



September 25, 2023

Sarah Edelman  
Deputy Assistant Secretary for the Office of Single Family Housing  
U.S. Department of Housing and Urban Development  
451 7<sup>th</sup> Street S.W.  
Washington, DC 20410

**Re: Mortgagee Letter 2023-03: CORRECTED AND REPUBLISHED: Expansion of the COVID-19 Recovery Loss Mitigation Options**

Dear Ms. Edelman,

On behalf of the clients, communities, and companies we represent, we welcome the opportunity to share some additional information with you on the Federal Housing Administration's (FHA) Mortgagee Letter 2023-03. We originally wrote you on August 24<sup>th</sup> (see Attachment 1) requesting that FHA make standalone partial claims available to any delinquent borrower, or at the very least for borrowers who are 60 days delinquent (aligning with the GSE 60-day delinquency requirement for deferrals). This would be a change from the current policy that requires that "the Borrower must be 90 or more Days Delinquent at the time the permanent loss mitigation documents are executed."<sup>1</sup>

In response to our letter, we received a question from your staff about whether a repayment plan, an informal forbearance plan, or a trial payment plan would potentially be better options for these borrowers rather than pursuing a standalone partial claim. As discussed below, and after reviewing each of these options, we still strongly recommend expanding the option for borrowers to pursue a standalone partial claim prior to becoming 90 days delinquent.

The policy challenge is clearest when looking at borrowers who have suffered temporary hardships that have resolved in a manner that allows them to resume their previous monthly payments. For this set of borrowers, the question is quite simply: what is the most effective way to cover the amount of money they are behind on their mortgage?

A repayment plan is currently the primary mechanism for repaying arrearages, and for borrowers who can afford for their payments to temporarily go up, it is a fine option. A repayment plan **will** indeed solve this type of borrower's issue and **will not** cause the borrower further harm. Since a repayment plan is already a part of the waterfall, there is no change in policy needed to make borrowers aware of this option. Unfortunately, for many borrowers, an option that increases their monthly payment will

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<sup>1</sup> T the requirement referenced in ML 2023-03 is also found in FHA guidance governing the traditional loss mitigation waterfall that is currently suspended (page 1044 of Handbook 4000.1 published on 8/9/23).

potentially derail their ability to consistently make their monthly mortgage payments, and thus other options are needed.

However, for borrowers who cannot afford an increase in their monthly payment though their temporary hardship has resolved, both an informal forbearance and a trial payment plan are inappropriate because they **won't** resolve the borrower's issue and **will** cause the borrower further harm. For these borrowers, the informal forbearance or trial payment plan will needlessly increase the borrower's arrearages and negatively affect the borrower's credit file (with subsequent decline in their credit score) just so they can meet HUD's level of delinquency standard to qualify for a standalone partial claim that can resolve their problem. Credit scoring models distinguish between 60- and 90-day delinquencies and requiring the latter undermines FHA's goals of sustainable homeownership and loss avoidance. In fact, all that an informal forbearance or trial payment plan will do for a borrower whose hardship has already resolved is delay resolution, which imposes additional harm to the borrower. Accordingly, borrowers should be offered a standalone partial claim when they are 60 days delinquent.

Moreover, we continue our strong recommendation for HUD to eliminate the phrase "documents are executed" from any delinquency standard for the Partial Claim. As described in our previous letter, Mortgagee Letter 2023-03 establishes a new timeframe for the level of delinquency tied to the borrower's execution of the modification documents rather than the servicer's offering of the loss mitigation option. Encouraging servicers to utilize informal forbearance or trial payments to meet HUD's 90 days delinquent standard still fails to solve the operational difficulty we previously raised because HUD's standard continues to focus on borrower execution of the documents. Even if the borrower is 90 days delinquent when the modification documents are sent, a borrower could make a payment before execution, resulting in a potential violation of the rule. Put differently, the policy articulates a 90-day delinquency standard that is out of the servicer's control. Even if FHA believes that it must maintain a 90-day delinquency standard to comply with Ginnie Mae MBS Guidance, that Guidance does not measure delinquency status using the date when "documents are executed." If an operational standard is needed, we recommend using "at the time of the evaluation" or "at the time of offer" as those are bright-line, point-in-time standards that servicers can effectively and consistently operationalize.

Thank you for the opportunity provide this additional detail to our previous letter. Should you have questions or wish to discuss this issue further, please contact Matt Douglas at [matt.douglas@housingpolicycouncil.org](mailto:matt.douglas@housingpolicycouncil.org), or Steve Sharpe at [ssharpe@nclc.org](mailto:ssharpe@nclc.org) to discuss next steps.

Yours truly,

**National Consumer Law Center (on behalf of its low-income clients)**

**Housing Policy Council**

# Attachment 1



August 24, 2023

Sarah Edelman  
Deputy Assistant Secretary for the Office of Single Family Housing  
U.S. Department of Housing and Urban Development  
451 7<sup>th</sup> Street S.W.  
Washington, DC 20410

**Re: Mortgage Letter 2023-03: CORRECTED AND REPUBLISHED: Expansion of the COVID-19 Recovery Loss Mitigation Options**

Dear Ms. Edelman,

On behalf of the clients, communities, and companies we represent, we welcome the opportunity to offer comments on the Federal Housing Administration's (FHA) Mortgage Letter 2023-03, which extended the new loss mitigation programs and processes that were established during the pandemic. Both the servicing industry and consumer advocates who monitor this sector appreciate the FHA's engagement with stakeholders to make these updates. Like FHA, we want clear, operationally feasible loss mitigation options that will maximize the number of FHA borrowers eligible for assistance to remain in their homes.

In that spirit, we want to address a challenging policy development that has been introduced through the publication of ML 2023-03.<sup>1</sup> Specifically, we are concerned that, for borrowers who are not on a COVID-19 Forbearance, "the Borrower must be 90 or more Days Delinquent at the time the permanent loss mitigation documents are executed." This language seems to unintentionally eliminate all loss mitigation options, other than repayment plans, for borrowers who have missed one or two payments, but are less than 90 days delinquent. Our understanding is that the specific text at issue may have been included in the mortgagee letter to accommodate Ginnie Mae MBS Guidance that dictates the terms under which a loan can be removed from pool for a loan modification. However, the broad language in the FHA mortgagee letter also eliminates the standalone partial claim for borrowers who are less than 90 days delinquent on their loans, even though loans with partial claims do not have to be bought out of Ginnie Mae pools, and thus the Ginnie Mae 90-day delinquency rule does not apply.

We are concerned that this overly broad policy prevents the 382,375<sup>2</sup> delinquent borrowers who are between 30-90 days delinquent from qualifying for a standalone partial claim, even if their hardship has resolved, and they are able to resume their previous monthly payments. For these borrowers, the only

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<sup>1</sup> Also, please note that the requirement referenced in ML 2023-03 is also found in FHA guidance governing the traditional loss mitigation waterfall that is currently suspended (page 1044 of Handbook 4000.1 published on 8/9/23).

<sup>2</sup> Recursion data on FHA delinquencies in Ginnie Mae Securities for July 2023.

program available is a repayment plan that will increase their monthly payment, which could derail their ability to consistently make their monthly mortgage payments.

The current FHA policy prohibiting standalone partial claims for certain delinquent borrowers, is also misaligned with the GSE Deferral Program. Recent GSE guidance makes their Payment Deferral Program available for any borrower who is 60 days delinquent.<sup>3</sup> Although our preference is for FHA to make partial claims available to any delinquent borrower, because of the operation costs of executing partial claims, we understand that aligning with the GSE 60-day delinquency requirement may be seen as more efficient.

Our second issue with the policy identified above, is that it adds a new operational standard that is not practical for servicers to execute effectively. The mortgagee letter establishes a new timeframe for the level of delinquency tied to the borrower's execution of the modification documents rather than the servicer's offering of the loss mitigation option. This requirement introduces operational difficulty and risk; even if the borrower is 90-days delinquent when the modification documents are sent, a borrower could make a payment before execution, resulting in a potential violation of the rule. Put differently, the policy articulates a 90-day delinquency standard that is out of the servicer's control. Even if FHA believes that it must maintain a 90-day delinquency standard to comply with Ginnie Mae MBS Guidance, that Guidance does not measure delinquency status using the date when "documents are executed." Thus, we strongly recommend dropping the phrase "documents are executed" from any future delinquency standard. If an operational standard is needed, we recommend using "at the time of the evaluation" or "at the time of offer" as those are bright-line, point-in-time standards, that servicers can effectively and consistently operationalize.

Thank you for the opportunity to comment on the changes to the Mortgagee Letter and the Handbook, and to provide the above recommendations on an important servicing issue. We look forward to working with HUD on these issues and others as part of our broader body of work intended to bring greater certainty and clarity to the FHA single family program, to expand lender participation and consumer access, and to protect communities from blight. Should you have questions or wish to discuss this issue further, please contact Matt Douglas at [matt.douglas@housingpolicycouncil.org](mailto:matt.douglas@housingpolicycouncil.org), or Steve Sharpe at [ssharp@nclc.org](mailto:ssharpe@nclc.org) to discuss next steps.

Yours truly,

**Housing Policy Council**

**National Consumer Law Center (on behalf of its low-income clients)**

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<sup>3</sup> See Payment Deferral and Freddie Mac Bulletin 2023-8