



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

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

August 15, 2011

MORTGAGEE LETTER 2011-28

TO: ALL APPROVED MORTGAGEES

SUBJECT: Trial Payment Plan for Loan Modifications and Partial Claims under Federal Housing Administration's Loss Mitigation Program

The purpose of this Mortgagee Letter is to identify circumstances under which mortgagors must successfully complete a trial payment plan prior to the mortgagee executing a loan modification or partial claim action under the Federal Housing Administration's (FHA) Loss Mitigation Program. In addition, this Mortgagee Letter announces the time requirements for mortgagees to complete permanent loan modification and partial claim documents in order to receive an incentive fee. These requirements are effective October 1, 2011.

A trial payment plan is an important tool for confirming a mortgagor's readiness and ability to make regular monthly mortgage payments and avoid re-default. This Mortgagee Letter requires successful completion of a trial payment plan as a prerequisite for a mortgagee executing a permanent standard modification and/or partial claim in the following situations:

- If a mortgagor has been delinquent (30 or more days) twice or more in the preceding 12 months;
- If a mortgagor has been delinquent for 90 days or more (three or more consecutive payments past due) in the preceding 36 months;
- If a mortgagor has defaulted within 90 days of a previous loss mitigation retention option (special forbearance, loan modification, and partial claim) executed in the past 12 months;
- If the financial analysis reflects a mortgagor has a net surplus income of less than 20 percent of total net income;
- If less than 14 months have elapsed since the origination of the loan;
- If the amount added to the loan balance in a loan modification or the amount of the partial claim exceeds 10 percent of the unpaid principal balance;
- If the mortgagor failed a trial payment plan for FHA's Making Home Affordable Program (FHA-HAMP); or
- If the mortgagee determines that a trial payment plan is necessary to demonstrate the mortgagor's ability to sustain the modified payment.

This Mortgagee Letter supersedes Mortgagee Letters 2000-05 and 2002-17 with respect to guidance pertaining to trial payment plans.

Trial Payment Plan Guidelines

The trial payment plan should be for a minimum period of three-months and the mortgagor should make at least three full, consecutive monthly payments prior to final execution of the loan modification or the partial claim. Reporting requirements are outlined in Appendix A. In addition, under no circumstances shall a mortgagee include language in any loss mitigation documents which requires mortgagors to waive their rights to be considered or approved for a loss mitigation option.

Loan Modifications

The rate for the trial payment plan and the permanent modified mortgage must be in compliance with Mortgagee Letter 2009-35.^[1] The final payment under the permanent modification must be the same or less than the trial mortgage payment. Accordingly, this Mortgagee Letter amends Mortgagee Letter 2009-35 by requiring the permanent rate to be established when the trial payment plan is approved by the servicer. The approval date is the date the servicer offers the trial payment plan to the borrower. In addition, mortgages in Ginnie Mae's Mortgage Backed Securities (MBS) must meet Ginnie Mae's repurchase requirement(s), prior to executing final modification documents (<http://www.ginniemae.gov/guide/guidtoc.asp?subTitle=Issuers>).

Partial Claims

For partial claims, the monthly payment during the trial period should be the same as the regularly scheduled payment. The mortgagee must service the mortgage during the trial period in the same manner as it would service a mortgage in forbearance.

Trial Payment Plan Failure

Foreclosure action must be suspended during trial payment plans. In the event a trial payment plan fails, an additional 90-day extension is provided in which the mortgagee must commence or recommence foreclosure or initiate another loss mitigation option. If the trial payment plan fails, before commencing or continuing a foreclosure, the mortgagee should re-evaluate the mortgagor's eligibility for other appropriate loss mitigation actions.

A trial payment plan is considered to have failed and is deemed broken when any of the following occurs:

- The mortgagor vacates or abandons the property; or
- The mortgagor does not make the scheduled trial plan payment within 15 days of the trial payment plan due date.

^[1] Mortgagee Letter 2009-35 defines Market Rate to be "no more than 50 basis points greater than the most recent Freddie Mac Weekly Primary Mortgage Market Survey Rate for 30-year fixed-rate conforming mortgages (US average), rounded to the nearest one-eighth of one percent (0.125%), as of the date the permanent modification is executed. The weekly survey results are published on the Freddie Mac website at <http://www.freddiemac.com/pmms/> and the Federal Reserve Board includes the average 30-year survey rate in the list of Selected Interest Rates that it publishes weekly in its Statistical Release H.15 at <http://www.federalreserve.gov/releases/h15/>."

Automatic Extensions

If a mortgagor is unable to complete a trial payment plan within the initial six-month time limit from the date of default (see 24 CFR § 203.355), the mortgagee is allowed a 90-day extension of the foreclosure deadline provided the initiation of a loss mitigation option (including a trial payment plan) was begun prior to the expiration of the initial six month period. Therefore, if there have been no other intervening delays (such as bankruptcy) this “automatic” extension will extend the six month deadline to initiate foreclosure by 90 days.

To qualify for the automatic extension, the mortgagee must have completed the loss mitigation evaluation required by 24 CFR § 203.605 and approved the appropriate loss mitigation action. Documentation of this analysis must be maintained in the claim review file. In addition, the loss mitigation initiative must be reported via the Single Family Default Monitoring System (SFDMS). An example of a common reporting sequence would be status code 42 (delinquent), followed by status code 08 (Type II Special Forbearance / Trial Payment Plan), then either status code 10 (partial claim started), or status code 28 (loan modification started). All extensions of time to initiate foreclosure (including “automatic extensions”) must be properly identified on HUD-27011, Block 19 on the conveyance claim.

Incentive Fees for Permanent Modifications and Partial Claims

In cases where a trial payment plan is required, mortgagees are only eligible for an incentive fee for subsequent execution of the loan modification (up to \$750) or the partial claim (\$500) if the permanent modification or partial claim is executed within 60 days of the mortgagor’s successful completion of a trial payment plan.

For additional information, please refer to Mortgagee Letters 2000-05, 2002-17, 2003-19, 2006-15, 2008-21, and 2009-35. Any questions regarding this Mortgagee Letter may be directed to HUD’s National Servicing Center at (877) 622-8525. Persons with hearing or speech impairments may access this number by calling the Federal Information Relay Service at (800) 877-8339.

Sincerely,

Carol J. Galante
Acting 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 numbers 2502-0584, 2502-0523 and 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.

Appendix A

Reporting Requirements for Type II Special Forbearance / Trial Payment Plans

Mortgagees are required to implement changes which enable them to electronically report new default status codes to the Single Family Default Monitoring System (SFDMS). FHA recognizes that some industry participants may require additional time to complete the required system changes. Therefore, mortgagees may begin using the updated SFDMS status codes immediately, but mortgagees must begin reporting the updated status codes commencing with the November 2011 reporting cycle. Accordingly, the reported data is due to HUD no later than the fifth business day of the next month, which is December 7, 2011.

Two new status codes are introduced with the release of this Mortgagee Letter to allow the industry to begin reporting on FHA trial payment plans specifically mandated prior to the recasting of a loan using a standard loan modification or a reinstatement through the partial claim FHA Loss Mitigation option.

- **08 - Type II Special Forbearance / Trial Payment Plan**

This code is used when the mortgagor has been approved for a Type II Special Forbearance as defined in ML 2002-17 and must make at least three (3) trial payments to demonstrate the ability to pay the regular monthly mortgage payment under the loan modification or partial claim.

If a mortgagor successfully pays three consecutive monthly payments during the trial payment plan, the code 08 (Type II Special Forbearance/Trial Payment Plan) is to be followed by either a code 10 (partial claim) or code 28 (loan modification). Once the loss mitigation claim is filed and the loan is brought current, the mortgagee will report the 98 (Default Cured using a Loss Mitigation Tool).

- **AQ - Option Failure**

Mortgagees must use this code when the mortgagor failed to perform under the terms of the loss mitigation tool utilized. This code should be used to indicate failure of any loss mitigation action.

The table on the next page provides sample reporting sequences for a successful and a failed trial period. There will be deviation from these examples should the trial period extend an additional month, the execution of the modification extends over two months, or there are any other differing mortgage statuses or activity during any reporting cycle.

Appendix A-Continued

Sample Reporting Sequences: Successful and Failed Trial Periods	
Code	A Successful Trial Period
42	Opens default episode
08	Identifies that a loan is in a Trial Period or is approved (<i>1st month</i>)
08	Identifies that the loan is in a Trial Period (<i>2nd month</i>)
08	Identifies that the loan is in a Trial Period (<i>3rd month</i>)
28	Mortgagor has been approved for a Loan Modification
98	Mortgagor reinstated delinquency with benefit of an option of the Loss Mitigation Program closing the default episode.
Code	A Failed Trial Period
42	Opens default episode
08	Identifies that a loan is in a Trial Period or is approved (<i>1st month</i>)
08	Identifies that the loan is in a Trial Period (<i>2nd month</i>)
AQ	The mortgagor fails to perform under the terms of the loss mitigation tool utilized
42	Continues default episode - reanalyze for other appropriate loss mitigation actions

Reporting requirements for FHA-HAMP are detailed in Mortgagee Letter 2009-39 (www.hud.gov/offices/adm/hudclips/letters/mortgagee/2009ml.cfm).