March 28, 2023

Single Family Housing Guaranteed Loan Division,
Rural Development,
U.S. Department of Agriculture,
STOP 0784,
South Agriculture Building
1400 Independence Avenue SW,
Washington, DC 20250–0784

RE: Docket No. RHS-22-SFH-0012 Proposed Rule – Single-Family Housing Guaranteed Loan Program

To Whom It May Concern:

The Housing Policy Council[1] and our member companies thank you for your efforts to strengthen the Rural Housing Service (RHS) Single-Family Housing Guaranteed Loan Program (SFHGLP). The SFHGLP is an important program that our members enthusiastically support. We also strongly support the intent of the proposed regulation to offer a less cumbersome process for executing a Mortgage Recovery Advance (MRA). However, as written, the MRA proposal shifts the MRA collection burden from RHS to servicers which could introduce significant and unreimbursed credit and reputational risk to servicers. We ask that RHS address this concern by modifying the regulation to:

- allow servicers to assign the Agency a small subset of loans that reach their mortgage maturity date with an outstanding MRA; or
- permit servicers to extend the amount of time before an MRA is due and allow for monthly payments to satisfy the obligation over that period.

Along with these changes to the regulation, we propose that RHS publish program guidance that accounts for the lessons learned over the last three years of operating the MRA Pilot. We specifically request guidance in the following areas:

- Allowing multiple MRAs over the life of a loan;
- Ensuring adequate agency data tracking;
- Addressing how borrower's pre-payments should be treated;
- Providing foreclosure bidding instructions for loans with an unpaid MRA; and
- Providing guidance on short sales for loans with an unpaid MRA.

With these changes, HPC would support the proposed elimination of a subordinate lien to execute the MRA.

[1] The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers; mortgage, hazard, and title insurers; and technology and data companies. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth-building for families. For more information, visit www.housingpolicycouncil.org

Needed Changes to the Regulation

HPC supports the concept of changing the MRA to allow the borrower's debt, legal fees, foreclosure costs, and additional principal to be covered by a deferred balance, rather than secured by a subordinate lien. This change would eliminate the need to execute documents for a non-interest-bearing subordinate lien (i.e., a promissory note and subordinate mortgage). As demonstrated by the RHS MRA Pilot, removing the obligation to execute those documents would provide a better borrower experience, simplify program administration for both mortgage servicers and the RHS, and reduce the cost of completing this loss mitigation option. A first lien deferral, in lieu of a subordinate lien, would end the need for mortgage servicers to execute documents, track their delivery with the USDA contractor, and record the subordinate mortgage with the county. Further, with this approach the borrower's monthly statement and final payoff quote will reflect the MRA amount for continuous borrower visibility.

Although we support changes to MRA operations, the final rule needs to establish clear expectations for servicers, borrowers, and RHS about what exactly will happen when a borrower pays the loan to the mortgage maturity date, in contrast to the much more straightforward situation when a mortgage terminates through a payoff. The preamble of the proposed rule states that the "servicer will collect the servicer advance from the borrower when the first lien is satisfied, and the full amount of the servicer advance will be due to the Agency from the lender." What this implies, but doesn't state explicitly, is that at the time of mortgage payoff, including when a loan reaches its maturity date, the MRA is owed by the borrower immediately as a balloon payment. For borrowers terminating a mortgage due to a refinance or home sale, this is likely not a major impediment as there are other sources of funds potentially available. However, borrowers who pay off the mortgage over the full mortgage term may not have sufficient funds available to satisfy the additional deferred balance. Those who could not pay off the remaining MRA deferred balance in cash could possibly refinance (which could be challenging due to credit policy concerns). However, without a repayment alternative, borrowers without cash or a refinance option could face foreclosure on the MRA amount.

Under the current MRA policy, "the burden of collection [is] on the Agency instead of the lender," and a loan that reaches its maturity date with an outstanding MRA requires borrowers to immediately make a balloon payment to RHS. However, if a borrower is unable to make the balloon payment (in cash or through a cash-out refinance), then RHS will allow a repayment plan. If that is unsuccessful, RHS will refer the debt to the Treasury Offset Program, which provides other ways to collect the debt (primarily through the capture of tax returns). These alternatives allow the RHS borrower to stay housed, and not face imminent foreclosure due to an inability to pay back an MRA through a balloon payment.

Unfortunately, these RHS arrangements are not addressed in the proposed rule. Instead, the proposal shifts the MRA collection burden from RHS to servicers, which appears to eliminate the opportunity for borrowers to utilize a repayment plan. As a result, collecting the MRA from a borrower represents a new form of credit, which poses reputational, balance sheet (liquidity), and operational risk for servicers.

We recommend that RHS remedy this omission. Our preferred approach would be for RHS to allow servicers to assign to RHS any outstanding deferred loan balance, for those mortgages that reach the maturity date. This small subset of borrowers would then retain the same repayment options that

they currently have with an MRA that is recorded as a subordinate lien. For the 99%[2] of loans that don't reach their mortgage maturity, the regulation would work exactly as proposed, with all of the benefits to RHS and servicers retained. With the addition of this narrow change, HPC supports the elimination of a subordinate lien when executing an MRA.

Alternatively, if RHS cannot accept assignment of these loans with a deferred balance, we would recommend that RHS permit the servicer to extend the amount of time before an MRA is due or to re-amortize and modify the remaining balance of an MRA and allow for monthly payments to satisfy the obligation over that period. This would allow the servicer to act as a collection agent for RHS on unsatisfied MRAs and pass through what is collected from the borrower based on guidance and instruction from RHS. Currently, §3555.304(d)(6) says that an MRA is due when the first lien mortgage and the guaranteed note are paid off. We would recommend that this provision be updated to permit collection of the MRA within a reasonable period from the due date of the guaranteed note held by the lender. One potential way to determine a reasonable repayment period, is to take the size of the average MRA and divide it by the average borrower's principal and interest (P&I) payment with an outstanding MRA. For example, one HPC lender found that the average size of its RHS MRAs was approximately $8,500 and that those loans had an average P&I payment of $750. If these number are consistent across the RHS portfolio, we estimate that most borrowers will need just one year to repay their MRA if they continue to pay the same P&I as they did on their original mortgage. We think this approach is reasonable, because a borrower who pays their loan to maturity has demonstrated that they can affordably make their P&I payments, and RHS should allow them a reasonable time to continue to make this same payment until they have satisfied the remaining MRA that they owe to RHS.

Lastly, if the servicer is going to be responsible for this post-payoff collection of the MRA balance on behalf of RHS (which we think is a poor policy design), we request that §3555.304 of the regulation authorize a mortgage recovery advance repayment plan to qualify for an incentive payment. We would also request that RHS provide additional guidance on process and amounts of incentives through RHS Program Guidance, rather than embedding it into regulatory text.

Needed Guidance

Beyond the regulatory changes discussed above, HPC believes that RHS should publish program guidance that accounts for the lessons learned over the last three years of operating the MRA Pilot Program. Specifically, we think modernization and/or clarity is needed in the following areas:

- **Multiple MRAs**- Current RHS guidance limits borrowers to only one MRA during the life of the loan. Leaving this limitation in place will put RHS borrowers at an elevated risk of future foreclosures, as many low- and moderate-income borrowers will face multiple income shocks over the course of a thirty-year mortgage, whether caused by a natural disaster, job loss, or other life events. It will also put RHS borrowers at a significant disadvantage to FHA, VA, and GSE borrowers, all of whom can qualify for multiple deferrals or partial claims over the life of the loan. For these reasons, we support providing RHS borrowers with the option to utilize multiple MRAs. However, as a procedural point, if multiple MRAs are allowed, we would

[2] Using Recursion analysis of Ginnie Mae data, we note that of the 11,523 loans that were guaranteed by SFHGLP in 1994, we estimate that just 41 remain in Ginnie Mae pools. Of the 16,580 loans that were guaranteed in 1995, we estimate that just 87 remain in Ginnie Mae pools.

encourage RHS to require that the non-interest bearing MRAs be transferred to a new servicer if the interest-bearing balance is also transferred.

- **Data Standards-** RHS should ensure that its internal systems track all MRAs, not only to ensure that the government is made whole, but to provide a formal system of record that subsequent servicers, who may have responsibilities for collecting an MRA, can access. Currently, there is no formal and reliable way of obtaining MRA information on RHS loans, except through ad hoc requests. As part of developing an accessible system of record, we recommend that the system should also identify the type of MRA present on the loan, specifically whether it is an MRA that involves a subordinate lien, a deferred balance MRA, or both.
- **Principal Prepayments-** RHS should specify how borrower prepayments are handled. Does RHS want additional borrower payments applied to the interest-bearing balance or the non-interest bearing MRA? Additionally, if multiple types of MRAs are present (subordinate lien, deferred balance, or both), which MRA should the extra payment be applied to? Our members prefer that RHS allow borrowers to choose how the extra payments should be applied, but strongly recommend that RHS clarify what is allowed.
- **Bidding at foreclosure sales-** RHS should specify how servicers are to bid on loans with an unpaid MRA at a foreclosure sale.
- **Short sales-** RHS should specify how to handle short sales for loans with an unpaid MRA. Currently, there is a lack of clarity about how this process should work. We recommend instructing servicers to consider the deferred balance as part of the loan balance. Thus, when the property is sold, the payoff funds would be applied to the full loan balance (including deferred balance), then the servicer would file a claim with RHS for the shortage of the remaining unpaid balance.

Conclusion

Should you have any questions or wish to discuss further, please contact Matthew Douglas at (202) 589-1924.

Yours truly,

Edward J. DeMarco
President
Housing Policy Council