September 29, 2023

The Honorable Julia Gordon
Assistant Secretary for Housing & Federal Housing Commissioner
Federal Housing Administration
U.S. Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

RE: FR–6353–P–01 Modernization of Engagement with Mortgagors in Default

Dear Commissioner Gordon:

The Mortgage Bankers Association (MBA)[1], American Bankers Association (ABA)[2], Housing Policy Council (HPC)[3], and the National Mortgage Servicing Association (NMSA)[4] (the Associations) respectfully submit these comments in response to the Department of

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[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 300,000 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 to 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 more than 2,200 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

[2] The American Bankers Association is the voice of the nation's $23.5 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2.1 million people, safeguard $18.6 trillion in deposits and extend $12.3 trillion in loans.

[3] 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.

[4] National Mortgage Servicing Association (NMSA), is a nonpartisan organization with member participation representing the nation's leading mortgage servicing organizations. NMSA was formed for the purpose of effecting progress and change while addressing key challenges and opportunities before the mortgage servicing industry. By bringing together decision makers and thought leadership, from across the nation, the NMSA drives the conversation on shaping the American housing industry for the benefit of homeowners.

Housing and Urban Development's (HUD) proposal to modernize the rules applicable to a Federal Housing Administration-insured (FHA) mortgage servicer's engagement with a borrower in default. [5]

The Associations appreciate HUD's proposal. As HUD is aware, the industry has for many years urged HUD to eliminate the anachronistic requirement for FHA-insured mortgage servicers to conduct in-person meetings ("Face-to-Face") with borrowers who are in default on their mortgage payments. Indeed, we support the goal of providing greater flexibility for mortgage servicers to educate borrowers on available loss mitigation solutions utilizing modern communication technology in a manner that preserves important consumer protections. As our industry continues to emerge from the COVID-19 pandemic and mortgage servicers simplify processes to improve borrower outcomes, borrowers facing financial hardship should be able to continue to engage with their servicers through methods of contact that have proven their effectiveness and ability to reach borrowers.

FHA intends to implement the proposed regulatory changes through formal guidance in a Mortgagee Letter and later in the 4000.1 Single-Family Housing Policy Handbook. We support this approach to preserve operational and technological flexibility. However, to achieve the goals of the proposed rule and to build upon the recent updates to FHA's Early Intervention requirements, we recommend that FHA:

- develop an "Engagement" or "Contact" standard and clarify applicable exemptions in § 604(a).

- clarify how servicers are expected to engage with borrowers in the applicable Handbook guidance; specifically, that servicers are not required to offer in-person meetings and modernization efforts align with FHA's existing Early Intervention requirements.

- utilize the Single-Family Drafting Table to receive comments before finalizing the policy.

I. HUD Must Extend the Temporary Face-to-Face Waiver to 2024

First, we urge HUD to extend the temporary Face-to-Face waiver currently in place in order to minimize the potential disruption that would arise if the proposed rule is not finalized by the end of the year.[6] HUD must make sure that the expiration date of the temporary waiver aligns with the effective date of the final rule and the applicable guidance in the Single-Family Housing Policy Handbook

To seamlessly facilitate the proposed rule and the waiver extension, we recommend that HUD extend the temporary waiver through calendar year 2024, and then rescind the waiver when the new rule and guidance are effective. Returning to in-person meetings, even temporarily, unnecessarily complicates a servicer's operations, adds costs, and increases the risk of noncompliance. Moreover, a return to in-person meetings would inconvenience consumers, which HUD acknowledges by citing MBA data reflecting the

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[5] Modernization of Engagement with Mortgagors in Default, 88 Fed. Reg. 49392 (proposed July 31, 2023), https://www.govinfo.gov/content/pkg/FR-2023-07-31/pdf/2023-16128.pdf (amending 24 C.F.R. § 203.604).
[6] Face to Face Reg through 12.31.23 (final) signed (003).pdf (hud.gov).

low acceptance rate of in-person meetings. As noted in a sample of three large servicers, in-person meetings were accepted less than 0.1% of the time. Avoiding a gap before the new policy is effective should be a priority.

II. General Comments to the Proposed Rule

We offer the following general comments before addressing specific issues in response to HUD's proposal. We suggest HUD address both the "meeting" standard and exemptions in § 604(a)(1) before finalizing the proposed rule. By doing so HUD will provide greater certainty and clarity to servicers and borrowers before servicers are required to adjust their processes.

a. *Implement an "Engagement" or "Contact" Standard*

HUD should replace the term "meeting" with an alternative in § 604(a)(1), such as "engagement" or "contact".[7] The term "meeting" suggests in-person contact, and thus, preserving a "meeting" standard undermines HUD's goal of accommodating mortgagors' preferences to communicate online or through remote methods. In contrast, creating an "engagement" standard clearly effectuates the purpose of the proposed rule to modernize contact with a borrower in default, while recognizing the inefficiency of an in-person meeting. Using an alternative term helps avoid unnecessary confusion that in-person meetings are still required. A specific definition is proposed below in Section II.b.i of this letter.

b. *Clarify Applicable Exemptions*

Additionally, regarding the exemptions, we also suggest that HUD clarify that the regulation does not apply where doing so would conflict with a law. Specifically, a servicer is not required to engage with a borrower in instances where a servicer has received a cease-and-desist order, or a borrower has received a discharge through Chapter 7 bankruptcy, as required by the Fair Debt Collection Practices Act. Therefore, to provide additional clarity, we recommend that HUD add "Unless otherwise prohibited by law" as the final exemption under § 604(a)(2).

III. FHA Must Clarify How Servicers Are Expected to Engage with Borrowers in Applicable Handbook Guidance

For servicers to properly implement an "engagement" standard, effective Handbook guidance should clearly describe how servicers may conduct their engagement with distressed borrowers. Because the proposed rule requires servicers to meet with (or "engage with," as recommended above) all borrowers, we support FHA's intention to permit telephone and virtual calls as acceptable methods of communication that are most likely to receive a response from a borrower in default. Therefore, we suggest FHA clarify two issues to achieve the stated purpose of modernizing HUD policy.[8]

a. *Servicers Should Not Be Required to Offer In-Person Meetings*

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[8] To expand the meeting requirement for all borrowers, the proposed rule eliminates two exemptions: 1) borrowers who no longer reside in the mortgaged property; and 2) borrowers whose property is not within 200 miles of a mortgagee, its servicer, or a branch office of either.

Applicable Handbook guidance should make clear that among the available options, a servicer may - but is not required to - offer or provide an in-person meeting. By maintaining an in-person meeting requirement, servicers are at risk that some borrowers may demand a face-to-face meeting and the servicer would be required to fly representatives out to the borrowers in other states or retain a local vendor to handle the meeting. As historical data has shown, in-person meetings are unnecessarily inconvenient and do not affect outcomes for borrowers facing financial hardship that cannot otherwise be achieved through alternative means, such as virtual or video conferencing. Therefore, mortgage servicers should not be required to offer borrowers the option to meet face-to-face.

b. *Modernization Should Align with Existing Early Intervention Requirements*

Engaging with a borrower or a servicer's reasonable effort to arrange such an engagement should align with FHA's existing Early Intervention standards.[9] Servicers conduct exhaustive outreach strategies to establish contact with delinquent borrowers and meet the early intervention servicing requirements of the Consumer Financial Protection Bureau, FHA, and various state laws.[10] Guidance should clearly state that compliance with FHA standards is sufficient to meet a servicer's obligations under the updated rule. Specifically, we request guidance that clarifies that an outbound telephone call where loss mitigation is discussed with a borrower constitutes the required contact.

Importantly, adopting an "engagement" standard further aligns FHA's Early Intervention standards with Fannie Mae and Freddie Mac's definition of Quality Right Party Contact. We urge FHA to define specific terms to encourage industry standardization as part of future guidance, specifically including the following four terms:

i. **Engagement.** An "engagement" should be defined as an activity where an authorized human representative of the mortgagee communicates to a borrower regarding available loss mitigation options through acceptable methods of communication in real time.

i. **Acceptable Methods of Communication** should include efforts such as outbound telephone calls, web, portal, text, e-mail, or remote or electronic means, such as virtual/online/video calls, as outlined under Section III.A.2.h.iv, "Communication Methods.".[11] Acceptable methods of communication can include "in-person" as an option.

ii. **Reasonable Efforts** should be defined as two verifiable attempts by the servicer to establish contact with a delinquent borrower as required under Section III.A.2.h.vi, "Contact Efforts with Delinquent Borrowers."

iii. **Verifiable Attempt** should be defined as the required note in the Servicing File documenting compliance with Section III.A.2.h.vi, "Contact Efforts with Delinquent Borrowers."

By aligning the proposed changes with FHA's existing Early Intervention standards, servicers are provided with discretion to offer a variety of appropriate methods of

[9] 4000.1 Single-Family Housing Policy Handbook Section III.A.2.h, "Early Intervention"
[10] 12 CFR 1024.39(a) requires servicers to establish live contact or make a good faith effort by the 36th day of delinquency.
[11] 4000.1 Single Family Housing Policy Handbook

communications. This flexibility also eliminates the need for servicers to send a separate letter to inform borrowers of in-person meetings, further simplifying processes and avoiding confusion on the borrower's part as to how to obtain mortgage assistance.

IV. FHA Should Use the Drafting Table to Finalize Effective Policy

Finally, FHA should utilize the Single-Family Drafting Table to receive comments before finalizing applicable Handbook guidance, and the effective date of the final rule. FHA has successfully used the drafting table in the recent past for loss mitigation changes, and the Associations greatly appreciate the benefits this has provided. In this instance, it is very difficult to fully appreciate the operational impacts and implementation challenges raised by the proposed rule as key elements are undefined. Compliance with the rule will depend on how reasonable efforts to engage with a borrower and verifiable attempts to contact the borrower are defined. The transparency of the drafting table will help make sure that the Handbook guidance is clear and unambiguous before servicers must change policies and procedures to comply with the new rule. Servicers should also have an opportunity to evaluate an appropriate implementation deadline to adjust their operations before the required effective date. A 30-day review period is sufficient.

V. Conclusion

The Associations welcome HUD's efforts to modernize a mortgage servicer's engagement with a borrower in default. Eliminating the requirement for mortgage servicers to conduct an in-person meeting further reduces the cost and regulatory burden of servicing a nonperforming FHA loan. The Associations and our members are committed to preventing foreclosure and protecting the Insurance Fund through proactive engagement of distressed borrowers. To help HUD achieve the goals identified in the proposed rule, FHA should clarify how servicers are expected to conduct their engagement to comply with HUD's rule.

Thank you for the consideration of these comments. We look forward to the opportunity to comment once more on HUD's drafted guidance. Should you have any questions or wish to discuss these issues further, please contact Brendan Kelleher at Bkelleher@mba.org.

Sincerely,

American Bankers Association
Housing Policy Council
Mortgage Bankers Association
National Mortgage Servicing Association