



MORTGAGE BANKERS ASSOCIATION

March 13, 2024

The Honorable Julia Gordon
Assistant Secretary for Housing & Federal Housing Commissioner
Federal Housing Administration
Department of Housing and Urban Development
451 7th Street S.W.
Washington, DC 20410

RE: Permanent Loss Mitigation Waterfall

Dear Commissioner Gordon,

The Mortgage Bankers Association (MBA)¹ appreciates the efforts of the Federal Housing Administration (FHA) to engage with the industry to craft effective loss mitigation guidance to protect borrowers from foreclosure, especially the recently announced Payment Supplement program.² As you know, access to the FHA's COVID-19 Recovery Loss Mitigation Waterfall ("COVID waterfall") will expire on April 30, 2025. MBA believes that maintaining the flexibility available to distressed borrowers throughout the pandemic is essential to preserving affordable homeownership for future borrowers and the health of the Insurance Fund. Today, MBA proposes specific recommendations for FHA's permanent loss mitigation waterfall and home retention policy well ahead of the COVID-19 waterfall expiration.

Last year, MBA published our *Future of Loss Mitigation* white paper before the expiration of the COVID-19 National Emergency.³ We advocated for the agencies to preserve critical features of the pandemic loss mitigation waterfalls that were successfully implemented by mortgage servicers. After more than three years of innovation, servicers have altered

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 300,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,200 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

² Mortgagee Letter 2024-02, Payment Supplement

³ <https://mba.org/lossmitigation>

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technology, borrower communications, and processes to provide distressed borrowers with opportunities to resolve their financial hardships timely. For these reasons, our members supported extending FHA's waterfall. Put simply, it worked and future borrowers should have the same opportunity to access these options.

Permanent loss mitigation and home retention guidance should build upon the lessons learned. The recommendations reflect three principles most appropriately ascribed to the COVID-19 pandemic experience – simplicity, standardization, and sustainability. As the volatile interest rate conditions recently demonstrated, creating a durable loss mitigation framework for all market conditions is necessary for mortgage servicers to continue providing payment relief.

To that end, FHA should consider four priorities when redesigning policy and improving the homeownership experience. Specifically, we encourage FHA to:

1. **Align guidance closely with Fannie Mae and Freddie Mac.** FHA should model the application process after the Government Sponsored Enterprises (GSEs). Borrowers should only provide documentation to support the specific hardship. Additionally, FHA should distinguish a Forbearance Plan from a Repayment Plan – using terminology consistent with the GSEs.
2. **Ensure access to streamline loss mitigation solutions for seriously delinquent borrowers.** Industry research has long demonstrated that payment reduction – not documentation standards – leads to favorable outcomes for borrowers.⁴ An unnecessary paper chase can delay or prevent a borrower from qualifying for home retention solutions. Servicers must be able to offer readily available solutions to a borrower's hardship promptly after establishing contact.
3. **Create one waterfall.** FHA currently separates standard guidance from natural disaster and pandemic guidance. Borrowers facing financial hardship should have access to the same loss mitigation solutions regardless of the reason for hardship. To ensure that borrowers receive a consistent loss mitigation experience, the COVID-19 waterfall should remain the standard policy for all hardships.
4. **A standalone partial claim must be preserved.** The partial claim must remain available to borrowers in a servicer's loss mitigation toolkit. A partial claim cures short-term delinquencies timely, enables wider adoption of forbearance, and is interest rate neutral. Its effectiveness is demonstrated as the most common home-

⁴ Several articles support this conclusion. [Analysis and Evaluation of Loss Mitigation Efforts Draft Report \(huduser.gov\)](https://huduser.gov/); <https://nysba.org/NYSBA/Coursebooks/Fall%202016%20Coursebooks/Mortgage%20Foreclosures%20and%20Workouts/One%20Mod%20-Principles%20for%20Post-HAMP%20Loan%20Modifications.pdf>; [Government Loan Modifications \(urban.org\)](https://www.milliman.com/-/media/milliman/pdfs/2023-articles/9-25-23_assessing-the-effectiveness-of-payment-reduction_20230925.ashx); https://www.milliman.com/-/media/milliman/pdfs/2023-articles/9-25-23_assessing-the-effectiveness-of-payment-reduction_20230925.ashx

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retention tool.⁵ In turn, borrowers who need payment reduction will complete a modification only when doing so offers a better outcome.

Detailed recommendations are outlined below.⁶ To close, we encourage FHA to consider using the Single-Family Drafting Table to solicit industry comments in advance of publishing final guidance. Advance notice allows servicers to provide implementation insights and useful feedback before being held to mandatory compliance.⁷

We appreciate FHA's consideration of these comments. Should you have questions or wish to discuss these issues further, please contact Brendan Kelleher at bkelleher@mba.org.

Sincerely,



Pete Mills
Senior Vice President
Residential Policy and Strategic Industry Engagement
Mortgage Bankers Association

⁵ According to FHA's FY2023 Annual Report to Congress (available at <https://www.hud.gov/sites/dfiles/PA/documents/2023FHAAnnualReportMMIFund.pdf>).

⁶ Please see Appendix A (contrasting the evolution of FHA's loss mitigation guidance) and Appendix B (outlining a permanent waterfall for consideration).

⁷ The Consumer Financial Protection Bureau is also considering amendments to the mortgage servicing rules under Regulation X. MBA anticipates substantial changes to the early intervention and loss mitigation provisions, which will affect a servicer's ability to implement FHA's loss mitigation guidance. The Drafting Table will allow servicers to provide comments on the implementation of FHA's changes, while also allowing the opportunity to carefully consider the impact of the proposed amendments from the Bureau. These recommendations are in the best interest of borrowers but would not comply with the current framework.



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APPENDIX A: FHA Home Retention Waterfall - FHA HAMP vs. FHA COVID-19 Recovery Waterfall vs. “The Future”⁸

Characteristic	FHA HAMP	FHA COVID Recovery Waterfall	MBA Recommendation for “The Future”	Commentary
Complete Loss Mitigation Application	<ul style="list-style-type: none"> Documentation for Hardship (Fannie Mae/ Freddie Mac Form 710 or something similar) Credit Report Income and asset documentation (as required on Form 710) 	Obtain borrower confirmation that they are able to afford either: <ul style="list-style-type: none"> Current Mortgage Payment OR Lowest Payment Possible under COVID Recovery Waterfall 	<ul style="list-style-type: none"> Documentation <u>for Hardship</u> (Fannie Mae/ Freddie Mac Form 710 or something similar) for imminent default borrowers⁹ Borrower affirms whether they can afford the current mortgage payment OR lowest possible payment under the Home Retention Waterfall 	Please note our recommendation for Trial Payment Plans for borrowers in imminent default to ensure affordability, in addition to documenting a borrower’s hardship.

⁸ This overview is not meant to be an exhaustive list of all program requirements but rather a highlight of key requirements and comparisons between these programs. Consult HUD Handbook 4000.1 for comprehensive list of FHA HAMP and COVID Recovery options and requirements.

⁹ All information can be captured verbally, electronically or in print form.

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Characteristic	FHA HAMP	FHA COVID Recovery Waterfall	MBA Recommendation for “The Future”	Commentary
Target Payment	<ul style="list-style-type: none"> Combination of % of gross income and % of current Mortgage Payment: <ul style="list-style-type: none"> A) 31% of gross income B) 80% of current Mortgage Payment C) 25% of gross income D) Take greater of B or C E) Lesser of A or D No greater than 40% of gross income 	<ul style="list-style-type: none"> 25% Reduction in P&I Portion of the current Mortgage Payment Where Target Payment is not achieved, provide lowest payment possible given the plan parameters 	<ul style="list-style-type: none"> 20% reduction in P&I Portion of the current Mortgage Payment. Where Target Payment is not achieved, servicers provide lowest payment possible given the plan parameters 	<p>Reducing the payment target to 20% further preserves partial claim funds for borrowers that may face future hardships, such as a natural disaster.</p>
Program Restriction – Repeat Home Retention Options	<p>Borrower cannot have executed an FHA-HAMP agreement in the previous 24 months</p>	<p>No prohibition pertaining to repeat home retention options</p>	<p>Borrower cannot have completed a Home Retention Option in the previous 24 months (excluded in the case of the Payment Supplement and Natural Disasters). Also, seasoning calculations should be based off the first payment due date of the modification or partial claim, instead of the date of execution.</p>	<p>An issue of concern is the undefined use of loss mitigation products that could lead to indefinite foreclosure avoidance and adversely affect product performance. Additionally, seasoning requirements should only apply to the solution that has been completed.</p>
30-year Modification Interest Rate	<p>No greater than PMMS Rate (rounded to nearest 1/8th) + 25 basis points</p>	<p>No greater than PMMS Rate (rounded to nearest 1/8th)</p>	<p>No greater than PMMS Rate (rounded to nearest 1/8th) + 25 basis points</p>	<p>N/A</p>
40-year Modification Interest Rate	<p>N/A</p>	<p>No greater than PMMS Rate (rounded to nearest 1/8th) + 50 basis points</p>	<p>No greater than PMMS Rate (rounded to nearest 1/8th) + 50 basis points</p>	<p>N/A</p>

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Characteristic	FHA HAMP	FHA COVID Recovery Waterfall	MBA Recommendation for “The Future”	Commentary
<p>Suite of Options intended to achieve Target Payment</p>	<ul style="list-style-type: none"> • Informal or Formal Forbearance • Special Forbearance – Unemployment • FHA HAMP options – First option that achieves Target Payment: <ul style="list-style-type: none"> ○ FHA HAMP Standalone Modification (30 year) ○ FHA HAMP Standalone Partial Claim ○ FHA HAMP Combination Loan Modification and Partial Claim (30 year) • Formal Forbearance (If ineligible for all home retention options) 	<ul style="list-style-type: none"> • COVID-19 Forbearance • Informal or Formal Forbearance • Special Forbearance – Unemployment • COVID-19 Advance Loan Modification (achieves target payment through capitalized loan modification of 30 years) • COVID-19 Recovery Standalone Partial Claim (for use when borrowers can make their normal mortgage payment) • COVID-19 Recovery Modification (seek to achieve target payment using a 30 year or 40-year modification while using available partial claim) 	<ul style="list-style-type: none"> • Temporary Hardship <ul style="list-style-type: none"> ○ Forbearance ○ Repayment Plan ○ Standalone Partial Claim • Permanent Hardship <ul style="list-style-type: none"> ○ Target Payment Reduction Achieved: <ul style="list-style-type: none"> ▪ 30-year modification ▪ 40-year modification ▪ Combination of a modification and Partial Claim of either 30 or 40 years ○ Payment Supplement¹⁰ 	<p>FHA must continue to allow for one, dynamic waterfall to resolve any hardship and helps borrowers achieve the most affordable payment. To do so, we recommend that solutions are centered around temporary versus permanent hardships, there is a distinction between a Forbearance and Repayment Plans, and standalone partial claim remains “higher” in the waterfall than a modification.</p>

¹⁰ FHA could also consider a Repayment Plan as a backstop after the Payment Supplement for borrowers that do not qualify for a home retention solution or do not want an increased term/rate. A repayment plan backstop could be up to 12 months to allow borrowers the opportunity to qualify for a modification.

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Characteristic	FHA HAMP	FHA COVID Recovery Waterfall	MBA Recommendation for "The Future"	Commentary
Forbearance Plan¹¹	<ul style="list-style-type: none">• 3 months for Informal Forbearance• Up to 6 months for Formal Forbearance• Up to 12 months for Unemployment-Forbearance• Up to 12 months for Natural Disasters	Up to 12 months per the CARES Act	Up to 12 months.	FHA's permanent forbearance policy should align with existing practices by making the Unemployment Forbearance policy standard guidance (i.e., an initial term of 6 months in 3-month increments. Proof of an ongoing hardship would only be required to extend forbearance for another 6 months). FHA should eliminate "Informal" versus "Formal" Forbearance guidance. Servicers will issue notice to borrowers 30 days before the end of forbearance advising borrowers that additional action is needed to pursue a permanent loss mitigation solution.

¹¹ Forbearances and Repayment Plans should also qualify as extensions to the First Legal and Reasonable Diligence Deadlines, as well as incentives.

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Characteristic	FHA HAMP	FHA COVID Recovery Waterfall	MBA Recommendation for “The Future”	Commentary
Repayment Plan (Formal Forbearance) Length¹²	6 months	6 months	No greater than 12 months	Term length aligns with forbearance guidance. FHA’s surplus income standard should also be eliminated. Instead, a borrower’s affordable payment is identified by the amount sufficient to repay arrears over the appropriate term. Extending the term to 12 months aligns term length standards with the applicable forbearance term and gives the borrower more opportunity to achieve an affordable payment.
Trial Payment Plan Requirement	Required for all FHA HAMP options	Only required for borrowers facing Imminent Default	Required when target payment is not achieved or for borrowers facing Imminent Default	The required use of a Trial Payment Plan creates industry consistency and ensures borrowers demonstrate affordability.
Occupancy Requirements for Home Retention Options	FHA HAMP Modifications are only available to Owner occupants; non-Owner occupants are only eligible for Informal or Formal Forbearance	COVID Recovery Waterfall is available to Owner Occupants and Non-Owner Occupants	Loss Mitigation Waterfall is available to Owner Occupants and Non-Owner Occupants	N/A

¹² See Footnote 10.

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Characteristic	FHA HAMP	FHA COVID Recovery Waterfall	MBA Recommendation for "The Future"	Commentary
Borrower Solicitations	N/A	Advance Loan Modification	Advance Loan Modification	ALM's accounted for approximately 3% of Home Retention Options Completed through FY 2023. ¹³ The success of the ALM has demonstrated that unengaged borrowers are able to receive a successful outcome.

¹³ According to FHA's FY2023 Annual Report to Congress <https://www.hud.gov/sites/dfiles/PA/documents/2023FHAAnnualReportMMIFund.pdf>

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APPENDIX B: Proposed Waterfall¹⁴

Question	Decision Point	Yes	No
1	Has the Borrower responded to outreach efforts by their servicer to establish contact?	Question 3	Question 2
2	Can the mortgage payment be reduced by 20% by re-amortizing the total outstanding debt for 360 months at the Market Rate?	Solicit Modification	Streamline Question 3
3	Has the Borrower experienced a loss of income or increase in expense rendering them unable to make a payment?	Forbearance	Question 4
4	Can the Borrower resume making on time mortgage payments?	Evaluate Standalone PC	Question 5
5	Can the borrower repay the indebtedness within 6 months?	Offer Repayment Plan	Question 6
6	Can the mortgage payment be reduced by 20% by re-amortizing the total outstanding debt for 360 months at the Market Rate + Margin?	Offer Standalone Modification	30-year Question 7
7	Can the mortgage payment be reduced by 20% by using Partial Claim funds to cure the arrearages and defer additional principal, while re-amortizing the total outstanding debt for 360 months at the Market Rate + Margin?	Offer Combination and Partial Claim	30-year loan modification Question 8
8	Can the mortgage payment be reduced by 20% by re-amortizing the total outstanding debt for 480 months at the Market Rate + Margin?	Offer Standalone Modification	40-year Question 9
9	Can the mortgage payment be reduced by 20% by using Partial Claim funds to cure the borrower’s arrearages and defer additional principal, while re-amortizing the total outstanding debt for 480 months at the Market Rate + Margin?	Offer Combination and Partial Claim	40-year loan modification Question 10
10	Can any Modification (that may also include a Partial Claim component) achieve a minimum 10% payment reduction?	Offer Modification	Question 11
11	Does the Payment Supplement reduce the Borrower’s P&I payment by at least \$20.00?	Offer the Payment Supplement	Question 12
12	Can the Borrower affirm the ability to repay the indebtedness within 12 months?	Repayment Plan	Question 13
13	Does the Borrower meet the requirements to participate in a Pre-Foreclosure Sale (PFS)?	Streamlined Standard PFS	PFS or Question 14

¹⁴ Appendix B complements Appendix A above. It is not intended as an explicit policy proposal that reflects a linear process and exhaustive borrower experience.

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Does the total outstanding debt remain uncurable and was an attempt made to market the Property under the PFS Program?

Streamlined
Standard DIL

DIL

or

Foreclosure