



OFFICE of
INSPECTOR GENERAL
★ ★ ★ ★
UNITED STATES DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT

MidFirst Bank Misapplied FHA's Foreclosure Requirements

Audit Report Number: 2025-KC-1001

January 28, 2025

To: Sarah J. Edelman
Deputy Assistant Secretary for Single Family Housing, HU

//signed//
From: Kilah S. White
Assistant Inspector General for Audit, Office of Inspector General, GA

Subject: MidFirst Bank Misapplied FHA's Foreclosure Requirements, Oklahoma City, OK

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our audit of MidFirst Bank's Federal Housing Administration (FHA) foreclosures.

HUD Handbook 2000.06, REV-4, sets specific timeframes for management decisions on recommended corrective actions. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued because of the audit.

The Inspector General Act, as amended, requires that OIG post its reports on the OIG website. Accordingly, this report will be posted at <https://www.hudoig.gov>.

If you have any questions or comments about this report, please do not hesitate to call Patrick Anthony, Audit Director, at (716) 646-7056.

Highlights

MidFirst Bank Misapplied FHA's Foreclosure Requirements | 2025-KC-1001

What We Audited and Why

We conducted an audit of MidFirst's compliance with Federal Housing Administration (FHA) requirements for foreclosures that started in 2022. Pursuant to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), as extended by the Secretary, from March 18, 2020, through July 31, 2021, there was a pause on new and ongoing foreclosures for FHA single-family mortgages for homes that remained occupied. We selected MidFirst Bank because it was among the first servicers to resume initiating foreclosures after the moratorium ended with a foreclosure rate above 1 percent. Our audit objective was to determine whether MidFirst Bank complied with FHA's requirements for loss mitigation before initiating and continuing foreclosure.

What We Found

MidFirst Bank did not follow FHA's requirements for more than 14 percent of its foreclosures in 2022. Based on a statistically valid sample drawn from a universe of 7,363 FHA-insured loans totaling \$890 million, MidFirst did not complete the required loss mitigation activities before initiating or continuing foreclosure for an estimated 1,038 loans. As a result, borrowers experienced hardship from improper foreclosure starts, including unnecessary foreclosure fees, and risked losing their homes. In addition, the U.S. Department of Housing and Urban Development (HUD) was at risk of paying unnecessary claims on the improperly handled loans with an unpaid balance of nearly \$186 million if the foreclosure sales had been completed. In the statistical sample, most borrowers ultimately received loss mitigation assistance and kept their homes, while one sampled borrower lost her home in a foreclosure sale.

What We Recommend

We recommend that HUD require MidFirst to (1) remedy the 24 loans in our sample with improper foreclosures or take administrative actions if appropriate, (2) report on its resolution of the manual process issues identified during its 2022 quality control review and analyze its completeness regarding remedies to borrowers or HUD, and (3) update its policies and procedures to comply with HUD requirements by placing foreclosure holds for requests made before the first legal filing.

Table of Contents

Background and Objective	1
Results of Audit	3
MidFirst Bank Misapplied FHA Requirements for More Than 14 Percent of Its Foreclosures Started in 2022	3
Scope and Methodology	6
Appendixes	8
Appendix A – Auditee Comments and OIG’s Evaluation	8
Appendix B – Criteria	17
Appendix C – Statistical Projection – Results and Methodology	24

Background and Objective

FHA, a part of HUD, provides mortgage insurance on loans made by FHA-approved lenders. The lenders bear less risk because FHA will pay a claim to the lender for the unpaid principal balance of a defaulted mortgage. The total FHA portfolio consisted of 7.3 million loans at the end of 2022, while there were 85,147 foreclosures started that year.


HUD's Office of Single Family Housing administers FHA's mortgage insurance programs for mortgages secured by new or existing single-family homes, condominium units, manufactured homes, and homes needing rehabilitation. FHA's single-family mortgage insurance programs protect mortgage lenders against losses from default and encourage lenders to provide mortgage financing to eligible home buyers, including first-time and low-to-moderate-income home buyers and individuals and families of color.

MidFirst Bank is a federally chartered savings association and a wholly owned subsidiary of Midland Financial Co. It is based in Oklahoma City, OK, but also operates in Arizona, Southern California, Colorado, Nevada, Texas, and Utah. As of December 31, 2023, it was the largest privately owned bank in the United States, with \$36.7 billion in assets. In 2022, MidFirst had 213,824 FHA loans in its servicing portfolio. MidFirst commenced foreclosure on 7,363 loans with an unpaid principal balance of more than \$890 million in 2022.

Congress, Federal agencies, and the mortgage industry took steps to protect the housing and financial stability of borrowers during the COVID-19 pandemic through expanded forbearance options, a foreclosure moratorium, and streamlined loss mitigation options after forbearance. Forbearance allowed for reduced or suspended payments for a period of 6 to 18 months. Foreclosure moratoriums were in place from March 18, 2020, through July 31, 2021, except with respect to vacant or abandoned properties. HUD loss mitigation options are designed to assist borrowers in default or imminent default in retaining their homes and reduce losses to the FHA insurance fund that result from mortgage foreclosures. Servicers use several loss mitigation options that lead to home retention, including a partial claim or a loan modification. To address the high volume of delinquent borrowers exiting forbearance, HUD implemented streamlined options to expedite reviews for mortgage assistance. The COVID-19 recovery home retention program streamlined HUD's previous options for struggling homeowners, reduced required documentation, and allowed mortgage servicers to provide greater payment reduction for eligible homeowners.

HUD Handbook 4000.1 contains requirements for servicing FHA loans. It requires servicers to comply with all laws, rules, and requirements applicable to mortgage servicing, including full compliance with the applicable requirements under the purview of the Consumer Financial Protection Bureau, including the Real Estate Settlement Procedure Act and the Truth in Lending Act, and FHA requirements that are more stringent or restrictive than those provided for in applicable law. Before starting foreclosure, the servicer must review its servicing record to be certain that servicing has been performed in accordance with HUD guidance.

When foreclosure is appropriate, servicers must initiate and complete foreclosure in a timely manner. A servicer may initiate foreclosure after at least three consecutive full monthly mortgage payments are due but unpaid and when a borrower is rejected for loss mitigation, does not perform under a loss mitigation agreement, or does not respond to the servicer regarding loss mitigation. Foreclosure begins with the filing of the first legal action to commence foreclosure. HUD requires servicers to file the first legal action



within 6 months of the delinquency start date but allows extensions to the deadlines to complete loss mitigation requests. A borrower may also request loss mitigation assistance after the foreclosure has started. The HUD handbook contains requirements for the servicer to provide loss mitigation before foreclosure starts as well as after foreclosure has started. If the loan remains delinquent, the ultimate outcome is a foreclosure sale. (See appendix B for more information on HUD's requirements.)

Our audit objective was to determine whether MidFirst Bank complied with FHA's requirements for providing loss mitigation before initiating and continuing foreclosure.

Results of Audit

MidFirst Bank Misapplied FHA Requirements for More Than 14 Percent of Its Foreclosures Started in 2022

MidFirst Bank did not complete the required loss mitigation before initiating or continuing foreclosure for more than 14 percent of its FHA loans with foreclosure filings in 2022. MidFirst misinterpreted FHA's requirements for when to initiate foreclosure. As a result, borrowers experienced hardship from unnecessary foreclosure starts and risked losing their homes to foreclosure. In addition, HUD was at risk of paying unnecessary claims on an estimated 1,038 loans with unpaid balances of approximately \$185.9 million if the foreclosure sales had occurred.

FHA Foreclosure Requirements Not Met

From a universe of 7,363 FHA-insured forward loans totaling \$890 million with foreclosure started in 2022, we selected a statistically valid sample of 88 loans totaling \$14.2 million. MidFirst did not comply with FHA requirements for providing loss mitigation assistance before initiating or continuing foreclosure for 24 of the sampled loans, which projected to 14.1 percent of the universe, or 1,038 loans. (See appendix C.)

Not Reviewing Borrowers' Requests Before Initiating Foreclosure

MidFirst initiated the foreclosure process before it reviewed the borrowers' requests for loss mitigation. A servicer may initiate foreclosure after it has completed its review of the borrower's loss mitigation request, determined that the borrower does not qualify for a loss mitigation option, properly notified the borrower of this decision, and rejected any available appeal by the borrower. HUD considers foreclosure to be initiated when the first legal action to commence foreclosure is filed. HUD Handbook 4000.1 requires servicers to determine that the borrower is not eligible for any loss mitigation option before initiating foreclosure, but MidFirst started the foreclosure before it made such determination. (See appendix B.) In one case, a borrower requested mortgage assistance after exiting COVID-19 forbearance. MidFirst filed the first legal action to commence foreclosure a month after the borrower's request for loss mitigation without completing the review of this request. The borrower was approved for a COVID-19 recovery modification after foreclosure started and after accumulating approximately \$1,850 in foreclosure-related fees.

Initiating Foreclosures While Awaiting Documents

MidFirst initiated the foreclosure process while waiting for some borrowers to provide additional documentation or items necessary to execute the loss mitigation option. The HUD handbook requires servicers to complete their review of borrowers' loss mitigation requests before starting foreclosure. However, MidFirst initiated foreclosure while waiting for borrowers to submit additional information or notarized loss mitigation documents. In one example, MidFirst notified a borrower that within 30 days, he needed to provide verification of his reason for falling behind on payments and his two most recent pay stubs. However, MidFirst filed the first legal action 4 days after the borrower submitted the application. This did not allow the borrower time to provide the documents to complete the application before the foreclosure was initiated. In another example, MidFirst notified a borrower that it had received her loss mitigation application and it would not initiate the foreclosure process under applicable law before evaluating her complete application. A week later, MidFirst approved her for a partial claim

and mailed out plan documents to be signed, notarized, and returned within 14 days. Less than a week after the approval letter, MidFirst filed the first legal action for foreclosure. In both of these examples, MidFirst did not comply with HUD's requirement to complete loss mitigation before initiating foreclosure.

Not Reviewing One Sampled Borrower for Streamlined Option

One sampled borrower requested loss mitigation after being impacted by the COVID-19 pandemic. Instead of evaluating the borrower for streamlined options, MidFirst filed the first legal action to commence foreclosure and required unnecessary steps to access loss mitigation. MidFirst approved the borrower for a standard loan modification, even though the borrower would have qualified for a streamlined option. MidFirst denied the loan modification because the third trial plan payment was returned for insufficient funds. The trial payment plan would not have been required under the streamlined option. MidFirst's representatives talked with the borrower multiple times but failed to offer streamlined options as an alternative to the failed plan. The house was sold in a foreclosure sale.

MidFirst Misinterpreted HUD's Requirements

MidFirst misinterpreted FHA's requirements for when to initiate foreclosure when it designed its policies and procedures. MidFirst's foreclosure administration policy required contacting the attorney to stop foreclosure only when a borrower made an initial request for loss mitigation. MidFirst properly reviewed borrowers' initial requests for loss mitigation, but it did not stop foreclosure for subsequent requests for loss mitigation. It did not believe repeat requests coming in after referral to its foreclosure attorney required the first legal action to be paused. In addition, MidFirst stopped foreclosure only when applications were deemed complete, which meant that the first legal action moved forward while MidFirst awaited additional information needed to evaluate and approve the borrower for loss mitigation. However, this procedure was inconsistent with HUD's requirements for when to initiate foreclosure, which did not specify that the loss mitigation application must be complete. MidFirst designed its policies based on CFPB requirements in Regulation X, which did not offer foreclosure protections for incomplete or duplicative requests.¹

MidFirst also initiated foreclosure before evaluating borrowers' loss mitigation applications due to human errors. A borrower had to be manually processed in MidFirst's underwriting system to place the foreclosure on hold after completing a loss mitigation application, which did not occur in every case. MidFirst self-identified this issue during a 2022 quality control review, and remediation of this issue is ongoing.

Borrowers Faced Financial Loss and Hardships, and the FHA Fund Could Be at Risk

Based on the deficiencies identified in our sample, we project that borrowers for an estimated 1,038 loans with a total unpaid balance of \$185.9 million experienced similar hardships from the unnecessary foreclosure starts, including foreclosure-related fees, stress, and other impacts from public filings. In

¹ 12 CFR Part 1024 – Real Estate Settlement Procedures Act (Regulation X) was issued by the Consumer Financial Protection Bureau to protect consumers when they apply for and have mortgage loans. It states that a servicer must not take the first legal action in a foreclosure unless the servicer has previously evaluated a borrower's complete loss mitigation application, and the borrower has been delinquent at all times since submitting the prior complete application.

most of the cases in the statistical sample, the borrowers ultimately received loss mitigation and kept their homes, so their financial impact was limited to the foreclosure fees they were charged, which could have been avoided. However, one borrower in the sample lost her home to foreclosure without receiving proper assistance. Her home was sold to a third party in the foreclosure sale, which satisfied the mortgage debt. HUD did not pay any claims on the deficient loans in our audit sample.

Conclusion

MidFirst did not properly design its policies and procedures to fully meet HUD's requirements. As a result, some borrowers faced additional financial loss and hardships, and the FHA insurance fund could have been at risk of loss for loans that started foreclosure without properly receiving loss mitigation. By implementing our recommendations, MidFirst will better service its delinquent FHA-insured loans facing foreclosure by minimizing costs to the borrowers while helping them stay in their homes.

Recommendations

We recommend that the Deputy Assistant Secretary for Single Family Housing

- 1A. Require MidFirst to remedy the 24 borrowers in our sample with improper foreclosure filings or take administrative actions if appropriate.
- 1B. Analyze MidFirst's resolution of the manual process issues identified during its 2022 quality control review to verify that it remedied the borrowers or HUD and corrected the issues identified related to manual processing.
- 1C. Require MidFirst to update its policies and procedures to comply with HUD requirements by placing foreclosure holds for loss mitigation requests made before the first legal filing.

Scope and Methodology

We performed our audit work from April 2023 to June 2024. We conducted our fieldwork offsite for this assignment. Our audit period covered January through December 2022.


To accomplish our objective, we

- reviewed relevant laws, regulations, and HUD's guidance;
- reviewed MidFirst's policies and procedures;
- interviewed HUD's staff to gain an understanding of the program;
- followed up with MidFirst's staff to gain an understanding of relevant controls to ensure compliance with HUD's requirements;
- selected a statistical sample of FHA-insured loans and reviewed records provided by MidFirst for the sample to determine compliance with HUD's foreclosure requirements; and
- followed up with MidFirst on issues found during the audit to determine the reasons for noncompliance.

We relied in part on data contained in HUD's Single Family Data Warehouse (SFDW) system to achieve our audit objective. SFDW is a large and extensive collection of database tables, organized and dedicated to support the analysis, verification, and publication of single-family housing data. One of the data sources is the Single Family Default Monitoring System (SFDMS), which contains loan-level default data reported by the servicers. Specifically, we relied on the system to identify the universe of loans reported as having had foreclosure started in 2022. HUD's Neighborhood Watch system contains data on delinquent FHA loans. We used Neighborhood Watch reports to obtain information on the status of sampled loans and the loan delinquency activities reported by the servicer. Although we did not perform a detailed assessment of the reliability of the data, we performed a minimal level of testing, which included comparing information from SFDW and Neighborhood Watch to MidFirst's records, and found the data to be adequate for our purposes.

Using data from Neighborhood Watch, we identified 26 servicers with portfolios greater than 50,000 loans as of December 31, 2022. These servicers oversaw 6.45 million properties, or nearly 90 percent of the FHA servicing universe. On average, these servicers reported about ½ of 1 percent of their portfolios in foreclosure. We selected MidFirst Bank because it was among the first servicers to resume foreclosures after the moratorium ended with a foreclosure rate above 1 percent.

Using data from SFDW, we identified an audit universe of 7,363 FHA-insured forward loans serviced by MidFirst Bank totaling nearly \$891 million as of December 31, 2022. These loans were reported in SFDW with a status code that means first legal action to initiate foreclosure in 2022. To project the results of our review to the audit universe, we selected a statistical sample of 88 loans totaling \$14.2 million. (See appendix C.) For each loan in the sample, we requested documentation from MidFirst Bank, including foreclosure chronology, tracking and checklists, loan payment and fee histories, call recordings, communications with HUD, property inspection reports, escrow analysis, servicing notes and letters logs, notifications sent to the borrower, loss mitigation analysis, and other relevant documents. We evaluated the information provided for the 88 sample loans to determine whether MidFirst Bank complied with FHA's requirements for providing loss mitigation assistance before initiating and continuing foreclosure.



We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective(s). We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Appendixes

Appendix A – Auditee Comments and OIG’s Evaluation

Ref to OIG Evaluation – Auditee Comments



Delivery via Electronic Mail

October 17, 2024

Kilah S. White
Assistant Inspector General for Audit
Office of Inspector General
U.S. Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

Dear Ms. White:

On behalf of MidFirst Bank (“MidFirst”), I submit this response to the draft audit report (the “Draft Report”) prepared by the U.S. Department of Housing and Urban Development (“HUD”) Office of Inspector General (“OIG”) related to HUD OIG’s recently-completed audit of MidFirst foreclosures initiated in 2022. MidFirst values its long history and continued partnership with HUD and remains dedicated to helping delinquent FHA borrowers avoid foreclosure where possible, and consistent with applicable law and the Federal Housing Administration’s (“FHA”) requirements. MidFirst likewise appreciates HUD OIG’s perspective and willingness to respectfully engage with MidFirst throughout the audit process.

Although MidFirst respectfully disagrees with HUD OIG’s interpretation of FHA’s foreclosure initiation requirements where a borrower has requested loss mitigation but has not completed an application for loss mitigation, MidFirst has nonetheless revised its practices to align with HUD OIG’s interpretation. However, MidFirst would like to emphasize that there is a reasonable basis for its interpretation of FHA requirements, and that its interpretation -- consistent with Regulation X -- did not result in financial harm or risk to borrowers or the FHA Insurance Fund. MidFirst appreciates that the Draft Report describes how MidFirst did, in fact, provide the necessary loss mitigation assistance to the borrowers reviewed in the audit, but respectfully requests that HUD OIG revise the report to better highlight that (1) there is a reasonable basis for MidFirst’s interpretation of FHA’s foreclosure initiation requirements and (2) the financial loss referenced in the Draft Report is hypothetical and was not realized on the files reviewed.

MidFirst’s mortgage servicing business is conducted primarily through its Midland Mortgage division and is focused primarily on the FHA program. MidFirst first became an FHA-approved Mortgagee in 1982 and, since that time, has continuously increased its focus on FHA-insured loans. Throughout this 42-year partnership with HUD, MidFirst has maintained a strong track record of compliance with applicable law and HUD requirements. According to HUD’s current tier ranking system (TRSII) – which measures compliance with HUD/FHA delinquent servicing guidelines and requirements, including loss mitigation engagement – MidFirst has maintained an “A” grade (Tier 1) since the inception of the system in 2016. Prior to TRSII, MidFirst maintained a Tier 1 (the highest tier) under the TRS I scoring system going back to 2005.

MidFirst is committed to, and uniquely effective in, helping delinquent FHA borrowers avoid foreclosure through loss mitigation. Indeed, despite being the 10th largest FHA servicer, as of June 30, 2022 – the mid-point of the audit period – MidFirst was third among FHA servicers in volume of claimable loss mitigation plans during that same period. MidFirst remains focused on helping FHA borrowers avoid foreclosure through loss mitigation; as of August 31, 2024, MidFirst was the 12th largest FHA servicer by loan volume, but completed the fourth largest volume of claimable loss mitigation activity. MidFirst is particularly adept at helping FHA borrowers find a solution to avoid foreclosure.

1

999 N.W. Grand Blvd. • Oklahoma City, OK 73118 • 405.426.1400

Comment 1 >

Ref to OIG Evaluation – Auditee Comments

Comment 2 >

MidFirst's policies and procedures were designed with an emphasis on assisting borrowers in avoiding foreclosure, and historical performance demonstrates its success. Despite its belief that it had properly interpreted FHA's foreclosure initiation requirements, MidFirst revised its policies and procedures to be consistent with HUD OIG's interpretation of the HUD Handbook. MidFirst will pursue extensions of the First Legal Deadline from HUD, when appropriate, to accommodate this change in approach. MidFirst also has already undertaken the other two recommended actions listed in the Draft Report.

I. HUD OIG's interpretation that HUD Handbook 4000.1 prohibits initiating foreclosure whenever the borrower requests loss mitigation, irrespective of the number of requests that the borrower has made or whether the request is accompanied by a complete application, conflicts with other FHA requirements.

Comment 3 >

MidFirst always strives to assist borrowers and, to that end, responds to all borrower requests for loss mitigation assistance. Historically, MidFirst would not initiate a foreclosure once the borrower submitted a complete loss mitigation application and would maintain the foreclosure hold on the file throughout the entire evaluation process for the same episode of delinquency. If a borrower made a subsequent request for loss mitigation assistance outside the scope of Regulation X, MidFirst would still attempt to complete the borrower's application and conduct a subsequent evaluation, but would not avoid initiating a foreclosure unless and until the borrower was approved for a loss mitigation option. MidFirst believed that this practice, which is consistent with Regulation X, was also consistent with HUD Handbook 4000.1, which strikes a balance between providing borrowers with sufficient opportunity to receive loss mitigation assistance and the need to timely advance foreclosure to minimize losses to the FHA Insurance Fund.

A. *MidFirst's foreclosure initiation procedures were consistent with the plain language of the Handbook.*

The basis for HUD OIG's finding that MidFirst misinterpreted HUD's requirements is Section III.A.2.s.i.(C) of the Handbook, which sets forth conditions precedent for initiating a foreclosure. That section provides:

(C) When to Initiate Foreclosure

After at least three consecutive full monthly Mortgage Payments are due but unpaid, a Mortgagee may initiate a foreclosure for monetary Default if one of the following conditions is met:

- the Mortgagee has completed its review of the Borrower's loss mitigation request, determined that the Borrower does not qualify for a Loss Mitigation Option, properly notified the Borrower of this decision, and rejected any available appeal by the Borrower;
- the Borrower has failed to perform under a Loss Mitigation Option agreement, and the Mortgagee has determined that the Borrower is ineligible for other Loss Mitigation Options; or
- the Mortgagee has been unable to determine the Borrower's eligibility for any Loss Mitigation Option due to the Borrower not responding to the Mortgagee's efforts to contact the Borrower.

Comment 4 >

HUD OIG takes the position that the first bulleted requirement prohibits the Mortgagee from initiating foreclosure any time *any* loss mitigation request is pending. However, HUD OIG's interpretation could lead to a scenario where the borrower perpetually avoids foreclosure by repeatedly requesting loss mitigation but never completing the request or never accepting the offered option.

Ref to OIG Evaluation – Auditee Comments

MidFirst reasonably interpreted this provision of the Handbook to require that a Mortgagee perform at least one complete review of a responsive borrower's complete loss mitigation request before initiating foreclosure – consistent with the language used in the Handbook, the requirements of the Consumer Financial Protection Bureau's ("CFPB") mortgage servicing rules, and HUD's First Legal Deadlines. For borrowers who received a loss mitigation review during the delinquency period but were either denied or did not execute a curative option for which they were approved, MidFirst understood the Handbook to require the initiation of foreclosure while it also worked with the borrower to respond to and evaluate subsequent requests for loss mitigation. This interpretation reflected the practical realities – in both pre- and post-COVID scenarios – that borrowers must typically take certain steps to provide necessary information to the servicer and to accept and/or execute a loss mitigation option. Borrowers who fail to take these necessary steps to engage with their servicers cannot obtain a loss mitigation option, yet under HUD OIG's interpretation, there is no real consequence to borrowers who stop engaging with their servicer during the loss mitigation process as non-payment can be easily prolonged by additional loss mitigation requests. To the extent that it was FHA's intent to permit any request for loss mitigation to delay a foreclosure filing, it was not clear within existing guidance.

B. MidFirst's interpretation of the Handbook was consistent with the interplay between FHA foreclosure requirements and the CFPB's Mortgage Servicing Rules.

Section III.A.2.s.i.(C) was promulgated during the same period in which the CFPB created sweeping federal servicing rules to govern loss mitigation and should be interpreted within that context. In early 2013, the CFPB set forth a loss mitigation framework, effective January 2014, that, in part, restricted servicers from initiating foreclosure upon receipt of a *complete* loss mitigation application.¹ Under the new Regulation X loss mitigation procedures, for the *first* complete application within a delinquency, a servicer was not permitted to initiate a foreclosure unless the borrower was ineligible for loss mitigation (and any related appeal rights have expired) or the borrower rejected or failed to perform under a loss mitigation option for which they were approved. The prohibition against foreclosure initiation applied only to the borrower's *first* complete application for loss mitigation within a delinquency period.² This limitation was by design and carefully considered by the CFPB:

"Specifically, the Bureau believes that a limitation on the loss mitigation procedures to a single complete loss mitigation application provides appropriate incentives for borrowers to submit all appropriate information in the application and allows servicers to dedicate resources to reviewing applications most capable of succeeding on loss mitigation options."³

Shortly before the effective date of the Regulation X loss mitigation procedures, HUD published Mortgagee Letter 2013-40 on November 1, 2013. Through Mortgagee Letter 2013-40, HUD stated its expectation that servicers comply with the changes to Regulation X, as well as 24 CFR § 203.606(a), in pursuing foreclosure. HUD, for the first time, announced the pre-conditions to initiating foreclosure, which were substantively the same as those that are now found in Section III.A.2.s.i.(C):

After at least three consecutive monthly payments are due but unpaid, a servicer may initiate a foreclosure for monetary default if one of the following conditions is met:

- The servicer has completed its review of the borrower's loss mitigation request, determined that the borrower does not qualify for a loss mitigation option, properly notified the borrower of this decision, and rejected any available appeal by the borrower;

¹ 12 C.F.R. § 1024.41(f)(2).

² 12 C.F.R. § 1024.41(i).

³ *Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X)*, 78 FR 10696, 10836 (February 14, 2013).

Ref to OIG Evaluation – Auditee Comments

- The borrower has failed to perform under an agreement on a loss mitigation option, and the servicer has determined that the borrower is ineligible for other loss mitigation options; or
- The servicer has been unable to make a determination of the borrower’s eligibility for any loss mitigation option due to the borrower not responding to the servicer’s efforts to contact the borrower.

The Mortgagee Letter 2013-40 requirements were also effective in January 2014, coinciding with the Regulation X changes.

Comment 5 >

Thus, there appeared to be intentional symmetry between the new requirements of Regulation X and the new HUD foreclosure pre-conditions, both effective in 2014 and similarly encouraging both servicers and borrowers to engage in loss mitigation prior to foreclosure. There is no question that MidFirst’s processes were compliant with Regulation X’s preconditions to foreclosure, and HUD OIG’s recognition of the propriety of MidFirst’s review of a borrower’s initial complete request for loss mitigation is appreciated. MidFirst reasonably read the HUD foreclosure limitation as consistent with Regulation X.

This interpretation was further informed by the regulatory requirement that servicers “consider the comparative effects of their elective servicing actions and to take appropriate actions which can reasonably be expected to generate the smallest financial loss to HUD.”⁴ Constantly re-reviewing a borrower for loss mitigation, who remains eligible but previously declined to take the necessary steps to execute offered loss mitigation in order to bring their loan current, is not an action which can reasonably be expected to minimize losses to HUD.

MidFirst was not reading the requirements of Mortgagee Letter 2013-40 (and now Handbook § III.A.2.s.i.(C)) in a vacuum but, instead, was reasonably interpreting these requirements as consistent with federal regulations and other, applicable HUD requirements.

C. HUD OIG’s interpretation of the foreclosure initiation restrictions is in apparent conflict with HUD’s first legal deadline requirements.

Servicers of FHA-insured loans are obligated to utilize available loss mitigation options or initiate foreclosure within six months of the date of default.⁵ These obligations were unchanged by HUD’s introduction of the COVID-19 loss mitigation options. The Handbook accordingly balances the need to timely advance foreclosure where a borrower fails to engage in loss mitigation with the need to give a delinquent borrower sufficient opportunity to receive loss mitigation assistance. Section III.A.2.s.i.(B) clarifies that foreclosure must be initiated by engaging in the first public legal action to begin the foreclosure, by the six-month deadline -- commonly referred to as the “First Legal Deadline” -- if the borrower is not successful in executing a loss mitigation option.

HUD policy dictates that automatic extensions of the First Legal Deadline are available to the Mortgagee when the borrower has pursued loss mitigation from the servicer only in the following specified circumstances:

1. if the borrower has been *approved* for loss mitigation before the expiration of the first legal deadline and the servicer needs additional time to send and receive back the executed documents or to initiate foreclosure⁶;

⁴ 24 C.F.R. § 203.501.

⁵ 24 CFR § 203.355.

⁶ HUD Handbook 4000.1, at § III.A.2.s.i.(D)(2).

Ref to OIG Evaluation – Auditee Comments

2. if the borrower has been *denied* loss mitigation the servicer is provided additional time to comply with the appeal-related rights of Regulation X⁷; and
3. if the borrower is otherwise entitled to foreclosure protections under federal law (related to Reg X's prohibition upon the receipt of the *first* complete application within the delinquency).⁸

When HUD streamlined the loss mitigation options available to borrowers exiting a COVID-19 forbearance, it did not provide additional flexibility or otherwise adjust the related First Legal Deadlines. And, although these changes reduced previous documentation requirements, FHA requirements still instructed servicers to evaluate requests – and a borrower's request for a COVID-19 loss mitigation option did not automatically result in an approval for such an option that would trigger an automatic extension to the First Legal Deadline.⁹

Both before and after HUD's introduction of the COVID-19 loss mitigation options, an incomplete request for loss mitigation from a borrower is of no consequence to the First Legal Deadline; rather, it is the approval or denial of that borrower – which is typically based upon a complete application pursuant to federal law – that will extend the deadline, unless the borrower is otherwise entitled to Regulation X protection. Otherwise, servicers are subject to the six-month First Legal Deadline unless they secure a manual extension from HUD. Further, a request for a manual extension must be accompanied by the date the servicer received the complete loss mitigation request, the outcome of that request (approval or denial), and a "clear explanation of the Mortgagee's need for an extension." (Handbook § III.A.2.s.i.(D)(5)). Manual extensions of the First Legal Deadline are not guaranteed to be approved by HUD. Importantly, no extension – neither automatic nor manual – is available to servicers for the purpose of allowing borrowers to complete loss mitigation requests, despite the Draft Report's implication otherwise.¹⁰

Comment 6 >

Thus, despite HUD OIG's position that Mortgagees must never initiate foreclosure unless and until every loss mitigation request by a Borrower is evaluated, the proverbial clock for the First Legal Deadline will continue to tick. MidFirst interpreted FHA requirements as ensuring both (1) that borrowers received an opportunity to pursue loss mitigation and, (2) if the borrower failed to take advantage of that opportunity, servicers must timely pursue foreclosure consistent with HUD's pre-foreclosure requirements *and* its First Legal Deadlines.

II. MidFirst provided the appropriate and necessary loss mitigation assistance to borrowers and did not cease the loss mitigation process even if it initiated foreclosure after receiving a loss mitigation request but before the application was completed.

In its Draft Report, HUD OIG contends that MidFirst misinterpreted FHA requirements and, in doing so, improperly initiated foreclosures in 2022. Although MidFirst would hold the initiation of a foreclosure only once the borrower completed their loss mitigation application, MidFirst would always continue working with the borrower to facilitate completion of their request for loss mitigation. In fact, of the loans for which MidFirst initiated foreclosure in 2022, more than 70% saw a positive outcome through loss mitigation or other actions that satisfied the loan's delinquency. Each of the loan-level examples cited by HUD OIG

⁷ HUD Handbook 4000.1, at § III.A.2.s.i.(D)(3).

⁸ HUD Handbook 4001, at § III.A.2.s.i.(D)(1)(c).

⁹ For all options available under the new COVID-19 waterfall, servicers had to determine what the borrower could afford in order to identify the plan for which the borrower qualified, according to FHA requirements. Further, not all applicants – such as a successor-in-interest – qualified for the COVID-19 loss mitigation options and additional documentation was required.

¹⁰ Draft Report, p. 2.

Ref to OIG Evaluation – Auditee Comments

underscore the fact that the initiation of foreclosure while a loss mitigation request was pending, but not yet completed, had no impact on the borrower's ability to enter into the appropriate loss mitigation option:

Comment 7 >

- *Not Reviewing Borrowers' Requests Before Initiating Foreclosure*
 - HUD OIG indicates there was one borrower who requested loss mitigation, against whom MidFirst filed First Legal one month after the request without completing the review of this request. However, MidFirst notes that the foreclosure was placed on hold the day after the borrower's application was deemed complete, the borrower was approved for and executed a COVID-19 partial claim, the foreclosure was dismissed, and MidFirst refunded the foreclosure-related fees to the borrower. This file shows that MidFirst provided appropriate assistance to the borrower and ensured the FHA Insurance Fund was not at risk.
- *Initiating Foreclosure While Awaiting Documents*
 - HUD OIG cites two examples in which MidFirst initiated foreclosure while awaiting the borrower's return of certain documents. In both examples, MidFirst provided borrowers the appropriate assistance while also ensuring the FHA Insurance Fund was not at risk.

Comment 8 >

- In the first example, MidFirst requested from the borrower the reason for default and paystubs so it could follow the FHA-HAMP requirements to complete the loss mitigation application. The borrower's application was not complete when the first legal action was filed, and it could not yet be reviewed. However, once the application was completed, the borrower was approved for an FHA HAMP Standalone Partial Claim that brought the loan current, and the foreclosure proceeding was closed.

Comment 9 >

- In the second example, MidFirst approved the borrower for a loss mitigation option but the borrower failed to return the required, signed documents. MidFirst could not delay foreclosure indefinitely while awaiting the borrower to take action, and ultimately had to initiate foreclosure. Following the foreclosure filing, the borrower was again approved for loss mitigation that would have brought the loan current, but the borrower could not meet the terms offered and rejected the option. MidFirst then received a third loss mitigation request from the borrower, but the borrower never submitted the information necessary to receive an evaluation pursuant to FHA guidelines.

Comment 10 >

- *Not Reviewing One Sample Borrower for Streamlined Option*
 - HUD OIG describes one borrower who was not evaluated for a streamlined option. MidFirst acknowledges that the borrower's request for loss mitigation was not handled according to MidFirst's processes and procedures. MidFirst approved the borrower for an FHA HAMP plan that included a trial payment plan, but the borrower failed to make their trial payments timely, and one trial payment was returned for non-sufficient funds. Following the trial plan failure, MidFirst continued to encourage the borrower to pursue loss mitigation, but the property was ultimately sold in a foreclosure sale. The COVID options would not have provided the borrower with more payment relief than the FHA HAMP plan. Evaluating the borrower for a trial plan rather than streamline option was an isolated mistake, but it was the borrower's failure to make payments on the loss mitigation option offered, not the mistake, that resulted in the borrower's default, and the ultimate foreclosure sale. The mistake did not result in financial harm to the borrower, and it did not put the FHA Insurance Fund at risk.

While HUD OIG highlights only four borrowers in its Draft Report, this story is consistent across all borrowers reviewed in the HUD OIG audit. Indeed, MidFirst continued to work with every borrower who

Ref to OIG Evaluation – Auditee Comments

Comment 11

requested loss mitigation, even after foreclosure had been initiated, and was very successful in assisting most of those borrowers in obtaining a resolution of the loan's delinquency and avoiding a foreclosure sale.

III. The Claimed Financial Risks to both HUD and Borrowers are Overstated

The Draft Report's sweeping statement that borrowers and HUD faced financial risk and hardship associated within an estimated 1,038 loans is not supported by the facts underlying the 24 loans cited by HUD OIG. As HUD OIG notes, in most cases in the statistical sample, borrowers ultimately received loss mitigation assistance and kept their homes. This is because, as described above, MidFirst always continued to work with borrowers to achieve a loss mitigation option irrespective of whether the foreclosure had been initiated. HUD OIG also correctly recognized that no claims were filed or paid in relation to the 24 loans.

IV. MidFirst Already Implemented the Actions Recommended by HUD OIG

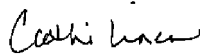
In its Draft Report and in response to the audit of MidFirst, HUD OIG recommends that HUD require MidFirst to take certain actions. MidFirst already completed the following actions, consistent with the recommendations in the Draft Report:

1A. With respect to the 24 borrowers to whom HUD OIG contends were subject to improper foreclosure filings under FHA guidelines, MidFirst waived and/or refunded the related fees. No claims were filed on these loans, so there was no impact to HUD.

1B. As noted in the Draft Report, before the HUD OIG audit, MidFirst has identified a limited number of human errors made during a manual evaluation process that led to a delay in placing a foreclosure on hold. MidFirst has implemented controls to prevent similar issues from occurring and remediated all impacted borrowers and/or HUD as appropriate.

1C. As described above, MidFirst appreciates HUD OIG's perspective and has updated its policies and procedures to stop the initiation and/or continuation of a foreclosure when a borrower requests loss mitigation, regardless of the number of prior attempts. MidFirst will request First Legal extensions from HUD to ensure compliance with applicable deadlines.

MidFirst appreciates HUD OIG's important role in protecting HUD's mission and programs, which provide valuable benefits to millions of homeowners across the nation, and appreciates HUD OIG's engagement with MidFirst throughout the audit process. HUD, mortgagees and borrowers all benefit from robust loss mitigation programs and processes, and MidFirst remains committed to resolving delinquencies through successful loss mitigation options so that borrowers avoid foreclosure and remain in their homes. If you have any questions about this response, please do not hesitate to contact me directly.



Cathi Linch
1st Executive Vice President
Director of Mortgage Operations

OIG Evaluation of Auditee Comments

- Comment 1 MidFirst disagreed with HUD OIG’s interpretation of FHA’s foreclosure initiation requirements. MidFirst proposed two changes to the report to better highlight there is a reasonable basis for MidFirst’s interpretation of FHA’s foreclosure initiation requirements, and the financial loss referenced in the draft report is hypothetical and was not realized on the files reviewed. We added a sentence of explanation that MidFirst’s policies were designed based on requirements in Regulation X, which specified foreclosure protections applied for the first complete loss mitigation request. We did not make the second proposed change because the audit report communicates that the amount was at risk only if the foreclosures would have been completed.
- Comment 2 MidFirst revised its policies and procedures to be consistent with HUD OIG’s interpretation of the HUD handbook. MidFirst stated that it will pursue extensions of the first legal deadline from HUD, when appropriate, to accommodate this change in approach. MidFirst stated that it has already undertaken the other two recommended actions listed in the draft report. We acknowledge MidFirst’s efforts to proactively address our recommendations and we will work with MidFirst and HUD on closing them during the audit resolution process.
- Comment 3 MidFirst believed that not evaluating the borrower’s subsequent application before initiating foreclosure was consistent with Regulation X and was also consistent with HUD Handbook 4000.1 to balance between providing borrowers with sufficient opportunity to receive loss mitigation assistance and the need to timely advance foreclosure to minimize losses to the FHA insurance fund. However, HUD guidance did not prescribe that a borrower could only be reviewed once for loss mitigation before initiating foreclosure.
- Comment 4 MidFirst questioned our interpretation of HUD’s requirement that prohibited the servicer from initiating foreclosure at any time a loss mitigating request was pending, which could have led to a scenario where the borrower perpetually avoided foreclosure. HUD required that lenders determine a borrower’s eligibility for loss mitigation before initiating foreclosure. When there was an open loss mitigation request, such determination had not been made.
- Comment 5 MidFirst stated that there appears to be intentional symmetry between Regulation X and the HUD foreclosure preconditions, and it reasonably read the HUD foreclosure limitation as consistent with Regulation X. However, the foreclosure restriction in Regulation X applied to the first complete application and not incomplete or subsequent loss mitigation applications, but the HUD handbook did not specify that it was limited in this way. The HUD foreclosure preconditions were applied more broadly than Regulation X. As such, MidFirst was required to review all open loss mitigation requests before filing foreclosure. HUD agreed that MidFirst violated the requirement for when to initiate foreclosure.

- Comment 6 MidFirst responded that by reviewing every loss mitigation request before foreclosure start, it would be fast approaching the first legal deadline to initiate foreclosure. However, if there was an open loss mitigation request, MidFirst could have requested an extension from HUD to complete its evaluation of the mortgage assistance request, as confirmed by HUD.
- Comment 7 MidFirst noted that in the example given, the foreclosure was placed on hold the day after the borrower's application was deemed complete and noted that it refunded foreclosure fees to the borrower. However, the borrower in this example exited a COVID-19 forbearance on November 30, 2021, and requested to be reviewed for a recovery modification on January 11, 2022, therefore additional documentation to complete the application should not have been necessary to stop the foreclosure filing. MidFirst filed the first legal action on February 18, 2022. It did not place a foreclosure hold until March 11, 2022, after it approved the borrower's loss mitigation. It refunded the foreclosure fees to the borrower in April 2024, after our audit was in progress.
- Comment 8 MidFirst stated that it notified the borrower about missing documents needed to complete the application, and while the borrower was gathering the documents, it initiated foreclosure. MidFirst did not determine that the borrower's eligibility for loss mitigation before initiating foreclosure, as required by HUD guidance.
- Comment 9 MidFirst commented that it could not delay foreclosure indefinitely while awaiting the borrower to act and ultimately had to initiate foreclosure. However, there was an open loss mitigation application at the time the foreclosure was filed and MidFirst was required to determine the borrower's eligibility for loss mitigation before initiating foreclosure.
- Comment 10 MidFirst's position is that it was the borrower's failure to make payments on the loss mitigation option offered, not the mistake, that resulted in the borrower's default, and the ultimate foreclosure sale; the mistake did not result in financial harm to the borrower. However, a trial payment plan was not required for the streamline option that the borrower was eligible to receive. The harm to the borrower was that when his October payment was returned for insufficient funds, his home was sold at a foreclosure sale in December 2022. Had he been properly offered the streamline option in March or April, not only would he have avoided a trial payment plan, but he would have qualified for a lower rate and had his loan fully reinstated. Having his October payment returned for insufficient funds would have made him one payment delinquent, which would not have imminently caused foreclosure.
- Comment 11 MidFirst questioned HUD OIG's statement that borrowers and HUD faced financial risk and hardship associated within an estimated 1,038 loans. However, the borrowers in the sampled loans experienced additional stress from premature foreclosures and improper financial costs which could have been avoided. Based on the 14.1 percent deficiency rate, we projected that 1,038 loans with unpaid balances totaling \$185.9 million faced similar hardships. Furthermore, by placing additional financial burden on the borrowers, it would have ultimately increased the risk of foreclosure on these properties and potential loss to HUD.

Appendix B – Criteria

Handbook 4000.1, FHA Single Family Housing Policy Handbook (Issued October 26, 2021)

III. A. 1. Servicing of FHA-Insured Mortgages

a. Servicing Roles and Responsibilities

ii. Standard

Mortgage Holders must ensure all FHA-insured Mortgages are serviced by a Servicer in accordance with FHA requirements and all applicable laws.

Servicers must service all FHA-insured Mortgages in accordance with FHA requirements and all applicable laws.

(A) Laws Applicable to Mortgage Servicing

Mortgagees must comply with all laws, rules, and requirements applicable to mortgage servicing, including full compliance with the applicable requirements under the purview of the Consumer Financial Protection Bureau (CFPB), including the Real Estate Settlement Procedure Act (RESPA) and the Truth in Lending Act (TILA).

FHA requirements that are more stringent or restrictive than those provided for in applicable law are set forth in this Handbook 4000.1 and the Mortgagee must comply with these requirements.

III.A.2. Default Servicing

o. Presidentially-Declared COVID-19 National Emergency

Loss Mitigation for Borrowers Affected by the COVID-19 National Emergency

The following loss mitigation options are available to assist Borrowers impacted, directly or indirectly, by COVID-19:

- COVID-19 Forbearance;
- COVID-19 Advance Loan Modification;
- COVID-19 Recovery Standalone Partial Claim;
- COVID-19 Recovery Modification;
- COVID-19 Recovery Non-Occupant Loan Modification;
- COVID-19 Pre-Foreclosure Sale; and
- COVID-19 Deed-in-Lieu of Foreclosure.

iii. COVID-19 Recovery Loss Mitigation Options

(A) Definition

The COVID-19 Recovery Loss Mitigation Options (COVID-19 Recovery Options) provide Borrower impacted, directly or indirectly, by COVID-19 with options to bring their Mortgage current and may reduce the P&I [principal and interest] portion of their monthly Mortgage Payment to reduce the risk of re-default and assist in the broader COVID-19 recovery. The COVID-19 Recovery Options are not incentivized for Mortgagees.

(B) Standard

The Mortgagee must review eligible Borrowers for the COVID-19 Recovery Options. Eligible Borrowers may receive more than one COVID-19 Recovery Option.

(1) Borrowers who were on a COVID-19 Forbearance

The Mortgagee must review all Borrowers who were on a COVID-19 Forbearance for the COVID-19 Recovery Options after the completion or expiration of the Borrower's forbearance period. Mortgagees may review the Borrower for the COVID-19 Recovery options prior to the completion or expiration of the Borrower's forbearance period. A Borrower does not need to exit their forbearance to be reviewed for the COVID-19 Recovery Options.

(2) Borrowers who were not on a COVID-19 Forbearance

The Mortgagee must review all Borrowers who did not participate on a COVID-19 Forbearance for the COVID-19 Recovery Options when the Borrower is 90 or more Days Delinquent and the Borrower affirms they have been negatively impacted by COVID-19. These Borrowers may request COVID-19 loss mitigation assistance through the termination of the COVID-19 National Emergency. The Mortgagee must complete a loss mitigation option for these Borrowers no later than 120 Days from the date of the Borrower's request for loss mitigation assistance. The 120-Day period to complete a loss mitigation option includes the COVID-19 ALM [advanced loan modification]. For Home Disposition Options, a signed ATP [approval to participate] Agreement (form HUD-90045) or a signed DIL [deed-in-lieu of foreclosure] Agreement will meet this requirement. The Mortgagee must document the date of the request for loss mitigation assistance in the Servicing File.

(4) Homeowners Assistance Fund

The Mortgagee must inform the Borrower, utilizing any available method of communication, that they can apply for the Department of Treasury's Homeowner Assistance Fund (HAF), if HAF is available in their jurisdiction. As permitted by the jurisdiction's HAF program, HAF funds may be used in connection with the Borrower's FHA-insured Mortgage or any Partial Claim Mortgage in a manner consistent with the respective mortgage documents and FHA requirements.

(C) COVID-19 Recovery Home Retention Options

A Trial Payment Plan (TPP) is not required for a Borrower to be eligible for the COVID-19 Recovery Options.

(2) COVID-19 Recovery Modification

(c) Standard

No income documentation is required to calculate the Borrower's modified monthly Mortgage Payment.

t. Foreclosure

When a Borrower with a Mortgage in Default cannot or will not resume and complete their Mortgage Payments, the Mortgagee must take steps to acquire the Property or see that it is acquired by a third party. Before starting foreclosure, the Mortgagee must review its servicing record to be certain that

servicing has been performed in accordance with HUD guidance. When foreclosure is appropriate, Mortgagees must initiate and complete foreclosure in a timely manner.

i. Mortgagee Action Before Initiation of Foreclosure

The Mortgagee must exercise reasonable diligence in collecting past due Mortgage Payments by:

- utilizing Early Delinquency Servicing Workout tools;
- determining eligibility of HUD's Loss Mitigation Program when appropriate;
- performing the first legal action to initiate foreclosure, to acquire title and possession of the Property, when necessary;
- ensuring the Mortgage has been accurately reported to consumer reporting agencies in accordance with applicable Federal law; and
- ensuring any former Borrower, co-Borrower and/or co-signer personally liable for payment of the mortgage debt has been notified, as appropriate.

(B) Time Frame for Utilization of Loss Mitigation or Initiation of Foreclosure

The Mortgagee must utilize a Loss Mitigation Option or initiate foreclosure within six months of the date of Default. FHA considers the Mortgagee to have satisfied this requirement if, within the six-month time frame, the Mortgagee takes one or a combination of the following actions:

- enters into an SFB [special forbearance]-Unemployment Agreement;
- completes a refinance of an insured cooperative housing Mortgage;
- completes an assumption;
- enters into a TPP Agreement for an FHA-HAMP Option;
- executes a PFS [preforeclosure sale] ATP;
- executes a DIL agreement; or
- initiates the first public legal action to begin foreclosure.

(C) When to Initiate Foreclosure

After at least three consecutive full monthly Mortgage Payments are due but unpaid, a Mortgagee may initiate a foreclosure for monetary Default if one of the following conditions are met:

- The Mortgagee has completed its review of the Borrower's loss mitigation request, determined that the Borrower does not qualify for a Loss Mitigation Option, properly notified the Borrower of this decision, and rejected any available appeal by the Borrower;
- The Borrower has failed to perform under a Loss Mitigation Option agreement, and the Mortgagee has determined that the Borrower is ineligible for other Loss mitigation Options; or
- The Mortgagee has been unable to determine the Borrower's eligibility for any Loss Mitigation Option due to the Borrower not responding to the Mortgagee's efforts to contact the Borrower.

ii. Conduct of Foreclosure Proceedings

When foreclosure is necessary, the Mortgagee must give timely notice to HUD via SFDMS and exercise reasonable diligence in processing and completing foreclosure proceedings to acquire good marketable title and possession of the Property. HUD expects Mortgagees to comply with

all Federal, state, and local laws when prosecuting a foreclosure and pursuing a possessory action.

(A) Initiating Foreclosure

(1) First Legal Action to Initiate Foreclosure

The Mortgagee must perform the first legal action to initiate foreclosure for each state as provided in Appendix 6.0 – First Legal Actions to Initiate Foreclosure and Reasonable Diligence Time Frames.

(C) Loss Mitigation During the Foreclosure Process

The Mortgagee may evaluate the Borrower for a Loss Mitigation Option during the foreclosure process where:

- the Borrower submits their initial Complete Loss Mitigation Request; or
- the Mortgagee has determined that the Borrower was ineligible for loss mitigation based on a Complete Loss Mitigation Request and a change in circumstances has occurred so that a Borrower may be eligible for a subsequent loss mitigation review.

(1) Requests Received during Foreclosure

The following describes Mortgagee action regarding foreclosure proceedings and loss mitigation requests, depending on when the request is received by the Mortgagee.

(a) 45 or More Days to Scheduled Foreclosure Sale Date

(i) Response

When the loss mitigation request is received 45 Days or more prior to the scheduled foreclosure sale date, the Mortgagee must notify the Borrower in writing within five business days of receiving the request that:

- the Borrower's request has been received; and
- the request is complete or incomplete.

(ii) Review

Within 30 Days of receiving a Complete Loss Mitigation Request, the Mortgagee must:

- review a Borrower's request for eligibility for all Loss Mitigation Options; and
- provide the Borrower with a notice in writing stating the Mortgagee's determination of which Loss Mitigation Option, if any, it will offer to the Borrower.

(iii) Foreclosure Action

A Mortgagee must not move forward with a scheduled foreclosure sale during its loss mitigation review.

(b) More than 37 Days but Less than 45 Days to Scheduled Foreclosure Sale Date

(i) Review

Within 30 Days of receiving a Complete Loss Mitigation Request, the Mortgagee must review a Borrower's request for eligibility for Loss Mitigation Options when received more than 37 Days but less than 45 Days to the scheduled foreclosure sale date.

If an incomplete request is received and is not completed despite the Mortgagee's repeated requests to the Borrower for information, the Mortgagee may, at its discretion, evaluate an incomplete loss mitigation request and offer a proprietary, non-incentivized Loss Mitigation Option.

(ii) Foreclosure Action

The Mortgagee must not move forward with a scheduled foreclosure sale during its loss mitigation review.

(c) 37 or Fewer Days Prior to the Scheduled Foreclosure Sale Date

(i) Review

A Mortgagee must use its best efforts to complete a thorough and accurate review when the Borrower's request is received 37 Days or fewer, prior to the scheduled foreclosure sale date.

(ii) Foreclosure Action

HUD does not require the Mortgagee to suspend the foreclosure sale. The Mortgagee may proceed with a foreclosure sale if the Mortgagee:

- determines after its review of available information that a Borrower is ineligible for loss mitigation; or
- using its best efforts, is still unable to complete a thorough and accurate review of a Borrower's request by the scheduled foreclosure sale date.

(2) Terminating Foreclosure Proceedings for Loss Mitigation

When a Borrower requests loss mitigation assistance after the Mortgagee has initiated foreclosure, the Mortgagee must suspend and/or terminate the foreclosure proceedings, depending on the state law requirement, after the Mortgagee has:

- verified that a Borrower's financial situation qualified them for a Loss Mitigation Option;
- allowed the Borrower at least 14 Days to consider the Mortgagee's offer of loss mitigation assistance, if the request for loss mitigation was received more than 37 Days prior to the scheduled foreclosure sale date; and
- received an executed Loss Mitigation Option agreement, where applicable, or sales contract from the Borrower.

If state law requires the Mortgagee to cancel a foreclosure action and then requires the Mortgagee to re-initiate the action at a later date, if needed, the Mortgagee must request an approval from the NSC [National Servicing Center] via EVARS [Extensions and Variances Automated Requests System] for an extension of time to the first legal action deadline prior to approving the Borrower for loss mitigation.

(3) Communication Between Departments

The Mortgagee must ensure that strong communication lines are established between the Loss Mitigation and Foreclosure departments to facilitate the coordination of loss mitigation efforts and the sharing of documentation and information relating to a Borrower's delinquency. Both departments must be aware of when a Borrower's file is under review for HUD's Loss Mitigation Program.

(D) Borrower Sale of the Property before Foreclosure Sale

HUD encourages the Mortgagee, when possible, to provide the Borrower with an opportunity to sell the Property and to provide a reasonable time to complete the sale. The Mortgagee should not initiate foreclosure if it appears that a sale is probable and should accept payments tendered while the Property is for sale and before foreclosure is started.

Mortgagee Letter 2021-05 (Issued on February 16, 2021, and Effective Immediately)

Summary of Changes

Changes to Loss Mitigation for Borrowers Affected by the COVID-19 National Emergency include:

- extending the foreclosure and eviction moratorium to June 30, 2021, and the deadline for the first legal action and the Reasonable Diligence Time Frame to 180 days;
- extending the COVID-19 Forbearance start date and HECM [home equity conversion mortgage] extension period to June 30, 2021;
- providing up to two additional three-month COVID-19 Forbearance periods or HECM extension periods for certain Borrowers;
- allowing additional Borrowers, regardless of delinquency status or participation on a COVID-19 Forbearance, to utilize FHA's COVID-19 Loss Mitigation Options; and
- removing the restriction on Borrowers receiving more than one COVID-19 Home Retention Option.

Background

Due to the length of the pandemic, and its impact across all sectors of the economy, HUD is expanding its streamlined options to additional Borrowers and removing the limitation on the number of permanent COVID-19 Home Retention Options available. HUD believes these additional measures will provide Mortgagees a better toolbox with which to assist Borrowers in recovery from the impacts of the pandemic. HUD believes that the extension of these moratoria, in addition to the increased eligibility of Borrowers for Loss Mitigation, will help marginalized communities that have been disproportionately impacted by the COVID-19 pandemic. HUD also encourages Mortgagees and Borrowers alike to utilize the extensive network of HUD-approved Housing Counselors to expedite this additional relief, especially to underserved populations.

Mortgagee Letter 2021-18 (Issued July 23, 2021, and Effective No Later Than 90 Days From the Publication Date)

Summary of Changes

This ML [mortgagee letter] establishes the COVID-19 Recovery Home Retention Options and associated Single Family Default Monitoring System (SFDMS) Status Codes, which include the following:

- COVID-19 Recovery Standalone Partial Claim;
- COVID-19 Recovery Modification; and
- COVID-19 Recovery Non-Occupant Loan Modification.

The following COVID-19 Loss Mitigation Options are being replaced:

- COVID-19 Standalone Partial Claim;

- COVID-19 Owner-Occupant Loan Modification;
- COVID-19 Combination Partial Claim and Loan Modification;
- COVID-19 FHA-HAMP [home affordable modification program] Combination Loan Modification and Partial Claim with Reduced Documentation; and
- COVID-19 Non-Occupant Loan Modification.

This ML streamlines the requirements for the COVID-19 Pre-Foreclosure Sale. This ML also establishes the deadline by which Borrowers who have not been on a COVID-19 Forbearance may request COVID-19 loss mitigation assistance.

Background

The revised COVID-19 Recovery Options will provide a path to deep and sustained recovery for Borrowers who were significantly impacted by the pandemic. The pandemic has caused a lengthy period of instability that has deeply impacted FHA homeowners requiring a streamlined approach to ensure Borrowers remain in their homes whenever possible. FHA anticipates these COVID-19 Recovery Options will particularly help low-income households, first-time homeowners, and households of color that have been disproportionately impacted by the pandemic.

Appendix C – Statistical Projection – Results and Methodology

Audit Universe

The audit universe consisted of 7,363 single-family FHA-insured forward loans serviced by MidFirst totaling more than \$890 million as of December 31, 2022. This universe of loans was reported in HUD’s SFDMs with a First Legal Action To Commence Foreclosure status code in calendar year 2022.

Sampling Methodology

We identified a highly stratified random sample of 88 for reviewing among the universe of 7,363 FHA-insured loans reported with a First Legal Action To Commence Foreclosure status code during any of the 2022 monthly reporting cycles. We designed the strata to group sampling units by the unpaid principal balance as of March 2023 for a given loan. The strata breakpoints encompassed the following ranges by percentile: 0-10, 10-30, 30-50, 50-70, 70-90, 90-95 and 95-100. We detail the sample counts per stratum, percentile break points by unpaid balance, and sampling weights in the sample design table below.

Sample design table					
Stratum label	Amount	Total count in stratum	Sample count per stratum	Probability of selection	Sampling weight
0-10pct	≥0	737	10	0.01357	73.70
10-30pct	≥ \$ 35,002	1,472	10	0.00679	147.20
30-50pct	≥ \$ 67,432	1,473	10	0.00679	147.30
50-70pct	≥ \$ 100,248	1,473	14	0.00950	105.21
70-90pct	≥ \$ 144,832	1,471	24	0.01632	61.29
90-95pct	≥ \$ 233,658	368	10	0.02717	36.80
95-100pct	≥ \$ 284,432	369	10	0.02710	36.90
Total		7,363	88	N/A	N/A

We tested the sample design with various rates of error to confirm that we could obtain a reliable projection answer with this sample design and that the confidence intervals as specified would provide an accurate probabilistic statement. Based on the testing and simulated sampling distributions, we found a stratified sample of 88 to be more than sufficient, and we selected that sample size.

The review team did not use any spares. Therefore, the sampling weights did not change.

We computed the percentage and number of counts of loans with exception based on the audit results, and we extended this result to the population using the surveyfreq procedure provided by SAS®. We estimated the lower confidence interval using a Gaussian sampling distribution, which is appropriate for error rates in this range. We extended these percentages to the 7,363 records in the universe to get the total universe count of loans with exceptions.

We used the surveymeans procedure in SAS® to estimate the total unpaid balance of such loans. We reduced the average amount by the margin of error (that is, the standard error with a student’s t factor) associated with this sample design. For complex sample designs, such as the stratified technique used for this review, the surveymeans procedure in SAS uses the Taylor expansion method to estimate sampling errors (standard errors). We then extended this result to the 7,363 records in the universe.

The basic estimation calculations are as follows:

$$\begin{aligned} \text{Amount}_{LCL} &= N * (\mu - t_{\alpha/2} SE_{\$}) \\ \text{Count}_{LCL} &= N * (pct - t_{\alpha/2} SE_{\%}) \end{aligned}$$

- Amount*_{LCL} = total review-finding amount after deducting a margin of error
- Count*_{LCL} = total number of sampling units with the error after deducting a margin of error
- N* = total number of sampling units in the sampling frame
- μ* = weighted average value of the error per unit
- pct* = weighted percentage of sampling units with the error in the sampling frame
- SE*_{\$} = standard error per unit, as applies to projecting dollars
- SE*_% = standard error per unit, as applies to projecting proportions
- t*_{α/2} = student’s - t for projecting a one-sided confidence interval for a sample of this size

Dollar Projection Results

We found that in 24 of 88 loan records reviewed, there was an exception. MidFirst Bank initiated foreclosures without adequately establishing that the borrowers were ineligible for loss mitigation assistance or continued it without adequately reviewing requests received during foreclosure. This amounts to a weighted average of \$35,620.86 per loan. Deducting for a statistical margin of error, we can say – with a one-sided confidence interval of 95 percent – that this amounts to at least \$25,255.24 per loan. In the context of this universe of 7,363 loan records, this amounts to at least \$185.9 million in FHA loans with a deficiency related to their foreclosure process, and this dollar amount could be higher.

$$\begin{aligned} \text{Per loan calculation:} & \quad \$35,620.86 - (1.665 \times \$6,229.77) \approx \$25,255.24_{LCL} \\ \text{Universe projection:} & \quad 7,363 \times (\$35,620.86 - (1.665 \times \$6,229.77)) \approx \$185,954,354.48_{LCL} \end{aligned}$$

Percentage-Count Projection Results

We found that in 24 of 88 loan records reviewed, there was a deficiency related to a MidFirst loan that went into foreclosure. This amounts to a weighted average of 21.55 percent. Deducting for a statistical margin of error we can say – with a one-sided confidence interval of 95 percent – that at least 14.11 percent of the loans met this condition. Extending this percentage to this universe of 7,363 loan records, at least 1,038 loans had a deficiency related to their foreclosure process, and that number could be higher.

$$\begin{aligned} \text{Percentage calculation:} & \quad 21.54\% - (1.665 \times 4.47\%) \approx 14.10\%_{LCL} \\ \text{Total loans projection:} & \quad 7,363 \times (21.54\% - (1.665 \times 4.47\%)) \approx 1,038.85_{LCL} \end{aligned}$$