

February 1, 2016

The Honorable Julián Castro

Secretary, Department of Housing and Urban Development

451 7th Street SW
Washington, D.C. 20410

Dear Mr. Secretary:

We are writing to request information on the Distressed Asset Stabilization Program and the loss-mitigation procedures available to homeowners whose loans are sold through the program. Several recent reports indicate that the Federal Housing Authority (FHA) may be selling nonperforming loans for properties located in some of our most vulnerable communities to hedge funds and private equity firms via quarterly auctions without sufficient protections for homeowners and neighborhoods.

Sales of Distressed Mortgages

In 2010, the Department of Housing and Urban Development (HUD) began selling pools of distressed single-family home mortgages at auction through the Distressed Asset Stabilization Program. Under this program, residential mortgage holders can place distressed FHA-insured loans into a loan pool and receive an insurance payout. Initially, the sole requirement for placing an FHA-insured loan into a loan pool at auction was that the borrower had to be at least six months delinquent on the mortgage and had to have completed all FHA loss-mitigation procedures. Pursuant to the program's requirements, any mortgage that has not undergone all FHA loss-mitigation measures should not be included in a loan pool offered for sale.

Recent media reports suggest that FHA may not be effectively ensuring that all mortgages sold through the program have completed all loss-mitigation requirements and that some mortgages may have been sold through the program before all available loss mitigation measures were exhausted. Multiple news sources cite legal advocates who claim that many homeowners—including borrowers residing in each of our states—were still actively pursuing loss-mitigation options when their mortgages were sold.

Distressed mortgages held by FHA offer stronger protections to borrowers than typically available after mortgages have been sold to third-parties. As long as a mortgage remains with HUD, a distressed homeowner is entitled to pursue three different "Loss Mitigation Home Retention Options," including Special Forbearances, Loan Modifications, and the Home Affordable Modification Program (HAMP). However, once the mortgage is sold, the only loss mitigation option typically available to the borrower is HAMP, "or a similar loss mitigation program," although HUD has not identified what programs it deems "similar" to HAMP.

Without the borrower protections guaranteed by HUD, borrowers whose mortgages are sold can be offered modifications that do not yield affordable payments or are not sustainable over the

longer term. For example, Caliber Home Loans, the mortgage servicing arm of Distressed Asset Stabilization Program purchaser Lone Star Funds, reportedly offered “a five-year interest-only” modification, which one consumer advocate said would only “delay the inevitable” and would not “present ‘good odds for any of these borrowers to keep their homes when the temporary modifications expire.’” Likewise, Selene Finance, which services loans through the program on behalf of Oaktree Capital, has reportedly ignored loan modifications and pursued foreclosure despite borrower compliance with all modification terms. And BSI, servicing program loans on behalf of US Bank in a fund started by PIMCO, has reportedly denied borrower requests for principal reduction, a key benefit of the program.

It also appears that the program may not effectively incentivize servicers to modify the mortgages they purchase to benefit homeowners in the loan pool. Some media reports portray purchasers in the program as singularly interested in foreclosing on the properties whose mortgages they have purchased. For example, an offering document from the VOLT 2015 NPL securitization—a securitization based on loans from program sales—states that “payments on the notes are expected to largely come from liquidation and sale proceeds, although there are expected to be collections each month from monthly payments by mortgagors.” The offering document indicates “that the firm considers foreclosure and sale of the homes the most likely outcome for a majority of the loans.”

Similarly, Maryland consumer rights attorney Phillip Robinson, who serves clients with mortgages who have been required to subject their homes to interior inspections prior to being offered a modification, states:

The reason they want interior inspection is that they want to get an idea if they can make money off foreclosing. ... They’re not looking to modify and certainly not looking to do principal reductions.

In addition, housing advocates claim the hedge and private equity funds that purchase mortgage pools in this program “are even less helpful than the banks had been in negotiating loan modifications with borrowers.”

For the reasons outlined above, we request that you provide responses to the following questions:

1. Does HUD require notice to be provided to homeowners that their mortgages are being sold through the Distressed Asset Stabilization Program? If so, what notice is required?
1. Is notice provided to a homeowner whose mortgage is slated for sale at an auction that HUD believes the homeowner’s loss-mitigation processes have been exhausted? If no notice is required to be provided, why not?
1. How is HUD ensuring loss mitigation procedures are being followed for mortgages prior to their sale through the program? Does HUD use self-certification or other measures? What documentation is required for proof of compliance with loss mitigation procedures? What steps is HUD taking to ensure any form of self-certification is effectively audited?

1. HUD allows loss mitigation for mortgages sold through the program to be performed through HAMP or “a similar loss mitigation program.” What is required of programs that are “similar” to HAMP? What procedural protections are offered to borrowers who pursue modifications through programs that are “similar” to HAMP?
1. What protections are provided to homeowners after their mortgages have been sold through the program? How do these protections differ from the protections in place when HUD owns the mortgage?
1. What data does HUD provide to the public about the loans sold through the program? Does it provide information at the pool level, or is the information aggregated at a higher level? Does it provide information on the:
 1. terms of loan modifications and number of modifications that reduce the principal owed;
 2. demographic and geographic information about homeowners;
 3. disposition results, including whether the home is held as a long-term rental, and whether the home was sold to an owner-occupant, non-profit, or investor; or
 4. re-sale information, including traceability to the original purchaser of the mortgage?
1. What percentage of loan pools sold through the program are sold to non-profits, and what is HUD doing to ensure non-profits may effectively participate in auctions?
1. Does HUD keep track of which auction buyers have failed to comply with the program’s requirements? If not, why not? Does HUD plan to bar from future auctions buyers that have been found to have violated any of the program’s requirements?

Please provide the requested information and a briefing on these issues by February 29, 2016. If you have any questions about this request, please contact Todd Phillips with Ranking Member Cummings at (202) 225-4741, or Erin Barry with Ranking Member Brown at (202) 224-7391. Thank you for your cooperation with this matter.

Sincerely,

Sherrod Brown

Elijah E. Cummings