

September 29, 2023

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

RE: Modernization of Engagement With Mortgagors in Default, 88 Fed. Reg. 49392, Docket No. FR-6353-P-01

Dear Regulations Division:

On behalf of our low-income clients, we strongly support HUD's proposal to retain the mandatory meeting that servicers must hold with FHA-insured borrowers early in the default process. Servicers who fail to make the required effort to hold the meeting should not have the right to proceed to foreclosure, and we support HUD's decision to maintain this standard in its regulations. Moreover, we strongly support HUD's proposal to eliminate the loophole that allows servicers to avoid the mandatory meeting if they do not have a branch office within 200 miles of the property. Because non-bank servicers without branch offices increasingly service FHA-insured loans, retaining the 200-mile loophole would effectively eliminate the opportunity for a meeting for many borrowers. With the removal of the 200-mile loophole, we recognize that not every mandatory meeting under the rule will be in person. However, HUD must take steps to ensure that the meeting is meaningful as detailed below.

The mandatory meeting provides particular value for FHA-insured borrowers and for the Mutual Mortgage Insurance Fund (MMIF). It is HUD's mission to stabilize and support homeownership for low- to moderate-income borrowers who need specialized assistance in times of need due to their relative lack of resources. Because HUD has developed its own waterfall with concepts like a Partial Claim, the meeting facilitates better borrower understanding of the assistance options available. The recent revisions to the waterfall, which no longer require a full submission of documents before providing relief, make the meeting even more valuable because the borrower and servicer can work together to identify a loss mitigation option during the meeting.

Reports from the HUD Office of Inspector General (OIG) clearly show that improved servicer performance is necessary. According to the reports, FHA-insured servicers persistently failed to comply with the FHA loss mitigation waterfall.¹ HUD's proposal to retain the mandatory meeting and remove the 200-mile loophole provides a specific opportunity for servicers and borrowers to prepare and fully discuss the options that are available, which will promote compliance.

¹ Dept. of Housing and Urban Dev., Office of Inspector General, Servicers Generally Did Not Meet HUD Requirements When Providing Loss Mitigation Assistance to Borrowers With Delinquent FHA-Insured Loans, 2023-KC-0005 (June 13, 2023).

However, we strongly believe that if HUD implements the proposed new rule without effective oversight, it will have the same failed impact as the old rule.

Meeting guidance. We urge HUD to add guidance to ensure that servicers follow the spirit of 24 C.F.R. § 203.604 and to require a scheduled meeting conducted with certain minimal procedural standards. Servicers should not be allowed to simply resend the general outreach letter required under Regulation X. HUD should provide guidance regarding the letter and structure of the meeting in the following ways:

- The servicer must provide specific notice regarding scheduling of the meeting so that borrowers understand what options are offered for the meeting and its purpose;
- The servicer must give the borrowers options of when the meeting will be held so that it does not interfere with their schedules and so borrowers have time to prepare;
- The servicer should provide borrowers with options on how the meeting should be conducted, including an invitation to involve an advocate in the meeting and to hold the meeting in person if feasible;
- The servicer representative who is present must be trained in FHA loss mitigation and have authority to determine eligibility;
- The servicer must document the meeting and share the meeting summary with the borrower;
- The servicer must develop a written plan that describes the concrete steps it has taken to implement the meeting requirement and this plan must be integrated into HUD's Quality Control.

Language access. HUD should require servicers to communicate in writing about the revised meeting in the borrower's preferred language and to explicitly offer simultaneous oral or sign language interpretation at the borrower's request, at no additional cost to the borrower. In addition, as noted in recommendations we have made under separate cover,² HUD should add to its current regulations by requiring servicers to collect and maintain information on borrower language preference and provide vital loss mitigation information in-language.

Housing counseling referrals. To improve accessibility, HUD should also continue to refer borrowers to available HUD-approved housing counselors in all communications. Many borrowers will be more comfortable and better able to understand and access their options when they have the assistance of housing counselors during the meetings, whether they are conducted in person, through video-conferencing, or over the phone. HUD should promote the use of housing counseling and ensure that for homeowners who need in-person interaction, the housing counseling agency can meet with the homeowner in person and help to coordinate the internet or phone call with the servicer.

² National Consumer Law Center, Group Letter to FHA on Language Access for Borrowers (Nov. 15, 2022), <https://www.nclc.org/resources/group-letter-to-fha-on-language-access-for-borrowers/>.

Homeowner engagement. We strongly dispute the suggestion in the data HUD cited in its proposed rule that borrowers are not interested in having a meeting with their servicers.³ These data ignore the frequent failure of mortgage servicers to comply with current version of 24 C.F.R. § 203.604 as demonstrated through years of case law as and supported by recent HUD OIG reports showing persistent failure of servicers to follow HUD’s waterfall.⁴ Even when servicers have complied, their actions often meet the letter, but not the spirit of the regulation and do not facilitate engagement with borrowers.

The success of state and local mediation and conference programs for borrowers in foreclosure demonstrates that borrowers want to engage with their servicers. Like the HUD rule, these programs set up face-to-face meetings between borrowers and mortgage servicers. Participation rates in the programs have ranged from twenty to eighty percent of eligible borrowers.⁵ The programs have documented high rates of success in avoiding foreclosures. These programs succeed because they set standards and hold servicers accountable for complying with them.

Quality control. Regardless of the rule HUD implements, HUD must engage in comprehensive quality control to ensure that servicers follow the rule. Information on the lack of borrower engagement under the current meeting rule was available to HUD for years. If HUD had timely investigated to find the cause of the systemic issues, HUD could have demanded remedial actions from the servicers and followed up with rigorous oversight. If HUD continues to believe that the issues with current rule result from technology problems and if HUD fails to implement effective oversight in the future, the revised rule will just as consistently fail to achieve HUD’s goals as the current rule does.

We appreciate the opportunity to comment on this proposed regulation, and we look forward to further developing strategies to best communicate with borrowers to help them avoid unnecessary foreclosures. If you have any questions about this letter, please contact Steve Sharpe, Senior Attorney at the National Consumer Law Center, at [ssharp@nclc.org](mailto:ssharpe@nclc.org).

Sincerely,

National Organizations

Center for Community Progress

Consumer Action

Consumer Credit and Budget Counseling, Inc d/b/a National Foundation for Debt Management

Consumer Federation of America

³ See 88 Fed. Reg. at 49393.

⁴ See National Consumer Law Center, Home Foreclosures at 6.2 (2d ed. 2023), *updated at* www.nclc.org/library; Dept. of Housing and Urban Dev., Office of Inspector General, Servicers Generally Did Not Meet HUD Requirements When Providing Loss Mitigation Assistance to Borrowers With Delinquent FHA-Insured Loans, 2023-KC-0005 (June 13, 2023).

⁵ See NCLC’s individual comment for discussion of participation rates.

Credit Advisors Foundation
HomeFree-USA
National Affordable Housing Network
National CAPACD- National Coalition for Asian Pacific American Community Development
National Consumer Law Center (on behalf of its low-income clients)
National Fair Housing Alliance
National Housing Law Project
National Housing Resource Center
National NeighborWorks Association
Navicore Solutions
Parachute Credit Counseling, Inc.

State and Local Organizations

ACCESS (OR)
Administration of Resources and Choices (AZ)
AGORA Community Services Corporation, NFP (IL)
Arizona Housing Coalition
Atlanta Legal Aid Society, Inc. (GA)
Bay Area Legal Aid (CA)
Buffalo Urban League (NY)
Centre for Home Ownership (NC)
Child & Family Services of Eastern Virginia DBA/THE UP CENTER
Community Legal Aid Services, Inc. (OH)
Community Legal Services of Philadelphia (PA)
Connecticut Fair Housing Center
Desire Community Housing Corp (LA)
Georgia Advancing Communities Together, Inc.
Good Neighbor Foundation - HOC (TN)
GS Community Ventures (GA)
Hale Mahaolu - Homeownership & Housing Counseling Program (HI)
Hawaiian Community Assets
Housing Action Illinois
Housing Network of Rhode Island
Housing Options & Planning Enterprises, Inc. (MD)
The Housing Trust (NM)
Jacksonville Area Legal Aid, Inc. (FL)
Legal Aid Society of Southwest Ohio, LLC
Legal Services NYC (NY)
Long Island Housing Services, Inc. (NY)
Michigan Poverty Law Program
Morningstar Urban Development Inc. (GA)
Mountain State Justice, Inc. (WV)
Multi-Cultural Development Center, A HUD Approved Housing Counseling Agency (LA)

Neighborhood Development Foundation (LA)
Neighborhood Housing Services of Chicago (IL)
Neighborhood Nonprofit Housing Corporation (UT)
NeighborWorks Southern Colorado
North Carolina Justice Center
Parkview Services (WA)
Pawtucket Housing Authority (RI)
PCF Development (RI)
Ponce Neighborhood Housing Services Inc. (PR)
PRG, Inc. (MN)
Public Counsel (CA)
Reinvestment Partners (NC)
Rockaway Development & Revitalization Corporation (NY)
Rockland Housing Action Coalition, Inc. (NY)
South Suburban Housing Center (IL)
Tri-City Peoples Corporation (NJ)
Trinity Empowerment Consortium, Inc. (FL)
Universal Housing Solutions CDC (IL)
Urban League of Metropolitan Seattle (WA)
Ventura County Community Development Corporation (CA)
West Elmwood Housing Development Corporation (RI)
Western Arizona Council of Governments