September 11, 2020

Dana Wade
Assistant Secretary for Housing–Federal Housing Commissioner
Department of Housing and Urban Development
451 7th St S.W.
Washington, D.C. 20410

RE: Single Family Handbook Drafts Posted for Feedback

Dear Assistant Secretary Wade:

On behalf of the clients and communities we represent, we write to comment on HUD's proposed revisions to Single Family Housing Policy Handbook, Handbook 4000.1. We appreciate HUD's attention to the issues raised by both consumer advocates and industry stakeholders in developing the revised policies.

We strongly support HUD's decisions that reduce barriers to timely loss mitigation evaluations. The elimination of requirements for significant proof of borrower expenses was especially helpful considering the limited role that expenses play in HUD's loss mitigation waterfall. We had received reports of servicers requesting receipts for food and utilities based on the rule currently in place, and these requests unduly burdened borrowers and servicers alike. HUD's revisions eliminate any perception that such requests are necessary. Similarly, HUD's proposed requirements for hardship documentation are improved and consistent with policies at Fannie Mae and Freddie Mac. These revisions will also reduce the likelihood that servicers make unduly burdensome requests to borrowers about what caused them to fall behind in documenting the details of their financial hardship.

We greatly appreciate HUD's decision to refine but retain the waterfall for FHA's Home Affordable Modification Program (FHA-HAMP). The target payment approach created by HUD allows for the consideration of income and also recognizes the need to provide payment relief for borrowers in hardship. The changes to the waterfall provide clarity without disruption to the overall system. We commend HUD for this approach, which is the most appropriate in light of the needs of FHA borrowers.

We note, however, three significant issues that HUD should address in revising the proposed handbook.

First, HUD must better address the needs of homeowners remaining in the home who are seeking loss mitigation after a separation or divorce. For an existing borrower who is attempting to apply for loss mitigation without the participation of an absent co-borrower, HUD's proposed revision of the handbook does not provide clear exceptions to the general rule that all borrowers must participate in loss mitigation. This lack of clarity promotes unnecessary home loss, which hurts servicers and borrowers as well as the FHA insurance fund.

HUD must implement a clear policy of not requiring participation or signature of absent co-borrowers after a divorce, separation, in cases of domestic violence, or when a never-married co-borrower has relinquished all interest in the home. The policy must take into account the fact that co-borrowers who were never married may separate, and a married co-borrower may be unable to secure any cooperation from a spouse due to domestic violence and other legitimate barriers. We have proposed specific edits to the handbook to address these issues in our line-by-line comments.

Second, HUD must provide a clear policy on the inclusion of non-borrower household income. This can include the use of income from a spouse or other family member who is living in the home, but does not wish to be added to the loan. While HUD references non-borrower income in several places, it does not clearly state when and how it can be used. We propose that HUD allow for the inclusion of non-borrower household member income without requiring the non-borrower to be added to the loan. This is similar to the HAMP policy that was successfully implemented throughout the mortgage market. If a borrower is regularly contributing to the household's finances, it is sensible to allow the income to include these funds, especially since there are many legitimate reasons the individual may not be on the loan.

Third, especially in light of the COVID-19 pandemic and the increased levels of forbearance for FHA borrowers, HUD should strengthen the role of the National Servicing Center (NSC). We appreciate the NSC's work in facilitating agreements between borrowers and servicers. However, in cases where servicers fail to provide borrowers with loss mitigation they are entitled to receive, the NSC should specifically direct servicers to address these errors and should provide written notice to borrowers regarding their communications with servicers. Having a clear and effective escalations pathway is crucial to ensuring that FHA borrowers are able to obtain the loss mitigation for which they are eligible.

Thank you for your attention to these important issues. If we can provide any additional information, please reach out to Steve Sharpe (ssharpe@nclc.org).

Sincerely,

National Consumer Law Center (on behalf of its low-income clients)
Advocates for Basic Legal Equality (Ohio)
Americans for Financial Reform Education Fund
Atlanta Legal Aid Society, Inc.
Center for NYC Neighborhoods
Center for Responsible Lending
Community Legal Aid Services, Inc. (Ohio)
Community Legal Services of Philadelphia
Connecticut Fair Housing Center
Legal Aid Society of Columbus
The Legal Aid Society of Cleveland
Legal Aid Society of the District of Columbia
Legal Aid Society of Southwest Ohio
Long Island Housing Services, Inc. (New York)
Mid-Minnesota Legal Aid
Mountain State Justice (West Virginia)
National Alliance for Safe Housing
National Fair Housing Alliance
National Housing Law Project
Philadelphia Unemployment Project
Southeastern Ohio Legal Services