



MORTGAGE BANKERS ASSOCIATION

February 27, 2023

Julie Shaffer
Acting Deputy Assistant Secretary for Single-Family Housing
Federal Housing Administration
U.S. Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

RE: Mortgage Letter 2023-03, *Expansion of the COVID-19 Recovery Loss Mitigation Options*

Dear Ms. Schaffer,

The Mortgage Bankers Association (MBA)¹ welcomes the Federal Housing Administration's (FHA) recently published Mortgage Letter (ML) 2023-03, *Expansion of the COVID-19 Recovery Loss Mitigation Options*. Upon further review, we request that FHA publish an updated mortgage letter clarifying and adjusting the new policy before mortgage servicers are required to comply with FHA's new standards. Ensuring mortgage servicers have the clarity to adjust their operations is essential to maintaining a consistent borrower experience as the industry has pursued over the past two-years.

As an initial matter, MBA supports FHA's expansion of the COVID-19 Recovery Loss Mitigation Options to all borrowers regardless of the reason for hardship. The COVID-19 pandemic has demonstrated the importance of having a durable loss mitigation structure for servicers to provide borrowers, especially as market conditions change. Moreover, seriously delinquent borrowers must have access to streamline loss mitigation options to quickly qualify for a home retention solution.

Nonetheless, Mortgage Letter 2023-03 is temporary and set to expire on October 30, 2024. With adjustments, MBA supports efforts by FHA to establish ML 23-03 as permanent policy in its 4000.1 Single-Family Housing Policy Handbook.² First, the following changes to the mortgage letter should be made to ensure servicers continue to successfully provide payment relief to distressed borrowers:

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 390,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,100 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

² See MBA's [The Future of Loss Mitigation | MBA](#); (advocating for a flexible loss mitigation structure).

1. Remove Documentation Requirements for Special Forbearance-Unemployment

The remaining requirement for a servicer to qualify a borrower for a Special Forbearance-Unemployment based on a documented evaluation of a borrower's financial condition must be eliminated. Borrowers with COVID-19 hardships remain eligible to receive a COVID-19 forbearance through the national emergency. However, borrowers with a non-COVID-19 hardship that need forbearance can receive a Special Forbearance-Unemployment only after a financial hardship is verified and documented. Maintaining a documentation requirement to qualify borrowers for the Special Forbearance-Unemployment creates an inconsistent forbearance experience for borrowers than servicers have operationalized over the past two years. This is particularly inconsistent when the home retention solutions themselves do not require servicers to formally evaluate a borrower's financial condition. Accordingly, FHA should clarify the documentation requirements for servicers.

2. Clarify the Treatment of Non-Borrowers

Mortgagee Letter 23-03 is unclear on how servicers should qualify non-borrowers for loss mitigation, particularly successors-in-interest (SII). Of course, with the suspension of FHA-HAMP, the purpose of the mortgagee letter is to allow all borrowers with access to the COVID-19 Recovery Loss Mitigation Options. However, ML 2023-03 addresses loss mitigation options for borrowers only. Historically, SII were not eligible for the COVID-19 waterfall. Instead, servicers were required to evaluate non-borrowers for traditional, documented loss mitigation options. FHA should clarify whether servicers are required to continue this practice.

3. Clarify whether Servicers Must Convert In-Flight Trial Payment Plans

Mortgagee Letter 2023-03 is also unclear whether servicers are required to convert in-flight trial payment plans (TPP) under FHA-HAMP prior to the mandatory compliance deadline. Mortgagee Letter 2023-03 states that servicers must implement the provisions of the ML no later than April 30, 2023, "where the Mortgagee has not sent documents to the Borrower to complete any Home Retention Option." A borrower cannot complete an FHA-HAMP loss mitigation option unless the borrower completes the required trial payment plan. FHA should clarify whether servicers are in compliance with the effective date based only on the delivery of final documents under the COVID-19 Recovery Home Retention Options or whether servicers have the option to complete the FHA-HAMP options. A borrower may receive a more favorable outcome under the COVID-19 Recovery loss mitigation waterfall. However, such an interpretation would also potentially change the terms the borrower previously agreed upon in the trial payment plan. Accordingly, FHA should clarify whether servicers are required or have the option to convert in-flight trial payment plans.

4. Add a Processing Month for Standalone Partial Claims

A processing month should be added for the COVID-19 Recovery Standalone Partial Claim. Like Step 2 of the COVID-19 Recovery Modification for partial claims, a processing month will ensure borrowers that the partial claim will bring the account current while simultaneously providing the borrower with additional flexibility to return partial claim documents. Moving forward, mortgage servicers should maintain a consistent approach between the two loss mitigation options for borrowers.

Conclusion

In sum, Mortgagee Letter 2023-03 is a step in the right direction to preserving the pandemic's flexibilities. Moving forward, and with additional adjustments and clarifications, mortgage servicers will continue to provide borrowers with a consistent loss mitigation experience. We appreciate your consideration and the MBA's continued collaboration with the HUD team. Should you have any questions or concerns, please contact me at Bkelleher@mba.org or (202) 557-2779.

Sincerely,

Brendan Kelleher

Brendan Kelleher