowers access to all available streamlined (i.e., limited documentation) solutions regardless of the reason for hardship in today's high-interest rate environment. However, FHA's updated policy is only temporary. Finalizing HUD's proposal to introduce an extended modification term up to 480 months (or 40 years) will provide the opportunity for mortgage servicers to permanently preserve the loss mitigation experience borrowers received during the pandemic, including creating additional alignment with the GSE modification.

Finally, as HUD finalizes its proposal, we encourage FHA and Ginnie Mae to provide an assessment of market trends on extended term modifications currently in Ginnie Mae's Mortgage-backed securities. We reiterate our support for potential changes to Ginnie Mae's extended term pools, including becoming eligible for multi-issuers. Extended term modifications are effective to provide additional payment reduction. Secondary market certainty must be maintained.

b. Establish a Permanent Single Family Loan Sale Program

MBA applauds HUD for working to establish a permanent Single Family Loan Sale Program (i.e., "SFLS" or "Note Sale").[5] The SFLS demonstration program helped stabilize communities and provide borrowers whose FHA prescribed loss mitigation options have been exhausted, a second chance to save their homes and avoid foreclosure. These goals have been achieved while also producing a better financial outcome for taxpayers. MBA believes a renewed Note Sale program can protect both the MMIF and the communities FHA serves.

HUD should propose a rule by March 2023 that implements many of the best practices and reforms that industry stakeholders recommended in response to HUD's 2019 Advance Notice of Proposed Rulemaking (ANPR).[6] MBA recommends that HUD propose (and subsequently

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[5] Federal Housing Administration (FHA): Single-Family Loan Sale Program; Advance Notice of Proposed Rulemaking and Request for Public Comment, FEDERAL HOUSING ADMINISTRATION, 84 Fed. Reg. 19748 (May 2019), available at https://www.govinfo.gov/content/pkg/FR-2019-05-06/pdf/2019-09124.pdf.

[6] Appendix A; *See also* Mortgage Bankers Association, Docket No. FR-6051-A-01, Re: Federal Housing Administration (FHA): Single-Family Loan Sale Program; Advance Notice of Proposed Rulemaking and Request for Public Comment, July 8, 2019, available at https://www.regulations.gov/comment/HUD-2019-0039-0018.

finalize) a simple regulatory framework that allows the FHA Commissioner to prescribe permanent guidelines for program participants in HUD's Single Family Housing Policy Handbook. [7] A simple framework will provide industry stakeholders, including FHA, the opportunity to evaluate whether the program is fulfilling its public policy objectives.[8] MBA looks forward to consulting with FHA in the near future on program guardrails and consumer protections that will strike the appropriate balance between encouraging servicer participation and ensuring borrowers have access to favorable outcomes. MBA also supports efforts to permit 'first-look' opportunities for non-profits and government entities to bid and purchase mortgage notes.

The SFLS can be particularly valuable in today's high interest rate environments by ensuring mortgage servicers can readily offer all possible alternatives to avoid foreclosure for borrowers facing financial hardship. Given that the prevailing note rates in FHA's portfolios are well below the market rate, the Note Sale offers a potential alternative where traditional solutions, such as a modification, may be ineffective. Nonetheless, ensuring borrowers are treated fairly and evaluated for all potential home retention solutions before terminating the mortgage insurance contract is vital. As FHA considers revitalizing its standard and natural disaster waterfalls to offer borrowers additional home retention solutions, MBA supports rulemaking efforts to secure the Note Sale as a sustainable fixture in FHA's permanent suite of loss mitigation alternatives.

c. Expedite Reform of Servicing Claim Requirements for FHA-Insured Mortgages

MBA welcomes HUD's decision to propose revisions to FHA's claim requirements for FHA-insured mortgages in April 2023.[9] Requiring mortgage servicers to curtail interest for missing any foreclosure deadline – the first legal action to initiate foreclosure, the reasonable diligence timeline to complete a foreclosure, or the conveyance timeline to deliver a property to FHA – has substantially increased the cost of servicing a nonperforming FHA loan beyond other portfolios. As foreclosures return to their pre-pandemic levels, instituting a pro-rata curtailment scheme, where servicers are penalized only to the proportion of the delay caused, is necessary and is likely to expand lender participation in FHA's program.

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[7] *See* Handbook 4000.1, FHA Single Family Housing Policy Handbook, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, FDEDERAL HOUSING AGENCY (June 2022), 4000.1.III.A.2.q (Distressed Asset Stabilization Program).

[8] Distressed Asset Stabilization Program, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, OFFICE OF INSPECTOR GENERAL (July 2017), available https://www.hudoig.gov/sites/default/files/documents/2017-KC-0006.pdf (explaining the regulation necessary to implement a permanent Single Family Loan Sale are 1) prescribing claims procedures for an assignment of mortgage upon default (24 CFR 203.355 - .371); and 2) giving HUD its own authority to dispose of properties acquired through an assignment, in addition to foreclosure (24 CFR 291.1 -.565).).

[9] Federal Housing Administration (FHA) Single Family Mortgage Insurance – Streamlining and Reform of Servicing and Claim Requirements for FHA-Insured Mortgages (FR 6206), OFFICE OF MANAGEMENT AND BUDGET, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Fall 2022), available at https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=2502-AJ53.

As part of this rulemaking, HUD should also consider additional recommendations. To start, MBA has consistently maintained that HUD should replace FHA's separate foreclosure timelines with one overall timeline. Creating a unified timeline allows mortgage servicers the flexibility to meet the final deadline without incurring extra costs, incentivizes responsible servicing, and minimizes potential disruptions to FHA. Additionally, the Consumer Financial Protection Bureau's (CFPB) Regulation X requires mortgage servicers to exhaust efforts to engage with delinquent borrowers to establish contact and prevent foreclosure. A unified timeline eliminates competing interests to juggle conflicting timelines and puts the regulatory focus on ensuring maximum engagement with borrowers. FHA should adopt this approach and strengthen alignment with the foreclosure time frames of Government-Sponsored Enterprises (GSEs), Fannie Mae and Freddie.[10]

While HUD considers a unified timeline, FHA should implement additional efforts to reduce compliance risk and minimize costs. First, the individual milestones should be extended to reflect the reality of foreclosure and the effects FHA policy, state laws, and judicial backlogs have on the process. Delays are often caused by meeting state requirements for publication, recording, possible title and HOA issues, and the time it takes to meet HUD's "conveyance condition" standard. FHA's own data demonstrates the inconsistency between HUD's required milestones and the actual time it takes to complete each process. In particular, the deadline to convey a property to HUD in conveyance condition in thirty (30) days after acquiring good and marketable title and possession of the property is impractical for mortgage servicers. Data and industry experience shows that all deadlines must be extended.[11]

Moreover, it is essential to preserve the clarity that FHA provided to the industry last year regarding the curtailment of property preservation expenses.[12] Mortgage servicers should only be required to curtail property preservation expenses incurred after missing the conveyance deadline. Reinstating previous FHA guidance to apply the same interest curtailment standards to property preservation expenses would unnecessarily roll back the progress these amendments sought to achieve. Mortgage servicers have a duty to convey a property in conveyance condition to decrease potential holding costs to HUD and to protect communities from blight. Mortgage servicers should be fully reimbursed for incurring those expenses to protect the mortgage collateral.

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[10] See Fannie Mae's Foreclosure Time Frames and Compensatory Fee Allowable Delays, available at [Fannie Mae Servicing](#).

[11] FHA's Reasonable Diligence deadlines are not set by regulation but instead by policy in FHA's Single Family Housing Policy Handbook. Like the deadlines for first legal action and conveyance that are set by regulation, FHA must regularly reassess the time it takes to complete a foreclosure based on industry and market experience.

[12] Mortgagee Letter 2022-08, *Establishing the Claims Standard for Reasonable Payments for Property Preservation and Protections Costs*, available at 2022-06hsgml.pdf (hud.gov) and now incorporated into FHA's Single-Family Housing Policy Handbook at 4000.1.IV.A.2.a.ii.(D)(3)

Finally, MBA restates our strong opposition to a maximum deadline for filing a claim for insurance. We do not believe HUD has the statutory authority to impose a claim deadline, given that the National Housing Act states that "insurance benefits **shall be paid** … and **shall be equal** to the original principal obligation of the mortgage"[13] and includes an incontestability clause expressly providing that any insurance contract executed by the Secretary "**shall be conclusive evidence of the eligibility of the loan or mortgage for insurance**, and the validity of any contract of insurance so executed shall be incontestable… except for fraud or misrepresentation."[14] Placing a maximum deadline on filing insurance is both contrary to law and will create uncertainty for Ginnie Mae investors, thereby diminishing financing and causing liquidity problems.

Given the projected health of the Insurance Fund, it is not clear what problem FHA is trying to solve with a claim filing deadline.[15] Terminating FHA insurance benefits after a certain time places the sole blame on servicers and once again would not recognize that state procedures, FHA procedures, and judicial foreclosure backlogs delay insurance filings. Servicers would be unfairly punished by the rigid requirements around the deadline for submitting a claim and for delays outside the servicer's control.

d. Eliminate Unnecessary Regulation Prescribing Engagement with Single Family Mortgagors in Default

MBA supports HUD's intention to amend its existing regulation that currently requires mortgage servicers to conduct face-to-face interviews before a borrower misses three full payments.[16] However, we urge HUD to go further. According to the Fall 2022 agenda update, HUD intends to require mortgage servicers to deploy alternative methods to conduct meetings with borrowers prior to foreclosure through virtual means. Certainly, regulatory flexibility that recognizes advancements in technology, borrower engagement preferences, and learned experience is always welcome. In this case, however, maintaining a regulatory requirement that HUD has recognized is unnecessary to help borrowers preserve homeownership does not advance additional consumer protections.

Instead, HUD should eliminate any regulatory requirement for mortgage servicers to engage face-to-face with mortgagors in default before three full missed payments are due once the current waiver expires at the end of the year.[17] HUD should implement the lessons learned throughout the COVID-19 pandemic and formally recognize what two Administrations already

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[13] 12 U.S.C. § 1710(a)(5) (emphasis added).
[14] 12 U.S.C. § 1709(e) (emphasis added).
[15] Annual Report to Congress Regarding the Financial Status of the Federal Housing Administration Mutual Mortgage Insurance Fund, FEDERAL HOUSING ADMINISTRATION, FY 2022, available at https://www.hud.gov/sites/dfiles/Housing/documents/2022FHAAnnualRptMMIFund.pdf.
[16] Modernization of Engagement with Single Family Mortgagors in Default (FR-6353), OFFICE OF MANAGEMENT AND BUDGET, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Fall 2022), available at https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=2502-AJ66.
[17] Except for Section 248 mortgages

have recognized - mortgage servicers have fulfilled the policy objective to engage borrowers through alternative methods without catastrophic consequences and without an FHA-specific requirement in place.

Under current CFPB rules, mortgage servicers have latitude to design effective outreach strategies to establish contact with borrowers in default, while also adhering to strict early intervention regulatory standards to engage delinquent borrowers.[18] Regulation X requires servicers to establish or make reasonable efforts to establish contact before the 36th day of delinquency. Servicers are also required to send an early intervention letter before the 45th day of delinquency. This letter also advises borrowers to contact their servicer or reach out to a housing counselor for additional assistance and available loss mitigation options.[19] As we move beyond the pandemic, mortgage servicers will continue to exhaust outreach efforts to establish contact and assist borrowers facing financial hardship. An FHA requirement to meet with borrowers virtually and continue to send unnecessary letters will continue to increase the cost of compliance without delivering additional value.

As an alternative, to ensure borrowers are informed of their available loss mitigation options, FHA should prescribe their call or script requirements, like the GSE's, in their handbook policies once contact is established.[20] Prescribing handbook standards will sufficiently ensure servicers have successfully met FHA's outreach requirements to engage delinquent borrowers.

II. <u>Future Priorities for the Unified Agenda and Regulatory Plan</u>

The following are regulatory priorities HUD should pursue in the near future.

a. Improve the Borrower Experience by Eliminating the Partial Claim as a Subordinate Lien

HUD should eliminate the partial claim as a subordinate lien to improve the borrower experience and help quickly resolve financial hardships after the COVID-19 pandemic. Currently, HUD regulations require mortgage servicers to execute documents for a non-interest-bearing subordinate lien in favor of the HUD Secretary (i.e., a promissory note and subordinate mortgage).[21] Moving forward, FHA should engage the industry in discussions

[18] *See* 12 CFR § 1024.39, *see also* Temporary, Partial Waiver of 24 CFR § 203.604 Servicing Responsibilities, Contact with the Mortgagor, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (December 2022), available at https://www.hud.gov/sites/dfiles/OCHCO/documents/Waiver-Face-to-Face-Reg-through-123123.pdf and https://www.hud.gov/sites/dfiles/OCHCO/documents/Waiver-Face-to-Face-HB-through-123123.pdf.
[19] *See* Appendix MS-4 to Part 1024- Model Clauses for the Written Early Intervention Notice, Appendix MS-4 to Part 1024 — Model Clauses for the Written Early Intervention Notice | Consumer Financial Protection Bureau (consumerfinance.gov)
[20] Fannie Mae Servicing Guide D2-2-01 Achieve Quality Right Party Contact with a Borrower
[21] 24 CFR § 203.371(c)

regarding the feasibility of structuring the partial claim as a deferred balance under the first lien mortgage. This change would not only eliminate the need for the mortgage servicer and HUD's contractor to track partial claim documents, but also save on the time and costs of recording advance the mortgage servicers' goal to create greater alignment across the industry.

b. Amend the Partial Claim Regulation to Impose Reasonable Consequences for Documentation Delays

If HUD does not eliminate the partial claim as a subordinate lien, HUD should reduce excessive penalties for documents that are not timely delivered to HUD's contractor. HUD's regulations currently require mortgage servicers to reimburse HUD for the entire partial claim amount paid, plus the incentive, if the note and subordinate mortgage are not delivered within prescribed timelines. Often, however, documents are misplaced by HUD's contractor. The financial, compliance, and operational risk rests with the mortgage servicer to resolve the issue, despite evidence by mortgage servicers documenting their timely delivery and the fact that HUD's policy requires servicers to advance corporate funds to reinstate the borrower's delinquency. Mortgage servicers may also misplace documents. The penalty is nonetheless excessive.

Therefore, we recommend that HUD eliminate this regulatory requirement altogether and impose a more reasonable guideline penalty that directly relates to the risk of loss to the Insurance Fund. One potential alternative remedy is considering a temporary indemnification under FHA's proposed Servicing Defect Taxonomy in the event a borrower redefaults and there is a real risk to the FHA Insurance Fund.

c. Allow Servicers to Market Properties with Surchargeable Damage through the CWCOT Program

HUD should consider additional efforts to expand FHA's Claims Without Conveyance of Title Program (CWCOT). FHA's CWCOT Program helps stabilize communities by providing potential homeowners with access to below-market homes. This program should be further expanded to allow for the inclusion of properties with surchargeable damages in the CWCOT. Currently, properties with surchargeable damage are not eligible to be sold via CWCOT sale.[22] Properties sold through CWCOT save HUD the cost of property preservation and holding the property for resale and give a wider audience of borrowers the opportunity to purchase homes quickly. Allowing properties with surchargeable damage would help potential borrowers to quickly find housing in areas impacted by natural disasters. This policy change should be paired with a requirement that servicers reduce their final claim by the amount necessary to repair the damage, thereby saving HUD the cost of repairing any damage.

[22] 24 CFR § 203.368 (b)

d. Permit Direct Conveyance of Foreclosed Properties with Surchargeable Damage

Finally, HUD should formalize procedures for a direct conveyance process that would expand access to the supply of affordable housing for owner-occupants, non-profits, and government programs. As an alternative to allowing mortgage servicers to market properties with surchargeable damage through CWCOT, HUD could consider allowing servicers to directly convey properties with surchargeable damage. Moving properties quickly to HUD's REO will increase HUD's flexibility to sell properties "as-is", avoid a lengthy conveyance process, reduce blight, and return properties to more productive uses. Like CWCOT, servicers would reduce the final claim by the amount of the damage.

We appreciate your consideration and the continued collaboration with the HUD team. Should you have any questions or concerns, please contact Brendan Kelleher at Bkelleher@mba.org or (202) 557-2779.

Sincerely,

Pete Mills
Senior Vice President
Residential Policy and Strategic Industry Engagement
Mortgage Bankers Association

Appendix A

MBA Comment Letter Policy Positions

#	Topic	Link	Year
1	**FHA's Increased Forty Year Terms for Modifications**	Here	2022
	a) A modification term up to 480 months should be available for both FHA-HAMP and Presidentially Declared Major Disaster Areas		
	b) A 30-year modification should be maintained as a core component of FHA's permanent set of loss mitigation programs		
	c) Flexibility should be provided to achieve a target payment reduction at a term less than 480 months		
	d) Ginnie Mae and FHA should ensure secondary market certainty before finalizing policy, including multi-issuer pools for extended term modifications		
2	**Single-Family Loan Sale Program**	Here	2019
	a) Establish a regular schedule of loan sales to increase predictability and reduce administrative burdens on servicers and FHA		
	b) Maintain consistent eligibility criteria across sales and lock qualified loans as of a specific date		
	c) Expand loan eligibility criteria		
	d) Revise contractual representation and warranties to reduce lengthy and costly conflict resolution		
	e) Revise claims policies by reimbursing BPOs, providing automatic extensions to First Legal and Reasonable Diligence timeframes, and extending the payment of interest from 30 days to 60 days		
3	**Reducing Regulatory Burden; Enforcing the Regulatory Reform Agenda**	Here	2017
	a) Amend the FHA foreclosure timelines and debenture interest curtailment structure		
	b) Adopt a direct conveyance model and continue to increase the use of alternative to conveyance claims		
	c) Standardize the FHA loss mitigation program to benefit borrowers and reduce costs		
	d) Eliminate outdate regulatory requirements, such as the face-to-face-interview		
	e) Amend the partial claim regulation to impose reasonable consequences for documentation delays		
4	**Federal Housing Administration (FHA): Single Family Mortgage Insurance Maximum Time Period for Filing Insurance Claims,**	Here	2015

Curtailment of Interest and Disallowance of Operating Expenses Incurred Beyond Certain Established Timeframes

a) Comments on the Proposed Maximum Timelines

   i. This proposal does not recognize the source of many impediments to timely conveyance and will introduce significant operational challenges for FHA

   ii. This proposal raises potential legal issues

   iii. This proposal could have a negative effect on FHA participation and thus access to credit for the borrowers FHA intends to serve

   iv. This proposal could have a negative impact on Ginnie Mae

   v. Credit and Capital Impacts

   vi. The proposal's cost-benefit analysis is not reflective of the actual costs of this proposal or the benefits that would accrue to FHA

b) Comments on FHA's Propose Changes to Curtailments

   i. See comments above and link for details.