

## **Addendum to Memorandum Regarding The Impact of Foreclosure Moratoria on the Mortgage Default Legal Services Community**

### **Purpose**

This addendum supplements the March 19, 2020 Memorandum Regarding the Impact of Foreclosure Moratoria on the Mortgage Default Legal Services Community (“Memorandum”) which was presented to The Honorable Benjamin Carson and Dr. Mark A. Calabria. The purpose of this addendum is to provide additional information related to two considerations. First, a process that supports and permits firms to provide foreclosure services that do not impact homeowner retention during the moratorium and second, financial support to maintain stability and employment for the mortgage foreclosure firms.

### **Default Firms and the Impact of the Pandemic**

In light of the current status, we request review and consideration of the following;

- Law firm viability during a moratorium period that could extend between 30 and 180 days or greater;
- Client reporting and other requirements in both judicial and non-judicial states;
- Judicial activity that law firms will be required to comply with;
- Increased bankruptcy activity;
- Continued adherence to regulatory compliance requirements;

**Layoffs:** The law firms which provide default legal services are experiencing the initial impact currently. As a result, layoffs have already commenced. Most impacted staff have little to no time to prepare financially.

**Viability:** Firms must have the ability to retain levels of staff and infrastructure to be available to the industry as the crisis diminishes. The cessation of business during the moratorium will be unsustainable long term. As previously addressed, firms providing default related representation meet high levels of quality in process coupled with effective security and compliance programs at the intersection of privacy laws, consumer protection laws, regulations and government/consumer interaction. Stabilization of these specialized firms must be treated as a priority to assure continuity post-crisis.

**Judicial Activity:** Courts across the country are also coping with the COVID-19 crisis. While most are limiting their activity, limiting access to the courts, going to on-line and phone hearings, judicial activity continues to proceed on a limited scale. There will be a requirement to seek different levels of judicial relief, continuances, extensions and other forms of relief that will require attorney intervention and time.

**Client reporting and requirements:** Even during the government mandated moratoriums, law firms in judicial and non-judicial states are required to continue updating servicers' technology platforms, providing chronologies and other documentation regarding the timelines of the action, issuing payoffs and reinstatements

**Bankruptcies:** Coinciding with an increase in foreclosure volume historically results in increased bankruptcy. Firms must be in a position to manage the increased bankruptcy activity as the volumes increase.

**Compliance:** Default firms are required to adhere to Mortgagor regulatory compliance requirements including but not limited to IT security, maintenance of client records and security of borrower private information. The maintenance of the forgoing involves ongoing capital requirements.

**Recommendations:**

- Abatement or Holding Fee: It is proposed that a monthly abatement fee be authorized for foreclosure, bankruptcy and eviction matters to protect the employment infrastructure and to continue providing services including but not limited to monitoring pending legal matters, maintaining updated information in servicer systems, and participating in or monitoring loss mitigation activity. The historical precedent supporting a fee was presented in FNMA's response to Hurricane Irma. Providing firms with a monthly per-file abatement fee would permit maintenance of adequate staff and support to viably meet required legal expectation during the moratorium.
- Limited file Processing: In states that involve Judicial Foreclosure Process, provide the base level of processing that FNMA approved for Florida as described above. This consideration would be feasible if the expected moratorium period expires within 60 to 120 days. In States that involve Non-Judicial Process, provide an ability to accept referrals, process title review, and schedule a sale date which would provide a first legal action outside of the moratorium.
- Fee Structure and Milestone Alignment: In furtherance of the December 4, 2019 working session with HUD and NMSA, consideration of expediting the alignment of fees and milestone billing with the GSE's would be appropriate.

We appreciate the review and consideration of the aforementioned subject matter and, at your discretion, welcome the opportunity to discuss in greater detail.