



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

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

August 14, 2008

MORTGAGEE LETTER 2008-21

TO: ALL APPROVED MORTGAGEES

ATTENTION: Single Family Servicing Managers

SUBJECT: FHA Loss Mitigation Program Updates

The Federal Housing Administration (FHA) is pleased to announce several changes to its Loss Mitigation Program that will strengthen both the Loan Modification and Partial Claim Initiatives.

While these changes are designed to address borrowers who are facing serious defaults, most delinquencies can and should be resolved through early intervention. Mortgagees are reminded of the critical importance of early and constructive contact with delinquent borrowers and the requirement to notify borrowers of the availability of default counseling by HUD-approved counseling agencies.

Loss Mitigation Program Changes

This Mortgagee Letter announces three changes to the existing Loss Mitigation program designed to give mortgagees additional latitude to help borrowers cure defaults and retain homeownership. The changes noted below are effective immediately.

First, with respect to Loan Modifications, mortgagees may use the Treasury 10-year constant maturity as a basis for establishing the maximum interest rate for loan modifications. The maximum interest allowable should be calculated as 200 basis points above the monthly average yield on United States Treasury Securities, adjusted to a constant maturity of 10 years. Mortgagees shall refer to the rate that is in effect as of the date of execution of the loan modification. For information on the 10-year monthly constant maturities, please refer to the statistical release H.15, which is available on the following web site: <http://www.federalreserve.gov/releases/h15/data.htm>

Next, where loss mitigation is being attempted after foreclosure has been initiated, mortgage servicers and mortgagors have advised that foreclosure related costs and legal fees are often impediments to successful loss mitigation. Many mortgagors who are able to resume making monthly mortgage payments frequently do not have sufficient funds to reimburse the mortgagee the legal fees and foreclosure costs incurred prior to qualifying for loss mitigation and therefore are denied participation.

Effective with this Mortgagee Letter, the Department will begin allowing legal fees and foreclosure costs related to a canceled foreclosure action to be incorporated into either the Loan Modification or the Partial Claim subject to the following requirements. This guidance expands and supersedes, in relevant part, the guidance provided in Loan Modifications section F (page 21) and Partial Claims section F (page 26) of Mortgagee Letter 00-05.

For Loan Modifications, legal fees and related foreclosure costs may now be **capitalized** into the modified principal balance. For Partial Claims (PC), mortgagees may now include legal fees and foreclosure costs related to a canceled foreclosure in the Partial Claim.

Mortgagees are reminded that all such foreclosure costs must reflect work actually completed to the date of the foreclosure cancellation and the attorney fees should not be in excess of the fee schedule that HUD has identified as customary and reasonable for FHA claim reimbursement. Late fees should not be capitalized in a Modification or included in a Partial Claim. As the goal in providing the mortgagor either a Loan Modification or a Partial Claim is to bring the delinquent mortgage current and give the mortgagor a new start, the mortgagee should waive all accrued late fees.

Please refer to Mortgagee Letter 2005-30 (or any subsequent guidance issued by FHA on reasonable and customary foreclosure costs) for the fee schedule for legal fees that HUD has identified as customary and reasonable for FHA claim reimbursement. Lenders should perform a retroactive escrow analysis at the time of the loan modification to ensure that the delinquent payments being capitalized reflect the actual escrow requirements required for those months capitalized.

Finally, in response to the industry's request to provide adequate time for the mortgagee to complete all required actions related to a loan modification, the Department provides the following clarification. When establishing a loan modification, it is acceptable for mortgagees to include all payments due including an additional month in the loan modification.

Consider the following example. The mortgagor is due for the January 2008 and all subsequent payments. The mortgagee completes its loss mitigation evaluation on June 27, 2008. To allow adequate time to complete the loan modification, obtain all required signatures and provide adequate notice to the mortgagor of the new payment, the mortgagee may include the payments due for July 2008 and August 2008 in the loan modification. The mortgagor will begin remitting payments due under the modified mortgage effective with the installment due September 1, 2008.

Any questions regarding this Mortgagee Letter or requirements for use of the partial claim and loan modification authorities may be directed to HUD's National Servicing Center (NSC) at 888-297-8685 or hsg-lossmit@hud.gov.

Sincerely,

Brian D. Montgomery
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Federal Housing Commissioner