



March 28, 2023

Ms. Ingrid Ripley  
Executive Director  
Single-Family Housing Guaranteed Loan Program  
Rural Housing Service  
U.S. Department of Agriculture  
1400 Independence Ave., SW  
Washington, DC 20250-0701

RE: Proposed Rule; Single-Family Housing Guaranteed Loan Program [FR Docket No. RHS-22-SFH-0012]

Dear Ms. Ripley:

The National Council of State Housing Agencies (NCSHA),<sup>1</sup> on behalf of its state Housing Finance Agency (HFA) members, respectfully offers these comments on the Single-Family Housing Guaranteed Loan Program (SFHGLP) proposed rule published in the Federal Register on January 27, 2023. For reasons we explain below, we request that the U.S. Department of Agriculture (USDA) exempt small servicers, as defined by the Consumer Financial Protection Bureau (CFPB) in 12 CFR Section 1026.41(e)(4)(ii), from the proposed rule and continue to be responsible for servicing the notes that result from a Mortgage Recovery Advance (MRA) for servicers that meet the CFPB's small servicer definition.

### **Background**

NCSHA is a nonprofit, nonpartisan organization created to advance, through advocacy and education, the efforts of the nation's state HFAs and their partners to provide affordable housing to those who need it.

State HFAs are focused on their affordable housing finance mission. In 2021, 75 percent of all state HFA mortgage loans went to borrowers earning at or below area median income. Additionally, the median borrower income for all HFA single-family loans in 2021 was \$48,772; the national average purchase price of HFA program loans was \$182,083.

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<sup>1</sup> NCSHA is a nonprofit, nonpartisan organization. None of NCSHA's activities related to federal legislation or regulation are funded by organizations that are prohibited by law from engaging in lobbying or related activities.

In 2021, on average, eight percent of state HFA program mortgage loans were guaranteed by USDA programs, although in some rural states, the percentage of SFHGLP loans was significantly higher. For example, in Maine, 67 percent of MaineHousing’s single-family loans are USDA program loans, while in Vermont, 47 percent are and in Mississippi, 30 percent are.

### **The CFPB Small Servicer Exemption**

CFPB recognizes through its “small servicer exemption”(See 12 CFR Section 1026.41(e)(4)) that there are explicit and important differences between small servicers and servicers who administer large volumes of mortgage loans. Small servicers eligible for the exemption include HFAs, which are specifically named by the CFPB in 12 CFR Section 1026.41(e)(4)(ii)(B).

We urge USDA to exempt small servicers as defined by the CFPB from the provisions in its new rule, thereby also recognizing that an approach that may work for larger servicers may not work for those eligible for the small servicer exemption.

### **Concerns with the Proposed Regulations**

In its proposed regulation, USDA proposes changing how MRA funds are advanced and repaid in significant ways. In the proposed regulation, the MRA would be an unsecured loan obligation and servicers would be responsible for collecting the MRA debt from the borrower prior to releasing the lien. The servicer’s failure to collect that debt would not relieve the servicer from an obligation to repay that debt to USDA. This not only turns servicers into third-party debt collectors; it also fundamentally changes the terms under which USDA guarantees its loans: USDA will forward funds to offset a partial claim, but then makes the servicer repay them.

When USDA guarantees a loan, it is providing a back-stop to the lender against losses resulting from credit risk. The MRA only comes about when a homeowner has been delinquent for a period of time. Through the MRA, USDA gives homeowners the opportunity to resume making their mortgage payments after encountering a financial hardship that prevented them from making on-time payments for that period of time. This not only gives the homeowner the opportunity to keep their home and prevent foreclosure; it also reduces overall loss severity for USDA because if that homeowner had gone into foreclosure without the MRA, USDA would have had to settle a claim for the amount of the missed payments plus the costs of foreclosure, resulting in greater loss severity for USDA.

The proposed regulation presents several operational issues for state HFAs.

## **CFPB-Defined Small Servicers Are Not Required to Send Monthly Statements**

As small servicers, HFAs are exempt from the requirement that a servicer send a periodic statement that corresponds to a consumer's billing cycle. Hence, state HFAs that provide coupon books to their homeowners on an annual basis would not be able to send homeowners a monthly statement showing the MRA balance, as the proposed regulation would require.

## **Do Not Require Small Servicers To Act As Third-Party Debt Collectors**

Because the proposed regulation removes the requirement that the MRA be secured by the property, it becomes an unsecured debt obligation of the homeowner owed to the USDA. However, the servicer is still responsible for collecting on the MRA unsecured note before releasing the first mortgage lien. This may work for homeowners who are able to retire their first mortgage loan debt and have equity in their home such that they can receive a new mortgage to pay off the MRA balloon payment.

However, there are other scenarios under which a homeowner might not be able to satisfy the MRA obligation when the first mortgage is paid off and the proposed rule does not adequately take these into account. For example,

- If the homeowner is paying off their mortgage loan early because they are moving (e.g., because of a job or they can no longer afford homeownership and want to avoid foreclosure), there may not be sufficient equity to satisfy the first mortgage, pay the seller's portion of settlement costs, and pay off the MRA. The servicer would be forced to either repay the remaining MRA balance amount to USDA or pursue the homeowner to collect the unsecured debt. In a worst-case scenario, the homeowner is disincentivized to sell their home and may go through foreclosure because it might ultimately cost them less than selling their home.
- If the homeowner is paying off their mortgage early so as to refinance for any reason, or specifically to release one of the parties from the mortgage loan obligation (which is necessary because USDA does not permit a release of lien for any circumstance, even in the case of divorce), there also might not be sufficient equity to pay off the MRA at that time and the servicer would need to pursue debt collection activities on the unsecured debt.

Requiring servicers to collect the unsecured debt the homeowner owes to USDA puts them in the position of becoming third party debt collectors and may make them subject to the Fair Debt Collection Practices Act. This is a fundamentally different relationship than what an HFA servicer agreed to when their agency agreed to offer and service SFHGLP loans as part of their single-family program offerings.

State HFAs service loans secured by real estate. They do not have debt collection staff to pursue homeowners on behalf of a third party, which USDA would be.

To avoid this significant change to the terms under which the SFHGLP USDA-servicer relationship was established, we recommend that USDA exempt small servicers from undertaking the debt collection efforts of USDA.

### **Clarify Whether Homeowners Can Receive More Than One MRA**

While USDA is revising its regulations, we suggest it also clarify whether a homeowner can receive more than one MRA during the life of their mortgage loan. Providing clear regulatory guidance on this would avoid future ambiguity.

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While we understand that large servicers that likely service the bulk of USDA's SFHGLP mortgage loans require streamlined processes to be efficient, we remain concerned that the differences between these servicers and small servicers such as state HFAs have not adequately been taken into account with the formulation of the proposed regulation.

State HFAs value the USDA SFHGLP because it often is the best single-family loan product to meet the needs of their rural home buyers, particularly those of lower income who our members were established to serve. We would like to work with USDA so you can better accomplish your goals while taking into account the operational considerations particular to HFAs and other small servicers.

NCSHA appreciates the opportunity to offer these comments and welcomes any questions you may have.

Sincerely,



Garth Rieman

Director of Housing Advocacy and Strategic Initiatives