



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

October 1, 2008

MORTGAGEE LETTER 2008 - 30

**TO: ALL APPROVED MORTGAGEES**

**SUBJECT: HOPE for Homeowners Servicing Guidance**

The Housing and Economic Recovery Act of 2008 amends the National Housing Act to authorize a new, temporary Federal Housing Administration (FHA) mortgage insurance program called the HOPE for Homeowners Program (also referred to as the H4H Program). Under the Program, a borrower facing difficulty paying his or her mortgage will be eligible to refinance into an affordable FHA-insured mortgage. The H4H Program is effective for endorsements on or after October 1, 2008, through September 30, 2011.

This mortgagee letter provides HUD-approved servicing mortgagees with servicing and loss mitigation guidance on the new H4H Program. The information, directions and guidance provided in the mortgagee letter reflect statutory requirements and the standards, policies and regulations adopted for the H4H Program by the Board of Directors of the H4H Program.

**I. Background**

At origination of an H4H mortgage, the borrower will execute a Shared Equity note and mortgage (SEM) in favor of HUD with a fixed dollar amount inserted for initial equity. Likewise at origination, the borrower will execute a Shared Appreciation note and mortgage (SAM) in favor of HUD representing a fifty percent (50%) interest in future appreciation of the mortgage property. The SEM and SAM mortgage documents will be recorded as second and third priority liens, respectively, against the property.

Initial equity is calculated as the difference between the H4H mortgage original balance and the appraised value at the time of the H4H loan origination. Based on the date of a sale, disposition or refinance, HUD is entitled to a percentage of the initial equity pursuant to the schedule as stated in the SEM.<sup>1</sup> Upon sale or disposition of the mortgaged property; HUD is also entitled to receive fifty percent (50%) of any appreciation. Appreciation is defined as the growth, if any, in the value of the property between the time the borrower takes out the H4H mortgage and the time the borrower sells the property. HUD may share its 50% interest in future appreciation with a subordinate lien holder(s) who meet specific criteria for the H4H mortgage.

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<sup>1</sup> During Year 1	100% of equity is paid to FHA
During Year 2	90% of equity is paid to FHA
During Year 3	80% of equity is paid to FHA
During Year 4	70% of equity is paid to FHA
During Year 5	60% of equity is paid to FHA
After Year 5	50% of equity is paid to FHA

Following the funding of the H4H mortgage, the originating lender (Originator) will record the H4H, SEM and SAM mortgage documents in the public records of the county in which the property is located and will deliver the original SEM and SAM notes and original recorded mortgage documents to HUD. The recording of the mortgages should enable the Originator to register the H4H, SEM and SAM notes and mortgages on the Mortgage Electronic Registration System (MERS);. The SEM and SAM will be serviced by HUD through its contractor, C&L Service Corporation/Morris-Griffin Corporation (Contractor).<sup>2</sup>

H4H mortgages will be serviced in accordance with the servicing policy for other FHA-insured forward mortgages as described in HUD Handbook 4330.1 REV-5 and any mortgagee letters that update this handbook, except as otherwise provided in this mortgagee letter.

## **II. Prohibition Against Subordinate Financing**

Under the H4H Program, borrowers are prohibited from taking out new subordinate liens for the first five years of the mortgage except when necessary to ensure maintenance of property standards. Therefore, during the first five years of the mortgage, FHA will permit a junior lien only if the proceeds are essential to preserve and protect the property, and:

- The condition to be repaired represents a health and safety hazard and/or the failure to make the repair will cause the property condition to deteriorate;
- The cost of the proposed repair is reasonable for the geographic market area as determined by HUD's residential property management contractor;
- The repairs are not primarily cosmetic or represent routine maintenance;
- The financing is a closed-end loan under Federal Reserve Board's Regulation Z;
- The financing does not reduce the amount of the government's equity share in the property;<sup>3</sup> and
- The new total debt does not exceed 95 percent of the property's new appraised value.

HUD will not subordinate equity or appreciation sharing notes to any subordinate financing – either within the first five years or thereafter – except liens as described above or for FHA loss mitigation actions (mortgage modifications and partial claims).

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<sup>2</sup> Contractor is subject to change. Mortgagees will be notified of any changes via future mortgagee letters.

<sup>3</sup> That is, the sum of the unpaid principal balance and accrued interest on the H4H mortgage and the original principal balance of the new mortgage debt is less than the sum of (i) the appraised value of the property after completion of the proposed repair and (ii) HUD's share of the new equity created upon origination of the H4H mortgage as if a sale of the property occurred on date of origination of the new mortgage debt.

Should a borrower need to obtain a loan for property repairs, the borrower should contact HUD in care of its Contractor at the address at the end of this mortgagee letter and provide information documenting the need for the repairs, repair cost estimates and a current appraisal prepared by a FHA roster appraiser.

### **III. Refinancing**

In the event of any refinance of the H4H mortgage, the borrower must pay to HUD its full equity interest as stated in the SEM. H4H mortgages may not be refinanced using the FHA streamline process. Refinance into another conventional loan product is permitted subject to the following restrictions:

#### ***Refinance to Access Equity***

No earlier than 12 months from the date of closing on the H4H mortgage, HUD will subordinate its SAM to a refinance if:

- The refinance results in a 30 year amortizing fixed-rate loan with a principal and interest payment that is lower than the P&I payment due on the existing H4H mortgage,
- The proceeds from the refinance are sufficient to pay off the percent of initial equity due to HUD, and
- The cash received by or on behalf of the borrower is limited to the borrower's initial equity as stated in the SEM and any earned equity the borrower has accrued by paying down the principal balance of the loan.

#### ***Refinance to Access Appreciation***

No earlier than five years from the date of closing on the H4H mortgage, HUD will allow a refinance if:

- The cash received by or on behalf of the borrower from the refinance is limited to the initial and earned equity and no more than twenty-five percent (25%) of the appreciation accrued since origination of the H4H mortgage, and
- The borrower consents to a modification of the SAM that specifies that HUD is entitled, upon the sale or other disposition of the property, to a fixed dollar amount equal to fifty percent (50%) of the appreciation (as adjusted for capital improvements as described below) that accrued between origination of the H4H mortgage and the date of the refinance, as well as fifty percent (50%) of any future appreciation that may accrue between the date of the refinance and sale of the property.

Additionally, if the H4H mortgage is being refinanced into a new FHA loan, the borrower must; (i) meet all standard eligibility and qualifying guidelines for FHA mortgage insurance, (ii) have made all of his or her mortgage payments during the previous 12 months, within the month

due, and (iii) be current for the month due.

Upon receipt of any request to subordinate the SAM to a refinance, HUD shall determine its equity interest based on the number of years since origination of the H4H mortgage and shall provide the amount required to pay off the shared equity mortgage to the refinance lender. If the borrower is requesting an appreciation refinance, HUD will, based on a new appraisal performed by a FHA roster appraiser and provided by the refinance lender, calculate the total appreciation (as adjusted for capital improvements) accrued since origination and multiply that amount by twenty-five percent (25%) to determine the maximum amount of appreciation the borrower may obtain from the refinance transaction.

#### **IV. Capital Improvements**

Upon receipt of a written request from a borrower, the calculation of accrued appreciation in the mortgage property may be reduced by an amount equal to seventy-five percent (75%) of the actual expenditure for capital improvements completed at the borrower's expense after origination of the H4H mortgage, subject to the following conditions:

- The combined total cost of the capital improvements claimed must be equal to or greater than \$2,500,
- The borrower must submit original or legible copies of paid invoices itemizing the work completed,
- The work must be of a nature that significantly changed and enhanced the value of the property including but not limited to room additions; full roof replacement; complete exterior painting, siding or stucco; full kitchen renovation; major landscape renovation; patio or deck additions; in-ground swimming pools,
- Expenses, including but not limited to interior décor (paint, flooring, window and wall coverings); landscape maintenance (mowing, tree trimming or removal, reseeding, planting, fertilization) or normal maintenance or replacement of appliances, systems, and fixtures may not be included, and
- There will be no allowance for "sweat equity".

#### **V. Default and Loss Mitigation**

Mortgagees shall follow the same documentation and reporting guidelines when providing loss mitigation to borrowers with H4H mortgages that apply to FHA-insured mortgages. HUD's Loss Mitigation Program allows for the following special considerations when evaluating an H4H borrower for loss mitigation.

##### ***Loss Mitigation Options***

- Special Forbearance – follow existing Program guidance.

- Loan Modification – HUD will subordinate the SEM and SAM to any modification of an H4H mortgage completed in accordance with HUD’s Loss Mitigation Program.
- Partial Claim – a partial claim note does not require subordination of the SEM and SAM.
- Pre-Foreclosure Sale – the lender will include the total dollar amount of the SEM in the total debt calculation for the negative equity ratio calculations in addition to any existing Partial Claim. Net proceeds must fit into the eighty-two percent (82%) requirement and up to \$2,000 can be used to pay off any junior property preservation lien. If a junior property preservation lien does not exist, the borrower is not eligible for the \$2,000.
- Deed-In-Lieu (DIL) – HUD will accept a DIL subject to the SEM and SAM liens and will allow up to \$2,000 to be used to satisfy a junior, property preservation lien.

## **VI. Impact of First Payment Defaults**

Section 257 of the National Housing Act prohibits HUD from paying an insurance claim on any H4H loan where there was a first payment default (the borrower did not make at least one full payment within 120 days from the date of settlement). Though HUD is unable to pay claims for insurance benefits on these loans, they remain insured and they must be serviced in accordance with the HUD’s servicing and loss mitigation guidance. Lenders must remit the portion of the annual mortgage insurance premium due each month.

Prior to filing any claim for insurance benefits, the lender must verify that the loan did not experience a first payment default as defined herein.

### ***Loss Mitigation***

Borrowers must be considered for and offered all appropriate loss mitigation options. However, the lender may not file a claim for loss mitigation incentives, reimbursement of loss mitigation expenses, partial claim advances or forgiveness of principal and interest associated with pre-foreclosure sales, DIL, claim without conveyance or conveyance claims. These restrictions apply to loans with first payment defaults:

- Partial Claim – Lenders are encouraged but not required to offer a loss mitigation option similar to a partial claim. HUD may subordinate the SEM and SAM to a partial claim advance note in favor of a lender if the advance generally complies with FHA Loss Mitigation Program guidance. However, HUD is unable to reimburse the lender for the advance.
- Pre-Foreclosure Sale (PFS) – the lender is required to offer eligible borrowers the opportunity to participate in a Preforeclosure Sale Program with terms similar to that proscribed by FHA, however, the lender is not required to pay the borrower a consideration or to advance funds for satisfaction of junior liens as provided in the FHA Loss Mitigation Program. When a PFS generally complies with HUD guidance, HUD may release its SEM and SAM liens to accommodate the loss mitigation action.

- DIL – Lenders are required to utilize the DIL option when appropriate. When a DIL generally complies with HUD guidance, HUD may release its SEM and SAM liens to accommodate the loss mitigation action.

### ***Voluntary Termination of Insurance***

Section 229 of the National Housing Act, as implemented by the H4H Regulations, provides that the Secretary shall terminate any insurance contract upon request by the mortgagor and the mortgagee. In the event the borrower and mortgagee mutually request termination of insurance and the request is granted, annual mortgage insurance premiums will no longer be due and payable to HUD. However, the borrower will not be entitled to a refund of any upfront mortgage insurance premium received by HUD and will remain obligated for the shared equity and appreciation mortgages, that can be discharged only as provided in other sections of this guidance.

## **VII. Sale and Payoff**

Upon sale or other disposition (transfer of title without sale) the borrower must satisfy both the SEM (if not already satisfied through refinance) and the SAM. Upon receipt of a payoff request, HUD will calculate the respective payoff amounts in the manner described herein and issue a payoff demand to the closing agent. Also, HUD will determine if there are prior subordinate lien holders who are entitled to a portion of any appreciation.

HUD shall receive out of net proceeds its initial equity amount as stated in the SEM note. If net proceeds are less than HUD's share of the initial equity due to a deduction for allowable closing costs, then net proceeds will be shared as follows:

- First, HUD shall receive from the net proceeds its proportionate share (as determined using the schedule stated in the SEM) of any closing costs deducted from initial equity.
- Second, the remaining net proceeds (if any) will be distributed between HUD and the mortgagor according to the schedule stated in the SEM.

HUD shall accept net proceeds that are less than HUD's share of initial equity as payment in full of the SEM note subject to the following conditions:

- The sale represents an arms-length transaction with no identity of interest between the parties,
- The sale price was based on a current appraisal performed in accordance with the Uniform Standards of Professional Appraisal Practice and acceptable to HUD, and
- The net proceeds from the sale are equal to or greater than eighty-eight percent (88%) of the appraised value or such other value as may be approved by HUD based on circumstances beyond the control of the borrower.

### **Example**

Assuming that the original appraisal for an H4H loan is \$100,000 and the original loan balance on the H4H loan is \$90,000; therefore the SEM is \$10,000. The property is sold six years later for \$103,000 with \$7,000 in closing costs. The unpaid principal balance on the H4H loan is \$88,000. Net proceeds equal \$8,000 (\$103,000-88,000-\$7,000). **HUD receives \$4,500 and the borrower receives \$3,500**; the deduction of closing costs resulted in the reduction in net proceeds being less than the initial equity amount by \$2,000; HUD first receives 50% of this \$2,000, or \$1,000 out of the net proceeds; The remaining net proceeds (\$7,000) are shared 50/50 between HUD and the borrower with each receiving \$3,500.

To the extent that there is appreciation available from HUD's share for distribution, HUD will provide instructions to the closing agent to distribute the funds at closing to each prior subordinate lien holder in order of their former priority. The lien holder that previously held the highest priority will receive up to the full dollar amount of its interest, not to exceed the amount of available appreciation. If additional appreciation is available, the lien holder with the next priority will be entitled to receive payment up to the full dollar amount of its interest, not to exceed the amount of available appreciation, and so on until all prior lien holders are satisfied or the amount of available appreciation is exhausted. All remaining appreciation will be remitted to HUD.

Upon receipt of all equity and appreciation proceeds due to HUD, the Contractor will issue and record satisfaction and release of the SEM and SAM notes.

### **VIII. Correspondence**

All correspondence and mortgagor inquiries as noted above related to servicing H4H mortgage should be directed to:

U.S. Department of HUD  
c/o C&L Service Corporation / Morris-Griffin Corporation  
2488 East 81<sup>st</sup> Street, Suite 700  
Tulsa, Oklahoma 74137

Any questions regarding this mortgagee letter may be directed to HUD's National Servicing Center at (888) 297-8685 or [hsg-lossmit@hud.gov](mailto:hsg-lossmit@hud.gov). This guidance is effective immediately.

Sincerely,

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