



Multifamily Mortgage Business Lender Letter 17-10

September 8, 2017

To: Multifamily Lenders

From: Manuel Menendez, Jr., Senior Vice President, Multifamily Chief Credit Officer

Subject: Disaster Relief Guidance for Hurricanes Harvey and Irma

Highlights

Disaster Relief Guidance for Hurricanes Harvey and Irma including forbearance, late fees, delinquency advances, and short-term leases.

Background

The people of Fannie Mae are working with our customers, partners, and Federal and local authorities to bring relief to homeowners and renters impacted by Hurricanes Harvey and Irma (the "Hurricanes"), and are committed to helping families, neighborhoods, and communities recover in the months and years ahead. In support of this effort to help those affected by the Hurricanes, we are working diligently to gather accurate information about affected multifamily Borrowers and Properties. We will have more detailed information about underwriting, existing Commitments, and asset management responsibilities in the coming days. The purpose of this Lender Letter is to provide immediate, temporary relief for Borrowers and Properties in the Designated Disaster Area affected by the Hurricanes. For purposes of this Lender Letter, "Designated Disaster Area" shall mean the Designated Counties identified by the Federal Emergency Management Agency in declarations related to the Hurricanes.

Forbearance

As you deem appropriate, Fannie Mae is willing to grant a forbearance not to exceed three (3) months for Borrowers with a Property affected by one of the Hurricanes, who miss making their monthly payment due to the Hurricanes. Fannie Mae delegates to you the authority to grant forbearances to affected Borrowers in the Designated Disaster Area in accordance with the guidance provided herein.

The forbearance must be documented by a written agreement on Fannie Mae's standard forbearance agreement form (see Attachment 1) without modification and executed by an authorized representative of the borrower and an officer of your organization. Borrowers will be required to bring Loans current either (i) within twelve (12) months following the end of the forbearance period or (ii) upon receipt of insurance proceeds by the Borrower or Servicer, whichever occurs first. Any requested changes to the form will require Fannie Mae's approval and any additional expense related thereto (including attorneys' fees) will be borne by the Borrower. A copy of the executed forbearance agreement should be delivered to Multifamily Loss Mitigation at LM_Watch@fanniemae.com.

During this period of forbearance, Fannie Mae will refrain from taking any adverse action against the Borrower to allow time for the Borrower and you to determine the status of the Property and its operations (including the status and amount of any insurance claims). Although Part V, Section 416 of the Guide requires the Servicer document its Servicing File with the results of its casualty loss assessment within 45 days after first learning of a casualty loss, given the scope of the Hurricanes, we will allow the required casualty loss assessment to be performed within 90 days following the date of the applicable Hurricane (for any Property located in the Designated Disaster Area).



While we expect that Borrowers in the Designated Disaster Area will qualify for forbearance while the casualty loss assessment is being completed, we expect you to apply reasonable judgment when following the established procedures in the Guide and as outlined in this Lender Letter. Fannie Mae is delegating to you the authority to grant the forbearance so that a determination can be made as to what further action or relief, if any, is necessary and feasible. It may be necessary for you to recommend continuing forbearance from foreclosure until all of the relevant information can be obtained and analyzed; however, any forbearance or continuation thereof exceeding three (3) months in the aggregate must be reviewed and approved by Fannie Mae.

Fannie Mae is requesting that you begin engaging in dialogue immediately with Borrowers while the Property inspections and casualty loss assessment are being completed. Prior to engaging in these discussions, you are reminded that a pre-negotiation letter must be executed by the Borrower, you, and, if participating in the discussions, Fannie Mae. Fannie Mae has prepared a simplified form of pre-negotiation letter for your use, a copy of which is attached to this Lender Letter as Attachment 2. However, you may also use the form of pre-negotiation letter provided by Fannie Mae in the Guide.

Fannie Mae is not requiring the pre-negotiation letter to be in place prior to your exercise of the above delegation to grant a forbearance; however, the pre-negotiation letter should be in place prior to engaging in on-going discussions with the Borrower. Fannie Mae has negotiated a flat fee of \$750 with the Bryan Cave law firm for preparation of both the forbearance agreement and pre-negotiation letter. The cost of this service will be at your own expense or the expense of the Borrower. If you are interested in utilizing this arrangement, please contact Keith Aurzada at 214-721-8041 or keith.aurzada@bryancave.com.

Late Fees

Guide Part V, Section 703.05(B)(1) states late charges are wholly retained by you, unless otherwise provided in the Lender Contract. Fannie Mae encourages you to provide relief from the late charges to be retained by you which may be owed on Mortgage Loans impacted by the Hurricanes. Fannie Mae is waiving late charges to which it may be entitled on Mortgage Loans in the Designated Disaster Area during any applicable forbearance period.

Delinquency Advances

We remind you that you remain responsible for making Delinquency Advances and Servicing Advances as required by the Guide, even on Mortgage Loans for which you grant a forbearance in accordance with this Lender Letter. In addition, the last paid installment date for Mortgage Loans subject to a forbearance does not advance due to a Delinquency Advance by you.

Short Term Leases

Fannie Mae's standard Loan Documents generally provide that all leases for residential dwelling units must be for a minimum of six months. Until further notice, the Servicer is permitted to allow Borrowers on existing Mortgage Loans secured by a Property within 500 miles of the Designated Disaster Area to enter into shorter-term leases for tenants displaced by the Hurricanes, provided, however, no lease term may be shorter than one (1) month and the rent applicable for such lease term must comply with applicable law (i.e., anti-gouging laws which may be applicable following a disaster event). Fannie Mae's waiver of its minimum lease term requirement will not waive any other similar restrictions held by other entities, agencies, or governmental authorities that impact the Property. You and the Borrower must determine that granting shorter-term leases does not violate any other leasing restrictions on the Property, and would not result in adverse tax consequences for existing tax credits, tax-exempt bond financing, or other similar programs.



Additional Resources

Fannie Mae Hurricane Relief website: <http://www.fanniemae.com/portal/about-fm/hurricane-relief.html>

Federal Emergency Management Agency website: <https://www.fema.gov>



ATTACHMENT 1
FORBEARANCE AGREEMENT FORM

[TO BE SENT ON SERVICER LETTERHEAD]

[Date]

VIA EMAIL AND
OVERNIGHT DELIVERY

Re: Fannie Mae Loan No. _____ (the "Loan")
_____ Apartments (the "Property")
Forbearance and Non-Waiver

Dear _____:

Reference is hereby made to the \$_____ Multifamily Note dated _____ (the "Note"), executed by _____ ("Borrower"), payable to the order of _____ (the "Servicer"). Servicer assigned, negotiated and transferred the Note to Fannie Mae, the current owner and holder of the Note. Capitalized terms not defined herein shall have the meaning ascribed to such term in the Loan Documents.

In connection with the Note please be advised as follows:

1. Due to the physical and economic damage to the Property and surrounding area as the result of the recent weather event; Borrower has failed to make the required monthly payment under the Note. Accordingly, the Loan and Note are currently delinquent for the months of ____, ____, ____ and ____, 20___. Borrower's obligation to make these monthly payments under the Note has not been waived by Fannie Mae but continue to be due and payable.
2. As an accommodation to Borrower to allow Borrower the opportunity to assess the amount of physical and economic damage impacting the Property, and to commence processing applicable insurance claims, and notwithstanding the defaults as a result of the delinquent monthly payments and/or other defaults that may exist, Fannie Mae has agreed to forbear from exercising its rights and remedies under the Note and other Loan Documents.
3. Fannie Mae will continue to forbear from exercising its rights and remedies until _____, 20__; conditioned, however, on Borrower (i) cooperating with and providing such information as requested by Servicer to determine the extent of the damage to the Property and such other action or relief that may be necessary; and (ii) the repayment of all outstanding amounts due on the Loan on or before the date set forth above in this paragraph 3. Borrowers will be required to bring Loans current either (i) within twelve (12) months following the end of the forbearance period or (ii) upon receipt of insurance proceeds by the Borrower or Servicer, whichever occurs first.

In the event Borrower fails to timely perform any of its obligations under this paragraph 3, Fannie Mae's agreement to forbear from exercising its rights and remedies under the Note and other Loan Documents shall immediately terminate, without further notice or demand, and Fannie Mae may, at its option, accelerate the Note and/or exercise any and all other rights and remedies available to it under the Loan Documents, at law or in equity.

4. If Servicer is in receipt of Borrower's insurance proceeds, these insurance proceeds and any other insurance proceeds with respect to the Property (including business income/business interruption/rent loss insurance) will be held in escrow by Servicer, on behalf of Fannie Mae, pending Borrower's completion and delivery of those items



described in the Loan Documents, with respect to the use of the insurance proceeds. Such insurance proceeds shall continue to be held in escrow by Servicer in an Insurance Proceeds Collateral Account for reimbursement to Borrower for costs of rebuilding the Property and/or applied to the Loan, as provided by the Loan Documents.

5. Monthly installments under the Note are due on the _____ day of each month and are subject to a late fee if received after the tenth (10th) day of each month. In addition, the Note and other Loan Documents provide for the charging of interest at a default rate of _____ percent (____%) during the period that Borrower is in default. **[OPTIONAL PROVISION AT SERVICER'S DISCRETION:** Upon the timely performance by Borrower of its obligations listed in paragraph 3 above, Fannie Mae and Servicer agree to waive collection of such late fees and default interest. In the event, however, Borrower fails to perform as described in paragraph 3 above or seeks protection under federal or state bankruptcy or insolvency laws prior to the expiration of Fannie Mae's agreement to forbear, such late fees and default interest shall be fully due and payable by Borrower.]

6. Notwithstanding Fannie Mae's agreement to forbear from exercising its rights and remedies, and the acceptance of any partial payments at any time by the Servicer, the Note remains in default, and Fannie Mae does not waive any defaults set forth in this letter, or any other defaults which may exist or arise under the Note and any Loan Document executed in connection with the Note. This letter is to evidence Fannie Mae's and Borrower's agreement for forbearance and does not, and should not be deemed to amend or modify the Note, the other Loan Documents or Borrower's obligations thereunder. Acceptance of late payments does not imply that any future late payments will be accepted by Fannie Mae or Servicer, and shall not be deemed a waiver of Fannie Mae's right to reject late payments, assess late charges, charge a default rate of interest, or prevent Fannie Mae from exercising any right, remedy, or power available to Fannie Mae, including, without limitation, all rights, remedies, and powers granted under the Note and any Loan Documents and at law or in equity.

7. By signing the Acceptance included herein, Borrower unconditionally acknowledges to be indebted to Fannie Mae for all amounts presently unpaid and outstanding under the Note, in principal, interest, and other amounts, without defense, setoff, deduction or counterclaim of any kind whatsoever, all of which are forever waived and released.

8. By signing the Acceptance included herein, Borrower additionally unconditionally acknowledges and agrees that no act, event or circumstance occurring since the date of the Note and the other Loan Documents shall give rise to any claim or cause of action (regardless of whether based on common or civil law, equity, statute, regulation, or other grounds) against Fannie Mae or Servicer, or against any of their respective officers, directors, employees, successors, assigns, agents, and attorneys (collectively, the "Released Parties"), with Borrower hereby unconditionally and fully releasing and forever discharging the Released Parties from all actions, causes of action, claims and/or demands of every nature whatsoever, whether at law or in equity, in tort or in contract, or otherwise, and whether known or unknown, or present or contingent, including release of any rights to recover consequential or punitive damages, that Borrower may now have as against any Released Party, further including any and all claims in connection with the Loan, or any extension of credit, refusal to extend credit, waiver, acquiescence, or any other act or failure to act in connection with any matter pertaining to the Note, the Security Instrument, and/or the Loan Documents.

If you have any questions regarding this matter, please do not hesitate to call me at _____ or email me at _____.

Sincerely,

By: _____
Name _____
Title: _____



ACCEPTED AND AGREED this
___ day of _____, 20___

By: _____
Name _____
Title: _____

cc: _____, Fannie Mae



ATTACHMENT 2
PRE-NEGOTIATION LETTER FORM

[TO BE SENT ON SERVICER LETTERHEAD]

[Date]

VIA FACSIMILE OR EMAIL

[Borrower Name and Address]

Attention: _____

Re: Loan from _____, to _____, a _____ ("Borrower"), and assigned to
Fannie Mae (the "Loan")
Fannie Mae Loan No.: _____

Dear _____:

You have asked to meet with us to discuss problems associated with the above-referenced Loan resulting from the recent disaster in your area. **[Optional:** In preparation for our meeting, please provide us with the information requested in the attached list. We would appreciate receiving the information several days before the scheduled meeting so that we may review and analyze it in advance.]

In order to make our meeting more productive, we ask that you have one or more representatives at the meeting who are fully authorized to enter into discussions on behalf of the Borrower. We additionally invite you to have your legal counsel attend the meeting along with you, or be available by telephone.

We would like to lay out for you, and have you agree to the following ground rules that will apply to our discussions with respect to the Loan:

1. Fannie Mae's Rights and Remedies Not Affected. The fact that we have consented to enter into discussions with you with respect to the Loan shall not affect any of our rights and remedies under the Loan Documents, or our right to declare the Loan to be in default.
2. No Oral Modifications. No modification, extension, or amendment agreement arising out of our discussions or correspondence pertaining the Loan or the Loan Documents shall be effective or binding on us unless reduced to writing in the form of amendments to the Loan Documents approved by Fannie Mae and executed by all parties. Each and every oral agreement to modify, extend or amend the terms and provisions of the Loan Documents is entirely unenforceable.
3. Confidential and Privileged. Any and all oral discussions, written notes, agenda items, correspondence, and other communications between you and us relating to the Loan, shall be confidential and privileged, and shall not be used or referred to in any litigation (including arbitration and mediation) by and among the parties.
4. Additional Information. You agree to provide us with such financial and other information as we may request.
5. Termination of Discussions. You and we may, in our sole and absolute discretion, unilaterally discontinue discussions at any time, and for any or no reason, without any liability whatsoever to the other party by reason of such discontinuation or termination.
6. Lender Relationship; Participation; Credit Loss Insurance. You acknowledge that Fannie Mae is the holder of the note executed in connection with the Loan, and that the Servicer is servicing the Loan under its lender/servicer agreement with Fannie Mae. You further acknowledge that although Fannie Mae may be the sole holder of the note, other parties



such as the Servicer, loan participants, credit loss insurance, REMIC, or other mortgage investors, may share in losses incurred on the Loan; however, such agreements and relationships, if any, are between Fannie Mae and such third parties, and you are not a party to, or a beneficiary of, any such agreements or relationships.

This letter constitutes the entire agreement between the parties concerning its subject matter, and supersedes any prior or contemporaneous representations or agreements not contained herein concerning modifications of the Loan, or concerning any of the parties' rights, remedies or obligations thereunder.

If you are in agreement with the foregoing, please execute a copy of this letter and mail, fax or email the same to the undersigned by 5:00 P.M. on _____, 20____. No discussions will be held until the undersigned receives a signed copy of this letter executed by you.

Please call either _____ at _____, or _____ at _____, should you have any questions.

Sincerely,

By: _____
Name _____
Title: _____

cc: _____, Fannie Mae



ACKNOWLEDGED this _____ day of _____, _____

FANNIE MAE (if applicable):

By: _____

Name: _____

Title: _____

ACKNOWLEDGED AND AGREED TO this _____ day of _____, _____.

BORROWER:

By: _____

Name: _____

Title: _____

ACKNOWLEDGED AND AGREED TO this _____ day of _____, _____.

KEY PRINCIPAL:



[OPTIONAL: LIST OF INFORMATION TO BE FURNISHED BY BORROWER]

A. Borrower Information

1. Borrower organizational documents, with all amendments
2. Offering circular from syndication, if applicable
3. Advise if the current owner is the original Borrower or a subsequent assumptor
4. Identify involvement of any partners in other Fannie Mae loans and list the name, loan number, and status of each such loan

B. Project Information

1. Physical Condition
 - a. If new, identify any construction problems or defects
 - b. If existing, identify any repairs needed
2. Occupancy
 - a. Identify the number of vacant units and pre-leased units
 - b. Identify the number of occupied and income-producing units
 - c. Identify the number of non-revenue units, i.e.: models, employee units, storage, and out of service units
 - d. Describe any concessions at property and in market
3. Quantify the turnover of units for the past twelve months
4. Number of new units on line in subject property's market and absorption
5. Management plan and copy of management contract

C. Financial Information

1. Project Operating Statements and Information
 - a. Provide a copy of the current rent roll
 - b. Provide year-end operating statements
 - c. Provide year-end operating statements
 - d. Provide monthly operating statements, year-to-date
 - e. Provide an aging of accounts payable
2. Other
Identify other sources of funds available to the Borrower (i.e., partnership payments from limited partners)
3. Junior Liens:
Provide copies of documents pertaining to any subordinate debt or other liens, including mezzanine debt, and identify amounts, lienholders and relationship to the borrowing entity and/or partners/members, and status of each loan
4. Provide current financial statements (less than 90 days old) of:
 - a. Borrowing entity and general partners/members, if any
 - b. All limited partners with a 25% or greater interest
5. Provide listing of Borrower's obligations with Fannie Mae to include the following:



- a. Borrowing entity and key principals
- b. DUS lender
- c. Property name and location
- d. Current unpaid principal balance
- e. Status of each loan

D. Borrower's Request or Proposal

Describe in detail Borrower's proposal to address the problems associated with the Loan and provide Borrower's projections pertaining to the future operation of the Property.