

**U.S. Department of Housing and Urban Development
Washington, D. C. 20410-8000**

January 19, 2000

MORTGAGEE LETTER 00-05

TO: ALL APPROVED MORTGAGEES

ATTENTION: SINGLE FAMILY SERVICING MANAGERS

**SUBJECT: LOSS MITIGATION PROGRAM -
COMPREHENSIVE CLARIFICATION OF POLICY AND
NOTICE OF PROCEDURAL CHANGES**

The purpose of this mortgagee letter is to announce clarifications of policy and procedural changes in FHA's Loss Mitigation Program and provide an updated consolidation of the existing program guidance.

BACKGROUND

After April 25, 1996, FHA ceased accepting applications for assignment of insured loans that had gone into default and initiated a comprehensive loss mitigation program to provide relief to borrowers in default. FHA's Loss Mitigation Program returns responsibility for managing loan defaults to mortgagees, and provides financial incentives to recognize them for their efforts. Loss mitigation is considered critical to FHA because it works to fulfill the goal of helping borrowers in default retain home ownership while reducing, or mitigating the economic impact on the insurance fund.

The program includes five strategies to be used by mortgagees as they deem appropriate, based on an individual assessment of the borrower's financial circumstances and the status of the loan. Three of the options ("reinstatement options") promote retention of home ownership, while two assist borrowers in default transition to lower cost housing ("disposition options").

This mortgagee letter provides a complete description of each option, identifies requirements for their use, and describes circumstances in which each may be appropriate. This issuance contains several clarifications of HUD policy. It replaces and supersedes the following mortgagee letters:

Mortgagee letter 97-43, FHA Loss Mitigation - Mortgage Modification Clarification
Mortgagee letter 96-32, Loss Mitigation - Mortgage Modification
Mortgagee letter 96-25, Existing Alternatives to Foreclosure

This mortgagee letter partially supersedes the following mortgagee letters:

Mortgagee letter 96-61, Loss Mitigation Procedures - Special Instructions
(Superseded and replaced, except for the loss mitigation claims instructions, which were changed by Mortgagee letter 99-27.)

Mortgagee letter 97-17, FHA Loss Mitigation - Clarification of Procedures
(Superseded and replaced, except for the model form of note(s) and subordinate mortgage provided, which remain unchanged and are still in effect.)

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EARLY DELINQUENCY (PRIOR TO 90 DAYS DELINQUENT) SERVICING REQUIREMENTS

As stated in Chapter 7 of HUD Handbook 4330.1, REV-5, *Administration of Insured Home Mortgages* (Handbook), the purpose of all collection efforts is to bring a delinquent mortgage current in as short a time as possible. The Handbook describes minimum default servicing requirements to accomplish this objective and expects that the vast majority of one or two payment delinquencies will be addressed by either voluntary reinstatement by mortgagors, or through traditional collection methods outlined in the Handbook, including informal forbearance plans, assumptions, and delinquent refinance.

The Loss Mitigation Program was designed to address serious defaults, those that continue for 90 days or more. However, all efforts taken by a lender in addressing delinquent loans contribute to HUD's goal of home ownership retention and protection of the insurance funds. Many of the most effective loss mitigation actions take place in the early stages of collection.

A. Early Intervention

To meet the procedural requirements of the Loss Mitigation Program (24 CFR 203.355), lenders must become proactive early in the default. The earlier that the lender establishes contact with the borrower, identifies the cause of default and begins to discuss reinstatement options, the more likely it is that the default will be cured and the mortgagor will be able to retain home ownership. Efforts to assist the borrower should begin as soon as the loan becomes delinquent. Mortgagees must make all decisions, particularly discretionary decisions, consistent with Fair Housing and Lending principles.

HUD's minimum collection requirements for borrower contact, described in Chapter 7 of the Handbook, have not changed. However, the time to complete these activities has been compressed due to an acceleration of the foreclosure initiation time limit which, under the revised rule (24 CFR 203.355), has been reduced from nine to six months from the date of default.

B. Cause of Default

HUD does not have a "hardship" test. Lenders may offer FHA relief options to homeowners who have experienced a verifiable loss of income or increase in living expenses to the point where the mortgage payments are no longer sustainable. HUD encourages lenders to develop collection techniques that seek to identify the underlying cause of the default at the earliest stages of borrower contact, primarily to determine if the financial problem is permanent or temporary. Borrowers whose ability to support the mortgage debt has been permanently reduced, for example through death, divorce, or permanent disability, are unlikely to reinstate through repayment plans. They should be considered for either loan modification which could provide a permanent reduction in the mortgage payment, or for pre-foreclosure sale which allows borrowers to transition to more affordable housing.

Borrowers who may require credit, legal or employment assistance to resolve temporary financial problems should be referred to housing counseling as quickly as possible.

C. Default Counseling

Borrowers who receive counseling early are much more likely to bring their loans current. Lenders are strongly encouraged to recommend counseling to borrowers and establish working relationships with counseling agencies. At a minimum, the lender **must** provide the borrower with a copy of the HUD publication PA 426-H, May 19, 1997, *How to Avoid Foreclosure*, no later than the end of the second month of delinquency (24 CFR 203.602). Lenders may make an exception to this requirement if the borrower has filed bankruptcy and, in the opinion of the lender's legal counsel, providing a copy of the HUD pamphlet would be a violation of the bankruptcy stay. This exception must be documented in the servicing file.

D. Informal Forbearance Plans

A verbal repayment agreement with a duration of 3 months or less is considered to be an informal forbearance plan. An informal forbearance plan is the first and best means to ensure that a one or two month delinquency does not escalate beyond the mortgagor's ability to cure. Lenders should avoid use of standard repayment terms, such as requiring all borrowers to make 1 ½ payments per month until reinstatement. Rather, FHA requires lenders to review each mortgagor's financial situation and arrange payment terms consistent with the borrower's ability to pay.

E. Delinquent Refinance

HUD recognizes that there are situations where mortgagors more than two months behind in their payments could cure their default if they were able to refinance the mortgage using their equity to pay off the unpaid balance plus any arrearage. HUD permits lenders to refinance these mortgages under certain circumstances.

Under the Delinquent Refinance Program, the lender must provide an amount equal to one month's mortgage payment, principal, interest, taxes and insurance ("PITI") of the mortgage being refinanced. For detailed instruction regarding delinquent refinances, refer to Mortgagee letter 94-30, dated June 28, 1994, *Refinances of Delinquent Mortgages—Special Instructions*.

F. Sale of the Property

Borrowers who do not have either the ability or willingness to reinstate, but who have sufficient equity to sell their property and use the sale proceeds to repay the arrearage, should be encouraged and assisted by the lender. This assistance may include the additional time provided by an agreement which provides a short term reduction or suspension of payments pending the closing of a sale or loan assumption. **Lenders are reminded that any mortgage delinquency must be cured no later than at closing.** FHA requirements for assumptions are described in Chapter 6 of the Handbook.

LOSS MITIGATION PROGRAM OVERVIEW

The FHA Loss Mitigation Program delegates to lenders both the authority and the responsibility to utilize actions and strategies to assist borrowers in default in retaining their homes, and/or in reducing losses to FHA's insurance funds. HUD believes that the lender is best positioned to determine which, if any, loss mitigation strategies are appropriate in a given circumstance. Without HUD approval, lenders may, in their sole discretion, utilize any of the loss mitigation options, within the guidelines provided in this document or determined by the Secretary.

Though lenders have great latitude in selecting the loss mitigation strategy appropriate for each borrower, it is critical to understand that **PARTICIPATION IN THE LOSS MITIGATION PROGRAM IS NOT OPTIONAL**. Lenders are required to:

- Consider all reasonable means to address delinquency at the earliest possible moment.
- Inform borrowers of available loss mitigation options and the availability of housing counseling within the second month of delinquency.
- Evaluate each delinquent loan no later than the 90th day of delinquency to determine which loss mitigation option is appropriate.
- Utilize loss mitigation whenever feasible to avoid foreclosure.
- Re-evaluate each loan monthly until reinstatement or foreclosure.
- Report loss mitigation actions through the Single Family Default Monitoring System (SFDMS), (refer to Mortgage Letter 99-9).
- Initiate foreclosure within six months of default unless a loss mitigation option is being pursued and ensure that all actions taken are documented.
- Retain a complete audit trail confirming compliance with all loss mitigation requirements.

Failure to comply with the provisions of the Loss Mitigation Program may result in the loss of incentive compensation and other benefits; reduced reimbursement of foreclosure and acquisition costs; and interest curtailment related to foreclosure delays.

Also, depending upon the severity of the non-compliance, the Department may also refer the lender to the Mortgagee Review Board (MRB) whose sanctions include civil money penalties, indemnification and the termination of the mortgagee's approval to participate in HUD programs.

A. Incentive Fees

In recognition of the effort and administrative expense involved in full implementation of loss mitigation, HUD provides financial incentives to mortgagees who utilize any of the 5 loss mitigation options listed below.

(Reinstatement Options)

Special Forbearance	\$ 100	(\$200 for lenders with performance scores in the top 25%)
Loan Modification	\$ 500	
Partial Claim	\$ 250	

(Disposition Options)

Pre-Foreclosure Sale	\$ 1,000
Deed-In-Lieu of Foreclosure	\$ 250

Additionally, use of any of the options except deed in lieu, extends the time frame requirement to initiate foreclosure or otherwise meet the time frame requirement of 24 CFR 203.355 in the event the workout fails. Use of special forbearance also provides the mortgagee with greater protections against subsequent foreclosure by allowing interest to be calculated more favorably. These benefits are fully described under each option.

B. Performance Measurement

FHA has created a tool to measure lender utilization of the Loss Mitigation Program, and to provide performance-based incentives to mortgagees. The Department intends to score lender performance on an annual basis. Lender performance score results will be used to determine eligibility for some incentive benefits and in selecting lenders for quality assurance reviews. They may also affect a mortgagee's percentage reimbursement for foreclosure expenses. More information on performance scoring is found in Mortgagee Letters 97-21, 98-9 and 99-6.

GENERAL PROGRAM REQUIREMENTS

Both lenders and borrowers have responsibilities under the Loss Mitigation Program. While each option has specific eligibility requirements, there are some policies that apply to all of the options, and some lender requirements which must be met whether or not any of the loss mitigation strategies are used. This section describes these general policies, recommended procedures, and minimum eligibility requirements.

A. Default Status of the Loan

Loss mitigation options are intended to provide relief for borrowers who are currently in default which is defined in 24 CFR 203.330, and in the Handbook as, "... a mortgagor's failure to perform under any covenant of the mortgage and the failure continues for 30 days." The lender may make reinstatement options (special forbearance agreements loan modifications and partial claims) available to borrowers whose failure to perform continues for at least 90 days (120 days for partial claims). Disposition options (pre-foreclosure sales and deeds-in lieu of foreclosure) are available immediately upon default, if the cause of the default is incurable, i.e. the borrower has no realistic opportunity to replace the lost income or reduce expenses sufficiently to meet the mortgage obligation.

Any attempt to utilize loss mitigation options by deliberately manufacturing or misrepresenting pertinent facts about a mortgagor's financial or other qualifying status, shall be considered "willful abuse", will disqualify a mortgagor from participation, and could lead to sanctions if perpetrated by a lender.

B. Owner Occupancy

The borrower must occupy the property as a principal residence to be eligible for any of the reinstatement options (special forbearance, loan modification or partial claim). Lenders are authorized to grant reasonable exceptions to non-occupant borrowers seeking relief through pre-foreclosure sale (PFS), or deed-in-lieu of foreclosure (DIL) when it is clear that the subject property was not purchased as a rental investment, or used as a rental for more than 12 months. Justification for the above exceptions must be documented in the claim review file. _

If the borrower is a corporation or partnership, a written request for approval must be submitted to:

U.S. Department of Housing and Urban Development
Servicing and Loss Mitigation Division
500 W. Main Street, Suite 400
Oklahoma City, OK 73102

C. Prohibition on Other FHA Loans

The mortgagor may not own other real estate subject to FHA insurance, or have been the mortgagor on prior loans on which an FHA claim has been paid within the past three years. The Credit Alert Interactive Response Systems (CAIVRS) must be used to assist in this determination, prior to use of any of the loss mitigation options.

Lenders are authorized to make reasonable exceptions, for mortgagors who have acquired FHA insured property through inheritance, or for mortgagors who co-signed FHA insured loans to enhance the credit of another borrower. Justification for any exceptions must be documented.

D. Other Eligibility Requirements

FHA has established the following general eligibility restrictions:

- With the exception of special forbearance, loss mitigation options are not available on co-insured loans until the 60th payment has been received.
- Borrowers who have filed bankruptcy are not eligible for any loss mitigation option except partial claim as more fully explained in Section B, page 25. Borrowers who have had a bankruptcy discharged or dismissed may be considered for loss mitigation options including pre-foreclosure sale.
- Loans secured by vacant or abandoned properties are not eligible for reinstatement options, though disposition options may be utilized when properties have been recently vacated by circumstances related to the default, such as job transfer or death. Such circumstances must be documented by the lender in the claim review file.

E. 90 Day Review Requirement

No later than when 3 full monthly installments are due and unpaid, lenders must evaluate each defaulted loan and consider all loss mitigation techniques to determine which, if any, are appropriate (24 CFR 203.605). In order to comply with this 90 day evaluation requirement, lenders must already have contacted the borrower and gathered sufficient information about the borrower's circumstances, intentions and financial condition. Given the normal reticence of most borrowers in financial distress, lenders must be proactive early in the default in order to meet this 90 day deadline. While the lender cannot be responsible if a borrower fails to respond to repeated contacts, claim review files must clearly document aggressive efforts to reach each borrower in default well in advance of the 90 day deadline.

When the cause of the default is curable and the borrower is committed to remaining in the home, HUD expects lenders to consider reinstatement options in the following order:

- Special forbearance
- Loan modification
- Partial claim

When the cause of the default is not curable and/or the borrower is not committed to remaining in the home, HUD expects lenders to consider disposition options in the following order:

- Pre-foreclosure sale

- Deed-in-lieu

F. Option Priority

HUD has established its order of option priority in order to minimize losses to the insurance funds. For example, both a partial claim and a special forbearance will avert a foreclosure and reduce the potential loss to the funds. However, borrower funded reinstatement through a special forbearance plan, is less costly to HUD than a partial claim reinstatement which is funded by FHA. Therefore, HUD requires that lenders determine that a special forbearance is not the best option prior to considering the use of a modification, and that a determination be made that a modification is not the best option prior to considering the use of a partial claim.

However, there will be some situations where a loan modification is clearly the best option, especially when the reduction of the interest rate and/or extension of the loan term yield a sizable reduction of the mortgagor's monthly payment. In these situations, modifications will be preferred over special forbearance. Lenders shall document the reasons why the specific loss mitigation option was chosen in the claim review file.

For the same goal of minimizing losses to HUD's insurance funds, pre-foreclosure sale ("PFS") is preferable to a deed in lieu ("DIL") of foreclosure. In most cases mortgagors are expected to attempt to market the collateral property under the PFS program prior to acceptance of a DIL by the mortgagor.

G. Monthly Evaluation Requirement

As long as the account remains delinquent, the lender must reevaluate the status of each loan monthly following the 90 day review, and is required to maintain documentation of the evaluations. This evaluation may be as simple as noting that the mortgagor is making payments as scheduled if the account is under special forbearance.

H. Evaluation of the Borrower's Financial Condition

To be considered for any of the loss mitigation options, the borrower must provide detailed financial information to the lender. The lender may request that this information be submitted on Form HUD-92068 F, *Request for Financial Information*, or on a similar form provided by the lender. The Department has no objection to situations where a cooperative mortgagor provides complete financial information during a telephone interview. Regardless of how the mortgagor's financial information was secured, the lender must independently verify the financial information by obtaining a credit report, and any other forms of verification the lender deems appropriate.

Regardless of the option under consideration, the lender must analyze the borrower's current and future ability to meet the monthly mortgage obligation, by estimating the borrower's assets and surplus income in the following manner:

- Estimate the borrower's normal monthly living expenses (food, utilities, etc.) including debt service on the mortgage and other scheduled obligations. Make necessary adjustments to reflect increased or decreased expenses for each month of the proposed special forbearance agreement, or in the case of all other options, for a minimum of three months.
- Estimate the borrower's anticipated monthly net income for the same period, making necessary adjustments for income fluctuations.
- Subtract expenses from income to determine the amount of surplus income available each month.
- Divide surplus income by total monthly expenses to determine the **surplus income percentage**.

The lender must use good business judgment to ensure that the workout option selected reasonably reflects the borrower's ability to pay. Borrowers with sufficient surplus income, and/or other assets, must be required to reinstate the debt through a repayment option.

For those situations where the mortgagee's evaluation indicates that the borrower is not eligible for any loss mitigation alternative, and the information relied upon in making this decision was secured from the borrower in a telephone interview, the lender shall advise the borrower in writing of this decision. The lender shall explain the reason for denial and allow the mortgagor at least seven calendar days to submit additional information that may impact upon the mortgagee's evaluation.

In the event a claim for loss is submitted to HUD, the lender must retain the financial analysis and supporting documentation in the claim review file.

I. Combining Options

The loss mitigation options may be used alone or in combination to resolve an existing default, although there are some limitations.

- Special forbearance may be combined with any reinstatement option including delinquent refinance. The combination of options will be sequential, not simultaneous.
- Special forbearance may be used to reinstate a loan prior to an assumption.
- Pre-foreclosure may be combined with a deed-in-lieu provision in the event the property does not sell within the time required.
- Modification may not be combined with a partial claim.

FHA strongly encourages lenders to combine special forbearance plans with modification, or special forbearance plans with partial claim whenever there is any doubt about a borrower's long term income stability. By requiring a borrower to make at least three full monthly payments prior to execution of a modification or partial claim, borrowers demonstrate their ability to support the debt, and FHA is further protected from the risk of workout failure. While this trial period is no guarantee against future default, a borrower's ability to make the first three payments is a strong indication that this is a long term workout option, and not a costly quick-fix.

J. Foreclosure

Lenders may not initiate foreclosure until all loss mitigation options have been considered. Written documentation of this review must be available in all conveyance claim review files (24 CFR 203.605). If the case meets one of the exceptions noted in 24 CFR 203.606, such as abandonment, loss mitigation does not have to be considered prior to initiating foreclosure. However, the claim review file must provide documentation of this finding.

K. Time Requirement to Initiate Action

Lenders must utilize one of the loss mitigation options or initiate foreclosure within six months of the date of default for all mortgages with a default date on or after February 1, 1998 (24 CFR 203.355). FHA considers the lender to have satisfied this requirement if, within the six month time frame, any of the following actions has taken place.

- The loan is reinstated or paid off.
- The borrower executes a special forbearance agreement.
- The loan is modified.
- The loan is reinstated through a partial claim.
- The borrower executes a pre-foreclosure sale agreement.
- The lender executes a deed-in-lieu of foreclosure.
- The lender initiates the first legal action to begin foreclosure.

Lenders must report the action through SFDMS in the month the action occurs or, if after the monthly cut-off date, in the next reporting cycle.

L. Automatic Extensions

If a lender has initiated, but is unable to complete a special forbearance, modification, or partial claim within the six month time limit, the lender is entitled to a 90 day extension of the

foreclosure deadline provided the initiative was begun prior to the expiration of the initial six months. Therefore, if there have been no other intervening delays (such as bankruptcy) this “automatic” extension will extend the six month deadline to initiate foreclosure by 90 days. To qualify for the automatic extension, the mortgagee must have completed the loss mitigation evaluation required by 24 CFR 203.605 and have documentation of this analysis in the claim review file. In addition the loss mitigation initiative must be reported on SFDMS, using the appropriate status code. All extensions of time to initiate foreclosure including “automatic extensions” must be properly identified on form HUD-27011, Block 19 on the conveyance claim.

There is no automatic extension provided for completion of a deed-in-lieu, although an extension of time may be requested from the Servicing and Loss Mitigation Office in Oklahoma City. There is also no “automatic extension for attempting a repayment plan (not special forbearance), a delinquent refinance or an assumption. Lenders must request this extension of time before the expiration of the existing time frame and must explain why an extension of time is necessary.

M. Option Failure

Foreclosure action is suspended during special forbearance and pre-foreclosure sale periods. In the event that these options fail, an additional 90 day extension is provided in which the lender must commence or recommence foreclosure or initiate another loss mitigation option. Failure is defined as:

- Special forbearance - mortgagor fails to perform under the terms of the written special forbearance agreement and the failure continues for 60 days.
- Pre-foreclosure Sale - Either, 4 months from the date of the PFS Agreement (6 months for lenders in the top 25th percentile) if there is no signed contract of sale; or 6 months from the date of the PFS Agreement (8 months for lenders in the top 25th percentile) if there is a signed contract of sale but settlement has not occurred; or the date the lender is notified of the mortgagor’s withdrawal; or the date of the letter from the lender to the mortgagor notifying them that participation as been terminated.

N. File Documentation

For each claim filed, the lender must maintain in the claim review file, evidence of compliance with all requirements of the Loss Mitigation Program, as well as supporting documentation including all communication with any HUD office. The mortgagee’s regular servicing files should also contain evidence of compliance with the counseling, 90 day review and other requirements of the program for those loans which do not result in a claim.

O. Customer Service

HUD has consolidated all responsibility and authority for management of the Loss Mitigation Program at its Oklahoma City Office. FHA staff in Oklahoma are available to

provide customer service to lenders, servicers, counselors and borrowers relative to loss mitigation issues. They have established a toll free number, **888-297-8685** for all inquiries. Written inquiries may be directed to:

U.S. Department of Housing and Urban Development
Servicing and Loss Mitigation Division
500 W. Main Street, Suite 400
Oklahoma City, OK 73102

P. Extensions and Variances

Lenders may request an additional extension of time from the HUD Office in Oklahoma. Each extension request must be submitted on Form HUD-50012, and must be accompanied by a valid justification for the extension.

Additionally, in the new procedures HUD has provided lenders with great flexibility to make exceptions to Department policy when exceptions are deemed to be in the best interest of the Department and the mortgagor. However, if circumstances require a variance not delegated to lenders, written requests should be mailed to the address above.

Q. Option Checklists

Many lenders requested that FHA provide teaching tools to assist in the training of staff unfamiliar with the requirements of the Loss Mitigation Program. In response, FHA has updated the Option Checklists originally published in ML 96-61. The revised checklists, included in the Appendix, highlight the most important eligibility requirements for each loss mitigation option in a convenient, easy to understand format. Use of the checklists is optional. There is no requirement that checklists be delivered to HUD with claims.

SPECIAL FORBEARANCE

A special forbearance is a written repayment agreement between a lender and a mortgagor which contains a plan to reinstate a loan that has been delinquent for at least 90 days. To qualify as a special forbearance and entitle the lender to the incentives afforded under this section, the agreement must provide the mortgagor with relief not typically afforded under an informal forbearance plan (Section D, page 5). Examples of the types of provisions which may be included in a special forbearance agreement include a repayment term of 4 or more months; suspension or reduction of payments for one or more months to allow the borrower to recover from the cause of default; and/or an agreement to allow the borrower to resume making full monthly payments while delaying repayment of the arrearage.

While special forbearance plans have no maximum duration, at no time may the maximum arrearage due under a special forbearance plan exceed the equivalent of 12 months of principal, interest, taxes and insurance (“PITI”).

Special forbearance plans must lead to reinstatement of the loan, either by gradually increasing monthly payments in an amount sufficient to repay the arrearage over time, or through resumption of normal payments for a period of time (generally 3 or more months) followed by a loan modification or partial claim. HUD will pay lenders a cash incentive for entering into a special forbearance plan, regardless of the outcome. As an additional incentive, HUD provides increased claim benefits related to the calculation of claimable interest in the event a special forbearance plan fails and a conveyance claim is filed.

To enable lenders to better utilize this option, FHA has reduced its minimum delinquency requirement from 4 months to 90 days. This and other special forbearance requirements are listed below.

A. Loan Default

The loan must be more than 3 months (90 days), but not more than 12 months (365 days) delinquent, and may not be in foreclosure when the special forbearance agreement is executed. Loans that had previously been referred to foreclosure may be removed from foreclosure status prior to execution of a special forbearance. On advice of lender's legal counsel, foreclosure may be suspended subject to the borrower's performance under the terms of the special forbearance agreement, if the suspension, is stipulated in writing in the agreement.

B. Borrower Qualifications

Special forbearance may be offered to borrowers who have recently experienced a verifiable loss of income or increase in living expenses, but who will have sufficient monthly income to correct the delinquency and reinstate the loan within the duration of the plan either through gradual repayment of the arrearage, or through a combination of repayment and modification or partial claim.

The borrower must be an owner occupant, committed to occupy the property as a primary residence during the term of the special forbearance agreement. However, unlike modification and partial claim which require that the borrower have a long term commitment to the home, special forbearance may be used to reinstate a loan to facilitate the eventual sale, or assumption of the property.

C. Property Condition

The lender must conduct any review it deems necessary to verify that the property has no physical conditions which adversely impact the borrower's continued use or ability to support the debt. A borrower will not be able to support payments under a special forbearance plan if the property is in such a deteriorated condition that repairs drain the borrower's monthly resources. An analysis of the borrower's surplus income should consider obvious property maintenance expenses.

If significant deferred maintenance contributed to the cause of the default, it may be appropriate that the special forbearance plan provide a period of mortgage forbearance during which repairs specified in the agreement will be completed at the borrower's expense. If the mortgagee's review identifies a property in extremely poor physical condition, a special forbearance plan, especially one that allows reduction or suspension of payments not tied directly to property repair, may not offer a permanent resolution to the default. Lenders must use good business judgment relative to property condition.

D. Financial Analysis

The lender is required to assess the borrower's ability to repay the default as described in Section H, page 10. HUD expects the lender to project the borrower's surplus monthly income for the duration of the special forbearance period, and to propose repayment terms consistent with the borrower's ability to pay.

The lender must exercise good business judgment to determine that the borrower has the capacity to resume full monthly payments, and eventually reinstate the loan under the terms of the plan. If the financial analysis determines that the borrower does not or will not, in the foreseeable future, have the ability to resume full monthly payments, special forbearance should not be used. The lender should consider other loss mitigation options in the priority detailed in Section F, page 10.

E. Combining Options

Special forbearance may be utilized as a stand alone tool, or combined with a loan modification or partial claim. For example, a borrower may be expected to recover from the cause of the default and resume making full monthly payments, but will not have adequate surplus income to repay the arrearage. In this case, the lender might establish a special forbearance agreement which allows the borrower to demonstrate that he has recovered from the financial problem by making full mortgage payments for a period of 3 or 4 months, at which time the delinquent amount could be capitalized into a modified loan, or paid off through a partial claim promissory note.

F. Required Documentation

A written agreement must be executed by the mortgagor and lender, which clearly defines the term, frequency of payments, and amounts due under the forbearance plan. The agreement must acknowledge previously missed mortgage payments and provide notice that failure to comply with the terms of the special forbearance agreement can result in initiation of foreclosure.

FHA does not dictate a specific format for the agreement, however at a minimum it:

- Must provide the borrower with relief not typically available under an informal forbearance plan.
- Must fully reinstate the loan, except if combined with mortgage modification or partial claim, as in paragraph E, above.
- May not at any time allow the total amount of the arrearage to exceed the equivalent of 12 months PITI. (ARMS, GPMS, and GEMS will be calculated by multiplying 12 times the monthly payment due on the date of default.)
- May not allow for late fees to be assessed while the mortgagor is performing under the terms of a special forbearance plan.
- May allow reasonable foreclosure costs and late fees accrued prior to the execution of the special forbearance agreement to be included as part of the repayment schedule. However, they may only be collected after the loan has been reinstated through payment of all principal, interest, and escrow advances. At no time shall the loan be considered delinquent solely because the borrower has not paid late fees or other foreclosure costs.
- If the special forbearance plan culminates in a modification or partial claim, foreclosure costs and fees may only be collected in accordance with the requirements applicable to those options.
- There is no maximum duration requirement for special forbearance agreements. Lender's are encouraged to allow as much time as is reasonable based on the borrower's ability to repay.

G. Review and Re-negotiation

Lenders must review the status of forbearance plans each month and take appropriate action if the borrower is not complying with the terms of the plan. Plans may be re-negotiated if the borrower's financial circumstances change, however, re-negotiated plans may not exceed HUD's requirement that the loan be no more than 12 months delinquent. Lenders will not be entitled to file a claim for additional special forbearance incentives in the event a plan is re-negotiated.

H. Lender Incentives

FHA believes that well structured special forbearance agreements will resolve the majority of curable loan delinquencies. The Department strongly encourages use of this option and has provided attractive lender incentives.

- First, for every special forbearance agreement executed by a lender, regardless of the outcome, FHA will pay a \$100 incentive fee. Lenders, whose overall loss mitigation performance is ranked in the top 25th percentile, will be eligible for incentive payments of \$200 per claim.
- Second, when a special forbearance has been utilized and failed, and a conveyance claim is filed, lenders are entitled to collect unpaid interest at the note rate rather than debenture rate of interest.
- Finally, the number of months of interest that may be claimed is computed from the earliest of several dates as provided in 24 CFR 203.402a. This computation generally allows two additional months of interest, than would be payable on a conveyance claim where special forbearance had not been utilized.

These are significant claim benefits, intended to reduce the risk to lenders of offering reduced or suspended payments, and/or longer than normal repayment terms. These incentives are not available with any other loss mitigation option, and, with the exception of the incentive fees, do not apply if the lender files a claim for reimbursement as a result of a modification or partial claim.

I. Filing For Incentive Payment

The lender must file the claim for incentive payment within 60 days of the date of execution of the special forbearance agreement. It is not necessary to submit a copy of the special forbearance agreement or checklist. However, all documentation pertaining to the special forbearance must be retained in the claim review file.

If special forbearance is combined with any other option, the lender is entitled to file a claim for the special forbearance incentive fee, and file a subsequent claim when the other loss mitigation action is finalized.

LOAN MODIFICATION

A loan modification is a permanent change in one or more of the terms of a borrower's loan which if made, allows the loan to be reinstated, and results in a payment the borrower can afford. Modifications may include a change in the interest rate; capitalization of delinquent principal, interest or escrow items; extension of the time available to repay the loan; and/or re-amortization of the balance due.

Modification may be appropriate for borrowers who have experienced a permanent or long term reduction in income or increase in expenses, or have recovered from the cause of the default but do not have sufficient surplus income to repay the arrearage through a repayment plan. To qualify, borrowers must be able to support the monthly mortgage debt after the terms of the loan are modified.

Not all loans are appropriate for modification. Loan characteristics which best support modification include: loans with above market interest rates; lower loan to value ratios; and/or mature terms (loans paid down 10 years or more). The modification tool is valuable when the arrearage can be capitalized into the loan balance, the term extended and/or the interest rate adjusted to current market rate, so that the resulting monthly payment is at a level the borrower can afford.

Modification is most often used to reduce a borrower's payment when the cause of the default is permanent or long term. However, if a borrower has recovered from a short term financial problem and has strong income, a modification may be used to increase the monthly payment slightly, allowing the borrower to repay the arrearage gradually over the life of the loan.

Approximately 96% of all FHA insured loans are securitized in Ginnie Mae guaranteed pools. Prior to modification, but no sooner than the 90th day of default, securitized loans must be purchased from pools. Ginnie Mae has recently streamlined its re-pooling requirements allowing almost all modified FHA loans to be quickly repooled. Details of Ginnie Mae's modification policy are found in the All Participants Letter 96-15, *Pooling FHA Loans That Have Been Modified as a Result of Loss Mitigation Efforts*.

FHA has recently made several changes to its modification program. First, the Department realized that borrowers with below market interest rates were being excluded from the modification program because their loans had to be re-pooled at a discount. When appropriate, lenders may now increase the note interest, not to exceed market rate as defined below in Section F, page 21. Next, to protect borrowers from future payment increases, all modifications must now result in a fully amortizing, fixed rate loan. Adjustable and other variable payment loans will be converted to fixed as a condition of the modification. Finally, the BPO requirement has been eliminated (there is no longer a BPO requirement for any of the reinstatement options). These changes are more fully described below.

A. Loan Delinquency

To modify a defaulted mortgage under the loss mitigation program:

- Three or more full monthly payments must be due and unpaid.
- At least 12 months have elapsed since the origination date of the loan.
- The loan may not be in foreclosure at the time the modification is executed, however, loans removed from foreclosure status may be modified.
- The default must be due to a verifiable loss of income or increase in living expenses.

Note: Loans which are not delinquent but are in danger of imminent default may be modified at the discretion of the lender and insurance coverage will be increased above the original certificate amount as necessary. However, performing loan modifications do not qualify for incentives under the Loss Mitigation Program, and may not meet Ginne Mae requirements for re-pooling of modified loans, which requirements are described in Ginne Mae's All Participants Letter, 96-15.

B. Borrower Qualifications

Modifications may be offered to borrowers who have stabilized, surplus income which, while not sufficient to sustain the original loan and repay the arrearage, is sufficient to support the monthly payment under the modified rate and/or term.

The borrower must be an owner occupant, committed to occupying the property as a primary residence. Modification may not be used as a means to reinstate a loan prior to a sale or assumption.

C. Property Condition

While the modification option does not include a loan-to-value restriction, and no appraisal or broker's price opinion is required, the lender must conduct any review it deems necessary to verify that the property has no physical conditions which adversely impact the borrower's continued use or ability to support the debt.

A borrower may not be able to support payments under a modification if the property is in such a deteriorated condition that repairs drain the borrower's monthly resources. An analysis of the borrower's surplus income should consider anticipated property maintenance expenses. If the mortgagee's inspection identifies a property in extremely poor physical condition, a modification may not offer a permanent resolution to the default.

Costs to complete needed repairs may not be capitalized as part of a modification agreement, nor may a borrower receive any cash back from a modification. Borrowers who have sufficient equity and income to receive cash back should be considered for a delinquent refinance.

D. Financial Analysis

The lender is required to assess the borrower's financial condition as described in Section H, page 10. HUD expects the lender to project the borrower's surplus monthly income for a minimum of three months, and use good business judgment to determine if the borrower has the capacity to repay the arrearage through a repayment or special forbearance plan, before considering modification. If the financial analysis determines that the borrower does not have the ability to support the modified monthly payment, the modification option may not be used.

E. Combining Options

Modification may be utilized as a stand alone tool, or incorporated as part of a repayment, or special forbearance agreement. For example, if a borrower needs time to resolve the default, but will eventually be able to support the debt at the modified rate but no more than that, a repayment plan or special forbearance may culminate in a loan modification. An existing repayment plan, or special forbearance may also be converted to modification if the borrower's circumstances change.

Mortgage modification may not be used in conjunction with a partial claim. If modification is appropriate, it should be used as the primary tool to bring the account current.

F. Allowable Provisions

The following provisions apply to loan modifications:

- All modifications must result in a fixed rate loan. ARM, GPM and GEM mortgages may only be modified to fixed payment, fully amortizing loans.
- The modification must fully reinstate the loan.
- At the lender's discretion, note interest rates may be reduced below market if necessary to resolve the default. Discount fees associated with rate reductions are not reimbursable.
- At the lender's discretion, note interest rates may be increased if supported by the borrower's ability to pay. The maximum interest allowable shall be calculated as 150 basis points above the current FHA debenture interest rate. Debenture interest rates are provided semi-annually through mortgagee letter.
- All or a portion of the PITI arrearage (principal, interest, and escrow items) may be capitalized to the mortgage balance.
- Foreclosure costs, late fees and other administrative expenses may not be capitalized. Lenders may collect the legal and administrative fees (resulting from the canceled foreclosure action), from mortgagors to the extent not reimbursed by HUD, either through a lump sum payment or through a repayment plan separate from, and subordinate to, the modification agreement.
- The modified principal balance may exceed the principal balance at origination.
- The modified principal balance may exceed 100% loan-to-value.
- Lenders may re-amortize the total unpaid amount due over the remaining term of the mortgage, or may extend the term not more than 10 years beyond the original maturity

date or 360 months from the due date of the first installment required under the modified mortgage, whichever is less.

G. Lien Status

The lender must ensure first-lien status of the modified mortgage. In satisfying this requirement, the lender must comply with any applicable state or federal laws and regulations.

If title to the property is encumbered with an FHA Title I loan, and the lender servicing the Title II loan has determined that a subordination agreement is necessary, the lender may send a written subordination request to:

U.S. Department of Housing and Urban Development
Home Improvement Branch
451 7th Street, SW, Room 9272
Washington, DC 20410

If title to the property is encumbered with an FHA Title I loan which has been assigned to the Secretary, and the lender servicing the Title II loan has determined that a subordination agreement is necessary, the lender servicing the Title II loan may send a written subordination request to:

HUD Albany Financial Operations Center
Asset Recovery Division
52 Corporate Circle
Albany, NY 12203
(518) 464-4200

H. Required Documentation

FHA does not dictate a specific format for documentation of the modification agreement. The lender is responsible for ensuring that the modification documentation preserves the first lien status of the FHA insured loan. The lender will have to make the determination in accordance with state law as to whether it is necessary to record the Modification Agreement to maintain the first lien requirement.

I. Disclosures

FHA requires lenders to comply with any disclosure or notice requirements applicable under State or Federal law.

J. FHA Mortgage Insurance

Where the loan modification has been processed in accordance with all HUD requirements, the FHA mortgage insurance coverage will be extended to the new principal balance of the loan following modification of eligible loans. Modification has no effect on the

one-time MIP or on periodic MIP payments. Monthly MIP payments must be calculated on the original insurance amount.

K. Lender Incentives

FHA will pay lenders a \$500 incentive fee for each modification and will reimburse the actual cost of the title search and/or endorsement to the title policy not to exceed \$250.00. No other expenses may be included on the claim.

L. Failure

In the event the borrower becomes delinquent following modification, it shall be treated as a new default and serviced accordingly. In the event the loan is foreclosed following modification, the lender must be prepared to deliver a copy of the modification agreement to the Department when a conveyance claim is filed. The lender shall be responsible for maintaining the first lien status of the insured loan subsequent to modification. Any amount of a loan which is not in the first priority position will be considered uninsured and not subject to claim. HUD reserves the right at the time of claim submission to request documentation (legal or otherwise) establishing the first lien status.

M. Limitations on Use

If a loan has been modified or reinstated using a partial claim within the past three years, re-default risk is presumed to increase following a subsequent modification. Prior to granting a modification in this circumstance, the lender must prepare a written justification, and retain a copy along with supporting documents in the claim review file. It is anticipated that this will be a highly unusual occurrence, and that the cause of the second default will be unrelated to the original problem.

N. Filing For Incentive Payment

The lender must file the claim for incentive payment within 60 days of the execution date of the modification agreement. It is not necessary to send a copy of the modification agreement, however, it must be retained in the claim review file and made available to FHA upon request.

FHA will pay lenders a \$500 incentive fee for each modification and will reimburse the actual cost of the title search and/or endorsement to the title policy not to exceed \$250.00. No other expenses may be included on the claim.

PARTIAL CLAIM

Under the partial claim option, a lender will advance funds on behalf of a borrower in an amount necessary to reinstate a delinquent loan (not to exceed the equivalent of 12 months PITI). The borrower, upon acceptance of the advance, will execute a promissory note and subordinate mortgage payable to

HUD. Currently, these promissory or “partial claim” notes carry no interest and are not due and payable until the borrower either pays off the first mortgage or no longer owns the property.

Following reinstatement, the lender will file a “partial” claim for the amount of the advance plus the lender’s incentive fee, and forward a copy of the recorded documents to HUD. A contractor retained by HUD will service the partial claim liens.

HUD approval is not required in order for lenders to advance funds and file a partial claim, as long as the requirements detailed in this section are satisfied. This new option provides lenders with a powerful tool to assist borrowers threatened with foreclosure. However, this should be used only if the lender is confident that:

- The borrower has the long term financial stability to support the mortgage debt.
- The borrower does not have the ability to repay the arrearage through a special forbearance or modification.

There are three notable changes to the partial claim option. First, the seven month delinquency requirement has been eliminated. Partial claims may now be used any time after the fourth month of delinquency, so long as the total arrearage on the loan does not exceed the equivalent of 12 months PITI. Second, the BPO requirement has been eliminated. And the third notable change is that copies of the subordinate lien will not be required to accompany the claim submission. However the original recorded documents will still be required to be submitted.

A. Loan Default

The loan must be at least 4 months (120 days), but no more than 12 months (365 days) delinquent at the time the partial claim note is executed. The loan may not be in foreclosure when the partial claim note is executed. However, a lender may remove a loan from foreclosure if the borrower’s financial situation has improved sufficiently to justify a partial claim.

B. Borrower Qualifications

Partial claims may be offered to borrowers who satisfy all of the following requirements:

- Have overcome the cause of the default.
- Have sufficient income to resume monthly mortgage payments.
- Do not have sufficient surplus income to repay the arrearage through a repayment plan.
- A mortgage modification is not appropriate.

- Borrower is owner occupant(s) committed to continuing occupancy of the property as a primary residence. Partial claim may not be used to reinstate a loan prior to a sale or assumption.

A lender may consider a mortgagor who has filed a petition in Bankruptcy Court under Chapter 13 for a partial claim, only after obtaining the approval of the Bankruptcy Court. If the mortgagor has filed a bankruptcy petition under Chapter 7, the lender must obtain Bankruptcy Court approval. and in addition, the mortgagor must reaffirm the debt.

C. Property Condition

There is a change from previous guidance in that a broker's price opinion (BPO) will not be required. While the partial claim option does not include a loan-to-value restriction and no appraisal or broker's price opinion is required, the lender must conduct a review sufficient to verify for FHA that the property has no physical condition(s) which adversely impact the borrower's continued use or ability to support the debt.

A borrower may not be able to support payments under a partial claim if the property is in such a deteriorated condition that repairs drain the borrower's monthly resources. An analysis of the borrower's surplus income should consider anticipated property maintenance expenses. If the mortgagee's inspection identifies a property in extremely poor physical condition, a partial claim may not offer a permanent resolution to the default.

D. Financial Analysis

The lender is required to assess the borrower's financial status as described in Section H, page 10. HUD expects the lender to project the borrower's surplus monthly income for a minimum of three months, and calculate the surplus income percentage.

If the financial analysis determines that the borrower does not have the ability to support the normal monthly payment, the partial claim option may not be used. In no case may partial claim be used if the borrower's surplus income percentage is 0% or less than 0%. If the borrower has low surplus income (< 5%), lenders are encouraged to combine partial claim with a special forbearance plan allowing the borrower to demonstrate the ability to make payments for a period of 3 or more months prior to origination of the partial claim note.

Lenders must use good business judgment to determine if the borrower has the adequate surplus income to repay the arrearage through special forbearance or mortgage modification before approving a partial claim. Lenders are encouraged to require borrowers to contribute all available funds toward paying down the default, thereby reducing the amount of the partial claim lien.

E. Combining Options

Partial claim may be utilized as a stand alone tool, or incorporated as part of an informal forbearance plan, or special forbearance agreement. For example, if a borrower needs time to resolve the default, but will eventually be able to support the normal monthly payment but no more than that, a repayment plan or special forbearance may culminate in a partial claim. An existing repayment plan or special forbearance may also be converted to partial claim if the borrower's circumstances change. Partial claim may not be used in conjunction with a mortgage modification.

F. Allowable Provisions

The following provisions apply to all partial claim notes:

- The partial claim must fully reinstate the loan.
- The partial claim advance may include only principal, interest and escrow advances required to reinstate the loan.
- In no event may the total arrearage exceed the equivalent of 12 months PITI. The maximum partial claim advance for ARM, GPM, and GEM loans is calculated by adding the specific PITI requirement for each of the monthly installments to be included in the partial claim.
- The lender may not include late fees, legal fees or other administrative expenses in the partial claim note. However, lenders may collect legal and administrative fees (resulting from a canceled foreclosure action) directly from the borrower to the extent not reimbursed by HUD and in accordance with the limitations of Chapter 4 of HB 4330. 1 REV-5.
- The lender will record the subordinate mortgage in all jurisdictions except the State of Texas. (In Texas, only a promissory note is required.)
- There is no lien priority requirement for partial claim notes, however the lender must ensure that recordation of the subordinate mortgage does not jeopardize the first lien status of the FHA insured mortgage.
- Payment of a partial claim does not decrease mortgage insurance coverage.

G. Repayment Terms

The partial claim advance will be secured by a note and subordinate mortgage with the following repayment terms.

- The note is interest free. (The Secretary reserves the right to assess interest on partial claim notes originated in the future.)
- The entire principal balance shall be payable as one balloon payment. No monthly or periodic payments are required.
- The note is due at the earlier of 1) payoff of the first mortgage, or 2) when the borrower no longer owns the property.
- There is no prepayment penalty.

Voluntary payments or prepayments should be directed to the following :

U.S. Department of HUD,
c/o Clayton National
4 Corporate Drive,
Shelton, CT 06484

H. Required Documentation

A promissory note must be executed in the name of the Secretary and a subordinate mortgage must be obtained and recorded. The lender must include the provisions of HUD's model form of note and subordinate mortgage (as provided in Mortgagee letter 97-17) and make any amendments required by State laws. In the State of Texas only, HUD will accept an unrecorded promissory note. While HUD does not endorse the products or services of vendors, the Department is aware that State specific documents are commercially available. Lenders who take advantage of the convenience of purchasing these documents should review them prior to use.

I. Disclosures

FHA requires lenders to comply with any disclosure or notice requirements applicable under State or Federal law.

J. Lender Incentives

FHA will pay lenders a \$250 incentive fee for each partial claim. The borrower may not be charged any additional costs.

K. Failure

In the event the borrower becomes delinquent following reinstatement via a partial claim, it shall be treated as a new default and serviced accordingly.

L. Limitations on Use

If a loan has been modified or reinstated using a partial claim within the past three years, re-default risk is presumed to increase following a subsequent partial claim. Prior to allowing a partial claim in this circumstance, the lender must prepare a written justification, and retain a copy along with supporting documents in the claim review file. It is anticipated that this will be a highly unusual occurrence, and that the cause of the second default will be unrelated to the original problem. There is a lifetime limitation of 12 monthly installments of PITI. Once 12 full monthly installments have been paid, no further partial claims will be honored on a specific case.

M. Claim Filing

The lender must file the claim within 60 days of the date the subordinate lien to HUD is executed.. The claim may include the amount of the partial claim note and the \$250 incentive fee. No other costs or fees will be paid by HUD.

N. Document Delivery

It is the responsibility of the lender to deliver the original promissory note and recorded mortgage to FHA at the address listed below, as soon as possible but no later than 6 months from the execution date of the partial claim note.

U.S. Department of HUD,
c/o Clayton National
4 Corporate Drive,
Shelton, CT 06484

Mortgagee's who fail to deliver original, recorded documents within the time frame specified, will be required to reimburse the Department any incentive fee previously paid for the partial claim. Time extensions may be granted by the Oklahoma City Office of HUD in the event document delivery is delayed by events beyond the control of the lender.

O. Servicing

A contractor selected by HUD will service the partial claim notes. Effective immediately, the following contractor will service the Partial Claim notes:

U.S. Department of HUD,
c/o Clayton National
4 Corporate Drive,
Shelton, CT 06484

Telephone: (800) 967-3050

PRE-FORECLOSURE SALE

The pre-foreclosure sale (“PFS”) option allows a borrower in default to sell his or her home and use the sale proceeds to satisfy the mortgage debt even if the proceeds are less than the amount owed. This option is appropriate for borrowers whose financial situation requires that they sell their home, but who are unable to sell without FHA relief, because the value of the property has declined to less than the amount owed on the mortgage.

Borrowers must make a commitment to actively market their property for a period of 4 to 6 months, during which time the lender delays foreclosure action. Owner-occupant borrowers who successfully sell to a third party within the required time, are paid a cash consideration up to \$1,000. Lenders also receive a \$1,000 incentive for successfully avoiding the foreclosure. If the property does not sell, borrowers are encouraged to convey the property to FHA through a deed-in-lieu of foreclosure.

Since PFS was introduced in 1994, it has helped thousands of borrowers in default avoid foreclosure and make a smooth transition to more affordable housing. The changes described below are intended to increase the number of borrowers who can take advantage of the PFS option.

In an effort to open PFS eligibility up to more borrowers, this Mortgagee letter changes two critical ratios used to determine property eligibility and minimum acceptable proceeds. Where Section E(4) of Mortgagee letter 94-45, *HUD’s Nationwide Pre-foreclosure Sale Procedure*, established the minimum ratio of appraised value to outstanding mortgage indebtedness at 70%, effective February 1, 2000 the minimum ratio of appraised value to outstanding mortgage indebtedness is 63%. Where Section G(4) of Mortgagee letter 94-45, required minimum acceptable net sales proceeds of 87%, effective February 1, 2000 minimum acceptable net sales proceeds are 82%. **Concurrent with these changes there will be no variances from the above stated ratios.**

Unlike other options, borrowers wishing to participate in the PFS program must submit an *Application to Participate* HUD-90036, along with the financial information required by the lender. The lender will also obtain a recent FHA appraisal and preliminary title report. After reviewing all relevant information, the lender will notify borrowers whether or not they meet the program requirements

described below. Acceptance into the program is indicated by issuance by the lender of an *Approval to Participate* HUD-90045.

The forms associated with the PFS program, *Information Sheet* HUD-90035, *Application to Participate* HUD-90036, *Approval to Participate* HUD-90045, and *Variance Request* HUD-90041, are currently being revised to incorporate the ratio changes, provide the disclosure language described above, and to delete references to the assignment program. These forms will be released in a subsequent mortgagee letter. In the meantime, lenders may continue to use current versions of the forms.

A. Loan Default

At the time the pre-foreclosure sale is closed, the loan must be in default (delinquent more than 30 days). Lenders may exercise their discretion to accept applications from borrowers who are facing imminent default, but by the time the pre-foreclosure sale is completed, the loan must be in default. Lenders should document this decision in the claim review file. Under no circumstances shall PFS be available to borrowers who have abandoned their mortgage obligation despite their continued ability to pay.

Home Equity Conversion Mortgages are not eligible pre-foreclosure sale.

B. Borrower Qualifications

The PFS option may be extended to borrowers who satisfy the following requirements:

- Are in default due to a verifiable increase in living expenses or decrease in income.
- Have negative equity of not more than **63%** of the outstanding mortgage balance including unpaid principal and accrued interest. (PFS may be considered if the property's appraised value slightly exceeds the mortgage payoff figure, but net proceeds, after deducting the costs of the sale, will fall short of the amount needed to discharge the mortgage by more than \$1,000.)
- Occupy the property as a primary residence. Lenders are authorized to grant reasonable exceptions to non-occupant borrowers when it is verifiable that the need to vacate was related to the cause of the default (job loss, transfer, divorce, death), and the subject property was not purchased as a rental investment, or used as a rental for more than 12 months.

C. Application to Participate

Any borrower in default who expresses interest in the pre-foreclosure sale program should be sent a copy of the PFS *Information Sheet*, and *Application to Participate*. Additionally, lenders are encouraged to proactively solicit participation by borrowers who are in default on an FHA insured first mortgage and are unable to cure the default through reinstatement.

By signing and returning the application with the required financial information, borrowers are acknowledging that they have received housing counseling, and are agreeing to:

- List the property with a licensed real estate broker, unrelated to the borrower. The listing agreement must include a specific cancellation clause in the event the terms of a sale are not acceptable to HUD.
- Make a good faith effort to aggressively market the property.
- Perform all normal property maintenance and repairs until closing of the pre-foreclosure sale.

D. Property Value

The lender must obtain a standard FHA appraisal from an appraiser who does not share any interest with the mortgagor or mortgagor's agent. The appraisal must contain both "As Is" and "As Repaired" values for the property, and will be valid for six months. A copy of the appraisal must be shared with the homeowner or sales agent, if requested. Appraisals or opinions of value provided by the borrower, or borrower's real estate agent are not acceptable. The lender must review the appraisal and satisfy itself that the opinion represents the fair market value of the subject property.

E. Property Condition

Properties which have sustained serious damage (fire, flood, earthquake, tornado) are not eligible for PFS if the cost of repair exceeds 10% of the As Repaired appraised value. Lenders may exercise their discretion to accept or reject damaged properties when repair costs are less than the 10% threshold, but should document their decision in the claim review file.

F. Condition of Title

The property must have marketable title. Prior to execution of the *Approval to Participate*, the lender must obtain a title search or preliminary report to verify that the title is not impaired with un-resolvable title problems, or junior liens that cannot be discharged as allowed by HUD. If the lender determines that junior liens and other title issues can be resolved, the borrower may be accepted into the PFS program and resolution of the title issues can be pursued concurrent with marketing.

It is frequently in HUD's interest to aid in the discharge of secondary liens in order to facilitate the sale. Lenders are expected to provide such assistance to the borrower. In some cases junior lien creditors will release a lien in return for a partial cash payment or a promissory note from the borrower. Where the amount required to satisfy or release the lien(s) is in line with the borrower's ability to pay, the borrower should be required to do so. The incentive consideration payable to the borrower should first be applied toward the discharge of liens. If this is not sufficient, the lender can obligate an additional amount not to exceed \$1,000 from sale

proceeds towards the discharge of liens or encumbrances, if that will result in clear title and allow the sale to proceed. If the borrower has a HUD Title I loan secured by the property, the lender must negotiate a release of the Title I lien in order to proceed with a PFS.

G. Financial Analysis

The lender is required to assess the borrower's financial condition as described in Section H, page 10. HUD expects the lender to project the borrower's surplus monthly income and use good business judgment to determine that the borrower is unable to support the mortgage debt.

H. Approval to Participate

When an application is accepted, the *Approval to Participate* form must be used. The date of this form becomes the starting date of PFS participation. The *Approval to Participate* must include the date by which a signed contract for sale must be obtained, and the minimum acceptable net sales price.

I. Timing of Initiation

The lender must either issue an *Approval to Participate*, commence foreclosure, or initiate another loss mitigation option within 6 months of the date of default, unless the lender qualified for an extension by trying another loss mitigation option.

If the PFS follows a failed special forbearance agreement, the *Approval to Participate* must be granted, or foreclosure or other option initiated within 90 days of the failure. If the PFS follows any other option, the *Approval to Participate* must be granted, or foreclosure or other option initiated within 9 months of the date of default.

J. Duration of the Pre-Foreclosure Sale Period

The pre-foreclosure sale period shall be three months beginning upon lender approval (automatically extended two months for lenders scoring in the top 25th percentile). The lender should review marketing efforts with the mortgagor on a monthly basis. After 90 days without a scheduled closing, the lender must discuss the likelihood of a sale with the real estate broker and make a determination to either end the pre-foreclosure sale period, or extend it for an additional 30 days if a sale is likely. Documentation for this decision should be retained in the claim review file.

If the property is under contract at the end of the marketing period, the lender may extend the PFS period for 60 days not to exceed a total of 6 months (8 months for lenders in the top 25th percentile).

K. Other Lender Responsibilities

The lender is responsible for inspection, protection, and preservation of the property between the 45th day of default and the date of the *Approval to Participate*. Funds expended for preservation and protection will be reimbursed.

L. Early Termination

Borrower participation in the PFS program may be terminated at the discretion of the lender, for any of the following reasons:

- Un-resolvable title problems.
- Determination that the borrower is not acting in good faith to market the property.
- Voluntary withdrawal by the borrower.

M. Failure

Within 90 days of the expiration of the pre-foreclosure sale period (or 6 months of the date of default, whichever is later), if no closing of an approved PFS has occurred, the lender must commence foreclosure or obtain a deed-in-lieu. If the borrower's financial condition has improved to the point that reinstatement is a viable option, the lender may undertake one of the reinstatement loss mitigation tools. However, the lender must fully justify this decision in the claim review file, and must complete the action within the 90 day period.

N. Lender Incentives

FHA will pay lenders an incentive fee of \$1,000 for each successful pre-foreclosure sale.

O. Borrower Consideration

Borrowers who successfully sell their properties using this option are relieved of their mortgage obligation, and are entitled to receive consideration in the amount of \$750. If the closing occurs within three months of the *Approval to Participate*, the borrower will be entitled to \$1,000. Unless the borrower's consideration is required to release junior liens, the borrower may elect to accept cash paid at closing, or may apply some or all of the amount to offset sales costs not paid by FHA, including home warranty plans, optional repairs, and seller's closing expenses.

Borrowers who become good-faith participants in the PFS program shall not be pursued for deficiency judgments by either the lender or the Department in the event that the PFS is unsuccessful and foreclosure occurs.

P. Contract Approval

The lender will have 5 working days from receipt of a signed Contract for Sale, to respond using the *Sale Contract Review* form HUD-90051. The transaction must be an outright sale of the premises. No sale by assumption, regardless of provisions for release of liability, may be considered.

Lenders may approve a sale contract in which the net sales proceeds are at least 82% of As Is appraised value. "Net Sales Proceeds" is defined as the contract price less:

- Sales commission (usually 6% or less).
- Consideration paid to the seller (\$750 or \$1,000).
- Discharge of junior liens not to exceed \$1,000.
- Property repairs required by the appraisal.
- Local/state transfer tax stamps and other customary closing costs including the seller's costs for a title search and title insurance.

Examples of settlement costs which may not be included in the net sales proceeds calculation are:

- Tax service fees and other property transfer costs normally paid by the buyer.
- Home warranty fees.
- Repairs not stipulated in the appraisal.
- Survey costs.
- Lawyer's fees for representing the seller (apart from conducting the settlement or review of documents).

There must not be any hidden terms or special understandings that exist between any of the parties involved in the transaction: buyer, seller, appraiser, sales agent, closing agent, and lender.

Q. Closing and Post Responsibilities

Prior to closing, the lender will provide the closing agent with a *Closing Worksheet*, HUD-90052, which lists all amounts payable out of sale proceeds. Before giving final approval for a closing, the lender must review the HUD-1 to ensure that it complies with earlier closing cost estimates.

A pre-foreclosure sale must be reported to national credit bureaus as a “short sale.” Lenders will be responsible for filing information return Form 1099-A with the IRS and reporting any discharge of indebtedness, in accordance with the Internal Revenue Code.

R. Claim Filing

The claim for insurance benefits must be submitted to HUD within 30 days after the date of the PFS closing. HUD will reimburse the lender for reasonable and customary costs of the appraisal, title search (if not included in the settlement statement), and the allowable percentage of legal fees for a foreclosure postponed pending completion of PFS. Disbursements for taxes, assessments, hazard insurance, and other allowable items payable before the date of the PFS closing are reimbursable. FHA will not pay costs related to the property which were incurred after the closing date.

The consideration paid to the borrower and allowable amounts, not to exceed \$1,000, paid to release all junior liens should be reflected on the HUD-1 and not included on the claim. The mortgagee’s incentive fee shall still be reflected on line 129 of the claim form HUD-27011. (See Mortgagee letter 94-45, *Pre-Foreclosure Sale Program*.)

DEED IN LIEU OF FORECLOSURE

Deed-in-lieu of foreclosure (DIL) is a disposition option in which a borrower voluntarily deeds collateral property to HUD in exchange for a release from all obligations under the mortgage. Though this option results in the borrower losing the property, it is usually preferable to foreclosure because the borrower mitigates the cost and emotional trauma of foreclosure and is eligible to receive borrower’s consideration of \$500. Also, a DIL is generally less damaging than foreclosure to a borrower’s ability to obtain credit in the future. DIL is preferred by HUD because it avoids the time and expense of a legal foreclosure action, and due to the cooperative nature of the transaction, the property is generally in better physical condition at acquisition.

Unlike a legal foreclosure however, acquisition by DIL does not extinguish junior liens or terminate tenancies. Therefore, there is substantial responsibility placed on the lender to determine that the condition of the property and the title meet HUD’s minimum requirements. The most significant change in this option is a new requirement that the lender enter into a written agreement with the borrower, stating specific actions the borrower must perform in order to take advantage of this option and receive the financial consideration.

A. Loan Default

Prior to acceptance of the deed conveying the property to HUD, a the loan must be in default (delinquent more than 30 days), and the cause of the default must be determined to be incurable. Lenders may exercise their discretion to enter into DIL agreements with borrowers whose loans are current but are facing imminent default, and should document their decision in the claim review file. The loan must be in default at the time that the DIL is recorded and the property conveyed to HUD. Under no circumstances shall DIL be available to borrowers who have abandoned their mortgage obligation despite their continued ability to pay.

Qualified properties should first be offered for sale through the PFS program. Lenders who elect to accept a DIL without attempting a PFS must provide written justification for their decision in the claim review file.

B. Borrower Qualifications

The DIL option may be extended to borrowers who are unable to continue to support the mortgage debt and who occupy the property as a primary residence.

Lenders are authorized to grant reasonable exceptions to non-occupant borrowers when it is verifiable that the need to vacate was related to the cause of the default (job loss, mandatory job transfer, divorce, death), and the subject property was not purchased as a rental investment, or used as a rental for more than 12 months. However, pursuant to 24 CFR 203.357(b) and (c), lenders must obtain the prior written consent of the Commissioner prior to accepting a DIL from a corporate mortgagor or a mortgagor who owns more than one FHA insured property. To obtain this consent lenders should contact:

U.S. Department of Housing and Urban Development
Servicing and Loss Mitigation Division
500 W. Main Street, Suite 400
Oklahoma City, OK 73102

A DIL may not be considered if HUD has elected to pursue a deficiency judgment against the borrower.

C. Tenant Occupied Properties

HUD will not accept a DIL if the collateral property is occupied at the time of conveyance to the Department, unless HUD determines that the tenancy is in the best interest of the Secretary as defined in 24 CFR 203.671. Lenders should follow the process established in 24 CFR 203.675 to request authorization for an occupied conveyance.

D. Financial Analysis

The lender is required to assess the borrower's financial condition as described in Section H, page 10. HUD expects the lender to project the borrower's surplus monthly income for a minimum of three months and use good business judgment to determine if the borrower has the capacity to support the mortgage debt. Under no circumstances shall deed-in-lieu of foreclosure be available to borrowers who have abandoned their mortgage obligation despite their continued ability to pay. The financial analysis requirement may be waived for borrowers who had previously participated in the PFS program.

E. Condition of Title

Good and marketable title must be conveyed to the Secretary. The lender must complete a title search and may be required to secure release of junior liens and/or endorsements to the title policy. HUD will not accept title subject to most junior liens including IRS liens. However, HUD will allow liens securing repayment of Section 235 assistance payments, partial claim advances and Title I liens.

It is frequently in HUD's interest for the lender to aid in the discharge or discounted payoff of secondary liens. With the borrower's consent, the consideration payable to the borrower may be applied toward discharge of liens if this will result in clear title.

F. Required Documentation

A written DIL agreement must be executed by the mortgagor and lender which contains all of the conditions under which the deed will be accepted, including but not limited to:

- Certification that the borrower does not own any other property subject to a mortgage insured by or held by HUD.
- Specific transfer date.
- Notification that there may be income tax consequences as a result of the DIL.
- Acknowledgment that borrowers who comply with all of the requirements of the agreement shall not be pursued for deficiency judgments.
- A statement describing the general physical condition in which the property will be conveyed.
- Agreement that the borrower will convey the property vacant and free of personal property unless an occupied conveyance has been approved by HUD.

- Itemization of the keys, built-in fixtures and equipment to be delivered by the lender on or before the transfer date.
- Borrower’s agreement to provide evidence that certain utilities, assessments and homeowner’s association dues are paid in full to the transfer date unless otherwise agreed to by the parties.
- The dollar amount of consideration payable to and/or on behalf of the borrower (not to exceed \$500).

FHA does not dictate a specific format for documentation of the deed-in-lieu agreement. The lender is responsible for ensuring that the deed-in-lieu documentation is in compliance with all applicable laws and regulations.

G. Conveyance

The property must be conveyed through a special warranty deed. The original credit instrument must be canceled and surrendered to the borrower, indicating that the mortgage has been satisfied. Whenever possible, title must be conveyed directly from the borrower to HUD. If it is necessary to first convey title to the lender, and then to HUD, the lender must document the reason in the claim review file.

As with all conveyance claims, the lender must record the special warranty deed and deliver the original, recorded deed to the HUD Office having jurisdiction over the subject property within 45 days of the date that good and marketable title was conveyed to the Secretary.

H. Timing

A DIL must be completed or foreclosure initiated within 6 months of the date of default unless the lender qualified for an extension by first trying another loss mitigation option or has received an extension approved by HUD prior to the expiration of the time requirement.

If the DIL follows a failed special forbearance agreement or pre-foreclosure sale, the DIL must be completed or foreclosure initiated within 90 days of the failure. If the DIL follows any other option, it must be completed or foreclosure initiated within 9 months of the date of default. All extensions of time to initiate foreclosure including “automatic extensions” (Section L, page 12) must be properly identified on form HUD-27011, Block 19.

Failure to comply will result in interest curtailment as more fully described in Mortgagee letter 98-7, *FHA Loss Mitigation Program Policy and Procedural Updates*.

I. Lender Incentives

FHA will pay the lender an incentive fee of \$250 for administrative expenses. This incentive payment should be claimed on line 129 of form HUD-27011.

J. Borrower Consideration

The borrower is entitled to consideration of \$500 upon satisfaction of the requirements of the deed-in-lieu agreement. However, no consideration may be paid if the property is occupied at conveyance.

K. Claim Filing

As with other conveyance claims, the lender is expected to follow the claim instructions detailed in HB 4330.4 REV1 and any updates thereto. Reimbursable expenses include, reimbursement of title costs, the consideration paid to (or on behalf of) the borrower not to exceed \$500, and a \$250 lender incentive fee.

L. Lender Reporting Requirements

The DIL must be reported to credit reporting bureaus. The lender is also responsible for filing information return Form 1099-A with the IRS, reporting any discharge of indebtedness in accordance with the Internal Revenue Code.

M. Option Not to Convey

The lender may elect not to convey title to HUD and to terminate the contract of mortgage insurance. If this decision is made, HUD must be notified on Form HUD-27050-A.

Sincerely,

William C. Apgar
Assistant Secretary for Housing -
Federal Housing Commissioner

APPENDICES

- Appendix 1 Special Forbearance Checklist
- Appendix 2 Modification Checklist
- Appendix 3 Partial Claim Checklist
- Appendix 4 Pre-foreclosure Sale Checklist
- Appendix 5 Deed-In-Lieu of Foreclosure Checklist

SPECIAL FORBEARANCE CHECKLIST

Loan Number: _____ Borrower: _____ Date: _____

Requirement	Verification (Date, Amount, Source of Information etc.)
1. Has the borrower experienced a verifiable loss of income or increase in living expenses?	
2. Is the borrower an owner occupant?	
3. Did a search of CAIVRS determine that the borrower has no other HUD insured loans or prior loans on which a claim has been paid within the past 3 years?	
4. Did the borrower receive the <u>How To Avoid Foreclosure</u> brochure?	
5. Will the loan be more than 90 and less than 365 days delinquent on the effective date of the agreement? (show number of days)	
6. Did the surplus income analysis to determine the borrower's ability to repay the debt include:	
<ul style="list-style-type: none"> • a financial statement provided by the borrower? 	
<ul style="list-style-type: none"> • a credit report? 	
<ul style="list-style-type: none"> • income/expense verifications? 	
<ul style="list-style-type: none"> • evidence the borrower can support the payment schedule? 	
7. The borrower's surplus income percentage is?	
8. Has an inspection determined that the property has no adverse conditions affecting continued occupancy?	
9. Does the written agreement executed by the borrower:	
<ul style="list-style-type: none"> • clearly define the terms and frequency of repayment? 	
<ul style="list-style-type: none"> • offer relief not available through a normal repayment plan? 	
<ul style="list-style-type: none"> • state that failure to comply may result in foreclosure? 	
<ul style="list-style-type: none"> • limit the total default to 12 months or less? 	
10. If the special forbearance agreement culminates in a partial claim or modification, show the proposed date of that action.	

LOAN MODIFICATION CHECKLIST

Loan Number: _____ Borrower: _____ Date: _____

Requirement	Verification (Date, Amount, Source of Information etc.)
1. Has the borrower experienced a verifiable loss of income or increase in living expenses?	
2. Does the borrower have a commitment to continue to occupy the property as his or her primary residence?	
3. Did a search of CAIVRS determine that the borrower has no other HUD insured loans or prior loans on which a claim has been paid within the past 3 years?	
4. Did the borrower receive the <u>How To Avoid Foreclosure</u> brochure?	
5. Will the loan be more than 90 days delinquent on the date of execution and funding? (show number of days)?	
6. If this loan had a prior modification or partial claim within the past three years justify the decision to modify now?	
7. Did the surplus income analysis to determine the borrower's ability to repay the debt include:	
<ul style="list-style-type: none"> • a financial statement provided by the borrower? 	
<ul style="list-style-type: none"> • a credit report? 	
<ul style="list-style-type: none"> • income/expense verifications? 	
<ul style="list-style-type: none"> • evidence of the borrower's ability to pay for at least 3 months? 	
8. The borrower's surplus income percentage is?	
9. The default cannot be cured through special forbearance because?	
10. Has a title search established first lien status of the modified loan?	
<ul style="list-style-type: none"> • will release of junior liens be required? 	
<ul style="list-style-type: none"> • will title endorsement be required? 	
11. Has an inspection determined that the property has no adverse conditions affecting continued occupancy?	
12. Does the written modification agreement executed by the borrower:	
<ul style="list-style-type: none"> • include all advances necessary to reinstate the principal, interest, taxes and insurance? 	
<ul style="list-style-type: none"> • exclude all legal and administrative costs? 	

PARTIAL CLAIM CHECKLIST

Loan Number: _____ Borrower: _____ Date: _____

Requirement	Verification (Date, Amount, Source of Information etc.)
1. Has the borrower experienced a verifiable loss of income or increase in living expenses?	
2. Does the borrower have a commitment to continue to occupy the property as his or her primary residence?	
3. Did a search of CAIVRS determine that the borrower has no other HUD insured loans or prior loans on which a claim has been paid within the past 3 years?	
4. Did the borrower receive the <u>How To Avoid Foreclosure</u> brochure?	
5. Will the loan be more than 120 and less than 365 days delinquent on the date of execution and funding? (show days)	
6. If this loan had a prior modification or partial claim within the past three years justify the decision to use a partial claim now?	
7. Did the surplus income analysis to determine the borrower's ability to repay the debt include:	
<ul style="list-style-type: none"> • a financial statement provided by the borrower? 	
<ul style="list-style-type: none"> • a credit report? 	
<ul style="list-style-type: none"> • income/expense verifications? 	
<ul style="list-style-type: none"> • evidence of borrower's ability to pay for at least 3 months? 	
8. What is the borrower's surplus income percentage? (Is it greater than 0% and less than 17%? show %)	
9. Explain why the default cannot be cured through special forbearance?	
10. Explain why the default cannot be cured through modification?	
11. Has an inspection determined that the property has no adverse conditions affecting continued occupancy?	
12. Will the written partial claim note executed by the borrower:	
<ul style="list-style-type: none"> • fully reinstate the loan? 	
<ul style="list-style-type: none"> • not exceed the equivalent of 12 months PITI? 	
<ul style="list-style-type: none"> • include only principal, interest and escrow advances in the note? 	

PRE-FORECLOSURE SALE CHECKLIST

Loan Number: _____ Borrower: _____ Date: _____

Requirement	Verification (Date, Amount, Source of Information etc.)
1. Has the borrower experienced an involuntary reduction in income or increase in living expenses?	
2. Does the borrower occupy the property as his or her primary residence? If not, explain any variances.	
3. Did the borrower sign an <i>Application to Participate</i> HUD-90036, or other disclosure of the availability of reinstatement options?	
4. Will the loan be at least 30 days delinquent when the PFS closes? (show number of days)	
5. Does a review of CAIVRS indicate that the borrower has no other current FHA loans, or prior loans on which a claim has been paid within the past 3 years? (explain any variances)	
6. Does an appraisal completed within the past 6 months show that: <ul style="list-style-type: none"> • the AS IS value is less than the loan amount ? (show Value) • the property is worth at least 63% of the unpaid principal balance? (show negative equity ratio) • sale proceeds will result in a loss of more than \$1,000 • the property is not seriously damaged? 	
7. Has a title search been obtained indicating marketable title?	
8. Did the surplus income analysis to determine the borrower's inability to repay the debt include: <ul style="list-style-type: none"> • a financial statement provided by the borrower? • a credit report? • income/expense verifications? • the borrower's surplus income percentage? (show %) 	
9. The PFS agreement, executed by the borrower shows: <ul style="list-style-type: none"> • the end date for marketing is? • minimum acceptable net proceeds are? 	
10. Do Net Sale proceeds equal or exceed 82% of As Is Value? (show %)	

DEED-IN-LIEU OF FORECLOSURE CHECKLIST

Loan Number: _____

Borrower: _____

Date: _____

Requirement	Verification (Date, Amount, Source of Information etc.)
1. Has the borrower experienced a verifiable loss of income or increase in living expenses?	
2. Does the borrower occupy the property as his or her primary residence? If not, explain any variances.	
3. Will the loan be at least 30 days delinquent when the special warranty deed is accepted?	
4. Did the borrower receive the <u>How To Avoid Foreclosure</u> brochure?	
5. Does a review of CAIVRS indicate that the borrower has no other current FHA loans, or prior loans on which a claim has been paid within the past 3 years? (explain variances)	
6. A recent appraisal or BPO indicates the AS IS property value is?	
7. If any portion of the property is rented has FHA approved occupied conveyance?	
8. Has a title search been obtained showing good and marketable title?	
9. Did the surplus income analysis to determine the borrower's inability to repay the debt include:	
<ul style="list-style-type: none"> • a financial statement provided by the borrower? 	
<ul style="list-style-type: none"> • credit report? 	
<ul style="list-style-type: none"> • income/expense verifications? 	
<ul style="list-style-type: none"> • the borrower's surplus income percentage? (show %) 	
10. Does a written DIL agreement, executed by the borrower:	
<ul style="list-style-type: none"> • require the property to be vacant and free of personal property at conveyance? 	
<ul style="list-style-type: none"> • convey title via a special warranty deed in favor of HUD? 	
<ul style="list-style-type: none"> • convey clear title free of junior liens? 	
<ul style="list-style-type: none"> • require the borrower to pay utility bills to the date of conveyance? 	
<ul style="list-style-type: none"> • require the borrower to pay HOA dues or other assessments? 	
<ul style="list-style-type: none"> • advise the borrower to obtain the advice of a tax consultant? 	