



Mr. Kelly G. Richardson, Esq.
President
Richardson Harman Ober PC
Pasadena, CA

Gregory G. Smith, CMCA, AMS, PCAM
President-Elect
Associa Northern California-Stockton
Stockton, CA

David I. Caplan, CMCA, AMS, PCAM
Immediate Past President
Community Association Management, LLC
Pikesville, MD

J. David Ramsey, Esq.
Chairman
Government & Public Affairs Committee
Becker & Poliakoff
Morristown, NJ

Ronald L. Perl, Esq.
Chairman
Federal Legislative Action Committee
Hill Wallack, LLP
Princeton, NJ

Thomas M. Skiba, CAE
Chief Executive Officer

Dawn M. Bauman, CAE
Senior Vice President
Government and Public Affairs

July 18, 2016

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW
Room 10276
Washington DC 20410

RIN: 2501-AD78—Strengthening the Home Equity Conversion Mortgage Program

To Whom It May Concern:

In correspondence dated June 28, 2016, Community Associations Institute (CAI),¹ urged the Department of Housing and Urban Development (Department) to resubmit a proposed rule concerning the Home Equity Conversion Mortgage (HECM) Program absent proposed §206.136(a)(1). CAI members strongly urge that proposed §206.136(a)(1) be struck from any final rule.

With this correspondence, CAI members offer additional views supporting the removal of proposed §206.136(a)(1), discuss how existing proposed policy in the rule adequately addresses the Department's concerns over state statutes providing limited priority for community association liens, and offer other commentary on the proposed rule.

About the Community Association Housing Model

Community associations are also known as condominium associations, homeowner associations, and housing cooperatives. The community association housing model continues to grow as consumers seek out communities that offer municipal-type services, amenities, and preserve the value of property.

Community associations provide services that were once the exclusive province of local government, including trash removal, street paving, lighting, snow removal, maintenance of common elements and community infrastructure

¹ CAI is the only national organization dedicated to fostering competent, well-governed community associations (condominiums, cooperatives and planned communities) that are home to approximately one in every five American households. For more than 40 years, CAI has been the leader in providing education and resources to the volunteer homeowners who govern community associations and the professionals who support them. CAI's 34,000 members include community association volunteer leaders, community managers, community management firms, and other professionals and companies that provide products and services to community associations.

(roads, bridges, and storm water systems), disaster recovery, and water and electric utility services. These municipal-type services provide critical support for community residents and ensure that homes in the community, condominium project, or housing cooperative are in safe and sanitary condition. Community associations purchase and maintain insurance on common property and undertake additional responsibilities to ensure communities are protected against financial shocks.

To ensure these vital community services and functions are fully funded, all owners pay assessments to the association, which are by law mandatory and lien-based. Community association common expense assessments are generally the sole source of income to fund association municipal-type services, which are fundamental to a stable community. Substantial amounts of assessment delinquencies caused by lengthy and intentional delayed foreclosure on vacant and abandoned properties, mortgagee and mortgage servicer negligence, or a homeowner's unwillingness to pay assessments can have a profoundly negative impact on community associations and association residents. Thus, 21 states and the District of Columbia have further acted to protect the financial stability of community associations and protect association households from financial shock by providing priority for a portion of a community association lien for delinquent assessments and other related costs.²

Association lien priority statutes serve as an effective, local remedy to overcome pervasive servicer misconduct and failures by federal mortgage agencies to enforce agency guidelines that require mortgagees and mortgage servicers to protect and preserve collateral and to foreclose on properties on reasonable timelines. Association lien priority is not a new concept and many state statutes have been in place for more than 30 years. Indeed, association lien priority was originally proposed by a former general counsel of Freddie Mac and was adopted by the Uniform Law Commission in the various uniform acts relating to the establishment and legal structure of community associations.³

States have a legitimate and ongoing interest in protecting citizens from unscrupulous actors and require all entities engaging in commerce to comply with applicable state statute. Rather than harming federal interests, these statutes often serve as an early warning system for attentive federal regulators. Alternatively, these state statutes can be the only source of relief for consumers when federal regulators fail to act on behalf of consumers.

Strong consumer demand for the community association housing model has led to the growth of association housing over the past decades. In 2015, the Foundation for Community Association Research⁴ estimated there are as many as 338,000 community associations nationwide, which account for more than 26 million housing units. There are more than 68 million community association residents, representing almost 1 in 5 households, nationally.⁵

The Housing Crisis in Community Associations and Access to the Housing Finance System

Community association assessments have been described by the courts as fundamental to the "financial integrity" of community associations.⁶ The veracity of this statement was dramatically demonstrated

² A list of jurisdictions with statutes providing a limited priority for community associations liens may be obtained at: <https://www.caionline.org/Advocacy/StateAdvocacy/PriorityIssues/PriorityLien/Pages/default.aspx>

³ Henry L. Judy and Robert A. Wittie, *Uniform Condominium Act: Selected Key Issues*, 13 Real Prop., Prob. & Tr. J. 437, 474-518 (1978).

⁴ The [Foundation for Community Association Research](#) is the driving force for community association research, development, and scholarship, providing authoritative analysis on community association trends, issues, and operations.

⁵ Foundation for Community Association Research: [Statistical Review for 2015 \(Summary\)](#)

⁶ See *Trustees of the Prince Condominium Trust v. Prosser*, 412 Mass. 723, 724-726 (1992), where the Massachusetts Supreme Court held, "A system that would tolerate a unit owner's refusal to pay an assessment because the unit owner asserts a grievance, even a

during the economic turmoil of 2008-2012 as many community associations experienced severe financial shock as distressed households ceased paying association assessments. In 2010, 10 percent of community associations reported delinquency rates greater than 20 percent.⁷ In 2011, 30 percent of community associations reported assessment delinquency rates of greater than 11 percent ranging to as high as 30 percent.⁸

California serves as an important case study to illustrate the degree to which community associations and association households were impacted by the housing crisis. In 2011, 50 percent of California community associations reported assessment delinquencies greater than 10 percent while 46 percent of surveyed communities reported delinquency rates between 11 percent and 30 percent. Of the communities reporting delinquencies, 44 percent reported assessment delinquencies of greater than 120 days; almost 30 percent reported assessment delinquencies of 91 to 120 days; and almost 15 percent reported assessment delinquencies of 61 to 90 days.⁹

California communities reported that mortgagees consistently refused to initiate foreclosure on vacant or abandoned properties. According to almost 40 percent of the 2011 survey respondents, mortgagees and mortgage servicers failed to initiate foreclosure on 50 percent of abandoned homes in their community. In those instances where a foreclosure sale did occur, communities reported that 60 percent of foreclosure sales in community associations were not recorded in a timely manner by the foreclosing party. This is validated by an additional 2012 CAI survey in which community associations reported an astounding 70 percent of bank owned properties or Real Estate Owned (REO) properties were delinquent on assessments.¹⁰

Not only did mortgagees refuse to initiate foreclosure where the homeowner had abandoned the property, but mortgagees established a consistent pattern of delaying recordation of the sale and paying assessments on REO. It should be noted that California does not provide limited priority for community association liens, which greatly limited the ability of associations to respond to the crisis.

Community associations did nothing to cause the economic crisis, but association households bore a substantial and disproportionate financial burden during the crisis. Association households were required to pay higher housing costs to make up lost assessment income due to the negligent behavior of mortgagees and mortgage servicers. Community associations were forced to incur maintenance expenses on abandoned properties and REO portfolios of negligent lenders. By continuing to fund municipal-type services, community associations preserved and protected the value of mortgagee collateral without compensation. This unjust enrichment of mortgagees and federal housing agencies occurred at the direct expense of community association households.

In response to these demonstrated failures of both mortgagees and federal regulators to protect the financial interests of association homeowners, CAI was a leader in the call to include regularly occurring association common expense assessments as a mortgage-related obligation in the Dodd Frank Wall

seemingly meritorious one, would threaten the financial integrity of the entire condominium operation. For the same reason that taxpayers may not lawfully decline to pay lawfully assessed taxes because of some grievance or claim against the taxing governmental unit, a condominium unit owner may not decline to pay lawful assessments."

⁷ CAI Community Impact Survey (2010)

⁸ CAI Community Impact Survey (2011)

⁹ Written witness testimony of Mr. Dick Pruess on behalf of Community Associations Institute: House Financial Services Committee, Subcommittee on Capital Markets and Government Sponsored Enterprises hearing entitled, *An Examination of the Federal Housing Finance Agency's Real Estate Owned (REO) Pilot Program*, May 7, 2012

¹⁰ *Ibid.*

Street Reform and Consumer Protection Act (Dodd-Frank).¹¹ To this end, CAI was strongly supportive of provisions in Dodd-Frank related rulemakings such as the “qualified mortgage” and “qualified residential mortgage” rules that implemented these consumer protections.¹² Additionally, CAI was supportive of similar provisions in the Federal Housing Administration’s (FHA) “qualified mortgage” rulemaking.

CAI members believe that underwriting requirements have substantially improved and federal financial regulators have taken substantive action to cure failures that directly contributed to the crisis.¹³ The impact of improved underwriting and stronger market oversight has produced several vintages of mortgages that are among the strongest performing in not only FHA’s 82 year history, but also for Fannie Mae and Freddie Mac.¹⁴ However, these improvements are no justification for regulatory efforts to strip community associations of protections provided in state statute. To the contrary, the clear lesson of the crisis for community associations is that limited priority for community association liens is paramount. Association homeowners must have a local remedy to respond to market failure, and CAI members will continue to advocate in state legislatures and the U.S. Congress to expand the number of association lien priority jurisdictions and ensure federal regulators respect these statutes.

CAI members understand and value the role of FHA in the housing finance system. This was certainly the case in the midst of the Great Recession, where FHA played a key countercyclical role, ensuring that mortgage credit was available on reasonable terms and at affordable rates. According to research published by the Federal Reserve Bank of Cleveland, FHA filled a critical demand in the housing finance system, with FHA-insured mortgages peaking at 43.8 percent of originations in November of 2009.¹⁵ If FHA had been unable or unwilling to enter the market in this manner and facilitate access to mortgage credit, the economic recession would have been even more damaging and by some estimates home values would have declined by an additional 25 percent.¹⁶ If community association households had been refused FHA-insured mortgages during the crisis the results would have been devastating.

CAI members strongly believe association households must have full and fair access to the housing finance system through all of the system’s component parts—including FHA. This is why CAI members are greatly concerned by the Department’s proposed rule that may needlessly deny a portion of community association households access to an FHA program. Whether in times of economic turmoil or economic stability, CAI members view FHA as a vital partner in building financially stable community associations and association households. CAI members call on FHA and the Department to work with community associations to ensure that associations and association households remain financially stable

¹¹ 15 U.S.C. § 1639c(a)(1) provides that “no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan, according to its terms, and all applicable taxes, insurance, (including mortgage guarantee insurance), and assessments.”

¹² For example, 12 CFR 1026.43(b)(8) provides that “Mortgage-related obligations mean property taxes, premiums and similar charges identified in § 1026.4(b)(5), (7), (8), and (10) that are required by the creditor; fees and special assessments imposed by a condominium, cooperative, or homeowners association; ground rent; and leasehold payments.”

¹³ *Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* (January 2011), p. xviii.

¹⁴ In testimony before the House Financial Services Committee on January 27, 2015, Federal Housing Finance Agency Director Mel Watt noted that severe delinquency rates for Fannie Mae acquired mortgages from 2005 to 2008 was 8.27 percent compared to a severe delinquency rate of 0.34 percent for Fannie Mae acquired mortgages from 2009 through September 30, 2014. Director Watt stated that for Freddie Mac acquired mortgages from 2005 to 2008, the severe delinquency rate was 7.66 percent compared to a severe delinquency rate of 0.23 percent for mortgages acquired from 2009 through September 30, 2014.

¹⁵ Demyank, Yuliya and Kolliner, Daniel. “FHA Lending Rebounds in Wake of Subprime Crisis” (April 2015). Available at www.clevelandfed.org.

¹⁶ John Griffith, Center for American Progress: *The Federal Housing Administration Saved the Housing Market* (October 2012), p. 1.

and ensure that association homeowners may enjoy the full protection of state statute while having complete access to our nation's housing finance system.

Comments on the Proposed HECM Rule

While CAI has not commented directly on previous FHA changes to the HECM program, many changes implemented via mortgagee letter were viewed positively. In general, CAI members share FHA's goal of bringing stability to the reverse mortgage book of business while providing senior citizens access to safe reverse mortgage products. In this context, CAI offers the following comments and recommendations on the proposed rule for the Department's consideration.

Application of Certain Forward Program Rules to HECM Program—Proposed §30.35

CAI members strongly support the proposed rule's application of certain forward mortgage program requirements on mortgagees and mortgage servicers in the reverse mortgage program. Proposed §30.35 ((a)(8) and (10)) impose on mortgagees and mortgage servicers a duty under regulation to follow FHA guidelines in manufacturing reverse mortgages and servicing such mortgages. Further, these provisions ensure that mortgage servicers have a clear duty to adhere to FHA property preservation, foreclosure, and title conveyance requirements.

Definition of Property Charges—Proposed §206.3

CAI members continue to express strong support for including all monthly mortgage-related obligations as variables in the mortgage credit decision. CAI members were supportive of FHA's inclusion of community association assessments in the definition of "property charge" in Mortgagee Letter 2014-22. Specifically, CAI members support the proposed rule's codification of community association assessments in the definition of "property charge".

Recommendations

1. CAI members support including community association assessments in the definition of "property charge" as proposed in §206.3.
2. In general, community associations fund ongoing and critical services through "assessments" rather than "fees", which are more commonly associated with one time charges rather than a property owner's ongoing and defined obligation to fund association operations. CAI members urge the Department to use the term "assessments" when referring to condominium association assessments, planned unit development assessments, and homeowners association assessments.

Financial Assessment— Proposed §206.37

CAI members support the Department's proposed financial assessment, including requirements a mortgagee determine a borrower's ability and willingness to pay property charges. Pertinent to CAI members are requirements that mortgagees determine a borrower has demonstrated both the ability and willingness to pay community association assessments over a reasonable period of time. CAI supports the Department's proposed incorporation by reference of portions of the *HECM Financial Assessment and Property Charge Guide* which directs mortgagees to document a borrower's association assessment payment history over the prior two years as a measurement of a borrower's willingness to pay association assessments and other property charges.¹⁷

Recommendation

1. CAI members support §206.37 as proposed.

¹⁷ ML 2014-22 Attachment 2—HECM Financial Assessment and Property Charge Guide 2.27

Deferral of Due and Payable Status for Eligible Non-Borrowing Spouses—Proposed §206.55

CAI members support a deferral period to ensure an eligible surviving spouse may remain in their home when a HECM borrower is deceased. In general, CAI members strongly support the concept of aging in place.

The Department may consider the utility of requiring servicers to notify surviving spouses of the requirement to ensure payment of property charges and similar requirements contained in relevant portions of proposed §206.55(c) and (d). Such a communication may well serve to protect the interests of both surviving spouses and the Mutual Mortgage Insurance Fund (MMIF).

Recommendations

1. CAI members support the concepts expressed in §206.55 to allow surviving spouses to remain in their primary residence.
2. CAI members urge the Department to consider a communication to surviving spouses to describe FHA requirements for such surviving spouse to remain eligible for the deferral period.

Acquisition and Sale of the Property—§206.125

As previously discussed, a consequence of the Great Recession in community associations was a sharp and prolonged increase in association common expense delinquencies. Even more damaging were the deliberate actions of mortgagees to delay the initiation and completion of foreclosure actions. It is the view of CAI members that mortgagees delayed completing foreclosure and taking title to properties to avoid the responsibilities of property ownership—namely the obligation to maintain property and fund association activities. By delaying the completion of a foreclosure or simply refusing to record a change in title, mortgagees were unjustly enriched as other homeowners funded maintenance, insurance, and other property costs. Just as pernicious, these mortgagee delays caused monetary judgments against homeowners, who believed their financial obligation to the association ceased when foreclosure was initiated, to increase.

Some states responded to the failure of mortgagees to promptly take title to a property once a foreclosure was complete by enacting statutes that required mortgagees to record a change in title within 30 days of completing a foreclosure.¹⁸ Even FHA has noted the failure of mortgagees to complete foreclosures or foreclosure alternatives such as deed-in-lieu transactions in a timely manner at significant cost to the MMIF.¹⁹ In general, CAI members support providing clarity to FHA mortgagees and servicers on timelines in which parties are expected to notify the Secretary of a default, initiate a foreclosure, complete a foreclosure, and convey title to the Secretary. However, clarity without attendant enforcement by FHA has limited practical impact. CAI members believe FHA will continue its more aggressive enforcement of program rules.

CAI members urge the Department to consider notifying or otherwise working cooperatively with a community association when a borrower or other person with legal right to sell a property exercises such

¹⁸ CA Civil Code Section 2924.1. (a) Notwithstanding any other law, the transfer, following the sale, of property in a common interest development, as defined by Section 1351, executed under the power of sale contained in any deed of trust or mortgage, shall be recorded within 30 days after the date of sale in the office of the county recorder where the property or a portion of the property is located.

(b) Any failure to comply with the provisions of this section shall not affect the validity of a trustee's sale or a sale in favor of a bona fide purchaser.

¹⁹ Docket No. FR-5742-P-01: Federal Housing Administration: Single Family Mortgage Insurance Maximum for Filing Insurance Claims & Disallowance of Operating Expenses Incurred beyond Established Timeframes

option pursuant to §206.125(f). CAI members appreciate the utility of deed-in-lieu transactions and other foreclosure alternatives such as the proposed “cash for keys” option in the proposed regulation. In such circumstances, the borrower or other person with legal right to sell the property should be directed to communicate with the association to ensure the obligations of the property owner are fulfilled or otherwise considered addressed by the association. This will increase the success of the Department’s policy proposals to reduce costs to the MMIF by allowing transactions to proceed in a timely and equitable manner.

Recommendations

1. CAI members are generally supportive of provisions in §206.125(a) that allow a borrower to cure a default even after receiving a notification of default, provided the borrower is also returned to good standing with the association.
2. CAI members strongly support §206.125(d) and the requirement that foreclosure be initiated within 6 months of the due date if a HECM borrower has failed to cure the default by bringing all property charges current and in good standing.
3. CAI members support provisions in proposed §206.125(f) that ease deed-in-lieu and “cash for keys” options, but urge the Department to consider reducing the period of time for completion of the deed-in-lieu option to 6 months rather than the proposed 9 months.
4. CAI members strongly support proposed §206.125(g) that requires—
 - a. Mortgagees to take possession, preserve, and repair properties
 - b. Mortgagees to make diligent efforts to sell the property within six months
5. CAI members urge that for housing units in a community association, repairs authorized in proposed §206.125(g)(2) be amended so as to ensure the property is in full compliance with the association’s governing documents in addition to any requirements of local government. As a property owner in a community association, the mortgagee has a duty under contract to ensure the housing unit is in full and complete compliance with the association’s covenants, conditions, and restrictions (CC&Rs). Failure to ensure that repairs and property preservation are consistent with CC&Rs will result in fines and possible action by the association to enforce its lien against the property. To avoid this outcome, the Department should clarify that compliance with both CC&Rs and local government ordinances is a requirement of §206.125(g).

Payment of Claim—§206.129

CAI members support provisions of the proposed rule that clarify for mortgagees the obligation to notify the Commissioner that a HECM has become due and payable under certain conditions in both proposed §206.205 and the terms of the mortgage. For this provision to function in a manner that protects community association homeowners and the MMIF, it is imperative that servicers be responsive to communications from associations concerning assessment delinquencies or other CC&R violations that may constitute a violation of the mortgage contract.

In general, CAI members support the proposed concept that advances for property charges be limited to two years after a foreclosure has been completed and then be directly assumed by the mortgagee without compensation. Two years is more than ample time for a property to be sold or title conveyed to the Secretary. CAI members support returning foreclosure, short sale, and deed- in-lieu properties to productive use in a reasonable but timely manner.

However, CAI members do not support portions of proposed §206.129 that do not recognize limited priority of community association liens in those jurisdictions that provide such priority. Specifically, CAI

members believe proposed §206.129(d)(3)(i) is flawed in that the provision does not recognize established law in 21 states and the District of Columbia that provide limited priority for community association liens.

CAI again stresses the roles and responsibilities of community associations to property owners, which often includes remitting payment for the very items the proposed §206.129(d)(3)(i) recognizes may, if unpaid, become a lien prior to the HECM mortgage (i.e. property taxes and utility payments). Community associations, through assessments paid by homeowners, pay property taxes assessed on common property and purchase water, electric, and other utilities. Such obligations are fundamental to the operation of communities and reflect precisely the reason states have accorded limited priority for community association liens. In fact, the proposed description of association assessments discussed immediately below overtly acknowledges the obligation to fund association activities through assessments arises from a recorded covenant that exists prior to the mortgage.

In proposed §206.129(d)(vii) the Department offers a seeming definition of association common expense assessments as “an obligation arising out of a covenant filed for record prior to the issuance of the mortgage...” In general, a property owner in a community association may incur additional expenses if the owner’s housing unit is in violation of the community’s CC&Rs. Many states provide that associations may levy fees and other penalties for late payment of assessments or fines for CC&R violations. Additionally, state statute may provide that additional charges are within the definition of “common expense assessment”. Examples of such charges include collection costs and attorney’s fees.²⁰

CAI members understand FHA may be attempting to prevent inclusion of monetary penalties levied against a mortgagee for nonpayment or late payment of association assessments or other property violations from a claim for insurance or a chargeable property expense. Notwithstanding this position, associations in all 50 states and other jurisdictions have authority to enforce liens against housing units for nonpayment of such amounts.

Given that community associations are established pursuant to state law, not federal law or regulation, it may be constructive for the Department to consider adopting a definition of assessment that is more consistent with that in the various state statutes. These association rights exist under law irrespective of the Department’s views and neither does the Department propose to preempt these statutory rights. Therefore, the final regulation must provide overt and clear direction as to the parties responsible for paying these components of association assessments when they arise due to a mortgagee’s error or negligence.

The Department is well-acquainted with the consistent failure of mortgagees to adequately maintain and preserve collateral or to make timely and complete payment of association common expense assessments. This is why in 2015 the Department proposed a regulation to curtail claims payments to mortgagees to account for losses to the MMIF that are a direct result of the failure of mortgagees to properly manage and preserve collateral and file for claims in a timely manner. To this end, CAI members do support actions by the Department to curtail claims payments when mortgagees and mortgage servicers, through the failure to comply with agency requirements, impose additional costs on the MMIF.

Recommendations

1. CAI strongly recommends that, consistent with removing §206.136(a)(1), the final rule reflect the limited priority of community association liens provided by 21 states and the District of Columbia

²⁰ Texas Property Code: Title 7, Chapter 82, Subchapter A, Sec. 82.113(a)

in §206.129(d)(3)(i). In these jurisdictions, certain defined amounts of community association assessments may become prior to a first mortgage, including a HECM, and FHA mortgagees should take appropriate action to pay the priority amount of community association liens in order to protect the priority of the HECM.

2. CAI strongly recommends that the final rule be consistent with state statutes describing the financial obligations that constitute a unit's common expense assessment. If the Department does not wish to expose the MMIF to certain components of a unit's common expense assessment, the final rule should clearly define the components FHA will reimburse and components that must be paid by mortgagees. Further, the final rule must compel mortgagees to make timely payment of any portion of a community association common expense assessment that becomes due and payable.

Life Expectancy Set Aside and Payment of Certain Property Charges—§206.205

CAI members support the concept of a Life Expectancy Set-Aside (LESA) for certain HECM borrowers. Estimates show that 10 percent of HECM borrowers enter technical default due to the failure to pay property charges.²¹ The LESA construct appears to offer borrowers the opportunity to access the HECM program but avoid the risk of a technical default. In general, CAI members support, based on a mortgagee's due diligence in determining a borrower's credit standing and willingness to pay property charges, the mandatory Fully-Funded LESA, Partially-Funded LESA, and Voluntary LESA options, but urge consideration of an important modification.

CAI members believe the combination of numerous factors—limitations on full draw HECMs; determining a borrower's ability and willingness to pay property charges; and the LESA—will greatly diminish the number of technical defaults in the HECM program. CAI members, however, question the Department's decision to exclude certain monthly mortgage related obligation property charges from the LESA. In particular, CAI members believe the Department should explore the inclusion of community association assessments in those instances where a mortgagee is required to establish a fully-funded LESA.

As previously discussed, a property owner's failure to make timely and full payment of association assessments places the mortgage in technical default and may result in an association initiated foreclosure. Such foreclosures are not common, but may result in the loss of a property owner's home and therefore a claim on the MMIF. This statutory framework exists in all states, territories, and the District of Columbia.

Given the Department's goal of reducing foreclosures in the HECM program generally and more specifically as a result of technical default, the decision to exclude payment of association common expense assessments from the LESA in all circumstances seems contrary to these policy objectives. Requiring payment of association common expense assessments through the LESA, where the mortgagee has documented a borrower's unwillingness to pay association assessments or where a mortgagee has failed to submit timely and complete association assessment payments, would support the Department's policy objectives.

The Department is aware of the substantial concern of CAI members with proposed §206.136(a)(1). CAI members believe that including payment of association common expense assessments for certain borrowers through a LESA could be a constructive compromise. By ensuring assessments for certain

²¹ Haurin, Donald; Moulton, Stephanie; and Shi Wei "An Analysis of Default Risk in the Home Equity Conversion Mortgage (HECM) Program" (July 18, 2014): p. 2.

HECM borrowers are paid through a LESA, the Department's concern that a portion of an association's lien for unpaid assessments may become prior to the HECM mortgage is adequately addressed in a manner that respects state statute. Stated plainly, if the LESA is sufficient to address the Department's concern over property tax liens and the threat of tax lien foreclosures, the policy is sufficient to address the Department's concern over the rare instances in which an association may be required to foreclose its lien.

Additionally, including association common expense assessments for certain HECM borrowers in the LESA would greatly reduce the potential that associations will foreclose on the priority portion of a lien in states providing this authority. Including association common expense assessments in the property charges to be paid via the LESA for borrowers with a demonstrated inability or unwillingness to pay assessments substantively address any concerns with state statutes providing priority for a portion of an association lien for unpaid assessments and related costs.

Recommendations

1. CAI supports the general policy of a HECM borrower retaining the duty to ensure timely and complete payment of association assessments, which is the obligation of all property owners.
2. CAI members urge the Department to consider how common expense association assessments may be included in the amounts remitted on the borrower's behalf pursuant to §206.205(a)(2) if the following conditions are met—
 - a. A borrower is required by a mortgagee to have a Fully-Funded LESA for payment of property taxes, special assessments levied by local or State law, hazard insurance premiums, and flood insurance premiums (if required).
 - b. A borrower fails to make timely and complete payment of association common expense assessments.

Conclusion

CAI members appreciate the opportunity to provide additional views on the Department's proposed improvements to the HECM program. Respectfully, CAI must reiterate the fundamental importance of assessments to the financial well-being not only of associations, but all association residents. State statutes providing a limited priority for community association liens, without doubt, protect associations and protect consumers. Importantly, by ensuring associations have income to maintain and insure common property, association lien priority statutes protect collateral securing FHA-insured mortgages to the direct benefit of the MMIF and taxpayers. Just as association homeowners should not unjustly bear additional housing costs owed by negligent mortgagees and mortgage servicers, neither should the MMIF nor taxpayers suffer such loss either.

CAI members strongly urge the Department to at the very least strike proposed §206.136(A)(1) from any final rule; make technical and conforming amendments to §206.129(d)(3)(i) to clarify that in association lien priority jurisdictions association assessments are property charges that may become prior to the HECM and are required to be remitted in complete and timely manner; and clarify for mortgagees and mortgage servicers the obligation to protect and preserve collateral in community associations and to make timely and complete payment of association assessments as required by state law and federal regulation.

Thank you for the opportunity to comment on these important regulations. If you would like to discuss any of these issues further, please feel free to contact me anytime at tskiba@caionline.org or (888) 224-4321.

Very truly yours,

A handwritten signature in black ink that reads "Thomas M. Skiba". The signature is written in a cursive style with a large, stylized initial 'T'.

Thomas M. Skiba, CAE
Chief Executive Officer
Community Associations Institute