



**National
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*Fighting Together
for Economic Justice*

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April 30, 2020

Brian Montgomery
Assistant Secretary for Housing – Federal Housing Commissioner
Department of Housing and Urban Development
451 7th St S.W.
Washington, D.C. 20410

RE: Comments to Mortgagee Letter 2020-06

Dear Assistant Secretary Montgomery:

On behalf of our low-income clients and communities, the undersigned 38 organizations write to comment on HUD's response to the COVID-19 epidemic and on its implementation of the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act through Mortgagee Letter 2020-06. We applaud HUD for adopting a flexible policy for borrower access to forbearance and for prioritizing partial claims for borrowers who have recovered from a COVID-19-related hardship.

HUD should take further steps to protect homeowners facing hardship in this pandemic. In addition to what it has released, HUD should:

- Clarify several critical loss mitigation issues related to forbearance and partial claims that Mortgagee Letter 2020-06 does not cover;
 - Adopt a modification program, such as the recently updated Disaster Loan Modification protocol, for borrowers who can resume current payments but are not eligible for partial claims; and
 - Address current issues in HUD's FHA-HAMP program to streamline access for the many FHA borrowers with COVID-19 hardships who will need access to permanent loan modifications.
- I. The forbearance and partial claim policies provide important flexibility but require clarification.

Flexibility for borrower communications regarding forbearance. Given the challenges borrowers have faced in reaching their mortgage servicers, we applaud HUD for providing a flexible policy on borrower communication. Under the letter, "The Mortgagee may utilize any available

methods for communicating with a Borrower regarding a forbearance to meet these requirements.” HUD then provides a broad list of communication methods, but only lists phone and email as explicit means for a borrower to accept a forbearance. **HUD should clearly state that all the listed methods of communication provide a valid means for electing forbearance.**¹ In addition, where email is used, the servicer should only use an email address provided directly by the borrower.

Full year of forbearance. Further, HUD, should clarify the forbearance rules to ensure that borrowers who are struggling with COVID-19-related hardship can obtain, when needed, the full year of forbearance provided by the CARES Act, even where provided in smaller increments. **HUD must directly state that borrowers who face COVID-19 hardship are eligible to receive up to twelve months of forbearance even if this requires more than two forbearance periods.** This should apply to borrowers who receive an initial forbearance shorter than six months. Without making this clear, borrowers will feel that the need to ask for forbearance than they need up front because it is unclear whether they can get an extension later, and this does not benefit borrowers, servicers, or the MMI Fund. **In addition, where a borrower receives an initial forbearance of 90 days rather than six months, the term should automatically be extended for an additional 90 days unless the borrower explicitly declines such an extension.**

Availability of partial claims. Borrowers in need will greatly benefit from the availability of partial claims, but more should be done to expand its availability and also to notify borrowers of this option. By allowing borrowers to restart current payments without the need to immediately address past due amounts, HUD’s partial claim policy promotes stability and alleviates the stress of borrowers who would otherwise need to either immediately repay past-due amounts or add extra years to their loan. HUD’s partial claim policy also benefits borrowers by not requiring significant documentation of eligibility – it allows for a partial claim upon an indication by the borrower that the monthly payment is again affordable.

However, HUD should require servicers to notify borrowers of this option and of how it works. Borrowers need to clearly understand that they are taking on a second lien on the property and that it will need to be paid when the property is sold. **Information about the partial claim option and all other FHA loss mitigation options should be given to borrowers when the forbearance is first provided and again before it expires, at least thirty days before the forbearance ends.**

Further, HUD’s partial claim policy is too limited in scope. By limiting eligibility to those current or less than thirty days past due, the policy unnecessarily cuts out people who have faced recent struggles and have been further stressed by COVID-19 but who can resume current payments. **HUD should expand access by increasing partial claim eligibility to those who were 60 or 90 days past due as of March 1, 2020.**

¹ We appreciate that HUD’s COVID-19 Questions and Answers page allows for more expansive means of borrower acceptance; however, we believed this policy should be formalized and included in a Mortgagee Letter.

- II. HUD should adopt a loan modification specifically for borrowers with COVID-19 hardships modeled on HUD's disaster modification program.

Mortgagee Letter 2020-06 does not include a loan modification specifically for COVID-19-related hardships. While the partial claim protocol in Mortgagee Letter 2020-06 should help many, if not most, borrowers who recover their ability to pay their mortgage payment, it will not help those who have already reached the maximum statutory partial claim through previous modifications, even if they can resume current payments.

Accordingly, HUD should implement the Disaster Loan Modification program for borrowers facing a COVID-19-hardship who are not eligible for a partial claim. HUD should keep the COVID-19 Standalone Partial Claim as the first option for providing a permanent resolution, but the Disaster Loan Modification program should be in place for borrowers who can afford their mortgage payment but have reached their statutory limit for partial claims. Under the Disaster Loan Modification program, borrowers receive a term extension and potentially an interest rate reduction to keep their payment at the current level.

We note that Fannie Mae has adopted the policy we suggest here in Fannie Mae Lender Letter 2020-02 (as updated April 8, 2020). Under Fannie Mae's COVID-19 loss mitigation protocol, borrowers who reach the end of a forbearance can be considered for Fannie Mae's disaster modification options. These include Fannie Mae's Extend Modification and Cap and Extend Modification designed for disaster relief. At the end of forbearance borrowers may also be considered for the new Fannie Mae payment deferral option, a program similar to the partial claim available for FHA borrowers. We urge HUD to make the full range of its disaster relief options available to FHA borrowers who complete a forbearance period.

- III. FHA must adopt sorely needed amendments to its standard loss mitigation protocol to provide more accessible relief to borrowers, including those with COVID-19-related hardships.

Borrowers with a COVID-19-related hardship but cannot fully recover income will need to rely on FHA's standard loss mitigation waterfall for relief. Unfortunately, borrowers have faced significant barriers to loss mitigation since the release of Mortgagee Letter 2016-14. As described in previous correspondence and a more [recent issue brief](#), servicers have imposed burdensome expense and hardship documentation requests as a result of the Mortgagee Letter. HUD must take steps to eliminate these requirements, including demands from servicers to produce a wide range of bills and receipts prior to any loss mitigation review and overbroad requests for documenting hardship. Such requests unnecessarily impede FHA loss mitigation and deter participation in the program. Moreover, Congress, through the passage of the CARES Act, expressed a preference for not requiring written documentation during this national emergency.

We understand that these issues may be presently under consideration and request that HUD expedite action on these matters. **HUD should act quickly to streamline expense and hardship documentation requirements.**

- IV. HUD should clarify its seasoning and trial plan rules in connection with the COVID-19-pandemic.

HUD must also provide clarification on several critical loss mitigation issues raised by the COVID-19 pandemic. Given the broad scope of the pandemic, HUD should eliminate several of its loan modification rules that will impede new homeowners from accessing needed COVID-19 relief.

Under HUD Handbook 4000.1, a loan is eligible for an FHA-HAMP loan modification only if the borrower has made four payments on the loan and the loan is twelve months old. If applied to homeowners who are not eligible for a partial claim but who need FHA-HAMP, this rule would prevent many new homeowners from accessing modifications. These homeowners with a COVID-19 based hardship have no control over the pandemic and the economic destruction it has caused. **HUD should waive the four-payment and twelve-month requirements.**

In addition, HUD should waive the rule that homeowners cannot receive FHA-HAMP for a 24-month period after previously receiving it. Again, homeowners have no control over the COVID-19 pandemic, and they should not be penalized due to a previous hardship. HUD has waived this requirement for Disaster Loan Modifications and should also do so for borrowers with a COVID-19 hardship.

HUD should extend forbearance eligibility to borrowers in current trial plans who face a COVID-19-related hardship. A borrower who recently regained but lost work because of the pandemic should not be shut off from loss mitigation. Instead, **HUD should extend the deadlines for paying on trial plans until the forbearance has ended.**

- V. HUD should eliminate unnecessary disclaimer language from Mortgagee Letter 2020-06 as it will encourage non-compliance.

Mortgagee Letter 2020-06 includes a paragraph stating that it does not confer any rights to borrowers and does not interfere with the lender's private contractual rights. This paragraph is unnecessary, and, in fact, appears to imply that servicers may pursue foreclosure regardless of the requirements of the letter and that the letter's requirements are ultimately optional. In this time of crisis, HUD's message to servicers should be that they must provide relief to help borrowers in accordance with FHA policy. HUD's paragraph provides a contrary message and should be deleted.

We appreciate your work on this important national issue and the opportunity to comment on it. To discuss this issue or any others related to the FHA-insured loan program, please contact Steven Sharpe, National Consumer Law Center, ssharpe@nclc.org

Sincerely,

The National Consumer Law Center (on behalf of its low-income clients)
Americans for Financial Reform Education Fund
Atlanta Legal Aid Society, Inc.

CAMBA Legal Services, Inc. (New York)
Center for Community Progress
Center for NYC Neighborhoods
Center for Responsible Lending
Charlotte Center for Legal Advocacy
Community Legal Services of Philadelphia
Connecticut Fair Housing Center
Consumer Federation of America
Empire Justice Center (New York)
Financial Protection Law Center (North Carolina)
Housing Help Inc. (New York)
Jacksonville Area Legal Aid, Inc.
Kentucky Equal Justice Center
La Fuerza Unida, Inc. (New York)
Legal Aid Chicago
Legal Aid Society of Southwest Ohio, LLC
Legal Aid Society of the District of Columbia
Legal Services NYC
Legal Services of New Jersey
Michigan Poverty Law Program
Mobilization for Justice, Inc. (New York)
Mountain State Justice (West Virginia)
NAACP
Nassau/Suffolk Law Services Committee, Inc. (New York)
National Fair Housing Alliance
National Housing Law Project
New Mexico Legal Aid, Inc.
North Carolina Justice Center
Northwest Justice Project (Washington)
Northwest side Housing Center (Illinois)
Ohio Poverty Law Center
Prosperity Now
Public Counsel (California)
The Legal Aid Society of Cleveland
Vermont Legal Aid, Inc.