March 17, 2025

The Honorable Matt Jones
Deputy Assistant Secretary for Single Family Housing
Department of Housing and Urban Development
451 7th St S.W.
Washington, D.C. 20410

RE: Comment on Equity Saver Sale Policy

Dear Mr. Jones:

Thank you for the opportunity to comment on the Equity Saver Sale (ESS) Policy posted on the FHA Single Family Drafting Table. As outlined in a joint industry and consumer advocacy letter, it is important to help borrowers with equity who cannot qualify for loss mitigation avoid foreclosure through market sales of their homes. Market sales help FHA avoid insurance claims to the Mutual Mortgage Insurance Fund (MMIF) and other costs related to a foreclosed property while also preserving borrower wealth.

We appreciate that the proposed ESS may help promote market sales by providing a process for borrowers to engage in these sales and time for borrowers to find buyers. As drafted, the ESS supplements the current pre-foreclosure sale (PFS) process that is aimed to help borrowers without equity avoid foreclosure.

However, for many borrowers, it is unclear whether they have any home equity, and thus, they do not fit neatly into an ESS or PFS box. A home's true value cannot be known in advance of having a buyer on board; moreover, the sales transaction often unearths unexpected costs that can cut into equity.

To address this uncertainty, instead of having the ESS as a separate option, HUD should consider expanding the current PFS system to include borrowers with equity and not just borrowers who are underwater.

Most importantly, such a change would avoid the potential for losing a sale when the borrower thought they had equity and did not. If there are separate programs, the ESS borrower would have to go through a process of converting to a PFS and in that time they may lose the buyer due to the delays in the process. From the perspective of the MMIF, the prospective buyer is most likely a much better prospect for minimizing fund risk than the foreclosure sale that may result from losing the buyer.

In a unitary model, in approving a PFS sale, FHA would determine the formula for what is an acceptable amount from a sale in advance. If there was a misconception about the amount of equity a borrower actually has prior to the sale, it would not cause additional process, which improves efficiency for FHA, borrowers, and servicers. Rather, the yield from the actual sales term would simply be compared to what is acceptable without the need for any separate process.

In such a system, the borrower's potential equity, as determined by AVMs or some other method, could determine how much time the borrower would have for a sale. If there is a lot of potential equity, it would benefit both FHA and the borrower to have more time to find the right buyer in order to potentially eliminate the need for any MMI claim and to preserve wealth. If there is not much equity, the FHA process may move more quickly to a Deed in Lieu to minimize costs.

As noted in the joint letter, servicers should ensure that home retention options are fully considered before moving to the PFS process. For borrowers who cannot afford home retention or have to move out for other reasons, however, we believe this unitary model may minimize complexity and cost.

We thank you for your work and look forward to working with you on these issues. If you have any questions or would like to discuss this matter further, please email Steve Sharpe, Senior Attorney, National Consumer Law Center at ssharpe@nclc.org.

Sincerely,

National Consumer Law Center (on behalf of its low-income clients)