

September 13, 2024

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

RE: Draft Mortgagee Letter: Modernization of Engagement with Borrowers in Default

Dear Commissioner Gordon:

On behalf of our low-income clients, we write to comment on the proposed HUD handbook language implementing the revision of 24 C.F.R. 203.604, which requires servicers to conduct a meeting with borrowers in default to discuss foreclosure alternatives. We applaud HUD's efforts to create a required meeting that will improve borrower access to loss mitigation, and we have some suggestions on how to further improve the process. In addition to the discussion below, we have attached and incorporated a completed version of HUD's feedback form and our previous comment on the mandatory meeting rule.

The Loss Mitigation Consultation, as proposed in the draft handbook, will facilitate effective communication between borrowers and servicers that is necessary due to the nuanced and unique nature of FHA's loss mitigation system and will provide particular value for FHA-insured borrowers and for the Mutual Mortgage Insurance Fund (MMIF). The consultation dovetails into HUD's current process under its loss mitigation waterfall, which provides borrowers access to streamlined pandemic-related assistance. Previously, the servicer had to collect full financial documentation to consider a borrower's eligibility for assistance. This made it challenging for the servicer to assess eligibility during a meeting unless the borrower provided necessary documentation prior to the meeting. However, under the streamlined loss mitigation system, the borrower and servicer determine what is affordable during a conversation without the need to reference documentation. As a result, having the Loss Mitigation Consultation scheduled in advance with the borrower to decide the appropriate option fits perfectly within the loss mitigation system HUD created. Servicers can let the borrower know that decisions will be made during the meeting and can give the borrower a chance to prepare questions.

The guidelines that HUD has proposed for scheduling and conducting the Loss Mitigation Consultation improve upon the previous system. By giving the borrower options for when the meeting will occur and how it will be conducted, HUD provides the flexibility that borrowers with family and work obligations need to make the meeting productive. It is important that HUD's proposal also prevents servicers from using artificial intelligence for the meeting and instead requires the servicer to staff the meeting with representatives that have proper training and authority to enter into agreements, which are critical for making the Loss Mitigation Consultation effective.

We strongly support HUD's decision to make the Loss Mitigation Consultation separate from actions that servicers take to comply with other regulations. This recognizes that FHA-insured borrowers are often more vulnerable to financial crises than other borrowers, and HUD has developed loss mitigation options to address the particular needs of its borrowers. It is also critically important that servicers make a second reasonable effort to arrange the meeting before foreclosure in order to fully ensure that borrowers have a chance to save their homes. These steps that HUD has proposed will improve its loss mitigation system..

While we support the proposed handbook additions for Loss Mitigation Consultations, we believe HUD should take the following steps to improve outcomes for borrowers and for the MMIF:

**1. HUD should define the steps servicers should take to arrange the Loss Mitigation Consultation.**

Scheduling the meeting in advance is a key component of making the Loss Mitigation Consultation effective. It will allow the borrower to have a meeting time that does not conflict with work, child care obligations, or other significant life issues. It will give the borrower reasonable time to prepare for the meeting, including to assemble documents, prepare questions, review the servicer's documents, and arrange for housing counselor or other advocacy assistance. Borrowers with a disability will be able to secure an assistive device or other reasonable accommodation. It will give peace of mind as well as a chance to have a meaningful opportunity to avoid foreclosure.

We suggest, however, that HUD define the steps that qualify as a "reasonable effort" that servicers must take to arrange the meeting. Specifying the requirements for arranging the meeting will clarify HUD's expectation for servicers and borrowers and will improve outreach to borrowers by ensuring a reasonable minimum system for contact. We suggest that HUD adopt the following as a minimum reasonable effort to arrange the Loss Mitigation Consultation pursuant to 24 C.F.R. § 203.604:

- Step 1: The servicer should send a letter by certified mail to the borrower or visit the borrower at the home and provide the information included in Handbook 4000.1 III.A.2.h.xii.B.2. The attempt is successful if the borrower responds and selects the time for the meeting and the method for conducting the meeting. If the borrower does not respond with this information, the servicer should move to Step 2.
- Step 2: The servicer should contact the borrower by any electronic means provided in Handbook III.A.2.h.iv.B. The attempt is successful if the borrower responds and selects the time for the meeting and the method for conducting the meeting. Attempts that do not result in the borrower responding and selecting the information are not counted as successful. If the borrower does not respond with this information, the servicer should move to Step 3.

- Step 3: The servicer should send a letter by certified mail to the borrower or visit the borrower at the home and provide the information included in Handbook 4000.1 III.A.2.h.xii.B.2. The servicer should also send the information to the borrower by regular first-class mail simultaneously with the certified letter because some borrowers have difficulty arranging to be present or to travel to the local post office to receive certified mail, or may decline certified mail out of fear.

If the servicer successfully schedules a meeting with the borrower or completes all three steps, the servicer has completed a reasonable effort to arrange the meeting and complies with the regulation. This system for outreach will improve borrower access to the meeting, which will improve outcomes for borrowers and the MMIF fund, and will provide clarity for servicers while imposing manageable costs.

## **2. FHA should continue to facilitate the availability of language access services for borrowers in default.**

We are pleased that HUD proposes to require that all verifiable attempts to schedule Loss Mitigation Consultations include a statement on the availability of language services, and that this statement be included in at least Spanish. LEP individuals are rarely accommodated in our consumer financial marketplace, as the availability of language assistance services is inconsistent across the market. The result is twofold: LEP borrowers are often not aware that language assistance may be available and they often do not feel entitled to assistance, making it unlikely that they will affirmatively ask for services. Including a statement on the availability of services will make it more likely that LEP consumers will know to ask for assistance, where available, and when mortgagees do not offer any assistance, it will encourage LEP consumers to get the help they need from someone they trust.

However, we encourage the HUD to consider requiring that mortgagees engage in reasonable steps to provide language assistance to borrowers, at least through oral interpretation during loss mitigation consultations. These consultations are likely to involve highly sensitive matters that consumers should be entitled to discuss with their servicers independently, without needing to involve family members or friends. Moreover, these consultations have the potential to assist borrowers in obtaining a long-term loss mitigation solution that works for them and protects the insurance fund, at a time when the risk of home loss to foreclosure is high. Without requiring some minimum level of language assistance, such as oral interpretation services, borrowers with LEP or other language barriers may still be unable to fully participate in these meetings when they take place.

## **3. HUD should eliminate unnecessary barriers to borrowers accessing forbearance plans.**

We believe HUD's revised Loss Mitigation Consultation program will improve communications between borrowers and servicers early in default. By better promoting communication earlier in the default cycle, it is likely that more borrowers will discuss options with their servicer before

their financial hardships have fully resolved. As a result, more borrowers may seek forbearance plans, which provide a temporary pause in payments while borrowers recover.

FHA should eliminate unnecessary barriers to accessing forbearance. During the pandemic, borrowers facing financial hardship with federally-backed mortgages, including FHA-insured borrowers, had access to twelve months of forbearance without having to submit financial documentation. Servicers approved forbearance plans based on a phone conversation with a borrower who asked for help. This was a great success. In fact, increased access to streamlined forbearance during the pandemic has largely been credited with avoiding somewhere between hundreds of thousands and millions of foreclosures.<sup>1</sup>

With the success of streamlined forbearance, HUD should revise its forbearance policies in Handbook 4000.1 to remove the requirement that borrowers submit financial documents if they seek up to twelve months of forbearance. In addition, HUD should broaden the scope of hardships that justify forbearance. Under HUD Handbook 4000.1, borrowers seeking Special Forbearance, which is the current program for providing twelve months of relief, must establish that they are unemployed. This is an overly restrictive requirement for forbearance as borrowers may face other hardships (such as reduced working hours, divorce, illness, an increase in expenses, among others) that prevent them from meeting their payment obligations. These changes would bring FHA forbearance policy into alignment with the Government Sponsored Enterprises (GSEs). Both Fannie Mae and Freddie Mac allow borrowers to access forbearance for up to twelve months without a financial package and allow for a broad scope of financial hardships to qualify for forbearance. There is no regulatory barrier to these changes. The regulation governing Special Forbearance, 24 C.F.R. § 203.471, does not require submission of financial documentation and instead gives HUD broad discretion to determine eligibility requirements.

**4. To ensure the meetings are successful, HUD should collect data about the servicer’s conduct of Loss Mitigation Consultations and should require servicers to submit plans regarding the meetings.**

As we discussed in our [September 29, 2023 comment](#) on the proposed revision to 24 C.F.R. 203.604, we and advocates in the field have witnessed significant servicer non-compliance with HUD’s former face-to-face meeting rule, which curtailed the rule’s success in facilitating effective alternatives to foreclosure. We believe the revised rule and HUD’s development of the Loss Mitigation Consultation are significant improvements, and we urge HUD to implement data collection and oversight systems so HUD can ensure servicer compliance with the new rule while also measuring its effectiveness. HUD should require servicers to report regularly on the status of their meetings, with aggregated data on numbers of borrowers eligible, participation rates, and outcomes. HUD must actively investigate patterns of failure to conduct meetings and determine causes of non-participation. Servicers that report low participation must improve their

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<sup>1</sup> Sources: [How Many Mortgage Foreclosures Is Forbearance Preventing?](#) | St. Louis Fed (stlouisfed.org) and [U.S. Foreclosure Activity Drops To An All-Time Low In 2021](#) | ATTOM (attomdata.com).

practices so that rates improve. Among other data points, HUD's Neighborhood Watch system should be adjusted to include data on each servicer's conduct of meetings.

Moreover, HUD should require each servicer to submit a plan for how it will conduct the Loss Mitigation Consultations. A concrete plan for conduct of meetings is key to accountability and oversight. The absence of such a plan is a clear indication that the servicer does not take the meeting requirement seriously. Elements of a plan must include: (1) the allocation of designated staff to handle the meetings; (2) provision for training and supervision of the designated staff to process borrower requests and conduct meetings; (3) description of the content of notices to borrowers; (4) the protocol for conduct of meetings; (5) documentation of the application of the FHA loss mitigation waterfall at the meeting; (6) a document to summarize the outcome of a meeting for servicer records; (7) a protocol for reporting data to HUD on numbers of meetings and outcomes.

We appreciate the opportunity to comment on these important provisions. If you have any questions or would like to discuss these recommendations in further detail, please contact Steve Sharpe, Senior Attorney at National Consumer Law Center, at [ssharpe@nclc.org](mailto:ssharpe@nclc.org).

Sincerely,

National Consumer Law Center (on behalf of its low-income clients)