

March 28, 2023

USDA Rural Development  
Rural Housing Service  
1400 Independence Ave., SW, Rm 5014, STOP 0701  
Washington, DC 20250-0701  
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RE: Comments in response to Single-Family Housing Guaranteed Loan Program, 88 Fed. Reg. 5275 (Jan. 27, 2023), Docket No. RHS-22-SFH-0012, RIN# 0575-AD28

Dear Rural Housing Service:

On behalf of our low-income clients, we appreciate the opportunity to comment on the Rural Housing Service's (RHS) proposed rule regarding Mortgage Recovery Advances (MRA). We support RHS's use of MRA to help borrowers reinstate past due mortgage amounts and to defer principal to the end of the borrowers' loan term at 0% interest. These uses of MRAs help borrowers reach affordable payment arrangements with their servicers and, thus, avoid foreclosure.

We believe that RHS's proposed rule will improve borrower access and borrower comprehension of MRAs by eliminating the use of subordinate mortgages to secure the MRA payments from the agency. Instead of requiring subordinate mortgages, which involve execution of burdensome documents and which can obscure the full amount due on the loan, we support RHS's proposal to rely on the servicer's first lien mortgage to secure the MRA. **However, we strongly urge RHS to amend proposed rule 7 C.F.R. § 3555.304(d)(6) through the implementation of an affordable repayment plan, based on the borrower's existing monthly mortgage payment, for borrowers who reach their maturity date and face substantial MRA balloon payments.**

- **Eliminating the requirement for subordinate mortgages will improve borrower access and understanding of MRA**

By eliminating the requirement for borrowers to execute a subordinate mortgage to RHS before accessing MRA, the proposed rule will remove a significant impediment to borrowers accessing relief. Subordinate mortgages require borrowers to execute complicated legal documents often without any guidance or advice. Because servicers generally include strict deadlines for borrowers to return the subordinate mortgages, we have seen borrowers fail to return them. Because the documents must meet the recording requirements of numerous states and counties, we have seen errors in executing the documents or unnecessary requirements

imposed by servicers, which can put borrower access to MRAs at risk. By relying on the original mortgage to secure the MRA, the proposed rule avoids these significant execution issues.

Moreover, because the servicer will service the deferred balance along with the interest-bearing principal balance, the borrower will have a better understanding of the full amount owed on the loan. Under the proposal, the deferred balance will be evident on the borrower's mortgage statement and any payoff statements. When the government owns and services the debt, borrowers often fail to understand how the deferred balance relates to the total amount owed. Unfortunately, we have seen title companies miss subordinate mortgages in connection with property transfers, and such failures have led to post-sale collection actions to recover proceeds. Eliminating the use of subordinate mortgages should minimize these issues.

- **Proving a payment plan for borrowers facing an MRA balloon payment will help avoid unnecessary foreclosures.**

It is critical, however, for the agency to provide clear direction regarding the collection of MRAs for borrowers who reach the end of their loan terms and face substantial balloon payments. While we anticipate that only a small percentage of borrowers will hold their mortgage to maturity, the proposed rule does not provide guidance on this matter. Below we propose simple steps to avoid unnecessary foreclosures on those borrowers who do not have sufficient funds available to pay off the deferred balance at maturity. The agency should incorporate the steps below into a revised version of 7 C.F.R. § 3555.304(d)(6).

First, no later than six months before the maturity of their mortgage, RHS should require servicers to notify borrowers who have an outstanding MRA balance that the balance will be coming due when their mortgage matures. This notice should list potential solutions that borrowers could use to pay off the loan, including a lump sum payment, refinance, the payment plan we suggest below, and any other options that the USDA may choose to list. The notice should recommend that the borrower contact a HUD-certified housing counselor for advice, and should provide the website and phone number for the HUD or CFPB housing counseling agency locators. This notice will give borrowers the opportunity to weigh their available options before they are in default and at risk of foreclosure.

Second, once the balloon payment becomes due and payable at the maturity of the mortgage, we urge the agency to require a simple payment plan to recover the unpaid balance that is based on the borrower's monthly mortgage payment. The plan would simply take the amount due on the MRA and divide it by the monthly principal and interest payment of the maturing mortgage to generate the term (number of months) of the payment plan. The amount due each month under the MRA payment plan would simply equal the monthly principal and interest payment of the maturing mortgage. The servicer would then be required to extend the amount of time before the MRA is due in full by the term as calculated above, and collect and remit to the agency monthly MRA payments from the borrower over that term.

For example, if the borrower owes \$20,000 in an MRA and had a \$2,000 monthly P&I payment on their mortgage, the payment plan term would be 10 months. The borrower would repay the MRA by making monthly payments of \$2,000 over the 10 months following the maturity of their mortgage, with the first MRA payment due one month after the due date of their final mortgage payment. This simple plan will allow the agency to recover their MRA, and it will be based on a payment the borrower has already demonstrated to be affordable since they have made these payments through the maturity of their mortgage. If the borrower wants to repay the MRA in a lump sum or make larger payments over a shorter period to resolve the past due amount, the borrower can make those arrangements with their servicer.

We urge the agency to incorporate these steps into a revised version 7 C.F.R. § 3555.304(d)(6) in order to avoid significant payment shock and the possibility of foreclosure after the borrower has made decades of on-time monthly payments but cannot afford to resolve their MRA by making a large balloon payment.

- **Updating the USDA loss mitigation system will provide RHS flexibility to respond to changing market conditions and will improve borrower outcomes.**

In addition to the topics discussed, we also ask RHS to remove the current restriction of one MRA per loan. Many low-income borrowers will face multiple hardships over the life of their loans that require assistance to overcome. FHA regulations recognize this possibility and do not impose a one-time limit on use of the partial claim and instead rely on a statutory maximum partial claim amount. We urge USDA to put its borrowers in the equivalent position as FHA-insured borrowers and allow multiple uses of the MRA over the life of their loans.

In addition, RHS should allow borrowers to specify how partial prepayments should be applied. Borrowers who make payments beyond their scheduled principal and interest due should be permitted to specify how the prepayment should be applied: to an MRA (subordinate lien or deferred balance) or their interest-bearing first lien. In instances when the borrower does not specify, RHS should clarify how partial prepayments will be handled. Should the borrower not specify a preference, our recommendation is that partial prepayments be applied first to interest-bearing loan balances.

We also urge RHS to reassess the loss mitigation regulations, 7 C.F.R. § 3555.303 & .304 because they impose unnecessary barriers on accessing relief and they put significant limits on the agency's ability to update its waterfall to address changing market conditions and to incorporate innovations in loan servicing. For example, RHS may wish to consider allowing a delinquent borrower who cannot make up their missed payments but can resume making their originally scheduled monthly payment to use a standalone MRA to cure their delinquency without submitting documentation. However, the current regulation seems to limit the agency's ability to innovate by spelling out so many details in the regulation rather than in agency letters and handbooks.

We greatly appreciate the opportunity to comment on the proposed rule, and we look forward to addressing any questions you may have or further conversation. If you have questions, please contact Steve Sharpe, Senior Attorney at the National Consumer Law Center at [ssharpe@nclc.org](mailto:ssharpe@nclc.org) or Kanav Bhagat, consultant to the Center for Responsible Lending at [kbhagat@housingrpa.com](mailto:kbhagat@housingrpa.com).

Sincerely,

National Consumer Law Center (on behalf of its low-income clients)  
Center for Responsible Lending  
National Housing Law Project