TO: ALL APPROVED MORTGAGEES

ATTENTION: SINGLE FAMILY SERVICING MANAGERS

SUBJECT: LOSS MITIGATION PROGRAM - COMPREHENSIVE CLARIFICATION OF POLICY AND NOTICE OF PROCEDURAL CHANGES

The purpose of this mortgagee letter is to announce clarifications of policy and procedural changes in FHA’s Loss Mitigation Program and provide an updated consolidation of the existing program guidance.

BACKGROUND

After April 25, 1996, FHA ceased accepting applications for assignment of insured loans that had gone into default and initiated a comprehensive loss mitigation program to provide relief to borrowers in default. FHA’s Loss Mitigation Program returns responsibility for managing loan defaults to mortgagees, and provides financial incentives to recognize them for their efforts. Loss mitigation is considered critical to FHA because it works to fulfill the goal of helping borrowers in default retain home ownership while reducing, or mitigating the economic impact on the insurance fund.

The program includes five strategies to be used by mortgagees as they deem appropriate, based on an individual assessment of the borrower’s financial circumstances and the status of the loan. Three of the options (“reinstatement options”) promote retention of home ownership, while two assist borrowers in default transition to lower cost housing (“disposition options”).

This mortgagee letter provides a complete description of each option, identifies requirements for their use, and describes circumstances in which each may be appropriate. This issuance contains several clarifications of HUD policy. It replaces and supersedes the following mortgagee letters:
Mortgagee letter 97-43, FHA Loss Mitigation - Mortgage Modification Clarification
Mortgagee letter 96-32, Loss Mitigation - Mortgage Modification
Mortgagee letter 96-25, Existing Alternatives to Foreclosure

This mortgagee letter partially supersedes the following mortgagee letters:

Mortgagee letter 96-61, Loss Mitigation Procedures - Special Instructions
(Superseded and replaced, except for the loss mitigation claims instructions, which were changed by Mortgagee letter 99-27.)

Mortgagee letter 97-17, FHA Loss Mitigation - Clarification of Procedures
(Superseded and replaced, except for the model form of note(s) and subordinate mortgage provided, which remain unchanged and are still in effect.)
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EARLY DELINQUENCY (PRIOR TO 90 DAYS DELINQUENT) SERVICING REQUIREMENTS

As stated in Chapter 7 of HUD Handbook 4330.1, REV-5, Administration of Insured Home Mortgages (Handbook), the purpose of all collection efforts is to bring a delinquent mortgage current as short a time as possible. The Handbook describes minimum default servicing requirements to accomplish this objective and expects that the vast majority of one or two payment delinquencies will be addressed by either voluntary reinstatement by mortgagors, or through traditional collection methods outlined in the Handbook, including informal forbearance plans, assumptions, and delinquent refinance.

The Loss Mitigation Program was designed to address serious defaults, those that continue for 90 days or more. However, all efforts taken by a lender in addressing delinquent loans contribute to HUD’s goal of home ownership retention and protection of the insurance funds. Many of the most effective loss mitigation actions take place in the early stages of collection.

A. Early Intervention

To meet the procedural requirements of the Loss Mitigation Program (24 CFR 203.355), lenders must become proactive early in the default. The earlier that the lender establishes contact with the borrower, identifies the cause of default and begins to discuss reinstatement options, the more likely it is that the default will be cured and the mortgagor will be able to retain home ownership. Efforts to assist the borrower should begin as soon as the loan becomes delinquent. Mortgagees must make all decisions, particularly discretionary decisions, consistent with Fair Housing and Lending principles.

HUD’s minimum collection requirements for borrower contact, described in Chapter 7 of the Handbook, have not changed. However, the time to complete these activities has been compressed due to an acceleration of the foreclosure initiation time limit which, under the revised rule (24 CFR 203.355), has been reduced from nine to six months from the date of default.

B. Cause of Default

HUD does not have a “hardship” test. Lenders may offer FHA relief options to homeowners who have experienced a verifiable loss of income or increase in living expenses to the point where the mortgage payments are no longer sustainable. HUD encourages lenders to develop collection techniques that seek to identify the underlying cause of the default at the earliest stages of borrower contact, primarily to determine if the financial problem is permanent or temporary. Borrowers whose ability to support the mortgage debt has been permanently reduced, for example through death, divorce, or permanent disability, are unlikely to reinstate through repayment plans. They should be considered for either loan modification which could provide a permanent reduction in the mortgage payment, or for pre-foreclosure sale which allows borrowers to transition to more affordable housing.
Borrowers who may require credit, legal or employment assistance to resolve temporary financial problems should be referred to housing counseling as quickly as possible.

C. Default Counseling

Borrowers who receive counseling early are much more likely to bring their loans current. Lenders are strongly encouraged to recommend counseling to borrowers and establish working relationships with counseling agencies. At a minimum, the lender must provide the borrower with a copy of the HUD publication PA 426-H, May 19, 1997, How to Avoid Foreclosure, no later than the end of the second month of delinquency (24 CFR 203.602). Lenders may make an exception to this requirement if the borrower has filed bankruptcy and, in the opinion of the lender’s legal counsel, providing a copy of the HUD pamphlet would be a violation of the bankruptcy stay. This exception must be documented in the servicing file.

D. Informal Forbearance Plans

A verbal repayment agreement with a duration of 3 months or less is considered to be an informal forbearance plan. An informal forbearance plan is the first and best means to ensure that a one or two month delinquency does not escalate beyond the mortgagor’s ability to cure. Lenders should avoid use of standard repayment terms, such as requiring all borrowers to make 1 ½ payments per month until reinstatement. Rather, FHA requires lenders to review each mortgagor’s financial situation and arrange payment terms consistent with the borrower’s ability to pay.

E. Delinquent Refinance

HUD recognizes that there are situations where mortgagors more than two months behind in their payments could cure their default if they were able to refinance the mortgage using their equity to pay off the unpaid balance plus any arrearage. HUD permits lenders to refinance these mortgages under certain circumstances.

Under the Delinquent Refinance Program, the lender must provide an amount equal to one month’s mortgage payment, principal, interest, taxes and insurance (“PITI”) of the mortgage being refinanced. For detailed instruction regarding delinquent refinances, refer to Mortgagee letter 94-30, dated June 28, 1994, Refinances of Delinquent Mortgages—Special Instructions.

F. Sale of the Property

Borrowers who do not have either the ability or willingness to reinstate, but who have sufficient equity to sell their property and use the sale proceeds to repay the arrearage, should be encouraged and assisted by the lender. This assistance may include the additional time provided by an agreement which provides a short term reduction or suspension of payments pending the closing of a sale or loan assumption. Lenders are reminded that any mortgage delinquency must be cured no later than at closing. FHA requirements for assumptions are described in Chapter 6 of the Handbook.
LOSS MITIGATION PROGRAM OVERVIEW

The FHA Loss Mitigation Program delegates to lenders both the authority and the responsibility to utilize actions and strategies to assist borrowers in default in retaining their homes, and/or in reducing losses to FHA’s insurance funds. HUD believes that the lender is best positioned to determine which, if any, loss mitigation strategies are appropriate in a given circumstance. Without HUD approval, lenders may, in their sole discretion, utilize any of the loss mitigation options, within the guidelines provided in this document or determined by the Secretary.

Though lenders have great latitude in selecting the loss mitigation strategy appropriate for each borrower, it is critical to understand that PARTICIPATION IN THE LOSS MITIGATION PROGRAM IS NOT OPTIONAL. Lenders are required to:

- Consider all reasonable means to address delinquency at the earliest possible moment.
- Inform borrowers of available loss mitigation options and the availability of housing counseling within the second month of delinquency.
- Evaluate each delinquent loan no later than the 90th day of delinquency to determine which loss mitigation option is appropriate.
- Utilize loss mitigation whenever feasible to avoid foreclosure.
- Re-evaluate each loan monthly until reinstatement or foreclosure.
- Initiate foreclosure within six months of default unless a loss mitigation option is being pursued and ensure that all actions taken are documented.
- Retain a complete audit trail confirming compliance with all loss mitigation requirements.

Failure to comply with the provisions of the Loss Mitigation Program may result in the loss of incentive compensation and other benefits; reduced reimbursement of foreclosure and acquisition costs; and interest curtailment related to foreclosure delays.

Also, depending upon the severity of the non-compliance, the Department may also refer the lender to the Mortgagee Review Board (MRB) whose sanctions include civil money penalties, indemnification and the termination of the mortgagee’s approval to participate in HUD programs.
A. Incentive Fees

In recognition of the effort and administrative expense involved in full implementation of loss mitigation, HUD provides financial incentives to mortgagees who utilize any of the 5 loss mitigation options listed below.

**Reinstatement Options**
- Special Forbearance: $100 ($200 for lenders with performance scores in the top 25%)
- Loan Modification: $500
- Partial Claim: $250

**Disposition Options**
- Pre-Foreclosure Sale: $1,000
- Deed-In-Lieu of Foreclosure: $250

Additionally, use of any of the options except deed in lieu, extends the time frame requirement to initiate foreclosure or otherwise meet the time frame requirement of 24 CFR 203.355 in the event the workout fails. Use of special forbearance also provides the mortgagee with greater protections against subsequent foreclosure by allowing interest to be calculated more favorably. These benefits are fully described under each option.

B. Performance Measurement

FHA has created a tool to measure lender utilization of the Loss Mitigation Program, and to provide performance-based incentives to mortgagees. The Department intends to score lender performance on an annual basis. Lender performance score results will be used to determine eligibility for some incentive benefits and in selecting lenders for quality assurance reviews. They may also affect a mortgagee’s percentage reimbursement for foreclosure expenses. More information on performance scoring is found in Mortgagee Letters 97-21, 98-9 and 99-6.

**GENERAL PROGRAM REQUIREMENTS**

Both lenders and borrowers have responsibilities under the Loss Mitigation Program. While each option has specific eligibility requirements, there are some policies that apply to all of the options, and some lender requirements which must be met whether or not any of the loss mitigation strategies are used. This section describes these general policies, recommended procedures, and minimum eligibility requirements.
A. Default Status of the Loan

Loss mitigation options are intended to provide relief for borrowers who are currently in default which is defined in 24 CFR 203.330, and in the Handbook as, “… a mortgagor’s failure to perform under any covenant of the mortgage and the failure continues for 30 days.” The lender may make reinstatement options (special forbearance agreements, loan modifications and partial claims) available to borrowers whose failure to perform continues for at least 90 days (120 days for partial claims). Disposition options (pre-foreclosure sales and deeds-in lieu of foreclosure) are available immediately upon default, if the cause of the default is incurable, i.e. the borrower has no realistic opportunity to replace the lost income or reduce expenses sufficiently to meet the mortgage obligation.

Any attempt to utilize loss mitigation options by deliberately manufacturing or misrepresenting pertinent facts about a mortgagor’s financial or other qualifying status, shall be considered “willful abuse”, will disqualify a mortgagor from participation, and could lead to sanctions if perpetrated by a lender.

B. Owner Occupancy

The borrower must occupy the property as a principal residence to be eligible for any of the reinstatement options (special forbearance, loan modification or partial claim). Lenders are authorized to grant reasonable exceptions to non-occupant borrowers seeking relief through pre-foreclosure sale (PFS), or deed-in-lieu of foreclosure (DIL) when it is clear that the subject property was not purchased as a rental investment, or used as a rental for more than 12 months. Justification for the above exceptions must be documented in the claim review file.

If the borrower is a corporation or partnership, a written request for approval must be submitted to:

U.S. Department of Housing and Urban Development
Servicing and Loss Mitigation Division
500 W. Main Street, Suite 400
Oklahoma City, OK  73102

C. Prohibition on Other FHA Loans

The mortgagor may not own other real estate subject to FHA insurance, or have been the mortgagor on prior loans on which an FHA claim has been paid within the past three years. The Credit Alert Interactive Response Systems (CAIVRS) must be used to assist in this determination, prior to use of any of the loss mitigation options.

Lenders are authorized to make reasonable exceptions, for mortgagors who have acquired FHA insured property through inheritance, or for mortgagors who co-signed FHA insured loans to enhance the credit of another borrower. Justification for any exceptions must be documented.
D. Other Eligibility Requirements

FHA has established the following general eligibility restrictions:

- With the exception of special forbearance, loss mitigation options are not available on co-insured loans until the 60th payment has been received.

- Borrowers who have filed bankruptcy are not eligible for any loss mitigation option except partial claim as more fully explained in Section B, page 25. Borrowers who have had a bankruptcy discharged or dismissed may be considered for loss mitigation options including pre-foreclosure sale.

- Loans secured by vacant or abandoned properties are not eligible for reinstatement options, though disposition options may be utilized when properties have been recently vacated by circumstances related to the default, such as job transfer or death. Such circumstances must be documented by the lender in the claim review file.

E. 90 Day Review Requirement

No later than when 3 full monthly installments are due and unpaid, lenders must evaluate each defaulted loan and consider all loss mitigation techniques to determine which, if any, are appropriate (24 CFR 203.605). In order to comply with this 90 day evaluation requirement, lenders must already have contacted the borrower and gathered sufficient information about the borrower’s circumstances, intentions and financial condition. Given the normal reticence of most borrowers in financial distress, lenders must be proactive early in the default in order to meet this 90 day deadline. While the lender cannot be responsible if a borrower fails to respond to repeated contacts, claim review files must clearly document aggressive efforts to reach each borrower in default well in advance of the 90 day deadline.

When the cause of the default is curable and the borrower is committed to remaining in the home, HUD expects lenders to consider reinstatement options in the following order:

- Special forbearance
- Loan modification
- Partial claim

When the cause of the default is not curable and/or the borrower is not committed to remaining in the home, HUD expects lenders to consider disposition options in the following order:

- Pre-foreclosure sale
F. Option Priority

HUD has established its order of option priority in order to minimize losses to the insurance funds. For example, both a partial claim and a special forbearance will avert a foreclosure and reduce the potential loss to the funds. However, borrower funded reinstatement through a special forbearance plan, is less costly to HUD than a partial claim reinstatement which is funded by FHA. Therefore, HUD requires that lenders determine that a special forbearance is not the best option prior to considering the use of a modification, and that a determination be made that a modification is not the best option prior to considering the use of a partial claim.

However, there will be some situations where a loan modification is clearly the best option, especially when the reduction of the interest rate and/or extension of the loan term yield a sizable reduction of the mortgagor’s monthly payment. In these situations, modifications will be preferred over special forbearance. Lenders shall document the reasons why the specific loss mitigation option was chosen in the claim review file.

For the same goal of minimizing losses to HUD’s insurance funds, pre-foreclosure sale (“PFS”) is preferable to a deed in lieu (“DIL”) of foreclosure. In most cases mortgagors are expected to attempt to market the collateral property under the PFS program prior to acceptance of a DIL by the mortgagor.

G. Monthly Evaluation Requirement

As long as the account remains delinquent, the lender must reevaluate the status of each loan monthly following the 90 day review, and is required to maintain documentation of the evaluations. This evaluation may be as simple as noting that the mortgagor is making payments as scheduled if the account is under special forbearance.

H. Evaluation of the Borrower’s Financial Condition

To be considered for any of the loss mitigation options, the borrower must provide detailed financial information to the lender. The lender may request that this information be submitted on Form HUD-92068 F, Request for Financial Information, or on a similar form provided by the lender. The Department has no objection to situations where a cooperative mortgagor provides complete financial information during a telephone interview. Regardless of how the mortgagor’s financial information was secured, the lender must independently verify the financial information by obtaining a credit report, and any other forms of verification the lender deems appropriate.

Regardless of the option under consideration, the lender must analyze the borrower’s current and future ability to meet the monthly mortgage obligation, by estimating the borrower’s assets and surplus income in the following manner:
• Estimate the borrower’s normal monthly living expenses (food, utilities, etc.) including debt service on the mortgage and other scheduled obligations. Make necessary adjustments to reflect increased or decreased expenses for each month of the proposed special forbearance agreement, or in the case of all other options, for a minimum of three months.

• Estimate the borrower’s anticipated monthly net income for the same period, making necessary adjustments for income fluctuations.

• Subtract expenses from income to determine the amount of surplus income available each month.

• Divide surplus income by total monthly expenses to determine the surplus income percentage.

The lender must use good business judgment to ensure that the workout option selected reasonably reflects the borrower’s ability to pay. Borrowers with sufficient surplus income, and/or other assets, must be required to reinstate the debt through a repayment option.

For those situations where the mortgagee’s evaluation indicates that the borrower is not eligible for any loss mitigation alternative, and the information relied upon in making this decision was secured from the borrower in a telephone interview, the lender shall advise the mortgagor at least seven calendar days to submit additional information that may impact upon the mortgagee’s evaluation.

In the event a claim for loss is submitted to HUD, the lender must retain the financial analysis and supporting documentation in the claim review file.

I. Combining Options

The loss mitigation options may be used alone or in combination to resolve an existing default, although there are some limitations.

• Special forbearance may be combined with any reinstatement option including delinquent refinance. The combination of options will be sequential, not simultaneous.

• Special forbearance may be used to reinstate a loan prior to an assumption.

• Pre-foreclosure may be combined with a deed-in-lieu provision in the event the property does not sell within the time required.

• Modification may not be combined with a partial claim.
FHA strongly encourages lenders to combine special forbearance plans with modification, or special forbearance plans with partial claim whenever there is any doubt about a borrower’s long term income stability. By requiring a borrower to make at least three full monthly payments prior to execution of a modification or partial claim, borrowers demonstrate their ability to support the debt, and FHA is further protected from the risk of workout failure. While this trial period is no guarantee against future default, a borrower’s ability to make the first three payments is a strong indication that this is a long term workout option, and not a costly quick-fix.

J. Foreclosure

Lenders may not initiate foreclosure until all loss mitigation options have been considered. Written documentation of this review must be available in all conveyance claim review files (24 CFR 203.605). If the case meets one of the exceptions noted in 24 CFR 203.606, such as abandonment, loss mitigation does not have to be considered prior to initiating foreclosure. However, the claim review file must provide documentation of this finding.

K. Time Requirement to Initiate Action

Lenders must utilize one of the loss mitigation options or initiate foreclosure within six months of the date of default for all mortgages with a default date on or after February 1, 1998 (24 CFR 203.355). FHA considers the lender to have satisfied this requirement if, within the six month time frame, any of the following actions has taken place.

- The loan is reinstated or paid off.
- The borrower executes a special forbearance agreement.
- The loan is modified.
- The loan is reinstated through a partial claim.
- The borrower executes a pre-foreclosure sale agreement.
- The lender executes a deed-in-lieu of foreclosure.
- The lender initiates the first legal action to begin foreclosure.

Lenders must report the action through SFDMS in the month the action occurs or, if after the monthly cut-off date, in the next reporting cycle.

L. Automatic Extensions

If a lender has initiated, but is unable to complete a special forbearance, modification, or partial claim within the six month time limit, the lender is entitled to a 90 day extension of the
foreclosure deadline provided the initiative was begun prior to the expiration of the initial six months. Therefore, if there have been no other intervening delays (such as bankruptcy) this “automatic” extension will extend the six month deadline to initiate foreclosure by 90 days. To qualify for the automatic extension, the mortgagee must have completed the loss mitigation evaluation required by 24 CFR 203.605 and have documentation of this analysis in the claim review file. In addition the loss mitigation initiative must be reported on SFDMS, using the appropriate status code. All extensions of time to initiate foreclosure including “automatic extensions” must be properly identified on form HUD-27011, Block 19 on the conveyance claim.

There is no automatic extension provided for completion of a deed-in-lieu, although an extension of time may be requested from the Servicing and Loss Mitigation Office in Oklahoma City. There is also no “automatic extension for attempting a repayment plan (not special forbearance), a delinquent refinance or an assumption. Lenders must request this extension of time before the expiration of the existing time frame and must explain why an extension of time is necessary.

M. Option Failure

Foreclosure action is suspended during special forbearance and pre-foreclosure sale periods. In the event that these options fail, an additional 90 day extension is provided in which the lender must commence or recommence foreclosure or initiate another loss mitigation option. Failure is defined as:

- Special forbearance - mortgagor fails to perform under the terms of the written special forbearance agreement and the failure continues for 60 days.

- Pre-foreclosure Sale - Either, 4 months from the date of the PFS Agreement (6 months for lenders in the top 25th percentile) if there is no signed contract of sale; or 6 months from the date of the PFS Agreement (8 months for lenders in the top 25th percentile) if there is a signed contract of sale but settlement has not occurred; or the date the lender is notified of the mortgagor’s withdrawal; or the date of the letter from the lender to the mortgagor notifying them that participation as been terminated.

N. File Documentation

For each claim filed, the lender must maintain in the claim review file, evidence of compliance with all requirements of the Loss Mitigation Program, as well as supporting documentation including all communication with any HUD office. The mortgagee’s regular servicing files should also contain evidence of compliance with the counseling, 90 day review and other requirements of the program for those loans which do not result in a claim.

O. Customer Service

HUD has consolidated all responsibility and authority for management of the Loss Mitigation Program at its Oklahoma City Office. FHA staff in Oklahoma are available to
provide customer service to lenders, servicers, counselors and borrowers relative to loss mitigation issues. They have established a toll free number, **888-297-8685** for all inquiries. Written inquiries may be directed to:

U.S. Department of Housing and Urban Development  
Servicing and Loss Mitigation Division  
500 W. Main Street, Suite 400  
Oklahoma City, OK 73102

**P. Extensions and Variances**

Lenders may request an additional extension of time from the HUD Office in Oklahoma. Each extension request must be submitted on Form HUD-50012, and must be accompanied by a valid justification for the extension.

Additionally, in the new procedures HUD has provided lenders with great flexibility to make exceptions to Department policy when exceptions are deemed to be in the best interest of the Department and the mortgagor. However, if circumstances require a variance not delegated to lenders, written requests should be mailed to the address above.

**Q. Option Checklists**

Many lenders requested that FHA provide teaching tools to assist in the training of staff unfamiliar with the requirements of the Loss Mitigation Program. In response, FHA has updated the Option Checklists originally published in ML 96-61. The revised checklists, included in the Appendix, highlight the most important eligibility requirements for each loss mitigation option in a convenient, easy to understand format. Use of the checklists is optional. There is no requirement that checklists be delivered to HUD with claims.

**SPECIAL FORBEARANCE**

A special forbearance is a written repayment agreement between a lender and a mortgagor which contains a plan to reinstate a loan that has been delinquent for at least 90 days. To qualify as a special forbearance and entitle the lender to the incentives afforded under this section, the agreement must provide the mortgagor with relief not typically afforded under an informal forbearance plan (Section D, page 5). Examples of the types of provisions which may be included in a special forbearance agreement include a repayment term of 4 or more months; suspension or reduction of payments for one or more months to allow the borrower to recover from the cause of default; and/or an agreement to allow the borrower to resume making full monthly payments while delaying repayment of the arrearage.

While special forbearance plans have no maximum duration, at no time may the maximum arrearage due under a special forbearance plan exceed the equivalent of 12 months of principal, interest, taxes and insurance ("PITI").
Special forbearance plans must lead to reinstatement of the loan, either by gradually increasing monthly payments in an amount sufficient to repay the arrearage over time, or through resumption of normal payments for a period of time (generally 3 or more months) followed by a loan modification or partial claim. HUD will pay lenders a cash incentive for entering into a special forbearance plan, regardless of the outcome. As an additional incentive, HUD provides increased claim benefits related to the calculation of claimable interest in the event a special forbearance plan fails and a conveyance claim is filed.

To enable lenders to better utilize this option, FHA has reduced its minimum delinquency requirement from 4 months to 90 days. This and other special forbearance requirements are listed below.

A. Loan Default

The loan must be more than 3 months (90 days), but not more than 12 months (365 days) delinquent, and may not be in foreclosure when the special forbearance agreement is executed. Loans that had previously been referred to foreclosure may be removed from foreclosure status prior to execution of a special forbearance. On advice of lender’s legal counsel, foreclosure may be suspended subject to the borrower’s performance under the terms of the special forbearance agreement, if the suspension, is stipulated in writing in the agreement.

B. Borrower Qualifications

Special forbearance may be offered to borrowers who have recently experienced a verifiable loss of income or increase in living expenses, but who will have sufficient monthly income to correct the delinquency and reinstate the loan within the duration of the plan either through gradual repayment of the arrearage, or through a combination of repayment and modification or partial claim.

The borrower must be an owner occupant, committed to occupy the property as a primary residence during the term of the special forbearance agreement. However, unlike modification and partial claim which require that the borrower have a long term commitment to the home, special forbearance may be used to reinstate a loan to facilitate the eventual sale, or assumption of the property.
C. Property Condition

The lender must conduct any review it deems necessary to verify that the property has no physical conditions which adversely impact the borrower’s continued use or ability to support the debt. A borrower will not be able to support payments under a special forbearance plan if the property is in such a deteriorated condition that repairs drain the borrower’s monthly resources. An analysis of the borrower’s surplus income should consider obvious property maintenance expenses.

If significant deferred maintenance contributed to the cause of the default, it may be appropriate that the special forbearance plan provide a period of mortgage forbearance during which repairs specified in the agreement will be completed at the borrower’s expense. If the mortgagee’s review identifies a property in extremely poor physical condition, a special forbearance plan, especially one that allows reduction or suspension of payments not tied directly to property repair, may not offer a permanent resolution to the default. Lenders must use good business judgment relative to property condition.

D. Financial Analysis

The lender is required to assess the borrower’s ability to repay the default as described in Section H, page 10. HUD expects the lender to project the borrower’s surplus monthly income for the duration of the special forbearance period, and to propose repayment terms consistent with the borrower’s ability to pay.

The lender must exercise good business judgment to determine that the borrower has the capacity to resume full monthly payments, and eventually reinstate the loan under the terms of the plan. If the financial analysis determines that the borrower does not or will not, in the foreseeable future, have the ability to resume full monthly payments, special forbearance should not be used. The lender should consider other loss mitigation options in the priority detailed in Section F, page 10.

E. Combining Options

Special forbearance may be utilized as a stand alone tool, or combined with a loan modification or partial claim. For example, a borrower may be expected to recover from the cause of the default and resume making full monthly payments, but will not have adequate surplus income to repay the arrearage. In this case, the lender might establish a special forbearance agreement which allows the borrower to demonstrate that he has recovered from the financial problem by making full mortgage payments for a period of 3 or 4 months, at which time the delinquent amount could be capitalized into a modified loan, or paid off through a partial claim promissory note.
F. Required Documentation

A written agreement must be executed by the mortgagor and lender, which clearly defines the term, frequency of payments, and amounts due under the forbearance plan. The agreement must acknowledge previously missed mortgage payments and provide notice that failure to comply with the terms of the special forbearance agreement can result in initiation of foreclosure.

FHA does not dictate a specific format for the agreement, however at a minimum it:

- Must provide the borrower with relief not typically available under an informal forbearance plan.

- Must fully reinstate the loan, except if combined with mortgage modification or partial claim, as in paragraph E, above.

- May not at any time allow the total amount of the arrearage to exceed the equivalent of 12 months PITI. (ARMS, GPMS, and GEMS will be calculated by multiplying 12 times the monthly payment due on the date of default.)

- May not allow for late fees to be assessed while the mortgagor is performing under the terms of a special forbearance plan.

- May allow reasonable foreclosure costs and late fees accrued prior to the execution of the special forbearance agreement to be included as part of the repayment schedule. However, they may only be collected after the loan has been reinstated through payment of all principal, interest, and escrow advances. At no time shall the loan be considered delinquent solely because the borrower has not paid late fees or other foreclosure costs.

- If the special forbearance plan culminates in a modification or partial claim, foreclosure costs and fees may only be collected in accordance with the requirements applicable to those options.

- There is no maximum duration requirement for special forbearance agreements. Lender’s are encouraged to allow as much time as is reasonable based on the borrower’s ability to repay.

G. Review and Re-negotiation

Lenders must review the status of forbearance plans each month and take appropriate action if the borrower is not complying with the terms of the plan. Plans may be re-negotiated if the borrower’s financial circumstances change, however, re-negotiated plans may not exceed HUD’s requirement that the loan be no more than 12 months delinquent. Lenders will not be
entitled to file a claim for additional special forbearance incentives in the event a plan is re-negotiated.

H. Lender Incentives

FHA believes that well structured special forbearance agreements will resolve the majority of curable loan delinquencies. The Department strongly encourages use of this option and has provided attractive lender incentives.

- First, for every special forbearance agreement executed by a lender, regardless of the outcome, FHA will pay a $100 incentive fee. Lenders, whose overall loss mitigation performance is ranked in the top 25\textsuperscript{th} percentile, will be eligible for incentive payments of $200 per claim.

- Second, when a special forbearance has been utilized and failed, and a conveyance claim is filed, lenders are entitled to collect unpaid interest at the note rate rather than debenture rate of interest.

- Finally, the number of months of interest that may be claimed is computed from the earliest of several dates as provided in 24 CFR 203.402a. This computation generally allows two additional months of interest, than would be payable on a conveyance claim where special forbearance had not been utilized.

These are significant claim benefits, intended to reduce the risk to lenders of offering reduced or suspended payments, and/or longer than normal repayment terms. These incentives are not available with any other loss mitigation option, and, with the exception of the incentive fees, do not apply if the lender files a claim for reimbursement as a result of a modification or partial claim.

I. Filing For Incentive Payment

The lender must file the claim for incentive payment within 60 days of the date of execution of the special forbearance agreement. It is not necessary to submit a copy of the special forbearance agreement or checklist. However, all documentation pertaining to the special forbearance must be retained in the claim review file.

If special forbearance is combined with any other option, the lender is entitled to file a claim for the special forbearance incentive fee, and file a subsequent claim when the other loss mitigation action is finalized.

**LOAN MODIFICATION**

A loan modification is a permanent change in one or more of the terms of a borrower’s loan which if made, allows the loan to be reinstated, and results in a payment the borrower can afford. Modifications may include a change in the interest rate; capitalization of delinquent principal, interest or
escrow items; extension of the time available to repay the loan; and/or re-amortization of the balance due.

Modification may be appropriate for borrowers who have experienced a permanent or long term reduction in income or increase in expenses, or have recovered from the cause of the default but do not have sufficient surplus income to repay the arrearage through a repayment plan. To qualify, borrowers must be able to support the monthly mortgage debt after the terms of the loan are modified.

Not all loans are appropriate for modification. Loan characteristics which best support modification include: loans with above market interest rates; lower loan to value ratios; and/or mature terms (loans paid down 10 years or more). The modification tool is valuable when the arrearage can be capitalized into the loan balance, the term extended and/or the interest rate adjusted to current market rate, so that the resulting monthly payment is at a level the borrower can afford.

Modification is most often used to reduce a borrower’s payment when the cause of the default is permanent or long term. However, if a borrower has recovered from a short term financial problem and has strong income, a modification may be used to increase the monthly payment slightly, allowing the borrower to repay the arrearage gradually over the life of the loan.

Approximately 96% of all FHA insured loans are securitized in Ginnie Mae guaranteed pools. Prior to modification, but no sooner than the 90th day of default, securitized loans must be purchased from pools. Ginnie Mae has recently streamlined its re-pooling requirements allowing almost all modified FHA loans to be quickly repooled. Details of Ginnie Mae’s modification policy are found in the All Participants Letter 96-15, Pooling FHA Loans That Have Been Modified as a Result of Loss Mitigation Efforts.

FHA has recently made several changes to its modification program. First, the Department realized that borrowers with below market interest rates were being excluded from the modification program because their loans had to be re-pooled at a discount. When appropriate, lenders may now increase the note interest, not to exceed market rate as defined below in Section F, page 21. Next, to protect borrowers from future payment increases, all modifications must now result in a fully amortizing, fixed rate loan. Adjustable and other variable payment loans will be converted to fixed as a condition of the modification. Finally, the BPO requirement has been eliminated (there is no longer a BPO requirement for any of the reinstatement options). These changes are more fully described below.

A. Loan Delinquency

To modify a defaulted mortgage under the loss mitigation program:

- Three or more full monthly payments must be due and unpaid.
- At least 12 months have elapsed since the origination date of the loan.
- The loan may not be in foreclosure at the time the modification is executed, however, loans removed from foreclosure status may be modified.
• The default must be due to a verifiable loss of income or increase in living expenses.

Note: Loans which are not delinquent but are in danger of imminent default may be modified at the discretion of the lender and insurance coverage will be increased above the original certificate amount as necessary. However, performing loan modifications do not qualify for incentives under the Loss Mitigation Program, and may not meet Ginne Mae requirements for re-pooling of modified loans, which requirements are described in Ginne Mae’s All Participants Letter, 96-15.

B. Borrower Qualifications

Modifications may be offered to borrowers who have stabilized, surplus income which, while not sufficient to sustain the original loan and repay the arrearage, is sufficient to support the monthly payment under the modified rate and/or term.

The borrower must be an owner occupant, committed to occupying the property as a primary residence. Modification may not be used as a means to reinstate a loan prior to a sale or assumption.

C. Property Condition

While the modification option does not include a loan-to-value restriction, and no appraisal or broker’s price opinion is required, the lender must conduct any review it deems necessary to verify that the property has no physical conditions which adversely impact the borrower’s continued use or ability to support the debt.

A borrower may not be able to support payments under a modification if the property is in such a deteriorated condition that repairs drain the borrower’s monthly resources. An analysis of the borrower’s surplus income should consider anticipated property maintenance expenses. If the mortgagee’s inspection identifies a property in extremely poor physical condition, a modification may not offer a permanent resolution to the default.

Costs to complete needed repairs may not be capitalized as part of a modification agreement, nor may a borrower receive any cash back from a modification. Borrowers who have sufficient equity and income to receive cash back should be considered for a delinquent refinance.

D. Financial Analysis

The lender is required to assess the borrower’s financial condition as described in Section H, page 10. HUD expects the lender to project the borrower’s surplus monthly income for a minimum of three months, and use good business judgment to determine if the borrower has the capacity to repay the arrearage through a repayment or special forbearance plan, before considering modification. If the financial analysis determines that the borrower does not have the ability to support the modified monthly payment, the modification option may not be used.
E. Combining Options

Modification may be utilized as a stand alone tool, or incorporated as part of a repayment, or special forbearance agreement. For example, if a borrower needs time to resolve the default, but will eventually be able to support the debt at the modified rate but no more than that, a repayment plan or special forbearance may culminate in a loan modification. An existing repayment plan, or special forbearance may also be converted to modification if the borrower’s circumstances change.

Mortgage modification may not be used in conjunction with a partial claim. If modification is appropriate, it should be used as the primary tool to bring the account current.

F. Allowable Provisions

The following provisions apply to loan modifications:

- All modifications must result in a fixed rate loan. ARM, GPM and GEM mortgages may only be modified to fixed payment, fully amortizing loans.
- The modification must fully reinstate the loan.
- At the lender’s discretion, note interest rates may be reduced below market if necessary to resolve the default. Discount fees associated with rate reductions are not reimbursable.
- At the lender’s discretion, note interest rates may be increased if supported by the borrower’s ability to pay. The maximum interest allowable shall be calculated as 150 basis points above the current FHA debenture interest rate. Debenture interest rates are provided semi-annually through mortgagee letter.
- All or a portion of the PITI arrearage (principal, interest, and escrow items) may be capitalized to the mortgage balance.
- Foreclosure costs, late fees and other administrative expenses may not be capitalized. Lenders may collect the legal and administrative fees (resulting from the canceled foreclosure action), from mortgagors to the extent not reimbursed by HUD, either through a lump sum payment or through a repayment plan separate from, and subordinate to, the modification agreement.
- The modified principal balance may exceed the principal balance at origination.
- The modified principal balance may exceed 100% loan-to-value.
- Lenders may re-amortize the total unpaid amount due over the remaining term of the mortgage, or may extend the term not more than 10 years beyond the original maturity
date or 360 months from the due date of the first installment required under the modified mortgage, whichever is less.

G. Lien Status

The lender must ensure first-lien status of the modified mortgage. In satisfying this requirement, the lender must comply with any applicable state or federal laws and regulations.

If title to the property is encumbered with an FHA Title I loan, and the lender servicing the Title II loan has determined that a subordination agreement is necessary, the lender may send a written subordination request to:

U.S. Department of Housing and Urban Development
Home Improvement Branch
451 7th Street, SW, Room 9272
Washington, DC 20410

If title to the property is encumbered with an FHA Title I loan which has been assigned to the Secretary, and the lender servicing the Title II loan has determined that a subordination agreement is necessary, the lender servicing the Title II loan may send a written subordination request to:

HUD Albany Financial Operations Center
Asset Recovery Division
52 Corporate Circle
Albany, NY 12203
(518) 464-4200

H. Required Documentation

FHA does not dictate a specific format for documentation of the modification agreement. The lender is responsible for ensuring that the modification documentation preserves the first lien status of the FHA insured loan. The lender will have to make the determination in accordance with state law as to whether it is necessary to record the Modification Agreement to maintain the first lien requirement.

I. Disclosures

FHA requires lenders to comply with any disclosure or notice requirements applicable under State or Federal law.

J. FHA Mortgage Insurance

Where the loan modification has been processed in accordance with all HUD requirements, the FHA mortgage insurance coverage will be extended to the new principal balance of the loan following modification of eligible loans. Modification has no effect on the
one-time MIP or on periodic MIP payments. Monthly MIP payments must be calculated on the original insurance amount.

K. Lender Incentives

FHA will pay lenders a $500 incentive fee for each modification and will reimburse the actual cost of the title search and/or endorsement to the title policy not to exceed $250.00. No other expenses may be included on the claim.

L. Failure

In the event the borrower becomes delinquent following modification, it shall be treated as a new default and serviced accordingly. In the event the loan is foreclosed following modification, the lender must be prepared to deliver a copy of the modification agreement to the Department when a conveyance claim is filed. The lender shall be responsible for maintaining the first lien status of the insured loan subsequent to modification. Any amount of a loan which is not in the first priority position will be considered uninsured and not subject to claim. HUD reserves the right at the time of claim submission to request documentation (legal or otherwise) establishing the first lien status.

M. Limitations on Use

If a loan has been modified or reinstated using a partial claim within the past three years, re-default risk is presumed to increase following a subsequent modification. Prior to granting a modification in this circumstance, the lender must prepare a written justification, and retain a copy along with supporting documents in the claim review file. It is anticipated that this will be a highly unusual occurrence, and that the cause of the second default will be unrelated to the original problem.

N. Filing For Incentive Payment

The lender must file the claim for incentive payment within 60 days of the execution date of the modification agreement. It is not necessary to send a copy of the modification agreement, however, it must be retained in the claim review file and made available to FHA upon request.

FHA will pay lenders a $500 incentive fee for each modification and will reimburse the actual cost of the title search and/or endorsement to the title policy not to exceed $250.00. No other expenses may be included on the claim.

PARTIAL CLAIM

Under the partial claim option, a lender will advance funds on behalf of a borrower in an amount necessary to reinstate a delinquent loan (not to exceed the equivalent of 12 months PITI). The borrower, upon acceptance of the advance, will execute a promissory note and subordinate mortgage payable to HUD. Currently, these promissory or “partial claim” notes carry no interest and are not due and payable until the borrower either pays off the first mortgage or no longer owns the property.
Following reinstatement, the lender will file a “partial” claim for the amount of the advance plus the lender’s incentive fee, and forward a copy of the recorded documents to HUD. A contractor retained by HUD will service the partial claim liens.

HUD approval is not required in order for lenders to advance funds and file a partial claim, as long as the requirements detailed in this section are satisfied. This new option provides lenders with a powerful tool to assist borrowers threatened with foreclosure. However, this should be used only if the lender is confident that:

- The borrower has the long term financial stability to support the mortgage debt.
- The borrower does not have the ability to repay the arrearage through a special forbearance or modification.

There are three notable changes to the partial claim option. First, the seven month delinquency requirement has been eliminated. Partial claims may now be used any time after the fourth month of delinquency, so long as the total arrearage on the loan does not exceed the equivalent of 12 months PITI. Second, the BPO requirement has been eliminated. And the third notable change is that copies of the subordinate lien will not be required to accompany the claim submission. However the original recorded documents will still be required to be submitted.

A. Loan Default

The loan must be at least 4 months (120 days), but no more than 12 months (365 days) delinquent at the time the partial claim note is executed. The loan may not be in foreclosure when the partial claim note is executed. However, a lender may remove a loan from foreclosure if the borrower’s financial situation has improved sufficiently to justify a partial claim.

B. Borrower Qualifications

Partial claims may be offered to borrowers who satisfy all of the following requirements:

- Have overcome the cause of the default.
- Have sufficient income to resume monthly mortgage payments.
- Do not have sufficient surplus income to repay the arrearage through a repayment plan.
- A mortgage modification is not appropriate.
- Borrower is owner occupant(s) committed to continuing occupancy of the property as a primary residence. Partial claim may not be used to reinstate a loan prior to a sale or assumption.
A lender may consider a mortgagor who has filed a petition in Bankruptcy Court under Chapter 13 for a partial claim, only after obtaining the approval of the Bankruptcy Court. If the mortgagor has filed a bankruptcy petition under Chapter 7, the lender must obtain Bankruptcy Court approval. and in addition, the mortgagor must reaffirm the debt.

C. Property Condition

There is a change from previous guidance in that a broker’s price opinion (BPO) will not be required. While the partial claim option does not include a loan-to-value restriction and no appraisal or broker’s price opinion is required, the lender must conduct a review sufficient to verify for FHA that the property has no physical condition(s) which adversely impact the borrower’s continued use or ability to support the debt.

A borrower may not be able to support payments under a partial claim if the property is in such a deteriorated condition that repairs drain the borrower’s monthly resources. An analysis of the borrower’s surplus income should consider anticipated property maintenance expenses. If the mortgagee’s inspection identifies a property in extremely poor physical condition, a partial claim may not offer a permanent resolution to the default.

D. Financial Analysis

The lender is required to assess the borrower’s financial status as described in Section H, page 10. HUD expects the lender to project the borrower’s surplus monthly income for a minimum of three months, and calculate the surplus income percentage.

If the financial analysis determines that the borrower does not have the ability to support the normal monthly payment, the partial claim option may not be used. In no case may partial claim be used if the borrower’s surplus income percentage is 0% or less than 0%. If the borrower has low surplus income (< 5%), lenders are encouraged to combine partial claim with a special forbearance plan allowing the borrower to demonstrate the ability to make payments for a period of 3 or more months prior to origination of the partial claim note.

Lenders must use good business judgment to determine if the borrower has the adequate surplus income to repay the arrearage through special forbearance or mortgage modification before approving a partial claim. Lenders are encouraged to require borrowers to contribute all available funds toward paying down the default, thereby reducing the amount of the partial claim lien.

E. Combining Options

Partial claim may be utilized as a stand alone tool, or incorporated as part of an informal forbearance plan, or special forbearance agreement. For example, if a borrower needs time to resolve the default, but will eventually be able to support the normal monthly payment but no more than that, a repayment plan or special forbearance may culminate in a partial claim. An existing repayment plan or special forbearance may also be converted to partial claim if the
borrower’s circumstances change. Partial claim may not be used in conjunction with a mortgage modification.

F. Allowable Provisions

The following provisions apply to all partial claim notes:

- The partial claim must fully reinstate the loan.

- The partial claim advance may include only principal, interest and escrow advances required to reinstate the loan.

- In no event may the total arrearage exceed the equivalent of 12 months PITI. The maximum partial claim advance for ARM, GPM, and GEM loans is calculated by adding the specific PITI requirement for each of the monthly installments to be included in the partial claim.

- The lender may not include late fees, legal fees or other administrative expenses in the partial claim note. However, lenders may collect legal and administrative fees (resulting from a canceled foreclosure action) directly from the borrower to the extent not reimbursed by HUD and in accordance with the limitations of Chapter 4 of HB 4330. 1 REV-5.

- The lender will record the subordinate mortgage in all jurisdictions except the State of Texas. (In Texas, only a promissory note is required.)

- There is no lien priority requirement for partial claim notes, however the lender must ensure that recordation of the subordinate mortgage does not jeopardize the first lien status of the FHA insured mortgage.

- Payment of a partial claim does not decrease mortgage insurance coverage.
G. **Repayment Terms**

The partial claim advance will be secured by a note and subordinate mortgage with the following repayment terms.

- The note is interest free. (The Secretary reserves the right to assess interest on partial claim notes originated in the future.)

- The entire principal balance shall be payable as one balloon payment. No monthly or periodic payments are required.

- The note is due at the earlier of 1) payoff of the first mortgage, or 2) when the borrower no longer owns the property.

- There is no prepayment penalty.

Voluntary payments or prepayments should be directed to the following:

> U.S. Department of HUD,
> c/o Clayton National
> 4 Corporate Drive,
> Shelton, CT 06484

H. **Required Documentation**

A promissory note must be executed in the name of the Secretary and a subordinate mortgage must be obtained and recorded. The lender must include the provisions of HUD’s model form of note and subordinate mortgage (as provided in Mortgagee letter 97-17) and make any amendments required by State laws. In the State of Texas only, HUD will accept an unrecorded promissory note. While HUD does not endorse the products or services of vendors, the Department is aware that State specific documents are commercially available. Lenders who take advantage of the convenience of purchasing these documents should review them prior to use.

I. **Disclosures**

FHA requires lenders to comply with any disclosure or notice requirements applicable under State or Federal law.

J. **Lender Incentives**

FHA will pay lenders a $250 incentive fee for each partial claim. The borrower may not be charged any additional costs.
K. Failure

In the event the borrower becomes delinquent following reinstatement via a partial claim, it shall be treated as a new default and serviced accordingly.

L. Limitations on Use

If a loan has been modified or reinstated using a partial claim within the past three years, re-default risk is presumed to increase following a subsequent partial claim. Prior to allowing a partial claim in this circumstance, the lender must prepare a written justification, and retain a copy along with supporting documents in the claim review file. It is anticipated that this will be a highly unusual occurrence, and that the cause of the second default will be unrelated to the original problem. There is a lifetime limitation of 12 monthly installments of PITI. Once 12 full monthly installments have been paid, no further partial claims will be honored on a specific case.

M. Claim Filing

The lender must file the claim within 60 days of the date the subordinate lien to HUD is executed. The claim may include the amount of the partial claim note and the $250 incentive fee. No other costs or fees will be paid by HUD.

N. Document Delivery

It is the responsibility of the lender to deliver the original promissory note and recorded mortgage to FHA at the address listed below, as soon as possible but no later than 6 months from the execution date of the partial claim note.

U.S. Department of HUD,
c/o Clayton National
4 Corporate Drive,
Shelton, CT 06484

Mortgagee’s who fail to deliver original, recorded documents within the time frame specified, will be required to reimburse the Department any incentive fee previously paid for the partial claim. Time extensions may be granted by the Oklahoma City Office of HUD in the event document delivery is delayed by events beyond the control of the lender.
O. Servicing

A contractor selected by HUD will service the partial claim notes. Effective immediately, the following contractor will service the Partial Claim notes:

U.S. Department of HUD,
c/o Clayton National
4 Corporate Drive,
Shelton, CT  06484

Telephone: (800) 967-3050

PRE-FORECLOSURE SALE

The pre-foreclosure sale (“PFS”) option allows a borrower in default to sell his or her home and use the sale proceeds to satisfy the mortgage debt even if the proceeds are less than the amount owed. This option is appropriate for borrowers whose financial situation requires that they sell their home, but who are unable to sell without FHA relief, because the value of the property has declined to less than the amount owed on the mortgage.

Borrowers must make a commitment to actively market their property for a period of 4 to 6 months, during which time the lender delays foreclosure action. Owner-occupant borrowers who successfully sell to a third party within the required time, are paid a cash consideration up to $1,000. Lenders also receive a $1,000 incentive for successfully avoiding the foreclosure. If the property does not sell, borrowers are encouraged to convey the property to FHA through a deed-in-lieu of foreclosure.

Since PFS was introduced in 1994, it has helped thousands of borrowers in default avoid foreclosure and make a smooth transition to more affordable housing. The changes described below are intended to increase the number of borrowers who can take advantage of the PFS option.

In an effort to open PFS eligibility up to more borrowers, this Mortgagee letter changes two critical ratios used to determine property eligibility and minimum acceptable proceeds. Where Section E(4) of Mortgagee letter 94-45, *HUD’s Nationwide Pre-foreclosure Sale Procedure*, established the minimum ratio of appraised value to outstanding mortgage indebtedness at 70%, effective February 1, 2000 the minimum ratio of appraised value to outstanding mortgage indebtedness is 63%. Where Section G(4) of Mortgagee letter 94-45, required minimum acceptable net sales proceeds of 87%, effective February 1, 2000 minimum acceptable net sales proceeds are 82%. **Concurrent with these changes there will be no variances from the above stated ratios.**

Unlike other options, borrowers wishing to participate in the PFS program must submit an *Application to Participate* HUD-90036, along with the financial information required by the lender. The lender will also obtain a recent FHA appraisal and preliminary title report. After reviewing all relevant information, the lender will notify borrowers whether or not they meet the program requirements described below. Acceptance into the program is indicated by issuance by the lender of an *Approval to Participate* HUD-90045.
The forms associated with the PFS program, Information Sheet HUD-90035, Application to Participate HUD-90036, Approval to Participate HUD-90045, and Variance Request HUD-90041, are currently being revised to incorporate the ratio changes, provide the disclosure language described above, and to delete references to the assignment program. These forms will be released in a subsequent mortgagee letter. In the meantime, lenders may continue to use current versions of the forms.

A. Loan Default

At the time the pre-foreclosure sale is closed, the loan must be in default (delinquent more than 30 days). Lenders may exercise their discretion to accept applications from borrowers who are facing imminent default, but by the time the pre-foreclosure sale is completed, the loan must be in default. Lenders should document this decision in the claim review file. Under no circumstances shall PFS be available to borrowers who have abandoned their mortgage obligation despite their continued ability to pay.

Home Equity Conversion Mortgages are not eligible pre-foreclosure sale.

B. Borrower Qualifications

The PFS option may be extended to borrowers who satisfy the following requirements:

• Are in default due to a verifiable increase in living expenses or decrease in income.

• Have negative equity of not more than 63% of the outstanding mortgage balance including unpaid principal and accrued interest. (PFS may be considered if the property’s appraised value slightly exceeds the mortgage payoff figure, but net proceeds, after deducting the costs of the sale, will fall short of the amount needed to discharge the mortgage by more than $1,000.)

• Occupy the property as a primary residence. Lenders are authorized to grant reasonable exceptions to non-occupant borrowers when it is verifiable that the need to vacate was related to the cause of the default (job loss, transfer, divorce, death), and the subject property was not purchased as a rental investment, or used as a rental for more than 12 months.

C. Application to Participate

Any borrower in default who expresses interest in the pre-foreclosure sale program should be sent a copy of the PFS Information Sheet, and Application to Participate. Additionally, lenders are encouraged to proactively solicit participation by borrowers who are in default on an FHA insured first mortgage and are unable to cure the default through reinstatement.

By signing and returning the application with the required financial information, borrowers are acknowledging that they have received housing counseling, and are agreeing to:
• List the property with a licensed real estate broker, unrelated to the borrower. The listing agreement must include a specific cancellation clause in the event the terms of a sale are not acceptable to HUD.

• Make a good faith effort to aggressively market the property.

• Perform all normal property maintenance and repairs until closing of the pre-foreclosure sale.

D. Property Value

The lender must obtain a standard FHA appraisal from an appraiser who does not share any interest with the mortgagor or mortgagor’s agent. The appraisal must contain both “As Is” and “As Repaired” values for the property, and will be valid for six months. A copy of the appraisal must be shared with the homeowner or sales agent, if requested. Appraisals or opinions of value provided by the borrower, or borrower’s real estate agent are not acceptable. The lender must review the appraisal and satisfy itself that the opinion represents the fair market value of the subject property.

E. Property Condition

Properties which have sustained serious damage (fire, flood, earthquake, tornado) are not eligible for PFS if the cost of repair exceeds 10% of the As Repaired appraised value. Lenders may exercise their discretion to accept or reject damaged properties when repair costs are less than the 10% threshold, but should document their decision in the claim review file.

F. Condition of Title

The property must have marketable title. Prior to execution of the Approval to Participate, the lender must obtain a title search or preliminary report to verify that the title is not impaired with un-resolvable title problems, or junior liens that cannot be discharged as allowed by HUD. If the lender determines that junior liens and other title issues can be resolved, the borrower may be accepted into the PFS program and resolution of the title issues can be pursued concurrent with marketing.

It is frequently in HUD’s interest to aid in the discharge of secondary liens in order to facilitate the sale. Lenders are expected to provide such assistance to the borrower. In some cases junior lien creditors will release a lien in return for a partial cash payment or a promissory note from the borrower. Where the amount required to satisfy or release the lien(s) is in line with the borrower’s ability to pay, the borrower should be required to do so. The incentive consideration payable to the borrower should first be applied toward the discharge of liens. If this is not sufficient, the lender can obligate an additional amount not to exceed $1,000 from sale proceeds towards the discharge of liens or encumbrances, if that will result in clear title and allow the sale to proceed. If the borrower has a HUD Title I loan secured by the property, the lender must negotiate a release of the Title I lien in order to proceed with a PFS.
G. Financial Analysis

The lender is required to assess the borrower’s financial condition as described in Section H, page 10. HUD expects the lender to project the borrower’s surplus monthly income and use good business judgment to determine that the borrower is unable to support the mortgage debt.

H. Approval to Participate

When an application is accepted, the Approval to Participate form must be used. The date of this form becomes the starting date of PFS participation. The Approval to Participate must include the date by which a signed contract for sale must be obtained, and the minimum acceptable net sales price.

I. Timing of Initiation

The lender must either issue an Approval to Participate, commence foreclosure, or initiate another loss mitigation option within 6 months of the date of default, unless the lender qualified for an extension by trying another loss mitigation option.

If the PFS follows a failed special forbearance agreement, the Approval to Participate must be granted, or foreclosure or other option initiated within 90 days of the failure. If the PFS follows any other option, the Approval to Participate must be granted, or foreclosure or other option initiated within 9 months of the date of default.

J. Duration of the Pre-Foreclosure Sale Period

The pre-foreclosure sale period shall be three months beginning upon lender approval (automatically extended two months for lenders scoring in the top 25th percentile). The lender should review marketing efforts with the mortgagor on a monthly basis. After 90 days without a scheduled closing, the lender must discuss the likelihood of a sale with the real estate broker and make a determination to either end the pre-foreclosure sale period, or extend it for an additional 30 days if a sale is likely. Documentation for this decision should be retained in the claim review file.

If the property is under contract at the end of the marketing period, the lender may extend the PFS period for 60 days not to exceed a total of 6 months (8 months for lenders in the top 25th percentile).
K. Other Lender Responsibilities

The lender is responsible for inspection, protection, and preservation of the property between the 45th day of default and the date of the Approval to Participate. Funds expended for preservation and protection will be reimbursed.

L. Early Termination

Borrower participation in the PFS program may be terminated at the discretion of the lender, for any of the following reasons:

- Un-resolvable title problems.
- Determination that the borrower is not acting in good faith to market the property.
- Voluntary withdrawal by the borrower.

M. Failure

Within 90 days of the expiration of the pre-foreclosure sale period (or 6 months of the date of default, whichever is later), if no closing of an approved PFS has occurred, the lender must commence foreclosure or obtain a deed-in-lieu. If the borrower’s financial condition has improved to the point that reinstatement is a viable option, the lender may undertake one of the reinstatement loss mitigation tools. However, the lender must fully justify this decision in the claim review file, and must complete the action within the 90 day period.

N. Lender Incentives

FHA will pay lenders an incentive fee of $1,000 for each successful pre-foreclosure sale.

O. Borrower Consideration

Borrowers who successfully sell their properties using this option are relieved of their mortgage obligation, and are entitled to receive consideration in the amount of $750. If the closing occurs within three months of the Approval to Participate, the borrower will be entitled to $1,000. Unless the borrower’s consideration is required to release junior liens, the borrower may elect to accept cash paid at closing, or may apply some or all of the amount to offset sales costs not paid by FHA, including home warranty plans, optional repairs, and seller’s closing expenses.

Borrowers who become good-faith participants in the PFS program shall not be pursued for deficiency judgments by either the lender or the Department in the event that the PFS is unsuccessful and foreclosure occurs.

P. Contract Approval
The lender will have 5 working days from receipt of a signed Contract for Sale, to respond using the *Sale Contract Review* form HUD-90051. The transaction must be an outright sale of the premises. No sale by assumption, regardless of provisions for release of liability, may be considered.

Lenders may approve a sale contract in which the net sales proceeds are at least 82% of As Is appraised value. “Net Sales Proceeds” is defined as the contract price less:

- Sales commission (usually 6% or less).
- Consideration paid to the seller ($750 or $1,000).
- Discharge of junior liens not to exceed $1,000.
- Property repairs required by the appraisal.
- Local/state transfer tax stamps and other customary closing costs including the seller’s costs for a title search and title insurance.

Examples of settlement costs which may not be included in the net sales proceeds calculation are:

- Tax service fees and other property transfer costs normally paid by the buyer.
- Home warranty fees.
- Repairs not stipulated in the appraisal.
- Survey costs.
- Lawyer’s fees for representing the seller (apart from conducting the settlement or review of documents).

There must not be any hidden terms or special understandings that exist between any of the parties involved in the transaction: buyer, seller, appraiser, sales agent, closing agent, and lender.

**Q. Closing and Post Responsibilities**

Prior to closing, the lender will provide the closing agent with a *Closing Worksheet*, HUD-90052, which lists all amounts payable out of sale proceeds. Before giving final approval for a closing, the lender must review the HUD-1 to ensure that it complies with earlier closing cost estimates.
A pre-foreclosure sale must be reported to national credit bureaus as a “short sale.” Lenders will be responsible for filing information return Form 1099-A with the IRS and reporting any discharge of indebtedness, in accordance with the Internal Revenue Code.

R. Claim Filing

The claim for insurance benefits must be submitted to HUD within 30 days after the date of the PFS closing. HUD will reimburse the lender for reasonable and customary costs of the appraisal, title search (if not included in the settlement statement), and the allowable percentage of legal fees for a foreclosure postponed pending completion of PFS. Disbursements for taxes, assessments, hazard insurance, and other allowable items payable before the date of the PFS closing are reimbursable. FHA will not pay costs related to the property which were incurred after the closing date.

The consideration paid to the borrower and allowable amounts, not to exceed $1,000, paid to release all junior liens should be reflected on the HUD-1 and not included on the claim. The mortgagee’s incentive fee shall still be reflected on line 129 of the claim form HUD-27011. (See Mortgagee letter 94-45, Pre-Foreclosure Sale Program.)

DEED IN LIEU OF FORECLOSURE

Deed-in-lieu of foreclosure (DIL) is a disposition option in which a borrower voluntarily deeds collateral property to HUD in exchange for a release from all obligations under the mortgage. Though this option results in the borrower losing the property, it is usually preferable to foreclosure because the borrower mitigates the cost and emotional trauma of foreclosure and is eligible to receive borrower’s consideration of $500. Also, a DIL is generally less damaging than foreclosure to a borrower’s ability to obtain credit in the future. DIL is preferred by HUD because it avoids the time and expense of a legal foreclosure action, and due to the cooperative nature of the transaction, the property is generally in better physical condition at acquisition.

Unlike a legal foreclosure however, acquisition by DIL does not extinguish junior liens or terminate tenancies. Therefore, there is substantial responsibility placed on the lender to determine that the condition of the property and the title meet HUD’s minimum requirements. The most significant change in this option is a new requirement that the lender enter into a written agreement with the borrower, stating specific actions the borrower must perform in order to take advantage of this option and receive the financial consideration.
A. Loan Default

Prior to acceptance of the deed conveying the property to HUD, a the loan must be in default (delinquent more than 30 days), and the cause of the default must be determined to be incurable. Lenders may exercise their discretion to enter into DIL agreements with borrowers whose loans are current but are facing imminent default, and should document their decision in the claim review file. The loan must be in default at the time that the DIL is recorded and the property conveyed to HUD. Under no circumstances shall DIL be available to borrowers who have abandoned their mortgage obligation despite their continued ability to pay.

Qualified properties should first be offered for sale through the PFS program. Lenders who elect to accept a DIL without attempting a PFS must provide written justification for their decision in the claim review file.

B. Borrower Qualifications

The DIL option may be extended to borrowers who are unable to continue to support the mortgage debt and who occupy the property as a primary residence.

Lenders are authorized to grant reasonable exceptions to non-occupant borrowers when it is verifiable that the need to vacate was related to the cause of the default (job loss, mandatory job transfer, divorce, death), and the subject property was not purchased as a rental investment, or used as a rental for more than 12 months. However, pursuant to 24 CFR 203.357(b) and (c), lenders must obtain the prior written consent of the Commissioner prior to accepting a DIL from a corporate mortgagor or a mortgagor who owns more than one FHA insured property. To obtain this consent lenders should contact:

U.S. Department of Housing and Urban Development
Servicing and Loss Mitigation Division
500 W. Main Street, Suite 400
Oklahoma City, OK 73102

A DIL may not be considered if HUD has elected to pursue a deficiency judgment against the borrower.

C. Tenant Occupied Properties

HUD will not accept a DIL if the collateral property is occupied at the time of conveyance to the Department, unless HUD determines that the tenancy is in the best interest of the Secretary as defined in 24 CFR 203.671. Lenders should follow the process established in 24 CFR 203.675 to request authorization for an occupied conveyance.
D. Financial Analysis

The lender is required to assess the borrower’s financial condition as described in Section H, page 10. HUD expects the lender to project the borrower’s surplus monthly income for a minimum of three months and use good business judgment to determine if the borrower has the capacity to support the mortgage debt. Under no circumstances shall deed-in-lieu of foreclosure be available to borrowers who have abandoned their mortgage obligation despite their continued ability to pay. The financial analysis requirement may be waived for borrowers who had previously participated in the PFS program.

E. Condition of Title

Good and marketable title must be conveyed to the Secretary. The lender must complete a title search and may be required to secure release of junior liens and/or endorsements to the title policy. HUD will not accept title subject to most junior liens including IRS liens. However, HUD will allow liens securing repayment of Section 235 assistance payments, partial claim advances and Title I liens.

It is frequently in HUD’s interest for the lender to aid in the discharge or discounted payoff of secondary liens. With the borrower’s consent, the consideration payable to the borrower may be applied toward discharge of liens if this will result in clear title.

F. Required Documentation

A written DIL agreement must be executed by the mortgagor and lender which contains all of the conditions under which the deed will be accepted, including but not limited to:

- Certification that the borrower does not own any other property subject to a mortgage insured by or held by HUD.
- Specific transfer date.
- Notification that there may be income tax consequences as a result of the DIL.
- Acknowledgment that borrowers who comply with all of the requirements of the agreement shall not be pursued for deficiency judgments.
- A statement describing the general physical condition in which the property will be conveyed.
- Agreement that the borrower will convey the property vacant and free of personal property unless an occupied conveyance has been approved by HUD.
• Itemization of the keys, built-in fixtures and equipment to be delivered by the lender on or before the transfer date.

• Borrower’s agreement to provide evidence that certain utilities, assessments and homeowner’s association dues are paid in full to the transfer date unless otherwise agreed to by the parties.

• The dollar amount of consideration payable to and/or on behalf of the borrower (not to exceed $500).

FHA does not dictate a specific format for documentation of the deed-in-lieu agreement. The lender is responsible for ensuring that the deed-in-lieu documentation is in compliance with all applicable laws and regulations.

G. Conveyance

The property must be conveyed through a special warranty deed. The original credit instrument must be canceled and surrendered to the borrower, indicating that the mortgage has been satisfied. Whenever possible, title must be conveyed directly from the borrower to HUD. If it is necessary to first convey title to the lender, and then to HUD, the lender must document the reason in the claim review file.

As with all conveyance claims, the lender must record the special warranty deed and deliver the original, recorded deed to the HUD Office having jurisdiction over the subject property within 45 days of the date that good and marketable title was conveyed to the Secretary.

H. Timing

A DIL must be completed or foreclosure initiated within 6 months of the date of default unless the lender qualified for an extension by first trying another loss mitigation option or has received an extension approved by HUD prior to the expiration of the time requirement.

If the DIL follows a failed special forbearance agreement or pre-foreclosure sale, the DIL must be completed or foreclosure initiated within 90 days of the failure. If the DIL follows any other option, it must be completed or foreclosure initiated within 9 months of the date of default. All extensions of time to initiate foreclosure including “automatic extensions” (Section L, page 12) must be properly identified on form HUD-27011, Block 19.

Failure to comply will result in interest curtailment as more fully described in Mortgagee letter 98-7, FHA Loss Mitigation Program Policy and Procedural Updates.
I. Lender Incentives

FHA will pay the lender an incentive fee of $250 for administrative expenses. This incentive payment should be claimed on line 129 of form HUD-27011.

J. Borrower Consideration

The borrower is entitled to consideration of $500 upon satisfaction of the requirements of the deed-in-lieu agreement. However, no consideration may be paid if the property is occupied at conveyance.

K. Claim Filing

As with other conveyance claims, the lender is expected to follow the claim instructions detailed in HB 4330.4 REV1 and any updates thereto. Reimbursable expenses include, reimbursement of title costs, the consideration paid to (or on behalf of) the borrower not to exceed $500, and a $250 lender incentive fee.

L. Lender Reporting Requirements

The DIL must be reported to credit reporting bureaus. The lender is also responsible for filing information return Form 1099-A with the IRS, reporting any discharge of indebtedness in accordance with the Internal Revenue Code.

M. Option Not to Convey

The lender may elect not to convey title to HUD and to terminate the contract of mortgage insurance. If this decision is made, HUD must be notified on Form HUD-27050-A.

Sincerely,

William C. Apgar
Assistant Secretary for Housing -
Federal Housing Commissioner
APPENDICES

Appendix 1  Special Forbearance Checklist
Appendix 2  Modification Checklist
Appendix 3  Partial Claim Checklist
Appendix 4  Pre-foreclosure Sale Checklist
Appendix 5  Deed-In-Lieu of Foreclosure Checklist
### SPECIAL FORBEARANCE CHECKLIST

#### Requirement

**1.** Has the borrower experienced a verifiable loss of income or increase in living expenses?

**2.** Is the borrower an owner occupant?

**3.** Did a search of CAIVRS determine that the borrower has no other HUD insured loans or prior loans on which a claim has been paid within the past 3 years?

**4.** Did the borrower receive the How To Avoid Foreclosure brochure?

**5.** Will the loan be more than 90 and less than 365 days delinquent on the effective date of the agreement? (show number of days)

**6.** Did the surplus income analysis to determine the borrower’s ability to repay the debt include:
   - a financial statement provided by the borrower?
   - a credit report?
   - income/expense verifications?
   - evidence the borrower can support the payment schedule?

**7.** The borrower’s surplus income percentage is?

**8.** Has an inspection determined that the property has no adverse conditions affecting continued occupancy?

**9.** Does the written agreement executed by the borrower:
   - clearly define the terms and frequency of repayment?
   - offer relief not available through a normal repayment plan?
   - state that failure to comply may result in foreclosure?
   - limit the total default to 12 months or less?

**10.** If the special forbearance agreement culminates in a partial claim or modification, show the proposed date of that action.
<table>
<thead>
<tr>
<th>Requirement</th>
<th>Verification</th>
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</thead>
<tbody>
<tr>
<td>1. Has the borrower experienced a verifiable loss of income or increase in living expenses?</td>
<td></td>
</tr>
<tr>
<td>2. Does the borrower have a commitment to continue to occupy the property as his or her primary residence?</td>
<td></td>
</tr>
<tr>
<td>3. Did a search of CAIVRS determine that the borrower has no other HUD insured loans or prior loans on which a claim has been paid within the past 3 years?</td>
<td></td>
</tr>
<tr>
<td>4. Did the borrower receive the How To Avoid Foreclosure brochure?</td>
<td></td>
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<tr>
<td>5. Will the loan be more than 90 days delinquent on the date of execution and funding? (show number of days)?</td>
<td></td>
</tr>
<tr>
<td>6. If this loan had a prior modification or partial claim within the past three years justify the decision to modify now?</td>
<td></td>
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<tr>
<td>7. Did the surplus income analysis to determine the borrower’s ability to repay the debt include:</td>
<td></td>
</tr>
<tr>
<td>• a financial statement provided by the borrower?</td>
<td></td>
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<tr>
<td>• a credit report?</td>
<td></td>
</tr>
<tr>
<td>• income/expense verifications?</td>
<td></td>
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<tr>
<td>• evidence of the borrower’s ability to pay for at least 3 months?</td>
<td></td>
</tr>
<tr>
<td>8. The borrower’s surplus income percentage is?</td>
<td></td>
</tr>
<tr>
<td>9. The default cannot be cured through special forbearance because?</td>
<td></td>
</tr>
<tr>
<td>10. Has a title search established first lien status of the modified loan?</td>
<td></td>
</tr>
<tr>
<td>• will release of junior liens be required?</td>
<td></td>
</tr>
<tr>
<td>• will title endorsement be required?</td>
<td></td>
</tr>
<tr>
<td>11. Has an inspection determined that the property has no adverse conditions affecting continued occupancy?</td>
<td></td>
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<tr>
<td>12. Does the written modification agreement executed by the borrower:</td>
<td></td>
</tr>
<tr>
<td>• include all advances necessary to reinstate the principal, interest, taxes and insurance?</td>
<td></td>
</tr>
<tr>
<td>• exclude all legal and administrative costs?</td>
<td></td>
</tr>
</tbody>
</table>
### PARTIAL CLAIM CHECKLIST

**Loan Number:** _______________  **Borrower:** ______________________________  **Date:** ______________

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Verification</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Has the borrower experienced a verifiable loss of income or increase in living expenses?</td>
<td></td>
</tr>
<tr>
<td>2. Does the borrower have a commitment to continue to occupy the property as his or her primary residence?</td>
<td></td>
</tr>
<tr>
<td>3. Did a search of CAIVRS determine that the borrower has no other HUD insured loans or prior loans on which a claim has been paid within the past 3 years?</td>
<td></td>
</tr>
<tr>
<td>4. Did the borrower receive the How To Avoid Foreclosure brochure?</td>
<td></td>
</tr>
<tr>
<td>5. Will the loan be more than 120 and less than 365 days delinquent on the date of execution and funding? (show days)</td>
<td></td>
</tr>
<tr>
<td>6. If this loan had a prior modification or partial claim within the past three years justify the decision to use a partial claim now?</td>
<td></td>
</tr>
<tr>
<td>7. Did the surplus income analysis to determine the borrower’s ability to repay the debt include:</td>
<td></td>
</tr>
<tr>
<td>• a financial statement provided by the borrower?</td>
<td></td>
</tr>
<tr>
<td>• a credit report?</td>
<td></td>
</tr>
<tr>
<td>• income/expense verifications?</td>
<td></td>
</tr>
<tr>
<td>• evidence of borrower’s ability to pay for at least 3 months?</td>
<td></td>
</tr>
<tr>
<td>8. What is the borrower’s surplus income percentage? (Is it greater than 0% and less than 17%? show %)</td>
<td></td>
</tr>
<tr>
<td>9. Explain why the default cannot be cured through special forbearance?</td>
<td></td>
</tr>
<tr>
<td>10. Explain why the default cannot be cured through modification?</td>
<td></td>
</tr>
<tr>
<td>11. Has an inspection determined that the property has no adverse conditions affecting continued occupancy?</td>
<td></td>
</tr>
<tr>
<td>12. Will the written partial claim note executed by the borrower:</td>
<td></td>
</tr>
<tr>
<td>• fully reinstate the loan?</td>
<td></td>
</tr>
<tr>
<td>• not exceed the equivalent of 12 months PITI?</td>
<td></td>
</tr>
<tr>
<td>• include only principal, interest and escrow advances in the note?</td>
<td></td>
</tr>
<tr>
<td>Requirement</td>
<td>Verification</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------</td>
<td>---------------------------------------------------</td>
</tr>
<tr>
<td>1. Has the borrower experienced an involuntary reduction in income or</td>
<td></td>
</tr>
<tr>
<td>increase in living expenses?</td>
<td></td>
</tr>
<tr>
<td>2. Does the borrower occupy the property as his or her primary residence?</td>
<td></td>
</tr>
<tr>
<td>If not, explain any variances.</td>
<td></td>
</tr>
<tr>
<td>3. Did the borrower sign an Application to Participate HUD-90036, or other</td>
<td></td>
</tr>
<tr>
<td>disclosure of the availability of reinstatement options?</td>
<td></td>
</tr>
<tr>
<td>4. Will the loan be at least 30 days delinquent when the PFS closes?</td>
<td></td>
</tr>
<tr>
<td>(show number of days)</td>
<td></td>
</tr>
<tr>
<td>5. Does a review of CAIVRS indicate that the borrower has no other</td>
<td></td>
</tr>
<tr>
<td>current FHA loans, or prior loans on which a claim has been paid within</td>
<td></td>
</tr>
<tr>
<td>the past 3 years? (explain any variances)</td>
<td></td>
</tr>
<tr>
<td>6. Does an appraisal completed within the past 6 months show that:</td>
<td></td>
</tr>
<tr>
<td>• the AS IS value is less than the loan amount? (show Value)</td>
<td></td>
</tr>
<tr>
<td>• the property is worth at least 63% of the unpaid principal balance?</td>
<td></td>
</tr>
<tr>
<td>(show negative equity ratio)</td>
<td></td>
</tr>
<tr>
<td>• sale proceeds will result in a loss of more than $1,000</td>
<td></td>
</tr>
<tr>
<td>• the property is not seriously damaged?</td>
<td></td>
</tr>
<tr>
<td>7. Has a title search been obtained indicating marketable title?</td>
<td></td>
</tr>
<tr>
<td>8. Did the surplus income analysis to determine the borrower’s inability</td>
<td></td>
</tr>
<tr>
<td>to repay the debt include:</td>
<td></td>
</tr>
<tr>
<td>• a financial statement provided by the borrower?</td>
<td></td>
</tr>
<tr>
<td>• a credit report?</td>
<td></td>
</tr>
<tr>
<td>• income/expense verifications?</td>
<td></td>
</tr>
<tr>
<td>• the borrower’s surplus income percentage? (show %)</td>
<td></td>
</tr>
<tr>
<td>9. The PFS agreement, executed by the borrower shows:</td>
<td></td>
</tr>
<tr>
<td>• the end date for marketing is?</td>
<td></td>
</tr>
<tr>
<td>• minimum acceptable net proceeds are?</td>
<td></td>
</tr>
<tr>
<td>10. Do Net Sale proceeds equal or exceed 82% of As Is Value? (show %)</td>
<td></td>
</tr>
</tbody>
</table>
### DEED-IN-LIEU OF FORECLOSURE CHECKLIST

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Verification</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Has the borrower experienced a verifiable loss of income or increase in living expenses?</td>
<td>(Date, Amount, Source of Information etc.)</td>
</tr>
<tr>
<td>2. Does the borrower occupy the property as his or her primary residence?</td>
<td>If not, explain any variances.</td>
</tr>
<tr>
<td>3. Will the loan be at least 30 days delinquent when the special warranty deed is accepted?</td>
<td></td>
</tr>
<tr>
<td>4. Did the borrower receive the How To Avoid Foreclosure brochure?</td>
<td></td>
</tr>
<tr>
<td>5. Does a review of CAIVRS indicate that the borrower has no other current FHA loans, or prior loans on which a claim has been paid within the past 3 years? (explain variances)</td>
<td></td>
</tr>
<tr>
<td>6. A recent appraisal or BPO indicates the AS IS property value is?</td>
<td></td>
</tr>
<tr>
<td>7. If any portion of the property is rented has FHA approved occupied conveyance?</td>
<td></td>
</tr>
<tr>
<td>8. Has a title search been obtained showing good and marketable title?</td>
<td></td>
</tr>
<tr>
<td>9. Did the surplus income analysis to determine the borrower’s inability to repay the debt include:</td>
<td></td>
</tr>
<tr>
<td>• a financial statement provided by the borrower?</td>
<td></td>
</tr>
<tr>
<td>• credit report?</td>
<td></td>
</tr>
<tr>
<td>• income/expense verifications?</td>
<td></td>
</tr>
<tr>
<td>• the borrower’s surplus income percentage? (show %)</td>
<td></td>
</tr>
<tr>
<td>10. Does a written DIL agreement, executed by the borrower:</td>
<td></td>
</tr>
<tr>
<td>• require the property to be vacant and free of personal property at conveyance?</td>
<td></td>
</tr>
<tr>
<td>• convey title via a special warranty deed in favor of HUD?</td>
<td></td>
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<tr>
<td>• convey clear title free of junior liens?</td>
<td></td>
</tr>
<tr>
<td>• require the borrower to pay utility bills to the date of conveyance?</td>
<td></td>
</tr>
<tr>
<td>• require the borrower to pay HOA dues or other assessments?</td>
<td></td>
</tr>
<tr>
<td>• advise the borrower to obtain the advice of a tax consultant?</td>
<td></td>
</tr>
</tbody>
</table>
TO: ALL APPROVED MORTGAGEES

SUBJECT: Streamline Refinances-Revised Mortgage Amount Calculations

To assist those borrowers who wish to take advantage of lower interest rates and refinance their existing FHA insured mortgage, we are making the following change to the mortgage amount calculation process for streamline refinance transactions only. This will result in enhanced opportunities to streamline refinance and lower the mortgage payment without the homeowner having to bring additional cash to settlement.

Streamline Refinances with Appraisals - For streamline refinances with appraisals, the two-step mortgage calculation procedure described below may be used. The lower of the two calculations is the maximum amount that FHA will insure (exclusive of new upfront MIP, if any, and subject to statutory geographical mortgage limits):

- Use the existing maximum loan-to-value percentage factors originally shown in ML 98-29 and in the chart below, i.e., those associated with property values and the average closing costs of the state where the property is located.* Multiply the property's appraised value (excluding any closing costs) by the appropriate percentage factor from the chart below:

<table>
<thead>
<tr>
<th>Low Closing Cost State</th>
<th>High Closing Cost State</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property value at $50,000 or less</td>
<td>98.75%</td>
</tr>
<tr>
<td>Property value between $50,000 and $125,000</td>
<td>97.65%</td>
</tr>
<tr>
<td>Property value in excess of $125,000</td>
<td>97.15%</td>
</tr>
</tbody>
</table>

- Add the sum of the existing FHA insured first lien, closing costs, reasonable discount points and the prepaid expenses necessary to establish the escrow account, and subtract any refund of upfront mortgage insurance premiums (UFMIP) as described below. The existing first lien may include the interest charged by the servicing lender when the payoff is not received on the first day of the month as is typically assessed on FHA mortgages, but may not include delinquent interest, late charges or escrow shortages.

*The list of individual states with high and low average closings costs is attached to 98-29.
This revision simplifies the mortgage calculation procedure for streamline refinances with appraisals. It eliminates the need to compute a mortgage amount using the appraised value plus closing costs multiplied by the 97/95/90 percent loan-to-value limits. It will especially benefit those homeowners who purchased using FHA's "downpayment simplification" procedure by allowing them to avoid additional out-of-pocket expenses when refinancing to lower their monthly payments.

Streamline Refinances without Appraisals - The new loan amount may not exceed the lesser of the original principal of the loan being refinanced or the sum of the outstanding principal balance of the existing mortgage plus closing costs. This (using the original principal balance in the first calculation as opposed to the current unpaid principal) will allow those homeowners who have paid down additional principal or whose mortgages have otherwise amortized sufficiently to add some or all of the closing costs to the new mortgage and, thus, not be burdened with bringing additional cash to settlement. For example, if the homeowner's unpaid principal balance has declined by $1000, that amount in closing costs may be included in the new loan amount. This applies only to owner-occupied properties. Non-occupant owner properties, even if originally acquired as principal residences by the current mortgagors, may only refinance the outstanding balance of the existing mortgage.

These revised mortgage amount calculation policies are designed to assist those homeowners already in FHA's portfolio to reduce their monthly mortgage payment with as little cash out-of-pocket as possible. It does not apply to other refinances where greater equity requirements exist such as refinancing interim financing or conventional loans to FHA insured financing. Further, we expect the refinance transaction to be in the homeowner's best interest, that is, result in an improvement to the affordability of the monthly mortgage payment and not be a vehicle for churning new mortgages.

New 1.5% Upfront MIP versus MIP Refund - In several previous mortgagee letters, including ML 92-35 and ML 92-43, lenders were informed that when the refund on the existing upfront mortgage insurance premium will exceed the total of the new upfront MIP, that lenders were permitted to subtract the new upfront MIP from the unpaid principal balance in calculating the new loan amount. This procedure results in the homeowner not needing to bring additional cash, i.e., the amount the refund exceeds the new upfront MIP, to settlement. This policy applies to all FHA refinances eligible for a refund of the upfront MIP.

ARM-to-Fixed Rate Streamline Refinances - Existing instructions regarding streamline refinances of adjustable rate mortgages to fixed rate require, among other things, that the payments on the present mortgage must have been made within the month due for the past twelve months or period that the loan has been in force (see HUD Handbook 4155.1 REV-4, Chg. 1, paragraph 1-12D.16). These instructions were used to describe refinance transactions where the new rate on the fixed-rate mortgage would exceed that of the existing ARM and remain in effect for those situations.

However, if the new fixed-rate mortgage will be at a rate lower than the existing rate of the ARM thus reducing the homeowner's monthly mortgage payment, the "within the month due", i.e., not more than 30 days late, rule is not applicable. All other handbook and mortgagee letter requirements remain intact for ARM-to-fixed rate streamline refinances (e.g., the loan must be current or brought current without obligation to the mortgagor, etc.).
Making Mortgage Payments When Due - Borrowers are expected to make their monthly mortgage payments when due, even when refinancing. It is not appropriate to include in the new mortgage amount the sum of any mortgage payments "skipped" by the homeowner. For example, a borrower whose mortgage payment is due June 1st and expected to close the refinance before the end of June is not permitted to roll the June payment into the new FHA loan amount. The borrower is to either make the payment when due or bring the monthly mortgage payment check to settlement.

Appraisal Expiration - FHA appraisals on existing homes are current for six months. However, they cannot be "re-used" during this period once the mortgage for which the appraisal was ordered has closed. For example, an appraisal used for the purchase of a property cannot be used again for a subsequent refinance even if six months has not passed. A new appraisal is required for each refinance transaction requiring an appraisal.

If you have any questions about this Mortgagee Letter, please contact your local Homeownership Center in Atlanta (888.696.4687), Denver (800.543.9378), Philadelphia (800.440.8647), or Santa Ana (888.827.5605).

Sincerely,

Sean G. Cassidy
General Deputy Assistant Secretary
for Housing-Deputy Federal Housing Commissioner
May 23, 2001

MORTGAGEE LETTER 2001-14

TO: ALL APPROVED MORTGAGEES

ATTENTION: Single Family Servicing Managers

SUBJECT: FHA Loss Mitigation
Clarification of Time Frames

The purpose of this Mortgagee Letter is to clarify the time frame requirements for the FHA Loss Mitigation initiatives. This clarification will address reinstatement loss mitigation claims specifically and will identify several minor procedural changes. These procedural changes shall be applicable for all reinstatement Loss Mitigation claims filed on or after the date of this Mortgagee Letter.

Special Forbearance and Modification

In Mortgagee Letter 00-05, dated January 19, 2000, HUD identified the minimum delinquency for use of both Special Forbearance and Loan Modification as three months. In the discussion regarding Special Forbearance, the Department had also given reference to a minimum delinquency of 90 days. Depending upon interpretation, these instructions appear to be in conflict.

Effective on the date of this Mortgagee Letter, HUD will define the minimum delinquency for both the Special Forbearance initiative and the Loan Modification initiative as three months. Simply stated, three payments must be due and unpaid. An example is included in the attachment.

A second problem involving the proper use of Special Forbearance is the maximum delinquency. The change in the maximum delinquency from seven months (as noted in Mortgagee Letter 96-61, dated November 12, 1996) to that of twelve months (as noted in Mortgagee Letter 00-05) was not intended as an automatic extension of the requirement of 24 CFR 203.355. Mortgagees must still take one of the actions required by 24 CFR 203.355 before six months from the date of default to avoid interest curtailment.
The maximum delinquency allowance of twelve months was provided to expand the use of the Special Forbearance initiative. In many cases, mortgagees were barred from initiating foreclosure (or otherwise fulfilling the requirements of 24 CFR 203.355) because of bankruptcy actions. Upon release of bankruptcy, many of those mortgagors had sufficient resources to begin making at least a full mortgage payment, but had arrearages in excess of seven months. By allowing the use of Special Forbearance for such cases, mortgagees would be able to assist more borrowers in saving their homes. An example of this requirement is also included in the attachment.

For cases where the mortgagee was not barred from initiating foreclosure (or otherwise meeting the requirements of 24 CFR 203.355) within six months from the date of default (and no extension was approved), interest will be curtailed on any subsequent conveyance to six months from the date of default regardless of any subsequent Special Forbearance that may have been executed.

An additional issue regarding the maximum time frame relates to accounts where the mortgagee waited until after the first day of the 12th month of delinquency to execute a special forbearance. This situation created both procedural and system related problems as the arrearage appeared to exceed the 12 month maximum. Therefore those Special Forbearance claims could not be processed.

To ensure that all Special Forbearance incentive claims may be processed in a timely manner, the Department will be requesting additional documentation including a copy of the executed forbearance agreement to support those Special Forbearance plans that are executed between the first and the last day of the 12th month of delinquency. These procedures will affect those Special Forbearance claims filed on or after the date of this Mortgagee Letter.

Mortgagees shall continue to file the Special Forbearance claims, preferably via the FHA Connection. As the Department begins processing of the claim, a request will be sent by Claims for the mortgagee to forward supporting documentation (including a copy of the Special Forbearance Agreement and a copy of the loan history). Upon receipt, the claims representative will confirm that the Special Forbearance agreement does not allow the mortgage arrearage to exceed twelve months. Do not forward any supporting documentation unless requested. This procedure will ensure that the documentation can be directed to the specific individual that is processing the case.

Partial Claims

In Mortgagee Letter 00-05, dated January 19, 2000, HUD identified the minimum delinquency for a partial claim as four months. In the discussion regarding Partial Claims, the Department had also given reference to a minimum delinquency of 120 days. Depending upon interpretation, these instructions appear to be in conflict.
Effective on the date of this Mortgagee Letter, HUD will define the minimum delinquency for the Partial Claim initiative as four months. **Simply stated, four payments must be due and unpaid.** An example is included in the attachment.

Questions regarding this Mortgagee Letter should be directed to our National Servicing Center at (888) 297-8685.

Sean G. Cassidy  
General Deputy Assistant Secretary for Housing-  
Deputy Federal Housing Commissioner
For all examples assume the mortgagor paid the December 1999, installment and failed to make all subsequent payments:

**Example 1: Special Forbearance -Minimum Time Requirement**

It is now March 2, 2000, and the mortgagor has furnished proof of the job layoff that created a decrease in income. He has also furnished verification from his employer as to when he will return to work full time. Including the March 2000, installment, the account is now three payments due and unpaid. If the borrower is cooperative and returns all requested documentation, the mortgagee need not wait until the last day of the month to enter into a special forbearance with the mortgagor as the account is three payments due and unpaid.

**Example 2: Special Forbearance -Maximum Time Requirement**

It is now November 2, 2000, and the mortgagor was just released from bankruptcy. The mortgagor filed the bankruptcy in early February 2000, and the mortgagee could not take any action to initiate foreclosure pending the release of bankruptcy. Since being laid off in January 2000, the mortgagor returned to work full time in late October 2000, and may now make a full mortgage payment at a minimum each month. The mortgagee received all required documentation and established a Special Forbearance plan requiring a full payment for the months of January 2001 through March 2001, and a payment and a quarter payment beginning April 1, 2001, until such time as the account is current. This plan would be acceptable because it does not allow the account to become more than 12 payments due and unpaid.

**Example 3: Special Forbearance -Maximum Time Requirement**

It is now November 2, 2000, and the loan has been sold several times. No servicer took any action to engage in loss mitigation nor did any of the previous servicers request an extension of time. The “ABC” mortgage company just completed an acquisition and found this loan. Upon contact from ABC, the mortgagor was eager to discuss his options.

The mortgagor had encountered several setbacks including a medical emergency involving his child which contributed to an increase in his expenses. He has just begun a new job with good prospects and a raise scheduled for January 1, 2001. It was determined that a Special Forbearance was appropriate because the mortgagor could begin making full monthly mortgage payments in December 2000, with increased payment of one and a quarter payments beginning in February 2001.

This plan would be acceptable because it does not allow the account to become more than 12 payments due and unpaid. However, should this account not reinstate, and it later becomes necessary to foreclose and file a conveyance claim, interest would be curtailed to six months from the date of the original date of default.
Exhibit 4: Partial Claim Time Requirement

It is now April 6, 2000, and the mortgagor furnished documentation of the medical emergency that created both an increase in expenses and a decrease in income. He has also furnished verification from his employer as to when he will begin receiving workman’s compensation, which including some supplemental benefits, will provide him with 90% of his former salary for a period of six months during his rehabilitation. His documentation also indicates that he would return to his former position at the end of his rehabilitation. His income will be sufficient to meet a full monthly mortgage payment, but will not be sufficient for any additional to be applied to the arrearage.

A partial claim is appropriate because the account is 4 payments due and unpaid, the mortgagor can begin making regular mortgage payments, but cannot offer any additional sums to be applied towards the arrearage. If the mortgagee is able to complete the partial claim before the end of April, it need not wait until after April 30, 2000, to submit the mortgage insurance claim for the Partial Claim incentive.
TO: All Approved Mortgagees

SUBJECT: Reinstatement of the Housing Counseling Notification Requirement

The purpose of this Mortgagee Letter is to advise of the reinstatement of the housing counseling notification requirement in Section 106(c)(5) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x)(Act). Under this provision mortgagees must notify all eligible delinquent mortgagors of the availability of homeownership counseling provided both by the mortgagee and by nonprofit organizations which are approved by the Secretary and experienced in homeownership counseling. Section 106(c)(9) of the Act, which previously terminated the provisions of Section 106(c)(5) on September 30, 2000, was recently repealed by Section 205 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act for 2002. Thus, the requirement of Section 106(c)(5) has now been made permanent.

Please note that this provision applies to all mortgage loans on residential properties in your portfolio, whether conventional, governmentally insured, or governmentally guaranteed (including those loans insured or guaranteed by federal, state, and local government agencies). This provision also applies to direct mortgage loans from federal, state, or local government agencies that are now in your portfolio.

HUD has established the Housing Counseling Clearinghouse (HCC) to provide a toll-free number (800) 569-4287 for financially distressed mortgagors to call for information concerning HUD-approved housing counseling agencies. The HCC operates a toll-free, 24-hour automated voice response system that provides homeowner referrals to local housing counseling agencies. The HCC collects and catalogs information on housing and homeownership programs,
publishes a newsletter targeted to housing professionals, and disseminates information on HUD initiatives such as HUD SuperNOFA Grants and Home Equity Conversion Mortgages for Seniors. Detailed and complete information is also available on HUD’s website and can be found on the Internet at:

http://www.hud.gov/offices/hsg/sfh/hcc/hcc_home.cfm

If you have any questions regarding this letter, please contact your local HUD office.

Sincerely,

______________________________________
John C. Weicher
Assistant Secretary for Housing-
Federal Housing Commissioner, H
June 7, 2002

MORTGAGEE LETTER 2002-13

TO: ALL APPROVED MORTGAGEES

ATTENTION: SINGLE FAMILY SERVICING MANAGERS

SUBJECT: Deed-in-Lieu of Foreclosure Consideration Increase and the Authorization to Pay Cash to Occupants for Keys Prior to Eviction

Deed-In-Lieu Consideration

Effective on the date of this Mortgagee Letter, the Department is increasing the consideration for a deed-in-lieu of foreclosure to an amount not to exceed $2,000. The funds may be paid to the borrower upon vacating the property or they may be used to pay off junior liens in order to clear a title. This payment increase amends the policy outlined in Mortgagee Letter 00-05, Loss Mitigation Program - Comprehensive Clarification of Policy and Notice of Procedural Changes, dated January 19, 2000.

Cash For Keys

Effective immediately, the Department authorizes a $1,000 “cash-for-keys” consideration as an alternative to a legal eviction following foreclosure. The consideration represents the savings to the government by avoiding most of the legal expenses associated with an eviction and other property expenses related to delayed possession of properties. Servicers are encouraged to offer up to $1,000 per dwelling, on the condition that the occupant peacefully vacates a property for which the mortgage has been foreclosed. Cash-for-keys may not be utilized in conjunction with deed-in-lieu or pre-foreclosure sale options. Additionally, in jurisdictions with rent control ordinances, lenders must adhere to all applicable laws and regulations.

The cash-for-keys offer should be made available only to occupants who fail to vacate a property after the first notice to quit is delivered and further legal action to evict is imminent. In order to receive the funds, all occupants must vacate the property within 30 days of the cash-for-keys offer. Occupants are required to leave the property in broom-clean condition. All built-in appliances and fixtures must be left in the property. Servicers must inspect the vacant properties prior to releasing the funds to ensure that the occupants have complied with their agreement on the condition of the property. Servicers must maintain documentation for the date and amount of the offer, the occupant’s receipt of the funds and agreed upon date of vacancy.
If the cost of eviction in the jurisdiction generally exceeds $1,000 and the servicer determines that $1,000 is not an adequate incentive to avoid eviction, the servicer may contact the marketing and management (M&M) contractor that has jurisdiction over the property to request an increased amount. M&M contractors will refer requests for the over allowable costs to the Government Technical Representative (GTR) with responsibility for the contract area in which the property is located. The Department may develop a list of allowable costs by jurisdiction that will be communicated to servicers in a future mortgagee letter.

**Claim Filing**

Enter the increased deed-in-lieu and cash-for-keys considerations on form HUD-27011, Single-Family Application for Insurance Benefits, Part D, item 305, Disbursements for HIP taxes, ground rents and water rates, eviction costs and other disbursements not shown elsewhere.

Sincerely,

________________________________________
John C. Weicher
Assistant Secretary for Housing-
Federal Housing Commissioner, H
TO: ALL APPROVED MORTGAGEES

ATTENTION: Single Family Servicing Managers

SUBJECT: Special Forbearance: Program Changes and Updates

The purpose of this mortgagee letter is to remind lenders of the proper use of the special forbearance agreement as a loss mitigation tool and to introduce several changes in the special forbearance program including new flexibility to utilize special forbearance to assist otherwise creditworthy borrowers who are experiencing temporary unemployment.

Definition and Existing Guidance

A special forbearance is a written repayment agreement between a lender and a mortgagor that contains a plan to reinstate a loan that is a minimum of three payments due and unpaid. To qualify as a special forbearance and entitle the lender to incentives, the agreement must provide the mortgagor with relief not typically afforded under a repayment plan or an informal forbearance plan. Requirements for use of special forbearance are detailed in Mortgagee Letter 2000-05, Loss Mitigation – Comprehensive Clarification of Policy and Notice of Procedural Changes.

This mortgagee letter supersedes the portion of Mortgagee Letter (ML) 2000-05 that addresses Special Forbearance, starting on page 14 through page 18 and those portions of paragraph M on page 13 that pertain to special forbearance. Included in this mortgagee letter are changes and clarifications for most of the sections related to special forbearance in ML 2000-05, but other loss mitigation provisions within ML 2000-05 were left intact. Several additional sections have been provided to clarify time frame and payment application issues. This mortgagee letter does not supersede those portions of Handbook 4330.1 REV-5, paragraph 8-4 that pertain to special forbearance agreements for investors or non-owner occupants.
Changes to and Clarifications to the Special Forbearance Procedures

Type I Special Forbearance

Type I special forbearance is a structured plan that allows a borrower to repay a loan delinquency over time. The plan must provide relief not typically afforded under an informal forbearance or short-term repayment plan including an initial period for financial recovery followed by a payment schedule based on the borrower’s ability to repay.

To be considered a valid Type I special forbearance agreement by the Department, a special forbearance agreement must:

• Identify the specific months for which the account is delinquent and note the total arrearage that accrued prior to the beginning of the agreement.

• Must fully reinstate the loan.

• Ensure that the repayment installments required under the terms of the special forbearance are based on the borrower’s ability to pay. (Note: the lender must retain in the claim review file, evidence that the lender analyzed the borrower’s financial condition as described in paragraph H, page 10 of ML 2000-05, and that the repayment schedule is supported by the financial analysis. (For example, a special forbearance plan may not include a balloon payment unless the borrower’s financial analysis indicates the source of the funds for this payment.)

• May allow reasonable foreclosure costs and late fees accrued prior to the execution of the special forbearance agreement to be included as part of the repayment schedule. However, they may only be collected after the loan has been reinstated through payment of all principal, interest, and escrow advances. At no time shall the loan be considered delinquent solely because the borrower has not paid late fees or other foreclosure costs.

• Provide relief that is not typically afforded under an informal forbearance plan, including one or more of the following: (a) suspension or reduction of payments for a period sufficient to allow the borrower to recover from the cause of default; (b) a period during which the borrower is only required to make his/her regular monthly mortgage payment before beginning to repay the arrearage; (c) a repayment period of at least six months.

• Have a minimum duration of four months. There is no maximum length of time to repay the arrearage.

• Not allow late fees to be assessed while the borrower is performing under the terms of a special forbearance plan or allow the loan to be considered delinquent solely because the borrower has not paid late fees or other foreclosure costs.
**Type I Special Forbearance (continued)**

- Not allow the accrued arrearage to exceed the equivalent of 12 months of principal, interest, taxes and insurance ("PITI"). The twelve months of PITI for ARMS, GPMS, and GEMS will be calculated by multiplying 12 times the monthly payments due on the date of default.

- Allow the borrower to pre-pay the delinquency at any time.

- Maintain a copy of the forbearance agreement that is signed and dated by at least one borrower and by an authorized agent of the lender.

**Special Provisions for Type 1 when the Cause of Default is Unemployment**

As stated above, the lender is required to make a determination, based on an evaluation of the borrower’s financial information that the special forbearance will lead to reinstatement of the loan. When the cause of default is unemployment and the borrower has no immediate prospect of re-employment, it is often not possible for the lender to reach this determination. With this mortgagee letter, HUD is providing additional flexibility for lenders to provide relief to otherwise creditworthy borrowers who have become unemployed and have a reasonable prospect of re-employment in the foreseeable future.

Lenders may now enter into a special forbearance agreement with a borrower who has both a good payment record and a stable employment history, but has not received a commitment of re-employment at the time the lender is reviewing the borrower’s financial information. As an indication of the borrower’s commitment to retaining homeownership, the borrower should be required to make partial payments in an amount determined by the lender based on the borrower’s ability to repay. Further, the borrower must agree to actively seek employment during the term of the reduced payments and to immediately notify the lender when the borrower’s employment status changes.

The lender is required to verify the borrower’s employment status monthly and renegotiate the terms of the special forbearance plan when the borrower’s status changes. As with other Type I special forbearances, the plan must be for a minimum of four months but may be any length. However, at no time may the plan provide for the delinquency to exceed the equivalent of 12 monthly PITI installments.
Type II Special Forbearance

A Type II special forbearance combines a short-term special forbearance plan and a modification or partial claim as a single loss mitigation plan. Lenders should use a Type II special forbearance whenever the loss mitigation evaluation determines that the borrower’s best option is either a modification or a partial claim but there is any concern about the borrower’s ability or commitment to keep the payments current following reinstatement. Borrower must make at least three full monthly payments prior to execution of a modification or partial claim. Where a short term special forbearance is used to allow borrowers to demonstrate their ability to support the debt, FHA is further protected from the risk of workout failure. Generally, during the trial period the amount of the monthly payment due will not exceed the borrower’s normal monthly payment.

To be considered a valid Type II special forbearance agreement by the Department, a special forbearance agreement will contain elements of a Type I, in addition to the following:

- Identify the loss mitigation initiative that will be used to cure the default, i.e., loan modification or partial claim.

- Not allow late fees to be assessed while the borrower is performing under the terms of a special forbearance plan. Because Type II special forbearance plans culminate in either a loan modification or a partial claim, foreclosure costs and fees may be collected in accordance with the requirements applicable to those options.

- Require a minimum of three monthly installments before the completion of the modification or partial claim.

- A Type II special forbearance is not entitled to receive a special forbearance incentive fee, but may file for the loss mitigation option incentive fee, used to cure the default, when the loss mitigation action is finalized.

Regardless of type, a special forbearance plan must be designed to eventually lead to reinstatement of the loan either directly or in combination with a loan modification or partial claim. While there is no maximum duration requirement for special forbearance agreements and lenders are encouraged to allow as much time for repayment as is reasonable based on the borrower’s ability to repay, at no time may the maximum mortgage arrearage due under a special forbearance plan exceed the equivalent of 12 months of principal, interest, taxes and insurance (“PITI”).

The special forbearance agreement must be in writing and must be executed by the mortgagor and lender. The agreement must acknowledge previously missed mortgage payments and provide notice that failure to comply with the terms of the special forbearance agreement can result in initiation of foreclosure.
General Requirements

Loan Default

The loan must be at least three months, but not more than 12 months due and unpaid, and may not be in foreclosure when the special forbearance agreement is executed. Loans that had previously been referred to foreclosure may be removed from foreclosure status prior to execution of a special forbearance. On advice of lender’s legal counsel, foreclosure may be suspended subject to the borrower’s performance under the terms of the special forbearance agreement, if the suspension is stipulated in writing in the agreement.

Borrower Qualifications

Special forbearance may be offered to borrowers who have recently experienced a verifiable loss of income or increase in living expenses, but who have or will have sufficient monthly income to correct the delinquency and reinstate the loan within the duration of the plan either through gradual repayment of the arrearage, or through a combination of repayment and modification or partial claim. Special forbearance should not be offered to borrowers who have repeatedly broken past informal or formal forbearance plans without good cause.

The borrower must be an owner occupant, committed to occupy the property as a primary residence during the term of the special forbearance agreement. However, unlike modification and partial claim, which require that the borrower have a long-term commitment to the home, a special forbearance may be used to reinstate a loan to facilitate the eventual sale, or assumption of the property. HUD Handbook 4330.1, REV-5, Chapter 8 provides additional forbearance relief options for non-owner occupants. Agreements executed per these handbook guidelines are not eligible for special forbearance incentive claim payments.

Property Condition

The lender must conduct any review it deems necessary to verify that the property has no physical conditions which adversely impact the borrower’s continued use or ability to support the debt. A borrower will not be able to support payments under a special forbearance plan if the property is in such a deteriorated condition that repairs drain the borrower’s monthly resources. An analysis of the borrower’s surplus income should consider obvious property maintenance expenses.

If significant deferred maintenance contributed to the cause of the default, it may be appropriate that the special forbearance plan provide a period of mortgage forbearance during which repairs specified in the agreement will be completed at the borrower’s expense. If the lender’s review identifies a property in extremely poor physical condition, a special forbearance
plan, especially one that allows reduction or suspension of payments not tied directly to property repair, may not offer a permanent resolution to the default. Lenders must use good business judgment relative to property condition.

Financial Analysis

The lender is required to assess the borrower’s ability to repay the entire delinquency as described in ML 2000-05, section H, page 10. HUD expects the lender to project the borrower’s surplus monthly income for the duration of the special forbearance period, and to propose repayment terms consistent with the borrower’s ability to pay.

The lender must exercise good business judgment in determining that the borrower has the capacity to resume full monthly payments, and eventually reinstate the loan under the terms of the plan. If the financial analysis reveals that the borrower does not, or has no reasonable expectation that his/her financial situation will recover in the foreseeable future, a Type I special forbearance should not be used. The lender should consider other loss mitigation options in the priority detailed in ML 2000-05, section F, page 10.

Review and Re-negotiation

Lenders must review the status of forbearance plans each month and take appropriate action if the borrower is not complying with the terms of the plan. A system report confirming that the loan is performing under the terms of the forbearance is sufficient to document the lender’s compliance with this review requirement except when the cause of the default is unemployment (see, Special Provisions for Type I when the Cause of Default is Unemployment). When a lender enters into a special forbearance agreement with a borrower whose continued unemployment is the cause of the default, the lender must document the borrower’s employment status monthly and adjust the terms of the plan to reflect changes in income.

Plans may be re-negotiated if the borrower’s financial circumstances change. However, re-negotiated plans may not exceed HUD’s requirement that the loan be no more than 12 months delinquent. Lenders may only file for the special forbearance incentive claim once per default.

Combining Options

Mortgagee Letter 2000-05 states that a special forbearance (now defined as Type I) can be used alone or combined with any reinstatement option, but that the options would be sequential, not simultaneous. The new Type II special forbearance option that combines special forbearance with either a modification or a partial claim will be considered as a single loss mitigation plan.

Lenders may continue to execute loan modifications and partial claims as stand-alone loss mitigation options; however since the combined Type II option serves to protect FHA from the risk of workout failure, the claim file should provide justification of the lender’s decision to skip this option. A Type II special forbearance may not be combined with a delinquent refinance
and may not be used to reinstate a loan to facilitate assumption.

**Other Provisions**

*Payment Application*

In cases in which the mortgagor is entitled to pre-foreclosure relief (24 CFR 203.606), the lender should be entering into special forbearance and other loss mitigation agreements before foreclosure is considered, and foreclosure costs are incurred. However, in those cases where the borrower brings forth new information after foreclosure has been initiated, lenders are encouraged to evaluate this information and consider all appropriate loss mitigation options. When this reconsideration indicates that it is appropriate to enter into a special forbearance agreement, some special arrangements may need to be made to allow the borrower to repay the foreclosure costs and fees over the term of the forbearance agreement.

In these cases, the borrower will be required to reimburse the lender for only those foreclosure costs accrued to the date the foreclosure was cancelled. Under no circumstances will the borrower be required to pay the lender more than the Department identified as customary and reasonable for claim purposes in the Mortgagee Letter 2001-19, or any subsequent mortgagee letter issued on that subject.

As part of the written special forbearance agreement, the lender and borrower may agree that in addition to the required forbearance installment, the borrower will remit a portion of the foreclosure costs each month. In this instance, the lender must place the foreclosure costs collected each month into a suspense or memo fund account properly identified as belonging to the borrower. When the borrower completes his/her forbearance and the account is current, those funds held in suspense may be released and used to reimburse the lender for foreclosure costs incurred. If the borrower does not complete the special forbearance, all fees held in suspense are to be applied to the borrower’s account in the order of priority established in 24 CFR 203.24, before calculating the claim for insurance benefits.

*Foreclosure Time Requirements*

In cases where foreclosure had begun, but the borrower is given an opportunity to attempt to save his/her home through special forbearance, an extension of time to initiate foreclosure (24 CFR 203.355) may be necessary.

Generally in non-judicial states, the foreclosure action must be cancelled to allow the borrower the opportunity to attempt a special forbearance. 24 CFR 203.355 provides additional time if the lender engages in one of the actions listed, which includes entering into a special forbearance agreement. The regulation does not provide any additional time for the lender if the borrower does not engage in a special forbearance but agrees to a repayment plan instead. In cases with informal forbearance plans, the lender should request an extension of time from the National Servicing Center (NSC). Additional guidance and information can be found on NSC’s

**Foreclosure Time Requirements, (continued)**

If the case in question is in a judicial foreclosure state it may not be necessary to cancel the foreclosure action, because the lender may be able to temporarily suspend the foreclosure action. In such cases, the lender may be concerned about meeting the reasonable diligence time requirement (24 CFR 203.356). For such cases, the lender should have adequate documentation to support that the borrower provided new information to support that a special forbearance was appropriate after foreclosure was initiated.

The lender’s reasonable diligence time frame will be extended for the time the borrower was performing under the terms of the special forbearance agreement as well as an allowance of no more than ninety days (90) to get the foreclosure back on schedule from the date the borrower defaulted under the special forbearance agreement. Additional information on reasonable diligence is found in the Claims Handbook, 4330.4, paragraph 3, page 1-11.

**Automatic Extensions**

If a lender has initiated, but is unable to complete a special forbearance within the six-month time limit, the lender is entitled to a 90-day extension of the foreclosure deadline provided the initiative was begun prior to the expiration of the initial six months. Therefore, if there have been no other intervening delays (such as bankruptcy) this “automatic” extension will extend the six month deadline to initiate foreclosure by 90 days. To qualify for the automatic extension, the lender must have completed the loss mitigation evaluation required by 24 CFR 203.605 and have documentation of this analysis in the claim review file. In addition, the loss mitigation initiative must be reported to the Single Family Default Monitoring System (SFDMS), using the appropriate status code (09, 12, or 32). All extensions of time to initiate foreclosure including “automatic extensions” must be properly identified on HUD-27011, Block 19 on the conveyance claim.

**Option Failure**

Foreclosure action is suspended during special forbearance. In the event this option fails, an additional 90-day extension is provided in which the lender must commence or recommence foreclosure or initiate another loss mitigation option.

A special forbearance is considered a failure when any of the following occur:

- The borrower abandons the property;
- The borrower advises the lender that he/she will not follow through and fulfill the terms of the special forbearance agreement; or,
- The borrower allows two installments to become due and unpaid without any advisement to the lender of any problems that rendered the borrower unable to stay current under the terms
of the forbearance.

Lender Incentives

FHA believes that well structured special forbearance agreements will resolve the majority of curable loan delinquencies. The Department strongly encourages use of this option and has provided attractive lender incentives.

- First, for each special Type I forbearance agreement executed by a lender, regardless of the outcome, FHA will pay a $100 incentive fee. Lenders whose overall loss mitigation performance is ranked in the top quarter will be eligible for an incentive payment of $200 per Type I special forbearance claim.

- Second, when either a Type I or Type II special forbearance has been utilized and failed, and a conveyance claim is filed, lenders are entitled to collect unpaid interest at the note rate rather than at the debenture rate of interest.

- Finally, the number of months of interest that may be claimed is computed to the earliest of several dates as provided in 24 CFR 203.402a. This computation generally allows two additional months of interest than would be payable on a conveyance claim where special forbearance had not been utilized.

These are significant claim benefits, intended to reduce the risk to lenders of offering reduced or suspended payments, and/or longer than normal repayment terms. These incentives are not available in combination with any other loss mitigation option.

Filing For Incentive Payment

The lender must file the claim for a Type I special forbearance incentive payment within 60 days of the date of execution of the special forbearance agreement. It is not necessary to submit a copy of the special forbearance agreement or checklist. However, all documentation pertaining to the special forbearance must be retained in the claim review file and provided to HUD promptly upon request.

If Type II special forbearance is used, the lender is not entitled to file a claim for the special forbearance incentive fee, but may file for the incentive fee for the loss mitigation option which is used to cure the default when this other loss mitigation action is finalized.
Any questions regarding this mortgagee letter may be directed to HUD’s National Servicing Center at (888) 297-8685 or hsg-lossmit@hud.gov. These clarifications and changes in this mortgagee letter are effective immediately.

__________________________________________
John C. Weicher
Assistant Secretary for Housing-
   Federal Housing Commissioner, H
TO: ALL APPROVED MORTGAGEES

ATTENTION: Single Family Servicing Managers

SUBJECT: Due Diligence in Acquiring Loans

The purpose of this Mortgagee Letter is to identify and recommend the use of prudent industry practices related to due diligence in the acquisition of whole loans or loan pools.

In recent months, national attention has been drawn to the devastating impact of predatory lending on families who are victimized by a few unscrupulous sellers, appraisers, real estate agents, mortgage originators or investors. The Department believes that no responsible FHA-approved mortgagee would knowingly purchase fraudulently originated loans. Effective due diligence policies, uniformly applied by mortgagees prior to purchase, would cripple the ability of fraudulent lenders to pawn predatory loans off on others in the mortgage industry. If predatory loans cannot be sold, they are unlikely to be made and all borrowers, including FHA borrowers, will be protected.

The Department routinely solicits feedback from lenders regarding the need for clarification of servicing requirements during various industry forums such as servicing conferences. As a result of the national attention on predatory lending, recent industry discussions focused on predatory lending practices and due diligence in the purchase of FHA insured loans. As a follow up to those discussions, several FHA-approved lenders that regularly buy and sell loans provided examples of the quality control procedures used by their firms to review both underwriting and servicing aspects of loan purchase transactions.

Due to the importance of this matter, the Department is considering amending its regulations to require pre-purchase quality control reviews. Until such regulations are issued, the Department will publicize through Mortgagee Letters prudent practices currently being used by the industry.

As such, this letter is the first in a series of Mortgagee Letters on prudent due diligence. Because of its focus on predatory lending, this letter concentrates on due diligence reviews of how loans were originated and underwritten. Future Mortgagee Letters will focus on related matters including prudent due diligence of prior servicing activity. The best practices described
herein are provided as guidance to HUD-approved lenders who may find it appropriate or necessary to update their Quality Control (QC) plan to include procedures for pre-purchase due diligence of acquired loans. While the Department encourages lenders to review and revise QC plans in accordance with this guidance, the performance of due diligence by asset purchasers is, at present, voluntary.

**BACKGROUND**

To obtain or maintain approval to participate in HUD mortgage programs, mortgagees are required to “implement a written quality control plan, acceptable to the Secretary, that assures compliance with the regulations and other issuances of the Secretary regarding loan or mortgage origination and servicing” (24 CFR 202.5 (h)). In addition, this written plan must “provide for independent evaluation of the significant information gathered for use in the mortgage credit decisionmaking and loan servicing process for all loans originated or serviced by the mortgagee” (see Chapter 6 (1) of the Mortgagee Approval Handbook, 4060.1 REV-1). This requirement includes loans or loan pools purchased by the mortgagee from unrelated originators.

There are also related requirements regarding the sale of the mortgage in that the purchasing mortgagee succeeds to all rights and becomes bound by all of the obligations of the seller under the contract for mortgage insurance. This would include the originating lender and any successive purchasing lender (see HUD Handbook 4330.1 Rev. 5, Chapter 6).

Prior to closing a portfolio or pool purchase from an independent source, prudent servicers conduct a due diligence review of selected loans within the portfolio. This procedure provides the acquiring servicer the opportunity to measure the credit and collateral risks inherent in the portfolio. Risk might arise from fraudulent transactions, deficient underwriting, defective property condition, inadequate servicing or other factors that may ultimately lead to borrower default or indemnification of the Department.

Just as the written QC plan must identify a specific protocol for on-going review of loans in the lender’s portfolio, the plan should also include a documented protocol for due diligence of loans to be acquired. An effective due diligence plan should:

1. Include specific procedures for reviewing the source of the loans;

2. Describe portfolio risk analysis methods;

3. Identify a sampling methodology (random, statistical and or risk targeted sampling);

4. List evaluation criteria for the loan level review; and,

5. Include outcomes if a loan, or a percentage of loans reviewed, is not in compliance with FHA requirements.
Following are examples of best practices for conducting due diligence. These practices are used by many FHA lenders and servicers that routinely purchase whole loans or loan portfolios.

PRE-PURCHASE DUE DILIGENCE

All FHA mortgagees who purchase or anticipate purchasing loans are encouraged to review and update their QC plan to include some or all of the practices described herein.

Review the Source of the Loans

Integrity of source is a critical factor in assessing the risk inherent in any transaction. A thorough review of the reputation, business conduct and practice of the seller is an essential first step in any pre-purchase due-diligence program. Seller review techniques commonly used by FHA lenders are described below. Most of the lenders volunteered that it is their practice to always conduct such reviews prior to a specific purchase transaction and it is their practice to follow up the initial review by conducting additional reviews at routine intervals for a period of time.

1. Utilize a comprehensive questionnaire to be completed by the originating lender or current seller prior to portfolio purchase that fully and completely describes the nature of the seller’s business and how it is conducted and fully discloses the seller’s current financial condition.

2. Obtain and review a copy of the selling lender/servicer’s QC plan and several annual reports.

3. Use HUD’s Neighborhood Watch website, which is accessible through the FHA Connection, to screen the originators from whom the seller regularly purchases loans. See ML 2002-15 for directions on accessing Neighborhood Watch.

4. Establish key questions and responses that are likely to detect fraud or poor business practices and use these questions to conduct interviews with the seller’s servicing and collection staff.

5. Audit the seller’s origination operations.

6. Check the Federal Register to see if the seller has been subject to Mortgagee Review Board actions. Also, use HUD’s Neighborhood Watch System as a means of evaluating the originating lender’s past performance and to see if HUD has taken any termination actions.

Portfolio Risk Analysis

Portfolio risk analysis looks at performance characteristics of all loans in the transaction. In order to properly measure portfolio risk, the acquiring mortgagee must establish benchmarks
for performance characteristics including interest rate, term, collateral type, pre-payment runoff, loan-to-value, delinquency, foreclosure, early payment default, etc. Buyers typically use computer assisted analysis to review all loans in the sale transaction, determine the relative risk and decide if the risk level of the transaction is acceptable before proceeding with further due diligence.

Sampling Methodology

The surest way to know the quality of loans being purchased is to completely re-underwrite each origination file. While this is common for individual loan purchases, it is not economically feasible in large transactions. Pool purchasers typically rely on sampling.

Sampling allows the buyer to conduct a detailed loan level review of a small number of loans in the portfolio and from this review draw conclusions about the overall quality of originations. HUD’s Mortgagee Approval Handbook, 4060.1, Rev-1, Chapter 6-1(c), describes sampling techniques relative to quality control reviews. These techniques, including random and statistically valid sampling, may be helpful in establishing a sampling protocol for due diligence reviews.

In addition to sampling, most loan purchasers also target certain loan types or loan characteristics for detailed review. Targeted reviews are conducted on some or all loans that present greater risk potential. FHA lenders report that they commonly conduct targeted reviews using these loan characteristics:

1. Section 203(k) rehabilitation loans (review of initial documentation and current escrow status).
2. Interest rates significantly exceeding the average portfolio rate.
3. Fair Isaac (FICO) scores below acceptable benchmarks established by the purchaser.
4. Loans to non-profit organizations.
5. Loans made based on the credit qualifying of multiple mortgagors to meet minimum income requirements.

Loan Level Review

When conducting loan level due diligence of specific loans, the best practices of many purchasing lenders also include reviewing the following:

1. Verification that each loan in the portfolio/pool is properly insured and that the mortgage insurance certificate has been issued.
2. Verification that the property had not been sold at a significantly lower value within a short time prior to the subject transaction without documentation to support the increased value.

3. Verification that the seller had been the owner of record for some reasonable period of time prior to the subject transaction.

4. Re-calculation of the borrower’s qualifying ratios and examination of the validity and sufficiency of the income.

5. Review of the borrower’s credit worthiness including:
   - FICO score
   - Credit report and adequacy of supplemental explanations
   - The in-file verification of employment (VOE), Gift Affidavits and other sources of downpayment.

6. Determination that the points and fees charged to the buyer were reasonable based on market conditions at the time of origination and that the rate was fair and appropriate based on the borrower’s credit and income.

7. Evaluation of the appraisal to determine that all relevant HUD regulations and guidelines (including HUD Handbooks 4150.1 and 4150.2), were met and followed during the underwriting process.

8. Verification that proper borrower disclosures were provided, that all signatures appear to be genuine and that the file documentation provides no evidence of fraud or poor business practices.

**Outcomes**

A comprehensive due diligence plan includes planned reactions. It is important that mortgage loan buyers establish risk thresholds and projected outcomes prior to conducting the review so that they know when to walk away from a transaction or an individual loan that presents an unacceptable level of risk. Some common outcomes of pre-purchase due diligence include:

1. Exclusion of one or more individual loans or a cohort of similar loans from the transaction;

2. Providing the seller the opportunity to correct defects;

3. Adjusting pricing to account for the increased risk; or,

4. Cancellation of the sale if the level of non-compliance is significant enough.
Essential to the success of any loan purchase policy is an enforceable loan sale agreement. Typically loan sale agreements provide additional protection for the purchaser by including recourse provisions in the event of contractual default or noncompliance discovered after closing. Recourse may include repurchase of selected loans, indemnity, or other financial remedies for the benefit of the purchaser. HUD encourages use of recourse provisions that require sellers to remedy any loan that is subsequently discovered to have predatory characteristics.

If due diligence is to be an effective protection against predatory lending, purchasers must complete their due diligence review prior to closing the sale transaction. A rigorous pre-purchase review protects the purchaser and puts sellers on notice that poor quality, predatory or fraudulently originated loans cannot be pawned off on legitimate mortgagees simply based on the strength of the FHA insurance endorsement.

If during any aspect of a loan sale transaction a mortgagee identifies evidence of potential loan fraud or predatory practices, the Department encourages the mortgagee to notify the seller in writing, listing the loan or loans that appear suspect. If the mortgagee observes what appears to be a fraudulent origination, the mortgagee must report this to the Quality Assurance Division within the Homeownership Center where the loan was originated.

If you have any questions concerning this Mortgagee Letter, please contact the National Servicing Center in Oklahoma City, Oklahoma at 1 (888) 297-8685.

Sincerely,

John C. Weicher
Assistant Secretary for Housing-Federal Housing Commissioner
MORTGAGEE LETTER 2003-19

TO: ALL APPROVED MORTGAGEES

ATTENTION: Single Family Servicing Managers

SUBJECT: Partial Claims: Program Changes and Updates

The purpose of this Mortgagee Letter is to remind mortgagees of the proper use of the partial claim as a loss mitigation tool for defaulted FHA mortgagors, and to introduce several changes in the partial claim program which include:

- a reminder that mortgagees shall lose the incentive payment when loss mitigation claims are not submitted within 60 days of the date the partial claim subordinate lien is executed, or where the partial claim security documents are not forwarded timely,
- a “One-Time Amnesty” which is being provided to accept all outstanding partial claim related legal documents without penalty;
- additional guidance for calculating pre-foreclosure sale ratios where a partial claim had been provided to the mortgagor in a previous default.

This Mortgagee Letter supersedes the portion of Mortgagee Letter (ML) 2000-05 that addresses partial claims, starting on page 24 through page 29. The other loss mitigation provisions within ML 2000-05 were left intact. Several additional sections have been provided to clarify time frame and address document delivery issues.

Definition and Existing Guidance

Under the partial claim option, a mortgagee will advance funds on behalf of a mortgagor in an amount necessary to reinstate a delinquent loan (not to exceed the equivalent of 12 months worth of principal, interest, taxes, and insurance (PITI)). The mortgagor, upon acceptance of the advance, will execute a promissory note and subordinate mortgage payable to HUD. Currently, these promissory or “partial claim” notes carry no interest and are not due and payable until the mortgagor either pays off the first mortgage or no longer owns the property.
Following reinstatement, the mortgagee will file a partial claim for the amount of the advance plus the mortgagee’s incentive fee, and forward a copy of the recorded documents to HUD. A contractor retained by HUD will service the partial claim notes.

HUD approval is not required in order for mortgagees to advance funds and file a partial claim, as long as the requirements detailed in this section are satisfied. This option provides mortgagees with a powerful tool to assist mortgagors threatened with foreclosure. However, this loss mitigation option should be used only if the mortgagee is confident that:

- The mortgagor has the long-term financial stability to support the mortgage debt; and,
- The mortgagor does not have the ability to repay the arrearage through a special forbearance or modification.

A. Loan Default

The loan must be at least four (4) payments due and unpaid, but may not be more than 12 months due and unpaid at the time the partial claim note is executed. The loan may not be in foreclosure when the partial claim note is executed. However, a mortgagee may remove a loan from foreclosure if the mortgagor’s financial situation has improved sufficiently to justify a partial claim.

B. Mortgagor Qualifications

Partial claims may be offered to mortgagors who satisfy all of the following requirements:

- Have overcome the cause of the default;
- Have sufficient income to resume monthly mortgage payments;
- Do not have sufficient surplus income to repay the arrearage through a repayment plan;
- A mortgage modification is not appropriate;
- The mortgagor is an owner-occupant(s) committed to continuing occupancy of the property as a primary residence. A partial claim may not be used to reinstate a loan prior to a sale or assumption.

A mortgagee may consider a mortgagor who has filed a petition in Bankruptcy Court under Chapter 13 for a partial claim, only after obtaining the approval of the Bankruptcy Court. If the mortgagor has filed a bankruptcy petition under Chapter 7, the mortgagee must obtain Bankruptcy Court approval. In addition, the mortgagor must reaffirm the debt.
C. Property Condition

While the partial claim option does not include a loan-to-value restriction and no appraisal or broker’s price opinion is required, the mortgagee must conduct a review sufficient to verify for FHA that the property has no physical condition(s) which adversely impact the mortgagor’s continued use or ability to support the debt.

A mortgagor may not be able to support payments under a partial claim if the property is in such a deteriorated condition that repairs drain the mortgagor’s monthly resources. An analysis of the mortgagor’s surplus income should consider anticipated property maintenance expenses. If the mortgagee’s inspection identifies a property in extremely poor physical condition, a partial claim may not offer a permanent resolution to the default.

D. Financial Analysis

The mortgagee is required to assess the mortgagor’s financial status as described in Section H, page 10, of ML 00-05. HUD expects the mortgagee to project the mortgagor’s surplus monthly income for a minimum of three months, and calculate the surplus income percentage.

If the financial analysis determines that the mortgagor does not have the ability to support the normal monthly payment, the partial claim option may not be used. In no case may a partial claim be used if the mortgagor’s surplus income percentage is 0% or less than 0%. If the mortgagor has low surplus income (< 5%), mortgagees are encouraged to combine a partial claim with a special forbearance plan allowing the mortgagor to demonstrate the ability to make regular payments for a period of three (3) or more months prior to origination of the partial claim note.

Mortgagees must use good business judgment to determine if the mortgagor has the adequate surplus income to repay the arrearage through a special forbearance or mortgage modification before approving a partial claim. Mortgagees are encouraged to require mortgagors to contribute all available funds toward paying down the default, thereby reducing the amount of the partial claim debt. The lender must retain the financial analysis and supporting documentation in the claim review file that supports the decision that a partial claim was the appropriate loss mitigation option.

E. Combining Options

A partial claim may be utilized as a stand-alone tool, or incorporated as part of a special forbearance agreement. For example, if a mortgagor needs time to resolve the default, but will eventually be able to support the normal monthly payment but no more than that, a repayment plan or special forbearance may culminate in a partial claim. An existing repayment plan or special forbearance may also be converted to partial claim if the mortgagor’s circumstances change. A partial claim may not be used in conjunction with a mortgage modification.
On August 29, 2002, the Department published Mortgagee Letter (ML) 2002-17, *Special Forbearance: Program Changes and Updates* which provided new guidance for a Type II Special Forbearance. The Type II Special Forbearance combines a short-term special forbearance plan and a modification or partial claim as a single loss mitigation plan. It is an appropriate loss mitigation tool to utilize when there is any concern about the mortgagor’s ability or commitment to keep the payments current following reinstatement. For more information on this related issue, please refer to ML 2002-17.

F. **Allowable Provisions**

The following provisions apply to all partial claim notes:

- The partial claim must fully reinstate the loan;
- The partial claim advance may include only principal, interest and escrow advances required to reinstate the loan;
- In no event may the total arrearage exceed the equivalent of 12 months PITI. The maximum partial claim advance for an Adjustable Rate Mortgage (ARM), Graduated Payment Mortgage (GPM), and Growing Equity Mortgage (GEM) loans is calculated by adding the specific PITI requirement for each of the monthly installments to be included in the partial claim.

The mortgagee may not include late fees, legal fees or other administrative expenses in the partial claim note. However, mortgagees may only collect legal costs and fees resulting from a canceled foreclosure action directly from the mortgagor to the extent not reimbursed by HUD and in accordance with HUD limitations. These requirements are provided in Chapter 4 of Handbook 4330.1, REV-5, Administration of Insured Home Mortgages, Mortgagee Letter 2001-19, Single Family Foreclosure Policy and Procedural Changes, or subsequent guidance, if any. As a reminder, under no circumstances will the mortgagor be required to pay the mortgagee more than the Department identified as customary and reasonable for claim purposes.

Although HUD does not prescribe a lien priority requirement for partial claims, the mortgagee must ensure timely recordation of the subordinate mortgage.

G. **Repayment Terms**

The partial claim advance will be secured by a note and subordinate mortgage with the following repayment terms:

- The note is interest free. (The Secretary reserves the right to assess interest on partial claim notes originated in the future.);
- No monthly or periodic payments are required, however, mortgagors may voluntarily submit partial payments;
- The note is due at the earlier of 1) the payoff of the first mortgage, or 2) when the
mortgagor no longer owns the property;

- There is no prepayment penalty;
- A mortgagor is only eligible to apply for a mortgage insurance premium (MIP) refund when the partial claim note has been paid in full;
- The Partial Claim Note and security documents must be payable to HUD;
- Voluntary payments or prepayments should be delivered via a cashier’s check or other certified funds to the Department’s servicing contractor at the following address.

U.S. Department of HUD  
c/o First Madison Services, Inc.  
4111 South Darlington  
Suite 300  
Tulsa, OK 74135

H. Required Documentation

A promissory note must be executed in the name of the Secretary and a subordinate mortgage must be obtained and recorded. The mortgagee must include the provisions of HUD’s model form of note and subordinate mortgage (as provided in ML 97-17) and make any amendments required by state laws. While HUD does not endorse the products or services of vendors, the Department is aware that state specific documents are commercially available. Mortgagees who take advantage of the convenience of purchasing these documents should review them prior to use.

I. Disclosures

FHA requires mortgagees to comply with any disclosure or notice requirements applicable under State or Federal law.

J. Use of Pre-Foreclosure Sale where a Partial Claim was provided on an earlier default

Some mortgagees have erroneously failed to include the amount of the Partial Claim when calculating total indebtedness for the purpose of a pre-foreclosure sale. In order to be in compliance, mortgagees must include both the first mortgage and the partial claim amounts to correctly calculate the total outstanding mortgage indebtedness.

K. Loan Payoff or Refinance- Mortgagee Responsibilities

Mortgagees will be responsible for notifying HUD when the first mortgage is being paid in full or refinanced in order for HUD to provide a payoff figure on the Partial Claim. HUD’s Servicing Contractor, identified in Section G of this mortgagee letter, should be contacted to request a payoff quote on the outstanding Partial Claim. The purpose of this requirement is to ensure that no partial claim is overlooked when preparations are made to pay the first mortgage in full.
L. Mortgagee Incentives

FHA will pay mortgagees a $250 incentive fee for each partial claim. The mortgagor may not be charged any additional costs for receiving this loss mitigation workout option, however, it is acceptable that legal costs and fees related to a canceled foreclosure action may be collected directly from the mortgagor. Mortgagees are reminded that all such costs must be reflective of work actually completed to the date of the foreclosure cancellation and the attorney fees may not be in excess of the fees that HUD has identified as customary and reasonable for claim purposes. Please refer to Mortgagee Letter 2001-19, issued August 24, 2001, or subsequent issuance, if any, for guidance.

M. Failure by the mortgagor on a Partial Claim

In the event the mortgagor becomes delinquent following reinstatement via a partial claim, it shall be treated as a new default and serviced accordingly.

N. Limitations on Use

If a loan has been modified or reinstated using a partial claim within the past three years, re-default risk is presumed to increase following a subsequent partial claim. Prior to allowing a partial claim in this circumstance, the mortgagee must prepare a written justification, and retain a copy along with supporting documents in the claim review file. It is anticipated that this will be a highly unusual occurrence, and that the cause of the second default will be unrelated to the original problem. There is a lifetime limitation of 12 monthly installments of PITI. Once 12 full monthly installments have been paid by HUD on a claim type 33 (partial claim) for a given case number, no further partial claims will be honored on a specific case.

O. Recordation Requirements

Upon execution of a partial claim by a mortgagor, the Department requires that the partial claim security instruments be submitted for recordation to the appropriate jurisdiction within a maximum period of five (5) business days following the execution AND prior to filing a claim with HUD.

The responsibility for servicing of the Partial Claim remains with the mortgagee until the security interests are legally recorded in the appropriate jurisdiction.

P. Claim Filing

In accordance with 24 CFR 203.371 (d) “along with the prescribed application for partial claim insurance benefits, the mortgagee shall forward to HUD the original credit and security instruments requirements by paragraph (c) of this section.” Provided that the mortgagee has complied with the regulations, the mortgagee must file the claim within 60 days of the date the subordinate lien to HUD is executed. The claim may include the
amount of the partial claim note and the $250 incentive fee. HUD will pay no other costs or fees. **Failure to file the claim within 60 days will result in loss of the $250 incentive fee.**

**Q. Document Delivery**

It is the responsibility of the mortgagee to deliver the original promissory note and recorded mortgage to HUD’s servicing contractor’s business address listed in Section G of this Mortgagee Letter, as soon as possible, but in any case, no later than six (6) months from the execution date of the partial claim note and security instruments.

HUD expects the mortgagee or its agent to periodically check on the status of all unreturned recorded documents and that mortgagees advise HUD of all such delayed deliveries. Where it appears that recorded documents cannot be forwarded due to delays in the land records office, mortgagees must request an extension of time. HUD’s National Servicing Center (NSC) shall grant time extensions in the event document delivery is delayed by events beyond the control of the mortgagee. Except in extreme circumstances, late requests will be denied.

HUD Form 50012 is to be used for extension requests. Box 7, titled “Other” (specify) must be checked and the following wording is recommended for specification purposes: “Requesting an extension of time to return recorded Partial Claim documents to HUD” and must enter the number of days needed. Under the sections “Basis for Extension Request”, the mortgagee must indicate the reason for the delay.

**R. One-Time Amnesty for accepting outstanding Partial Claim related legal documents without penalty.**

HUD shall provide a **One-Time Amnesty** to allow mortgagees to submit overdue Partial Claim documents without penalty. The Department is emphasizing HUD’s willingness to partner with the mortgage industry on overdue partial claim related legal documents that remain outstanding because of a delay in receipt of recorded documents.

HUD expects mortgagees to exercise prudent and consistent diligence to ensure that all documents are promptly submitted for recordation and are then forwarded to HUD as required. HUD will accept **without penalty**, all overdue partial claim documents received within 45 days of the issuance date of this Mortgagee Letter. Once the 45-day grace period has expired, on the 46th day HUD will begin issuing demand letters for the submission of overdue partial claim security instruments and notes and reimbursement of related incentives paid.
Any questions regarding this Mortgagee Letter may be directed to HUD’s National Servicing Center (NSC) at (888) 297-8685 or hsg-lossmit@hud.gov. These clarifications are effective immediately.

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John C. Weicher  
Assistant Secretary for Housing-  
Federal Housing Commissioner
December 30, 2004

MORTGAGEE LETTER 2004 - 48

TO:   ALL FHA-APPROVED MORTGAGEES
      ALL HUD-APPROVED HOUSING COUNSELING AGENCIES

SUBJECT:  Home Equity Conversion Mortgage (HECM) Counseling
          Requirements Simplified

The purpose of this Mortgagee Letter is to provide additional guidance to the Federal Housing Administration (FHA) approved mortgagees and the Department of Housing and Urban Development’s approved housing counseling agencies serving prospective HECM borrowers. Mortgagee Letter 04-25, “Clarification of HECM Counseling Requirements,” elicited questions and comments from lenders and counselors. To ensure that all seniors pursuing HECM loans are able to obtain high-quality HECM counseling in a timely manner, this FHA Mortgagee Letter:

a) provides guidance on face-to-face interview requirements for HECM borrowers;

b) provides additional guidance regarding when telephone counseling is permissible and what entities may provide telephone counseling;

c) simplifies the identification of eligible HECM counseling agencies; and

d) describes HUD’s creation of and ongoing support for the American Association of Retired Persons (AARP) Foundation Network of expert HECM counselors.

Face-to-Face Requirements for HECM Loans

Mortgagee Letter 00-10 clarifies FHA’s requirement (stated in Handbook 4000.2, REV-2, Chapter 3) that senior citizens applying for HECMs receive a face-to-face interview with either the Mortgagee or the HUD-approved housing counseling agency. The Mortgagee may elect to routinely conduct the face-to-face interview with the borrower and have the borrower counseled by a HUD-approved housing counseling agency by telephone. However, any prospective borrower who requests face-to-face meetings with both the lender and the counselor must be accommodated.

Telephone Counseling Requirements for HECM Loans

As stated in Mortgagee Letter 04-25, FHA prefers face-to-face counseling for HECM borrowers. However, FHA recognizes that many seniors prefer telephone counseling to face-to-face counseling for a variety of reasons, including limited mobility and health conditions. For
seniors who cannot or who choose not to travel to a housing counseling agency and who cannot be visited by a counselor in their home, FHA permits telephone counseling.

Telephone counseling may be provided by agencies approved by HUD to offer HECM counseling, including: a) local HUD-approved housing counseling agencies; b) affiliates or branches of HUD-approved national and regional counseling organizations located in the area where the prospective HECM borrower resides; c) State Housing Finance Agencies (HFAs) funded by HUD to provide HECM counseling (and their affiliates, if applicable); d) the AARP Foundation Network of expert HECM counselors; and e) the Fannie Mae HECM Counseling hotline, under a limited set of circumstances, which are described in Mortgagee Letter 04-25.

Local agencies and local affiliates of national, regional, or state organizations may provide telephone counseling within the state where the agency is located or within a contiguous state only under the following circumstances: a) HUD has approved the agency to operate in a defined service area that covers more than one state and b) the agency’s out-of-state service area is clearly defined in its housing counseling plan and the agency has the capacity to serve the extended service area. HUD approval for an out-of-state service area is based on an assessment of the agency’s administrative and financial capacity to serve a broader geographic area. This clarification of the appropriate jurisdiction of a local housing counseling agency or affiliate recognizes that many agencies are serving metropolitan areas that cross state lines or are serving rural areas where few agencies are located and one agency covers a portion of two states.

In accordance with Handbook 7610.1, REV-4 and HUD Form 9900 Application for HUD Approval as a Housing Counseling Agency, HUD expects that local counseling agencies and local affiliates serve residents within their state or general geographic area. For HECM counseling, this policy helps to ensure that counselors fulfill the statutory requirement that prospective borrowers receive information on alternatives to a HECM. State and local agencies familiar with state and local programs are well qualified to assist seniors in meeting their financial needs.

As stated in Mortgagee Letter 04-25, HECM counselors with the AARP Foundation Network may provide counseling services by telephone to anyone in the country. The AARP Foundation HECM counselors are specialized to cover particular states and are trained to know about a wide variety of state and local programs available to seniors in those particular states.

Availability of HUD-Approved Agencies offering HECM Counseling

HUD has approved approximately 800 housing counseling agencies to provide HECM counseling. There are agencies located in 49 states. HUD continues to add new agencies to the list.

Lender’s List of HUD-Approved Housing Counseling Agencies

FHA has required that lenders provide prospective HECM borrowers with a list of all HECM counseling agencies serving the state in which the prospective borrower resides. The standard state listing was intended to ensure that lenders were not steering seniors to any particular agency. It has come to HUD’s attention that many seniors find the listing of all HECM counseling agencies to be excessively long and confusing. Therefore, FHA will now permit lenders to provide
prospective HECM borrowers with a list of no fewer than five HUD-approved agencies in the local area and/or state that can provide HECM counseling (except in cases where fewer than five agencies are serving a particular state). The lender must include at least one agency located within a reasonable driving distance from the prospective borrower, so that the prospective borrower is able to receive face-to-face counseling if he/she chooses. In addition to the five local agencies, the list must include the AARP Foundation Network of HECM Counselors toll-free number: 800-209-8085. Should a prospective borrower request the list of all agencies serving the state, the lender must provide this listing rather than the abbreviated list.

AARP Foundation’s HECM Counseling Network

Established and Supported with HUD Funding

Congress established a special set-aside of funding for HECM Counseling in HUD’s FY1999 Appropriations Act. Given the complexity of the HECM program and the importance of providing seniors with comprehensive and accurate information, HUD determined that the best use of the funds was to build the capacity of HECM counselors.

The initial set-aside of funding was awarded in FY2000 to AARP Foundation, who proposed to partner with HUD, Fannie Mae, the National Reverse Mortgage Lenders Association (NRMLA), the Mortgage Bankers Association of America (MBAA), and experienced reverse mortgage counselors to improve the quality and availability of reverse mortgage counseling nationwide. Since FY2000, more than $3 million in HUD counseling grant funds have been dedicated to the creation and maintenance of a national network of expert HECM counselors.

The industry has adopted the term “AARP counselor” to refer to the expert counselors who are selected to participate in the AARP Foundation’s HECM Counseling Network. However, it should be noted that these counselors work for HUD-approved agencies and receive HUD funding to provide HECM Counseling. These counselors are not employees of AARP. The AARP Foundation provides oversight and guidance for the Network on HUD’s behalf. Currently, the Network has 91 counselors working for 58 HUD-approved local agencies in 34 states.

FHA commends the AARP Foundation and its partners for creating a HECM Counseling system that is effective and efficient. Each year, the Network meets the counseling needs of thousands of seniors. Seniors who receive services from counselors in this Network consistently praise the quality of the counseling and professionalism of these counselors.

Quality Standards and Uniform Protocols

To be eligible to join the AARP Foundation’s HECM Counseling Network, a counselor must:

a) work for a HUD-approved housing counseling agency;
b) achieve a qualifying score on a national HECM exam;
c) follow uniform counseling protocols, which stipulate appropriate procedures for servicing clients and the topics that must be covered;
d) track all HECM clients using specialized HECM Counseling software; and

e) participate in ongoing education and training.
Successful Model

The AARP Foundation HECM Counseling Network model has proven to be a success. The Network enables HUD to financially support housing counselors who have the knowledge and skills necessary to provide HECM counseling and to ensure that these counselors continue to be experts in the field. HUD plans to continue to expand the Network. The AARP Foundation is working with HUD to offer the HECM counselor qualifying exam on a regular basis, to permit more experienced HECM counselors to join this unique, highly-qualified team of experts.

Any HECM lenders or counselors with questions about this Mortgagee Letter or seeking additional information about the HECM Counseling Network should contact the Homeownership Center in its jurisdiction: Atlanta (888-696-4687), Denver (800-543-9378), Philadelphia (800-440-8647), or Santa Ana (888-827-5605).

Sincerely,

John C. Weicher
Assistant Secretary for Housing-
Federal Housing Commissioner
April 26, 2005

Mortgagee Letter 2005-18

TO: ALL APPROVED MORTGAGEES

ATTENTION: Single Family Servicing Managers

SUBJECT: Success of Loss Mitigation and Increase in Incentive Payments

HUD initiated its loss mitigation program in 1996 in an effort to provide maximum opportunities for Federal Housing Administration (FHA) insured borrowers to retain homeownership. The program delegates loss mitigation responsibility and authority to lenders and cannot be successful without their full participation and cooperation.

Since that time, HUD has seen usage of loss mitigation grow exponentially, especially with home retention options including special forbearance, mortgage modification and partial claim. In fiscal year 2004, the Department paid 84,222 total loss mitigation claims, 78,528 of which were home retention claims. This exceeds the number of foreclosure claims paid during the same period and is a clear indication that FHA lenders are fully committed to curing mortgage default and preventing foreclosure.

Effective use of loss mitigation not only allows families to retain homeownership, it also significantly reduces the financial impact of foreclosure claims against the FHA Insurance Funds. The savings realized through loss mitigation are substantial and ultimately reduce the mortgage insurance premiums paid by all FHA-insured borrowers.

As described in Mortgagee Letter 2000-05, Loss Mitigation Program – Comprehensive Clarification of Policy and Notice of Procedural Changes, HUD provides reimbursement of certain costs incurred by lenders in executing loan modification and partial claim loss mitigation options and also provides additional financial incentives for all loss mitigation options. In recognition of the increased costs lenders experience when providing effective default servicing and the savings realized by HUD from this program, the Department is announcing an increase in its loss mitigation incentives and will make these increased incentives available to all lenders that utilize HUD’s most powerful home retention options; loan modification and partial claim.

Therefore, effective for loan modifications and partial claims received by HUD on or after June 1, 2005, all lenders will be entitled to claim an additional financial incentive of $250 when submitting a claim type 32 for mortgage modifications, and an additional incentive of $250 when submitting a claim type 33 for partial claims. The total financial incentive that will be payable is $750 for mortgage modifications and $500 for partial claims.
This is in addition to reimbursement of actual allowable expenses, such as the cost of a title search or recording fees, up to the limits provided in Mortgagee Letter 2000-05. Reimbursements and incentives for other loss mitigation options remain unchanged at this time.

In addition, the Department is announcing another change that will permit more lenders to become eligible for the additional special forbearance and other incentives that lenders have been eligible for based upon their performance. The Department plans to begin using the Loss Mitigation Tier Ranking System (TRS) rather than the Loss Mitigation Performance Assessment (LMPA) as the basis for payment of these additional incentives following the release of TRS Round 20 scores. A subsequent Mortgagee Letter will be issued to advise those lenders scoring in Tier One when they may begin requesting the increased incentives and taking advantage of the other, non-monetary incentives.

Since 1997, HUD has been using the LMPA to measure the loss mitigation performance of lenders and has provided additional loss mitigation incentive payments, certain claim reimbursements, and delegated program authorities to those lenders who scored in the top 25th percentile of this annual performance measure. The Department believes that the information provided by the LMPA is an important measure of lender performance and it will continue to conduct this analysis and publish LMPA scores annually.

The next assessment for the purpose of providing the additional incentives will be tied to the publication of TRS Round 20 scores. This shift to the use of TRS rather than LMPA scores will not penalize any mortgagee that is currently receiving the increased incentives, as the current scoring will continue through the end of the fiscal year.

After publication of TRS Round 20 scores, lenders who rank in Tier One will receive:

1. An additional $100 payment for each Special Forbearance Agreement executed on or after the effective date to be announced by HUD;

2. Pre-foreclosure sale time frames may be extended an additional two months without prior HUD approval; and

3. For loans endorsed on or after February 1, 1998, lenders will be able to claim reimbursement of 75 percent for foreclosure costs (an increase from the current allowance of 66 percent). For loans endorsed prior to February 1, 1998, all lenders will continue to be reimbursed two thirds of the foreclosure costs.

The identity of Tier One lenders in TRS Round 20 will be posted by HUD on its website. The specific site will be announced in a future mortgagee letter but will be accessible through http://www.hud.gov/offices/hsg/sfh/nsc/nschome.cfm.
The Department will continue to publish TRS scores quarterly, but eligibility for performance incentives will be determined on an annual basis using the TRS scores published near the end of each fiscal year. TRS performance scores represent lender performance for the 12-month period prior to issuance.

HUD will continue to use both LMPA and TRS scores in selecting lenders for Quality Assurance reviews. While these scores do not define all aspects related to loss mitigation performance, HUD is confident that they both identify opportunities for improvement in lender performance.

Questions regarding this announcement may be directed to HUD’s National Servicing Center toll free at 1-(888) 297-8685.

John C. Weicher
Assistant Secretary for Housing-
Federal Housing Commissioner
January 6, 2005

MORTGAGEE LETTER 2005-03

TO: ALL APPROVED MORTGAGEES

SUBJECT: Elimination of Refunds of Upfront Mortgage Insurance Premiums

Section 223 of the Consolidated Appropriations Act 2005 amended Section 203(c)(2)(A) of the National Housing Act to eliminate refunds of the Federal Housing Administration’s (FHA) upfront mortgage insurance premiums except when the borrower refinances to another mortgage to be insured by FHA. This elimination of refunds is effective for those mortgages endorsed for insurance on or after December 8th, 2004, the day the President signed the act. Form HUD-92900-B, Important Notice to Homebuyers, has been revised to reflect this change and is available on www.hudclips.org.

Also effective with those mortgages endorsed for insurance on or after December 8th, the refund schedule for those borrowers who refinance to another FHA-insured mortgage is modified to a three-year time period, as shown below.

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If you have any questions concerning this Mortgagee Letter, please contact your local Homeownership Center in Atlanta (888-696-4687), Denver (800-543-9378), Philadelphia (800-440-8647), or Santa Ana (888-827-5605).

Sincerely,

John C. Weicher
Assistant Secretary for Housing-
Federal Housing Commissioner
July 12, 2005

MORTGAGEE LETTER 2005-30

TO: All Approved Mortgagees

ATTENTION: Single Family Servicing Managers

SUBJECT: Single Family Foreclosure Policy and Procedural Changes:
Reasonable Diligence Requirements;
Update to HUD’s Schedule of Allowable Attorney Fees; and
Update to HUD’s Foreclosure Time Frames

This Mortgagee Letter provides updates to HUD’s reasonable diligence time frames and the schedule of attorney fees for all jurisdictions.

REASONABLE DILIGENCE REQUIREMENTS AND EFFECTIVE DATES

When foreclosure of a defaulted loan is necessary, HUD regulation 24 CFR 203.356(b) provides that mortgagees “must exercise reasonable diligence in prosecuting the foreclosure proceedings to completion and in acquiring title to and possession of the property.” That regulation also states that HUD will make available to mortgagees a time frame that constitutes “reasonable diligence” for each state. This Mortgagee Letter provides an update to the state foreclosure time frames and attorney’s fee schedules that were provided in Mortgagee Letter 2001-19, dated August 24, 2001. The updates are as follows:

Foreclosures

Attachment 1 provides listings of the first legal action necessary to initiate foreclosure on a mortgage and of the typical security instrument used in each state. Reasonable diligence time frames for completing foreclosure and acquisition of title in each state are provided in Attachment 2. These time frames identify the time between the first legal action required by the jurisdiction to commence foreclosure and the date that the foreclosure deed (Sheriff’s, Trustee’s, etc. or certificate of title) is recorded. Delays in completing foreclosure due to bankruptcy are treated as exceptions and are not included in the time frames.
The revised time frames provided in Attachment 2 will be effective for all cases where the first legal action to initiate foreclosure occurs on or after September 1, 2005.

**Acquiring Possession**

When a separate legal action is necessary to gain possession following foreclosure, an automatic extension of the reasonable diligence time frame will be allowed for the actual time necessary to complete the possessory action provided that the mortgagee begins such action promptly. Mortgagees must take the first public legal action to initiate the eviction or possessory action within thirty calendar days of foreclosure completion to qualify for this extension of the reasonable diligence time frame.

The Department is not issuing time frames for completing possessory actions because of wide differences in time periods depending upon the location of the property and other factors outside of the mortgagee’s control.

**Bankruptcies**

When a borrower files bankruptcy after foreclosure proceedings have been instituted, an extension of the reasonable diligence time frame for foreclosure and acquisition of the property will be allowed. However, the mortgagee must ensure that all necessary bankruptcy-related legal actions are handled in a timely and effective manner. The case must be promptly referred to a bankruptcy attorney after the bankruptcy is filed and the mortgagee must monitor the action to ensure that the case is timely resolved. The time frame for completing legal action on a bankruptcy will vary based on the chapter under which the bankruptcy is filed.

**Chapter 7 Bankruptcy Filings**

HUD does not reimburse for legal expenses associated with a current FHA-insured mortgage. Where the mortgagee cannot proceed with foreclosure action because of a Chapter 7 Bankruptcy, the case shall be resolved through dismissal, termination of the automatic stay or trustee abandonment of all interest in the secured property. The mortgagee’s claim review file must document that the case was promptly referred to the mortgagee’s foreclosure attorney after the bankruptcy filing.

In general, the additional time allowed for the Chapter 7 Bankruptcy delay for meeting the reasonable diligence requirement shall not exceed 90 days from the date of the bankruptcy filing. Any delay beyond 90 days from the date of bankruptcy filing must be supported by documentation that the delay was not due to the failure of the mortgagee to timely notify its bankruptcy attorney or by any failure of the mortgagee’s attorney.
Chapter 13 (and Chapter 11 and 12) Bankruptcy Filings

HUD does not reimburse for legal expenses associated with a current FHA-insured mortgage. Where the mortgagee cannot proceed with foreclosure action because of a Chapter 13 (or Chapter 11 or 12) Bankruptcy, the case shall be resolved through dismissal, termination of the automatic stay or trustee abandonment of all interest in the secured property. The mortgagee’s claim review file must document that the case was promptly referred to the mortgagee’s attorney after the bankruptcy filing.

In addition to prompt and accurate notification to the bankruptcy court, the mortgagee shall closely monitor the payments required by the bankruptcy court. If the borrower becomes 60 days delinquent in payments required under a Chapter 13 (or Chapter 11 or 12) plan, the lender must ensure that prompt legal action is taken to resolve the matter.

In general, the additional time allowed for the Chapter 13 (or Chapter 11 or 12) Bankruptcy delay for meeting the reasonable diligence requirement shall not exceed 90 days from the date of the payments under the bankruptcy plan became 60 days delinquent. Any delay beyond 90 days from the date of the account became 60 days delinquent under the terms of the bankruptcy plan must be supported by documentation that the delay was not due to the failure of the mortgagee to timely notify its bankruptcy attorney or by any failure of the mortgagee’s attorney.

Non-compliance

Mortgagees are responsible for “self-curtailment” of interest on single-family claims where reasonable diligence or reporting requirements are not met. Self-curtailment shall be accomplished by identification of the interest curtailment date on Form HUD-27011, Item 31. Explanation and examples are provided in Attachment 4.

SCHEDULE OF ATTORNEY FEES AND EFFECTIVE DATES

The Department has revised the attorney fees that will be considered as reasonable and customary for various legal actions for purposes of calculating the maximum amount HUD will reimburse in an insurance claim. The updated fee schedules are provided in Attachment 3.

These fees cover the customary legal services performed in each type of action. In all cases, the amount claimed for attorney fees shall reasonably relate to the work actually performed. In the event a legal action is stopped for a loss mitigation option, a reinstatement or a payment in full, the attorney fees that the borrower is required to pay shall be commensurate with the work actually completed to that point and the amount charged may not be in excess of the fee that HUD has established as reasonable and customary for claim purposes.
Foreclosures

The update to HUD's Schedule of Attorney Fees, as provided in Attachment 3, will be effective for all cases where the first legal action to initiate foreclosure occurs on or after September 1, 2005. In the interim, mortgagees shall continue to follow the HUD Schedule of Attorney Fees that was issued with Mortgagee Letter 2001-19, dated August 24, 2001.

Bankruptcy Actions

The update to HUD’s Schedule of Attorney Fees will be effective for all bankruptcy clearances undertaken on or after September 1, 2005. These fees represent maximum allowable amounts for customary and routine legal services performed in each type of bankruptcy filing. Mortgagee claims for legal fee reimbursement must be reasonably related to the amount of work that the bankruptcy attorney actually performed.

A bankruptcy clearance begins when a petition for release of the bankruptcy stay is submitted to the bankruptcy court. Bankruptcy clearances begun prior to the effective date shall be reimbursed according to HUD's Schedule of Attorney Fees that was issued with Mortgagee Letter 2001-19, dated August 24, 2001.

Possessory Actions (Evictions)

The update to HUD’s Schedule of Attorney Fees will be effective for all possessory actions undertaken on or after September 1, 2005. Possessory actions begun prior to the effective date shall be reimbursed according to HUD's Schedule of Attorney Fees that was issued with Mortgagee Letter 2001-19, dated August 24, 2001.

Deeds-in-Lieu of Foreclosure

The update to HUD’s Schedule of Attorney Fees will be effective for all deeds-in-lieu recorded in HUD's name on or after September 1, 2005. In the interim, mortgagees shall continue to follow HUD’s Schedule of Attorney Fees that was issued with Mortgagee Letter 2001-19, dated August 24, 2001.

Questions regarding this Mortgagee Letter may be directed to HUD’s National Servicing Center at (888) 297-8685.

Sincerely,

______________________________
Brian D. Montgomery
Assistant Secretary for Housing-
Federal Housing Commissioner

Attachments
### ACTION CONSIDERED BY THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AS THE FIRST LEGAL ACTION TO COMMENCE (INSTITUTE) FORECLOSURE

<table>
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<tr>
<th>State Code</th>
<th>State</th>
<th>Typical Type of HUD Security Instrument</th>
<th>Normal Method of Foreclosure</th>
<th>First Foreclosure Action</th>
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**Footnote:** (1) The mortgagee must first obtain a Judgment from the Land Court certifying that the owners of the property being foreclosed are not entitled to relief under the Servicemembers Civil Relief Act (SCRA).
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### HUD Schedule of Standard Attorney’s Fees – Effective 9/1/2005

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**Footnotes:**

1. The fee covers the combined attorney’s and notary’s fees
2. This fee applies to strict foreclosures. If the foreclosure orders a Foreclosure by Sale, the fee will be $1,550.
3. The fee covers both the attorney’s fee and the trustee’s commission (or statutory fee).
4. The fee includes reimbursement of any fee for the attorney’s certificate of title.
5. The fee increases by $100 if foreclosure is achieved by summary judgment.
6. In addition to the allowable foreclosure fee, an auctioneer’s fee of up to $250 is allowed for the services of a state licensed auctioneer requested by the lender and approved by the court.
7. The fee increases to $1,100 for a nonjudicial foreclosure for a case in which the attorney provides services for “proceedings subsequent” that involve registered land.
8. The fee includes the notary’s fee. An additional fee of $250 is allowed for an attorney court appearance for a foreclosure hearing.
9. This fee relates to the exercise of the power of sale under a deed of trust.
10. This fee applies to foreclosures other than those conducted in New York City and Long Island. A fee of $1,850 applies to foreclosures conducted in the five boroughs of New York City (Bronx, Brooklyn/Kings, Manhattan, Queens and Staten Island) and in Long Island (Nassau and Suffolk Counties).
11. The fee covers certain additional legal actions necessary to complete the foreclosure, including motions to postpone or relist a sale and motions to reassess damages.
12. In addition to the allowable foreclosure fee, $150 is allowed for a notary fee for completed foreclosures. However, if a deed of judicial sale cannot be executed contemporaneously with the foreclosure sale, $300 is allowed for the notary fee.
13. This fee assumes that all required procedural steps have been completed. The maximum attorney’s fee varies based on the chapter under which the bankruptcy action is filed.
   - For Chapter 7 bankruptcies, the maximum allowable fee is $650.
   - For Chapter 11, 12 and 13 bankruptcies, the maximum allowable fee is $1,000.
The following examples are provided to illustrate how the date to which debenture interest can be claimed must be calculated. This calculation will take into account the date the first public action to initiate foreclosure was taken and the reporting cycle in which the action was properly reported pursuant to 24 CFR 203.356(a). As provided in Mortgagee Letter 97-18, mortgagees shall be considered to be in compliance with the reporting requirement of 24 CFR 203.356(a) when the case is properly reported to the SFDMS for the reporting cycle (or in the following reporting cycle) in which the first public legal action required to initiate foreclosure is taken.

If one or more time requirements have been missed, the interest curtailment date will be the date of the earliest missed time requirement. Mortgagees shall be responsible for “self curtailment” by identifying the appropriate interest curtailment date on Form HUD-27011, Item 31.

Example 1: Mortgagee fails to initiate foreclosure on a timely basis.

Date of Default 09/01/2003
First public action to foreclose 04/21/2004
SFDMS reflects Status 68 for reporting cycle ending 04/30/2004
SFDMS reflects Status 45 for reporting cycle ending 10/31/2004
Date reflected in item 9 of HUD-27011 11/30/2004
Date reflected in item 10 12/28/2004

Reasonable diligence requirement for the State is six months.

In this example, the mortgagee did not initiate foreclosure within six months of the date of default as required by 24 CFR 203.355(a). The claim system will automatically curtail interest to March 1, 2004, six months from the default date.

Example 2: Mortgagee initiates foreclosure on a timely basis but exceeds the State reasonable diligence time frame for completing the action without a valid, documented reason.

Date of Default 12/01/2003
First public action to foreclose 05/10/2004
SFDMS reflects Status 68 for reporting cycle ending 06/30/2004
SFDMS reflects Status 45 for reporting cycle ending 12/31/2004
Date reflected in item 9 of HUD-27011 01/31/2005
Example 3: A timely initiated foreclosure action is delayed by a borrower’s Chapter 7 Bankruptcy filing but the mortgagee takes more than 90 days from the date of bankruptcy filing to resolve the case through dismissal, termination of the automatic stay or trustee abandonment of all interest in the secured property and it is not documented that the delay was not due to the failure of the mortgagee to timely notify its bankruptcy attorney or by any failure of the mortgagee’s attorney.

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<tr>
<td>Date reflected in item 10</td>
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</tbody>
</table>

Reasonable diligence requirement for the State is four months.

In this example, the mortgagee initiated foreclosure within six months of the date of default as required by 24 CFR 203.355(a) and properly reported the action to SFDMS with Status 68 within the required reporting cycle. However, the reasonable diligence requirement for resolving the bankruptcy case and completing the foreclosure was not met. The State reasonable diligence time frame for foreclosure completion is four months and a 90-day extension is authorized for resolving the bankruptcy case. The interest curtailment date for claim purposes would therefore be November 10, 2004 and that date would have to be reflected on Form HUD-27011, Item 31.

Example 4: A timely initiated foreclosure action is delayed by a borrower’s Chapter 13 Bankruptcy filing and the borrower subsequently defaults on a confirmed bankruptcy plan. The mortgagee takes more than 90 days from the date plan payments become 60 days delinquent to resolve the case through dismissal, termination of the automatic stay
or trustee abandonment of all interest in the secured property and it is not documented that the delay was not due to the failure of the mortgagee to timely notify its bankruptcy attorney or by any failure of the mortgagee’s attorney.

Date of Default 04/01/2003
First public action to foreclose 09/09/2003
SFDMMS reflects Status 68 for reporting cycle ending 09/30/2003
Date Chapter 13 Bankruptcy filed 10/09/2003
Plan Payments Nov through Feb advance Default Date to 08/01/2003
Date reflected in item 21 of HUD-27011 09/10/2004
SFDMMS reflects Status 45 for reporting cycle ending 12/31/2004
Date reflected in item 9 of HUD-27011 01/31/2005
Date reflected in item 10 02/28/2005

Reasonable diligence requirement for the State is five months.

In this example, the mortgagee initiated foreclosure within six months of the date of default as required by 24 CFR 203.355(a) and properly reported the action to SFDMMS with Status 68 within the required reporting cycle. However, the reasonable diligence requirement for resolving the Chapter 13 bankruptcy case and completing the foreclosure was not met. Bankruptcy plan payments, due on the first of each month, became 60 days delinquent on April 30, 2004. The mortgagee had a maximum of 90 days from April 30, 2004 to resolve the bankruptcy since no valid reason for further delay was documented. Accordingly, the bankruptcy should have been resolved no later than July 29, 2004, the total authorized delay due to the bankruptcy was 294 days (the bankruptcy filing date of October 9, 2003 through July 29, 2004) and the total time frame allowed for meeting the reasonable diligence requirement was the normal foreclosure time period of five months plus 294 days. The interest curtailment date for claim purposes would therefore be November 29, 2004 and that date would have to be reflected on Form HUD-27011, Item 31.

Example 5: Mortgagee exercises reasonable diligence in completing foreclosure but does not initiate eviction or possessor action within thirty calendar days of foreclosure completion to qualify for extension of the reasonable diligence time frame (Acquiring Possession, page 2, paragraph 1).

Date of Default 12/01/2003
First public action to foreclose 05/10/2004
SFDMMS reflects Status 68 for reporting cycle ending 06/30/2004
Foreclosure Completion Date 10/27/2004
Possessory Action Initiated  12/15/2004
Date reflected in item 9 of HUD-27011  01/20/2005
Date reflected in item 10  02/16/2005

Reasonable diligence requirement for the State is six months.

In this example, the mortgagee met the reasonable diligence requirements for initiating, reporting and completing the foreclosure action. However, action to acquire possession of the property was not initiated within thirty calendar days of foreclosure completion. This requires a curtailment of interest to November 26, 2004, the date by which possessory action should have been initiated, and that date would have to be reflected on Form HUD-27011, Item 31.

Example 6: Mortgagee fails to convey the property to HUD within thirty calendar days of acquiring possession and marketable title as required by 24 CFR 203.359.

Date of Default  12/01/2003
First public action to foreclose  05/10/2004
SFDMS reflects Status 68 for reporting cycle ending  06/30/2004
SFDMS reflects Status 45 for reporting cycle ending  10/31/2004
Date reflected in item 9 of HUD-27011  12/29/2004
Date reflected in item 10  02/28/2005

Reasonable diligence requirement for the State is six months.

In this example, the mortgagee exercised reasonable diligence in prosecuting the foreclosure to completion and in acquiring title to and possession of the property. However, it did not meet the requirement to convey the property to HUD within thirty calendar days of acquiring possession and marketable title as required by 24 CFR 203.359. This requires a curtailment of interest to January 28, 2005 and that date would have to be reflected on Form HUD-27011, Item 31.
December 16, 2005

MORTGAGEE LETTER 2005-47

TO: ALL APPROVED MORTGAGEES

ATTENTION: SINGLE FAMILY SERVICING MANAGERS

SUBJECT: TIER RANKING SCORES

The Department announced in Mortgagee Letter 2005-18, issued April 26, 2005, a change in the way the Department would identify the top performing mortgagees for the purpose of providing increased claim reimbursement and additional incentives for the use of Loss Mitigation. In order to permit more lenders to become eligible for these performance incentives, the Department is using the Loss Mitigation Tier Ranking System (TRS) as the basis for payment rather than the Loss Mitigation Performance Assessment (LMPA).

Since 1997, HUD has been using the LMPA to measure the loss mitigation performance of lenders and has provided additional loss mitigation incentive payments, certain claim reimbursements, and delegated program authorities to those lenders who scored in the top 25th percentile of this annual performance measure. The Department believes that the information provided by the LMPA is an important measure of lender performance and it will continue to conduct this analysis and plans to provide LMPA via HUD’s website.

The assessment for the purpose of providing the additional incentives is now tied to TRS scores with the first application of this change tied to the TRS Round 20 scores. Those mortgagees servicing loans under multiple HUD ID’s, as defined by the Office of Lender Activities, will receive only one aggregate TRS score for fiscal year 2005. A lender’s tier ranking will directly affect loss mitigation incentive payments, certain claim reimbursement and delegated program authorities.
Lenders ranked in Tier 1 are eligible for the following increased loss mitigation incentives:

1. An additional $100 payment for each Special Forbearance Agreement executed on or after January 1, 2006;

2. Pre-foreclosure sale time frames may be extended an additional two months without prior HUD approval; and,

3. For loans endorsed on or after February 1, 1998, lenders will be automatically reimbursed 75 percent of the foreclosure costs on Part B claims received by HUD on or after January 1, 2006. For loans endorsed prior to February 1, 1998, lenders will continue to be reimbursed two thirds of the foreclosure costs.

The Department will continue to provide TRS scores quarterly, but eligibility for performance incentives will be determined on an annual basis using the TRS scores provided near the end of each fiscal year. TRS performance scores represent lender performance for the 12-month period prior to issuance. HUD will continue to use both LMPA and TRS scores in selecting lenders for Quality Assurance reviews.

Attached is a list of all Tier One (1) lenders with their workout ratios. If there are any questions or comments regarding the scoring process, please send them via the Internet to: hsg-lossmit@hud.gov. Also, please visit FHA’s Loss Mitigation TRS Page on the World Wide Web at http://www.hud.gov/offices/hsg/sfh/nsc/trsovrvw.cfm

_________________ ________________________
Brian D. Montgomery
Assistant Secretary for Housing-
Federal Housing Commissioner

Attachment
## HUD’s Tier Ranking System (TRS) - Tier One for Round 20

<table>
<thead>
<tr>
<th>Tier</th>
<th>Number of ranked servicers in tier 1: 99</th>
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</thead>
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### High Volume

<table>
<thead>
<tr>
<th>ID#</th>
<th>Name</th>
<th>Loans</th>
<th>Tier</th>
<th>WO</th>
</tr>
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<tbody>
<tr>
<td>38092</td>
<td>NATIONAL CITY MORTGAGE CO</td>
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<td>88.839%</td>
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<td>34400</td>
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<td>Wells</td>
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<td>22995 WELLS FARGO HOME MORTGAGE</td>
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</tr>
<tr>
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<td>16990 WELLS FARGO HOME MORTGAGE</td>
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<tr>
<td></td>
<td>59006 WELLS FARGO HOME MORTGAGE</td>
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### Med High Volume

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<td>63001</td>
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<td>13063 BANK OF AMERICA</td>
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<td>13064 BANK OF AMERICA</td>
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<td>13065 BANK OF AMERICA</td>
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### Med Low Volume

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<tr>
<td>64308</td>
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<td>63026</td>
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<tr>
<td>59010</td>
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<tr>
<td>46049</td>
<td>RHODE ISLAND HSG MTGE FIN</td>
<td>1,566</td>
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<tr>
<td>64102</td>
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<tr>
<td>63011</td>
<td>FIRST BANK-PR</td>
<td>1,045</td>
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<tr>
<td>64325</td>
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<tr>
<td>06230</td>
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<td>WEBSTER BANK</td>
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<tr>
<td>55582</td>
<td>HOMESTREET BANK</td>
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<tr>
<td>05331</td>
<td>COLORADO HOUSING FINANCE</td>
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<td>GLACIER BANK</td>
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<td>72080</td>
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<td>39318</td>
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### Low Volume

<table>
<thead>
<tr>
<th>ID#</th>
<th>Name</th>
<th>Loans</th>
<th>Tier</th>
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<tbody>
<tr>
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<td>ORIENTAL BANK AND TRUST</td>
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### HUD’s Tier Ranking System (TRS) - Tier One for Round 20

**TRS Round:** 20

<table>
<thead>
<tr>
<th>ID#</th>
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<tbody>
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<td>558</td>
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<tr>
<td>06130</td>
<td>NEWALLIANCE BANK</td>
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<tr>
<td>63138</td>
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<tr>
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<td>79426</td>
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<tr>
<td>36074</td>
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<tr>
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<td>74206</td>
<td>TEXAS BANK</td>
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<tr>
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<td>16134</td>
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<tr>
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<td>GN MORTGAGE LLC</td>
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</table>
### HUD’s Tier Ranking System (TRS) - Tier One for Round 20

**TRS Round:** 20

<table>
<thead>
<tr>
<th>ID#</th>
<th>Name</th>
<th>Loans</th>
<th>Tier</th>
<th>WO</th>
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<tbody>
<tr>
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<td>GNMA-WATERS MORTGAGE CORP</td>
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</table>

**TRS Key:**  
- **FF**=Forbearance (Forbearance, Repayment Plan, and Military Indulgence)  
- **SF**=Special Forbearance  
- **MM**=Mortgage Modification  
- **ME**=Multiple Event (a dummy code used to provide a maximum credit of one Loss Mitigation event per case)  
- **PC**=Partial Claim  
- **PFS**=Pre-Foreclosure Sale  
- **DIL**=Deed-in-Lieu  
- **ACD**=Accelerated Claim Disposition  
- **FC**=Foreclosure

**WO Ratio:** $(FF+SF+MM+ME+PC+PFS+DIL+ACD)/(FF+SF+MM+ME+PC+PFS+DIL+ACD+FC)$

**Servicer Size:**  
- **High Volume** = 100,000 loans or more  
- **Med High Volume** = 10,000 to 99,999 loans  
- **Med Low Volume** = 1,000 to 9,999 loans  
- **Low Volume** = Less than 1,000 loans
June 8, 2006

MORTGAGEE LETTER 2006 -14

TO: ALL APPROVED MORTGAGEES

SUBJECT: Property Flipping Prohibition Amendment

On June 7, 2006, HUD published a final rule in the Federal Register amending regulations at 24 CFR 203.37a prohibiting property flipping in HUD’s single-family mortgage insurance programs by providing additional exceptions to the time restrictions on sales. The rule and this mortgagee letter become effective for mortgages endorsed for insurance on or after July 7, 2006. This Mortgagee Letter also rescinds, in their entirety, Mortgagee Letters 2003-07 and 2005-05.

The additional categories of properties exempted from the time restrictions include sales of properties by:

- State and Federally chartered financial Institutions and government-sponsored enterprises (GSEs) (e.g., Fannie Mae and Freddie Mac)
- Local and State government agencies
- Sales of properties within Presidentially-Declared Disaster Areas (upon FHA’s announcement of eligibility in a mortgagee letter specific to said disaster)

**Prohibition on Property Flipping Described**

Property flipping is a practice whereby a property is resold a short period of time after it is purchased by the seller for a considerable profit with an artificially inflated value, often abetted by a lender’s collusion with the appraiser. FHA’s policy prohibiting property flipping eliminates the most egregious examples of predatory flips of properties within the FHA mortgage insurance programs.

**Overview of FHA’s Property Flipping Policy**

FHA requires that: a) only owners of record may sell properties that will be financed using FHA-insured mortgages; b) any resale of a property may not occur 90 or fewer days from the last sale to be eligible for FHA financing; and c) that for resales that occur between 91 and 180 days where the new sales price exceeds the previous sales price by 100 percent or more, FHA will require additional documentation validating the property’s value. FHA also has flexibility to examine and require additional evidence of appraised value when properties are re-sold within 12 months.
Sale by Owner of Record

To be eligible for a mortgage insured by FHA, the property must be purchased from the owner of record and the transaction may not involve any sale or assignment of the sales contract. This requirement applies to all FHA purchase money mortgages regardless of the time between resales.

The mortgage lender must obtain documentation verifying that the seller is the owner of record and submit this to HUD as part of the insurance endorsement binder; it is to be placed behind the appraisal on the left side of the case binder. This documentation may include, but is not limited to, a property sales history report, a copy of the recorded deed from the seller, or other documentation such as a copy of a property tax bill, title commitment or binder, demonstrating the seller’s ownership of the property and the date it was acquired. Mortgagees participating in the Lender Insurance program (see ML 2005-36) are to retain this documentation and provide it to FHA upon request.

Resales Occurring 90 Days or Less Following Acquisition

If the owner sells a property within 90 days after the date of acquisition, that property is not eligible security for a mortgage insured by FHA unless it falls within one of the exceptions to the time restrictions on resales set forth in §203.37a(c) of the regulations. FHA defines the seller’s date of acquisition as the date of settlement on the seller’s purchase of that property. The resale date is the date of execution of the sales contract by the buyer that will result in a mortgage to be insured by FHA.

As an example, a property acquired by the seller is not eligible for a mortgage to be insured for the buyer unless the seller has owned that property for at least 90 days. The seller must also be the owner of record.

Resales Occurring Between 91 and 180 Days Following Acquisition

If the resale date is between 91 and 180 days following acquisition by the seller, the lender is required to obtain a second appraisal made by another appraiser if the resale price is 100 percent or more over the price paid by the seller when the property was acquired.

As an example, if a property is resold for $80,000 within six months of the seller’s acquisition of that property for $40,000, the mortgage lender must obtain a second independent appraisal supporting the $80,000 sales price. The mortgage lender may also provide documentation showing the costs and extent of rehabilitation that went into the property resulting in the increased value but must still obtain the second appraisal. The cost of the second appraisal may not be charged to the homebuyer.

FHA also reserves the right to revise the resale percentage level at which this second appraisal is required by publishing a notice in the Federal Register.
Resales Occurring Between 91 Days and 12 Months Following Acquisition

If the resale date is more than 90 days after the date of acquisition by the seller but before the end of the twelfth month following the date of acquisition, FHA reserves the right to require additional documentation from the lender to support the resale value if the resale price is 5 percent or greater than the lowest sales price of the property during the preceding 12 months. At FHA’s discretion, such documentation may include, but is not limited to, an appraisal from another appraiser.

FHA will announce its determination to require the additional appraisal and other value documentation, such as an automated valuation method (AVM), through a Federal Register issuance. This requirement may be established either nationwide or on a regional basis, at FHA’s discretion.

Exceptions to 90-day Restriction

The following sales are exempt from the time restrictions provided by §203.37a:

- Sales by HUD of its Real Estate Owned
- Sales by other United States Government agencies of single family properties pursuant to programs operated by these agencies.
- Sales of properties by nonprofits approved to purchase HUD-owned single-family properties at a discount with resale restrictions.
- Sales of properties that are acquired by the sellers by inheritance.
- Sales of properties purchased by employers or relocation agencies in connection with relocations of employees.
- Sales of properties by state and federally charted financial institutions and Government Sponsored Enterprises.
- Sales of properties by local and state government agencies.
- Upon FHA’s announcement of eligibility in a notice (i.e., ML), sales of properties located in areas designated by the President as federal disaster areas, will be exempt from the restrictions of the property-flipping rule. The notice will specify how long the exception will be in effect and the specific disaster area affected.

Inapplicability of §203.37a to New Construction

The restrictions in 203.37a are not applicable to a builder selling a newly built home or building a home for a homebuyer wishing to use FHA-insured financing.

Date of Property Acquisition Determined by the Appraiser

Mortgage lenders may rely on information provided by the appraiser in compliance with the updated Standard Rule 1-5 of the Uniform Standards of Professional Appraisal Practice (USPAP). This rule requires appraisers to analyze any prior sales of the subject property that occurred within specific time periods, now set for the previous three years for one-to-four family residential properties.
As a result, the information contained on the Uniform Residential Appraisal Report or other applicable appraisal report form describing the Date, Price and Data for prior Sales is to include all transactions for the subject property within three years of the date of the appraisal and the comparable sales within 12 months of the date of the comparable sale. Appraisers are responsible for considering and analyzing any prior sales of the property being appraised within three years of the date of the appraisal and the comparables that are utilized within 12 months of the date of the comparable sale.

Therefore, provided that the URAR completed by the appraiser shows the most recent sale of the property to have occurred at least one year previously, no additional documentation is required from the mortgage lender. The mortgage lender remains accountable for verifying that the seller is the owner of record and may rely on information developed by the appraiser for this purpose if provided. However, if the lender obtains conflicting information before loan settlement, it must resolve the discrepancy and document the file accordingly.

If you have any questions regarding this Mortgagee Letter, please call 1-800-CALL-FHA.

- Sincerely,

Brian D. Montgomery
Assistant Secretary for Housing-
Federal Housing Commissioner
June 9, 2006

MORTGAGEE LETTER 2006-16

TO: ALL APPROVED MORTGAGEES

ATTENTION: Single Family Servicing Managers

SUBJECT: Mississippi Homeowner Grant Assistance Program

The State of Mississippi has now finalized an action plan for use of Federal Community Development Block Grant (CDBG) funds to assist homeowners who suffered flood damage to their primary residence from Hurricane Katrina. This mortgagee letter provides guidance regarding grant program issues specific to FHA-insured loans.

Under the state plan, eligible homeowners may receive a one-time grant payment, up to a maximum of $150,000, for flood damages not covered by insurance or FEMA grants. An eligible homeowner is one whose home is located outside a FEMA-designated 100-year flood zone, and was flooded as a result of Hurricane Katrina. In exchange for the grant payment, a qualifying homeowner must agree to covenants on their property that establish building code, flood insurance and elevation requirements for them and any future owner of the land and all existing lienholders must subordinate their liens to those covenants. Unpaid and outstanding insurance claims must be subrogated back to the State. After certain deductions, the homeowner has complete discretion of the use of the grant funds, as allowable by State and Federal law.

The Mississippi Development Authority (MDA), which is administering the assistance program, has requested that mortgagees manage the grant closing and funds disbursement process for their customers. Mortgagees that wished to participate were required to sign and return an Opt-In Agreement by the MDA deadline. The Opt-In agreement states that grant managing mortgagees will remit grant funds to the homeowner within five (5) business days and may only reduce the payment by the amount of any past due installments on the Homeowner’s mortgage and any taxes due and owing on the Property. However, HUD understands that this agreement does not prohibit homeowners and mortgagees from voluntarily negotiating other arrangements with respect to disbursement of grant funds for home repairs or payoff of mortgage debt.

Subordination Agreements and Disbursement Accounts

HUD has no objection to the subordination of FHA-insured first mortgage liens to the covenants required by the state as a condition for grant awards, and covenant-encumbered title that is otherwise marketable will be acceptable to HUD upon claim, provided that there is no material breach of the covenants as of the date of conveyance of such property to the Secretary that is due to
neglect or poor oversight on the part of the mortgagee. HUD recognizes that in order to ensure that there has been no breach of the covenants, mortgagees and homeowners may feel that it is necessary and prudent to enter into disbursement agreements, to which neither HUD nor the State of Mississippi are parties, that allow the mortgagee to escrow grant funds and disburse them in draws as repairs are completed in accordance with covenant requirements.

Secretary Held Liens

HUD may hold a junior lien on some eligible properties as security for a partial claim, mortgage assistance initiative payment or Section 235 subsidy mortgage. Requests to subordinate such liens to the State required covenants should be submitted to HUD’s servicing contractor at the address below:

U.S. Department of HUD
c/o Morris Griffin Corp./First Madison Services, Inc.
4111 South Darlington
Suite 300
Tulsa, OK 74135
Phone: 800-967-3050

Any questions regarding this Mortgagee Letter may be directed to HUD’s National Servicing Center (NSC) at (888) 297-8685 or hsg-lossmit@hud.gov.

Sincerely,

Brian D. Montgomery
Assistant Secretary for Housing-
Federal Housing Commissioner
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC  20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER August 29, 2006

MORTGAGEE LETTER 2006-21

TO:       ALL APPROVED MORTGAGEES

SUBJECT:  Extension of Time for Disaster Victims of Hurricanes Katrina, Rita and Wilma to apply for Section 203(h) Mortgage Insurance

This Mortgagee Letter is to advise you of actions taken by the Department to assist victims of Hurricanes Katrina, Rita and Wilma. Currently, 24 CFR 203.18(e)(3) requires the application for mortgage insurance under Section 203(h) to be filed within one year after the Presidential declaration of the disaster. The President's declaration of a major disaster for these hurricanes occurred August 29, 2005, September 24, 2005, and October 24, 2005 respectively. Because of the unprecedented extent of destruction caused by these hurricanes, the Department has determined that the one year period is insufficient to meet the housing needs of the hurricanes' victims. With the President’s signing of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, the Department has the authority to extend the period for filing an application for mortgage insurance. Therefore, all disaster victims affected by these three hurricanes have until September 30, 2007 to file an application for mortgage insurance under Section 203(h).

If you have any questions regarding this Mortgagee Letter, please call 1-800-CALLFHA.

Sincerely,

Brian D. Montgomery
Assistant Secretary for Housing-
Federal Housing Commissioner
November 20, 2006

Mortgagee Letter 2006-28

TO: ALL APPROVED MORTGAGEES

ATTENTION: Single Family Servicing Managers

SUBJECT: Mortgage and Foreclosure Rights of Servicemembers under the Servicemembers Civil Relief Act (SCRA)

This Mortgagee Letter provides information regarding a new legal requirement to notify homeowners in default of the mortgage and foreclosure rights of servicemembers and their dependents under the Servicemembers Civil Relief Act (SCRA). It also provides guidance regarding the implementation of SCRA requirements in servicing FHA-insured mortgages. This guidance supersedes prior Mortgagee letters ML 2003-04, Soldiers’ and Sailors’ Civil Relief Act and ML 01-22, The Effect of the Soldiers’ and Sailors’ Civil Relief Act of 1940 on FHA Insured Mortgages. However, the guidance provided in ML 91-20, Effect of the Soldiers’ and Sailors’ Civil Relief Act of 1940 on FHA Insured Mortgages remains valid with respect to the calculation of Section 235 subsidy.


Servicemembers Civil Relief Act Notice

Pursuant to the statutory amendment, HUD has developed, in consultation with the Departments of Defense and Treasury, the form for the required notice of servicemember rights (Attachment 1). All mortgage loans, including conventional mortgages and mortgages insured by HUD are subject to the notification requirement that became effective June 5, 2006. The notice must:

- Be sent to all homeowners who are in default on a residential mortgage;
- Include the toll-free military one-source number to call if servicemembers or their dependents require further assistance (1-800-342-9647); and
- Be made within 45 days from the date a missed payment was due, unless the homeowner pays the overdue amount before the expiration of the 45-day period.
Legal Rights and Protections Under the SCRA Applicable to all Debts

The SCRA states that a debt incurred by a servicemember or spouse jointly, prior to entering military service shall not bear interest at a rate above six percent per year during the period of military service. Interest in excess of six percent per year that would otherwise be incurred during the period of military service is forgiven. Servicemembers become eligible for the interest rate limitation by providing to the mortgagee a written notice, a copy of the military orders calling the servicemember to military service, and any orders further extending military service, not later than 180 days after the date of the servicemember’s termination or release from military service. Upon receipt, the mortgagee must limit interest on the obligation to no more than six percent per year effective as of the date on which the servicemember is called to military service. Only a court may grant the mortgagee an exception to the interest rate limitation and then, only if, in the opinion of the court, the ability of the servicemember to pay interest upon the obligation or liability at a rate in excess of six percent per year is not materially affected by reason of the servicemember’s military service.

In a legal action to enforce a debt against real estate that is filed during, or within 90 days after the servicemember’s military service, a court may stop the proceedings for a period of time, or adjust the debt. In addition, the sale, foreclosure, or seizure of real estate shall not be valid if it occurs during, or within 90 days after the servicemember’s military service unless the creditor has obtained a court order approving the sale, foreclosure, or seizure of the real estate.

The SCRA provides some additional legal protections. HUD is not in a position to interpret all the various provisions of the SCRA as they may affect rights between creditors and servicemembers. Such interpretations should be obtained from the Department of Defense or be determined by the courts.

Reduction of Monthly Payments on FHA-Insured Loans

When, pursuant to the SCRA, interest must be reduced to six percent on an FHA-insured loan, the mortgagee may either calculate interest due for the period of active duty on a per diem basis, or permit the lower interest rate from the first through the last month of military service.

If notified that a mortgagor is on active military duty, the mortgagee must advise the servicemember or representative of the adjusted amount due, provide adjusted coupons or billings, and ensure that the reduced payments are not returned as insufficient.

If the mortgagee was not notified that the mortgagor is on active military duty, but receives a reduced payment that approximates an interest reduction to six percent, an effort should be made to contact the mortgagor or a representative to determine whether the mortgagor is on active duty. If an appropriate explanation is not provided, the mortgagee may return the insufficient payment in accordance with 24 CFR § 203.556.

Section 235 Mortgage Insurance and Assistance Payments Program

A few Section 235 mortgages still have assistance payments from HUD applied to them on behalf of lower-income mortgagors. Assistance for these mortgages may be affected by the six percent
interest rate limitation. On all accounts receiving assistance when the note rate of interest exceeds six percent, the amount of assistance must be reanalyzed, and the subsidy amount must be recalculated using the full mortgage payment at a six percent rate when determining the amount of assistance. For some accounts, the interest rate deduction will cause the suspension of assistance for the period of active duty. Whenever an interest rate reduction is made with retroactive effect and the Section 235 assistance is reduced, any over-billed subsidy must be returned to HUD as a refund or adjustment to the subsequent Section 235 monthly billing. When active duty terminates and the note rate resumes, the assistance must be recalculated and restored in accordance with the usual procedures. Any income recertification requests received from mortgagors in accordance with 24 CFR § 235.355 must be processed expeditiously. Please also reference ML 91-20, *Effect of the Soldiers’ and Sailors’ Civil Relief Act of 1940 on FHA Insured Mortgages* for additional guidance in calculating Formula 2 subsidy.

**HUD Relief Provisions for Servicemembers**

FHA regulations contain special relief provisions authorizing postponement of principal payments and foreclosure proceedings for mortgagors in active duty military service as defined in the SCRA. Pursuant to 24 CFR 203.610, the mortgagee shall specifically give consideration to affording the mortgagor relief authorized by 24 CFR 203.345 and 203.346 and covered under the following two paragraphs.

**Postponement of Principal Payments**

Under 24 CFR 203.345, the mortgagee may, by written agreement with the mortgagor, postpone for the period of military service and for 3 months thereafter any part of the monthly mortgage payment which represents amortization of principal. The agreement shall contain a provision for the resumption of monthly payments after such period in amounts that will completely amortize the mortgage debt within the maturity as provided in the original mortgage. This agreement does not affect the amount of the annual Mortgage Insurance Premium (MIP) that will continue to be calculated in accordance with the original amortization provisions of the mortgage.

**Postponement of Foreclosure**

Under provisions of 24 CFR 203.346, the period during which the mortgagor is in military service shall be excluded in computing the period during which the mortgagee shall commence foreclosure or acquire the property by other means. Further, postponement or delay in prosecuting foreclosure proceedings during the period the mortgagor is in military service shall not be construed as a failure of the mortgagee to exercise reasonable diligence.

**Loss Mitigation**

Mortgagees must consider all FHA home retention loss mitigation options for active duty military persons who are in default on an FHA insured loan. These options, including special forbearance, loan modification, and partial claim help protect the servicemember against the risk of foreclosure after the period of service is completed. Mortgagees must also provide delinquent servicemembers with information about pre-foreclosure sale and deed-in-lieu of foreclosure options.
Claims for FHA Insurance Benefits

Debenture interest will not be curtailed because of SCRA-caused delays in initiating or prosecuting foreclosure proceedings. On conveyance claims involving loans subject to SCRA provisions, the Department will pay the applicable debenture interest rate from the date of default to the date the claim is paid unless interest must otherwise be curtailed pursuant to 24 CFR 203.402(k).

Reimbursement of Issuers for Interest Shortfalls on Eligible Loans in Ginnie Mae Mortgage-Backed Securities

Ginnie Mae will reimburse issuers for interest shortfalls attributable to SCRA for all eligible loans. To receive a reimbursement of interest, an issuer must demonstrate that the borrower meets the criteria for a reduction in interest rate. Mortgagees should refer to Chapter 34, Section 34-3 of Ginnie Mae Mortgage-Backed Securities Guide 5500.3, Rev. 1 for further information on obtaining such reimbursement. Links to each chapter of the Ginnie Mae MBS Guide are available at: http://www.ginniemae.gov/guide/guidetoc.asp?subTitle=Issuers

Verification of Military Service

Mortgagees who are otherwise unable to verify a defendant mortgagor’s military status may request and obtain a statement as to military service from the Department of Defense pursuant to 50 U.S.C. App. § 582 of the SCRA. To facilitate SCRA searches, the Department of Defense’s Manpower Data Center (DMDC) has developed a secure public Internet access system through which any requester can quickly determine whether an individual is currently in the armed forces. The URL for SCRA queries is https://www.dmdc.osd.mil/owa/scra/home. The requester must provide a Social Security number (SSN) and a last name. First name, middle name, birth year, and birth month are optional.

A report is executed by clicking the “LookUp” tab on the query form. If the provided SSN and other identifying information match the name of a person currently on active duty, the DMDC response report will provide the named individual’s branch of military service and "begin date" of Active Duty status. If the provided SSN is matched to the name of a person on active duty but the last name and/or birth date entered do not match information recorded for that individual, the DMDC response report page states:

“Based on the social security number you have provided, the individual is currently on Active Duty. However, the name or partial DOB, or both provided do not match the individual against whom the social security number is assigned.”

If the DMDC does not have information regarding whether the name of the identified person is on active duty, the response report will only list the supplied name with the text:

“Based on the information you have furnished, the DMDC does not possess any information indicating the individual is currently on active duty.”
There is no charge for the online SCRA queries and no authorization, user ID or password is required. Should you require assistance, you may fax a SCRA request to DMDC at 703-696-4156 or call 703-696-6762.

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB Control Number 2502-0565. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB Control Number.

Any questions regarding this Mortgagee Letter may be directed to HUD's National Servicing Center through its toll-free number 1-888-297-8685.

________________________________________
Brian D. Montgomery
Assistant Secretary for Housing-
Federal Housing Commissioner

Attachment
United States Department of Housing and Urban Development
Servicemembers Civil Relief Act Notice

Legal Rights and Protections Under the SCRA

Servicemembers on “active duty” or “active service,” or a dependent of such a servicemember may be entitled to certain legal protections and debt relief pursuant to the Servicemembers Civil Relief Act (50 USC App. §§ 501-596) (SCRA).

Who May Be Entitled to Legal Protections Under the SCRA?

- Active duty members of the Army, Navy, Air Force, Marine Corps, Coast Guard, and active service National Guard;
- Active service members of the commissioned corps of the National Oceanic and Atmospheric Administration;
- Active service members of the commissioned corps of the Public Health Service;
- United States citizens serving with the armed forces of a nation with which the United States is allied in the prosecution of a war or military action; and
- Their spouses.

What Legal Protections Are Servicemembers Entitled To Under the SCRA?

- The SCRA states that, a debt incurred by a servicemember, or servicemember and spouse jointly, prior to entering military service shall not bear interest at a rate above 6 percent during the period of military service.
- The SCRA states that, in a legal action to enforce a debt against real estate that is filed during, or within 90 days after the servicemember’s military service, a court may stop the proceedings for a period of time, or adjust the debt. In addition, the sale, foreclosure, or seizure of real estate shall not be valid if it occurs during, or within 90 days after the servicemember’s military service unless the creditor has obtained a court order approving the sale, foreclosure, or seizure of the real estate.
- The SCRA contains many other protections besides those applicable to home loans.

How Does A Servicemember or Dependent Request Relief Under the SCRA?

- A servicemember or dependent, or both, may request relief under the SCRA by providing the lender a written notice with a copy of the servicemember’s military orders. (Note: Lender should place its name, address and contact information here).

How Does a Servicemember or Dependent Obtain Information About the SCRA?

- Servicemembers and dependents with questions about the SCRA should contact their unit’s Judge Advocate, or their installation’s Legal Assistance Officer. A military legal assistance office locator for each branch of the armed forces is available at: http://legalassistance.law.af.mil/content/locator.php.
December 22, 2006

MORTGAGEE LETTER 2006-31

TO: ALL APPROVED MORTGAGEES

ATTENTION: SINGLE FAMILY SERVICING MANAGERS

SUBJECT: TIER RANKING SCORES

This Mortgagee Letter announces the results of HUD’s Tier Ranking Scores (TRS) for Round 26. Round 26 scores cover the fiscal year 2006 (i.e., October 1, 2005, through September 30, 2006) performance period. The assessment used to determine additional incentives for the 2007 calendar year is linked to these scores.

Lenders ranked in Tier 1 are eligible for the following increased loss mitigation incentives:

1. An additional $100 payment for each Special Forbearance Agreement executed on or after January 1, 2007;

2. An automatic (i.e., would not require written approval from HUD) extension of two additional months to continue to market their properties related to Pre-Foreclosure Sale time frames; and

3. An increase in the reimbursement of foreclosure costs from two thirds to 75% for Part B claims received by HUD on or after January 1, 2007, for loans endorsed on or after February 1, 1998.

HUD will continue to provide Tier Ranking Scores quarterly, but eligibility for performance incentives will be determined on an annual basis using the Tier Ranking Scores provided at the end of each fiscal year. Tier Ranking Scores represent lenders’ performance for a 12-month period prior to the issuance of such scores. The identity of Tier 1 Lenders will be published every year on HUD’s TRS website and announced via a Mortgagee Letter, effective with Round 26 Tier Ranking Scores. Beginning with the next incentive round (i.e., Round 30) the entire TRS list for all four tiers will be posted on the Department’s TRS website. HUD’s TRS website address is: www.hud.gov/offices/hsg/sfh/nsc/ trsovrvw.cfm.
Attached is a list of all Tier 1 lenders, including their workout ratios. If there are any questions or comments regarding the tier ranking scoring process, please send them via email to: hsg-lossmit@hud.gov.

Sincerely,

Brian D. Montgomery
Assistant Secretary for Housing-
Federal Housing Commissioner

Attachment
### High Volume (100,000 loans or more):

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<th>ID#</th>
<th>Name</th>
<th>Loans</th>
<th>Workout Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>34400</td>
<td>CHASE HOME FINANCE LLC</td>
<td>316,795</td>
<td>89.478%</td>
</tr>
<tr>
<td>39276</td>
<td>MIDLAND MORTGAGE CO</td>
<td>217,005</td>
<td>83.615%</td>
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<tr>
<td>38892</td>
<td>NATIONAL CITY MORTGAGE CO</td>
<td>140,109</td>
<td>87.431%</td>
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<td>WELLS FARGO HOME MORTGAGE</td>
<td>727,531</td>
<td>84.697%</td>
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**Total High Volume Lenders - 4**

### Medium High Volume (10,000 to 99,999 loans or more):

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<th>ID#</th>
<th>Name</th>
<th>Loans</th>
<th>Workout Ratio</th>
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<tr>
<td>63001</td>
<td>BANCO POPULAR DE PUERTO RICO</td>
<td>23,899</td>
<td>86.647%</td>
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<td>BANK OF AMERICA NA</td>
<td>68,213</td>
<td>86.417%</td>
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<td>30084</td>
<td>CENLAR FEDERAL SAVINGS BANK</td>
<td>13,294</td>
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<td>63100</td>
<td>DORAL FINANCIAL CORPORATION</td>
<td>31,960</td>
<td>97.297%</td>
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<td>08411</td>
<td>EVERHOME MORTGAGE COMPANY</td>
<td>30,929</td>
<td>84.053%</td>
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<td>KENTUCKY HOUSING CORPORATION</td>
<td>10,373</td>
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<td>63093</td>
<td>R&amp;G MORTGAGE CORP</td>
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<td>49001</td>
<td>REGIONS BANK</td>
<td>46,703</td>
<td>82.482%</td>
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<td>74991</td>
<td>TBW INC</td>
<td>16,018</td>
<td>86.695%</td>
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<td>54521</td>
<td>VIRGINIA HOUSING DEV AUT</td>
<td>11,116</td>
<td>87.500%</td>
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**Total Medium High Volume Lenders - 10**

### Medium Low Volume (1,000 to 9,999 loans or more):

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<th>ID#</th>
<th>Name</th>
<th>Loans</th>
<th>Workout Ratio</th>
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<td>2,334</td>
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<tr>
<td>23009</td>
<td>BANCORPSOUTH BANK</td>
<td>4,802</td>
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<tr>
<td>64325</td>
<td>CALIFORNIA HOUSING FINANCE</td>
<td>2,866</td>
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<tr>
<td>74649</td>
<td>EMC MORTGAGE CORPORATION</td>
<td>2,700</td>
<td>83.848%</td>
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<tr>
<td>63011</td>
<td>FIRST BANK-PR</td>
<td>1,110</td>
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</tr>
<tr>
<td>64308</td>
<td>FIRST MORTGAGE CORPORATION</td>
<td>1,770</td>
<td>94.737%</td>
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<tr>
<td>59010</td>
<td>FIRST NATIONAL BANK ALASKA</td>
<td>1,240</td>
<td>99.248%</td>
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<tr>
<td>04718</td>
<td>GUILD MORTGAGE COMPANY</td>
<td>5,315</td>
<td>100.000%</td>
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<tr>
<td>55582</td>
<td>HOMESTREET BANK</td>
<td>3,940</td>
<td>90.698%</td>
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<tr>
<td>71247</td>
<td>HUNTINGTON NATIONAL BANK</td>
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<tr>
<td>10101</td>
<td>IDAHO HOUSING AND FINANCE ASSN</td>
<td>7,521</td>
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<tr>
<td>06230</td>
<td>MCCUE MORTGAGE COMPANY</td>
<td>5,018</td>
<td>96.552%</td>
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HUD's Tier Ranking System (TRS) - Round 26

Tier One Lenders

Medium Low Volume (1,000 to 9,999 loans or more) continued:

<table>
<thead>
<tr>
<th>ID#</th>
<th>Name</th>
<th>Loans</th>
<th>Workout Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>39318</td>
<td>MORTGAGE CLEARING CORPORATION</td>
<td>6,728</td>
<td>90.689%</td>
</tr>
<tr>
<td>32053</td>
<td>PIONEER BANK</td>
<td>2,273</td>
<td>81.481%</td>
</tr>
<tr>
<td>46049</td>
<td>RHODE ISLAND HSG MTGE FIN CORP</td>
<td>1,243</td>
<td>100.000%</td>
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<tr>
<td>17158</td>
<td>STANDARD MORTGAGE CORPORATION</td>
<td>6,190</td>
<td>95.455%</td>
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<tr>
<td>25122</td>
<td>STREETER BROTHERS MTG CORP</td>
<td>1,457</td>
<td>93.750%</td>
</tr>
<tr>
<td>52167</td>
<td>UTAH HOUSING CORPORATION</td>
<td>8,188</td>
<td>81.605%</td>
</tr>
<tr>
<td>06060</td>
<td>WEBSTER BANK</td>
<td>2,255</td>
<td>87.179%</td>
</tr>
<tr>
<td>63026</td>
<td>WESTERNBANK PUERTO RICO</td>
<td>1,574</td>
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</tr>
<tr>
<td>58109</td>
<td>WYOMING COMMUNITY DEV AUTH</td>
<td>2,714</td>
<td>84.314%</td>
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</table>

Total Medium Low Volume Lenders - 21

Low Volume (Less than 1,000 loans):

<table>
<thead>
<tr>
<th>ID#</th>
<th>Name</th>
<th>Loans</th>
<th>Workout Ratio</th>
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<tbody>
<tr>
<td>39194</td>
<td>AEGIS WHOLESALE CORPORATION</td>
<td>184</td>
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<tr>
<td>51370</td>
<td>AMEGY MORTGAGE COMPANY LLC</td>
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<tr>
<td>52204</td>
<td>AMERICA FIRST FEDERAL CREDIT UNION</td>
<td>234</td>
<td>100.000%</td>
</tr>
<tr>
<td>25113</td>
<td>AMERICAN FEDERAL SAVINGS BANK</td>
<td>135</td>
<td>100.000%</td>
</tr>
<tr>
<td>30323</td>
<td>AURORA FINANCIAL GROUP INC</td>
<td>974</td>
<td>94.872%</td>
</tr>
<tr>
<td>61006</td>
<td>BANK OF HAWAII</td>
<td>219</td>
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<tr>
<td>26016</td>
<td>BANKFIRST</td>
<td>15</td>
<td>100.000%</td>
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<tr>
<td>55314</td>
<td>BANNER BANK</td>
<td>270</td>
<td>95.652%</td>
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<tr>
<td>14244</td>
<td>BAYVIEW LOAN SERVICING LLC</td>
<td>591</td>
<td>91.429%</td>
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<tr>
<td>18033</td>
<td>CAMDEN NATIONAL BANK</td>
<td>630</td>
<td>100.000%</td>
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<tr>
<td>64439</td>
<td>CAPITAL PACIFIC MTGE CO</td>
<td>141</td>
<td>100.000%</td>
</tr>
<tr>
<td>10640</td>
<td>CENTRAL MORTGAGE COMPANY</td>
<td>191</td>
<td>94.737%</td>
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<tr>
<td>19408</td>
<td>CHEVY CHASE SAVINGS BANK FSB</td>
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<tr>
<td>53026</td>
<td>CHITTENDEN TRUST COMPANY</td>
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<td>100.000%</td>
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<tr>
<td>33201</td>
<td>CITIBANK NA</td>
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<tr>
<td>25200</td>
<td>COMMUNITY FIRST BANK</td>
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<tr>
<td>78642</td>
<td>CONNECTICUT HOUSING INV FUND INC</td>
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<tr>
<td>42544</td>
<td>DWELLING HOUSE SAVINGS ALA</td>
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<tr>
<td>33535</td>
<td>ELMIRA SAVINGS AND LOAN ASSN</td>
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<tr>
<td>33487</td>
<td>ELMIRA SAVINGS BANK FSB</td>
<td>143</td>
<td>100.000%</td>
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Low Volume (Less than 1,000 loans) continued:

<table>
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<th>ID#</th>
<th>Name</th>
<th>Loans</th>
<th>Workout Ratio</th>
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</thead>
<tbody>
<tr>
<td>52158</td>
<td>FAR WEST BANK</td>
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<tr>
<td>39390</td>
<td>FIRST BANK OKLAHOMA</td>
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<tr>
<td>71429</td>
<td>FIRST COMMUNITY BANK</td>
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<tr>
<td>20684</td>
<td>FIRST EASTERN MORTGAGE CORP</td>
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<tr>
<td>17199</td>
<td>FIRST FEDERAL BANK OF LOUISIANA</td>
<td>54</td>
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<tr>
<td>47017</td>
<td>CHARLESTON</td>
<td>68</td>
<td>100.000%</td>
</tr>
<tr>
<td>49253</td>
<td>FIRST FEDERAL SAVINGS BANK</td>
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<td>100.000%</td>
</tr>
<tr>
<td>03062</td>
<td>FIRST FINANCIAL BANK</td>
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<tr>
<td>61007</td>
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<td>19386</td>
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<tr>
<td>26178</td>
<td>GREAT WESTERN BANK</td>
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<tr>
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<td>HEARTLAND BANK</td>
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<tr>
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<td>HERITAGE BANK</td>
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<td>14711</td>
<td>IOWA BANKERS MORTGAGE CORP</td>
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<tr>
<td>19434</td>
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<td>MOUNTAIN STATES MTG CENTER</td>
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<tr>
<td>63153</td>
<td>ORIENTAL BANK AND TRUST LLC</td>
<td>668</td>
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</table>
Low Volume (Less than 1,000 loans) continued:

<table>
<thead>
<tr>
<th>ID#</th>
<th>Name</th>
<th>Loans</th>
<th>Workout Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>77072</td>
<td>PEOPLES NATIONAL BANK</td>
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<tr>
<td>51628</td>
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<tr>
<td>24550</td>
<td>PULASKI BANK SB</td>
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<td>33848</td>
<td>SAWYER SAVINGS BANK</td>
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<td>40178</td>
<td>SUIUSLAW VALLEY BANK</td>
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<td>72533</td>
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<td>34441</td>
<td>SYRACUSE SECURITIES INC</td>
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<tr>
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</table>

Total Low Volume Lenders - 75

Calculation of Work Out (WO) Ratio:

\[
\frac{\text{FFs} + \text{SFs} + \text{MMs} + \text{PCs} + \text{MEs} + \text{PFSs} + \text{DILs} + \text{ACDs}}{\text{FFs} + \text{SFs} + \text{MMs} + \text{PCs} + \text{MEs} + \text{PFSs} + \text{DILs} + \text{ACDs} + \text{FCs}}
\]

Events Key: FF=Forbearance, SF=Special Forbearance, MM=Mortgage Modification, PC=Partial Claim, PFS=Pre-Foreclosure Sale, DIL=Deed-in-Lieu, ACD=Accelerated Claims Disposition, FC=Foreclosure, ME=Multiple Event (a dummy code to provide credit for one Loss Mitigation event per case) for one loss mitigation event per cycle.