

July 5, 2019

Mr. John Lucey
Director, FHA Office of Asset Sales
Office of Housing
Department of Housing and Urban Development,
451 7th Street SW, Washington, DC 20410

Via regulations.gov

Re: Federal Housing Administration (FHA): Single-Family Loan Sale Program
Advance Notice of Proposed Rulemaking and Request for Public Comment
Docket No. FR-6051-A-01

Dear Mr. Lucey,

On behalf of the low-income homeowners and the communities we represent, the undersigned 27 consumer, civil rights, community, and housing organizations write to urge the Department of Housing and Urban Development (HUD) to focus on protecting homeowners, preserving communities, including communities of color, and promoting neighborhood stability in any rule it issues on the Federal Housing Administration (FHA) Single-Family Loan Sale Program (“Loan Sale Program”).

In order to stabilize communities and avoid furthering the harm that the Loan Sale Program has caused, any regulation must:

- Allow HUD to employ loan sales only when it can document an imminent threat of a negative balance to the Mutual Mortgage Insurance (MMI) fund.
- Require servicers to provide notice to homeowners prior to their inclusion in any auction informing them that the loan is being proposed for sale as a result of the exhaustion of loss mitigation alternatives.
- Obligate servicers to document and certify compliance with each step of FHA’s sequential loss mitigation review, including documentation of the grounds for denial of foreclosure alternatives, before HUD allows the loan to be sold in a loan sale.
- Mandate that loan purchasers offer and make publicly available comprehensive loss mitigation protocols that provide borrowers with equivalent or greater relief than the options available under FHA loss mitigation guidelines.
- Prohibit loan purchasers from offering loss mitigation options that do not support long term affordability, including temporary interest-only modifications.
- Set aside the maximum number of loans for purchase by community groups and nonprofit organizations with a mission of preserving homeownership or affordable rental units.
- Include comprehensive and publicly accessible limits on the disposition of properties acquired through the program to entities other than owner-occupants, community groups, affordable rentals, or land banks.
- Prohibit entities that acquire properties through the program from disposition through sales using land installment contracts or conversion to high cost rental properties.

Congress has specifically tasked FHA “to meet the housing needs of the borrowers that the single family mortgage insurance program . . . is designed to serve.”¹ FHA-insured loans play a vital role in providing access to sustainable, affordable homeownership for all Americans, and especially for low- and moderate-income (LMI) families and communities of color. In 2018, almost 83 percent of FHA mortgage loans provided financing for first-time homebuyers.² Minority homebuyers accounted for almost 34 percent of all FHA loans.³

Since 2010, HUD has sold over 108,000 loans with over \$18 billion in unpaid principal balances⁴ without proper guardrails in place to protect borrowers – the people most affected by the program. Contrary to its Congressional mandate to meet the housing needs of borrowers, the FHA Loan Sale Program has instead weakened the very communities that FHA has an obligation to serve.

Loan sales should only be allowed when FHA faces financial difficulty with the FHA insurance fund as an option of last resort. Our organizations have witnessed the negative effects of the Loan Sale Program on homeowners, communities, and neighborhoods over the past several years. These sales should only occur after HUD improves enforcement against non-compliant lenders, where HUD faces significant weakness in the MMI, and after HUD promulgates strong protections to shield our communities from further harm.

The problems are significant. The Loan Sale Program has stripped borrowers of important protections against foreclosure, including their ability to access FHA-HAMP, without first notifying borrowers that their loans have been selected for sale and without providing borrowers with an opportunity to dispute and appeal the servicer’s representation that loss mitigation was fully exhausted. Servicers have consistently failed to comply with FHA loss mitigation requirements designed to avoid foreclosure. This non-compliance has led to homeowners unnecessarily facing foreclosure or being unable to stay in their home even though they should have been able to modify their loan into an affordable payment. We have seen this non-compliance in loans selected for the Loan Sale Program with borrowers who were in the middle of applying for FHA-HAMP having their loan placed in a sale without warning before receiving an answer on their application.⁵

To protect loans from inappropriate inclusion in loan sales before being fully evaluated for loss mitigation, HUD should require servicers to provide a specific notice to homeowners prior to sale informing them that their loan is being proposed for inclusion in a loan sale. The notice

¹ 12 USC 1708(a)(7)

² Annual Report to Congress Regarding the Financial Status of the FHA Mutual Insurance Fund, Fiscal Year 2018, available at <https://www.hud.gov/sites/dfiles/Housing/documents/2018fhaannualreportMMIFund.pdf>.

³ *Id* at page 24.

⁴ HUD Office of the Inspector General, *HUD Did Not Conduct Rulemaking or Develop Formal Procedures for Its Single Family Note Sales Program* (Jul 2017), available at <https://www.hudoig.gov/sites/default/files/documents/2017-KC-0006.pdf>.

⁵ Geoff Walsh, National Consumer Law Center, *Opportunity Denied: How HUD’s Note Sale Program Deprives Homeowners of the Basic Benefits of Their Government-Insured Loans* (May 2016), available at <https://www.nclc.org/issues/opportunity-denied.html>.

should explain to borrowers that according to the servicer, loss mitigation has been exhausted. It should provide borrowers with the opportunity to dispute inclusion and appeal any improper denials of loss mitigation options, in order to ensure borrowers are fully evaluated for loss mitigation before being included in a sale.

Before a loan sale takes place, servicers should be required by regulation to document and certify compliance with each step of FHA's sequential loss mitigation review. This should include documentation of the grounds for denial of foreclosure alternatives before HUD allows the loan to be sold in a loan sale. HUD should impose penalties on servicers who substantially delay processing loss mitigation requests, systemically circumvent FHA loss mitigation requirements or fail to comply with state and local laws, including mediation requirements.

Protections are also needed to prevent further harm to individual borrowers and their communities after a loan sale. HUD has sold the vast majority of the loans in the FHA Loan Sale Program to private equity firms that increase neighborhood instability. Although the private equity purchasers typically buy the loans for far less than the outstanding principal balance and the property's market value, they generally have not passed along these savings to homeowners by offering long-term affordable modifications that allow families to maintain homeownership. Unlike FHA-HAMP, the loss mitigation options offered by private equity purchasers have generally been unsustainable options, including temporary interest-only modifications that push homeowners further into debt. Once they own single family properties, private equity investors have often engaged in predatory practices with the homes they acquire,⁶ such as sales through land installment contracts and conversion of units to high-cost rentals with unaffordable terms, that harm residents and communities.

In order to ensure that borrowers are able to access home-saving solutions after losing access to FHA loss mitigation options, it is necessary that loan sale purchasers be required to implement and disclose a comprehensive and publicly accessible loss mitigation protocol. The loss mitigation options in the protocol should provide borrowers with equivalent or greater relief than the options available under FHA loss mitigation guidelines, including loan modifications that prioritize principal reduction, interest rate reduction, and term extension to reach an affordable payment. Purchasers (and subsequent purchasers) should be required to review all borrowers for loss mitigation under this protocol before initiating foreclosure.

To further neighborhood stability, HUD should prioritize increased opportunities and resources for mission-driven entities to purchase loans and rehabilitate properties for owner-occupancy or affordable rental. HUD should establish procedures to design specific pools for community partners and prioritize the sale of non-performing loans whenever possible to community partners. Local governments, non-profit organizations, and other mission-driven entities have had success in providing better outcomes for borrowers and communities after purchasing pools at loan sales and should have more opportunities to purchase loans if they must be sold.

⁶ ACCE Institute, Americans for Financial Reform, and Public Rights Advocates, *Wall Street Landlords Turn American Dream Into a Nightmare* (Jan 2018), available at <https://ourfinancialsecurity.org/2018/01/afr-report-wall-street-and-single-family-rentals>.

For all non-performing loans where a home-saving loss mitigation option is not possible and the purchaser of a non-performing loan acquires the property through foreclosure sale, HUD should issue regulations that promote owner-occupancy and neighborhood stability by requiring as many properties as possible to be sold to owner-occupants, converted to affordable rental units, or sold or donated to mission-driven entities or a land bank. These regulations should explicitly prohibit purchasers of non-performing loans from using a contract for deed, rent-to-own, or land installment contract to sell acquired properties unless the seller is a legitimate non-profit organization.

To meaningfully evaluate the community impact of the Loan Sale Program and provide meaningful comment, data is crucial. As many of us noted in our May 31, 2019 letter,⁷ it is difficult to fully address the questions posted in the ANPR concerning the impact and outcomes of the program because HUD has not released the data necessary to conduct such an analysis. Although buyers of single family loans under the Loan Sale Program are currently subject to a four-year reporting requirement, HUD has not updated its reporting for over two years, which makes it impossible for the public to fully assess the results of the program. HUD has also provided no reporting at all about the ongoing sales of the Home Equity Conversion Mortgage (HECM) pools that have been sold over the past few years.

HUD should release this data immediately. This lack of data makes it very challenging to get a full picture of how the program is affecting communities. As described in earlier comments, HUD should pause the ANPR process to allow stakeholders to review this data and respond.

Going forward, the FHA loan program should implement and enforce specific and comprehensive requirements for servicer reporting and HUD's timely publication of that data so that all parties are able to assess compliance for all loan sale purchases. This reporting should include reporting on post-sale loss mitigation activities, including data to show: the levels and nature of payment changes; the borrower's old and new debt-to-income ratios; post-sale reporting of demographic and geographic data about homeowners, loss mitigation, and loan performance; and data on subsequent sales and rentals involving the properties for four years following the loan purchase. The rule also should specify that subsequent purchasers of the homes must comply with post-sale reporting requirements within this four-year period. HUD should establish meaningful financial penalties for substantial noncompliance with reporting requirements and bidding contract terms, including a bar on non-compliant purchasers from future participation in loan sales.

HUD also has an obligation under the Fair Housing Act to affirmatively further fair housing (AFFH), which requires HUD to analyze how its programs, including the Loan Sale Program, will further fair housing. Unfortunately, HUD has not provided any public assessment of how its Loan Sale Program will further fair housing, which is of particular concern given that FHA-insured loans now provide a significant means of financing purchases for African American and Latino homebuyers. As a result, policies will disproportionately impact those communities. HUD should release any AFFH assessment it has done on loan sales thus far. Going forward, it is crucial that reporting requirements for the FHA Loan Sale Program include a fair lending

⁷ Letter to HUD (May 31, 2019), available at <http://ourfinancialsecurity.org/wp-content/uploads/2019/06/2019.5.31-ANPR-comments-delay-letter.May31.finalsSubmitted.pdf>.

analysis that reviews all aspects of the Loan Sale Program to ensure that there are no discriminatory impacts or outcomes associated with the sale of these loans on any protected classes under the Fair Housing Act and Equal Credit Opportunity Act.

We also agree with the Office of Inspector General (OIG)'s finding in its July 14, 2017 report stating that any continuation of HUD's single family loan sales without engaging in a full rulemaking process violates the Administrative Procedures Act (APA). HUD should cease all sales of nonperforming loans, including HECMs, until the rulemaking is completed.

FHA mortgages play a crucial role in providing and maintaining access to affordable and sustainable homeownership for LMI families and communities of color. If the Loan Sale Program continues in its current unregulated form, FHA borrowers and their communities remain at risk of further harm from non-compliant servicers and private equity loan purchasers. It is crucial that HUD implement strong protections both before and after loans are sold to prevent needless borrower displacement and neighborhood instability. HUD must develop and enforce robust protections for FHA borrowers and former borrowers affected by loan sales and mandate comprehensive data collection, including on fair housing issues, so that the impact of loan sales can be properly evaluated and problems addressed.

Sincerely,

Americans for Financial Reform Education Fund
Advocates for Basic Legal Equality, Inc.
American Budget Credit Debt Services
Atlanta Legal Aid Society, Inc.
California Reinvestment Coalition
Center for Popular Democracy
Center for Responsible Lending
Community Legal Aid Services
Community Legal Services of Philadelphia
Connecticut Fair Housing Center
Consumer Action
Consumer Justice for the Elderly Clinic, St. John's University School of Law
Indiana Legal Services, Inc.
Legal Aid Chicago
Legal Aid Society of Southwest Ohio, LLC
Legal Services NYC
MHANY Management, Inc.
Mountain State Justice, Inc.
NAACP
Nassau/Suffolk Law Services Committee, Inc.
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low-income clients)
National Fair Housing Alliance
NC Justice Center

New Jersey Citizen Action
Prosperity Now
Woodstock Institute