
CHAPTER 4 - SERVICING THE DELINQUENT MORTGAGE
(Forbearance Agreements and Payment Plans)

- 4-1. POLICY. To the extent possible, forbearance is the primary tool utilized to avoid acquisition. The objective is to help the mortgagor achieve debt-free homeownership.

Field offices must make every effort to bring mortgages current by developing forbearance agreements and to take other actions which also minimize losses to HUD.

4-2. FORBEARANCE AGREEMENTS.

- A. Requirement. All delinquent mortgages not in foreclosure, bankruptcy or inactive status must be placed under a forbearance agreement - which temporarily supercedes, but does not replace, the mortgage instrument. Field offices are responsible for developing and entering into agreements with mortgagors.

B. Format.

- 1) Field offices must use the forbearance agreements in Exhibits 4-1, 4-2, and 4-3. These agreements encompass the standard provisions described below.
- 2) Changes to the provisions may only be made with specific Headquarters approval. Only additions, such as an agreement to pay more than required under the 35 percent rule, may be inserted without Headquarters approval.

- C. Documentation. All agreements lasting more than 60 days must be in writing so that:

- 1) A record of the terms and conditions is established;
- 2) Mortgagors will know their specific rights and responsibilities;
- 3) Field offices have documentation to support their servicing efforts for review or if foreclosure becomes necessary; and,
- 4) The agreement must be entered into the SFMNS.

- D. Required provisions. All agreements must have certain standard provisions tailored to the individual mortgagor's case. These are:

- 1) Duration. Agreements must be for no more than 12 months. They should be shorter if:
 - payments are suspended,
 - less time is needed to cure the delinquency,
 - you know the mortgagor's financial circumstances will change in less than a year.
- 2) Payment amount. Agreements must specify the required payment. (For details, see paragraph 4-3, Payment Plans.)
- 3) Payment due date. Agreements must state that payments are due the first of the month and specify the beginning and end dates of the agreement. Note: The due date of the first payment should be the first of the month after HUD issues the agreement.
- 4) Hazard insurance. Agreements must specify the minimum amount the mortgagor must carry. (See Chapter 3 for these requirements.)
- 5) Property tax escrow. All agreements must tell the mortgagor that portions of the monthly payment will be set aside to pay taxes and what action will be taken if the amount of tax changes.

NOTE: The mortgagor should be informed that if sufficient funds are not available in the escrow account at the time taxes are due HUD will advance funds to pay the taxes and charge interest, at the note rate, on those advances.

- 6) Termination. All agreements must include the conditions and results of termination.
 - 7) Status of original Note and Mortgage. All agreements must clearly state that the original note and mortgage remain in full force except where the agreement temporarily modifies them.
- E. SFMNS. Field offices must put the forbearance agreement terms into The SFMNS in time for automatic billing of the first payment. (See the SFMNS User's Guide for instructions.)

- F. Monitoring. Field offices must monitor mortgagor performance under the agreements and, as necessary, review and restructure agreements, collect payments, or recommend foreclosure. (These activities are covered in this Chapter and Chapter 5.) The SFMNS' MONT Screen should be used to remind staff in advance of

necessary review schedules.

- G. Notification to Mortgagor. At the beginning of the initial 36-month period after the date of the assignment acceptance letter, the field office must advise the mortgagor of the following:

"During the next 36 months HUD will calculate your payment plan for the maximum payment based on your ability to pay. As a result, you may be asked to make regular or increased payments or your payments may be reduced or even suspended. Regardless of which type of payments you have over the next 36-months, you must begin to pay at least the full regular monthly payment due under your mortgage (or deed of trust) on the first day of the 37th month after notification of assignment acceptance. If you are financially able at any time your mortgage is with HUD, you will also be required to make payments to eliminate any outstanding delinquency."

4-3. PAYMENT PLANS.

- A. Policy. To obtain the maximum feasible payment to reduce the delinquency as soon as possible and help the mortgagor achieve debt-free homeownership. Simultaneously, the payment plan must be commensurate with the mortgagor's ability to pay.

-- Escrow shortages must be considered in developing the plan and, if possible, the mortgagor must be required to reduce them.

Where a "technical" delinquency has been created, solely due to escrow advances, the mortgagor's bill will show him or her delinquent until the advances are expunged.

If the mortgagor cannot eliminate the delinquency advance through a lump-sum payment, or the time necessary to expunge it in a reasonable fashion extends beyond the next escrow analysis, then a simpler self-explanatory payment plan shall be used (see Exhibit 4-3).

B. Types of Payment Plans.

- 1) Increased. Requires the regular payment due under the mortgage plus an amount toward the delinquency. It may be used in an assumption that does not bring the account current. It may be used for any delinquent account where the mortgagor's monthly income, less expenses (calculated using Form HUD-92208), yields an amount available for mortgage application which exceeds that required to make the regular mortgage payment. A mortgagor may

voluntarily agree, as part of the written plan, to make increased payments.

- 2) Regular. Use when it is determined that the mortgagor is financially unable to reduce the delinquency but has enough income to meet obligations. Requires the regular payment due under the mortgage--or for assisted mortgages, the mortgagor's "share". It also represents the "minimum" amount required after the initial 36 months following assignment acceptance has expired.
- 3) Reduced.
 - a. Use when the mortgagor is undergoing temporary hardship beyond the mortgagor's control and is unable to pay the regular or increased monthly payment.
 - b. Maximum period. 36 consecutive months. The SFMNS loan monitoring screen must be used to monitor this period, which is measured from:
 - date of the assignment acceptance letter for a mortgage assigned in a delinquent status.
 - For PMMs, or automatically assigned mortgages, 36 months from initial default.
 - c. Maximum Payment. During the 36 month period, where it is determined that the mortgagor cannot meet the regular or increased payment, the monthly payment demanded of the mortgagor must not cause the mortgagor's total housing expense to exceed 35 percent of net effective income. However, if a mortgagor can, and is willing to, pay more than the 35 percent the field office may incorporate a larger amount in the forbearance agreement. (See 4-2, B,2)) Such an amendment must be fully documented.

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Apply the 35 percent rule as follows:

1. Use it only if the monthly income available toward the mortgage (on Form HUD-92208) is less than the full mortgage payment.
2. Monthly net effective income is the gross monthly income less monthly city, State and Federal income and social security taxes.
3. Total monthly housing expense is the monthly mortgage payment plus the mortgagor's other monthly housing

expense: housing maintenance, utility and hazard insurance expense,

4. Maximum monthly reduced payment under 35 percent rule is:

35% of net effective income, minus:

- Monthly utility cost
- Monthly hazard insurance premium, if any,
- Monthly home maintenance cost

- 4) Suspended. (No monthly payment) Use under unusual circumstances only when analysis on Form HUD-92208 and application of 35-percent rule dictate it:
 - a. only during first 36 months after assignment acceptance and,
 - b. for no more than a 6-month term during which time financial circumstances must be reviewed so that payments can be adjusted promptly.

C. Minimum Payments.

- 1) The 37th month after the assignment acceptance letter, the mortgagor must begin paying at least the full monthly payment due under the mortgage (principal, interest, current escrow requirements and service charge).
- 2) If the mortgage is not current, the mortgagor must sign a forbearance agreement.

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- a. Terms. The agreement must require at least full monthly payments due under the mortgage and have a term of no more than 12 months.
 - b. Review. The mortgagor's financial circumstances must be reevaluated near the end of the term of each agreement before a new one is executed. If the evaluation shows that the mortgagor can cure the delinquency and make the full monthly payment, a higher payment must be required.
- 3) If the mortgagor is financially capable, the delinquency must be cured on or before the maturity date of the mortgage. Otherwise, the mortgage may be modified (2-5c.) or extended so that the delinquency may be paid over a period not to exceed 120 months (10 years) beyond maturity date. "Mortgage extension" is an informal process of failing to satisfy the mortgage at term. In "extending" the mortgage, the field

office must insure that the priority of the mortgage lien is not affected. Consult Regional/Chief Counsel, if necessary.

D. Lump Sum.

- 1) Such payments to reduce delinquency may be accepted any time; but they generally occur with the first forbearance agreement. (A format for an agreement with a lump sum payment is in Exhibit 4-2.)
- 2) The field office should request a lump sum payment from the mortgagor who:
 - a. has the cash available, and
 - b. would still be able to make subsequent monthly payments.

4-4. FORBEARANCE RELIEF FOR SECTION 235 SUBSIDIZED MORTGAGES.

- A. For mortgagors still eligible to receive assistance, family income must be recertified and verified at least annually. The same policies and procedures for private mortgagees, in Chapter 10 of Handbook 4330.1, apply.
- B. Try to coordinate the anniversary date of the assistance payments contract with the proposed payment plan.

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C. Remember the following:

- 1) Family income used to determine section 235 eligibility is different from what determines the mortgagor's ability to pay.
 - a. Section 235 eligibility income. The income of all persons related by blood marriage or operation of law living in the household, exclusive of earnings of minors.
 - b. Income for payment plans is limited to the responsible mortgagor(s). Income that can't be relied on, can't be included; neither can incomes of persons not obligated under the mortgage.
- 2) Section 235 assistance computation takes precedence. The "mortgagor's share" shall be viewed as the "full mortgage payment" for purposes of developing the payment plan.
- 3) For mortgages insured after January 1976, recertifications of family income and composition are required annually and when the servicer becomes aware that the monthly family income has

risen at least \$50. For cases insured before that date the assistance payment will not change between annual recertifications unless income goes down and the mortgagor brings it to the field office's attention.

4-5. COLLECTION PROCEDURES.

- A. General. Deal with a delinquency the first month a payment is missed. A partial payment or a break in payment pattern are the signs of problems. Keep close records and monitor the payment plan. Special telephone efforts, letters and field visits are essential during the early stages of default.

Objectively determine the cause of default and arrive at a payment plan that will eliminate the default. When warranted, initiate foreclosure.

- B. Early Contact and Follow-up.

- 1) Mortgagors under a forbearance agreement require individual attention and close monitoring. Early delinquency notices followed by telephone calls will prompt most mortgagors to pay or explain the delay. There is no substitute for consistent early contact and follow-up. Do not rely on SFMNS generated delinquency notices as your sole collection tool.

- 2) The SFMNS Delinquent Status Report (Report No. 507) provides delinquency status on accounts in 30, 60, 90, and 90+ day categories. These reports must be used to determine which mortgagors have delinquent payments and need servicing activity. (See the SFMNS User's Guide concerning these reports.)

- C. Common Causes of Default Under Forbearance Plans. Identifying the reason for non-payment will help you develop a reasonable repayment plan. Even the most carefully planned forbearance plan can be rendered unworkable by unexpected events. In such cases prompt restructuring of the plan is called for. Common causes for default include:

- 1) Unexpected major repairs or restoration due to damage or deterioration of a major structural component.
- 2) Temporary loss of income due to such things as unemployment, illness, death in family and divorce which occurred after the forbearance plan was established.

- D. Required Servicing During Month 1 of a Delinquency (day 1 through 31). SFMNS automatically produces a delinquency letter the 17th day of the month if a payment is not posted to the account by the 16th.

A late charge is also assessed. But, this should not limit you from initiating action of your own.

- E. Required Servicing During Month 2 of a Delinquency (day 32 through 61). Beginning the 32nd day of a delinquency, when two payments are past due, the Field Office must step-up servicing activities. These activities must be directed toward collection of the delinquent payments or assessment of the cause(s) of the delinquency. The effectiveness of the SFMNS's automatically generated delinquency notice loses its effect with each successive month and personal attention is necessary.

Directly contact the mortgagor, determine the cause of default, and, if appropriate, restructure the payment plan and refer the mortgagor to counseling or initiate foreclosure when warranted. Foreclosure is warranted when the property has been abandoned or the mortgagor has expressed a clear refusal to cooperate further. All actions should be thoroughly documented.

- F. Required Servicing During Month 3 of a Delinquency (day 62 through 90).
- 1) On the 62nd day of delinquency 3 payments are past due. The field office must review the payment plan and servicing actions taken and decide either to restructure a payment plan or

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foreclose. Providing all required servicing attempts have been completed with no positive result, and a complete analysis has been made, a decision to foreclose must be made before the 4th payment is missed (92nd day) (see paragraph 4-6 concerning review of payment plans). All actions must be thoroughly documented.

- 2) You cannot foreclose until the month 2 servicing is completed, unless the property has been abandoned.
- 3) To recommend foreclosure, follow Chapter 5.

NOTE: Partial payments may advance the paid-to date on the Forbearance Screen (FORB), but three payments can be measured from the initial forbearance delinquency. However, partial payments may also be indicative of a concern, rather than total disregard, for the obligation. In this latter case restructuring of the agreement may be warranted.

- G. Collection Techniques. The following summarizes basic techniques, which should be tailored to the individual case.

- 1) Telephone Contact. This is one of the most effective and practical collection tools before sending a collection letter. The telephone calls are not only more personal, but faster and cheaper than automatically generated delinquency letters. They demand immediate attention and cannot be thrown away or deferred. The staff person can vary his/her collection appeal and adapt his/her tone and approach to the mortgagor's response and attitude. Since mortgagors normally work the same hours that you do, and sometimes cannot be reached at their work location, consideration may be given to varying the work schedule to allow for evening calls. Calls should be limited to "reasonable hours", usually not later than 9:30 p.m.
 - a. Always keep in mind that the purpose of the call is to determine: why the payment has not been made; and when it will be made.
 - b. Plan and organize the call; review the mortgagor's record.
 - c. Have the pertinent information on hand during the conversation. Use a telephone near a SFMNS terminal so you can access the account.
 - d. Talk only with the mortgagor. You must never discuss the account with anyone else unless the mortgagor authorizes it in writing.

- e. Identify yourself, then confine the conversation to the purpose of the call.
- f. Always maintain control over the telephone conversation. Do not argue with the mortgagor.
- g. End conversation when a firm commitment has been made.
- h. Document the servicing file and set a follow-up date. The loan monitoring screen of the SFMNS can be used to monitor follow-ups.
- i. Follow-up is essential. As soon as you are aware of a missed payment date, contact the mortgagor.

NOTE: Each servicer should have, and use, the Guide for Telephone Collections, a HUD publication, GPO 904 082. It tells how to gather facts and pursue evasive responses.

- 2) Face-to-face contact. Personal contacts are also effective.

- a. If face-to-face meetings are feasible, they must be scheduled at the mutual convenience of the mortgagor and the field staff. Unless either pre-arranged, or the mortgagor is encountered, and spoken with, during the course of a property inspection, such inspections are not considered as attempts at face-to-face meetings.
- b. Field office staff are not required to attend meetings outside the field office; but if they do, they cannot accept a cash payment on the account at the meeting. Meetings may be held at the mortgagor's home, counseling agency, mortgagee's office or even another field office which may be closer to a mortgagor's residence. Out of office meetings may be necessitated by travel, illness or job constraints, etc.
- c. Be fully prepared for an objective and complete discussion of the case. Concentrate on fact-finding, the mortgagor's obligations under the mortgage and the forbearance agreement, problems affecting ability to meet these obligations, and the results of not meeting them.

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- d. In planning and carrying out a meeting see that:
 1. Mortgagor agrees to specific time and place.
 2. Tell the mortgagor in advance what specific information you need.
 3. Assure privacy, confidentiality; and freedom from interruption.
 4. Maintain a friendly but businesslike manner and an atmosphere of understanding and cooperation. Refrain from arguments.
 5. Emphasize the seriousness of the delinquency and the possibility of eventual foreclosure.
 6. If the forbearance agreement cannot be reinstated determine the cause of default and obtain the facts to assist in recommending continuation of the present payment plan, a new plan, or foreclosure.
 7. Your decisions based on the meeting must:
 - be in writing and approved by your supervisor.
 - state the payment terms.

-- be sent to the mortgagor.

- 3) Letters. Collection letters are most effective when they are not the same repeated form letter, but more personal. Letters are also valuable to confirm agreements made during telephone or personal contacts.

-- Never bring up foreclosure unless you fully intend to recommend it.

- 4) Fact Finding. Whether by telephone, letter or in person, questions and demands should be phrased to elicit a positive answer. Always ask open-ended questions such as:

Ones that begin with the words:

- a. Who, What, Which, When, How, and Why . . . ?

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b. What caused you to miss the payment?

c. When will you make a payment?

- 5) Documentation. All contacts with the mortgagor must be well documented on a case history sheet for the servicing file. Use the Assignment Request Case History Sheet, Form HUD-92210, (EXHIBIT 4-4), or a similar sheet. The servicing Card, Form HUD-92202, is useful for making quick notes, but lacks the space for detailed information. Cryptic or shorthand notes at the bottom of copies of correspondence may not suffice as thorough documentation.
- 6) Data Collection and Evaluation. Three HUD forms help in determining the mortgagor's ability pay:
 - a. Request for Financial Information, Form HUD-92068F.
 - b. Request for Verification of Employment, Form HUD-92004-g.
 - c. Analysis of Mortgagor's Income and Expense, Form HUD-92208.

In addition, for Section 235 cases, the data derived from the Recertification of Income and Family Composition procedure will help in that determination.

- 7) In addition to the collection procedures outlined above, HUD may also use several additional techniques provided under OMB Circular A-129 (Managing Federal Credit Programs). These

activities will be initiated by Headquarters:

- a. Salary offset for Federal employees.
- b. Income tax refund offset.

4-6. REVIEW AND RESTRUCTURE OF PAYMENT PLANS.

A. Specific Review Periods. Once a payment plan has been developed, the mortgage account must be monitored as follows.

1) When an Account is in Default.

- a. No foreclosure recommendation shall be made, except when the property is vacant, until the payment plan has been reviewed and all servicing/collection efforts required in paragraph 4-5 have been completed.

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b. As part of this effort ask the mortgagor to complete and return Form HUD-92068F within 14 days. Failure to return the Form HUD-92068F is not, of itself, sufficient ground to recommend foreclosure. Include a letter advising the mortgagor that:

- failure to return the form may result in a continuation of the current payment or the payment required under the mortgage, whichever is greater.
- foreclosure could result from the delinquency.

c. You must recommend foreclosure when:

- reanalysis shows the existing plan was realistic but the mortgagor refused to make payments,
- or 37 months have expired and the attempted minimum payment plan fails.

d. If the plan was not realistic, or if changed circumstances warrant, it must be restructured.

2) Before the Plan Expires.

- a. Each month the field office receives Loan Monitoring Report No. 246, listing the forbearance agreements expiring in 60 days.
- b. Where an agreement is due to expire, have those mortgagors submit financial information (Form HUD-92068F) within 14

days. Advise them that failure to return the form will result in a continuation of the current payment or minimum payment, whichever is greater.

1. If the form is received, use it to re-evaluate and, if necessary, revise the payment plan.
2. If it is not:
 - check with the mortgagor to see if failure to return the form was an oversight; if it was, mail another form.
 - otherwise, update the SFMNS for the higher amount to become effective immediately and send the proposed agreement for mortgagor's signature.

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c. If the mortgagor doesn't return the agreement signed, proceed to service the account under the terms of that proposed agreement.

B. Analyzing Income and Expenses.

- 1) You must use the mortgagor's Forms HUD-92068F and HUD-92208. (Samples are in Exhibits 4-5 and 4-6.) If a mortgagor does not submit a current Form HUD-92068F, place the account under the full note payment or the previous payment plan amount, whichever is greater.
- 2) In making the analysis, remember that HUD accepts assignment of a delinquent mortgage solely to help a mortgagor to avoid foreclosure. What may be perceived as extravagant may have been affordable before the mortgagor encountered financial difficulties. However, the assignment program should not subsidize a mortgagor's continued extravagant lifestyle by accepting increased expenditures for new non-essential items while making reduced or suspended mortgage payments. Financial counseling for the mortgagor is essential.
- 3) Disallow new or increased installment debts for non-essential items during the forbearance period. These are considered to be expenses not directly essential to the mortgagor's health, employment, or modest transportation needs.
- 4) Do not arbitrarily change amounts of expenses listed by mortgagors; consider each case on its own merits. If changes are made the mortgagor should be contacted and the result documented.

- 5) Expenses for utility costs can either be averaged over the year or seasonally adjusted to allow variable payments.
- 6) Standardized tables for food, living expenses, utilities, or home maintenance are often available from State agencies or HUD's area economists. However, such tables must be used merely as guides in analyzing the mortgagor's expenses, not used to force a subsistence lifestyle upon the family.

4-7. RELIEF FOR AUTOMATIC ASSIGNED MORTGAGES, AND OWNER OCCUPIED PMMS.

- A. Occasionally, short-term difficulties cause an otherwise dependable mortgagor to be delinquent. Often, HUD's best interest is to accept partial payment rather than to foreclose.

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- B. Field offices may accept partial payment, but must first document the following:

- 1) The mortgagor has not, previously, been provided relief by HUD,
- 2) Cause of delinquency must have been beyond the mortgagor's control,
- 3) There must be a reasonable prospect that the mortgage and delinquency can be paid by the maturity date, extended by up to 10 years if necessary.

- C. No assistance can be provided for more than 36 months.

4-8. PROVIDING COUNSELING.

- A. Field offices must offer counseling through a HUD-approved housing counseling agency to every mortgagor accepted by HUD for assignment. Do not initiate the offer to those who are under an approved bankruptcy plan; however, you may suggest counseling through the trustee or mortgagor's attorney. Field offices must tell mortgagors about available counseling in:

- 1) The assignment acceptance letter
- 2) Any written request for financial information for use in establishing or revising a forbearance agreement.

NOTE: While it is not required that mortgagors with Prams be referred to counseling, it is strongly advised, if such mortgagors become delinquent.

- B. When the services of a HUD-approved counseling agency is available, field offices will refer mortgagors to such agencies for service. Upon request for counseling, refer the mortgagor to the agency, taking into consideration:
- 1) that travel time from home or work to the counseling agency should not exceed 1 hour (in urban areas) or 2 hours (in rural areas), or
 - 2) whether public or private transportation is available.
- C. Homeownership Counseling Services By Counseling Agencies. Services must include those required by the Housing Counseling Handbook 7610.1 Rev., and if applicable, the grant document.
- D. Length of Counseling. It should be available to assigned mortgagors during the entire term of the mortgage, including any period of extension.

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4-9. SUPERVISORY RESPONSIBILITIES. This chapter has been designed to define HUD's standards for servicing the delinquent mortgage. What should be clear is that while servicing and collection activities go hand-in-hand they are different. HUD does have a right to pursue payment of the indebtedness, but the zealotness of that pursuit must be tempered with reason and based on thorough information gathering and documentation, as well as the exercise judgment.

The following excerpt from the Amended Stipulation, dated August 2, 1979, in the Farrell case is most pertinent;

"7) HUD shall review and, as appropriate, restructure payment plans of assigned mortgages (emphasis added) to ensure that they are reasonable and comport with 24 C.F.R. 203.650-662 and Handbook 4191.2 under the following circumstances:

- a. Before any action has been taken by reason of mortgagor default;
- b. When the terms of such a plan expire;
- c. When a plan is in default for three months or longer;
- d. When the terms of an existing plan extend more than six (6) months from the Order date;
- e. When a mortgagor so requests for good cause." (emphasis added)

While the term of that stipulation has expired, HUD desires that equivalent standards apply.

