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VIA EMAIL

Massachusetts Office of the Attorney General
Policy & Government Affairs Division
One Ashburton Place, 20th Floor
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Re: Written Comments to Proposed Regulation 940 CMR 39.00.

To whom it may concern:

We write on behalf of BlueHub Capital ("BlueHub") in response to the proposed shared appreciation mortgage ("SAM") regulations issued by the Massachusetts Office of the Attorney General ("AGO"), pursuant to St. 2024, c. 238 § 269 (the "Proposed Regulations").[1]

As described in detail below, BlueHub understands the AGO's objectives regarding SAMs and supports regulations that require clear and thorough disclosures for these products. BlueHub shares the AGO's goal of ensuring that consumers have an understanding of how a SAM works, and what the consumer is agreeing to, as evidenced by BlueHub's existing comprehensive disclosures. We believe that implementing regulations requiring clear and thorough SAM disclosures can be done in a way that does not conflict with federal law and that is practically feasible, and indeed several other states with strong consumer protection interests have done so. BlueHub is likewise committed to serving the residents of Massachusetts, particularly those residents who are distressed, and facing foreclosure and eviction from their homes. Indeed, BlueHub's program is the only one of its kind available to homeowners because the product requires significant effort (over the course of months or more that it may take to finalize the process) and because it is not profitable, which is why there are no other entities in the market offering a similar program.

However, we believe that certain aspects of the Proposed Regulations conflict with federal law, invite regulatory violations, and present operational and programmatic impossibilities that would effectively eliminate the use of SAMs in Massachusetts that are used for foreclosure relief, which would be to the significant detriment of Massachusetts residents. Indeed, through its Stabilizing Urban Neighborhoods initiative (the "SUN Program"), BlueHub has made it possible for numerous distressed Massachusetts homeowners to avoid foreclosure and eviction and remain

[1] *See* Proposed Regulations 940 C.M.R. 39.00 Shared Appreciation Mortgages.

in their homes, but the SUN Program could not work without the use of SAMs. The SUN Program has a clear record of providing substantial economic and other benefits to homeowners, and has been examined by the AGO, and Massachusetts Department of Banking ("MA DOB"), without a single finding of wrongdoing. This is because BlueHub's transactions are fundamentally fair and extremely well-disclosed to consumers.

With this submission, we are providing a full set of the robust SUN Program disclosures that describe SAMs, which BlueHub developed in the absence of any regulations with the advice and assistance of leading compliance law firms. And while BlueHub has been providing these disclosures for years because it is committed to transparency, it is grateful that the AGO is implementing regulations that will serve to formally protect Massachusetts consumers. We invite the AGO to review these disclosures and are ready to discuss any improvements that the office may have with respect to them. We are hopeful that these existing disclosures, in terms of content and timing, will be a helpful reference point in developing the regulations, since they reflect the information that can be feasibly provided at various stages of a SUN transaction, which can take place over a period of a year or longer.

We respectfully submit that the AGO should eliminate or revise the provisions of the Proposed Regulations that conflict with federal law and make the use of SAMs in Massachusetts impossible. We appreciate the AGO's consideration of this submission and look forward to further discussing these important issues, with the goal of creating regulations that inform and protect consumers, while also allowing for the use of SAMs by non-profits such as BlueHub to help homeowners in need.

I. BLUEHUB'S MISSION

BlueHub is a non-profit organization and community development financial institution ("CDFI")[2] based in Boston, Massachusetts, and a successor to entities that have been operating in Massachusetts since 1985. BlueHub's mission is to build healthy communities where low-income people live and work. In support of this mission, in 2009 BlueHub developed the SUN Program, in large part to assist homeowners affected by the 2008 mortgage market collapse and help them avoid foreclosure while remaining and building equity in their homes.

In addition to the SUN Program, BlueHub offers other programs that assist low-income communities. These include the following:

- **BlueHub Loan Fund, Inc.**, which provides commercial real estate secured loans to non-profit and for-profit organizations to acquire, renovate and/or construct affordable housing, schools, day care centers, and health care centers, among others.

[2] CDFIs are certified by the Community Development Financial Institutions Fund ("CDFI Fund") at the U.S. Department of the Treasury, which provides funding to CDFIs through a variety of programs. A CDFI is generally defined as a non-government financial institution with a primary mission of community development that serves a target market and provides financing and development services to its community.

- **One Percent for America, Inc.**, which aims to lower the cost of financing a path to citizenship.

Through its work, BlueHub has lent or invested approximately $3.2 billion in low-income communities. BlueHub primarily relies on debt funding to support its programs, meaning that it must meet capital investor requirements and pay interest on the capital it utilizes. BlueHub has been awarded and deployed approximately $608 million in new market tax credits and has obtained a $100 million bond through the CDFI Fund Bond Guarantee Program (part of the CDFI Fund), of which it has borrowed approximately $83 million and repaid $36 million. In addition, BlueHub and its lending affiliates have received approximately $87 million in historic grant awards to provide financial assistance, healthy food initiatives, and capital magnet fund affordable housing grants to low-income communities.

II. BlueHub SUN

BlueHub SUN was created in 2009 in response to the 2008 financial crisis, when foreclosure rates were skyrocketing and Massachusetts neighborhoods were being ravaged by foreclosures, with the goal of providing distressed homeowners an opportunity to avoid foreclosure and continue to own and remain in their homes with a new mortgage they can afford. This goal aligns with the numerous federal and state governments, including Massachusetts, that have stressed the importance of avoiding foreclosure and keeping individuals in their homes.[3]

The SUN Program operates through two separately established and financed affiliates of BlueHub—Aura Mortgage Advisors, LLC ("Aura"), a mortgage lender and CDFI, and NSP Residential, LLC ("NSP"), a real estate acquisition company. This relationship enables the SUN Program to purchase a homeowner's foreclosed property, resell the property to the homeowner in an amount typically well below their prior outstanding mortgage (via NSP), and finance the homeowner's repurchase of the property (via a new mortgage from Aura). BlueHub provides organizational support and structure for SUN Program operations (including human resources, communications, finance and accounting, and information technology).

Most applicants learn about BlueHub SUN through independent research or referrals from government agencies and representatives, non-profit organizations, for-profit agencies, and professional service providers (*e.g.*, real estate agents, bankruptcy attorneys). Indeed, since 2011, the SUN Program has received 204 referrals from the AGO, 17 of which have been funded. For these 17 loans, the SUN Program participants have obtained an average payment savings of approximately $789.08 per month, for a total monthly savings amount of $1,048,531. Of these 17 loans, 10 have been paid off or refinanced. Of the 10 that have been paid off or refinanced, the participants retained an average amount in equity at payoff of $139,154, for total equity retained

[3] *See, e.g.*, Mass. H.B. 1404 (193rd Gen. Ct. 2023-2024) (introduced Jan. 20, 2023) (introducing legislation "to codify existing law and ensure that homeowners receive the protection intended by the legislature to avoid unnecessary foreclosures"); CFPB Bulletin 2021-02: *Supervision and Enforcement Priorities Regarding Housing Insecurity* (Apr. 1, 2021) (urging "servicers to dedicate sufficient resources and staff to ensure they can . . . ultimately reduce avoidable foreclosures and foreclosure-related costs").

of approximately $1,391,538. These savings and retained equity would not have been available to the participants but for the SUN Program, and are indicative of the entire portfolio and the benefits the program provides to its clients.

The referral sources mentioned above are not surprising, given that government officials have publicly commended the SUN Program on several occasions. For example, while giving a keynote address at the 2011 Federal Reserve Community Affairs Research Conference, former Federal Reserve Board Chairman Ben Bernanke stated that the SUN Program was "an innovative strategy to prevent occupied homes from becoming vacant and creating a strain on the community."[4] In addition, in 2013 Senator Elizabeth Warren wrote to the Director of the CDFI Fund:

> In Massachusetts, Aura is a leader in addressing the foreclosure crisis and has demonstrated its effectiveness in working with banks, loan servicers, community organizations and low-income residents. . . . I believe [Aura's] success represents a powerful stand against the predatory practices that have dominated lending in low income communities and has the potential to spur private investments in low income neighborhoods across the country.[5]

While the SUN Program has received praise for its ability to help homeowners in need, it unfortunately has not led to similar programs in Massachusetts. Rather, the SUN Program is the only program of which we are aware that allows homeowners to avoid foreclosure, remain and build equity in their homes, and reduce outstanding mortgage debt. As described below, the absence of similar programs is likely due to the complexity of the transactions involved, difficulties associated with working with lenders and servicers, and the SUN Program's lack of profitability.

A. How the SUN Program Works

Due to the complex nature of the transactions and issues involved in the SUN Program, the application, origination, and underwriting processes typically take several months or more. Homeowners can inquire about the SUN Program online or by calling BlueHub directly, at which point Aura will schedule a prequalification call with one of its licensed mortgage loan officers ("MLO"). During the call, the MLO will describe the SUN Program, discuss the homeowner's circumstances, and determine whether the homeowner might be eligible for a mortgage loan from Aura. If the homeowner prequalifies, the MLO will obtain income and asset documentation and take the homeowner's application. Once the homeowner submits the application, the MLO will discuss the Aura loan and SUN Program features with the homeowner again, issue loan disclosures, and process and underwrite the application. Notably, and unique among mortgage lenders, BlueHub manually underwrites each loan, does not require homeowners to submit an

[4] Ben S. Bernanke, Chairman, Fed. Rsrv. Board, *Community Development in Challenging Times* (Apr. 29, 2011), available at https://www.federalreserve.gov/newsevents/speech/bernanke20110429a.htm.

[5] See **Exhibit A** (Letter from Unites States Senator Elizabeth Warren to Donna J. Gambrell, Director of the Community Development Financial Institutions Fund (July 25, 2013)).

application fee, nor does it charge applicants for appraisals, credit reports, title work, or other related work unless a loan closes.

Once an applicant is pre-approved, NSP will negotiate with the existing mortgage servicer or owner to purchase the applicant's property, which is either in foreclosure or has been foreclosed—before the applicant is evicted—at or below the current distressed market value. If NSP reaches an agreement with the servicer or owner of the property through the negotiation process, which can often take several months, Aura will re-underwrite the application, because only at this point is the purchase price of the home is known, which in turn determines both the amount to be financed on the Aura mortgage and the terms of the SAM that the homeowner will enter into with NSP. If the application receives final approval, NSP will clear title, pay the negotiated price to the existing mortgage servicer or owner to pay off the original mortgage, then resell the property back to the homeowner at or near the current fair market value, financed by a 30-year, fixed rate mortgage at a well-below-market interest rate from Aura.[6]

When Aura originates the mortgage, an Aura customer service representative will conduct a welcome call with the homeowner and onboard the loan file with Aura's third-party servicer. Importantly, the Aura mortgage is based on the current value of the property and the homeowner's current ability to pay, which is determined through a rigorous underwriting process. As described below, under the SUN Program, the Aura mortgage typically comes with a substantial reduction in outstanding principal compared to the homeowner's prior mortgage, along with a much lower monthly payment.

In addition to the new mortgage from Aura, if (and only if) the homeowner obtains a reduction in outstanding principal, they will also enter into a SAM with NSP. The SAM is a second mortgage with no funds advanced, no interest rate or finance charge, and no regular payments, that gives NSP a right to receive a percentage of the property's equity, if and to the extent the property appreciates in value between the date of consummation and the date on which the Aura loan is paid off or refinanced. The appreciation percentage that NSP is entitled to is tied to the reduction in principal of the homeowner's prior mortgage. Notably, NSP is only compensated when the homeowner has made a profit as a result of the transaction, because the SAM is only paid if the home appreciates in value from the price at which the homeowner repurchased the home, and only when the Aura loan is paid off or refinanced.

B. Necessity of the SAM to the SUN Program

The SUN Program would not be possible without the SAM, which arose as a policy compromise between BlueHub and mortgage lenders and servicers, with assistance from the Massachusetts legislature. By way of background, lenders and servicers are extremely reluctant to have a foreclosed property be returned to the defaulting borrower because of the perceived "moral hazard"—namely, that selling the property back to the borrower at a much lower price would encourage borrowers to intentionally default on their existing mortgages. For this reason,

[6] The interest rate on the Aura mortgage is 7% for loans below $450,000 and 7.25% for loans of $450,000 or more, just slightly above the average rates for homeowners who are not in foreclosure (~6.75%).

after BlueHub introduced the SUN Program, lenders and servicers would require an "arms' length affidavit," promising that the property would not be sold back to the previous homeowner and that the previous homeowner would not be permitted to occupy the property.

The fear of "moral hazard" and demand for an "arms' length affidavit" made the SUN Program unworkable, as its entire purpose was to keep distressed homeowners in their homes. In search of a solution, in 2012 BlueHub approached the Massachusetts legislature and sought a statutory amendment that would allow non-profits to run programs like the SUN Program. The success of this endeavor required negotiations and alignment between various parties, including mortgage lenders, servicers, the legislature, and the Massachusetts Bankers Association ("MBA")—an industry group representing more than 120 commercial, savings, and cooperative banks and federal savings institutions throughout Massachusetts and New England. As part of these negotiations, BlueHub was required to obtain the MBA's consent for any legislative solution to be approved.

During negotiations, SAMs were presented as a way to address "moral hazard" concerns. In particular, BlueHub was able to convince the MBA that adding a SAM to the transaction would dissuade borrowers from intentionally defaulting on their existing mortgage because they would now be required to agree to an additional obligation when repurchasing their property, if they did so for a price less than their current mortgage debt. As stated in a March 7, 2023 statement provided by the MBA recounting the history of the 2012 legislation:

> In 2012, MBA worked closely with the legislature to address unlawful and unnecessary foreclosures as many homeowners faced significant challenges affording their mortgages during the housing crisis (See Chapter 194 of the Acts of 2012). At the time, mortgage lenders were unwilling to sell homes to nonprofit programs because of a moral hazard problem. . . . Ultimately, MBA worked to find a solution–a requirement that borrowers share future potential appreciation with their nonprofit partners in exchange for a reduction of their mortgage principal—that made lenders willing to sell to the nonprofit institutions. *This was a critical element to the compromise and without the shared appreciation component we were not comfortable working with nonprofits to sell homes back to the homeowner*.[7]

As noted by the MBA, in 2012 the Massachusetts legislature enacted Section 35C(h) of Chapter 244 to the Massachusetts General Laws ("M.G.L. Ch. 244") as a result of these negotiations, providing that "[i]n all circumstances in which an offer to purchase either a mortgage loan or residential property is made by [a non-profit organization], no creditor shall require as a condition of sale or transfer to any such entity any affidavit, statement, agreement or addendum limiting ownership or occupancy of the residential property by the borrower . . . ."[8]

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[7] *See* **Exhibit B** (MBA, *Statement of the MBA in Support of HD 3467/SD 1216, An Act Protecting Homeowners from Unnecessary Foreclosures* (Mar. 7, 2023) (emphasis added)).

[8] *See* St. 2012, c. 194, § 2, (creating M.G.L. Ch. 244 § 35C) (Nov. 1, 2012).

While the concept of a SAM was not included in the 2012 legislation, as noted by the MBA, it was a "critical" component to passing the legislation and allowing programs like the SUN Program to work. Accordingly, in late 2024, the SAM was added to M.G.L. c. 244 § 35C, which now expressly permits the use of SAMs by non-profit organizations when certain disclosures are provided.[9] As stated in the bill that first introduced this legislation, the reason for the legislation was "to codify existing law and ensure that homeowners receive the protection intended by the legislature to avoid unnecessary foreclosures."[10] Importantly, the SAM is tied to the actual benefit that the homeowner receives—a fact that was a key component to the legislature's passage of the legislation described above.

C. SUN Program Disclosures

As noted above, the SUN Program's application, origination, and underwriting processes typically take several months or more, thus giving BlueHub ample time to disclose and discuss all terms, conditions, and other aspects of the program with applicants to ensure they are well-informed and knowledgeable before entering into an agreement. A complete list of the disclosures provided by BlueHub at the time of application is included in **Exhibit C**, while **Exhibit D** includes a complete list of the disclosures provided at closing. Among others, the disclosures include documents required by federal law, such as the Loan Estimate and Closing Disclosure, and various documents explaining how the SUN Program works and its terms and conditions. Participants also receive a description of the relationship between BlueHub, Aura, and NSP in the "How Our Program Works" document, Privacy Policy, and Affiliated Business Relationship Disclosure.

Applicants also have several opportunities to speak directly with BlueHub, Aura, and NSP representatives about the SUN Program. For example, applicants speak over the phone with a licensed MLO during the prequalification and application stages, often on multiple occasions, to discuss the terms and conditions. After pre-approval, additional disclosures are sent to applicants which are discussed during a mandatory phone call with a BlueHub representative. Further, applicants are required to meet with a negotiator before NSP begins its negotiations. At closing, applicants meet with a BlueHub representative to further discuss terms and conditions and ask any questions that they may have.

With respect to the SAM in particular, BlueHub provides information regarding the SAM in its promotional materials, in its initial disclosures provided at application, during the prequalification and application phone calls, prior to NSP commencing its negotiations, and in its closing documents provided prior to closing. Detailed information regarding the SAM is provided in the following documents, examples of which are enclosed with this submission:

- **How Our Program Works (Exhibit E)**, is provided at application (which is at minimum two months before closing). Among other things, this informs applicants of the SAM requirement and provides a brief explanation of the SAM stating: "You will need to sign

[9] M.G.L. Ch. 244 § 35C(i)(2).

[10] *See* Mass. H.B. 1404 (193rd Gen. Ct. 2023-2024).

an additional Mortgage and Note at your closing called a 'Shared Appreciation Mortgage and Note.' These require that any increase in the value of your property at the time of a future sale or refinance is shared between you and our program based on how much we are able to lower your mortgage payment."

- **How the Shared Appreciation Mortgage Works (Exhibit F)**, is also provided at application and must be signed by the applicant. This provides a detailed explanation of the SAM, including specifics concerning how the amount of appreciation will be determined and how NSP's and the applicant's shares will be calculated.

- **Purchase and Sales Agreement (Exhibit G)**, is provided after an application is approved and must be signed by the applicant (which is at minimum one month before closing). Approved applicants receive two of these documents—one pertaining to NSP's purchase of the property and one pertaining to NSP's resale of the property to the applicant. The resale agreement describes the SAM requirement, stating: "It is specifically understood and agreed that the BUYER has been pre-approved by Aura Mortgage Advisors LLC for a mortgage loan . . . at the rate, terms, and conditions as set forth in the documents that have been provided to the BUYER, including also such documents as to the requirement for and terms of the Shared Appreciation Mortgage."

- **SAM Estimate Percentage Disclosure – Offer Made (Exhibit H)**, is provided prior to negotiations commencing and must be signed by the applicant. Prior to any offer being made for NSP to purchase their home. This provides the closest approximation of NSP's and the applicant's appreciation shares based on the offer amount made and the information contained in the file regarding the applicants prior mortgage principal balance, with an example payoff amount estimate based on a hypothetical $100,000 in appreciation.

- **SAM Estimate Percentage Disclosure – Offer Accepted (Exhibit I)**, is also provided prior to negotiations commencing, and must be signed by the applicant, at a minimum, a month to a few weeks before closing. This provides estimates of NSP's and the applicant's appreciation shares based on the offer amount accepted, with an example payoff amount estimate based on a hypothetical $100,000 in appreciation.

- **How the Shared Appreciation Mortgage Works (Exhibit J)**, is provided prior to closing and must be signed by the applicant at closing. This is very similar to the "How the Shared Appreciation Mortgage Works" document provided at application and reiterates much of the information contained therein.

In addition to the information described above, in late 2020 BlueHub began developing a set of six educational videos that provide comprehensive but easy-to-understand information about the SUN Program.[11] This includes a video dedicated to the SAM, titled "Spotlight on SUN: Sharing the Value," which explains how the SAM works and is calculated and what the borrower's

[11] *See* BlueHub Capital YouTube Page, available at https://www.youtube.com/@bluehubcapital3568/videos.

obligations are. Before allowing applicants to enter into the SUN Program, BlueHub requires that they sign a "Spotlight on SUN Acknowledgement," acknowledging that they have watched these videos.

BlueHub spent considerable time and resources developing the SAM-related disclosures and videos described above—despite the absence of any federal or state law requirement to do so—because of its desire to ensure consumers are fully informed before entering into any agreements as part of the SUN Program. We believe that these disclosures provide an example of the types of disclosures that should be required by the Proposed Regulations and welcome the opportunity to work with the AGO to further develop the disclosure requirements in a way that best serves Massachusetts homeowners.

D. Benefits of the SUN Program

Since launching in 2009, the SUN Program has helped stabilize over 1,200 families with approximately 1,000 loans that have totaled over $210 million. Of these loans, 63% are to people of color and 23% are to single female heads of household. In addition, 458 borrowers, or 44% of SUN Program participants, have repaid their Aura loan and SAM (if applicable), and now have access to 100% of the equity in their homes.

Importantly, homeowners facing foreclosure end up in a significantly better position by taking advantage of the SUN Program compared to their alternatives (*e.g.*, experiencing foreclosure and eviction, receiving negative credit reporting, struggling to find a new place to live and raise a family). The community at large is also served by the SUN Program, due to the reduction in vacant homes, blight, crime, and avoidance of the corresponding decrease in property tax revenue through the decrease in home values caused by foreclosures and evictions in a community. In addition to the innumerable non-financial benefits that SUN Program participants receive by not experiencing foreclosure and eviction and by keeping themselves and their families in their homes, the SUN Program offers the following key financial benefits:

- **Mortgage Loan Principal Balance Reduction**. Participants frequently have large decreases in principal balance, often in the six-figure range. Since 2009, participants have received an average 28% reduction in principal balance, with total reductions amounting to $75 million.

- **Monthly Mortgage Payment Savings**. Participants also frequently benefit from a substantial reduction in the amount of their monthly mortgage payment. Since 2009, there has been an average 17% reduction in monthly housing expenses, amounting to an average of $526 in savings per participant per month. In total, the SUN Program has reduced monthly mortgage payments by $54 million.

- **Building Home Equity**. The SUN Program creates an otherwise unavailable opportunity for participants to build equity in their homes. Many participants begin the program with negative equity (*i.e.*, the outstanding principal balance of their existing mortgage, in

addition to late fees, foreclosure fees, unpaid interest, etc., exceeds the market value of their homes). Through the program, participants are fully released from their existing mortgage and the new mortgage does not exceed the value of their home, thereby allowing participants to start fresh, akin to a Chapter 7 bankruptcy discharge, and immediately begin building equity, rather than having to dig out of their current financial hole. Since 2009, participants have retained an average of $152,000 in equity after paying off or refinancing their Aura loans (compared to zero or negative equity, or full loss of title, before entering the SUN Program). In total, participants have retained $69.2 million in equity, and there is currently $110 million in equity that will be available to participants if or when they pay off or refinance their Aura loans. None of this equity would have been available to any of these participants were it not for the availability of the SUN Program.

- **Avoiding Prior Mortgage Liabilities**. As noted above, participants are fully released from the liabilities associated with their existing mortgage, which includes the outstanding principal balance, unpaid interest, and any associated fees. These liabilities are often large and an overwhelming burden to participants, which the SUN Program helps them to avoid.

- **Improvement to Credit**. Rather than having a foreclosure or charge-off on their credit report, more than 40%of participants have substantially improved their credit by participating in the SUN Program. This has allowed them to exit the program and sell their home or refinance their mortgage and enter the conventional mortgage market.

While there are hundreds of examples of homeowners benefitting from the SUN Program, the following bullets provide details of one participant's experience in the SUN Program to demonstrate how significant the program can be for an individual's life.

- **$189,500 principal balance reduction**. The participant entered the SUN Program with a principal mortgage balance of $564,500 and through the program received a new balance of $375,000, resulting in a $189,500 reduction.

- **$932 monthly mortgage payment reduction**. The participant entered the SUN Program with a $3,432.98 monthly mortgage payment and through the program received a new monthly payment of $2,509.93, resulting in a $923.05 monthly reduction.

- **$248,760 positive difference in equity**. The participant entered the SUN Program in 2015 with $189,500 in negative equity and exited in 2017 with $59,185 in positive equity (after paying the SAM), resulting in a positive difference of $248,685.

- **$53,460 share in home appreciation at payoff**. The appraised value of the participant's property at the time of the Aura loan closing was $375,000. When the Aura loan was paid off in 2017, the appraised value was $456,000, representing $81,000 in appreciation. Under the SAM, NSP was entitled to 34% of the appreciation and the participant was entitled to 66%, such that NSP received $27,540, while the participant received $53,460.

If the homeowner described above had not participated in the SUN Program, they would have lost their home, had no equity, had a foreclosed or charged-off mortgage on their credit report, faced potential collection activity, and been forced to find a new home, likely in a difficult rental market, facing a long road to becoming credit worthy again to buy a new home. There is no question that this homeowner—like numerous others who have participated in the SUN Program—was better off by participating in the program.

E. BlueHub SUN Financials

While the SUN Program provides clear financial and other benefits to distressed homeowners, it does not result in financial gain for BlueHub or its investors. Indeed, the SUN Program's combined financial statements show that since 2009, the SUN Program has not generated a profit cumulatively to offset BlueHub and affiliates total investment in the initiative. Rather, neither BlueHub nor the SUN Program's primary equity investors have received any positive return on their invested capital or even the return of their initial capital investment (however, debt investors have been paid their interest and principle payments, as agreed). Total revenue for the SUN Program does not even cover ongoing expenses, much less permit BlueHub to repay its investors or recoup and repurpose its own up-front investment into other programs.

Although BlueHub's goal has been for the SUN Program to become self-sustaining, even that more limited goal has not yet been attained. BlueHub began the SUN Program to help build healthy communities where low-income people live and work, and despite the SUN Program's financial challenges, BlueHub intends to continue pursuing this goal because of the immense benefit it provides to Massachusetts' families and neighborhoods. To BlueHub's knowledge, no other entity in Massachusetts provides a program or service like the SUN Program. No other entity is serving the population that BlueHub is serving. In an economy where every successful business model is duplicated and each perceived opportunity for profit taken advantage of, that BlueHub stands alone in providing a program like the SUN Program evidences its motives are not in profit-seeking.

F. Litigation, Complaints, and Regulatory Oversight

Despite the SUN Program's proven track record of helping distressed homeowners, BlueHub has been made the target of unfair and unsubstantiated attacks because of this program. In particular, there is currently a single lawsuit pending in Massachusetts state court concerning the SUN Program that is being backed by an individual who has publicly targeted BlueHub on several occasions. While this litigation has led to unfavorable media coverage, BlueHub strongly believes it has legal grounds to prevail and has been vigorously defending against plaintiffs' claims. We are also aware that the AGO and MA DOB began receiving consumer complaints concerning the SUN Program in October 2020, which arose directly from the litigation. It is our understanding that over 30 complaints have been filed with the AGO and almost 20 have been filed with the MA DOB, many of which are dated within a single 90-day period. BlueHub has fully investigated and responded to each complaint, and neither BlueHub nor the regulatory agencies that received the complaints have found any evidence of wrongdoing. Indeed, both the

AGO and MA DOB have dismissed or closed each of the complaints in BlueHub's favor. Moreover, the MA DOB has explicitly found "no wrongdoing," and responded to one complaint with the statement:

> It appears that all proper documentation of the Aura Mortgage loan and the SAM were discussed with and disclosed to [the complainant] throughout the loan origination, negotiation and loan closing process. The records of BlueHub illustrate that [the complainant] received and signed all proper disclosures agreeing to the terms of the SUN Program.

The SUN Program has also been examined by regulators in Illinois, Michigan, New Jersey, and Pennsylvania, None of these examinations have resulted in significant findings.

III. PROPOSED SAM REGULATIONS

As noted in the introduction, we have reviewed the Proposed Regulations and have several comments, concerns, and suggestions. Generally, it appears that the Proposed Regulations were informed by the attorney currently suing BlueHub in the litigation described above. Indeed, the proposals would support that attorney's arguments in the litigation, exceed the scope of, or outright contradict, the legislation, and make it impossible for any institution to provide SAMs in Massachusetts. We believe this runs counter to the language and spirit of the SAM legislation signed by the Governor last year.[12] In particular, the legislation recognizes the importance of SAMs in helping homeowners avoid foreclosure by enabling their use by non-profit institutions, subject to appropriate disclosure requirements.[13] As stated in the bill that initially introduced this legislation, its purpose "is to codify existing law and ensure that homeowners receive the protection intended by the legislature to avoid unnecessary foreclosures."[14] Further, the Proposed Regulations seek to undo the immunity provided for in the legislation and the well-established exemption for non-profits from M.G.L. Ch. 93A. While the legislation allows the AGO to "promulgate rules and regulations to implement" the SAM requirements, it does not contemplate the wholesale elimination of the use of SAMs.[15]

Moreover, eliminating SAMs would be to the substantial detriment of Massachusetts homeowners, particularly those in need of financial assistance and at risk of foreclosure. This is in large part because of the significant housing supply and affordability problems in Massachusetts. For example, Realtor.com recently issued an "F" grade to Massachusetts for its housing affordability and homebuilding, making it one of only seven states to receive a failing

[12] *See* St. 2024, c. 238, § 269 (amending M.G.L. c. 244 § 35C) (Nov. 20, 2024).

[13] M.G.L. Ch. 244 § 35C(i)(2).

[14] *See* Mass. H.B. 1404 (193rd Gen. Ct. 2023-2024).

[15] M.G.L. Ch. 244 § 35C(i)(5).

grade.[16] Massachusetts also suffers from a shortage of affordable rental housing. Indeed, data from the National Low Income Housing Coalition shows that Massachusetts has a shortage of more than 183,000 affordable rental homes that are available for extremely low-income renters.[17] These factors make it incredibly difficult for individuals who are evicted from their homes to find a new and affordable place to live.

As described above, the SUN Program is one of the only programs giving distressed homeowners an opportunity to avoid foreclosure and remain in their homes. Eliminating the use of SAMs would effectively eliminate this program, thereby removing one of the few realistic ways for Massachusetts homeowners to avoid foreclosure. Because of the limited housing supply and bleak rental options in the state, Massachusetts residents would likely end up with nowhere to live.

We recognize the need for regulation of SAMs, but believe certain aspects of the Proposed Regulations are unnecessary and misguided. We request that the AGO consider removing or revising certain aspects of the Proposed Regulations after reviewing this submission and considering the issues raised herein. Ultimately, we hope to align on regulations that achieve the goal of ensuring borrowers understand what a SAM is and what they are agreeing to, while also allowing institutions like BlueHub to continue supporting homeowners in need.

A. Disclosure Requirements

The majority of our concerns relate to the disclosure and timing requirements included in Section 39.04 of the Proposed Regulations, many of which both conflict with federal law and would be impossible to meet. We believe that implementing regulations requiring clear and thorough SAM disclosures can be done in a way that does not conflict with federal law and that is practically feasible. For example, as described in detail above, BlueHub has been providing comprehensive disclosures for the SUN Program (including with respect to the SAM) for years. While there may be room to improve these disclosures, we believe that they can serve as a framework for developing appropriate disclosure requirements.

1. Conflicts with TRID Disclosure Requirements.

The Proposed Regulations' disclosure requirements conflict with both the Truth in Lending Act ("TILA") and Real Estate Settlement Procedures Act ("RESPA"). In particular, the proposals specify the manner in which the SAM should be disclosed in the TILA-RESPA Integrated Disclosures ("TRID") for the "first mortgage," but these specifications are directly contrary to the clear provisions of TILA and its Official Commentary. Thus, it would be impossible for BlueHub or any similar institution to comply with the Proposed Regulations without violating federal law.

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[16] *See* Grant Welker, *Realtor.com Gives Massachusetts Failing Grade for Housing Production*, Boston Business Journal (Apr. 28, 2025), available at https://www.bizjournals.com/boston/news/2025/04/28/why-mass-got-an-f-in-housing-report.html.

[17] *See GAP Report – Massachusetts*, National Low Income Housing Coalition, available at https://nlihc.org/gap/state/ma.

As a general matter, Regulation Z provides that "[s]tate law requirements that are inconsistent with" TILA and Regulation Z "are preempted to the extent of the inconsistency" and that "[a] state law is inconsistent if it requires a creditor to make disclosures or take actions that contradict" federal requirements.[18] As described below, the Proposed Regulations seek to substitute Massachusetts' own disclosure for what Regulation Z requires for first mortgage loans. While a state can substitute its own disclosure for a federal disclosure when the state disclosure is "substantially the same in meaning," the state can only do so "*after* the [CFPB] has made a finding of substantial similarity."[19] We are not aware that Massachusetts has asked the Consumer Financial Protection Bureau ("CFPB") for such a finding here. In any event, the CFPB will not even consider a state-proposed disclosure when it relates "to the finance charge [or] annual percentage rate," such as the disclosure required by the Proposed Regulations.[20]

As demonstrated below, there are several key conflicts between the Proposed Regulations and TILA and Regulation Z, such that the implementing the Proposed Regulations in their current form would require institutions like BlueHub to violate federal law while also necessarily creating federal preemption issues.

a) The Proposed Regulations would require that the SAM be included in the TRID disclosures, but under TILA a SAM is not "credit" and therefore cannot (and should not) be disclosed as such.

Section 39.04(3) of the Proposed Regulations requires that the SAM be included in the TRID disclosures for the first mortgage. In particular, it states that "the TRID disclosure for the first mortgage should be based on Model Form H24(E) in Reg. Z, which shows a loan with a balloon payment, in order to show the effect of the shared appreciation mortgage."[21]

As explained by Regulation Z, the TRID disclosures are used to disclose the terms of credit. While the Regulation Z Official Commentary states that certain SAMs are variable-rate transactions that must be included in the TRID disclosures, Comment 17(c)(1)-11(ii) clarifies that this is only the case when the SAM has "a fixed rate of interest" and where the "appreciation share is payable in a lump sum at a specified time."[22] For these types of SAMs, the "[d]isclosures must be based on the fixed interest rate."[23]

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18 12 C.F.R. § 1026.28(a)(1).

19 *See* Cmt. 28(b)-1 (emphasis in original); 12 C.F.R. § 1026.28(b).

20 12 C.F.R. § 1026.28(b); Cmt. 28(b)-1 ("Since the rule stated in § 1026.28(b) does not extend to any requirement relating to the finance charge or annual percentage rate, no state provision on computation, description, or disclosure of these terms may be substituted for the Federal provision."); *cf.* Proposed Regulations (attempting to prescribe how to calculate the "APR, Total of Payments," and "Projected Payments").

21 940 C.M.R. 39.04(3).

22 Cmt. 17(c)(1)-11(ii) (emphasis added).

23 *Id.*

With respect to the SAMs that are part of the SUN Program, there is no fixed interest rate and there is no payment due at a specified time. The Official Commentary goes on to note that "other types of shared-equity arrangements" such as the SUN Program's SAM, "are not considered 'credit' and are not subject to Regulation Z."[24] Accordingly, the SAMs provided through the SUN program cannot be included in the TRID disclosures without violating Regulation Z and the plain language of its binding Official Commentary.

b) The Proposed Regulations would require the SAM to be included in the same disclosures as the first mortgage, but this is prohibited by TILA.

As noted above, section 39.04(3) of the Proposed Regulations requires that the SAM be included in the TRID disclosures for the first mortgage. However, under the SUN Program, the first mortgage and the SAM are issued by two separate entities (Aura and NSP, respectively). As an initial matter, we note that NSP is not a "creditor" as defined in 12 C.F.R. § 1026.2(a)(17)(i), because NSP does not regularly extend consumer credit. Moreover, NSP does not extend credit by providing the SAM because, unlike a loan, NSP advances no funds to SUN Program participants at any point in the process nor does it impose any finance charge.

Even if the SAM were considered an extension of credit (which is it not), TILA would not permit the SAM and first mortgage to be included in the same TRID disclosures because Regulation Z only permits multiple creditors to provide one set of disclosures when there is only one transaction.[25] Here, the SUN Program clearly involves two separate and distinct transactions. One is the mortgage loan transaction with Aura, wherein Aura provides the mortgage loan amount that enables a participant to purchase the property at issue. The second is the purchase and sale transaction with NSP, wherein NSP arranges for a full release of a participant's prior mortgage debt by purchasing the property, then resells the property to the participant for less than their prior mortgage debt, which is in exchange for the participant paying the newly-negotiated lower price and entering into the SAM (if applicable). Including both the transaction with Aura and the transaction with NSP on the same TRID disclosures would violate TILA and Regulation Z because these federal requirements do not permit two transactions to be included in one disclosure.[26]

c) The Proposed Regulations would require the SAM to be disclosed as if it reached the "maximum" at some point in the future, directly contradicting TILA's requirement to disclose information as it exists at the time of consummation.

Section 39.04(3) of the Proposed Regulations seeks to treat the maximum SAM amount as a "fully indexed rate." In particular, it requires that "[i]n the 'Projected Payments' section [of the TRID disclosures], the disclosure should show the maximum shared appreciation mortgage payment + the last monthly payment as the final payment," and that "[t]he APR, Total of Payments,

[24] *Id.*

[25] *See* 12 C.F.R. § 1026.17(d); Cmt. 17(d)-1.

[26] Even where a single creditor makes two extensions of credit at the same time, the creditor has the option of combining the two transactions into a single disclosure or disclosing them separately. *See* Cmt. 17(c)(1)-16.

and other TILA disclosures should be calculated assuming the shared appreciation portion reaches the cap, so the Borrower must make the maximum payment (like a fully-indexed rate)."[27]

This requirement contradicts the term "fully indexed rate" in Regulation Z, which is defined as "the interest rate calculated using the index value and margin at the time of consummation."[28] According to this definition and the Regulation Z Official Commentary, the "fully indexed rate" for the SAM, even if it were credit, would be the same as the starting value at the time of closing, and therefore would be disclosed as zero.[29] Thus, disclosing the potential maximum amount in the TRID disclosures would directly violate TILA.

d) The Proposed Regulations would require the SAM to be disclosed as a "balloon payment," but the SAM does not meet TILA's definition of "balloon payment" and attempting to disclose it as such would violate TILA.

Section 39.04(3) of the Proposed Regulations states that the SAM must be included on the TRID disclosures for the first mortgage, which "should be based on Model Form H-24(E) in Reg. Z, which shows a loan with a balloon payment," and that the disclosures "should say 'Yes' for 'Balloon Payment'" in the Loan Terms section.[30] However, the payment obligation under the SUN Program's SAM is not a "balloon payment" as TILA uses that term. In particular, as demonstrated by both Regulation Z and Form H-24(E), in order to disclose a balloon payment, the TRID disclosures require that the date of the balloon payment be provided. For example, Regulation Z states that when providing the Loan Estimate for a transaction with a balloon payment, the "due date of such payment" must be disclosed.[31] Similarly, Form H-24(E), titled "Mortgage Loan Transaction Loan Estimate – Balloon Payment Sample," requires the creditor to include the year in which the balloon payment "will" be due.[32] Further, the Official Commentary explains that if a loan product includes a balloon payment, the TRID disclosures must include "the balloon payment feature, including the year the payment is due."[33]

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27 940 C.M.R. 39.04(3)(c), (d).

28 *See* 12 C.F.R. § 1026.37(b)(2) (emphasis added); 12 C.F.R. § 1026.18(s)(7)(vi) ("The term 'fully-indexed rate' means the interest rate calculated using the index value and margin at the time of consummation.").

29 *See also* Cmt. 17(c)(1)-8 ("the disclosures for a variable-rate transaction must be given for the full term of the transaction and must be based on the terms in effect at the time of consummation. Creditors should base the disclosures only on the initial rate and should not assume that this rate will increase.") (emphasis added).

30 940 C.M.R. 39.04(3)(b).

31 12 C.F.R. § 1026.37(b)(7)(ii).

32 *See* App. H to Part 1026, Model Form H-24(E) Mortgage Loan Transaction Loan Estimate - Balloon Payment Sample (hereinafter "Form H-24(E)").

33 Cmt. 37(a)(10)-2.iv. The "Projected Payments" requirements in Regulation Z reinforce this requirement, as they require creditors to itemize separate periodic or ranges of payments in a table, including "[a] scheduled balloon payment." *See* 12 C.F.R. § 1026.37(c)(1)(i)(B).

Here, however, the date on which the consumer "will have to pay" the SAM is unknown, and unknowable, when the TRID disclosures are provided. Instead, the payment is owed at a time largely of the SUN Program participant's choosing, specifically whenever the participant pays off or refinances the first mortgage, and the homeowner will have no obligation to pay anything under the SAM unless the property has appreciated in value since the time of closing of the SUN Program transaction. It is not possible to comply with the requirements in TILA and Regulation Z for disclosing the SAM as a "balloon payment," as the Proposed Regulations incorrectly suggest that the SAM is, because at consummation it is impossible to know when (or even if) the SAM payment will be due.

This conflict between the Proposed Regulations and TRID is made more clear by comparing the Proposed Regulations with Form H-24(E), which notably the Proposed Regulations seek to incorporate. In the balloon payment section of Form H-24(E), creditors must indicate "Yes" and fill in the following sentence: "You will have to pay $____ at the end of year __."[34] The Proposed Regulations would impermissibly alter this form in two significant ways. First, they require that, rather than stating "You will have to pay," the form state "You may have to pay."[35] Second, instead of only providing the year in which the balloon payment will be due, they require that the form state that the maximum amount that the borrower "may" have to pay would, possibly, be due "at the end of the term of the shared appreciation mortgage at year __."[36] As an initial matter, it would be impossible for BlueHub to provide this information for the reasons discussed above (*i.e.*, the date on which the SAM will be payable (if at all) is completely unknown). More problematic, substitutions, insertions, or other alterations of the H-24 forms are not permitted when, as the Proposed Regulations assume, the financing is a "federally related mortgage loan" ("FRML").[37] Only in the case of a non-FRML may a TRID disclosure be merely "substantially similar" to an H-24 form.[38]

The balloon payment requirements in TILA and Regulation Z make it clear that a SAM that is payable at an unknown time in the future in an unknown amount (if any) is not a "balloon payment," and thus the Proposed Regulations' requirement that the SAM be included in the TRID disclosures as a balloon payment would both violate TILA and require impermissible changes to Form H-24(E).

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34 Form H-24(E).

35 940 C.M.R. 39.04(3)(b).

36 *Id.*

37 12 C.F.R. § 1026.37(o)(3)(i) (stating that disclosures for FMRLs "must be made using form H-24"); *see* Cmt. 37(b)(7)(ii)-1 ("A creditor complies with the requirement under § 1026.37(b)(7)(ii) to disclose additional information indicating the maximum amount of the balloon payment and the due date of such payment using the phrases 'You will have to pay" and "at the end of.' See form H-24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans.").

38 12 C.F.R. § 1026.37(o)(3)(ii).

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2. Additional Conflicts with Federal Law and Operational Reality.

Section 39.04(1) requires that the "Notice of Shared Appreciation Mortgage Agreement," (the "SAM disclosure") be provided "at least fourteen (14) days prior to the closing," while also requiring that it be provided "at the same time as the [TRID disclosures] for the first mortgage." It is not possible to meet these requirements for several reasons, which would lead to inevitable violations of the Proposed Regulations.

First, Regulation Z requires that the Loan Estimate ("LE") (which is part of the TRID disclosures) be issued within 3 business days of application.[39] It would be impossible to also provide the SAM disclosure at this time—as the Proposed Regulations require—due to the Proposed Regulations' requirements for the SAM disclosure. For example, the SAM disclosure must include the amount that the participant's prior mortgage has been reduced, which determines the percentage of shared appreciation. However, it is impossible to know this number within 3 business days of application, because at this point the participant's prior mortgage loan would not have been paid off. That event occurs only after negotiations between NSP and the current mortgage holder, which are never concluded within 3 business days of a borrower's application for the SUN Program.

The SAM disclosure must also include the maximum payment amount of the SAM, but the Proposed Regulations provide no guidance on how to set this maximum payment amount, and the concept of a maximum payment amount is outside the scope of the legislation. Further, it would be impossible to know the "Starting Value" necessary to calculate this amount because of how the Proposed Regulations require that the Starting Value be calculated. In particular, the Starting Value is (a) the actual fair market value ("FMV") of the property as of the SAM origination, (b) the original principal balance of the new first mortgage, or (c) the purchase price of the property by the borrower.[40] These numbers are not known until months after the application date, and often not until immediately before closing. For example, with respect to (a), it would be impossible to know the FMV of the property as of the SAM origination within 3 business days of application because the SAM origination typically does not occur until many months after application.[41] With respect to (b), the new first mortgage amount is often not set until just several days before closing, such that the maximum payment amount (which requires a set new first mortgage amount) can neither be provided with the LE—within 3 business days of application—or at least 14 days prior to closing, both of which the Proposed Regulations require.[42] Accordingly, issuing the SAM disclosure at the same time as the LE, as required by Section 39.04(1), is not possible (which is

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39 12 C.F.R. § 1026.19(e)(1)(iii).

40 940 C.M.R. 39.02(8).

41 We also note that FMV is not defined in the Proposed Regulations, and appraisals to determine FMV can often be weeks or months old due to the time it takes to negotiate and finalize the transaction. The regulations should define this term to account for these variables and avoid regulatory uncertainty.

42 In addition, borrowers often add costs to their loans (*e.g.*, repairs, lien payoffs) that are unrelated to the property value, thus making the loan amount inappropriate for determining the baseline for appreciation. As such, we propose removing this from the potential "Starting Value" calculation.

one of the reasons why BlueHub attempts to explain the SAM and provides examples of SAM calculations during the application process).

Second, the Closing Disclosure ("CD") (which is also part of the TRID disclosures) is typically provided 3 days prior to closing rather than 14, and in fact is only required to be provided no later than 3 business days before closing.[43] Providing the CD this close to the closing date is necessary due to the complexity of most closings associated with a SAM and the various scenarios that can cause the loan amount to change up until closing. For example, borrowers often have multiple liens that require payoffs, which are difficult to obtain until right before closing. These payoffs often result in the loan amount changing, which triggers a new CD. In addition, property tax information from title companies is often unavailable until near closing. In some cases, property tax payments are rolled into a loan, thereby changing the loan amount and triggering a new CD. Further, borrowers often utilize a "holdback," whereby loan proceeds are disbursed after closing to pay for necessary property maintenance, but repair estimates are frequently not available until right before closing. These repair costs could change the loan amount, thus triggering a new CD. For these reasons, it is impossible to provide the SAM disclosure at least 14 days prior to closing while also providing it at the same time as the CD.

B. Servicing Requirements

Although the Proposed Regulations are not completely clear, it appears that Section 39.05 requires periodic statements for the SAM that meet TILA requirements. If this is the case, it would be impossible to comply with this requirement. In particular, the servicer would be required to provide the SAM payment due date and amount due on periodic statements,[44] but neither of these pieces of information is known until the first mortgage is paid off or refinanced. With respect to the amount due, the only possible option would be to constantly adjust the amount based on market conditions. In addition to violating the Regulation Z requirements set forth in § 1026.41 with respect to periodic statements, no servicer would agree to provide statements with this non-compliant information. This type of information would also mislead and confuse borrowers by providing them with "information" that has no meaning and would constantly change depending on the current housing market.

C. Reporting Requirements

Section 39.03(2)(f) of the Proposed Regulations includes robust reporting requirements relating to all SAMs on real property in Massachusetts, many of which are unclear or would be impossible to comply with. For example, they require reporting for "each shared appreciation mortgage loan or loan application," without requiring reporting for the first mortgage. However, it appears that reporting for the first mortgage is required based on some of the fields that must be provided, such as APR and "amount of the loan or the amount applied for." If these requirements relate only to SAMs, then this information cannot be provided because a SAM does not have an

[43] 12 C.F.R. § 1026.19(f)(1)(ii).

[44] *See* 12 C.F.R. § 1026.41(d)(1).

APR or loan amount. In addition, the reporting requires information for all SAM applications, but many of the fields required would be unavailable for applications that are incomplete, withdrawn, or denied, (*e.g.*, FMV of property, starting value of SAM, amount mortgage debt reduced). Further the Proposed Regulations provide for reporting of the "gross and net proceeds from each loan," but the only loan involved in the SUN Program is the Aura first mortgage, and it is unclear how BlueHub could report the "gross and net proceeds" from these loans, or how these amounts would be calculated. The Proposed Regulations should specify what information is required for SAMs vs. first mortgages and consummated transactions vs. applications, and include guidance regarding the flexibility provided by the AGO in overseeing reporting requirements. As with the other aspects of the Proposed Regulations, BlueHub is ready to work with the AGO to arrive at reporting requirements that are clear and provide meaningful information to the AGO.

D. High-Cost Loans and Programmatic Impossibilities

Aside from the issues described above and inevitable conflicts with federal law, implementing the Proposed Regulations in their current form would make SAMs (and in particular the SUN Program) both impossible and impractical to run. In particular, Section 39.04(3)(d) of the Proposed Regulations requires that the SAM be incorporated into the calculation of the APR for the first mortgage TRID disclosures, with the required assumption that the shared appreciation portion will reach the cap. But even if this were permissible under TILA (which it is not), if BlueHub were to do this, it would artificially inflate the first mortgage APR resulting in a high-cost mortgage.[45] Importantly, Regulation Z prohibits balloon payments from being included in a high-cost mortgage.[46] However, as discussed above, the Proposed Regulations mandate that the SAM be included in the first mortgage TRID disclosures as a balloon payment. The Proposed Regulations thus create a paradoxical loop that renders them internally inconsistent and impossible to comply with.

Moreover, if BlueHub violated TILA by following the Proposed Regulations, it would be difficult or impossible to sell or pledge loans that also include a SAM to investors (without heavily discounting the loans) because of their high-cost nature. Virtually no investors will purchase high-cost mortgage loans because TILA makes secondary purchasers of such loans liable for undetectable errors made by the originator.[47] This would likely put the SUN Program out of business and would certainly increase the cost of these loans for consumers, thereby defeating the purpose of the product and the legislation that seeks to support such products.

In any event, the idea of adding a hypothetical future "maximum" amount of the SAM into the finance charge and APR calculation on the TILA disclosures for the Aura loan also violates TILA's requirement that, for a variable-rate loan, the finance charge and APR are calculated based on what is payable at the time of consummation, without giving effect to future contingencies.[48]

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[45] *See generally* 12 C.F.R. § 1026.32.

[46] 12 C.F.R. § 1026.32(d)(1)(i).

[47] *See* 15 U.S.C. § 1641(d).

[48] *See* notes 28-29 above.

In the case of the SUN Program, measuring the amount owed under the SAM at the time of consummation would always result in that number being zero, and so it would not change the finance charge or APR disclosed for the Aura loan.

IV. Other States' SAM Regulations

We agree with the need for SAM regulations in Massachusetts, but believe that the SAM legislation and regulations of other states provide a more realistic and workable way to regulate SAMs than the requirements included in the Proposed Regulations. Notably, none of these require SAMs to be combined or provided with TRID disclosures. For example:

- Maryland regulations require a shared appreciation disclosure no later than 10 business days after the application is complete, but allow for a second disclosure if the terms of the agreement change, to be provided at least 72 hours before closing.[49] The regulations also provide concrete guidance for calculating property value, actual appreciation, and final payment amount.[50]

- Minnesota law requires disclosure of "the terms and conditions upon which the lender or mortgagee shall receive any share of future appreciation of the mortgaged property," but with respect to timing, the disclosure need only be provided "[b]efore the loan is made."[51]

- Washington law requires a SAM disclosure within 3 business days of receiving a SAM application. In addition to general information concerning the SAM (*e.g.*, conditions triggering duty to pay, procedures for including major home improvements), the disclosure must include information concerning the amount of the SAM payment. However, unlike Massachusetts' Proposed Regulations, the disclosure must provide "[t]he percentage of shared equity or shared appreciation [the provider] will receive (or a formula for determining it).[52]

The SAM legislation enacted by the Massachusetts legislature is consistent with these other states' laws, but the Proposed Regulations would put Massachusetts well out of step with these states. Accordingly, we believe it would be beneficial to analyze other states' methods for regulating SAMs prior to finalizing the Proposed Regulations.

V. CONCLUSION

Through the SUN Program, BlueHub has developed one of the most effective solutions in the country for helping homeowners avoid foreclosure, regain and retain homeownership, earn

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[49] *See* Md. Code Regs. § 09.03.15.01 *et seq.*

[50] *Id.*

[51] *See* Minn. Stat. § 47.20, subd. 4b(3).

[52] *See* Wash. Admin. Code § 208-620-510(6) (emphasis added).

equity and build generational wealth. Although there is a clear need for solutions that help homeowners facing foreclosure, very few institutions are serving this segment of the market. This is in large part due to the complexities involved with transactions like those under the SUN Program and the lack of profitability of such programs. Despite these difficulties, BlueHub is committed to operating the SUN Program and serving as a resource for homeowners in need.

BlueHub wants to work with the AGO to align on regulations that accomplish consumer protection goals without forcing BlueHub to discontinue the SUN Program in Massachusetts. We agree with the AGO that consumers should be well informed of what a SAM is and what the terms and conditions of any agreement that includes a SAM are before entering into such an agreement. However, the Proposed Regulations should be revised to accomplish these goals while also allowing for programs like the SUN Program to continue serving as a resource to homeowners in need. While the SUN Program already includes robust disclosures regarding the SAM and other aspects of the program, BlueHub welcomes the AGO's suggestions for improving those disclosures and looks forward to working with the AGO to create effective and workable SAM regulations.

Sincerely,

Chris Willis
Partner
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