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HUD/FHA-Insured Homeowners and Properties in End-Stage Default and Foreclosure: National Context and Experiences in Massachusetts

The Role of HUD and the FHA: Conflicts in Mandate and Operations, Past and Present

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Abstract

A recurrent theme in HUD/FHA's history is the tension in its dual mandate: to be responsive both to the needs of homeowners and, at the same time, to the mortgage-lending industry. Conflicts between the priorities of private for-profit stakeholders who do business with the FHA and the homeowners whose mortgages the agency has insured have arisen repeatedly. Typically, federal agencies have tended to be more attentive to the needs of the former than to the latter. Such conflicts occurred following the creation of the FHA in 1934 and in subsequent decades. A key problem was the failure of mortgagees to adhere to FHA servicing guidelines, combined with lax HUD/FHA oversight. In recent years, HUD/FHA's conflict between its need and desire to be responsive to both the mortgage-lending industry and homeowners participating in its programs has been evident in the operation of HUD's program for disposing of loans in end-stage of default (seriously nonperforming loans and heading toward foreclosure), the Distressed Asset Stabilization Program (DASP). The great majority of these loans have been sold to private for-profit investors. Only 2 percent have been sold to nonprofit organizations, whose missions are focused explicitly on homeowners and communities. The limited data that is available reveals that nonprofit organizations have a better record of restabilizing homeowners in their homes with loan modifications: while the overall percentage of restabilizations for loans sold through DASP is only 12.8 percent, the restabilization percentages for nonprofit DASP purchasers ranges from modestly (19 percent) to considerably better (40 percent).

Series Introduction

By Erin M. Graves* and Chris Herbert**

This series of Issue Briefs was being finalized just as the coronavirus pandemic was beginning. Beyond our current and pressing concerns about health, mortality rates, personal financial distress, and impacts on businesses and the national economy, we will likely soon be facing an increase in loan defaults and foreclosures, as significant numbers of people are unable to make their mortgage payments.

Policy makers and financial institutions have taken several immediate steps to help homeowners who have lost income during this period. The Department of Housing and Urban Development (HUD) took action by placing a 60-day moratorium on foreclosures for loans insured by the Federal Housing Administration (FHA). In addition, the Federal Housing Finance Administration (FHFA) ordered Fannie Mae and Freddie Mac loan servicers to lower or suspend borrowers' mortgage payments for up to 12 months if homeowners have lost income because of the pandemic. Under the Coronavirus Aid, Relief, and Economic Security Act, borrowers can initiate a 180-day forbearance and foreclosure moratorium for any federally-backed mortgage loan. Private non-government-backed lenders and servicers also have volunteered mortgage relief.

These short-term actions may relieve some financial distress and forestall some foreclosures and, in the longer term, the economy hopefully will recover. However, that recovery will likely be uneven and the financial challenges for millions of families could continue as workers struggle to regain a foothold. In addition, those who contracted the virus may experience long-term effects that will impact their ability to work. Should these challenges come to pass, there likely will be a spike in foreclosure rates over the next several years. Other households, unable to afford their mortgage payments, may be able to avoid foreclosure, but they may find themselves forced into a rushed sale and a destabilizing move. And, as always, those who will be hit hardest will be households with less secure employment and fewer assets, a pattern that parallels the disproportionate impact of the disease itself. This situation will therefore likely have a disparate and more serious impact on households of color and on more fragile neighborhoods.

The Federal Reserve Bank of Boston and the Joint Center for Housing Studies of Harvard University are pleased to be presenting this Issue Brief series at a time when the insights drawn from this research may be of great value as policymakers look to craft a response to this latest economic crisis. Since the research and writing for this series of Briefs were done during a period of declining foreclosures for both FHA-insured and conventional loans, the author of the Briefs, Rachel Bratt, points out that this relatively calm stretch provided "a good time to explore the extent to which a number of HUD/FHA default and foreclosure policies and procedures are serving the public interest and to identify opportunities for improvement."

These Issue Briefs offer a number of insights about HUD's regulations and procedures concerning mortgages that are close to foreclosure, or end-stage default through the lens of mortgage market upheaval following the Great Recession. Also drawing on the experiences of local and state governments, as well as several nonprofit organizations, a number of thoughtful and innovative suggestions are offered for how homeowners in end-stage default can be assisted to retain their homes, thereby promoting family and neighborhood stability. Now is a good time to consider how to apply the lessons learned in order to safeguard the hardest-hit households and communities facing foreclosures in 2020 and beyond.

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Introduction

The Federal Housing Administration (FHA) and the Department of Housing and Urban Development (HUD) have made many important contributions: supporting housing finance, funding affordable-housing initiatives, and promoting the revitalization of urban areas. Yet many times they have failed to provide adequate attention to the needs of their lower-income clients and those clients' neighborhoods. A recurrent theme in HUD/FHA's history, from the early days to the present, is the tension in HUD/FHA's dual mandate: to be responsive both to the needs of homeowners and the mortgage-lending industry. Repeatedly, HUD and FHA have tended to be more attentive to the lenders than to the homeowners.

The overall context for this series of Issue Briefs is the foreclosure crisis associated with the Great Recession of the late 2000s, which deeply impacted households and communities across the country. (For additional background, see Issue Brief No. 1.) Issue Brief 2 poses two questions: First, to put the recent set of events in the proper historical context, it asks: what is the record of HUD/FHA's past programs that were intended to protect consumer needs while at the same time working with and encouraging the involvement of the private for-profit real estate and banking industries? Second, how has HUD's sales of nonperforming FHA-insured loans operated, and in particular, to what extent has it safeguarded homeowner interests?

In this Issue Brief, I use document analysis to assess how several historical HUD/FHA practices had significant adverse impacts on homeowners and tenants. This component of the work includes a discussion of the pros and cons of HUD's Distressed Asset Stabilization Program (DASP), which sells loans in end-stage default (prior to foreclosure) to new mortgagees.

Historical Context of HUD/FHA

The 1934 legislation creating the FHA, enacted as part of President Franklin D. Roosevelt's Depression-era recovery package, had an ambitious goal: to stimulate the economy by providing mortgage insurance on home loans, thereby enabling a new group of households to attain mortgages and, consequently, homeownership. The idea was that insuring mortgages would encourage bankers to start lending again, since their financial liability would be covered. With more families able to purchase homes, builders would also be encouraged to start building again. In many respects, the program was successful: it helped to revive the homebuilding and mortgage-lending industries and helped to lift the country out of economic collapse. In the current era, FHA continues to be an important component of the home-finance sector, insuring nearly 17 percent of all new home purchases in the United States.[1]

A homeowner whose mortgage is insured by the FHA typically pays a lower down payment than is required with a conventional loan; each month, the homeowner pays a mortgage insurance premium along with the principal and interest due on the loan. The insurance premiums are aggregated in the Mutual Mortgage Insurance Fund (MMIF), which covers losses to the lender in the event of foreclosure. While an FHA-insured loan does not provide insurance to the homeowner, it does provide certain benefits to homeowners. (See Issue Brief No. 4.)

In 1965, Congress created a new cabinet-level department, the U.S. Department of Housing and Urban Development, which had a sweeping mandate: to administer the nation's assisted-housing and community-development programs, to help coordinate federal activities that impact community development, to help solve housing problems, to maximize the contributions of the private homebuilding and lending industries, and to ensure that the needs of the nation's communities and the people in them receive "full and appropriate" consideration.[2] The FHA was folded into the new agency.

In its first 50 years, HUD has been tasked with an ambitious, multifaceted, and crosscutting set of policy agendas, leaving behind a record that at least one well-respected scholar deemed a success.[3] Nevertheless, over the decades, HUD/FHA has experienced many programmatic failings, at least partly arising from its limited capacity or commitment to oversee the private-market actors upon whom the agency must rely to implement its various initiatives.

Balancing the interests and incentives among actors in public-private partnerships is inherently difficult, and the experiences with many HUD/FHA programs illuminate this tension.[4] HUD/FHA programs offer significant public subsidies that are channeled through private for-profit developers, builders, contractors, and mortgage lenders. Such situations can invite abuse. In addition, the FHA has two distinct client groups: private-sector entities on the one hand, and consumers of the housing and mortgage programs on the other. This has resulted in confusion and conflicts around which client's needs are dominant in any given program, and requires finely tuned, highly professional, and costly oversight and regulatory efforts to keep a check on practices, both within and outside the agency. This Issue Brief continues with several examples of problems HUD/FHA has encountered due in large part to its split loyalties.[5] In each case, the agency did not operate with consumers' needs as the primary priority.

HUD is often hesitant to take strong but needed actions against lenders because of its competing mandate to continue FHA's role in restoring the housing market and ensure the availability of mortgage credit and continued lender participation in the FHA program.

David A. Montoya, inspector general, HUD, 2013[6]

FHA, 1930s–1960s

The early years of the FHA were arguably the most troublesome in the agency's history: policies were explicitly contrary to serving the broadest possible group of potential consumers, discrimination against nonwhite households and older urban areas was explicitly advised, and racially segregated neighborhoods were created, limiting the ability of nonwhite households to become homeowners and accumulate wealth.[7]

The FHA did not invent the idea of racial discrimination (redlining) in mortgage lending; it was simply continuing the real-estate and mortgage-lending practices of the time, and in doing so, failing to take a stand against discriminatory lending. By 1949, however, the FHA had removed from its guidelines all explicit racially discriminatory language, such as the inadvisability of issuing mortgage insurance where "incompatible racial and social groups" were living or areas threatened by "invasions" of these groups.[8] Nevertheless, the consequences of HUD/FHA's policies, whether written or unwritten, were significant:

> The damage had been done. It was more serious than most realize. It was the first time in our national history that a federal agency had openly exhorted segregation … The evil that FHA did was of a peculiarly enduring character. Thousands of racially segregated neighborhoods were built, millions of people re-assorted on the basis of race, color, or class, the differences built in, in neighborhoods from coast to coast.[9]

A 1968 government report found that as of the summer of 1967, redlining practices persisted, despite their removal from FHA's guidelines decades before:

> There was evidence of a tacit agreement among all groups—lending institutions, fire insurance companies, and FHA—to block off certain areas of cities within "red lines," and not to loan or insure within them. The net result, of course, was that the slums and the areas surrounding them went downhill farther and faster than before.[10]

By very narrowly defining the potential homeowners to be served, as well as the neighborhoods in which it would provide mortgage insurance, the FHA excluded large numbers of households that might have been interested in and eligible for its programs. Instead, it fueled an already discriminatory mortgage-lending industry and provided a new level of security and financial opportunity to banks and homebuilders. Overall, HUD/FHA's early policies fostered racial and economic inequality in a way that had profound consequences for the nation. Even after its early years, HUD/FHA's institutional structure, which attempts to serve both the private market and the public interest, continued to be problematic. As detailed below, the federal response to criticisms involving neglect of lower-income and nonwhite households, as well as inner-city areas, ended up creating a new set of problems for many consumers.

HUD/FHA Section 235 Program, 1960s–1970s

Following a series of urban riots and much highly partisan debate, in 1968 Congress enacted a new "homeownership for the poor" program, Section 235. The program provided federal subsidies that brought the FHA-insured mortgage interest rate down to as low as 1 percent and allowed buyers to make minuscule down payments. While the real estate industry eagerly embraced the program, within a few years, the program was plagued with abuses. Both HUD/FHA and private-sector personnel engaged in illegal activities.[11] Private-sector partners quickly found ways to reap windfall profits, often by producing or marketing homes with serious structural flaws.

At the same time, often due to the presence of corrupt personnel at HUD/FHA, the agency failed in its responsibility to protect the interests of the lower-income homeowners. In particular, faulty FHA home inspections—sometimes following bribes paid to HUD/FHA officials—certified that units met quality standards when in fact they did not.[12] Additionally, HUD/FHA's assessments of the creditworthiness of home purchasers were often inadequate. This both encouraged homeownership for households that were ill-equipped for the responsibility and increased HUD/FHA's risk that it would need to reimburse the mortgagee due to a default and foreclosure.[13]

Congress cited inadequate oversight by HUD/FHA staff as a central problem, noting in a report that "HUD has never had a sufficient amount of trained staff to deal with problems it is responsible for solving."[14] Thus, HUD's efforts to work with the mortgage lending and homebuilding industries, while attempting to meet the social goal of increasing homeownership opportunities to a new, lower income population, were besieged with problems. This era of federal housing initiatives came to an abrupt halt in January 1973, when the Nixon administration suspended all subsidized-housing programs, including the Section 235 program, giving the agency time to assess its future direction.

HUD's Mortgage-Servicing Problems, 1970s

Although no new Section 235 homes were insured after the January 1973 housing moratorium, there continued to be problems with HUD's oversight of mortgagees servicing these and other FHA-insured loans. This period provides additional context for understanding current complaints regarding HUD's procedures and oversight of servicing loans in default. (See Issue Brief No. 4.) An early 1970s report found that only 3.3

percent of 26,575 delinquent but eligible FHA-insured loans were receiving forbearance.[15] Another study from that period confirmed this finding, based on interviews with HUD personnel in various parts of the country.[16]

Several court cases from the early 1970s highlighted the various complaints against HUD. In *Brown v. Lynn,* the most publicized case of that era, FHA-insured mortgagors in default (the plaintiffs) argued that mortgagees had instituted foreclosure proceedings "without adequate prior notice or an opportunity for a preliminary hearing."[17] The court ruled in favor of the plaintiffs; HUD's actions (or inactions) were severely reprimanded.

> Notwithstanding the high-sounding and purposeful language of HUD's own guidelines stressing policies supposedly designed to preserve home ownership, in reality, HUD has thrust these low-income mortgagors into the marketplace subject only to the benevolence of 'prudent' mortgagees and the state courts. Such an abdication of responsibility is clearly inadequate … HUD has done nothing to insure that these procedures [that would provide various types of forbearance] would be followed … If HUD had consciously and deliberately set out to frustrate the Congressional purpose and sabotage the program, it could hardly have done so more effectively short of simply refusing to carry it out … HUD's policy on foreclosures has brought and continues to bring about a rash of unwarranted defaults and foreclosures.[18]

Decades later, a HUD report commented on the agency's practices during the 1970s: "Until 1976 HUD maintained a hands-off approach to defaults and foreclosures, effectively leaving policy decisions to each individual mortgagee."[19] By 1996, following Congressional mandates, HUD said that it was "moving forward in a proactive way to develop a full menu of options for assisting borrowers with financial difficulties,"[20] but also suggested additional ways that it could help homeowners avoid foreclosure. These efforts notwithstanding, more than 20 years later, problems remain in HUD's oversight of servicers' foreclosure prevention initiatives. (See Issue Brief No. 4.)

Moderate Rehabilitation Program and Other Scandals of the 1980s

The various problems with the FHA-insured homeownership programs in the 1970s, the 1973 housing moratorium, and the ensuing period of reflection led to the creation of the Section 8 programs of the Housing and Community Development Act of 1974. Section 8's major component involved a move away from subsidizing multifamily developments (as in the public housing and below-market interest rate programs of the 1960s) to directly subsidizing households in privately owned housing. Although Section 8's rental assistance program represented a new policy approach, other components continued the project-based subsidy strategy, in the form of assistance for New Construction and Substantial Rehabilitation projects. The Section 8 program also provided assistance for projects needing "moderate rehabilitation." The excess profits offered to developers by the so-called Mod Rehab program led to "developers with the right political connections induc[ing] HUD officials to help award them [subsidy] contracts [and] … a very large share of the program's funds [being] allocated through abuse of authority."[21]

Abuses connected to the Mod Rehab program were part of a larger set of problems, which came to be known as the “HUD scandals.” In 1990, the U.S. General Accounting Office (later known as the Government Accountability Office, both referred to as GAO) stated:

> Some of these problems were department wide; others were confined to individual programs. Some of the most notable problems included influence-peddling, theft by private real estate agents of millions of dollars in HUD funds, inadequate enforcement of requirements designed to minimize defaults on HUD-backed mortgages, and poorly designed programs and controls that made it relatively easy for developers and lenders to exploit the program—at billions of dollars in costs to the government.[22]

Thus, HUD’s problems in the 1980s resulted from a combination of poor program design, a commitment to encourage private-sector participation but no concomitant commitment to appropriate regulatory controls, and some unethical HUD personnel. HUD/FHA’s failure to provide adequate program oversight undermined its reputation and mission and sacrificed its goal to increase the stock of decent housing, affordable to lower-income households.

Ongoing Challenges, 1990s–2010s

In response to past scandals, the HUD Reform Act of 1989 instituted various safeguards against political interference with grant competitions and other inappropriate actions involving subsidy programs. Nevertheless, HUD was still seen as “an agency vulnerable to scandal,”[23] and when President Bill Clinton took office in 1993, HUD’s reputation was severely tarnished. HUD attempted to launch a new approach and management plan,[24] but when the midterm elections of 1994 gave Republicans a majority in both the House and Senate, the agency faced increasing conservative opposition that challenged its very existence.[25]

HUD responded with plans to reinvent itself.[26] During Clinton’s second term, HUD Secretary Andrew Cuomo, acknowledging the agency’s recent experiences with scandal and mismanagement, proposed “to change the negative *perception* of HUD by changing the *reality*—by making HUD work well.”[27] A large component of “working well” involved doing a better job of mediating the various needs of HUD’s multiple clients, including fostering a commitment on the part of HUD staff members to rededicate themselves to the agency’s public purpose, to appropriately oversee private-sector operations, and to steer clear of illegal activities. Still, by the end of the Clinton years, a GAO report found that HUD’s various problems and deficiencies “continue to place the integrity and accountability of HUD’s programs at high risk.”[28]

Under President George W. Bush’s administration, efforts to implement the 1989 HUD reforms continued. However, toward the end of Bush’s term, Secretary Alphonso Jackson was accused of inappropriately using his influence in the awarding of HUD contracts; a federal investigation ensued, and Jackson ultimately resigned.[29] Running up to the foreclosure crisis, a GAO report found that “HUD’s initial review of lenders prior to their qualification as approved FHA lenders was haphazard and that, even when lenders exhibited ‘poor performance’ and engaged in ‘program violations,’ HUD failed to hold them accountable.”[30]

During the eight years of the Obama administration, HUD was scandal free, but there was increasing polarization in Congress that led to battles over whether to maintain housing programs and how to handle the intensifying foreclosure crisis. Certainly, HUD was not central in causing the crisis, nor does it bear primary responsibility for the crisis’s impacts. Nevertheless, actions by players in the private, for-profit sector—which were carried out without sufficient government regulations, oversight, or remedial initiatives—have been identified as key contributing factors.[31]

While private investors ended up losing large sums of money because they were holding devalued pools of mortgages, numerous private entities enjoyed enormous profits from the origination, sale, and securitization of mortgages. Ultimately, hundreds of thousands of homeowners ended up losing significant equity in their homes and sometimes the homes themselves. When homeowner needs and interests are in direct opposition to the interests of the private lending industry, it is the former that typically bears much of the risk.

In summary, in its capacity as the federal agency charged with implementing a large portion of the nation’s housing agenda, HUD could play a stronger role in advocating for policies and programs that would explicitly focus on homeowner and tenant needs and could exert a stronger regulatory presence where appropriate. It could serve as a moral compass for directing private-sector actions and procedures to ensure that consumer needs are viewed as a priority.

Unfortunately, recent actions of the Trump administration and HUD secretary Ben Carson do not move in that direction. Indeed, advocates and policy analysts have little optimism about how the housing agenda will fare in coming years. To date, the administration’s actions have not been encouraging.[32] And this harmful policy direction comes at a time when there is an acute need for housing, particularly housing that lower-income households can afford.[33] HUD needs to be far more proactive and a stronger supporter of households in mortgage distress and end-stage default. Losing a home is always traumatic, but losing one in the current housing environment means having to search for new housing when competition for affordable units is intense in many locations across the country.

Distressed Asset Stabilization Program[34]

A key outcome of the financial crisis of 2007–2010 was an increase in FHA-insured mortgages in end-stage default, which are seriously nonperforming loans and heading toward foreclosure. Among HUD’s responses was the Single Family Loan Sale program, which started in 2010 and was renamed the Distressed Asset Stabilization Program (DASP) in 2012. Its story, like the stories of earlier initiatives, reveals conflicts between the needs and priorities of the mortgage-lending industry, investors purchasing distressed loans, and the needs of families facing the possible loss of their homes.

The DASP program enables servicers to pool mortgages in end-stage default and sell them to qualified bidders, who are encouraged to work with borrowers to help bring the loan out of default. An FHA servicer can place a loan into the loan pool if the borrower is at least six months delinquent on the mortgage and the servicer has exhausted all steps in the FHA loss-mitigation process.[35] HUD is very specific about the steps that mortgagees/servicers must take in an effort to bring the loan current before a loan can be designated as nonperforming and placed in a pool for sale. (See Issue Brief No. 4.)

Under DASP, loans are separated into two pools: national/regional pools and neighborhood stabilization outcome (NSO) pools, with the latter concentrated in geographic areas that were hit hard by foreclosures. The latter carry the additional requirement that purchasers achieve neighborhood-stabilizing outcomes in at least 50 percent of the loans they purchase.[36] Through early 2017, about 111,000 FHA-insured distressed loans were sold across the country.[37] About 2,000 of these loans were sold in Massachusetts.[38]

DASP has two main purposes: to ensure the financial soundness of the FHA's MMIF, and to "[offer] homeowners a second chance to keep their home."[39] In 2016, HUD Secretary Julián Castro also articulated the DASP goal of helping to stabilize communities.[40] The various modifications to DASP, discussed below, seemingly responded to the multiple goals of the program. However, the GAO observed that the financial soundness of the MMIF was the FHA's primary goal. Despite various HUD statements "that DASP has a 'two-fold' goal and multiple 'intended purposes,' FHA officials told us that preserving homeownership and stabilizing neighborhoods are 'ancillary benefits'—positive consequences that flow from DASP's objective of maximizing recoveries to the MMI Fund—but not objectives themselves."[41]

Among the purported benefits of DASP is that loan sales allow new investors more flexibility than under the HUD guidelines.[42] Specifically,

> The investors who buy loans through the program can reduce a borrower's payment by extending the loan term to 40 years or by cutting the interest rate to below a market rate of interest. They can forgive the principal on the loans, forbear for more than 30 percent of the loan value, or offer more generous terms for deeds in lieu of foreclosure or short sales. None of these options is available to FHA, given their statutory authority. Again, borrowers who participate in DASP are basically out of options with FHA.[43]

In addition, this approach is thought to be less expensive for the lender or likely to incur lesser losses for the insurer (the FHA) than foreclosing and selling the property through the lender's real estate–owned (REO) property disposition process.[44] HUD also assumes that because these mortgages are sold for between 40 percent and 60 percent of their value, the new note servicer will be inclined to pass along those savings to the homeowner in the form of a generous mortgage modification.[45] Another advantage of DASP for FHA loan servicers is that they do not have to wait for the foreclosure to be completed before receiving the payout on the outstanding principal balance. In short, loan sales are expected to result in overall savings for the FHA because it avoids the cost of paying a foreclosure claim through its REO program.[46]

The costs included in a foreclosure claim are the principal and interest payments owed to investors, property taxes, and insurance while the loan is in default. In addition, FHA reimburses servicers' legal costs, property maintenance, selling costs, and any deficit in what a sale yields relative to the debt. Thus, by selling the delinquent loan prior to foreclosure, the costs of a prolonged foreclosure process should be reduced significantly.

Nonperforming loans that are sold do indeed seem to incur slightly lower losses than comparable unsold loans.[47] However, according to the GAO, FHA's current practices "may not maximize recovery to the MMI Fund because it may be selling loans that could result in a smaller loss to the MMI Fund than if they had remained under FHA insurance."[48] Thus, the goal of reducing losses to the MMIF may be better achieved if various changes in FHA procedures are made. Regardless, the losses to the MMIF for every loan that is disposed through the REO process or through some other type of disposition are significant, ranging from 61 percent to 46 percent of the unpaid principal balance, respectively.[49]

Early reports emphasized program successes. HUD's first report on DASP noted that it was meeting its goal to minimize losses to the MMIF, thereby reducing risk to taxpayers,[50] and that the loan sales were generating savings for the FHA.[51]

DASP has been subject to a number of criticisms, however, including the number of loans sold to hedge funds and private equity firms, which typically have little concern for homeowner and community needs, are solely interested in maximizing profits, and, at worst, have engaged in illegal activities.[52] Indeed, most of the loans sold through DASP went to private investors, with only 2 percent of loans purchased by nonprofits.[53] Even under the NSO program, nonprofits represented only 12 percent of loans purchased.[54]

HUD also was accused of systematically excluding affected homeowners from any role in the loan sale process, including rejecting demands that it require notification to homeowners before their loans are sold, even though homeowners are in the best position to inform HUD when servicers (prior to a loan being sold) are not complying with HUD's rules.[55] Of major concern is that only 12.8 percent of homeowners whose loans were sold through DASP were, as of 2016, classified as "reperforming"; another 0.3 percent were under some type of forbearance agreement with the servicer. In addition, 20 percent had avoided foreclosure through a short sale or by offering the servicer the deed in lieu of foreclosure. Nearly two-thirds of the loan sales either resulted in foreclosure (42 percent) or were still delinquent (23 percent) at the time of the study, and the long-term outcome for these homeowners was uncertain. (See Table 1.)[56] HUD has defended DASP's record by pointing out that "only loans headed to foreclosure after all FHA prescribed loss mitigation efforts have failed are eligible for the DASP. Without the DASP, all of these loans might have been foreclosed upon."[57] Nevertheless, a key bottom line is that most of the homeowners (64 percent) whose loans were sold through DASP are no longer living in their homes, and another 23 percent of homeowners whose loans were sold were facing the possibility of displacement.

Table 1 | Outcomes from Sales of FHA-Insured Loans Through the Distressed Asset Stabilization Program (DASP)

Outcome Category*	Number	Percentage
Reperforming	11,107	12.8
Forbearance	224	0.3
Foreclosure avoided through short sale or deed in lieu of foreclosure	17,301	20.0
Delinquency servicing	19,483	22.5
Foreclosure	36,711	42.3
Held for rental	1,870	2.1
Total	**86,696****	**100.0**

Source: U.S. Department of Housing and Urban Development, "Report to the Commissioner on Post-Sale Reporting: Distressed Asset Stabilization Program," March 2017, 10, retrieved from https://www.hud.gov/program_offices/housing/comp/asset/hsgloan.

** The following are the definitions for these categories based on the HUD report cited below:*

Reperforming: six consecutive on-time payments

Forbearance: agreement has been reached between borrower and servicer whereby all or a portion of the debt service is suspended temporarily.

Foreclosure avoided through short sale: sale to a third party arranged, allowing the borrower to leave the home and avoid foreclosure.

Deed in lieu: a borrower conveys property to the new servicer in lieu of foreclosure proceedings.

Delinquency servicing: purchaser continues to service loan that remains delinquent.

Foreclosure: Servicer initiates legal proceeding to take control of the property that serves as security for the FHA-insured mortgage.

Held for rental: Purchaser has acquired REO via a deed in lieu or foreclosure, then offers the property for rent.

*** The source report shows a higher total number of loans sold through DASP. Presumably, the data presented in this table, which comes from that report, is based on the available information in the reporting system.*

Nonprofit organizations that have participated in the DASP program report better outcomes in terms of loan modifications. New Jersey Community Capital (NJCC), one of the two major purchasers of DASP loans, reports that 19 percent of the loans it purchased have been successfully modified, which is modestly better than the overall loan modification rate for the DASP—12.8 percent.[58] Hogar Hispano Inc. (HHI), the other major nonprofit purchaser of DASP loans, reports that its overall loan modification rate is 40 percent.[59] Thus, both NJCC's and HHI's record of modifying HUD nonperforming loans is either somewhat or considerably better than the record for the overall DASP portfolio. (See Issue Brief No. 5 for additional information about both nonprofits.)

At least part of the reason for the apparent higher success rate for the nonprofit organizations may be that some 80 percent of NJCC's modified loans and almost 100 percent of HHI's modified loans received principal reduction/forgiveness. In contrast, in the overall DASP portfolio, only 37 percent of the modified loans received principal debt reduction, or forgiveness. Unfortunately, a key change in DASP in 2016, noted below, which required purchasers of these loans to make principal forgiveness the first option investors were to consider offering to borrowers when evaluating them for a modification,[60] was only in force for one of the DASP sales.

A key factor contributing to successful modification is whether the owner is still occupying the house at the time the loan is sold, since it is much more difficult to contact an owner to make a modification arrangement once the owner has left the home. In the case of HHI, about 80 percent of the nonperforming loans they purchased were for homes that were still occupied. The owner-occupancy rate of HHI-purchased loans was about the same as for the overall DASP portfolio, but higher than the percentage reported by NJCC. This may have contributed to HHI's higher rate of loan modification, compared with NJCC. (See Issue Brief No. 5, Table 1.) Comparable data on outcomes for the overall portfolio of occupied vs. unoccupied DASP loans does not seem to be available. Indeed, the GAO found that, in general, FHA inadequately monitored the outcomes of loan modifications carried out by the various purchasers of DASP loans.[61]

Wayne Meyer, president of NJCC, noted that NJCC's modified loans have had a very low redefault rate, with only two or three new loans across its entire inventory encountering difficulties after refinancing.[62] Again, a lack of data hampers a more complete analysis; comparable information on redefaults of loans purchased by for-profit entities does not seem to be available.[63]

The GAO raised further questions about the extent to which DASP loan sales are helping homeowners avoid foreclosure. Specifically, their report stated, "In the aggregate, the probability of experiencing foreclosure was greater overall for sold loans compared to unsold loans."[64] In short, the GAO found that "sold loans were less likely to result in owners staying in their homes."[65] The report also noted that there were variations based on loan pool and purchaser servicing differences and recommended that FHA use the data it collects to evaluate how the outcomes for loans sold through DASP compared with the outcomes for similar, unsold loans.[66]

Researchers at the Urban Institute commented on the GAO report, observing that the GAO compared "the outcomes of delinquent borrowers who *FHA could not longer help*, and were thus put into DASP, with borrowers FHA could still help avoid foreclosure. Put differently, it shows the program changed the probability of foreclosure in that first group from close to 100 percent to 43 percent, only 7 percent higher than the group of borrowers FHA was still in a position to help on its own."[67]

An earlier Urban Institute study refuted several specific criticisms of the DASP program and concurred with HUD's assertion that nonperforming loan sales create significant savings for HUD compared with what would have been collected through foreclosure.[68] Investors, the report asserts, have a larger toolkit than HUD to work with mortgagors and it is in investors' best interest to avoid foreclosure, since foreclosure results in the lowest return on investment.[69] In short, the study found that investor and homeowner incentives are well aligned and concluded that "borrower outcomes are far better under [DASP]."[70] This assessment notwithstanding, as noted above, only 12.8 percent of homeowners whose loans were sold through DASP have been restabilized in their homes with reperforming loans.

Despite the Urban Institute's defense of DASP, the report also offered recommendations for improvement, including a requirement that investors "resolve each asset" and the creation of a rating system to acknowledge investors who produce borrower-friendly outcomes.[71]

Modifications to DASP and Changes Involving Nonprofits

Prior to 2015, nonprofit loan buyers found it difficult to compete with for-profit companies, and HUD did not give nonprofits any type of preferential treatment.[72] For example, as part of HHI's foreclosure prevention program, in 2012 the nonprofit organization offered to pay 61 percent of the value of an NSO pool, but lost to a for-profit company that bid only slightly higher—66 percent on the dollar.[73]

Researchers at The Urban Institute have argued that sales to nonprofits are not in the best interest of the entities selling the loans.[74] Their report concluded that greater nonprofit participation could occur through partnerships between these organizations and investors in order to help build the capacity of the nonprofits, since they currently face insufficient capital, expertise and infrastructure needed to work out delinquent loans.[75] Other observers of DASP have been far more positive about the potential role of nonprofits and have urged FHA to make it easier for nonprofits to participate in the program.[76]

In April 2015, changes to the NSO sales portion of DASP gave nonprofit organizations a first look at vacant properties, allowing purchasers to resell notes to nonprofits and offering a nonprofit-only pool.[77] In addition, changes in DASP required loan servicers to delay foreclosure for a year (up from six months) and to evaluate all borrowers for the federal Home Affordable Modification Program (HAMP) or a similar loss-mitigation program.

In June 2016, further changes in DASP directed loan purchasers to offer qualified borrowers principal reductions on their mortgages as the first option to consider when evaluating mortgagors for a modification. Investors were also required to limit interest rate increases, and in an effort to prevent blight, they were prohibited from abandoning low-value properties in high-foreclosure neighborhoods. The changes also made it easier for nonprofit organizations, local governments, and other governmental entities to participate in DASP.[78] It is not clear, however, how these programmatic changes were implemented in the only loan sale that followed, despite calls by a number of Congressmen for DASP to be better targeted to the needs of the defaulting homeowners and the communities in which their homes are located.[79]

DASP on Trial

DASP raised a serious legal issue about the extent to which mortgagors' interests were being taken into account. Specifically, is the sale of an FHA-insured loan without the knowledge of the mortgagor a violation of the latter's rights? This is the central claim in *Washington et al. vs. HUD et al.,*[80] which argues that failure to inform homeowners that their mortgages are about to be auctioned out of the FHA mortgage insurance program—which will mean the homeowners will lose various benefits—violates due process.[81] One of those benefits is a requirement that, in the event of default, HUD's servicers pursue alternatives to avoid foreclosure.[82] The question of mortgagor notification of loan sales is particularly important because the vast majority (79 percent) of loans sold through DASP were for homes that were occupied. The occupancy status of 11 percent of home loan sales was unknown; 10 percent were definitely vacant.[83]

Although HUD rule changes in June 2016 require servicers to include a warning in the 120-day delinquency notice indicating that the mortgagor's loan might be sold, this was too late for the plaintiffs in the above-cited case, whose 120-day notification period fell prior to the new ruling. Further, while the Truth in Lending Act of 1968 requires homeowners to be notified when their mortgage has been sold to another entity, there is no requirement that the notice—which, importantly, is sent after the sale—explain the consequences of the sale or that the homeowner is no longer entitled to the protections included in the FHA mortgage insurance program.[84]

As of early 2018, the case, which also argued that DASP had created disparate impacts for African-American FHA-insured mortgagors and predominantly African-American neighborhoods in New York City, had not been settled.[85] It also was unclear whether a 2017 report by HUD's inspector general, which pointed out a technical defect with DASP, would alter its outcome:

> HUD did not conduct rulemaking or develop formal procedures for its single-family note sales program. This condition occurred because HUD officials did not have a formal plan to transition HUD's single-family note sales from a demonstration program to an official HUD program. As a result, public officials, citizens, and industry participants were not given the opportunity to provide comments for a more than $18 billion program.[86]

The report directed HUD to "complete the rulemaking process" and "develop and implement formal procedures and guidance" for HUD's single-family note sales program.[87] Thus, the next chapter of the DASP program could depend in part on its compliance with rulemaking procedures for official HUD programs, as opposed to demonstration initiatives. As of this writing, the date of the next DASP sale was not known.[88]

The recent history of DASP suggests that homeowners in serious default whose loans were sold through DASP were not provided with the protections that are associated with FHA-insured loans. Indeed, a 2017 law review article provides this critical assessment of DASP:

> The FHA's decision to utilize DASP eroded long-standing doctrine and practices meant to protect struggling, delinquent borrowers … Leading up to the foreclosure crisis, the FHA undermined its mission by lowering its lending standards and inadequately policing against predatory lenders … [DASP] was supposed to both maximize recoveries for the FHA's reserves and provide borrowers an alternative to foreclosure … DASP's bidding process might have failed to maximize recoveries because a few dominant firms set a lower market-clearing price with discounts that reflected both the price of foreclosure and a high rate of return for private investors. DASP [also] undermined borrower protections by short-circuiting the judicial foreclosure process and failing to ensure long-term, stabilizing post-sale modifications or other favorable outcomes … There is little question that the costs of DASP were imposed predominantly on African American and Hispanic neighborhoods.[89]

Further inquiries into the differential impacts of DASP on various racial groups should be pursued. Indeed, since about the 1990s, there has been a "relatively heavy reliance of black and Hispanic customers on FHA loans compared to their white counterparts."[90]

Conclusion

The history of HUD/FHA, along with the recent experiences with DASP, reveal the extent to which HUD/FHA's dual mandates—to both support the mortgage-lending industry and to assist households in attaining and maintaining homeownership—often result in the latter receiving inadequate attention. This Issue Brief has also raised a number of policy implications and questions that warrant further exploration. (See Table 2.) Of particular concern is HUD's oversight of DASP, including the extent to which it ensures that loan servicers adhere to HUD's guidelines. In addition, there is an overall need for better record-keeping and evaluations of DASP loan sales. Collecting comparative data on the outcomes of DASP loan sales to nonprofit and for-profit purchasers should be a priority. The last sale of DASP loans was held in September 2016, and it is not clear when or if sales of nonperforming loans will resume. Nevertheless, the questions and issues raised here should be considered as the program continues to evolve.

FHA is deeply committed to protecting struggling homeowners and making certain they have the greatest opportunities to avoid foreclosure and remain in their homes.
While thousands of homeowners avoided foreclosure through this note sales program, we continue to explore new ways to help these families and to offer more opportunities for public-minded organizations to have a seat at the table.

Ed Golding, former HUD principal deputy assistant secretary, Office of Housing, 2016[91]

Table 2 | Observations, Questions for Further Research, and Policy Implications: The Role of HUD and the FHA: Conflicts in Mandate and Operations, Past and Present

Observations from the study	Questions for further research	Policy implications for HUD
1a) HUD/FHA is tasked with mediating conflicting interests and goals. A key conflict is between the priorities of private, for-profit stakeholders who do business with the FHA and those of homeowners with FHA-insured loans. Typically, HUD/FHA has tended to be more attentive to the needs of the former. 1b) Another major conflict (further discussed in Issue Brief No. 3) is between HUD/FHA's responsibility to assist homeowners in end-stage default and its responsibility to assure the sustainability of the Mutual Mortgage Insurance Fund (MMIF), which backs FHA-insured loans.		1) In its capacity as the federal agency charged with implementing a large portion of the nation's housing agenda, HUD could play a stronger role in advocating for policies and programs that explicitly focus on homeowner and tenant needs, while also exerting a strong regulatory presence. It could serve as a moral compass in directing private-sector actions and procedures that ensure that consumer needs are viewed as a priority, while keeping in mind the need to maintain the viability of the MMIF.
2) Mortgagors have not always been notified in a timely way prior to their loan being sold through HUD's Distressed Asset Stabilization Program (DASP).	Was the June 2106 rule (which affected the single DASP sale conducted after this period), which required servicers to include a warning in the 120-day delinquency notice indicating that the mortgagor's loan might be sold, implemented?	2) For future DASP sales, ensure that homeowners with nonperforming loans are provided information about loan sales before those sales occur.
3a) When a loan is sold through DASP, HUD requires lenders/servicers to take several steps to avoid foreclosure. Nevertheless, the majority of DASP loan sales result in the displacement of homeowners. 3b) DASP requires that loan purchasers delay foreclosure for a year and evaluate all borrowers for some type of loan modification. 3c) The requirement that purchasers of DASP loans offer principal forgiveness as the first option to borrowers when evaluating them for a modification was	3a) To what extent have these steps been carried out? Have purchasers of nonperforming loans been providing mortgagors with opportunities to cure their loans that are equivalent to or better than the protections offered by unsold FHA-insured loans? 3b) Has this been implemented? 3c) Has this been implemented? Were there changes in outcomes for DASP loans sold after the principal forgiveness requirement went into effect?	3a) Ensure that protections for homeowners whose loans have been sold are at least as strong as those prescribed for unsold FHA-insured loans. 3b) Ensure that this rule is being enforced. 3c) Ensure that the principal forgiveness rule is enforced for future DASP sales. Suggestions for how principal debt reduction efforts could be instituted for unsold FHA-insured loans are noted in Table 1, Issue Brief No. 4. Changes in HUD/FHA's statute

Observations from the study	Questions for further research	Policy implications for HUD
only in force for one of the DASP sales. Principal/interest reduction was only provided for a minority of DASP loans.		likely would be required for such changes to be adopted.
4a) DASP has been modified to give nonprofit organizations, local governments, and other governmental entities greater opportunities to participate. 4b) The limited data available reveals that nonprofit organizations have a better record of restabilizing homeowners in their homes with loan modifications than the overall DASP portfolio.	4) How have these changes been implemented, and what have been the outcomes? In particular, how do nonprofit and for-profit purchasers compare in terms of compliance with HUD regulations and homeowner outcomes? Efforts should be made to identify the reasons for any differences in success, to assess the extent to which nonprofits have received greater opportunities to participate, and to assess whether the steps mandated by HUD are being followed.	4) Consider policy changes that would provide nonprofit organizations with more resources and opportunities for participation in DASP.
5) The data indicates that better record-keeping and evaluations of the experiences with DASP loan sales are needed. In particular, more attention should be given to the disproportionate costs of DASP borne by African American and Hispanic neighborhoods.	5a) How well do DASP outcomes meet the program's objectives? What changes to outcome measures are needed to assure that there is a clear priority on preserving homeownership and stabilizing neighborhoods while still minimizing losses to the MMIF? 5b) How does DASP outcome data compare with data for comparable unsold loans, and what accounts for variations? 5c) What were the differential outcomes of DASP for homeowners in various racial and ethnic groups?	5) Make necessary changes to DASP to ensure better outcomes for homeowners and neighborhoods. In particular, outcomes for homeowners and neighborhoods of color need to be considered.
6) In 2017, the HUD inspector general found that DASP never instituted proper rulemaking for a permanent program, rather than a demonstration initiative.	6) What are the implications of the inspector general's finding, and how has it been addressed?	6) Assess whether DASP should continue, so long as the program is shown to meet HUD's several goals.

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[2] U.S. Department of Housing and Urban Development Act, 42 U.S.C. § 3531 (1965).

[3] Jill Khadduri, "The Founding and Evolution of HUD: 50 Years, 1965–2015," in *HUD at 50: Creating Pathways to Opportunity* (Washington, DC: U.S. Department of Housing and Urban Development, 2015), 85. retrieved from https://www.huduser.gov/portal//hud50th/HUDat50Book.pdf.

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[5] For a comprehensive review of HUD's first 50 years, see Jill Khadduri, "The Founding and Evolution of HUD: 50 Years, 1965–2015." For a review of HUD's record after its first 25 years, see Rachel G. Bratt and W. Dennis Keating, "Federal Housing Policy and HUD: Past Problems and Future Prospects of a Beleaguered Bureaucracy," *Urban Affairs Quarterly* 29, no. 1 (September 1993), 3–27. For details about various HUD scandals, see Irving Welfeld, *HUD Scandals* (New Brunswick, NJ: Transaction Publishers, 1992). Omitted from this discussion is the public-housing program, since it does not involve the FHA and did not traditionally involve private for-profit developers and owners.

[6] David A. Montoya, "Testimony Before the United States Senate Committee on Appropriations Subcommittee on Transportation, Housing and Urban Development and Related Agencies: An Overview of the Federal Housing Administration," June 4, 2013, 3, retrieved from https://www.hudoig.gov/sites/default/files/documents/prnews/FHA%20Testimony%206-4-13%20Final.pdf.

[7] For a recent analysis of this period, see Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (New York: Liveright Publishing Corporation, 2017).

[8] Section 937, Federal Housing Administration, "Underwriting and Valuation Procedures under Title II of the National Housing Act," 17, 938.

[9] Charles Abrams, *Forbidden Neighbors* (New York: Harper and Brothers, 1955), 234.

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[13] U.S. Department of Housing and Urban Development, *Report on Internal Audit of HUD Single Family Appraisal/Inspection Procedures and Mortgagees' Loan Processing Activities* (Washington, DC: Office of Inspector General, Office of Audit, 1973), 26.

[14] U.S. Congress, Nineteenth Report, Committee on Government Operations, "HUD's Responsiveness to Previous Recommendations for Corrective Action," March 29, 1973, 4.

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[17] Johnnie D. Brown et al. v. James T. Lynn et al. No. 73 C 334, United States District Court, N.D. Illinois, E.D. October 11, 1974. Opinion.

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[20] Ibid., 85.

[21] Jill Khadduri, "The Founding and Evolution of HUD: 50 Years, 1965–2015," 47.

[22] U.S. General Accounting Office, *Housing and Community Development Issues*, Transition Series (Washington, DC: U.S General Accounting Office, 1992), 13, retrieved from http://www.gao.gov/assets/220/217294.pdf.

[23] Jill Khadduri, "The Founding and Evolution of HUD: 50 Years, 1965–2015," 74. A U.S. General Accounting Office report summed up the situation with its title: *HUD Reforms: Progress Made Since the HUD Scandals but*

Much Work Remains, GAO/RCED-92-4 (Washington, DC, U.S. General Accounting Office, 1992), retrieved from http://archive.gao.gov/d31t10/145818.pdf.

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[27] U.S. Department of Housing and Urban Development, "HUD 2020 Management Reform Plan Executive Summary," June 1997, retrieved from https://archives.hud.gov/reports/2020/mrexsum.cfm (italics in original).

[28] U.S. General Accounting Office, "Management Challenges: GAO's Responses to HUD's Comments," July, 1999, 2, retrieved from http://www.gao.gov/assets/230/227550.pdf.

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[30] U.S. Government Accountability Office, "Single-Family Housing: Stronger Oversight of FHA Lenders Could Reduce HUD's Insurance Risk," 2000, as cited in Brad Greenburg, "Consolidation after Crisis: How a Few Private Investors Bought Distressed, Federally Insured Mortgages after the Foreclosure Crisis," *New York University Journal of Legislation & Public Policy* 20, no. 3 (2017), 900–901.

[31] For example, "The only federal agency with authority over enforcing consumer protection laws concerning the fast-growing set of subprime mortgage companies was the Federal Trade Commission, an agency not at all equipped for such levels of activity." Cited in Dan Immergluck, *Foreclosed: High-Risk Lending, Deregulation, and the Undermining of America's Mortgage Market* (Ithaca, NY: Cornell University Press, 2009), 77. See also Dan Immergluck, "Too Little, Too Late, and Too Timid: The Federal Response to the Foreclosure Crisis at the Five-Year Mark," *Housing Policy Debate* 23, no. 1 (February 2013), 199–232; Dan Immergluck, *Preventing the Next Mortgage Crisis* (Lanham, MD: Rowman & Littlefield, 2015).

[32] For example, the Trump administration has proposed a rule that would raise rents for households living in subsidized housing. Center on Budget and Policy Priorities, "Trump and Ross Proposals to Raise Rents Would Hurt Efforts to Prevent and End Homelessness," October 11, 2018, retrieved from https://www.cbpp.org/research/housing/trump-and-ross-proposals-to-raise-rents-would-hurt-efforts-to-prevent-and-end. See also Alicia Mazzara, "Demographic Data Highlight Potential Harm of New Trump Proposal to Restrict Housing Assistance," Center on Budget and Policy Priorities, July 1, 2019, retrieved from https://www.cbpp.org/research/housing/demographic-data-highlight-potential-harm-of-new-trump-proposal-to-restrict-housing.

[33] The Joint Center for Housing Studies has pointed out that although the HUD budget has increased by 2 percent, "the budget increases only help programs keep up with inflation and do not go far enough to close gaps in need." Joint Center for Housing Studies of Harvard University, "The State of the Nation's Housing, 2019," 2019, 34, retrieved from https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2019.pdf. See also National Low Income Housing Coalition, "The Gap: A Shortage of Affordable Homes," March 2019, retrieved from https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2019.pdf; National Low Income Housing Coalition, "Out of Reach," 2019, retrieved from https://reports.nlihc.org/sites/default/files/oor/OOR_2019.pdf.

[34] In addition to initiatives that sprang from various 1970s court cases concerning HUD's failure to ensure adherence to its guidelines pertaining to mortgagee granting foreclosure relief (see note 17, above), there have been at least two other precursors to DASP. In the late 1980s and early 1990s, HUD purchased mortgages and became the mortgagee, instead of foreclosing. Its new repayment plan allowed for reduced or suspended payments for up to 36 months. Nearly one-half of the borrowers in the cohort studied were likely going to avoid foreclosure and eventually pay off the new loans, typically by selling or refinancing, often after a long period in the program. However, the program came at a significant price to the FHA, costing about $1.5 billion more than would have been incurred had the loans simply gone to foreclosure. The report "Homeownership: Mixed Results and High Costs Raise Concerns About HUD's Mortgage Assignment Program" (U.S. General Accounting Office, October 1995, retrieved from https://www.gpo.gov/fdsys/pkg/GAOREPORTS-RCED-96-2/pdf/GAOREPORTS-RCED-96-2.pdf) noted, "While FHA borrowers' premiums pay for these losses, these additional costs make it more difficult for FHA's single-family insurance program to maintain financial self-sufficiency" (page 2).

A second program from the 1990s focused on nonperforming 1-4 family loans (i.e., loans on properties with up to four separate units). Based on each homeowner's circumstances, the goal was to establish "an affordable level of payments while preserving as much of the existing debt as possible." Christopher E. Herbert and Linda

B. Fosburg, “FHA Assets Sales Study: Final Report,” October1998, 57. Herbert and Fosburg found that this program performed significantly better than forecasts for how HUD would have performed had it owned the loans.

[35] On average, mortgages sold through DASP were 28 months delinquent at the time of the auction. U.S. Department of Housing and Urban Development, “Report to the Commissioner on Post Sale Reporting FHA Single Family Loan Sale Program,” October 2016, 1, retrieved from https://www.hud.gov/sites/documents/SFCREPORT.PDF.

[36] Acceptable outcomes include reperformance of the loan, rental of the home to a borrower, sale of the home to an owner occupant, gift of the home to a land bank, sale of the home to a Neighborhood Stabilization Program (NSP) grantee or to a nonprofit organization, or a loan payoff. See Office of Asset Sales, “HUD Single Family Non-Profit Loan Sale Webinar: Encouraging Opportunities to Succeed,” October 21, 2015, retrieved from https://www.hud.gov/sites/documents/SLIDES.PDF.

[37] U.S. Government Accountability Office, “Federal Housing Administration: Opportunities Exist to Improve Defaulted Single-Family Loan Sales,” Report to the Chairwoman, Committee on Financial Services, House of Representatives. GAO-19-228. July 2019, retrieved from https://www.gao.gov/assets/710/700131.pdf

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[39] U.S. Department of Housing and Urban Development, “Report to the Commissioner on Post Sale Reporting FHA Single Family Loan Sale Program,” January 2016, 1, retrieved from https://www.hud.gov/sites/documents/RPRT.12616.PDF.

[40] U.S. Government Accountability Office, “Opportunities Exist to Improve Defaulted Single-Family Loan Sales,” 27.

[41] Ibid.

[42] Interview with Bill Reeder, director, Housing Finance Analysis Division, Office of Policy Development and Research, HUD, May 2017. Specifically, HUD is constrained by what it is allowed to do, but “once the [nonperforming loans] are sold, the new investors … can lower the interest rate on the loan to a below-market rate, and they can reduce principal. They can pay borrowers enough in relocation costs to encourage a short sale.” Laurie Goodman and Dan Magder, “Selling HUD’s Nonperforming Loans: A Win-Win for Borrowers, Investors, and HUD,” Urban Institute, January 2016, 3, retrieved from https://www.urban.org/research/publication/selling-huds-nonperforming-loans-win-win-borrowers-investors-and-hud/view/exhibits.

[43] Laurie Goodman, Edward Golding, and Jim Parrott, “FHA Distressed Asset Stabiiization Program Should Be Improved, Not Abandoned,” *Urban Wire* (blog), August 14, 2019, 4, retrieved from https://www.urban.org/urban-wire/fhas-distressed-asset-stabilization-program-should-be-improved-not-abandoned.

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[46] U.S. Department of Housing and Urban Development, Federal Housing Administration, “Report to the Commissioner on Post-Sale Reporting: FHA Single Family Loan Sale Program,” January 22, 2016, retrieved from https://www.hud.gov/sites/documents/RPRT.12616.PDF.

[47] Citing a report by HUD’s inspector general, the GAO reported that “for loans sold in 2015 and 2017, FHA experienced a 3 percent lower loss rate compared with similar loans that were foreclosed and the associated property placed into FHA’s REO inventory.” U.S. Government Accountability Office, “Opportunities Exist to Improve Defaulted Single-Family Loan Sales,” 51–52.

[48] Ibid., 57.

[49] Ibid., 52.

[50] FHA insurance claims are typically covered by the MMIF, not by taxpayers. In 2013, however, in the aftermath of the mortgage crisis, the fund needed an infusion of some $1.7 billion from the U.S. Treasury. This was the first and only time that such assistance was needed. Testimony of Carol Galante in “Federal Housing Administration: Implications of a $1.7 Billion Taxpayer Bailout, Hearing Before the Committee on Financial Services, U.S. House of Representatives,” October 29, 2013, retrieved from https://www.gpo.gov/fdsys/pkg/CHRG-113hhrg86682/html/CHRG-113hhrg86682.htm. The MMIF was quickly able to recover its solvency and now has substantial assets with which to cover claims.

[51] U.S. Department of Housing and Urban Development, “Quarterly Report on FHA Single Family Loan Sales,” May 30, 2014,” retrieved from https://www.hud.gov/sites/documents/REPORT082814.PDF.

[52] See the class action lawsuit brought by Joseph Washington, St. Clair Blackett, Lucille Mason, and Melissa Trotman on behalf of themselves and all others similarly situated against United States Department of Housing

and Urban Development (HUD), Julián Castro in his official capacity as Secretary of HUD, Edward Golding in his official capacity as Commissioner of the Federal Housing Administration, Caliber Home Loans, Inc., and U.S. Bank Trust, N.A., as Trustee for LSF9, Master Participation Trust," filed on August 12, 2016, retrieved from https://www.clearinghouse.net/chDocs/public/FH-NY-0026-0001.pdf. See also Geoff Walsh, "Opportunity Denied: How HUD's Note Sale Program Deprives Homeowners of the Basic Benefits of Their Government-Insured Loans," National Consumer Law Center, May 2016, retrieved from https://www.nclc.org/issues/opportunity-denied.html?print=pdf.

[53] Sarah Edelman, Julia Gordon, and Aashna Desai, "Is the FHA Distressed Asset Stabilization Program Meeting Its Goals?" 7, 9.

[54] Ibid., 9.

[55] For additional critical analyses of DASP see Aditi Sen, "Do Hedge Funds Make Good Neighbors? How Fannie Mae, Freddie Mac & HUD are Selling off our Neighborhoods to Wall Street," Center for Popular Democracy and ACCE Institute, June 2015, retrieved from https://stopforeclosurefraud.com/wp-content/uploads/2015/06/Housing-report_web-final.pdf; Connie M. Razza, "Vulture Capital Hits Home: How HUD Is Helping Wall Street and Hurting Our Communities," Center for Popular Democracy, September 2014, retrieved from http://populardemocracy.org/news/publications/vulture-capital-hits-home; Jared Bennett, "The Government Is Selling Thousands of Homes to Hedge Funds Without Their Owners' Knowledge," *Atlantic Monthly*, September 23, 2015, retrieved from https://www.theatlantic.com/business/archive/2015/09/the-government-is-selling-thousands-of-homes-to-hedge-funds-without-their-owners-knowledge/406771/.

[56] U.S. Department of Housing and Urban Development, "Report to the Commissioner on Post-Sale Reporting: Distressed Asset Stabilization Program," March 2017, 10, retrieved from https://www.hud.gov/program_offices/housing/comp/asset/hsgloan.

[57] U.S. Department of Housing and Urban Development, Federal Housing Administration, "Report to the Commissioner on Post-Sale Reporting, FHA Single Family Loan Sales Program," January 22, 2016, 4.

[58] Ibid.

[59] Private email communication from Marcos Morales, executive director of Hogar Hispano Inc., March 2019.

[60] U.S. Department of Housing and Urban Development, "FHA Announces Most Significant Improvements to Date for Distressed Notes Sales Program," news release, June 30, 2016, retrieved from https://archives.hud.gov/news/2016/pr16-105.cfm.

[61] U.S. Government Accountability Office, "Federal Housing Administration: Opportunities Exist to Improve Defaulted Single-Family Loan Sales," 31.

[62] Interview with Wayne Meyer, April 2017.

[63] In general, HUD's records on outcomes of DASP are incomplete. It appears that the Federal Housing Finance Agency (FHFA) does a better job of tracking distressed loan sales by Fannie Mae and Freddie Mac, in a program similar to DASP. See, for example, Federal Housing Finance Agency, "FHFA Releases Fifth Report on Non-Performing Loan Sales," news release, June 12, 2018, retrieved from https://www.fhfa.gov/Media/PublicAffairs/Pages/Fifth-Report-on-Non-performing-Loan-Sales.aspx.

[64] U.S. Government Accountability Office, "Opportunities Exist to Improve Defaulted Single-Family Loan Sales," 27.

[65] Ibid.

[66] Ibid.

[67] Laurie Goodman, Edward Golding, and Jim Parrott, "FHA Distressed Asset Stabiiization Program Should Be Improved, Not Abandoned."

[68] Laurie Goodman and Dan Magder, "Selling HUD's Nonperforming Loans: A Win-Win for Borrowers, Investors, and HUD."

[69] Ibid., 3

[70] Ibid., 2.

[71] Ibid., 16.

[72] Sarah Edelman, Julia Gordon, and Aashna Desai, "Is the FHA Distressed Asset Stabilization Program Meeting Its Goals?" 9.

[73] Ibid.

[74] Laurie Goodman and Dan Magder, "Selling HUD's Nonperforming Loans: A Win-Win for Borrowers, Investors, and HUD." See also Meghan Milloy, "Sale of Distressed Mortgages to Non-Profits: Good in Theory, Higher Guarantee Fees in Reality," American Action Forum, October 24, 2015, retrieved from https://www.americanactionforum.org/insight/sale-of-distressed-mortgages-to-non-profits-good-in-theory-higher-guarantee/.

[75] Laurie Goodman and Dan Magder, "Selling HUD's Nonperforming Loans: A Win-Win for Borrowers, Investors, and HUD," 1, 9.

[76] Sarah Edelman, Julia Gordon, and Aashna Desai, "Is the FHA Distressed Asset Stabilization Program Meeting Its Goals?" 18.

[77] U.S. Department of Housing and Urban Development, "HUD Announces Changes to Distressed Asset Stabilization Program," news release, April 24, 2015, retrieved from https://archives.hud.gov/news/2015/pr15-048.cfm.

[78] U.S. Department of Housing and Urban Development, "FHA Announces Most Significant Improvements to Date for Distressed Notes Sales Program." Additional suggested changes included ensuring that investors are offering homeowners sustainable loan modifications and respecting a loan modification that the homeowner was in the process of negotiating when the loan was sold. Sarah Edelman, Michela Zonta, and Shiv Rawal, "Protecting Communities on the Road to Recovery: Why Strong Standards are Needed for the Distressed Asset Stabilization Program," Center for American Progress, June 28, 2016, retrieved from https://www.americanprogress.org/issues/economy/reports/2016/06/28/140445/protecting-communities-on-the-road-to-recovery/.

[79] See Jared Bennett, "HUD Loan Investment Program Draws Scrutiny," Center for Public Integrity, February 3, 2016, retrieved from https://www.publicintegrity.org/2016/02/03/19248/hud-loan-investment-program-draws-scrutiny.

[80] The case can be accessed at via the Mobilization for Justice website at http://mobilizationforjustice.org/wp-content/uploads/Complaint-Washington-et-al-v.-HUD-et-al..pdf. The case also argues that nonperforming-loan sales violate the Fair Housing Act because they have a disparate impact on African-American households and undermine the requirement of furthering fair housing.

[81] Ibid.

[82] See U.S. Department of Housing and Urban Development, *Handbook 4000.1, FHA Single Family Housing Policy Handbook* (Washington, DC: U.S. Department of Housing and Urban Development), retrieved from https://www.hud.gov/sites/documents/40001HSGH.PDF.

[83] U. S. Department of Housing and Urban Development, "Report to the Commissioner on Post Sale Reporting FHA Single Family Loan Sale Program," October 2016, 7.

[84] See http://mobilizationforjustice.org/wp-content/uploads/Complaint-Washington-et-al-v.-HUD-et-al..pdf.

[85] University of Michigan Law School, Civil Rights Litigation Clearinghouse, retrieved from https://www.clearinghouse.net/detail.php?id=15452.

[86] Office of Inspector General, U.S. Department of Housing and Urban Development, "HUD Did Not Conduct Rulemaking or Develop Formal Procedures for Its Single-Family Note Sales Program," Audit Report No. 2017-KC-0006, July 17, 2014, 5, retrieved from https://www.hudoig.gov/sites/default/files/documents/2017-KC-0006.pdf.

[87] Ibid., 1.

[88] U.S. Government Accountability Office, "Federal Housing Administration: Opportunities Exist to Improve Defaulted Single-Family Loan Sales," 26.

[89] Brad Greenburg, "Consolidation After Crisis: How a Few Private Investors Bought Distressed, Federally Insured Mortgages After the Foreclosure Crisis," 924, 938, 939.

[90] Stephen L. Ross and John Yinger, The Color of Credit: Mortgage Discrimination, Research Methodology, and Fair Lending Enforcement (Cambridge, MA: MIT Press, 2002), 41.

[91] U.S. Department of Housing and Urban Development, "FHA Announces Most Significant Improvements to Date for Distressed Notes Sales Program."