



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

OFFICE OF THE ASSISTANT SECRETARY
FOR HOUSING-FEDERAL HOUSING COMMISSIONER

January 22, 2010

MORTGAGEE LETTER 2010-04

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

SUBJECT: Loss Mitigation for Imminent Default

The Helping Families Save Their Home Act of 2009 expanded the authority to use FHA Loss Mitigation to assist defaulted FHA borrowers avoid foreclosure to include those mortgagors facing "imminent default" as defined by the Secretary. The purpose of this Mortgagee Letter is to define imminent default and provide guidance to FHA-Approved servicers on how to assist those FHA borrowers. At this time FHA is limiting the loss mitigation options that may be used to assist borrowers facing imminent default to forbearance and FHA-HAMP. The guidance provided in this Mortgagee Letter is effective immediately.

Background

Loss Mitigation is critical to both borrowers and FHA because it works to fulfill the goal of helping borrowers retain homeownership while protecting the FHA Insurance Fund from unnecessary losses. By establishing early contact with the borrower to discuss the reason for the default and the available reinstatement options, the servicer increases the likelihood that the default will be cured and the borrower will be able to retain homeownership. Therefore, this Mortgagee Letter emphasizes the use of loss mitigation at the time of initial default or determination that a default is imminent. This Mortgagee Letter supplements those loss mitigation requirements prescribed by HUD pursuant to regulations 24 CFR §203.501 and §203.605.

Definition of "FHA Borrower Facing Imminent Default"

FHA defines an "FHA borrower facing imminent default" to be an FHA borrower that is current or less than 30 days past due on the mortgage obligation and is experiencing a significant reduction in income or some other hardship that will prevent him or her from making the next required payment on the mortgage during the month that it is due. The borrower must be able to document the cause of the imminent default which may include, but is not limited to, one or more of the following types of hardship:

1. A reduction in or loss of income that was supporting the mortgage loan, e.g., unemployment, reduced job hours, reduced pay, or a decline in self-employed business earnings. A scheduled temporary shut down of the employer, (such as for a scheduled vacation), would not in and by itself be adequate to support an imminent default.

2. A change in household financial circumstances, e.g., death in family, serious or chronic illness, permanent or short-term disability.

Documenting the Reason for and Timing of Imminent Default

A servicer must document in its servicing system the basis for its determination that a payment default is imminent and retain all documentation used to reach its conclusion. The servicer's documentation must also include information on the borrower's financial condition.

Loss Mitigation Options that are Applicable for Imminent Default

Forbearance Agreement

A forbearance agreement is an agreement by the Servicer to postpone, reduce or suspend payment(s) due on a loan for a limited and specific time period. At FHA, forbearance agreements are classified as informal, formal or special. The imminent default provisions of this mortgagee letter are applicable to both informal and formal forbearance agreements. The use of Special forbearances is not applicable for use in cases of imminent default.

Informal forbearance is a verbal agreement between the Servicer and borrower. The duration for an informal forbearance must be three months or less. Formal forbearance is an agreement in writing between the Servicer and borrower. Where the duration of the forbearance agreement will be for more than three months, it must be in writing and would therefore be a formal forbearance.

The financial analysis required for forbearance agreements should be calculated under FHA's standard loss mitigation procedures that use a net surplus basis. The lender must analyze the borrower's current and future ability to meet the monthly mortgage obligation as provided in Mortgagee Letter 2000-05, General Program Requirements, Section H.

FHA – Home Affordable Modification Program (FHA – HAMP)

FHA-HAMP was introduced on July 30, 2009, in Mortgagee Letter 2009-23 titled "Making Home Affordable Program: FHA's Home Affordable Modification Loss Mitigation Option." Under new authority provided in the "Helping Families Save Their Home Act of 2009," FHA was able to offer FHA-HAMP to provide homeowners in default a greater opportunity to reduce their mortgage payments to a sustainable level. Servicers may consider FHA-HAMP if an FHA borrower is facing imminent default (as defined in this mortgagee letter). In order for an FHA-insured loan that is at risk of imminent default to qualify for modification under FHA-HAMP, the borrower must first successfully participate in a four-month trial modification period. Servicers are reminded that FHA-HAMP program requirements include both income and expense calculations in addition to front end and back end ratio calculations.

Data Reporting

Servicers are required to report all standard loss mitigation activities prior to the HAMP option implementation according to the guidance established in Mortgagee Letter 2006-15 and subsequent guidance. Specific reporting requirements for FHA-HAMP were provided in Mortgagee Letter 2009-39, which was issued on October 9, 2009. In addition, servicers are reminded that per HUD regulation 24 CFR §203.508, the Department may request information related to FHA mortgages and that they are obligated to respond with information and related documentation.

Monitoring

FHA holds servicers accountable for their servicing practices in order to protect the public trust and the FHA Insurance Fund. When a servicer fails to comply with FHA's policies and procedures, FHA will take appropriate action. Servicers that violate FHA program statutes, regulations, handbook requirements and mortgagee letters may be subject to numerous actions including: the repayment of loss mitigation incentives, indemnification, and referral to HUD's Mortgagee Review Board for appropriate sanctions.

Questions regarding this Mortgagee Letter should be directed to our National Servicing Center Customer Service at (888) 297-8685. Persons with hearing or speech impairments may access this number via TDD/TTY by calling 1-877-TDD-2HUD (1-877-833-2483).

Sincerely,

David H. Stevens
Assistant Secretary for Housing-
Federal Housing Commissioner

Paperwork Reduction Act

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 2502-0429. Additionally, the Department has submitted an expansion package to OMB for 2502-0429, where approval is pending. 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.