HPC
HOUSING POLICY COUNCIL

April 28, 2020

FHA Commissioner Brian Montgomery
Acting Deputy Secretary
U.S. Department of Housing
and Urban Development
451 7th Street, SW
Washington, DC 20410-5000

Joe Gormley
Deputy Assistant Secretary for Single Family, FHA
U.S. Department of Housing
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RE: FHA Mortgagee Letter 2020-06: FHA's Loss Mitigation Options for Single Family Borrowers Affected by the Presidentially-Declared COVID-19 National Emergency in Accordance with the CARES Act

Commissioner Montgomery and Deputy Assistant Secretary Gormley:

The Housing Policy Council (HPC)[1] appreciates the opportunity to provide feedback to the Federal Housing Administration (FHA) on Mortgagee Letter 2020-06, "Loss Mitigation Options for Single Family Borrowers Affected by COVID-19."

Our comments are divided into three categories:

a) proposals for consideration to alter the standalone Partial Claim approach, to achieve the consumer objectives in a streamlined manner, simplify servicer processing, and reduce risk for FHA;
b) recommended changes to the requirements set forth in the mortgagee letter; and
c) requests for clarification on specific issues or text within the ML 2020-06 guidance.

Alternative Approaches to Standalone Partial Claim:

We appreciate the policy discussions between FHA and several trade associations on two proposals that would simplify and improve program administration, which we restate in summary fashion here. The two concepts could be combined into a single set of program changes or offered as stand-alone options. We do think that it would be appropriate for FHA to continue to permit a second

[1] The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers, mortgage and title insurers, and technology and data companies. HPC advocates for the mortgage and housing marketplace interests of its members in legislative, regulatory, and judicial forums. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth-building for families.

lien approach, in addition to these new options, for those servicers who prefer not to change their existing operational practices.

- *Tax and Insurance (T&I) Partial Claim Reimbursement Proposal* – As an alternative to filing a partial claim at the conclusion of the forbearance period, FHA could permit servicers to submit partial claim(s) for the reimbursement of T&I advances and expenses incurred during the COVID-19 forbearance period, either as such amounts are incurred or on a periodic basis such as quarterly (the “Interim Partial Claim”). T&I advances would include property insurance, real estate taxes, any escrowed HOA fees, and monthly mortgage insurance premiums (MIP). FHA could stipulate that the interim partial claim amount could not exceed the amount of T&I and MIP that would have been collected, had the borrower made their monthly payments. Further, any positive escrow balance in the customer’s account would need to be utilized to cover actual expenses before servicer “out-of-pocket” advances. At the completion of the forbearance, the servicer would file a final partial claim (true up) for total forbearance period principal and interest (P&I), the difference between the borrower’s monthly accrued T&I times the number of months of forbearance, and any amounts already received, and/or monthly mortgage insurance premium advances outstanding in excess of any amounts already received. If, at the end of the forbearance, the borrower reinstates using any other loss mitigation option that reimburses the servicer for any of the previous T&I partial claims funds collected (i.e. a capitalization modification), the servicer would reimburse FHA those funds already received. Likewise, if the borrower makes partial or full payments within the term of the forbearance plan, those funds would be reimbursed to HUD/FHA, or netted out of the final partial claim amount.

- *Streamlined Recoverable Advance in Lieu of Partial Claim Proposal*: To simplify the program, HPC recommends that FHA replace the partial claim second lien approach, which obligates the borrower to reimburse FHA for the missed payments under a recorded, subordinate lien due upon property sale. Instead, FHA could allow the servicer to classify and track the outstanding unpaid forbearance amount as a “recoverable advance,” a practice that would link payoff of the outstanding forborne balance to the terms of first mortgage in a legally binding manner. This approach would allow the mortgage to remain in the Ginnie Mae MBS pools, provide the borrower with a single payoff of full outstanding indebtedness that is not separately monitored and managed by a third party (and often forgotten by the homeowner until property sale), and improve FHA’s oversight, by holding the servicer accountable for ultimate recovery of this payment as the collection agent for HUD/FHA.

Recommended Clarifications / Changes to Published Guidance, ML 2020-06:

- *Owner-Occupancy Requirement* – The owner-occupancy requirement should be removed, to ensure that the small minority of FHA borrowers who retain properties with FHA loans that are not their primary residence may access the COVID-19 Partial Claim and other FHA post-forbearance programs available. This approach would extend the programs to rental units, which may be affected by a reduction in the income of either the owner of the property or the renter in the property.

- *Extensions*: We request that FHA increase the automatic extension timeframe to deliver the recorded mortgage to HUD's servicing contractor (Novad) from 90-days (past the original 6-month deadline) to 180-days, to address disruption in notarization and recordation services at the local level. If this cannot be granted, we would ask that FHA remove the requirement that additional extensions (beyond the automatic 90-day extension) be requested and granted and instead allow servicers to denote any delay within the file and deliver the recorded documents as soon as the servicer is able to do so.

- *Streamlined Modifications* – The FHA post-forbearance loss mitigation options "waterfall" should be updated to include, at the top of the waterfall, a streamlined, no doc modification option, similar to the natural disaster modification. This alternative option could serve as the simplest way to assist COVID-19-affected consumers who don't meet the Partial Claim eligibility requirements. Further, streamlined modifications would enable efficient consideration of interest rate and term changes that would allow the servicer to keep the borrower's payment at or below the existing level. Among the benefit of the streamlined modification is the elimination of the trial payment plan and income documentation, similar to a partial claim, no seasoning requirement, and no cap on the number of previous loan modifications. In other words, we would recommend that all of the benefits of the COVID -19 Partial Claim also be applied to a streamlined mod option.

- *Incentive Fee* -- Given the magnitude of the national emergency and the high volume of customers in need of forbearance and that the Standalone Partial Claim program is one of the more complex and costly post-forbearance options to administer, an incentive payment for this program seems appropriate. It is clearly in the interests of FHA, from an administrative perspective and for protection of the MMI fund, to motivate servicers to dedicate additional resources to manage this process efficiently and effectively, performing the complex tasks associated with creation of a promissory note and recordation of a subordinate mortgage. In fact, given the importance of serving the increasing numbers of borrowers who are reaching out to participate in the COVID-19 forbearance program and who will be in need of one of the FHA post-forbearance options, we recommend that FHA consider offering incentive payments for the full array of alternatives, from the initial forbearance through to the final evaluation of the customer for the array of post-forbearance options. We would recommend that FHA align a set of COVID-19 incentive payments with the current amounts offered for the various loss mitigation programs.

- *Outbound Calls*: We recommend that FHA eliminate the requirement for outbound outreach phone calls and allow servicers to leverage the full range of communication methods that have proven to more effective and easier to operationalize. Mortgagee Letter 2020-06 updated communications regarding the forbearance to allow emails, texts, fax, and web, however, it does not appear to apply to outbound call attempts regarding delinquency. On average, using outbound "cold" calls, servicers connect with fewer than 1 out of every 3 customers. That response rate improves when servicers can use email, text, web notifications, and/or electronic surveys and the overall capacity of the servicer to simultaneously manage inbound calls improves – based on experience with call spikes associated with natural disasters.

- *Exterior Occupancy Inspections*: Although the mortgagee letter itself is silent on this policy, an FAQ indicates that the servicer is required to perform a visual exterior inspection when there is no borrower contact. We assume that the forbearance contact suffices and that this rule is not relevant when the borrower is in a forbearance plan. However, to be more explicit regarding the policy, we suggest that FHA eliminate this requirement or narrow it to focus on cases that truly need an inspection, given the magnitude of this national emergency and the high level of requests for payment relief assistance.

Requests for Clarification:

- *Late Fees* – We request that FHA clarify whether the requirement to waive all late fees applies to fees assessed prior to forbearance. If not, could the language be revised to make clear that the intent is only to align with the CARES Act, prohibiting the imposition of *new late* fees (that arise during the forbearance period).

- *COVID-19 as Hardship for Other Loss Mitigation Programs* – FHA should clarify that affirmation of a COVID-19 hardship in a manner consistent with the CARES Act, which requires no documentation or validation, may "supersede" or replace any pre-existing hardships and deem a borrower eligible for assistance, similar to the GSE guidance.

- *Streamlined Refinance Eligibility* – FHA should confirm that borrowers who are assisted with a COVID-19 Standalone Partial Claim will be eligible for streamlined refinances and that HUD will agree to re-subordinate the Partial Claim seconds, or allow a Streamlined Refinance to include the balance of any Partial Claim, to permit the borrower to benefit from a future lower rate.

We appreciate that FHA is offering the public an opportunity to comment on the COVID-19 guidance issued and other aspects of the FHA forbearance and post-forbearance programs available. We would be happy to discuss any of the thoughts expressed in this letter. Please do not hesitate to call Meg Burns, EVP for Mortgage Policy, at 202-589-1926.

Yours truly,

Edward J. DeMarco

Edward J. DeMarco
President
Housing Policy Council