



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

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

November 1, 2013

Mortgagee Letter 2013-40

To All Approved Mortgagees, Single Family Servicing Managers

Subject Loss Mitigation during the Foreclosure Process

Purpose The purpose of this Mortgagee Letter is to clarify the Department's requirements delineated in 24 CFR 203.502 and to communicate expectations for servicers who are engaging in loss mitigation during the foreclosure process.

Effective loss mitigation is essential to stabilizing communities affected by natural disasters, poor housing market conditions, etc. Therefore, servicers are reminded that participation in FHA's Loss Mitigation Program is not optional, they are to inform borrowers of and evaluate them for each loss mitigation retention and non-retention option¹ in a timely manner.

Effective Date Mortgagees must implement the requirements in this Mortgagee Letter by January 1, 2014.

Affected Policy The policies set forth in this Mortgagee Letter modify or supersede, where there is conflict, HUD Handbook 4330.1, Rev-5, and clarify parts of Mortgagee Letter 2000-05.

Notice to Borrower after Loss Mitigation Review Pursuant to 24 CFR 203.605, servicers are to evaluate on a monthly basis all loss mitigation tools available for delinquent borrowers and document their evaluations. Servicers must timely evaluate and respond to complete loss mitigation requests. A loss mitigation request is considered complete when it contains all information required by the servicer from the borrower in order to evaluate him/her for available loss mitigation retention and non-retention² options.

¹ For updated information on FHA's Loss Mitigation home retention options, see Mortgagee Letter 2012-22. For updated information on FHA's non-retention loss mitigation options, see Mortgagee Letter 2013-23.

² See ML 2013-23 for information regarding documents to be included in a complete mortgagor workout packet for non-retention loss mitigation options.

After its timely review of a borrower's loss mitigation request, the servicer must send a written notice to the borrower which indicates:

- whether or not he/she qualifies for a loss mitigation option;
- the actual reason(s) he/she has been denied for any loss mitigation option; and
- the servicer's points of contact and process for appeals or the escalation of cases.

FHA emphasizes that effective communication with borrowers is an important aspect of proper servicing. In this regard, servicers should be mindful of persons with disabilities and persons with limited English proficiencies, and take extra care to ensure that the appropriate communication tools are available for them. Providing thorough explanations and information about appeal or escalation processes may reduce instances of challenges to foreclosure actions, and in some instances, may reveal additional circumstances under which some mortgage loans may be brought current, thus precluding mortgage insurance claims. In these instances, the servicer is continuing to mitigate losses that FHA, as the mortgage insurer, might otherwise incur. Servicers are expected to comply with all applicable federal laws regarding loss mitigation appeals, including 12 CFR 1024.41 when it becomes effective.

**Loss Mitigation
and Initiation
of Foreclosure**

Pursuant to 24 CFR 203.606(a), a foreclosure may not be commenced for monetary defaults unless at least three consecutive monthly payments are unpaid. In addition, servicers are required to consider borrowers for each appropriate loss mitigation option prior to initiating foreclosure, unless the property has been abandoned or vacant for more than 60 days. Servicers are expected to comply with all applicable federal laws when initiating foreclosure, including 12 CFR 1024.41 when it becomes effective. After at least three consecutive monthly payments are due but unpaid, a servicer may initiate a foreclosure for monetary default if one of the following conditions is met:

- The servicer has completed its review of the borrower's loss mitigation request, determined that the borrower does not qualify for a loss mitigation option, properly notified the borrower of this decision, and rejected any available appeal by the borrower;
- The borrower has failed to perform under an agreement on a loss mitigation option, and the servicer has determined that the borrower is ineligible for other loss mitigation options; or
- The servicer has been unable to make a determination of the borrower's eligibility for any loss mitigation option due to the borrower not responding to the servicer's efforts to contact the borrower.

A servicer may initiate foreclosure on a delinquent mortgage, regardless of whether three consecutive monthly payments under the mortgage are due but unpaid, if one of the following conditions is met,:

- The servicer has determined that the property has been abandoned or vacant for more than 60 days; or
- The borrower, after being clearly advised of the options available for relief (including a pre-foreclosure sale and a deed in lieu of foreclosure), has clearly stated to the mortgagee in writing that he/she has no intention of fulfilling his/her obligation under the mortgage.

Servicers must clearly document reasons for not proceeding with loss mitigation activity prior to initiating foreclosure.

Loss Mitigation during the Foreclosure Process

Once foreclosure has been initiated, HUD expects servicers to keep open lines of communication with borrowers so that borrowers can notify servicers of any changes in their circumstances that may qualify them for loss mitigation options. In the event that a borrower notifies a servicer of a change in circumstances that may make him/her eligible for a loss mitigation option, the servicer may continue with the foreclosure process while evaluating the borrower for a loss mitigation option. The following chart describes the actions the servicer must take when it receives a loss mitigation request from a borrower.

Loss Mitigation Request Received by Servicer	Servicer Action
45 or more calendar days prior to the scheduled foreclosure sale date	<p>Within 5 business days of receiving the request, the servicer must notify the borrower in writing that:</p> <ul style="list-style-type: none"> • The borrower’s request has been received, and • The request is complete or incomplete (See the section of this Mortgagee Letter entitled “Requests for Additional Documents.”) <p>Within 30 days of receiving a complete request, the servicer must review the borrower’s loss mitigation request for eligibility for all retention and non-retention loss mitigation options.</p> <p>A servicer must not move forward with a scheduled foreclosure sale during its review. See the section of this Mortgagee Letter entitled “Loss Mitigation and Initiation of Foreclosure” for conditions under which the servicer may proceed with a foreclosure sale.</p>

<p>More than 37 calendar days prior to the scheduled foreclosure sale date, but less than 45 calendar days prior to the scheduled foreclosure sale date</p>	<p>Within 30 days of receiving a complete request, the servicer must review a borrower's request for eligibility for loss mitigation options.</p> <p>If an incomplete request is received and is not completed despite the servicer's repeated requests to the borrower for information, a servicer may, at its discretion, evaluate an incomplete loss mitigation application and offer a proprietary, non-incentivized loss mitigation option.</p> <p>A servicer must not move forward with a scheduled foreclosure sale during its review. See the section of this Mortgagee Letter entitled, "Loss Mitigation and Initiation of Foreclosure" for conditions under which the servicer may proceed with a foreclosure sale.</p>
<p>Fewer than 37 calendar days prior to the scheduled foreclosure sale date</p>	<p>A servicer must use its best efforts to complete a thorough and accurate review of a borrower's request for loss mitigation.</p> <p>The servicer is not required to suspend the foreclosure sale. The servicer may proceed with a foreclosure sale if the servicer:</p> <ul style="list-style-type: none"> • Determines after its review that a borrower is ineligible for loss mitigation, or • Using its best efforts is still unable to complete a thorough and accurate review of a borrower's request by the scheduled foreclosure sale date. Such efforts must be documented in the servicer's files.

See Mortgagee Letter 2013-38 for information on compliance with reasonable diligence timeframes in completing foreclosure.

In addition, servicers must ensure that strong communication lines are established between their loss mitigation and foreclosure departments to facilitate the coordination of loss mitigation efforts, and the sharing and documentation of information relating to a borrower's delinquency. For example, both departments should be aware that a borrower's file is under review for loss mitigation.

Requests for Additional Documents

When a servicer receives incomplete loss mitigation requests, the servicer must notify the borrower in writing:

- which documents are needed for review;
- when the documents should be sent back to the servicer.

This notice is expected to comply with all applicable federal requirements, including 12 CFR 1024.41 when it becomes effective, regarding requests for additional documents, including the requirement that the notice to the borrower includes a statement that the borrower should consider contacting servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options.

Extensions of Time for Initiating Foreclosure

To ensure that borrowers are properly considered for all appropriate loss mitigation options, HUD allows servicers certain automatic extensions of time to meet the deadline to perform the first legal action initiating foreclosure.

If there have been no other intervening delays (such as bankruptcy), HUD grants servicers an automatic 90-day extension of the six-month foreclosure initiation deadline as long as they have:

- Approved, but are unable to complete a retention option prior to the expiration of the first legal deadline to initiate foreclosure; and
- Reported the appropriate status code in the Single Family Default Monitoring System (SFDMS).

Servicers may also submit additional Requests for Extensions of Time through the Extensions and Variances Automated Requests System (EVARS).

Terminating Foreclosure Proceedings

When a borrower requests loss mitigation assistance after the servicer has initiated foreclosure, the servicer must terminate the foreclosure proceedings after:

- Verifying that a borrower's financial situation qualifies him/her for a loss mitigation option;
- Allowing the borrower at least 14 calendar days to either accept or reject the servicer's offer(s) of loss mitigation assistance, if the request for loss mitigation was received more than 37 calendar days prior to the scheduled foreclosure sale date; and
- Receiving an executed loss mitigation option agreement from the borrower, indicating that the borrower understands and agrees to the loss mitigation option terms.

Some loss mitigation option agreements may be executed only after completion of a Trial Payment Plan. Thus, if the servicer offers a borrower a loss mitigation option paired with a Trial Payment Plan, the servicer must suspend foreclosure proceedings during this Trial Payment Plan period and, as stated above, terminate foreclosure proceedings upon receiving a signed loss mitigation option agreement from the borrower.

**Information
Collection
Requirements**

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 2502-0589. 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.

Questions

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 reach this number by calling the Federal Information Relay Service at (800) 877-8339. For additional information on this Mortgagee Letter, please visit www.hud.gov/answers.

Signature

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