



National Community
Stabilization Trust

June 14, 2017

The Honorable Ben Carson
Secretary of Housing and Urban Development
c/o Regulations Division, Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

*RE: "Reducing Regulatory Burden; Enforcing the Regulatory Reform Agenda"
Under Executive Order 13777, 2017-09730 / Docket No. FR-6030-N-01
(82 Fed. Reg. 22344)*

Dear Secretary Carson:

The National Community Stabilization Trust (NCST) welcomes the opportunity to offer input to the Department of Housing and Urban Development (HUD) as it reviews regulations in response to Executive Order 13777.

NCST is a non-profit, non-partisan organization that works to restore vacant and abandoned properties to productive use and protect neighborhoods from blight. Our programs facilitate the rehabilitation of vacant but structurally sound homes, enable safe, targeted demolition when necessary, and support creative and productive re-use of vacant land. Established in 2008, NCST offers a unique blend of policy expertise and on-the-ground experience, and since our founding, we have supported the productive re-use of more than 23,000 properties.

NCST supports neighborhoods and fights blight through these key activities:

- Our First Look REO acquisition program provides local affordable housing and community development organizations with the opportunity to obtain REO properties in their target neighborhoods before the properties are marketed to the public and investors. In many cases, REO properties can be acquired at discounts that help make it financially feasible for nonprofit buyers to rehabilitate these properties as affordable homeownership or rental.
- The Neighborhood Stabilization Initiative is a partnership with Fannie Mae and Freddie Mac to offer their REO properties through a special First Look program in 18 strategic markets around the country, mostly east of the Mississippi river.
- Through our ReClaim Project, operated in collaboration with the Housing Partnership Network, NCST manages a portfolio of highly distressed mortgages to resolve delinquencies, assist homeowners, and prepare vacant properties for productive disposition.

In this comment letter, NCST makes the following recommendations:

- Restore Neighborhood Stabilization Waiver to Anti-Flipping Regulation
- Improve FHA Distressed Asset Sales
- Expand the Claim Without Conveyance of Title (“CWCOT”) Option
- Improve HUD REO Disposition Practices
- Modernize FHA Single-Family Neighborhood Revitalization Products

Additionally, we urge HUD to appoint representatives of the neighborhood stabilization community to the Regulatory Reform Task Force established pursuant to Executive Order 13777, as well as other affordable housing and consumer advocates.

1. Restore Neighborhood Stabilization Waiver to Anti-Flipping Regulation

NCST urges HUD to use the opportunity presented by EO13777 to reinstate the waiver of anti-flipping provisions in the context of neighborhood-stabilizing acquisition, rehabilitation and resale.

HUD rule 24 CFR 203.37a currently defines “property flipping” as “the purchase and subsequent resale of a Property in a short period of time” indicative of “a practice whereby recently acquired Property is resold for a considerable profit with an artificially inflated value.” For homes resold within 90 days of a prior closing, the rule renders them ineligible for financing insured by the Federal Housing Authority (FHA), and it also places special conditions on FHA insured financing when purchasing homes resold between 90 and 180 days and between 90 days and 12 months.

The overall purpose of the anti-flipping rule is to curb the predatory practices that can occur when developers, appraisers, realtors, and/or others in the resale chain acquire properties and resell them quickly for a significantly higher price than they paid. If they perform any rehab at all, it is typically minor, cosmetic work such as painting and carpeting, with a goal to minimize cost and maximize profit. The prohibition extends not just to HUD properties that are acquired and resold, but to any property purchased with an FHA mortgage regardless of its provenance.

In 2009, in the context of HUD’s Neighborhood Stabilization Program (NSP), FHA issued a temporary exemption from compliance with this anti-flipping regulation to qualified organizations receiving NSP grant funds. This exemption enabled NSP participants to engage in aggressive efforts to rehab and re-sell homes in distressed areas, thereby helping to reduce the impact of the foreclosure crisis on these neighborhoods. After the need for rehab on a larger scale became clear, FHA extended the exemption on a nationwide basis and renewed it several times until it finally expired on December 31, 2014, when markets had generally recovered.

Unfortunately, this exemption is still desperately needed in the remaining distressed neighborhoods where the housing market continues to struggle. Among others, these areas include low-income neighborhoods, neighborhoods of color, and rural areas. In these markets, many properties are not saleable until rehabilitated. The entities that do that mission-focused work, including community development corporations and other nonprofits, often have developed sufficient expertise that they often are able to provide high-quality, significant rehab

in a relatively short period of time. Yet when the rehab takes less than 90 days or falls within another of the limited periods, aspiring buyers cannot access FHA mortgages – the primary source of most mortgage credit in these neighborhoods. Additionally, the anti-flipping rule also requires the lender to get a second appraisal at the end of the 90-day period, which increases the cost for the homebuyer.

NCST believes restoring the neighborhood stabilization exemption on a national basis will enable these organizations to rehabilitate existing affordable housing, help more families achieve the dream of homeownership, and assist distressed neighborhoods – all without exposing HUD to additional risk. The language of the exemption includes very strict eligibility criteria to vet sellers, require property inspections and protect against predatory “flippers,” and there is no evidence that this exemption was abused during the period it was in effect.

If HUD chooses not to restore the exemption on a national basis, we would ask that the agency enable its use for any properties rehabbed and resold as part of the Fannie Mae and Freddie Mac Neighborhood Stabilization Initiative (NSI). In this initiative, Fannie Mae and Freddie Mac partner with NCST to offer REO properties to local affordable housing and community development organizations through a special First Look program in 18 strategic markets around the country, mostly east of the Mississippi river. The NSI program contains a number of special requirements and protections (including anti-flipping provisions) that would serve as an effective proxy to the goals of the anti-flipping provision without preventing potential low- and moderate-income homebuyers from accessing FHA credit.

2. Improve FHA Distressed Asset Sales

Since 2012, HUD has auctioned off pools of non-performing loans to investors, often at significant discounts. The number of loans sold through this process has now exceeded 100,000. Initially, these sales took place without consumer protection standards and little oversight of investors after the sale was complete, but over time, FHA has improved its requirements for its Distressed Asset Sales Program (DASP) to include loss mitigation guidelines, enhanced reporting standards, and a prohibition on investors “walking away” from properties that are not economic and thereby leaving them as a burden on local communities. These new standards are critically important to protect homeowners and local governments and for the most part have not materially affected the price investors are willing to pay for non-performing loans.

However, there are additional improvements HUD can make to these asset sales programs. One significant problem is that FHA has not yet successfully enabled mission-focused entities such as nonprofits, community development organizations, and municipalities to purchase significant numbers of distressed assets. Yet these are often the organizations that will provide the most effective assistance both to homeowners and neighborhoods, not only preventing foreclosure but maintaining strong home values in neighborhoods that often have many other FHA-insured properties nearby. The best way for these transactions to take place is through a direct sale process rather than an auction, but OMB rules make direct sales cumbersome. We recommend consideration of how to improve both the direct sales and auction process to accommodate better outcomes on the ground.

Additionally, FHA is also selling pools of distressed mortgages outside the DASP program, which have fewer protections. We believe these protections should apply to HUD distressed asset sales of all kinds, not simply those carried out under the Distressed Asset Stabilization Program.

Finally, when HUD should require lenders to notify homeowners prior to placing their loan in the sales pools. The notice, which could be incorporated into existing systems for sending HUD-required notices under 24 C.F.R. 203.602 and 24 C.F.R. 203.606, will help HUD avoid payment of unnecessary claims because it will ensure the loan is properly assessed for loss mitigation options. HUD should also create a system to require lenders to document compliance with loss mitigation prior to placing loans in a pool.

3. Expand the Claim Without Conveyance of Title (“CWCOT”) Option

HUD should continue to expand its Claim Without Conveyance of Title (CWCOT) option set forth in 24 C.F.R. 203.368. When foreclosed properties become caught up in a dispute between servicers and FHA, the burden of that dispute ultimately falls on both neighbors and neighborhoods as the properties continue to deteriorate and cause blight. The CWCOT process is designed to shortcut the REO conveyance system to allow properties to be restored more quickly to productive use, but the option remains fairly limited. HUD should consider ways in which to expand the CWCOT option so that more properties can move more quickly to productive re-use.

4. Improve HUD REO Disposition Practices

Currently, HUD offers several priority programs when disposing of its REO properties. This includes its “first look” period for owner-occupants, non-profits and government agencies, as well as its Good Neighbor Next Door program that enables discounted access for homebuyers that meet certain criteria related to income and employment. Despite these efforts, a significant number of HUD REO properties ultimately end up purchased by third-party investors. We recommend that HUD thoroughly review its current disposition practices to understand better the obstacles faced by owner-occupant and nonprofit buyers in accessing these properties. If necessary, HUD should retool its priority programs to make them more effective. Additionally, HUD should place conditions on REO properties that it sells to require appropriate rehab and maintenance and to prevent investors from engaging in predatory activities such as contract-for-deed sales.

5. Modernize FHA Single-Family Neighborhood Revitalization Products

HUD should retool FHA regulations and policies that inhibit the use of the Section 203 (b) and 203 (k) loan guarantee programs by mission-based developers working on neighborhood stabilization. Past efforts to use the FHA guarantee products have met inconsistent application of regulations and sub-regulatory guidance. Limits on the number of loans one nonprofit can access and the number of loans that can be guaranteed in any one neighborhood are neither understood nor consistently communicated by HUD local offices, resulting in confusion for nonprofit developers and lack of access to FHA guarantees. Lenders who rely on HUD guidance are further deterred from using the programs by this inconsistency. FHA should reevaluate its existing policies, procedures and regulations as well as the implementation by field offices to make sure that loan guarantee products are meeting their potential to help developers (for-profit and nonprofit alike) interested in revitalizing communities and increasing homeownership.

Additional Considerations

Please note that while this letter focuses on specific topics that directly affect our programmatic work, NCST strongly supports many other HUD efforts, including the HOME and CDBG programs, affordable rental programs, FHA lending, and fair housing. NCST endorses the comments submitted by the Center for Responsible Lending that address rules related to access to credit, affirmatively furthering fair housing, and disparate impact.

Thank you again for the opportunity to comment and for your attention to our concerns. Please contact us if you would like to discuss any of these recommendations further.

Sincerely,

Julia Gordon
Executive Vice President
National Community Stabilization Trust