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June 14, 2017

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street S.W., Room 10276
Washington, DC 20410-0500

RE: Comments to Office of Secretary, HUD on 82 Federal Register 22344; Docket No. FR-6030-N-01;
Reducing Regulatory Burden; Enforcing the Regulatory Reform Agenda Under Executive Order 13777

Dear Regulations Division:

Empire Justice Center is pleased to have the opportunity to provide comments to HUD's request for input on its regulatory program. Empire Justice Center is a New York State-wide, multi-issue, multi-strategy, public interest law firm focused on changing the systems in which poor and low income families live. Empire Justice Center protects and strengthens the legal rights of people in New York State who are poor, disabled or disenfranchised through systems change advocacy, training and support to other advocates and organizations, and high quality direct civil legal representation. Empire Justice has offices in Albany, Rochester, Westchester and Long Island.

Our comments will focus on how HUD's current foreclosure alternatives program for FHA-insured loans avoids unnecessary payment of insurance claims, and thus protects the mortgage insurance fund (Fund) and our communities. Payment of unnecessary claims harms the Fund and destabilizes neighborhoods. We will also illustrate the importance of HUD approved housing counseling to ensure homebuyers get a mortgage that is sustainable, and that homeowners are able to avoid foreclosure.

As HUD's notice emphasized, a major goal of the agency is "to create strong, sustainable, inclusive communities" In fact, HUD's insured mortgage program plays a significant role in building wealth and providing opportunity for low and moderate income homeowners, including those in communities of color. The mortgage insurance program facilitates the funding for approximately half of all home purchases made by African American and Latino households. Under the National Housing Act, Congress made clear that HUD's administration of the insurance fund must promote sustainable homeownership and protect the financial solvency of the Fund. HUD's continued long-term

commitment to mandatory loss mitigation, as spelled out in its regulations, is essential to the ability of the agency to meet both goals.

We offer the following recommendations for HUD to avoid costs associated with unnecessary claims and to stabilize homeownership and communities.

- 1) *HUD's decades-long, modest loss mitigation procedural requirements should be preserved as they avoid unnecessary payment of insurance claims by ensuring that lenders fully evaluate foreclosure avoidance options.*

For decades, HUD has required lenders to take specified yet modest steps to ensure that they are actively working with homeowners to avoid foreclosure. These steps include notice requirements, a duty to have a face-to-face meeting, and an obligation to periodically evaluate a borrower's eligibility for foreclosure alternatives. The regulations do not require lenders to make impractical loan modifications, but rather to take limited steps to ensure that lenders are focused on avoiding unnecessary claims and ensuring that borrowers are treated fairly and uniformly. HUD's requirements are consistent with and complement the CFPB regulations, while addressing the particular needs of HUD's low and moderate income FHA borrowers.

For example, FHA rules, unlike the CFPB's requirements, ensure that a homeowner facing hardship is reviewed for loss mitigation that also serves the needs of the Fund each time a default occurs. HUD's requirement for lenders to engage face-to-face with borrowers has special value. The requirement recognizes the challenge that FHA borrowers have in communicating over the phone by requiring a lender representative to have a face-to-face meeting with the borrower early in the default process, or to at least make a reasonable effort to have such a meeting. Because the meeting is early in the process, it can prevent extended and costly defaults. It is particularly important for borrowers who may have limited communication ability, including elderly borrowers and those with disabilities or limited English proficiency, and borrowers without access to technology. This requirement prevents the payment of claims by better facilitating cost-saving loss mitigation. The cost of compliance is outweighed by improved outcomes for homeowners and for the Fund. In addition, any advances HUD can develop to allow borrowers with access to technology to opt in to video meetings will only increase the requirement's efficiency and scope.

- 2) *HUD's significantly improved menu of FHA loss mitigation foreclosure alternatives should be maintained as it promotes payment relief for FHA's unique borrower profile while limiting unnecessary insurance claims.*

Between 2009 and 2012, HUD's loss mitigation options were not reaching borrowers and were not providing significant payment relief. Borrowers who received loss mitigation options during this time were re-defaulting at a high rate. HUD significantly revised the FHA loss mitigation program to promote greater payment relief and better limit avoidable insurance payouts. This has led to improved outcomes while still using HUD's standard options. HUD should continue the progress it has made while preserving access to options that are essential for FHA's low and moderate income borrowers.

- 3) *HUD must preserve its reverse mortgage rules protecting surviving spouses and ensure loss mitigation options are available and enforced for borrowers who fall behind on property taxes and homeowner's insurance.*

HUD recently adopted prospective rules to ensure that, after a death of a reverse mortgage borrower, the surviving spouse has the option to remain in the home. In addition to managing grief and funeral expenses, such spouses have previously also faced foreclosure and eviction. HUD developed rules to avoid this fundamental unfairness. HUD should not undo these protections.

In addition, HUD should preserve its existing loss mitigation options for dealing with property charge defaults and ensure that servicers understand and comply with these protocols. HUD should make repayment plans available to all reverse mortgage borrowers who have fallen behind on property charges, and should preserve the at-risk extension for borrowers with critical circumstances. HUD also should allow servicers to offer all loss mitigation options to HECM borrowers after foreclosure has been initiated.

- 4) *HUD should revise its program for selling loans through the Distressed Asset Stabilization Program (DASP) to ensure that HUD does not pay unnecessary claims by requiring pre-auction notice to borrowers and by enhancing its pre-claim screening process.*

Under DASP, HUD pays full insurance claims to lenders that claim to have exhausted foreclosure alternatives. Many FHA homeowners, however, have had their loans sold before they have been properly reviewed for loss mitigation. DASP administration is frustrating the goals of HUD's FHA loss mitigation regulations. When HUD is considering inclusion of a loan in an upcoming auction, it should require the lender to notify the borrower of the proposed action. The notice should inform the borrower that the servicer claims it has satisfied its FHA loss mitigation obligations, and that if the borrower has not been fully evaluated or is currently performing on a loss mitigation option, the borrower may contact HUD's National Servicing Center. Borrowers now do not receive such a notice, and instead only find out about the sale and loss of FHA loss mitigation options after their loan is sold. Providing such a notice would not increase costs because the notice could be incorporated into existing systems for sending HUD-required notices. The notice will help HUD avoid payment of unnecessary claims because borrowers who have not received a full evaluation will be able to ensure the loan is properly assessed by working with HUD's National Servicing Center. Borrowers who have had a full evaluation are likely to welcome additional home retention opportunities available to them after a DASP sale. HUD should also put a system in place to ensure that lenders have documented compliance with loss mitigation prior to a DASP sale.

- 5) *HUD should expand use of the Housing Counseling Assistance (HCA) Program.*

HUD approved housing counseling agencies provide essential services by helping prepare first-time homebuyers for homeownership, helping homeowners resolve mortgage delinquencies and avoid foreclosure, and helping renters find affordable rental options, among many others. Further, in light of the elimination of the National Foreclosure Mitigation Counseling program, housing counseling agencies are crucial to help meet the continued demand for default and delinquency counseling.

Repeatedly, studies have shown that those who engage in HUD approved housing counseling before they purchase are less likely to default on their mortgage.¹ Likewise, studies have shown that homeowners in default are more likely to achieve an affordable modification and sustain that modification over time.² Housing counseling supports safe and sound homeownership, which is the best vehicle for low and moderate income individuals and people of color to build wealth. Integration of HUD approved HCA services ensures that all available resources to prepare homebuyers and protect homeowners are utilized to promote sustainable homeownership, thereby preventing unnecessary payment of insurance claims and thus protecting the Fund and our communities.

In addition to our comments on single-family mortgage loans, we want to emphasize the importance of preserving HUD's rules addressing Affirmatively Furthering Fair Housing (AFFH) and Disparate Impact under the Fair Housing Act. These are important tools for ensuring housing opportunity and fair credit access for communities of color. In addition, we support continued funding for low income housing programs such as the HOME Investment Partnership.

Sincerely,

A handwritten signature in cursive script that reads "Eleanor Pepper".

Eleanor (Ellie) Pepper
Regional Coordinator, HOPP Anchor Partner Program

¹ https://portal.hud.gov/hudportal/documents/huddoc?id=ohc_counselingworks1214.pdf

² Neil S. Mayer, Peter A. Tatian, Kenneth Temkin, and Charles A. Calhoun. 2010. "National Foreclosure Mitigation Counseling Program Evaluation: Preliminary Analysis of Program Effects," The Urban Institute, December