

# Comments to FHA Single Family Housing Policy Handbook

## Part II: Title II Insured Housing Programs Forward Mortgages

November 14, 2014

The National Consumer Law Center (on behalf of its low-income clients) and the Legal Aid Society of Southwest Ohio have prepared the comments below for HUD's consideration in revising the servicing sections of its Single Family Housing Programs Handbook

We also submit these comments on behalf of the following organizations: Atlanta Legal Aid (on behalf of its low-income clients), Bay Area Legal Aid (Oakland), Center for Responsible Lending, Community Legal Services (Philadelphia), Connecticut Fair Housing, Empire Justice Center (New York), Housing and Economic Rights Advocates (California), LAF (Chicago), MFY Legal Services (New York City), National Fair Housing Alliance, and United South Broadway Corp. (Albuquerque, NM).

For questions or comments please contact: Geoff Walsh, National Consumer Law Center, (617) 542-8010, [gwalsh@nclc.org](mailto:gwalsh@nclc.org) or Steven Sharpe, Legal Aid of Southwest Ohio, (513) 362-2788, [StevenSharpe@lascinti.org](mailto:StevenSharpe@lascinti.org).

### A. Summary

1. We greatly appreciate HUD's effort in creating a draft handbook on FHA servicing. If comprehensive, such a handbook would be able to serve as a one-stop source for all FHA guidance. Unfortunately, the draft handbook is not a comprehensive guide to HUD servicing rules despite HUD's plan for making such a guide. HUD has omitted several key provisions from previous guidance and regulations, including details regarding the escalation process, loss mitigation in bankruptcy, the face-to-face meeting, and the calculation of assistance under FHA-HAMP. For example, see comments at Page 39, Line 16; Page 42, Line 11; Page 44, Line 37; Page 46, Line 15; Page 51, Line 6; Page 51, Lines 11 and 30; and Page 53, Line 6. In a guide that seeks to serve as a single guide, such important topics must be included. To the extent HUD leaves out any relevant guidance, the handbook should clearly state that all previously issued guidance that is not contradicted by the handbook is still in place.
2. The handbook appears to make some changes in loss mitigation policy, including on eligibility for loss mitigation options. Not only are these changes inadvisable, but such changes should be properly vetted with stakeholders. For example, with respect to the special forbearance and FHA-HAMP discussions, HUD's handbook adds imprecise eligibility guidance to the waterfall HUD has provided, thus possibly creating new and unnecessary barriers to loss mitigation eligibility. See for example, comments at Pages 56-57; Page 68, Line 26; and Page 69, Lines 38-41.

3. The draft handbook lacks detail on several issues that have not yet been addressed by FHA mortgagee letters but that come up consistently in loss mitigation, including how gross income is defined, how to calculate self-employment income, and under what circumstances non-borrower income may be included. See comments at Page 46, Line 15; Page 48, Line 17; and Page 56, Line 37. Especially considering that the handbook is supposed to be comprehensive, HUD should provide detail on these significant issues, and our comments provide example language for addressing these issues.
4. The handbook omits any guidance on important issues related to people who are applying for loss mitigation after a death, divorce, or separation. This must be included, and we have provided language on these topics below. See comments at Page 46, Line 15.
5. Although the Distressed Asset Stabilization Program (DASP) is a significant piece of HUD's current asset strategy, there is no guidance provided about it in the handbook. HUD must provide clear and simple details about determining eligibility for the program, monitoring of servicer compliance, and collecting data from the sales. Exhaustion of loss mitigation prior to sale must be addressed. See, for example, comments at Page 4, Line 7; and Page 116, Line 6.
6. The draft handbook provides guidance that is contrary to regulatory text, especially with respect to its use of the term "borrower" rather than "mortgagor," which is the term used in HUD regulations. This is especially important since the term "borrower" is narrower in scope than "mortgagor," which, as a result, leaves some "mortgagors" outside of protections from previous guidance. See comments at Page 3, Lines 1-10; Page 36, Line 18; Pages 36-44; and Page 42, Line 30.
7. In several places, HUD's guidance either contradicts (for example, in connection with the discussion of partial payments) or fails to consider mandatory language from the CFPB's regulations. For example, see comments at Page 34, Lines 33-37; Page 50, Lines 36-37; Page 118, Line 36; and Page 126, Lines 1-6.
8. We understand that HUD worked with representatives of the lending industry to create this draft handbook and that those representatives were invited to contribute directly to the drafting process. HUD did not extend a similar invitation to homeowner advocates despite the fact that the FHA program is in place to support and stabilize homeowners. HUD should ensure that homeowner representatives receive the same access to the drafting process that the lending industry receives.

## **B. Our Comments**

Page 1, Lines 4-13: The paragraph suggests that this draft handbook is a comprehensive guide to loss mitigation. As spelled out in the comments below, the handbook is not comprehensive. HUD has omitted several key provisions from previous guidance, including details regarding the escalation process, loss mitigation in bankruptcy, the face-to-face meeting, and the calculation of assistance under FHA-HAMP. In a guide that seeks to serve as a single guide, such important topics must be included, and these comments will include examples of material that need to be added.

To the extent HUD leaves out any relevant guidance, the handbook should clearly state that all previously issued guidance that is not contradicted by the handbook is still in place. Such a sentence

regarding the continuing use of other handbooks and guidance should be placed in this first paragraph in order to ensure that servicers will continue to follow all relevant guidance.

Page 1, Lines 7-8: Add “in addition to all standards imposed by state and federal law”

HUD must make it very clear that insured lenders must both follow CFPB regulations in addition to its own regulations.

Will read: “The mortgagee must fully comply with all of the following standards and procedures, in addition to all standards imposed by state and federal law, when servicing a mortgage insured...”

Page 1 Lines 8-9, *Exceptions or Program-Specific Standards or Procedures that Differ from Handbook Content*: It is not clear to what the sentence starting in the middle of line 8 refers. It suggests an illogical reading to the effect that any standards that differ from those in the Handbook are contained in the Handbook. Instead, the text should state that to the extent that HUD publishes explanatory material that is consistent with standards and procedures in the Handbook, HUD intends such explanatory material to serve as guidance for program participants. As explained above, the handbook should clearly state that all previously issued guidance that is not contradicted by the handbook is still in place. However, in order to be a useful guide for both mortgagors and lenders, the handbook should clearly include the most important guidance that is in place already, and we have made several suggestions for current policy that should be included.

Page 1, Lines 34-45, *Obligation of Selling Mortgagee*: The text states that upon transfer of servicing the “selling mortgagee” relinquishes “all obligations” under the mortgage insurance contract. A transferring servicer must in fact remain responsible for ensuring that all relevant loan history and documents are transferred to the transferee servicer. The break-down in document transfers between servicers can be a significant impediment to loss mitigation reviews. This sentence should be qualified to state explicitly that a transferor or seller servicer must ensure that it transfers all documentation and other information related to the account history to the new servicer, regardless of the transfer date. This standard is consistent with the CFPB mortgage servicing rules. 12 C.F.R. § 1024.38(b)(iv).

Page 1, Line 34-45/General: These obligations must apply to both the transferor and new servicer to ensure that foreclosure is not improperly initiated or restarted during and following the transition.

Page 2, Lines 20-21: Same comment as Page 1 Lines 34-35, *supra*.

Page 2, Lines 36-37: After “requests for information” add “and requests for correction of errors.” This addition brings the text in line with the CFPB regulations on mortgage servicing.

Page 3, Lines 1-10: In several places, the handbook uses the word “borrower” instead of “mortgagor.” For example, 24 CFR 203.508 refers to “mortgagors,” but the handbook uses the word borrower.

In general, it is critical that HUD use language in this handbook that tracks the relevant regulations and that is precise. The term “borrower” seems to only cover people who signed the note and the mortgage and excludes people who only signed the mortgage. The regulation, however, uses the term “mortgagor,” which includes anyone who signed the mortgage. Based on the plain language of the regulations, any “mortgagor,” regardless of whether that person signed the note as well, is entitled to the protections of the regulations. For example, all mortgagors are entitled to notices and participation

in the loss mitigation process, and the handbook should reflect this. See, e.g., 24 C.F.R. 203.602 (notice to mortgagors) & 24 C.F.R. 203.604 (contact with mortgagors).

Therefore, based this regulation, HUD's handbook should not limit the applicability of its terms to "borrowers," and it should not improperly exclude other mortgagors. HUD should be careful in its definitions make clear that the protections of the regulations broadly encompass everyone who signed the mortgage or the note. These protections also apply to anyone who has the right to assume from someone who signed the mortgage or note.

Furthermore, HUD's lack of precision on these terms makes it a challenge to comment on this draft in a consistent manner.

In this specific section, HUD's handbook should ensure that mortgagees communicate and send notices to all mortgagors, whether they signed the note or not. Mortgagors have an interest in the real property that secures the note. Regardless of whether they signed the note, mortgagors stand to lose their interest in the property if the note is enforced through foreclosure.

Page 3, Line 5: After "written" add "publicly available".

Page 3, Lines 15-16: As explained above the use of the word "borrower" is confusing and overly narrow. A mortgagor who signed the mortgage but not the note is not a "third party" and should not be treated as such. Yet by focusing only on "borrower," the handbook seems to exclude mortgagors who are not borrowers. Servicers must communicate with anyone who signed the mortgage, whether or not that person signed the note as well. Such mortgagors are not third parties.

Page 3 lines 22-29 *Required Documentation*. In addition to our comments above, the term "Borrower" used here and as defined in the Glossary (p. 270 line 43) should also be expanded to require that servicers communicate with successors of the original mortgagors. This includes heirs and individuals who acquire an interest in the property through a marital settlement. Elsewhere in the text the Handbook should address these issues related to servicers' interactions with non-signatories to the note and mortgage who have legal rights to assume the mortgage debt. All loss mitigation options should be available to lawful successors of the original parties to the loan documents. These successors must be able to use to FHA's loss mitigation options to reinstate a loan and make ongoing payments.

Third party authorization formats must be reasonable, not require notarization or social security numbers of the authorized party, and be readily available on websites, especially if the servicer requires a specific authorization format. The monthly statement must inform the mortgagor that the authorization form is available on its website or upon oral request.

Finally, consistent with the discussion above, any person who signed the mortgage as well as any lawful successor to a person who signed the note or mortgage should be able to authorize a third party to communicate with the mortgagee.

Page 4, after Line 7: Add a paragraph requiring the mortgagee to provide written notice to a mortgagor of the proposed sale of a loan under the DASP program. The notice must include information about the nature of the proposed sale, the timing of the transfer, the consequences of a DASP sale, and a description of the servicer's loss mitigation activities to date, including how it implemented the FHA loss

mitigation waterfall for the loan, and contact information for the mortgagor to seek assistance if loss mitigation has not been exhausted.

Page 4, beginning Line 14, *Payoff Procedure Disclosure*: Add that, in addition to the requirements of this Handbook, in responding to mortgagor requests for payoff information the servicer must comply with all requirements of the CFPB mortgage servicing rules, including timing requirements.

Page 5, beginning Line 20, *Annual Notices to Borrowers*: Add that the requirements of this Handbook regarding account status notices to mortgagors do not supersede the servicer's duty to comply with all requirements for account status notices under the CFPB mortgage servicing rules.

Page 7, Line 6: Add to line 6: "and permissible under rules of the CFPB and any court-approved consent decree to which the servicer is a party."

Page 7, Line 26: Add after line 26: "The servicer may not charge the mortgagor for costs related to compliance with a request for information or request for correction of error sent under the CFPB rules. "

Page 7, Line 35: Change "Borrower" to "Mortgagor." Clearly any party who signed the mortgage should have a right to a copy of it.

Page 8, Line 4: Add: "and no endorsements or allonges have been added to the note since a copy was previously provided to the borrower. " Language also should be added indicating that servicers must comply with the Notice of Error and Request for Information regulations, including established timeframes, issued by the CFPB.

Page 8, Line 37: After "from HUD staff or from a HUD-approved counseling agency" add "borrower's attorney or other authorized representative."

Page 9, Line 28: Add: "In addition, the Transferor Servicing Mortgage must also forward all payments received from the mortgagor in a prompt and timely fashion to the Transferee Servicing Mortgage."

When mortgagors do not receive correct notice of the transfer, the transferor must ensure that payments are applied in a timely fashion. A mortgagor should not be penalized where the transfer notices were not properly provided.

Page 9, Line 31: Add at beginning of sentence: "In addition to complying with all Truth-in-Lending Act requirements for giving notice of sale to the mortgagor, ...."

Page 9, Line 34: Add a provision after line 34 providing that the servicer must also give written notice to the mortgagor of a proposed sale of loan under the DASP program. The notice must include information about the nature of the proposed sale, the timing of the transfer, the consequences of a DASP sale, and a description of the servicer's loss mitigation activities to date, including how it implemented the FHA loss mitigation waterfall for the loan, and contact information for the mortgagor to seek assistance if loss mitigation has not been exhausted.

Page 15, Line 20: *Hazard Insurance*. Add after line 20: the mortgagee must comply with all rules for imposition of force-placed insurance set forth in the CFPB rules, 12 C.F.R. §1024.37.

Page 17, Line 15: Add at the beginning of line 15: The mortgagee must comply with all CFPB regulations related to application of payments, including use of suspense accounts set forth in 12 C.F.R. 1026.36.

We specifically address a problem with the Handbook's provision on treatment of late fees in the application of payments, below at the comments directed to p. 34, lines 33-37.

Page 22, Lines 7-38: Regarding Modifying a Performing Mortgage, it is unclear how this interacts with the ability to use FHA-HAMP for a loan in imminent default. The imminent default mortgage is still performing, but there is no reference to FHA-HAMP or imminent default in this section. For clarity, HUD should explain how this works.

Page 23, Lines 25-27: The lender should not charge a fee for modifying a loan that is in imminent default consistent with the HAMP approach. As with loans in default, a modification based on imminent default presumes a mortgagor who is facing a challenging financial situation. As with loans in default, the mortgagor should not be charged a fee.

Page 30, beginning Line 32: *Borrower's Consent to Voluntary Termination of FHA Mortgage Insurance*. A similar form is appropriate for and should be adopted in connection with termination of insurance through a sale under the DASP program.

Pg 32, Line 18: Insert from ML 2014-16 the following:

"In addition to any requirements for retaining hard copies or originals of foreclosure-related documents, documents relating to loss mitigation review must also be retained in electronic format. These documents include, but are not limited to:

- Evidence of the servicer's foreclosure committee recommendation;
- The servicer's Referral Notice to a foreclosure attorney, if applicable; and
- A copy of the document evidencing the first legal action necessary to initiate foreclosure and all supporting documentation, if applicable (See Mortgagee Letter 2013-38).

All servicing files must be retained for a minimum of the life of the mortgage loan plus seven years. Pursuant to 24 CFR 203.365, for mortgages where FHA insurance has been terminated and a claim has been filed, the claim file must be retained for at least seven years after:

- the final settlement date, which is the date of the last acknowledgement or check received by the mortgagee in response to submission of a claim, or
- the latest supplemental settlement date, which is the date of the final payment or acknowledgement of such supplemental claim."

Page 32, Line 40: Consistent with our previous comments, HUD should change "Borrowers" to "Mortgagors." This is especially important to change because the NSC should be available to assist all mortgagors.

Page 32, Line 40: Add after "counselors" the following: "attorney or other authorized representative."

Page 33, Line 13: The statement about late charges being assessed if the payment is not made when due contradicts the contracts, in which late charges are generally not assessed until the loan is 15 days past due. The language should clarify this by referring to the note contract.

Page 33, Line 18: *Late Charges*. Add after line 18 language consistent with terms of 24 C.F.R. § 203.25 that late charges are intended to cover servicing and other costs attributable to receipt of payments

after the due date. This will clarify that late fees must not be penalties unrelated to incremental costs incurred by the mortgagee due to tardy receipt of funds.

Page 33, Line 18: *Late Charges*. Add after line 18 a provision stating that the mortgagee may not pyramid late fees, meaning that the mortgagee may not impose a late fee attributable solely to the mortgagor's nonpayment of a late fee on an earlier payment when the subsequent payment is otherwise a timely periodic installment. This provision is consistent with the CFPB mortgage servicing rules (12 C.F.R. § 1026.36 (c)(2)) and the terms of the 2012 National Mortgage Settlement.

Page 33, Line 18: *Late Charges*. Add after line 18 that a mortgagee shall not impose a late charge during periods when a mortgagor is being reviewed for loss mitigation options after submitting a complete application or while the mortgagor is in compliance with a loss mitigation option, including while making payments on a trial or permanent loan modification.

Page 34, before Line 10: *Prompt posting of payments*. Although the text addresses partial payments and payments for loans in default, the Handbook does not describe a mortgagee's duty to credit payments in a timely manner when a loan is not in default.

HUD should add text before line 10 on *Timely Posting of Payments*. This may incorporate language similar to that of the National Mortgage Settlement, which states, "Servicer shall ensure that properly identified payments shall be posted no more than two business days after receipt at the address specified by Servicer and credited as of the date received to borrower's account."

Page 34, after Line 21: *Partial Payments*. Add to text after line 21 that Mortgagee must disclose to the mortgagor when any partial payment is placed to a suspense or trust account and in this notification describe the standards under which the partial payment will be applied to the Borrower's account. Such notification is required both under the CFPB rules and the National Mortgage Settlement servicer guidelines.

Page 34, Line 33-37: *Application of Partial Payments Totaling a Full Monthly Payment*. The draft Handbook text provides for application of payments and removal from suspense accounts "after deduction of amounts due to the mortgagee for late charges and refunds of mortgage advances" (lines 34-35). Thus, the mortgagor's payment must include items such as late charges and escrow advances due with an installment before the payment will be applied. The CFPB "Prohibited Acts or Practices" rule for mortgage servicing states that "A payment qualifies as a periodic payment even if it does not include amounts required to cover late fees, other fees, or non-escrow payments a servicer has advanced on a consumer's behalf." 12 C.F.R. § 1026.36(c)(1)(i). The CFPB rule requires that the servicer promptly credit a "periodic payment." *Id.* A periodic payment as the CFPB defines it is not to be placed into a suspense account even though it does not include items such as a late fee. The draft Handbook text is clearly inconsistent with the CFPB rule and the qualification on application of payments should be deleted.

Page 34, Line 37: Clarify final phrase in sentence by stating, "but, in the event of a continuing delinquency, not the date on which the account first became delinquent."

The additional phrase clarifies the situation in which this would apply.

Page 35, Lines 21-31: *Exception to Partial Payment Acceptance Rules on a Defaulted Mortgage*. We recommend that HUD delete both exceptions discussed on page 35, lines 21-31. The exceptions described in lines 21-31 are too vaguely worded to serve as guidance, and the exceptions text should be deleted. Including these loosely drafted exceptions will encourage mortgagees to ignore the general rule outlined in lines 1-20 of this same page. In particular, allowing the mortgagee to avoid the general rule whenever the mortgagee decides that a borrower demonstrated a “general disregard” of the mortgage obligation sets a highly subjective standard. The second exception addresses a need to control speculators. While speculators are a problem, the relationship between acceptance of partial payments and control of speculators is very tenuous. Like the “general disregard” exception, the speculator exception invites excessive discretion and will likely subvert the primary rule. In addition, HUD should ensure that the proposed exceptions to the partial payment application rules when a borrower is in default are compliant with the CFPB requirements.

Pg. 36, Lines 1-4: The handbook excludes “loan modification” from the possible options for people in imminent default without providing any grounds for doing so. Clearly, if mortgagors in imminent default can receive FHA-HAMP, there is no sound policy justification for excluding loan modifications if that is what the FHA waterfall demonstrates as the appropriate loss mitigation tool. Previous HUD guidance on the topic was unclear about whether imminent default borrowers could receive a loan modification outside of FHA-HAMP. HUD, the handbook should not exclude this option. If the homeowner should receive a loan modification under the waterfall and meets the definition of imminent risk of default, there is no reason to see if the mortgagor falls a few months behind before making the offer.

Page 36, beginning Line 18: *Communication with Authorized Third Parties on Delinquent Mortgages*. The text in lines 20-30 refers to a requirement that authorizations be signed by “all Borrowers on the mortgage” or “the Borrower.” The Appendix Glossary defines “Borrower” to be “each and every Borrower on the loan application.”

The Glossary definition is functionally inappropriate for this authorization section. The authorization requirement should reflect a reasonable standard. For example, when there are co-signors to a promissory note and all are some of the co-signors are unavailable, it is perfectly acceptable for one co-borrower to give a valid authorization for release of information regarding an account for which he or she is liable. The term “Borrower(s) on the mortgage” is confusing. As discussed elsewhere in these comments, the Handbook must distinguish between signatories to the mortgage and signatories to the promissory note, or clearly refer to signatories to both documents when this is intended. A party to either the note or the mortgage has an interest that is affected by loss mitigation and foreclosure decisions. That interest could be in the debt, the real property securing the debt, or both. A release or authorization signed by a signatory to either the note or mortgage should be sufficient for access to account information. A lawful successor to a signatory to the note or mortgage should also be able to authorize the release of information. Unreasonably burdensome requirements to sign authorizations can significantly impede loss mitigation and lead to unnecessary foreclosures.

Pages 36-37, Line 36 on page 36 to Line 7 on page 37: Change “borrowers” to “mortgagors” – this is consistent with our comments thus far, and it is especially critical that the servicer reach out to all mortgagors.

Page 37, Lines 4-5: There is valuable language from Handbook 4330.1 and ML 2013-39 that should be included.

First, from 4330.1: “In communicating with mortgagors, the servicer should make a real effort to determine the root cause of default and work with the mortgagor, HUD-approved counseling agencies, and HUD Field Offices in correcting the default by attacking the underlying reason.”

In addition, from Handbook 4330.1:

“Mortgagee personnel must be aware of the psychological differences and varying life styles among mortgagors. Servicing practices that are effective with one mortgagor may not be effective with another. When the mortgagee made the decision to make the mortgage loan, provided it was insurable by HUD or when acquiring the servicing of a mortgage from another mortgagee, at that time it committed itself to assume the added costs and effort required to service those mortgages in accordance with HUD guidelines should they become delinquent.”

“A successful collection department is one that incorporates both understanding and flexibility into its operations. There is no substitute for human judgment in servicing, and the function must not be relegated to automated systems or encased in a rigid system.”

Second, from ML 2013-39: “Prompt and effective contact with all delinquent borrowers is essential in ensuring that delinquencies are properly addressed. This includes ensuring that notices and communications are provided in a manner that is effective for persons with hearing, visual, and other communications-related disabilities. Servicers must also ensure that their contact attempts are adequately documented in their servicing files.”

Page 37, line 6: The chart does not make a clear reference to the lender’s obligations under 24 CFR 203.605 requiring monthly evaluations. This obligation starts before day 90. However, the first mention of evaluations on the chart is listed at day 90.

Pages 36-44: As explained above, the draft handbook imprecisely uses the term “borrower” instead of “mortgagor” in discussing servicer obligations on important topics such as who should receive notice and who should participate in the face to face meeting. The servicing regulations at 24 CFR 203.602 (notice) and 24 CFR 203.604 (face-to-face meeting) use the term “mortgagor” instead of “borrower” when discussing a servicer’s obligations. A “mortgagor” signs the mortgage but may not sign the promissory note. The handbook should be more precise and consistent with HUD regulations.

Page 38, Lines 26-28: *Electronic Methods of Communication* : Add a statement clarifying that the mortgagor must expressly consent to receiving electronic communications. Merely providing an email address on a loss mitigation application is not consent to receive electronic communications.

Page 39, Line 16: Before addressing the notice that must be sent, the handbook should include valuable language from ML 2013-39 (although it should be adjusted to conform to our points about the use of the term “borrower”): “HUD requires that all parties on the mortgage be advised of a default. Therefore, for mortgages in default, servicers are responsible for contacting each borrower on the mortgage, whether or not that borrower occupies the mortgaged property, and HUD considers it prudent servicing that a notification of default also be sent to any co-signers.”

Page 39, Line 20: *Required Notices to Borrower by 45<sup>th</sup> Day of Delinquency*. The HUD-2008-5-FHA “Save Your Home – Tips to Avoid Foreclosure” Pamphlet should be sent as part of the 45-day notice required by the CFPB rule, 12 C.F.R. § 1024.39(b). The CFPB rule requires, *inter alia*, that the initial default notice

contain “a statement providing a brief description or example of loss mitigation options that may be available from the servicer.” The HUD-2008-5-FHA pamphlet contains this description. When the mortgagee sends this pamphlet to a mortgagor (at the 45<sup>th</sup> day of delinquency and at the 60<sup>th</sup> day), the mortgagee should provide a cover letter that clearly informs the borrower that the loan is FHA-Insured and that the mortgagee will review the mortgagor for all the FHA-options described in the pamphlet.

Page 39, Lines 22-23: *Required Notices to Borrowers by 45<sup>th</sup> Day of Delinquency*. In referring to the “RESPA regulations on early intervention requirements for certain borrowers” the text should mention specifically 12 C.F.R. § 1024.39(b), where the CFPB specifies the mandatory notice content.

Page 42, Line 1: *Determination that the Property is Vacant or Abandoned*. HUD should add sentence stating that “The servicer must send a letter via first class mail to mortgagors at the property address informing mortgagors of determination that the property is vacant or abandoned. This letter should give the mortgagor contact information to correct the information.”

This is necessary because there have been erroneous determinations, such as when a mortgagor is temporarily absent from the property due to illness or family emergency. In addition to avoiding unnecessary repeated property inspections and potentially incorrectly securing the property, an erroneous determination will also lead to a denial of loss mitigation on the grounds that the property is not the principal residence of the mortgagors.

Page 42, Line 11: *Face-to-Face Interviews*. Beginning at Page 42, line 11, the draft text of this section omits significant content found in the HUD regulation. For this reason, unless revised, the text will lead to increased non-compliance with 24 C.F.R. § 203.604 and hinder loss mitigation in general.

The following significant issues must be addressed:

1. The text must state explicitly (as does the codified regulation) that the mortgagee must make a “reasonable effort” to arrange the face-to-face meeting. The draft’s use of the word “attempt” allows a wide range of subjective interpretation. Instead of merely requiring a vague “attempt” to conduct the meeting, the regulation requires a “reasonable effort” and defines the elements of this reasonable effort. This entire approach must be incorporated into the handbook.
2. The specific elements on what constitutes a “reasonable effort” must be included in the new Handbook. The regulation currently states: “A reasonable effort to arrange a face-to-face meeting with the mortgagor shall consist of a minimum of one letter sent to the mortgagor certified by the Postal Service as having been dispatched. Such a reasonable effort to arrange a face-to face meeting shall also include at least one trip to see the mortgagor at the mortgaged property, unless the mortgaged property is more than 200 miles from the mortgagee, its servicer, or a branch office of either, or is known that the mortgagor is not residing in the mortgaged property.” 24 C.F.R. §203.604(d). HUD’s existing Handbook 4330.1 includes this language and further adds another clause that should be included about the visit to the home that must also be added: “at least one visit to the property (unless the distance is over 200 miles) for which at least one of the reasons for the visit must be to conduct an interview with the mortgagor.” This clause makes it clear that the person doing the visit must have the authority to do the visit (see below), and this is important. Such specific language on “reasonable effort” must be added.

3. The Handbook must include clear language addressing the authority of persons conducting face-to-face meetings and the level of familiarity such persons should have with FHA options. The Handbook should include language as follows : “The mortgagee’s representative who conducts the face-to-face meeting must be familiar with FHA’s loss mitigation options, have authority to consider the borrower for all FHA options, and be able to bind the mortgagee to an agreed-upon option.” The draft Handbook contains the following statement (which also appears in Handbook 4330.1) describing the authority of the mortgagee’s representative conducting the face-to-face interview: “The employee representing the mortgagee at these interviews needs to have the authority to propose and accept reasonable repayment plans and/or limit their actions to the realm of that authority.” This sentence is narrow and confusing. By starting the second clause with “and/or” HUD makes it unclear how the second clause could even apply in light of the requirement to have authority. Both the first clause in the text and the purpose of the face-to-face meeting make clear that the interviewer must have some authority to make a loss mitigation decision. The second clause appears to be a drafting error in the text, which is especially important to fix because we have seen servicers send unrelated third-parties, like property inspectors, to homes and claim it counts toward the face-to-face requirement. This should be corrected by substituting language as proposed at the top of this paragraph. While the existing text could be edited by deleting “and/or limit their actions to the realm of that authority,” The remaining text focuses only on “reasonable repayment plans” which is not clearly as broad as the range of FHA loss mitigation options.
4. In order to make the authority requirement clearer, HUD should add back a statement from Handbook 4330.1 that clarifies the entire paragraph: “The interview has little value if the mortgagee's representative must take proposals back to a superior for a decision.” This sentence, which is already part of HUD policy, clarifies the role of the interviewer.
5. Language must be added clarifying the scope of the exception to the face-to-face meeting requirement applicable when the property in question “is more than 200 miles from the mortgagee, its servicer, or a *branch office* of either” . 24 C.F.R. 203.604( c ), (d) (emphasis added). As interpreted by numerous appellate courts, the plain meaning of a “branch office” is any branch of the mortgagee company, including an office where loans are originated, serviced, or other financial products of the institution are marketed to consumers. This should be added to the Handbook.
6. Language must be added to clarify what does not constitute a face-to-face meeting. Such language should provide, “An occupancy inspection is not the same as an attempt to arrange a face-to-face meeting since it only addresses whether the borrowers reside in the home. We have seen servicers attempt to use occupancy inspections as sufficient for the face-to-face meeting rule, and this practice should be stopped.

The text requires that the mortgagee notify “each Borrower, co-signor, and any other party requiring notice by state law that the mortgage is in default.” As noted elsewhere in our comments, the draft Handbook must avoid using the term “Borrower” where mortgagor or similar terminology would be more accurate and particularly without significant revision of the Glossary definition of “Borrower.” In this section, the text should require notice, *inter alia*, “to all parties who are signatories to the note and/or the security instrument (mortgage or deed of trust).”

Page 42 beginning Line 33. *Vacant Property Inspections* The proposed text addresses the schedule for inspections after a property has been determined to be vacant. The text does not address with any specificity the issue of when inspections should take place when a loan is in default and the mortgagee has not determined that the property is vacant. This is a controversial subject. Unless subject to oversight, mortgagees may conduct unnecessary property inspections while loans are in default. *See, In re Stewart*, 391 B.R. 327 (Bankr. E.D. La. 2008) (disallowing large national mortgage servicer’s claim for costs of unnecessary property inspections). Inspections are unnecessary when a mortgagee is in regular contact with a borrower during loss mitigation review or while the borrower is complying with an approved loss mitigation option. Mortgagees nevertheless assess costs for monthly visual inspections against the borrower’s account under these circumstances. The mortgagee eventually includes these unnecessary charges in the claim for insurance reimbursement from HUD. As noted in the *Stewart* decision, mortgagees may have a pecuniary interest in accumulating these charges because the costs are paid to an affiliate of the mortgagee.

Given these concerns, the Handbook should add a provision stating “Mortgagees should conduct periodic inspections of properties that secure loans in default. Mortgagees should authorize inspections as reasonably necessary to determine whether a property is vacant. However, the mortgagee must not charge the loan account for unnecessary inspections. Inspections are unnecessary when the mortgagee continues to be in regular contact with the mortgagor, loss mitigation options are under consideration or in place, and the mortgagee has no reliable information from any source indicating that the property is vacant.”

Pg. 44, Line 37: Mortgagee Letter 2000-05 includes very clear and strong language regarding the mandatory nature of loss mitigation and this language should carry on into this new handbook.

Add: “Though lenders have great latitude in selecting the loss mitigation strategy appropriate for each borrower, it is critical to understand that **PARTICIPATION IN THE LOSS MITIGATION PROGRAM IS NOT OPTIONAL**. Loss mitigation is required under 12 U.S.C. 1715u and 24 CFR part 203.

Page 45, Line 1: After line 1, add as separate bullet points: Implement all loss mitigation options for which the mortgagor is eligible and the mortgagor accepts; Refrain from proceeding with foreclosure when a mortgagor has expressed a willingness to be considered for loss mitigation and the mortgagee has not considered the mortgagor for all available loss mitigation options;

Page 45, Line 8: Revise text to say: “Document all loss mitigation actions, including all efforts to contact mortgagor, and retain all documentation used to make loss mitigation determinations including the application of the FHA Loss Mitigation Waterfall.”

Pg. 45, Line 10: Add “for loss mitigation eligibility” between “each mortgage” and “monthly until” to read “re-evaluate each mortgage monthly for loss mitigation eligibility until ...”

Page 45, Line 18: Add before period ending sentence: “or to waive any legal right under state or federal law as a condition to implementation of a loss mitigation option.”

Page 45, Line 20: We have a general comment regarding eligibility and also regarding the terminology used below. At this point, we must again specify the difference between borrowers and mortgagors and make sure that the use of those terms is intentional.

It is our understanding that HUD, consistent with other programs, will generally require all borrowers, which means all people who signed the note, to participate in loss mitigation requests and to provide financial information subject to exceptions for death and divorce. In evaluating loss mitigation options, HUD will look at borrower income because that income was used for evaluating the loan. If a non-borrower who now owns the home wants to participate in loss mitigation, that person should be evaluated for a simultaneous loan modification and assumption. These loss mitigation evaluation issues are different than the process and notice issues described above.

As we have pointed out in our September 8, 2014 and October 20, 2014 letters to HUD, there is a lack of clarity on these points, and HUD needs to provide guidance. Over the next few pages, we suggest language that HUD could put in place to avoid ambiguous issues. In these sections, we seek to carefully use the term “borrower” as someone who signed the note in order to clarify how a loss mitigation evaluation should proceed. We ask HUD to be precise in the use of terms.

Page 45, Lines 21-24: Add at the end of line 24: “or in imminent default.”

Pg. 45, Lines 25-35: The operation of the waterfall as described by the language is ambiguous and confusing. It appears that the point of this is to show at what point borrowers begin to become eligible for options. We recommend that the text should be set out as a timeline with imminent default options first, then 61 days delinquent, then 91 days delinquent.

Pg. 45, Lines 31-35: There are two issues with this text. First, it is unclear from the text whether the limit on FHA-HAMP partial claims to loans that are 91 days or more behind applies only to stand-alone FHA-HAMP partial claims or whether it also includes partial claims that are combined with FHA-HAMP loan modifications. Since HUD guidance clearly allows for FHA-HAMP in situations of imminent default and since the FHA-HAMP waterfall may require the use of a partial claim in calculating the mortgagor’s target payment, it seems that partial claims in connection with FHA-HAMP modifications should be allowed and this language should be clarified. Second, there should not be any limit to loans in default 91 days for Stand Alone FHA-HAMP partial claims because that rule is nowhere in ML 2012-22 or ML 2013-32.

Therefore, lines 30-31 should be deleted and line 34 should just say “FHA-HAMP.”

Page 45, Line 40: Add sentence to paragraph: “The mortgagee must not offer or implement a Home Disposition Option unless the mortgagee has evaluated the borrower for all Home Retention Options and informed the borrower of the outcome of these evaluations.” This statement is consistent with the expressed intent of the CFPB’s RESPA mortgage servicing regulations. These guidelines require that servicers evaluate borrowers in writing for “all available loss mitigation options” when a borrower requests consideration for loss mitigation. The servicer must not limit evaluations to only those options

that the borrower specifically requests. When borrowers are unaware of what all the available loss mitigation options are, they cannot make informed decisions about accepting a particular option.

Pg. 46, Line 15: Add as a new subsection after “(B) Owner Occupancy”

**“Non-borrower owner-occupants:** A non-borrower who is or becomes an owner of a property in connection with the death of a borrower or divorce from a borrower is eligible to apply for loss mitigation assistance in connection with assumption of the loan. The non-borrower owner-occupancy should be evaluated for loss mitigation as if she were a borrower. If approved for a loan modification, the non-borrower owner-occupant should be approved for a modification and assumption. In this context, non-borrower means a person who did not sign the promissory note and may include people who signed the mortgagor and people who did not sign the mortgage.”

This policy is consistent with the general policy of free assumability of FHA loans and is required to bring the handbook into compliance with the Garn St Germain Act, which prohibits enforcement of due on sale clauses in such cases. HUD’s Handbook 4330.1-Rev 5 states under the “POLICY OF FREE ASSUMPTION” that “Mortgagees must not impose, agree to or enforce legal restrictions or conveyances, or on assumptions, unless specifically permitted by CFR 203.512, or specified in a junior lien granted to the mortgagee after settlement.” Handbook 4330.1 Rev-5 chapter 6 at 6-1. The text of 24 C.F.R. § 203.512 acknowledges the Garn St. Germain exception for exercise of due-on- sale clauses in the case of devise or descent. The new servicing handbook should further specifically address the other Garn St. Germain exceptions, including the exception for divorce.

Recently, we communicated with HUD for further clarification regarding its policy on the above topic. We sought clarification of HUD’s policy in a September 8, 2014 letter, and we received a response on September 30, 2014. However, as explained in our recent letter, dated October 20, 2014, HUD’s policy regarding homeowners who are not borrowers but who have obtained ownership due to death or divorce remains unclear.

Pg. 46, Line 15: Add as a new subsection after “(B) Owner Occupancy”

**“Death or Divorce of Co-Borrower:** An occupying co-borrower may be considered for loss mitigation if a quitclaim deed evidencing that the non-occupying co-borrower has relinquished all rights to the property has been recorded. All changes in ownership due to death or divorce of the current owners must be supported by legal documentation. In such a case, the occupying co-borrower need not supply the income information of the non-occupant co-borrower or have the non-occupant co-borrower sign loss mitigation documents.”

The above language includes language from current FHA policy found in Attachment to Mortgagee Letter 2009-23 (second sentence) and also language from the HAMP Handbook 4.4 (first sentence, which was slightly edited to remove reference to “HAMP”). The suggested paragraph is consistent with HUD policy and clarifies the proper standard for the death or divorce of co-borrowers. If a borrower has an ex-spouse that has disappeared or is hostile, surely that borrower should not lose their home automatically due to non-participation of their ex-spouse.

It is important to note again, as explained above, that the use of the term “borrower” here is intentional. In general, the servicer will evaluate the income of a borrower who is actually on the note because it is generally the borrower’s income that was used for evaluating the loan underwriting and so

it is the borrower's income that is used for evaluation loss mitigation. This section addresses when a co-borrower need not be part of the loss mitigation process even though that person did sign the note.

The handbook should also clarify the standard for a death or divorce mid-trial plan, as the HAMP Handbook does (with slight edits below):

If during a trial plan, the mortgagee learns that a co-borrower occupant has inherited sole title to the property upon the death of another co-borrower or was awarded sole title to the property through a divorce decree or other action, the servicer must notify the remaining co-borrower occupant of the availability of the following options: (1) continuation of the existing trial plan and conversion to a permanent modification; (2) termination of the existing trial plan and immediate evaluation for a new trial plan based on the income of the remaining co-borrower occupant; or (3) termination of the trial plan immediately followed by consideration of any other loss mitigation options that may be available.

Recently, we communicated with HUD for further clarification regarding its policy on the above topic. We sought clarification of HUD's policy in a September 8, 2014 letter, and we received a response on September 30, 2014. However, as explained in a recent follow up letter, dated October 20, 2014, HUD's policy regarding participation of co-borrowers who no longer have ownership in property due to death or divorce remains unclear.

Pg. 46, Line 15: Add as a new subsection after "(B) Owner Occupancy":

**"Credit History:** "No minimum credit score required. (Credit report is only used to verify recurring debts.)." This is from Attachment, Mortgagee Letter 2009-23

Pg. 46, Line 15: Add as a new subsection after "(B) Owner Occupancy"

**"No Down Payment:** The Mortgagee may not require the mortgagor to contribute cash."

This is also from Attachment, Mortgagee Letter 2009-23

Pg. 46, Line 15: Add as a new subsection after "(B) Owner Occupancy"

**"Eligibility – Existing Mortgage:** There is no net present value (NPV) test for eligibility."

This is also from Attachment, Mortgagee Letter 2009-23

Pg. 47, Lines 13-15: By not imposing any restrictions on what documents the servicer can ask for in a loss mitigation assistance package, the guide creates opportunities for excessive document requests that prolong default and impede the loss mitigation process. This is a well-documented problem in mortgage servicing.

To solve this issue, the handbook should, at a minimum, add the word "reasonably" between "the mortgagee" and "requires." A stronger step would be to define the initial package of paperwork needed to apply for FHA loss mitigation, similar to the rule under HAMP.

The handbook also should add: “Any income documentation may not be more than 90 days old as of the date the documentation is received by the servicer. There is no requirement to refresh the income documentation during loss mitigation.”

In addition, the handbook should add a sentence stating: “The mortgagee must not demand documents that are irrelevant to eligibility for FHA loss mitigation options.

Page 47, Lines 22-31: *Requests for Additional Documentation* The text should state clearly that servicers have a duty to assist borrowers in completing applications for loss mitigation. An appropriate statement would be: “A servicer must exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application”

Page 48, Line 2: As explained above, HUD’s use of the term “borrower” here is consistent with our understanding of how loss mitigation evaluations are processed and in line with our comment on page 45, line 20.

Pg. 48, Line 17: In addition to evaluating the borrower’s surplus income and surplus income percentage, the lender also must clearly evaluate the borrower’s gross monthly income since this figure is used in the loss mitigation evaluation. There is no guidance in the handbook on how the servicer must calculate gross monthly income. In performing this calculation, there are several issues that can arise, including how to calculate self-employment income and how to include non-borrower income.

Specifically, with respect to non-borrower income, we had previously asked HUD to clarify its policy in a September 8, 2014 letter. We received a response to the letter on September 30, 2014, but it remained unclear on the topic of non-borrower income, as explained in our follow up letter dated October 20, 2014.

We suggest using language that we slightly edited and included below, from the Making Home Affordable Handbook, Version 4.4 to clarify gross income and how to calculate it. Again, the use of the term “borrower” here is intentional.

**Monthly Gross Income:** Monthly gross income is the borrower’s income amount before any payroll deductions and includes: Wages and salaries, overtime pay, commissions, fees, tips, bonuses, housing allowances, and/or other compensation for personal services; Social Security payments, food stamps and adoption subsidies, including those received by adults on behalf of minors or by minors intended for their own support; Monthly income from annuities, insurance policies, retirement funds, pensions and disability or death benefits; Rental income and other miscellaneous sources of income.

**Rental Income:** A borrower seeking to modify the mortgage loan on his or her principal residence who receives rental income from another property must provide evidence of that income, which is generally documented on IRS Schedule E (Supplemental Income and Loss) of the borrower’s tax return for the most recent tax year. When Schedule E is not available to document rental income because the property was not previously rented, servicers may accept a current lease agreement and bank statements or evidence of damage deposits.

If the borrower is using income from the rental of a portion of the borrower's principal residence, the income may be calculated at 75 percent of the monthly gross rental income, with the remaining 25 percent considered vacancy loss and maintenance expense.

If the borrower is using rental income from properties other than the borrower's principal residence, the income to be calculated should be 75 percent of the monthly gross rental income, reduced by the monthly debt service on the property (i.e., principal, interest, taxes, insurance, including mortgage insurance, and association fees), if applicable.

Rental income should not be included in a borrower's monthly gross income if there is currently no income due to vacancy (even if rental income was identified in their tax return or tax transcript). The servicer must reconcile any differences between what the borrower communicates and the borrower's information. For example, the servicer might choose to perform a property inspection of the rental property.

**Self-Employment Income:** Each self-employed borrower must provide his or her most recent quarterly or year-to-date profit and loss statement. Audited financial statements are not required. When calculating gross income for self-employed borrowers, a servicer must include the borrower's net profit plus any salary or draw amounts that were paid to the borrower in addition to making allowable adjustments used in analyzing the tax returns for the business, if applicable, to decrease gross income (e.g. nonrecurring income) or to increase gross income (e.g. expenses, depreciation and depletion). If consistent with the Verification Policy, servicers may require up to four consecutive months of bank statements as an alternative to obtaining a profit and loss statement or if, following receipt, it is determined that the information in the profit and loss statement is insufficient.

**Non-borrower Income:** For purposes of this Section, a non-borrower is someone who is not on the original note (and may or may not be on the original security instrument), but whose income has been relied upon to support the mortgage payment. Non-borrower household income that may be considered for qualification must come from a person who resides in the borrower's principal residence and supports the borrower's ability to pay the mortgage on the subject property. Examples include a non-borrower spouse, parent, child or a non-relative, but in each case, a person who shares in the occupancy of the borrower's principal residence and provides some support for the household expenses. Servicers should include non-borrower household income in monthly gross income if it is voluntarily provided by the borrower and if, in the servicer's business judgment, that the income reasonably can continue to be relied upon to support the household. Non-borrower household income included in the monthly gross income must be documented and verified by the servicer using the same standards for verifying a borrower's income. The servicer must verify the occupancy of a non-borrower in the same manner it verifies the occupancy of a borrower.

**Passive, Non-wage Income:** Notwithstanding the other provisions of this handbook, passive and non-wage income (including rental, part-time employment, bonus/tip, investment and benefit income) does not have to be documented if it constitutes less than 20 percent of the borrower's total gross. Servicers must identify the specific sources and amount of a borrower's passive or non-wage income and may not assume that a portion of the borrower's income is passive. Servicers must obtain income documentation to verify passive or non-wage income when it equals or exceeds 20 percent of the borrower's total gross income.

Finally, with respect to self-employed borrowers, HUD should make it clear that the requirement to have a profit and loss completed by a CPA does not apply to home retention options and only applies in the Standard PFS transactions, explained on page 86, lines 6-8.

Page 49, Line 30: The text reads as though the 90-day Review is the only required loss mitigation evaluation, which is not in line with 24 C.F.R. 203.605.

Change the text to: “The 90-day review is a required evaluation, occurring no later than when...”

Page 50, Line 7: *Required Documentation*. Add to this sentence as italicized: “The mortgagee must document in the Claim Review File its aggressive efforts to reach each Borrower in default, *to complete a loss mitigation application, and its review of the application* well in advance of the 90-Day Review deadline.”

Page 50, Line 17: In order to make sure the mortgagee is collecting all relevant information, add: “and the mortgagee’s efforts to collect the Borrower’s financial information.”

It will read: “The mortgagee’s servicing records must include monthly notations, documenting the mortgagee’s analysis and determination with respect to the appropriateness of each Loss Mitigation Option and the mortgagee’s efforts to collect the Borrower’s financial information.”

Page 50, Line 33. Add to text: “A notice that an application for loss mitigation is not complete must list those documents that the mortgagee deems necessary to evaluate the Borrower and that the Borrower has not yet provided. The notice should identify specific items needed and avoid references to broad categories of documents and irrelevant documents.”

Page 50, Lines 36-37. *Notice to Borrower after Loss Mitigation Review*. Under the CFPB rules, if the servicer has determined that the borrower’s loss mitigation application is “complete,” the servicer must complete its evaluation and notify the borrower in writing of the outcome the evaluation within thirty days of receipt of the complete application. 12 C.F.R. § 1024.41(c). The Handbook should specify this time frame, rather than use the vague phrase, “after its timely review of a Borrower’s loss mitigation request.” This requirement applies to a complete application received up to 37 days before a scheduled foreclosure sale.

Page 51, Line 2: Replace “a Loss Mitigation Option” with “each FHA Loss Mitigation Option.”

Page 51, Line 6: The handbook does not include significant detail on escalations that is included in Mortgagee Letter 2013-39. The discussion of escalations should be included here because it logically follows from the evaluation and notice sections. It also should include all of the important details from ML 2013-39. It is critically important for Borrowers to have an opportunity to challenge denials. The handbook should, at a minimum, include language from ML 2013-39, included below. The language was edited and adapted for the purposes of this Handbook.

A servicer’s escalation policies should, at a minimum:

- Designate which staff members will be responsible for resolving Escalated Cases. These staff members must:

- Not be the same staff members responsible for the first evaluation of the loss mitigation application; and
- Have access to borrowers' servicing files.
- Provide for timely responses to Escalated Cases. Specifically, within 7 days of categorizing a borrower's inquiry or complaint as an "Escalated Case", the servicer should notify the borrower in writing that his inquiry and/or complaint has been escalated and that a resolution to his case will be provided no later than 30 days from the date of escalation.
- If the servicer is unable to resolve an Escalated Case within 30 days, the servicer must send the borrower written updates on the status of his/her case every 15 days until the case is resolved
- Servicers shall also provide borrowers with the direct contact information of the department and/or staff member responsible for resolving its Escalated Cases.

Page 51, Line 7: Add to content of notice: Information about appeal rights, including deadlines and procedures.

Page 51, Line 11: Add from Mortgagee Letter 2013-32 the following: "Mortgagors with an active Chapter 7 or Chapter 13 bankruptcy case are eligible for FHA Loss Mitigation Options to the extent that such Loss Mitigation does not violate federal bankruptcy law or orders of the Bankruptcy Court or Bankruptcy Trustee."

Page 51, Line 11: The draft states: "The mortgagee must obtain bankruptcy court approval on all loss mitigation actions prior to final execution or utilization. " In chapter 13 cases the bankruptcy court must approve a mortgage loan modification. However, particularly in chapter 7 cases, the bankruptcy estate may have no interest in the real property or mortgage loan. The bankruptcy court may not wish to be troubled by requests to approve modifications in chapter 7, and will not want to have any role in approving "all loss mitigation options" under the FHA waterfall. See *In re Smith*, 409 B.R. 1 (Bankr. D. N.H. 2009) (finding that motion for approval of loan modification does not present court with a case or controversy unless filed in connection with proceedings for stay relief, plan confirmation, or plan modification). The draft Handbook text, if finalized, will impair loss mitigation unnecessarily. A more general approach should suffice, such as "the parties must obtain bankruptcy court approval for loss mitigation options as required by the Bankruptcy Code or local bankruptcy court practice."

Page 51, Line 30: Add from Mortgagee Letter 2013-32 the following: "Mortgagors who have received a Chapter 7 bankruptcy discharge and did not reaffirm the FHA-insured mortgage debt under applicable law are eligible to be considered for Loss Mitigation Options."

Page 51, Lines 31-38: Delete lines 35-38 HUD's priority list for retention options is confusing because it reads as though the process is linear rather than the more complicated decision tree that HUD has put into place and that is included on page 52. It is better to instead simply refer to the chart rather than the list on page 51 in order to avoid confusion on how the waterfall operates.

Page 52, Line 4: *HUD's Loss Mitigation Option Priority Waterfall*. Add to text: "The mortgagee must offer to implement the option for which the Priority Waterfall indicates the borrower is eligible. "

HUD must clearly state that a servicer must offer the option that the borrower is qualified to receive. There can be no ambiguity regarding the mandatory nature of this program.

Page 53, Line 6: In order to clarify the waterfall, the handbook needs to include the guidance from the February 12, 2014 FAQs. The FAQs made a few significant changes in how FHA-HAMP is calculated and the handbook must ensure that those changes are reflected in the guidance.

Under the step 2 of the FHA-HAMP modification waterfall (generally called step 6.2), the waterfall states that the servicer should “calculate the monthly payment on current loan balance at the market interest rate (not including arrears) and 360 month term.”

However, under the FAQs it is clear that the servicer should add arrears in step 6.2 before determining whether a partial claim is necessary. The handbook should add language from the February 12, 2014 FAQs to make it clear how step 6.2 works in operation. It may be easiest to revise the language in step 6.2 by deleting “not including arrears.”

The guidance should also make it clear that a borrower should be approved for FHA-HAMP even if his/her arrearages (including attorney fees, etc.) exceeds the Maximum Allowable New Partial Claim as long as other program requirements are met.

Page 55, Lines 20-36: It appears that the handbook is repeating itself in its 2<sup>nd</sup> and 3<sup>rd</sup> bullet point (lines 27-31 vs. lines 32-36) although the text is slightly different in each bullet point. As it reads now, it is confusing, and it one of the bullet points should be deleted.

Pages 56-57, Lines 12 on Page 56 through Line 11 on Page 57: The handbook appears to add requirements for Special Forbearance beyond what is included in the waterfall. The handbook requires servicers to determine whether unemployment was, at page 56, the “major cause” of default and later has servicers analyze whether the loss of employment had a “direct impact” on default (page 57). These are vague standards that add an unnecessary, subjective level of analysis. The discussion should be deleted and servicers should instead rely on the waterfall. In addition, the discussion of property condition imposes unnecessary additional requirements.

Page 56, Line 37: First bullet under *(3) Review under the Loss Mitigation Home Retention Priority Waterfall*. In describing the application of the Waterfall the text states that the mortgagee must “determine that it is the Borrower of record who has experienced the loss of employment.” Limiting consideration to income from the “Borrower of record” raises the concern we have noted elsewhere in these comments. The handbook must clearly address treatment of income of non-borrower household members in the waterfall. Even if, as noted above, borrower income generally forms the basis for evaluating loss mitigation options, HUD should not ignore the devastating impact that the loss of non-borrower income will have on the family. The draft language here would preclude consideration of the effect of loss of employment income earned by a non-borrower spouse who was residing with the borrower (the note signatory). Such an exclusion would be impractical and deny important loss mitigation relief, leading to unnecessary foreclosures. As explained above, such non-borrower income is clearly considered in HAMP evaluations.

Page 57, Line 13: The label of subsection (C)(4) titled “Special Forbearance – Unemployment Agreement” is confusing because the entire section (C) addresses special forbearance. As a result, it seems like the label does not fit. Instead, subsection 4 seems to address the possible terms for special forbearance and should be titled “Special Forbearance Terms” or something similar.

Page 57, Line 14: The handbook already defines special forbearance at subsection (C)(1) and this additional definition is repetitive and should be deleted.

Page 57, Line 19: This would be better titled "Standard Terms"

Page 57, Line 20: To clarify that this section applies when special forbearance is approved add "For eligible Borrowers" to read: "For eligible Borrowers, the mortgagee must prepare a SFB-Unemployment Agreement that provides for the following:"

Page 58, Line 25: Add to text after line 25: "While the borrower is complying with a special forbearance agreement the mortgagee must not proceed with foreclosure, including taking any action to enter judgment, proceed with a dispositive motion, or schedule a foreclosure sale. "

Page 58, Line 38: It is unclear how the servicer will solicit the financial information needed to do a review upon the expiration of the SFB. More specific guidance is needed about what servicers must do as the SFB ends to reach out to borrowers for updated information. HUD should require servicers to send the borrower a notice that the SFB is about to expire along with a new package of information. This should occur in addition to personal contact with the borrower.

Page 60, Line 30: The handbook should make it clear that the borrower will accrue no late fees during the pendency of the SFB.

Page 61, Line 39: Add for clarity: "A failed trial plan does not count as a loan modification for the purposes of the limit on one loan modification for every twenty-four months.

Page 62, Lines 17-26: It is unclear how the passage regarding an analysis of property condition works in practice. Under the handbook, the lender should scrutinize a borrower who budgets large amounts for maintenance and possibly reject that person for a loan modification. The borrower should not be penalized for making an assessment that he or she will need to budget additional money to keep the property in good repair. This is the sign of a cautious borrower and not someone who should be rejected for a loan modification. This discussion of property condition as an issue for a loan modification should be limited to situations where a municipality condemns property.

Page 62, Lines 17-26: In the alternative to the suggestion above, the handbook should require that property correction as a condition of loan modification occur when the conditions of the home are determined to be unsafe or a serious health risk by HUD.

Page 63, Line 11: Add: "The terms of the trial payment plan must be provided in writing to the borrower."

The estimated terms of the final loan modification must be provided in writing at the same time as of trial payment plan is offered. There is no reason not to provide this information borrower because the servicer should have already calculated the estimated terms, and by providing this information, borrowers can determine if the information that the servicer used is correct.

Page 64, Line 19: *Review for Other Loss Mitigation Options – Ineligibility for Home Retention Options.* Add after "the Borrower's financial information" the phrase "and after applying the Loss Mitigation Waterfall." The sentence should read, "If the mortgagee determines through analysis of the Borrower's

financial information, and after application of the Loss Mitigation Waterfall, that the Borrower is not eligible for a Home Retention Option, the mortgagee must consider the Borrower for Home Disposition Options.”

Page 64, Line10: Add again for clarity: “A failed trial plan does not count as a loan modification for the purposes of the limit on one loan modification for every twenty-four months.”

Page 65, Lines 15-16:

We appreciate that HUD is clearly requiring lenders to stop the foreclosure process for homeowners who are approved for assistance. However, HUD must ensure that the requirement is not read as a limit that prevents lenders from modifying loans that are in foreclosure. To avoid this, add the following for clarity: “If a lender has already initiated foreclosure on a homeowner that was approved for a modification,”

Of course, a lender should not initiate foreclosure in the first place if there is a loss mitigation review pending, but this language clarifies what a lender must do if the evaluation commences in the middle of the foreclosure process.

To read: “If a lender has already initiated foreclosure on a homeowner that was approved for a modification, the mortgagee must remove the mortgage from foreclosure prior to executing the Loan Modification Documents.”

Page 65, Line 32: To make it clear how HUD expects the interest rate to be calculated in a loan modification, the handbook should restate the earlier provision in the trial plan section: “The interest rate for the Trial Payment Plan and the permanent Loan Modification must not be greater than market rate.”

Page 65, Lines 36-37: The handbook seems to allow for an increase in the interest rate; however, the previous loan modification policy documents do not support such an increase. In fact, in ML 2009-35, HUD pointed out the problems with increased interest rates. Instead, when a borrower comes into the loan modification with a below-market interest rate, that rate should remain (or be reduced as allowed by the previous sentence in this paragraph). The handbook should delete any references to an increase in the interest rate.

Page 66, Lines 9-10: The reference to “the statutory limits” is vague – does this refer to the statutory limits on Partial Claims?

Page 66, Lines 18: The handbook should clearly state that the lender should waive any late fees. This is pursuant to HUD policy under Mortgagee Letter 2009-23, Attachment.

Page 67, Line 23: Add for clarity “and in line with HUD policy and federal regulations” in order to make it clear that lenders must follow all loss mitigation regulations if a borrower defaults on a modified loan.

To read: “treat this as a new default and service the defaulted mortgage accordingly and in line with HUD policy and federal regulations.”

Page 68, Line 26: Delete “when the cause of default is permanent or long term.” These phrases, especially the phrase long term, is imprecise and adds an unnecessarily vague consideration in evaluating FHA-HAMP. Instead, HUD should rely on the waterfall it has set forth. The requirement on page 69, Line 34 regarding a verified loss of income or hardship is a better standard.

Page 68, Lines 37-38: The handbook sets up a situation where there is a gap for FHA-HAMP eligibility between the time of an imminent default and the time when a loan is four months past due. As a result, a borrower who is not yet in default could receive FHA-HAMP while a borrower who is less than four months past due cannot unless he or she falls four months behind. There is no good reason for this gap in qualification, and it would seem to create an incentive for borrowers to not pay. Moreover, if the person in imminent default is in process for a loan modification and then falls behind (as he or she said she would since default was imminent), the process goes on hold for a few months.

The better standard is simply to allow FHA-HAMP to apply for all loans that are at imminent risk of default or actually in default. The four month rule does not make sense and creates odd incentives. We are not aware of any policy or regulatory requirement that makes this gap necessary. On the contrary, it seems counter to the CFPB’s express policy goal in creating a protected window of time for loss mitigation review, before any initiation of foreclosure, until a loan reaches 120 days delinquent.

Page 69, Lines 9-10: The handbook should provide the same clarity regarding mortgages not in foreclosure as done on Page 65, Lines 23-24 (with changes suggested). This will make it clear that a mortgage that is in the foreclosure process is eligible for FHA-HAMP and that the burden is on the mortgagee to stop the process upon approval.

Page 69, Lines 34-37: *Borrower Qualifications (FHA- HAMP)*. As noted above, regarding p. 48 of the handbook, the handbook needs to clarify that non-borrower household contribution income may be included, and that as mentioned in reference to p. 56, a loss of non-borrower income may be a qualifying hardship.

Page 69, Lines 38-41: *Borrower Qualifications (FHA-HAMP)*. The draft lists as a qualification for FHA-HAMP that “the Borrower has sufficient, stable income (including continuous income) to support the monthly payment under the modified rate and/or term, although not sufficient to sustain the original mortgage and repay the arrearage.” This appears to be a qualification statement that was applicable to the FHA standard modification. For FHA-HAMP, however, this statement is redundant and likely to cause confusion. FHA-HAMP includes formulae and standards for determining affordable payments based on the borrower’s income. The affordability standards are built into the FHA-HAMP calculation. This draft sentence incorrectly implies a separate affordability standard and test outside of the FHA-HAMP waterfall calculation.

Page 70, Lines 19-28: The comments related to Page 62, Lines 17-26 also apply here.

Page 71, Lines 6-7: In addition to hyperlink, HUD should include a page and line number reference for the “Loan Modification Provisions.”

Page 72, Line 4: Add, from ML 2000-05, this important clarification: “There is no lien priority requirement for partial claim notes, however the lender must ensure that recordation of the subordinate mortgage does not jeopardize the first lien status of the FHA insured mortgage.”

Given the challenges servicers have in addressing any current lien policy, it is important to clearly state that first priority rules or any other priority rules do not apply for the partial claim.

Page 72, Line 16: Add, from the February 2014 FHA-HAMP FAQs, "A borrower can be approved for FHA-HAMP even if his/her arrearages, attorney fees, etc. exceeds the Maximum Allowable New Partial Claim as long as other program requirements are met."

Prior to the release of the FAQ, this was consistently an issue that servicers failed to understand. HUD should include the FAQ language to make sure servicers consistently follow the rule.

Page 72, Line 29: The handbook should clearly state that the mortgagee should waive late fees.

Page 72, Line 39: As it stands, it is ambiguous what procedures apply for trial plans. At this time, the guide relies on a hyperlink and not a written reference to previous sections. It would be appropriate to include both a hyperlink and a statement that the policies for loan modification trial plans also apply here. That can be easily done by incorporating the previous section, page 63 line 1.

Page 73, Line 15: The comments from Page 65, Lines 15-16 also apply here.

Page 73, Line 23: In cases where the borrower is approved for both a modification and a partial claim, the servicer must generate and deliver those documents at the same time. We have heard of servicers who will only send out one first. Because the calculations occur simultaneously, there is no reason for the servicer to send just one.

Add: "For borrowers approved for a combination FHA-HAMP partial claim and loan modification, the servicer must send both the partial claim documents and loan modification documents together."

Page 74, Lines 30-31: HUD should delete the line "The primary Note and related mortgage, deed of trust, or similar Security Instrument are no longer insured by the Secretary."

The handbook (see page 72) and previous guidance on partial claims do not list this as a possible event that triggers the obligation to repay the partial claim note. It is possible for homeowners to bring their loans current after a note sale by HUD. In fact, HUD has stated that it hopes note sales by HUD will lead to homeowners avoiding foreclosure. With that, it is inconsistent for HUD to call its note due if a sale occurs. The agency already holds a lien on the property and does not need another ground for default.

Page 75, Line 23: This is the location in the Note where the parties could add, when applicable, a provision stating that if the borrower obtained a chapter 7 bankruptcy discharge of personal liability on the note in the past, the execution of the partial claim is not to be construed as creating personal liability on the discharged debt or a demand for payment of the discharged debt.

Page 81, Line 3-4: HUD should make the model partial claim note confirm to the text at this section, which makes it clear that the partial claim note should only be due at the earlier of 1) payoff or 2) the borrower no longer owns the property.

Page 81, Lines 15-16: It is unclear what HUD means by FHA-HAMP documents when it states that the FHA-HAMP documents need to maintain first lien priority. We understand that the modification needs

to have first lien status but that there is no lien priority for the partial claims as explained in ML 2000-05 and mentioned in the comment for Page 72, line 4, *supra*.

Page 82, Lines 4-6: The comment from Page 67, Line 23 also applies here.

Page 113, Line 17 *Escalated Cases*. This section deals with a subject of general applicability to a wide range of servicing topics. A higher case section number and earlier location in the draft would better highlight this important section. For example, this content could be placed directly after "Communication With Borrowers" after page 7 of the current draft and as a distinct lettered section.

Page 113 Line 30 *Escalation Process*. The Draft states that mortgagees must escalate disputes "in accordance with their written internal processes." Add further text to the effect that "the mortgagee must make these written internal processes available to borrowers who disagree with mortgagee decisions. The procedures must be conspicuously available on the mortgagee's website." The mortgagee's written decision on loss mitigation requests should include a description of the mortgagee's escalation process and a link to the website where the mortgagor may access the full text of the applicable rules.

As reflected in Mortgagee Letter 2013-39, edited slightly here, a servicer's escalation policies should, at a minimum:

- Designate which staff members will be responsible for resolving Escalated Cases. These staff members must:
  - Not be the same staff members responsible for the first evaluation of the loss mitigation application; and
  - Have access to borrowers' servicing files.
- Provide for timely responses to Escalated Cases. Specifically, within 7 days of categorizing a borrower's inquiry or complaint as an "Escalated Case", the servicer should notify the borrower in writing that his inquiry and/or complaint has been escalated and that a resolution to his case will be provided no later than 30 days from the date of escalation.
- If the servicer is unable to resolve an Escalated Case within 30 days, the servicer must send the borrower written updates on the status of his/her case every 15 days until the case is resolved
- Servicers shall also provide borrowers with the direct contact information of the department and/or staff member responsible for resolving its Escalated Cases.
- If the borrower submits the appeal request at least 90 days before a scheduled foreclosure sale, the mortgagee must refrain from conducting the sale, entering judgment of foreclosure, or proceeding with a dispositive motion leading to foreclosure until the appeal procedures have run.

Page 116, Line 6: Distressed Asset Stabilization Program. Although the Distressed Asset Stabilization Program (DASP) is a significant piece of HUD's current asset strategy, there is no guidance provided about it in the handbook. HUD must provide clear and simple details about determining eligibility for the program, monitoring of servicer compliance, and collecting data from the sales. Exhaustion of loss mitigation prior to sale must be addressed. In addition to any other quality control requirements, servicers should be required to certify compliance with FHA loss mitigation prior to a DASP sale, and to provide documentation of such to HUD. HUD should employ sampling to ensure proper oversight. DASP is a multi-billion dollar program that is impacting individual homeowners and neighborhoods. HUD must ensure that the rules developed for the program promote the interests of homeowners and the community.

Page 116, Line 16: Add the following language from ML 2013-39,: “While a servicer may not be held responsible if a borrower fails to respond to repeated contact efforts, the servicer’s files must evidence efforts to reach the borrower early in his/her delinquency and to take the appropriate loss mitigation action.”

Page 116, Lines 29-30: Each and every mortgagor should receive notice in addition to borrowers. Individuals who signed the mortgage have an interest in the property that will be affected by foreclosure. These individuals need notice in advance of foreclosure.

Page 118, Lines 10-22: The commencement of a trial plan should also qualify as a satisfactory action under the list that starts on line 10 and continues to line 22.

Page 118 Line 36: *When to Initiate Foreclosure*. This text continuing to page 119, Line 8 is inconsistent with the pre-foreclosure review period required by the CFPB regulation 12 C.F.R. § 1024.41(f). The draft text purports to authorize commencement of foreclosure “[a]fter at least three consecutive monthly payments are due but unpaid.” Depending on how one makes the calculation, this would allow foreclosure to begin at either the 61<sup>st</sup> or 91<sup>st</sup> day after the initial unpaid installment payment date. Either option would violate § 1024.41(f). The CFPB rule prohibits the mortgagee from making the initial foreclosure filing until at least 120 days have passed from the first unpaid installment’s due date. The draft text suggests, *inter alia*, that the mortgagee may begin foreclosure once three installments are unpaid if “[t]he mortgagee has been unable to make a determination of the Borrower’s eligibility for any Loss Mitigation Option due to the Borrower not responding to the mortgagee’s efforts to contact the Borrower.” Draft Handbook Page 119 Line 6-8. The CFPB rule does not allow for this exception to the 120-day rule. Instead, the CFPB intended the 120-day period to insulate the borrower completely from foreclosure activity. (“The Bureau further believes it necessary and appropriate for borrowers, servicers, and courts to have a known early period during which a servicer shall not begin the foreclosure process.” CFPB *Section-by-Section Analysis* § 1024.41(f), 78 Fed. Reg. 10,833 (Feb. 14, 2013)).

Unless HUD wishes to extend the permissible date for the first filing in a foreclosure proceeding to a time beyond the 120-day limit (which would be allowed under the CFPB rules), HUD should designate the 120-day time frame as a fixed threshold before which the mortgagee must not make the first filing to commence foreclosure.

Page 121, Lines 20-23. *Management Review*. The “form or checklist” required to memorialize the mortgagee’s loss mitigation review should include specific reference to the steps of the FHA Loan Modification Waterfall, indicating how the mortgagee followed each step until an ultimate conclusion. The form or checklist should include all relevant numerical inputs needed to reach a conclusion in the waterfall analysis.

Page 121, Line 28: Rather than stating that the mortgagee should continue to service the mortgage during and after the management review “if . . . there is a possibility that a mortgage can be salvaged and foreclosure avoided” the text should cross-reference the “Loss Mitigation during the Foreclosure Process” discussion on page 123. The language on page 121 suggests a subjective, optional standard for the servicer to consider loss mitigation during foreclosure. Instead, the CFPB rules mandate this review as a continuing servicer duty during foreclosure (at least up until 37 days before the foreclosure sale date). The draft text on page 123 generally tracks the CFPB rules. It is preferable to direct readers to the text on page 123 and omit the ambiguous language proposed for page 121 lines 28-31.

Page 121, Line 31: Add a section "*Notice to Borrower*" Add language here stating that prior to initiation of foreclosure the mortgagee must give the mortgagor a copy of the form or checklist, including the completed waterfall analysis, discussed under "*Management Review*," above.

Page 123, Lines 1-4: *Loss Mitigation during the Foreclosure Process*. This introductory sentence should be clarified. The language could be read to say that a borrower must show a change of circumstances in order to apply for loss mitigation after a foreclosure has commenced. We assume this is not what HUD intended. A borrower who never applied for loss mitigation before should obviously be able to apply after a foreclosure has begun in any case.

Presumably the draft language meant to say that a borrower who applied for loss mitigation before foreclosure began and was denied or experienced an option failure may apply again after foreclosure has started if the borrower has had a change of circumstances. The text should be amended to add this clarification.

Page 123, Line 10: *Requests Received during Foreclosure*. Add to the text: "The mortgagee may not schedule a foreclosure sale, enter judgment in a judicial foreclosure proceeding, or proceed with a dispositive motion in a judicial foreclosure while an appeal/escalation is pending." 12 C.F.R. § 1024.41(g)(1).

Page 123, Line 24: *Foreclosure Action*. The text must be amended to read: "A mortgagee must not move forward with a scheduled foreclosure sale *or move for a foreclosure judgment* during its review." The draft omitted the italicized text, which is mandated by 12 C.F.R. § 1024.41(g)(1).

Page 123, Lines 36-38: Rather than invite mortgagees to approve non-FHA options based upon incomplete applications during the 45 to 37-day pre-sale period, the text should direct mortgagees to approve FHA options whenever the mortgage has sufficient information to determine eligibility. If the mortgage can determine eligibility for the FHA option, there is no reason to allow the mortgagee to offer the non-FHA option instead.

Page 124, Line 3: Add the same text proposed for Page 123 Line 24, above.

Page 124, Line 20: Foreclosure action. Add language stating that the sale must be canceled if the mortgagee offers the borrower a loss mitigation option, despite the close proximity to the sale date.

Page 126, Lines 1-6: *Judicial Foreclosure States*. This section appears to retain language regarding suspension of foreclosure found in an older text that pre-dated the current CFPB servicing rules. The requirements to refrain from sales and entry of judgment during judicial foreclosures are now mandatory under the CFPB rules. Servicers do not have discretion to decide whether to stay proceedings when required to do so under the CFPB rules. Pages 123-24 of this draft acknowledge the new requirements. The text at page 126 lines 1-6 should be deleted.

Page 135, Lines 7-8: The definition of "mortgagee neglect" should include specific benchmarks as there are no standards provided to measure whether a mortgagee is responsible for any deterioration in the property. This is important for the individual homeowner who may face sanctions from a local municipality for actions that a lender should have responsibility to take. It is also important for neighborhoods to ensure that a foreclosed property does not cause problems for other homes. For this

reason, a mortgagee that files a foreclosure action on a vacant building should become responsible for maintenance at filing.

Without specific benchmarks, the banks will always be able to argue that whatever damage is present is not due to their neglect. Without a clear starting date and clear responsibilities, the bank will blame the homeowner for any condition issues.

Pages 144-47: A servicer should also contact any relevant municipality prior to preparing its claim to determine if any other charges are outstanding. This helps HUD to ensure that there are no outstanding charges for properties that HUD owns. It also ensures that homeowners will not face their own sanctions later on for charges imposed that should be resolved by the lender.

Page 151, Lines 33-35: It is our understanding that HUD's current policy is to not pursue deficiency judgments against borrowers except for a few narrow circumstances. HUD should continue its policy of very limited deficiency collection and should make that policy clear in this handbook.

Page 155, Lines 13-23: In comments to Mortgagee Letter 2013-21, we made several suggestions for improving TRS II. We maintain those suggestions are important and should be incorporated. Specifically here, we again want to repeat the need to consider mortgagor input into the ranking process. Without this information, HUD will miss a major opportunity to find out what actually happened in the loss mitigation process.

General:

In addition to definition and procedural clarifications needed in the Guidebook, we urge FHA to revise its policies regarding loan modifications. In the current economy, many borrowers experience a long-term decrease to income and need a lower monthly mortgage payment in order to maintain long-term success in their modifications. With other government mortgage backed securities ("MBS"), Fannie Mae or Freddie Mac (the "GSEs") purchase the loan out of the MBS, hold it on their own portfolio, and the terms are changed. Unfortunately, FHA loans must generally be purchased by the servicer and typically are only modified at current market interest rates in order to avoid being purchased out of the MBS. As a result, the monthly payment may *increase*. Due in part to this modification policy, FHA loan modifications have had much lower success rates than their GSE counterparts.

FHA can correct these issues by using its authority under Section 230 of the National Housing Act, National Housing Act, Sec. 230 (12 U.S.C. § 1715u), which states that the loan may be assigned to HUD both prior to and after a loan modification. Like the GSEs, FHA should use its balance sheet to purchase modified loans so that borrowers in need have more viable options for reducing monthly payments than currently offered. We also urge the FHA to extend term extensions to at least 40 years and increase usage of partial claims options. We believe these reforms are critical to achieving higher loan modification success rates, greater servicer participation, and maintaining homeownership for more families.