Comments of:

National Consumer Law Center

(on behalf of its low-income clients)

National Housing Law Project

and

Advocates for Basic Legal Equality

Americans for Financial Reform Education Fund

Connecticut Fair Housing Center

Legal Aid Society of Southwest Ohio

Mountain State Justice

Ohio Poverty Law Center

on

United States Department of Agriculture – Rural Housing Service

Notice of Proposed Amendments to 7 C.F.R. Part 3550

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The RHS single-family direct loan program continues to provide an essential resource for hundreds of thousands of rural families who would otherwise never achieve the benefits of homeownership. On behalf of the clients, communities, and neighborhoods we represent, we write to support two of RHS's proposed changes to the direct loan program rules. These changes will provide greater access to the program for new participants and preserve program benefits for those who already participate.

First, the proposed changes to 7 C.F.R. § 3550.53(g) will give more rural families access to loans that are affordable based on a prudent assessment of their ability to repay.

Second, the proposed change to 7 C.F.R. § 3550.207 will simplify the process for getting borrowers back on track toward loan repayment after a temporary moratorium on payments.

While we recognize that these specific changes will have a positive effect, we outline below some additional proposals related to both the direct loan origination guidelines and the moratorium option that we believe would greatly improve the program. Several of the organizations that are signing on to these comments have represented homeowners with USDA loans in foreclosure and have seen how a lack of available loss mitigation options leads to unnecessary foreclosures. We recommend that RHS:

- Commit to rigorous monitoring of borrowers' payment performance in order to assess the impact of RHS's new debt-to-income ratios and the compensating factors used in loan origination;
- Create standards and procedures to govern the process of how RHS makes decisions to forgive interest upon the termination of a moratorium, incorporating notices to borrowers about these standards and procedures;
- Implement flexible loan modifications upon termination of a moratorium, in particular to allow for extension of the loan repayment term in order to lower payments;
- Eliminate the bars on moratorium relief and other loss mitigation options after loan acceleration;
- Eliminate the arbitrary requirement that the borrower have a 20% reduction in income within a 12 month period in order to be eligible for a moratorium;
- Adopt loan modification rules for direct loans that are consistent with RHS's rules for its guaranteed loan program and with standard practices in the mortgage market.

1. The proposed amendment to repayment ability standards (7 C.F.R. § 3550.53(g)) will give more borrowers access to loans that are affordable based on an appropriate determination of ability to repay.

We support RHS's continued reliance on a measurable underwriting threshold such as debt-to-income ratios combined with the use of compensating factors for higher risk applicants. The proposed total debt ratio of 43% keeps RHS generally in line with the similar ratios used by the

Veterans Administration ("VA")[1] and the Federal Housing Administration ("FHA")[2] in their guaranteed loan programs. The proposed ratio is also consistent with the standard RHS uses for its own guaranteed loan program.[3] All of these programs set a presumptive debt-to-income ratio for applicants, but allow for consideration of compensating factors that permit borrowers who exceed the ratio to qualify for loans. Typical compensating factors include a past payment history showing ability to manage a higher housing expense or a demonstrated ability to accumulate savings.[4]

The marginally higher base ratio of 43% proposed here for RHS direct loans (compared to 41% used in the VA and RHS guaranteed loan programs) is appropriate because the availability of payment subsidies after origination serves as an additional safety net for RHS borrowers. Similar payment subsidies are not in use in any other federally guaranteed loan program. We urge RHS to monitor robustly how its direct loans perform after this change. RHS should consider future adjustments based on the data from the monitoring.

RHS should consider development of a residual income standard in addition to its existing compensating factors. The VA underwriting guidelines include this feature.[5] Residual income looks at the income actually available to a household after it pays for necessities. It allows applicants who can document that they minimize expenses to qualify for a loan that they can clearly afford. The VA has developed standards that set residual income threshold amounts based on family size, region, and loan amount.[6] This evaluative tool is likely to predict future repayment much more accurately than the compensating factors that RHS now uses for direct loan underwriting.[7] For example, the compensating factor that RHS now uses for new homes constructed under specific energy efficiency programs does not require any determination that a specific family will actually achieve the assumed level of energy cost savings. The generalized claims for savings under these programs do not reflect the budget realities for many low-income families. We encourage RHS to pursue data analysis to ensure that any approach it uses reflects the affordability issues in its book of business.

2. The automatic reamortization upon termination of a moratorium should streamline the transition to repayment (7 C.F.R. § 3550.207(c)).

The proposal to move directly to reamortization of all loans upon the termination of a moratorium is an improvement. Section 3550.207(c) currently requires that RHS attempt to assess whether the borrower can afford future payments after a moratorium without a reamortization. This step is unnecessary and confusing.

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[1] 38 C.F.R. § 36.4340(c) (total debt ratio 41% but with higher ratios allowed either for compensating factors or upon showing of appropriate level of residual income as defined in §36.4340(e)).
[2] FHA Single Family Housing Policy Handbook 4000.1 § II.A.5.d.viii (p. 332 pdf version effective Oct. 24, 2019) (allowable range of housing payment to total income ratios from 31% to 40% and allowable range of total debt ratios from 43% to 50% with permissible limit based on credit scores and compensating factors).
[3] RHS Handbook HB-1-3555 SFH Guaranteed Loan Program Technical Handbook § 11.2 (total debt ratio 41%) and § 11.3 (compensating factors).
[4] HB-1-3550 RHS Direct Single Family Housing Loans and Grants Field Office Handbook § 4.24.A.4.
[5] 38 C.F.R. § 36.4340(e).
[6] *Id.*
[7] HB-1-3550 RHS Direct Single Family Housing Loans and Grants Field Office Handbook § 4.24.A.4.

However, after this regulatory change two significant problems will continue to impair the transition from a moratorium to repayment. The first is the absence of any publicly available standards and procedures that apply to the agency decision to forgive all or part of the unpaid interest that accrued during the moratorium. Currently there are no known standards that tell borrowers how RHS makes a determination to forgive interest. Few borrowers even know about the option.

The proposed amendment adds language stating that the unpaid interest accrued during the moratorium "may be forgiven so that the new monthly payment optimizes both affordability to the borrower as well as the best interest of the Government."[8] While this language sounds fine as a general principle, it adds no transparency or accountability to the opaque process. It does nothing to change the borrower's impression that these case-by-case decisions are arbitrary.

RHS can take several steps to clear up this perception. First, the agency needs to give borrowers written notices that inform them about the agency procedure for assessing the forgiveness of interest. Second, the agency must develop meaningful objective standards for these evaluations. The regulation currently requires that the borrower submit financial information to RHS at the end of a moratorium so that the agency can evaluate the borrower for interest forgiveness.[9] Borrowers clearly have a right to know what the agency does with the information they submit. RHS must explain its decision by reference to a set of objective guidelines that ensure that similarly situated borrowers are treated the same.

The current and proposed regulations fail to address the second major problem impeding the transition from a moratorium to repayment, which is the agency's lack of an effective loan modification program. A modification program is absolutely essential to preserve homeownership for borrowers who have a permanent reduction in income and such a program is present in all other government loan programs.

RHS must, at a minimum, allow extension of the loan repayment term as part of the post-moratorium restructuring of the loan. As described in the final section below, the GSEs, FHA, and the RHS guaranteed loan programs routinely allow term extension as part of their modification protocols. When a loan is modified under these programs, accrued, unpaid interest is capitalized and the loan term is extended for thirty to forty years from the modification dates. As a result, the borrower's payment decreases. Under the rigid reamortization option used for RHS direct loans, the borrower's regular payment inevitably increases after a moratorium even if interest during the moratorium is forgiven. Because homeowners who have faced a hardship generally continue to experience pronounced decreases in income, the current RHS reamortization option hinders the transition to repayment. If RHS changed its policy to conform to the prevailing modification standards in the industry, direct loan borrowers coming out of a moratorium would have long-term affordable payments consistent with the best interest of the Government.

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[8] Proposed 7 C.F.R. § 3550.207(c).
[9] 7 C.F.R. § 3550.207(b)(2).

3. Additional changes to 7 C.F.R. § 3550.207 (Payment Moratorium) can optimize home retention and protect the Government's interest.

Two provisions in 7 C.F.R. § 3550.207 continue to impose unnecessary barriers to a borrower's eligibility for a payment moratorium. The first is the prohibition on a moratorium for a loan that has been accelerated.[10] The second is the requirement that the borrower's repayment income have fallen by at least 20 percent within the past 12 months.[11] Neither limitation is authorized by the statute that created the moratorium program.[12]

The bar on loss mitigation after acceleration. RHS takes the position that borrowers cannot access any loss mitigation options, which the agency labels as "special servicing," after it accelerates the loan.[13] The moratorium rule specifically incorporates this limitation.[14] This policy is contrary to law, unnecessarily shortens the time window for finding a resolution to a delinquency, and leads to unnecessary losses – to the agency, to the homeowners, and to the homeowners' communities. Even in non-judicial foreclosure states, acceleration is an early step in the foreclosure process. In certain states, a foreclosure sale cannot take place for ninety days or longer from the date of acceleration. In judicial foreclosure states, the foreclosure time frames extend significantly longer.[15] During the pendency of any type of foreclosure the borrower's financial circumstances may improve. The borrower may find counseling or legal help and approach the lender for the first time for loss mitigation help.

RHS's policy of barring loss mitigation after acceleration is out of step with the rest of the mortgage industry. FHA-insured borrowers may access loss mitigation, if they are eligible, until shortly before a foreclosure sale. The same holds true for loans held by Fannie Mae and Freddie Mac. In fact, RHS's guaranteed loan program also allows for loss mitigation after acceleration. During the weeks or months when these other homeowners can access loss mitigation assistance prior to a foreclosure sale, RHS direct loan borrowers are barred from doing so.

Moreover, the 2014 Real Estate Settlement Procedures Act (RESPA) regulations that govern mortgage servicers' evaluations for loss mitigation specifically contemplate post-acceleration loss mitigation. These regulations require that servicers evaluate borrowers for any loss mitigation options until a specified time (typically 37 days) before a foreclosure sale.[16]

RHS's policy is not only harmful and out of step with the entire mortgage industry, but it is also contrary to the moratorium statute. In *United States v. Shields*,[17] U.S. District Court for Vermont held that the provision barring post-acceleration moratorium relief, now found at § 3550.207(a)(3), was invalid as contrary to the federal moratorium statute (42 U.S.C. § 1475).

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[10] 7 C.F.R. § 3550.207(a)(3).
[11] 7 C.F.R. § 3550.207(a)(1)(i).
[12] 42 U.S.C. § 1475.
[13] 7 C.F.R. § 3550.211(h).
[14] 7 C.F.R. § 3550.207(a)(3).
[15] *See* RHS Single Family Housing Guaranteed Loan Program Technical Handbook Attachment 18-B (state-by-state listing of RHS's acceptable foreclosure time lines, with approved timelines ranging from five to twenty-five months depending on the state).
[16] 12 C.F.R. § 1024.41.
[17] 733 F. Supp. 776 (D. Vt. 1989).

Despite this court ruling, RHS has continued to enforce the invalidated provision even in cases where the RHS foreclosure does not take place for 12 or more months. RHS must formally delete this subsection from the regulation. RHS must also change its general policy that precludes all loss mitigation ("special servicing") after an acceleration. For the benefit of both the Government and borrowers, all forms of loss mitigation must be available after acceleration.

The requirement for a 20% reduction in income. The Housing Act of 1949 provides that a direct loan borrower is eligible for a payment moratorium "upon a showing by the borrower that due to circumstances beyond his control, he is unable to continue making payments of such principal and interest when due without unduly impairing his standard of living."[18] RHS's implementing regulation creates a barrier to eligibility that is inconsistent with the statute's broad standard for eligibility. The regulation defines as a condition to moratorium eligibility that "[t]he borrower's repayment income fell by at least 20 percent within the past twelve months."[19] Borrowers who cannot make this showing are automatically denied eligibility for a moratorium. The RHS regulation thwarts the statutory purpose in several ways.

First, the arbitrary 20% reduction in income threshold tends to exclude borrowers most in need of assistance. The lower the borrower's income, the more likely it becomes that even a small reduction in income will prevent the borrower from meeting a financial obligation. Second, the standard is particularly arbitrary when a borrower can qualify for a moratorium with, for example, $2,000 in unexpected unreimbursed expenses[20] but not qualify for a $5,000 loss in income because it is less than 20% of her income. Third, the standard is confusing to apply. Borrowers' income often rises and falls multiple times in the course of a year. The points of reference for calculating a percentage reduction in income fluctuate accordingly. Moreover, the twelve-month time frame itself is arbitrary. A borrower's income may have fallen drastically thirteen months before an application date. The borrower may have struggled to pay with reduced income and savings for several months, then applied for a moratorium when unable to continue. This borrower should qualify for a moratorium under the statutory eligibility criteria. However, the RHS regulation would automatically disqualify her. RHS should delete the 20% reduction in income requirement from the regulation.

A further barrier to securing moratorium relief is the fact that the loss in income must be attributable to the borrower and not the borrower's household. It is not uncommon that a borrower marries after securing a loan and, for a variety of reasons, such as the birth of children, the borrower and the spouse alter their lives and the non-borrower's income becomes the primary source of household income. Yet when the non-borrower's income is reduced, the household does not qualify for a moratorium. This is true even in community property states where the non-borrower's income is by law also the borrower's income. If the amount of payment assistance that a household receives is calculated on household income, so should eligibility for moratorium be based on the loss of income by the household. RHS should change its regulations to allow a borrower to qualify for a moratorium if a spouse, partner, or other household member who has been regularly contributing to essential expenses experiences a loss of income.

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[18] 42 U.S.C. § 1475(a).
[19] 7 C.F.R. § 3550.207(a)(1)(i).
[20] 7 C.F.R. § 355.207 (a)(1)(ii) and (ii).

4. **RHS needs to update its set of loss mitigation options to incorporate industry standards developed over the past decade.**

Over the past decade, all major government-related mortgage loan programs, with the exception of RHS's direct loan program, substantially revised their loss mitigation protocols. Fannie Mae, Freddie Mac, FHA, and the VA revamped nearly all aspects of their systems. RHS did the same for its guaranteed loan program. These entities made many of the changes in response to the foreclosure crisis. However, they ended up retaining many aspects of the reforms as permanent features of their servicing programs. They did so because the changes were effective in preserving homeownership and avoiding unnecessary foreclosures.

The most glaring deficiency in RHS's loss mitigation offerings for direct loans continues to be the lack of a flexible loan modification option. A modification option that allows for a reduction of the interest rate and extension of the repayment term can create affordable payments for the borrower while protecting the interest of the government as owner or insurer of the loan. Fannie Mae, Freddie Mac, FHA, and the VA have implemented modification protocols that authorize modifications with these features.[21] RHS allows this type of modifications for its guaranteed loan program.[22]

A loan modification with affordable terms returns a defaulted loan to payment status immediately. RHS moratoriums, on the other hand, often lead to gaps in payment lasting for one to two years. These gaps lead directly to the problem of how to deal with one or two years of unpaid interest at the end of a moratorium without a substantial restructuring of the loan. In the past, RHS never adequately addressed this problem. The rules currently under consideration leave the problem unresolved. The system for forgiving interest accrued during a moratorium remains vague and arbitrary. Interest forgiveness may be unnecessarily costly for the government as well. RHS should seek public input from a wide range of stakeholders and develop alternative modification and loss mitigation options that will better meet the needs of all parties.

On behalf of our low-income clients, we thank you for the opportunity to comment on these proposals, and we would appreciate any opportunity to discuss these matters in further detail. We have also attached an issue brief that we wrote last year that summarizes these changes and also changes needed for the guaranteed loan program.

We would be happy to answer questions and discuss our comments further with our staff. For further questions or discussion, please contact the following drafters: Geoff Walsh, National Consumer Law Center, 7 Winthrop Square, 4th Floor, Boston, MA 02110. (617) 542-8010 and Gideon Anders, National Housing Law Project, 1663 Mission St., Suite 460, San Francisco CA 94103, (415) 432-5703.

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[21] Fannie Mae Single Family Seller/Servicer Guide § 9206-10 (Flex Modification); Freddie Mac Single Family Servicer/Seller Guide ¶ F-1-30 (Flex Modification); HUD/FHA Single Family Housing Policy Handbook 4000.1 at A.III.2.k (pdf version pp. 669-70) (Jan. 2, 2020) (FHA-HAMP); VA Servicer Handbook M26-4 ¶ 5.06 (Feb. 26, 2019) (VA Affordable Modification).
[22] RHS Single Family Housing Guaranteed Loan Program Technical Handbook HB-1-3555 Attachment 18-A ¶ 5.

USDA Should Modernize Mortgage Protections: Four Long-Overdue Policy Changes to Limit Rural Foreclosures

April 2019

The United States Department of Agriculture (USDA) operates two significant programs for financing the purchase or construction of single-family homes in rural areas in the United States through its Rural Development (RD) mission area. The agency serves as a lender under its Section 502 direct loan program and also acts as a guarantor of loans made by private lenders under its Section 502 guaranteed loan program. Almost one million households have USDA-guaranteed loans and over 200,000 households currently have direct loans.[1]

Both the direct loan program and the guaranteed loan program are designed to promote stable and sustainable homeownership in rural areas. However, a significant number of borrowers in both programs lose their homes every year due to hardships caused by circumstances beyond their control and by RD's failure to adequately address their needs. To promote sustainable homeownership and prevent unnecessary foreclosures and loss claims, the agency should adopt four critical servicing policies.

> Almost one million households have USDA guaranteed loans, and over 200,000 households currently have direct loans.

Recommendations to Prevent Unnecessary Foreclosures and Loss Claims

1. USDA must make alternatives to foreclosure available for direct borrowers throughout the foreclosure process.

RD offers a number of foreclosure avoidance options, generally referred to as "loss mitigation options," for borrowers in both the direct and guaranteed loan programs who run into trouble making their mortgage payments. For borrowers in the guaranteed loan program, these options are available throughout the foreclosure process. However, RD takes the position that borrowers in the direct loan program cannot access foreclosure avoidance options, which the agency labels as "special servicing," once it accelerates a loan.[2] This policy shortens the time for resolving delinquencies and leads to unnecessary losses – to the agency, the homeowner, and the homeowner's community. [3]

Loan acceleration is an early step in a home foreclosure process that may take months or even years. After a loan is accelerated but before the foreclosure sale a borrower may experience a positive change in financial circumstances or qualify for a plan to bring the loan current. RD policy bars homeowners in the direct loan program from accessing these options even when significant time remains before a foreclosure judgment or sale.

RD's policy barring homeowners in foreclosure from accessing options to prevent foreclosure is fully out of step with the rest of the mortgage market. FHA-insured borrowers, for example, may access loss mitigation until shortly before a foreclosure sale. The same is true for borrowers whose loans are held by Fannie Mae and Freddie Mac. RD guaranteed loan borrowers also are allowed access to loss mitigation after acceleration.[4]

The USDA policy barring homeowners from options to prevent a foreclosure is fully out of step with the rest of the mortgage market.

The Real Estate Settlement Procedures Act (RESPA) regulations governing evaluation of loss mitigation require servicers to evaluate borrowers for all the loss mitigation options that a servicer can offer until a specified time prior to the foreclosure sale of the property.[5] RESPA rules recognize that defaulting homeowners frequently do not seek help from housing counselors and other experienced advocates until *after* they learn that foreclosure proceedings have begun with the acceleration of their home loan. These regulations apply to RD direct loans just as they do to all other "federally related mortgage loans."[6] RD's refusal to allow direct loan borrowers to access its major loss mitigation options after acceleration frustrates the goal of the RESPA rule. Meaningful loss mitigation options must remain available to homeowners throughout the foreclosure process.

RD's policy also clearly violates the statute that created moratorium relief for borrowers who have defaulted on their loans for reasons beyond their control. That statute applies "[d]uring any time such loan is outstanding. . . "and not only prior to acceleration." [7] In fact, in *United States v. Shields*,[8] a Vermont federal district court held that the agency's bar on post-acceleration moratorium relief violated the law because it is contrary to the moratorium statute. The agency nonetheless has continued a policy that is harmful to homeowners, costly to the government, contrary to the federal moratorium statute, and out of step with the rest of the mortgage market. This policy must be updated to make loss mitigation available to direct loan borrowers after acceleration.

2. Direct loan borrowers who complete a moratorium should automatically receive affordable loan modifications that address their post-moratorium income and financial situation.

RD is statutorily authorized to grant moratoriums of up to two years on mortgage payments to borrowers who suffer financial hardships for reasons outside of their control. By postponing the borrower's monthly mortgage payments, a moratorium provides significant relief to a borrower who is working through hardship. A moratorium does not, however, relieve a borrower of the obligation to repay the amounts that are deferred during the moratorium period.

Once a moratorium ends, it is almost always impossible for a borrower who is recovering from a financial hardship to pay all the deferred payments in a lump sum. This is particularly true for the low- and very low-income borrowers that the direct loan program serves. RD deals with this issue by offering only two options, both of which are inadequate. The first is forgiveness of the interest that has accrued during the moratorium, and the second is reamortization of the loan balance within the remaining term of the loan. The primary inadequacy of both of these options is that if either or even both are applied, the borrower's monthly post-moratorium mortgage payments will still always be greater than the pre-moratorium mortgage payments,[9] creating a payment shock that financially vulnerable borrowers coming off a hardship can ill afford.[10]

To prevent borrowers from failing after a moratorium, RD must stop refusing to allow loan term extensions after a moratorium.[11] Fannie Mae, Freddie Mac, FHA, and even the RD-guaranteed programs use loan term extensions as part of the loan modification process. As a result, the borrower's payment often decreases rather than increases. Because homeowners who have faced a hardship generally continue to experience pronounced decreases in income, extending the loan term so that the homeowner's monthly payment can be reduced after a moratorium improves loan performance and home retention.

RD must adopt a loan term extensions policy for direct loan borrowers. Such a change will help borrowers retain their homes and will improve the financial stability of the RD direct loan program.

3. For its guaranteed loans, RD must finalize the provisions of its August 23, 2018, proposed rule aimed at eliminating unnecessary barriers and improving loss mitigation options.

In August 2010, RD adopted a loan modification program based on the FHA Home Affordable Modification Program (HAMP) that focuses on creating an affordable payment plan for delinquent borrowers based on their income. As with FHA's HAMP program, the RD program allows loan servicers to combine a change in loan terms with a reduction of the amount due, which can include both the principal of the loan and past due charges. Unfortunately, in creating this program, the agency imposed unnecessary barriers to eligibility.

On August 23, 2018, RD proposed regulations that would eliminate some of these barriers. One proposed change would remove limits on Mortgage Recovery Advances, which allow lenders to receive advanced guarantee payments from RD in exchange for deferring past due amounts and, in certain circumstances, a portion of the loan principal in order to bring the loan current with an affordable payment. Borrowers still owe the amount of the advance, but the advanced amounts do not accrue interest and are generally due at the end of the loan or when the home is sold. RD currently limits the amount of a Mortgage Recovery Advance to 12 months of arrears. This rule unnecessarily prevents borrowers who struggle through an often-lengthy evaluation process from receiving Mortgage Recovery Advances. As RD noted in the discussion accompanying the proposed rules, HUD eliminated a similar rule from the FHA loss mitigation process in 2012.[12] RD needs to do the same, adopting its pending proposal.

RD should also implement Mortgage Recovery Advances for borrowers facing temporary hardships who do not need any other changes in their loan terms. With a stand-alone Mortgage Recovery Advance, borrowers would simply receive an advance to bring the loan current. Such advances work very well for homeowners who face only a temporary job loss or wage reduction. In those cases, borrowers simply need an advance to catch up on payments. The FHA loss mitigation process includes a variant of the stand-alone Mortgage Recovery Advance, and it has been successful for borrowers.[13] RD should follow the FHA's model and adopt its proposal for stand-alone Mortgage Recovery Advances.

4. USDA must eliminate other unnecessary barriers to affordable modifications for guaranteed loans and adopt additional beneficial concepts from FHA's waterfall.

RD should further update its guaranteed loan loss mitigation program by eliminating the requirement that the borrower's post-modification "debt to income ratio . . . must not exceed

55 percent."[14] When FHA eliminated the 12-month rule, it also eliminated its 55% back-end debt-to-income ratio (DTI) rule. This back-end rule was unnecessary because HUD, like RD, already applied an affordability analysis as part of the process of setting a target for the borrower's monthly payment. Unlike the target payment, the back-end ratio is challenging to apply with any certainty because expenses are hard to estimate and credit reports frequently include inaccurate or irrelevant information. RD should follow the FHA model and eliminate the 55% debt-to-income ratio requirement.

Lastly, RD should fully adopt the FHA-HAMP's system for determining a borrower's monthly payment, which is referred to as a "waterfall." This approach has proven to be an effective means of creating affordable, income-based loan modifications. The current form of FHA-HAMP[15] is particularly effective because it targets both borrower payment relief and affordability. Rather than simply pinning a modification to 31% of a borrower's income, the FHA-HAMP target payment system insures that payment relief is a factor in the waterfall. The mortgage industry has consistently noted the importance of payment relief in the success of loan modifications. RD should follow the FHA and adopt the waterfall system to help prevent unnecessary foreclosures.

Endnotes

[1] Corianne Payton Scally & David Lipsetz, *New Public Data Available on USDA Rural Housing Service's Single-Family and Multifamily Programs*, Cityscape: A Journal of Policy Development and Research, Vol. 19, No. 1 (2017) at 295, U.S. Department of Housing and Urban Development Office of Policy Development and Research, *available at* https://www.huduser.gov/portal/periodicals/cityscpe/vol19num1/ch17.pdf. Since 1949, when it was initiated, the RD direct loan program has financed over 1 million homes.

[2] 7 C.F.R. § 3550.211(h).

[3] Statement of Gideon Anders, National Housing Law Project, House Financial Services Committee, Subcommittee on Housing, Community Development, and Insurance at 13 (April 2, 2019) ("Anders Testimony"), available at https://financialservices.house.gov/uploadedfiles/hhrg-116-ba04-wstate-andersg-20190402.pdf.

[4] USDA, Loss Mitigation Guide: Single Family Housing Guaranteed Loan Program 4, 10 (July 2018), available at https://www.rd.usda.gov/files/3555-1chapter18.pdf.

[5] 12 C.F.R. § 1024.41.

[6] 12 U.S.C. § 2602(1)(B)(ii).

[7] 42 U.S.C. § 1475.

[8] 733 F. Supp. 776 (D. Vt. 1989).

[9] *See* United States v. Garner, 767 F.2d 104 (5th Cir. 1985).

[10] The forgiveness of interest accrued during a moratorium is also ineffective because borrowers are generally not informed of this option and RD has not made public any standards that it uses in determining eligibility for this forgiveness.

[11] 7 C.F.R. § 3550.208(b); Anders Testimony at 13-14.

[12] HUD, Mortgagee Letter 2012-22 (Nov. 16, 2012)

[13] HUD, Handbook 4000.1, FHA Single Family Housing Policy Handbook 609-611 (Mar. 27, 2019).

[14] 7 C.F.R. § 3555.304 (b)(1).

[15] HUD, Handbook 4000.1, FHA Single Family Housing Policy Handbook 611 (Mar. 27, 2019)..