



NEW YORKERS FOR RESPONSIBLE LENDING

June 14, 2017

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW., Room 10276,
Washington, DC 20410-0500

RE: Comments to Office of Secretary, HUD on 82 Federal Register 22344; Docket No. FR-6030-N-01; Reducing Regulatory Burden; Enforcing the Regulatory Reform Agenda Under Executive Order 13777

Dear Regulations Division:

The undersigned members of the Mortgage Working Group and the Federal Advocacy Group of New Yorkers for Responsible Lending (NYRL) respectfully submit these comments in response to HUD's request for input on its regulatory program. Our comments will focus on how HUD's current foreclosure alternatives program for FHA-insured loans avoids unnecessary payment of insurance claims and thus protects the mortgage insurance fund (Fund) and our communities. Payment of unnecessary claims harms the Fund and destabilizes neighborhoods.

As HUD's notice emphasized, a major goal of the agency is "to create strong, sustainable, inclusive communities . . ." In fact, HUD's insured mortgage program plays a significant role in building wealth and providing opportunity for low-and moderate-income homeowners, including those in communities of color. The mortgage insurance program facilitates the funding for approximately half of all home purchases made by African American and Latino households. Under the National Housing Act, Congress made clear that HUD's administration of the insurance fund must promote sustainable homeownership and protect the financial solvency of the Fund. HUD's continued long-term commitment to mandatory loss mitigation, as spelled out in its regulations, is essential to the ability of the agency to meet both goals.

NYRL is a statewide coalition of more than 160 non-profit organizations that promotes economic justice as a matter of racial and community equity through legislative and policy advocacy, popular education, media advocacy, and organizing campaigns. NYRL members represent community development financial institutions, community-based organizations, affordable housing groups, advocates for seniors, legal services organizations, housing counselors, and community reinvestment, fair lending, labor and advocacy groups. Coalition members have detailed knowledge of the array of unfair lending and abusive mortgage servicing practices that have caused tens of thousands of foreclosures and devastated communities across New York State, which have had a disproportionate impact on New York's low and moderate income communities of color.

While HUD has requested input on regulations that should be repealed, replaced or modified, we focus our comments on the preservation and strengthening of crucial FHA loss



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mitigation regulations. We offer the following recommendations for HUD to avoid costs associated with unnecessary claims and to stabilize homeownership and communities.

1) HUD's decades-long, modest loss mitigation procedural requirements avoid unnecessary payment of insurance claims by ensuring that lenders fully evaluate foreclosure avoidance options.

For decades, HUD has required lenders to take specified yet modest steps to ensure that they are actively working with homeowners to avoid foreclosure. These steps include notice requirements, a duty to have a face-to-face meeting, and an obligation to periodically evaluate a borrower's eligibility for foreclosure alternatives. The regulations do not require lenders to make impractical loan modifications, but rather to take limited steps to ensure that lenders are focused on avoiding unnecessary claims and ensuring that borrowers are treated fairly and uniformly. HUD's requirements are consistent with and complement the CFPB regulations, while addressing the particular needs of HUD's low- and moderate-income FHA borrowers.

For example, FHA rules, unlike the CFPB's requirements, ensure that a homeowner facing hardship is reviewed for loss mitigation that also serves the needs of the Fund each time a default occurs. HUD's requirement for lenders to engage face-to-face with borrowers has special value. The requirement recognizes the challenge that FHA borrowers have in communicating over the phone by requiring a lender representative to have a face-to-face meeting with the borrower early in the default process or to at least make a reasonable effort to have such a meeting. Because the meeting is early in the process, it can prevent extended and costly defaults. It is particularly important for borrowers who may have limited communication ability, including elderly borrowers and those with disabilities or limited English proficiency, and borrowers without access to technology. This requirement prevents the payment of claims by better facilitating cost-saving loss mitigation. The cost of compliance is outweighed by improved outcomes for homeowners and for the Fund. In addition, any advances HUD can develop to allow borrowers with access to technology to opt in to video meetings will only increase the requirement's efficiency and scope.

2) HUD's significantly improved menu of FHA loss mitigation promotes payment relief for FHA's unique borrower profile while limiting unnecessary insurance claims.

Between 2009 and 2012, HUD's loss mitigation options were not reaching borrowers and were not providing significant payment relief. Borrowers who received loss mitigation options during this time were re-defaulting at a high rate. HUD significantly revised the FHA loss mitigation program to promote greater payment relief and better limit avoidable insurance payouts. This has led to improved outcomes while still using HUD's standard options. HUD should continue the progress it has made while preserving access to options that are essential for FHA's low- and moderate-income borrowers.



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3) HUD's reverse mortgage rules protecting surviving spouses and ensuring loss mitigation options are available and enforced for borrowers who fall behind on property taxes and homeowners insurance has proven to be of tremendous importance in preventing avoidable foreclosures impacting vulnerable seniors.

HUD recently adopted prospective rules to ensure that after a death of a reverse mortgage borrower the surviving spouse has the option to remain in the home. In addition to managing grief and funeral expenses, such spouses have previously also faced foreclosure and eviction. HUD developed rules to avoid this fundamental unfairness, and these protections are of vital importance to both the individual families who benefit from these protections and the surrounding communities.

In addition, HUD's existing loss mitigation options for dealing with property charge defaults could be even more effective if servicers understand and comply with these protocols and were subject to consistent enforcement in instances of non-compliance. Furthermore, making repayment plans available to all reverse mortgage borrowers who have fallen behind on property charges and preserving the at-risk extension for borrowers with critical circumstances would also avert many avoidable reverse mortgage foreclosures and the associated adverse impacts on communities, as would allowing servicers to offer all loss mitigation options to HECM borrowers after foreclosure has been initiated.

4) Costs to the Fund could be reduced by amending the regulation that requires HUD to pay claims even in cases of lender non-compliance with loss mitigation regulations.

Current HUD regulations do not allow HUD to deny payment of a claim to a lender that fails to comply with loss mitigation regulations. Instead, HUD only relies on after-the-fact enforcement. This significantly reduces the incentive for lenders to comply with claims-saving regulations. Revising this rule to permit HUD to deny claims to non-compliant lenders where sufficient evidence of material non-compliance has been documented would be prove far more efficient and effective.

5) Revising HUD's program for selling loans through the Distressed Asset Stabilization Program (DASP) to ensure that HUD does not pay unnecessary claims by requiring pre-auction notice to borrowers and by enhancing its pre-claim screening process would produce better outcomes for distressed homeowners, the Fund, and communities.

Under DASP, HUD pays full insurance claims to lenders that claim to have exhausted foreclosure alternatives. Many FHA homeowners, however, have had their loans sold before they have been properly reviewed for loss mitigation. DASP administration is frustrating the goals of HUD's FHA loss mitigation regulations. When HUD is considering inclusion of a loan in an upcoming auction, it could require the lender to notify the borrower of the proposed action and inform the borrower that the servicer claims it has satisfied its FHA loss mitigation obligations, and that if the borrower has not been fully evaluated or is currently performing on a loss mitigation option, the borrower may contact HUD's National Servicing Center. Borrowers now



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do not receive such a notice and instead only find out about the sale and loss of FHA loss mitigation options *after* their loan is sold. Providing such a notice would not increase costs because the notice could be incorporated into existing systems for sending HUD-required notices. The notice will help HUD avoid payment of unnecessary claims because borrowers who have not received a full evaluation will be able to ensure the loan is properly assessed by working with HUD's National Servicing Center. Borrowers who have had a full evaluation are likely to welcome additional home retention opportunities available to them after a DASP sale. HUD could also ensure compliance by putting a system in place to ensure that lenders have documented compliance with loss mitigation prior to a DASP sale.

In addition to our comments on single-family mortgage loans, we also note that HUD's rules addressing Affirmatively Furthering Fair Housing (AFFH) and Disparate Impact under the Fair Housing Act are essential. These are important tools for ensuring housing opportunity and fair credit access for communities of color, as is continued funding for low-income housing programs

If you have questions about any of these comments, please contact Jacob Inwald, Director of Foreclosure Prevention, Legal Services NYC, at 646-442-3634 or jinwald@lsnyc.org.

Respectfully,

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Center for NYC Neighborhoods
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District Council 37 Municipal Employees Legal Services
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