The Honorable Carol Galante
Federal Housing Administration (FHA) Commissioner—Assistant Secretary for Housing
U.S. Department of Housing and Urban Development
451 7th Street S.W.
Washington, DC 20410

Dear Commissioner Galante:

On behalf of our members, the National Council of State Housing Agencies (NCSHA)[1] and the Mortgage Bankers Association (MBA)[2] write to ask that the Federal Housing Administration (FHA) make a crucial adjustment to FHA's pre-foreclosure requirements that will reduce unnecessary compliance burdens and allow mortgage lenders and servicers to more efficiently operate their loan modification and assistance efforts.

Specifically, we ask that FHA eliminate the well-intentioned but outdated requirement that a lender have a face-to-face meeting with a borrower before the borrower becomes three months delinquent. Our members, which include many public and private organizations that service a significant number of FHA and other loans, are strongly committed to taking a proactive approach to assisting delinquent borrowers and helping them stay in their homes. We know that FHA shares this goal. That being said, FHA's pre-foreclosure face-to-face meeting requirement has diverted resources that could be better targeted towards assisting struggling homeowners and has proven to be overly burdensome and sometimes unworkable.

FHA regulations (24 CFR Section 203.604) require all mortgagees to have a face-to-face meeting with the borrower, or make a reasonable effort to do so, before the borrower is seriously delinquent. "Reasonable effort" consists of at least one letter sent to the borrower by certified mail and at least one in-person visit to the borrower in his or her home. In addition to the regulation, FHA's Single-Family Handbook (paragraph 7-7C2) requires that the individual conducting the in-person visit have the ability to negotiate repayment plans with the borrower.

[1] The National Council of State Housing Agencies (NCSHA) represents the state housing finance agencies (HFAs) for all 50 states, Puerto Rico, the District of Columbia, the U.S. Virgin Islands, and New York City. State HFAs are state-chartered authorities established to help meet the affordable housing needs of the residents of their states.

[2] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mba.org

The imposition of the face-to-face requirement dates back to a time when borrowers were less likely to be aware of loss mitigation options and when mortgage origination and servicing activities were more likely to be conducted locally. HUD statements in 2007 acknowledge that this requirement is "obsolete and unnecessary" and suggested that future amendments or changes would be forthcoming.[3]

HUD's 2007 conclusion is even more appropriate today. Currently, a financially troubled borrower receives calls and written solicitations from their servicers and housing counselors offering their services. Most servicers have increased their loss mitigation staffing and outreach through call centers or their websites and have implemented processes that are sensitive to the need to promptly offer timely loss mitigation options. Such contact on the part of the servicer is required by the Bureau of Consumer Financial Protection's (CFPB) new servicing rules as well as state law in many jurisdictions. Additionally, the ability to research options on the Internet makes most borrowers far more aware of the availability and variety of loss mitigation options. Notably, these more recent rules—many promulgated with a goal of consumer protection following an unprecedented foreclosure crisis — do not have a face-to-face meeting requirement. In sum, the benefits to the face-to-face requirement pale in comparison to the costs, particularly when few homeowners want an in-person meeting.

While the promulgation of this requirement was undoubtedly well-intentioned, in practice it imposes a substantial financial and logistical burden upon many mortgagees with few, if any, corresponding borrower protections in today's mortgage world. The regulation is not clear and certain issues—such as the definition of what constitutes a branch office—can result in significant compliance expenses and unpredictable legal risks. In order to fully comply with the regulations and Handbook as currently written, mortgagees have to either engage a third party vendor or hire and train representatives who have the capability to negotiate loan modifications or divert previously trained staff to the task of traveling to contact borrowers at their homes.

Hiring and training staff with such credentials can be prohibitively expensive, particularly for smaller and/or public mission-driven mortgagees. In addition, despite mortgagees' good faith efforts to set up face-to-face meetings, home visits are often not successful. In order to avoid committing a violation, many mortgagees in this situation will send representatives to make multiple visits, which is costly and inefficient. Consequently, compliance with this requirement results in a serious commitment of resources by mortgagees that provides borrowers with no additional benefits or protections than those already required under other consumer protection servicing regulations.

[3] See 72 FR 56159. In response to comments that the Face-to-Face Interview requirement was obsolete and unnecessary, HUD notes that: "HUD agrees with the commenters and has determined that amending the existing requirement is appropriate. As the Department has already relieved the industry from a requirement to conduct a face-to-face meeting as a requirement for loan origination, it may also be time to make a similar change with respect to FHA's servicing requirements."

Given these concerns, we ask that FHA adjust its pre-foreclosure policy to eliminate the face-to-face meeting requirement. In the alternative, we ask that paragraph 7-7C2 of the FHA Single-Family Handbook be amended to eliminate the requirement that a mortgagee's representative have the authority to negotiate repayment plans with the borrower. Most lenders with branch offices are usually running these offices for retail origination, not servicing, and thus either must have staff trained in an area that is frequently irrelevant to their day-to-day work or require certain employees to travel extensively.

Elimination of the face-to-face meeting requirement would recognize the reality that loss mitigation outreach is now required by CFPB's servicing rules as well as most state laws that address early delinquencies and pre-foreclosure assistance. As such, eliminating the face-to-face requirement would allow lenders to shift more resources to other loss mitigation efforts. We remain committed to the various initiatives FHA has undertaken in the wake of the financial crisis and economic downturn to help struggling homeowners remain in their homes. The change we request will eliminate unreasonable burdens that take resources away from efforts that can more effectively assist borrowers.

Thank you very much for your attention to this matter. We welcome the opportunity to meet in order to discuss these matters further.

Best,

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