



July 23, 2021

Lopa Kolluri, Principal Deputy Assistant Secretary for Housing
Julienne Joseph, Deputy Assistant Secretary for Single Family Housing
Office of Housing / Federal Housing Administration
Department of Housing and Urban Development
451 7th Street SW
Washington, D.C. 20410-8000

RE: Mortgage Letter 2021-15: Extension of the Foreclosure and Eviction Moratorium in Connection with the Presidentially-Declared COVID-19 National Emergency, Further Expansion of the COVID-19 Forbearance and the COVID-19 Home Equity Conversion Mortgage (HECM) Extensions, and Establishment of the COVID-19 Advance Loan Modification (COVID-19 ALM)

Ms. Kolluri and Ms. Joseph,

The Mortgage Bankers Association (MBA), Housing Policy Council (HPC) (the Associations), and our member companies welcome the opportunity to offer comments on the Federal Housing Administration's (FHA) Mortgage Letter 2021-15, which established the new Advance Loan Modification (ALM) program. As stated in previous communications with FHA, the servicing industry appreciates the FHA's engagement with stakeholders to track and adjust programs, as necessary, to address the continued economic impact of the pandemic. Like you, our members want loss mitigation programs that the mortgage industry can use to help borrowers navigate successfully the financial strains caused by COVID-19 and stay in their homes.

In that spirit, we want to address the challenges posed by the introduction of ALM, as announced in ML 2021-15, not only for servicers, but also for borrowers. As discussed in more detail below, the new program's technical requirements make it very difficult to implement, particularly as compared to the GSE Flex Mod. As written, the program does not give servicers enough implementation time and we ask that you remove the June 25th criteria that conflicts with the August 24th mandatory effective date. Without this change, the ALM guidance requires servicers to issue solicitation packages that will confuse borrowers, frustrating people who are already worried about keeping their homes. As already noted, our members want to help borrowers and ALM makes it very difficult to do that. We hope you will reconsider some elements of the program, based on feedback in this letter, not only for the sake of the program's practicability but also for the benefit of the borrowers both you and our members want to help. The servicers who were invited to participate in discussions with FHA regarding possible COVID-19 program changes appreciate the constructive dialogue. Yet, FHA's establishment of a new standalone ALM modification program was an unexpected pivot away from the existing "waterfall" of loss mitigation options. Exacerbated by the conflict between the August effective date and June eligibility criteria, execution of this program is problematic for servicers and borrowers alike.

FHA's ALM option, while similar in some ways to the GSE FlexMod program, contains unique features that complicate ALM implementation, as compared to FlexMod. Differences between the GSE FlexMod approach and the FHA ALM are meaningful. One critical difference in approach is that all GSE borrowers in forbearance are first solicited for a deferral of the missed payments. This arrangement provides a smooth transition from forbearance to a resumption of regularly scheduled monthly payments and reinstatement of the borrower to a current status. The ALM, in contrast, is presented as a program that stands apart from the FHA waterfall of options for a specific subset of borrowers affected by COVID and does not come after the option to resume previous payments using a partial claim. Further, because the GSE FlexMod does not require recordation of the modification, the solicitation and consumer understanding for the GSE offering is simple. In contrast, because the FHA modification agreements require specific measures to ensure that title policy, recordation, and subordination terms all meet Ginnie Mae standards, the preparation and execution of the FHA ALM modification documents for the solicitation package require additional up-front steps that delay execution and add expense before the ALM solicitation can be mailed.

These operational challenges are aggravated by the implementation timeframe provided by FHA. The mortgagee letter states that the effective date by which servicers must offer the program is August 24, 2021. This implies a 60-day period to execute the program. Yet, this timeframe is contradicted by the eligibility criteria that all borrowers who did not receive final modification documents by June 25th (the same day that the ML was published) must be solicited for ALM. The ML's June 25th date puts servicers in the difficult position of having to choose between completing timely resolution of borrower forbearances and strict compliance with the ML. Further, for those who are fast-approaching the expiration of their forbearance period, the customer communications to-date now reflect incomplete information, as the ALM option was not available to be discussed during those communications.

Inconsistent information will create confusion for many of these borrowers, an outcome that is avoidable with an appropriate transition period. FHA's rapid introduction of ALM for eligible borrowers will delay the implementation of options that were previously discussed and selected by borrowers. Of particular concern, the FHA stand-alone partial claim option that allowed a borrower to retain the original mortgage term and resume the previous payment levels (similar to the GSE deferral) is no longer an immediate option; a borrower must be solicited for ALM and reject that offer to receive an alternative offer, in some cases one that the borrower previously had accepted. This process is likely to delay resolution of forbearance by at least 60 days, which will increase the number of missed payments and possibly require more partial claim funds to resolve the borrower's delinquency, as well as confuse and perhaps discourage borrowers.

Receipt of the ALM documents is likely to create confusion for these borrowers, many of whom had agreed verbally or in writing to accept another viable loss mitigation option. The requirement for servicers to send ALM documents to all eligible borrowers, regardless of prior communications regarding other programs or expectations to receive other plan documents, is mandatory under the terms of the ML. This will cause borrower confusion and frustration at a minimum, which will increase call volumes and complaints, and will likely require that servicers repeat work that was completed prior to publication of ML 2021-15.

Further, the FHA ALM requires an entirely new process to execute – analysis of the borrower population, new flags in systems to track these customers, new documents and notifications, new scripts to communicate with borrowers, new technology to calculate capitalization modifications in a unique way, new processes to transmit and receive documents from this distinct set of customers, and special practices for handling customers who reject this offer and need to be evaluated for another COVID-19 alternative, among others. The list of changes is extensive. The program is not designed in a manner that is consistent with the existing servicer infrastructure, which is currently set up to operate in accordance with the FHA waterfall.

As FHA leadership has heard from the servicing community already, the dramatic program shift introduced by ALM is placing substantial new demands on servicers at the height of the forbearance expiration period. While only some borrowers are eligible for the program and the proportion of those borrowers varies by servicer, for those servicers who have a higher volume of these customers, the implementation of this program is challenging. For those servicers with fewer eligible customers, some level of manual workaround may be adequate, but this creates more opportunity for error and borrower confusion.

Conclusion

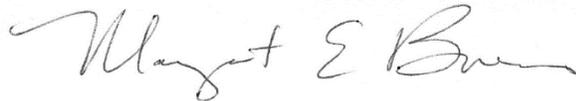
These operational challenges are exacerbated by the implementation timeframe provided by FHA. Inconsistent information will create confusion for many of these borrowers, an outcome that is avoidable with an appropriate transition period. To prevent the customer disruption, we recommend that FHA issue a clear statement that servicers are expected to execute the ALM program as quickly as possible, but in all cases by August 24th and remove from the eligibility criteria the additional, conflicting June 25th timeframe. The program should be available for all eligible borrowers as soon as the servicer has set up the infrastructure required, no later than the mandatory date. We also recommend that FHA provide clarification that borrowers can verbally decline the ALM, and that servicers are not required to send ALM documents to borrowers who have verbally declined the product.

Again, MBA and HPC thank FHA for the opportunity to comment on the ML 2021-15. Should you have questions or wish to discuss this issue further, please contact Sara Singhas at ssinghas@mba.org or (202) 557-2826 or Matt Douglas at 202-589-1924.

Sincerely,



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FHA Mortgagee Letter 2021-15 – Technical Issues

1) Implementation Timeline Confusion and Concerns

ML 21-15 requires servicers to review borrower eligibility for ALM by August 24, 2021, *where the Servicer had not yet sent out the final documents to the borrower to complete a Loss Mitigation Option as of June 25, 2021.*

- The confusion and possible conflict between the 08/24 and 06/25 dates stems from the text requiring consideration of all borrowers for whom the servicer has “not yet sent out the final documents.”
- To satisfy the mandatory effective date of 08/24, a servicer would build out their operations to offer ALM after that date, obviously.
- However, during the interim period of 06/25 until 08/24, there are: a) borrowers who are “in flight,” negotiating and/or agreeing to existing programs AND b) borrowers who have forbearance expirations prior to 09/30, which would be the first set of borrowers who would be served under an 08/24 date.
- The 06/25 date could be interpreted to suggest that all borrowers who fall within this “in-between” period cannot complete loss mitigation underway or cannot receive the existing COVID-19 loss mitigation solutions without an evaluation for ALM first, which will not be possible for many servicers.
- Alternatively, the ML could be interpreted to allow servicers, prior to the 8/24 mandatory effective date -- while servicers are setting up the infrastructure to fully implement the new program -- to continue offering partial claims and other COVID-19 loss mitigation solutions to eligible borrowers. Clearly, this would be best, to prevent delays and permit those who have accepted a non-ALM option and brought the loan current (e.g., through PC) to proceed.

This latter interpretation is preferable and full confirmation of this would be beneficial, given that the “has not yet sent out the final documents” text creates a separate and contradictory timeline. Because an immediate 06/25 effective date is problematic, we request that FHA review the text to affirm an interpretation that the 08/24 mandatory effective date *does* permit servicers to offer the non-ALM solutions until they are prepared to execute ALM.

2) Borrower Communications – Interplay with CFPB Reg X

The ALM is presented as a program that stands apart from the FHA waterfall of options for a specific subset of borrowers and raises several questions about how to discuss the ALM with eligible borrowers when making live contact. In fact, ML 2021-15 does not address live contact with borrowers at all, which is problematic, given that servicers are conducting enormous amounts of outreach to engage borrowers and discuss loss mitigation options. The CFPB’s final rule amending Regulation X requires servicers to discuss all available loss mitigation options with borrowers nearing the end of their forbearance. This rule requires servicers to discuss the ALM with eligible borrowers once the program is available. However, the ML raises several questions, including whether a borrower can verbally decline

the ALM, and whether the servicer would be required to send ALM documents to a borrower even if the borrower previously declined the product over the phone.

3) **Borrower Eligibility Concerns – Never in COVID-19 Forbearance, Prior to 08/24**

- Borrowers who are delinquent and not in a COVID-19 Forbearance should be evaluated for the ALM, but what if those borrowers need or want a forbearance? The mortgagee letter indicates that the servicer is expected to move the borrower into the ALM before discussing or offering forbearance, which seems inconsistent with the CARES Act obligation to permit a borrower COVID-19 Forbearance if they indicate that they have a COVID-related hardship.
- Similarly, for a borrower who is 90 days delinquent, if the forbearance option is now removed, it still could be better for them to use a partial claim to resume their regular monthly payments, but this option also appears to be available only after rejection of an ALM.
- In FHA’s FAQs issued July 9, 2021, the answer to “*Do Mortgages have to review their entire portfolio for a COVID-19 Advance Loan Modification (ALM)*”, FHA states that after August 24, 2021, Borrowers must be on a COVID-19 Forbearance to be eligible for a COVID-19 ALM. The ML does not include this requirement. In fact, the ML requires review of “borrowers who were not on a COVID—19 Forbearance” which implies that beginning August 24th, a Mortgagee screen all borrowers who are 90 days delinquent for ALM eligibility on a go forward basis.

4) **Doc Recordation / Ginnie Mae Securitization Requirements**

- Ginnie Mae requirements for the securitization of modified loans are more onerous than FHA’s requirements, and include recordation, specific title policy and/or subordination requirements for intervening liens.
- FHA requires no contact with the borrower is required prior to offering ALM, but the first lien must be legally enforceable. Therefore, servicers will need to pull title, which may identify issues that need resolution to ensure a recordable modification agreement. If a customer doesn’t respond and resolve title issues prior to expiration of the 30-day period, are they ineligible?

5) **Cost Constraints - Incentive Eligibility / PMMS Flat**

- Administration of the COVID-19 ALM modification will require out-of-pocket expenses for title work and recordation. In fact, title work will need to be performed even for borrowers that do not opt in to the ALM modification. Although FHA does not supply or recommend specific modification documents, FHA does require that servicers maintain first lien status upon completion of a modification. The title search could indicate issues that must be cleaned up in order to maintain first lien position, adding to the cost of administering the ALM program.
- Reducing the interest rate to PMMS flat shifts costs and burden of administering the program to servicers. Further, by expanding ALM to 100% of delinquent loans, whether or not borrower has indicated a COVID-related hardship, increases this cost burden. To cover these costs – title, recording, and rate – we request, again that FHA consider offering incentive fees and reimburse title related expenses in instances where borrowers do not opt-in.
- The economics of requiring PMMS flat rate is of concern. As mentioned above, outbound solicitations require title work to be done at the servicer’s cost, whether a solution is completed or not, prior to solicitation. The changes erode servicer revenue and increase expenses. At some point, this will have adverse impact on the market for MSRs, which will correspondingly be

negative for customers and potential future homeowners. We ask that FHA carefully weigh and consider the impact this will have on MSR economics.

6) Timing to Evaluate/Send Solicitation

The mortgagee letter sets expectations for servicers to evaluate borrowers to determine eligibility for ALM and then send solicitation packages with modification documents, but the time frame for this review and transmission is muddled by the population of borrowers to be evaluated. On page 8, the mortgage letter states that the servicer must review borrowers who have exited or requested to exit forbearance, those whose forbearance has expired, and those whose forbearance will expire before August 24th but then also says that the servicer must review the borrower within 30 days of expiration of forbearance. The mortgagee letter is then silent regarding the timeframe for the transmission of the documents. This is relevant because the preparation of the modification documents for an FHA loan is complicated, as described above in #4. The ability to move seamlessly from identification of an eligible borrower to resolution of the forbearance/ missed payments through this program will take a substantial amount of time, which will likely mean additional missed payments for the borrower that would need to be addressed.

7) 30-Days for Borrower to Sign & Return Modification Documents

- The ML states that the borrower has *30 days from receipt of documents* to return them, which means more than 30 days from the point they are sent. This is a very short window and the servicer does not actually know the date that the borrower receives the documents. Servicers may need to add more than just one more month to ensure that when the modification is processed so that it fully reinstates the loan.
- For non-responsive borrowers who do not return the ALM documents, does the servicer return to the regular COVID-19 loss mitigation waterfall?

8) Forbearance Extension

New Forbearance – The six-month forbearance limit for customers who request initial forbearance between July 1, 2021 and September 30, 2021 does not align with the CARES Act, which provides for up to two 180-day forbearance periods.