



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

OFFICE OF HOUSING

JUN 03 2016

Mr. Stephen A. O'Connor
Senior Vice President, Public Policy & Industry Relations
Mortgage Bankers Association
1919 M Street NW, 5th Floor
Washington, DC 20036

RE: Requests for clarification/revision of FHA policy guidance

Dear Mr. O'Connor:

Thank you for your letter regarding priority issues of MBA members and requests for clarification or revision of FHA policy guidance.

FHA's responses to the priority issues identified in Appendix A of your letter are provided in the enclosed Question and Answer (Q&A) document. Responses to additional issues/concerns you raised in your letter are provided below.

1. The March 14th Update to Handbook

You raised a concern about the addition of a new HUD reconveyance option for mortgagee failure to comply with the terms of the insurance contract and asserted that "insurance contract" was not a defined term and HUD did not have regulatory authority to establish this policy. Neither assertion is correct. Contract of Insurance is a term defined under 24 CFR § 203.251(j) of Subpart B as "the agreement evidenced by the issuance of a Mortgage Insurance Certificate or by the endorsement of the Commissioner upon the credit instrument given in connection with an insured mortgage, incorporating by reference the regulations in this subpart and the applicable provisions of the Act" (National Housing Act). Regulations 24 CFR § 203.261 and § 203.263 of the same Subpart B provide authority to reconvey property for failure to comply with regulations. 24 CFR § 203.261 provides that property transfer and acceptance by the Commissioner is subject to compliance with the regulations in this part. 24 CFR § 203.263, *Effect of noncompliance with regulations*, provides authority in subparagraphs a and b to reconvey title to the property to the mortgagee, if, for any reason, the mortgagee fails to comply with the regulations in this subpart.

FHA has therefore determined that the revised Handbook language referencing the insurance contract is appropriate and that language will be retained.

2. The Treatment of Over-Allowables

As indicated in the enclosed Q&A document, the Maximum Property Preservation Allowance is increased by any over-allowables approved after the \$5,000 cap has been reached. A chart detailing requirements for over-allowable requests is provided in Section III.A.2.t.ii(C)(4)(c)(ii) of the FHA Single Family Policy Handbook (4000.1). The chart clearly provides that once the P&P expense total exceeds \$5,000, all additional P&P costs need over-allowable approval.

3. Trial Payment Plans

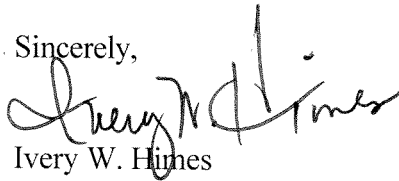
FHA has provided a response to this concern in the enclosed Q&A document. As stated there, FHA has determined that there is no existing conflict between CFPB regulations and FHA requirements. The established policy provides ample time for the borrower(s) to sign and return the written TPP Agreement and FHA will not waive or remove the requirement to do so.

4. Bankruptcy

As stated in the enclosed Q&A, 90 days from the date plan payments become 60 days delinquent provides ample time for mortgagees to either obtain Bankruptcy Plan payment from the Trustee or relief from the bankruptcy stay. FHA expects mortgagees to take timely and appropriate actions when Bankruptcy Plan payments are not made when due and the requested change to the authorized timeframe for recommencing foreclosure for Chapter 11, 12, or 13 bankruptcies will not be made.

I hope this information is helpful to you. If you have any questions or if I can be of assistance on any FHA matters, please contact me at (202) 402-5628.

Sincerely,



Ivery W. Hines
Director
Office of Single Family Asset Management

Enclosure

HUD ML 2016-02 Clarification Requests

1. Maximum Property Preservation Allowance

The Maximum Property Preservation Allowance is a pre-approved reimbursement for the aggregate of all P&P expenses that do not exceed the line item allowable listed on the Property Preservation Allowances schedule (Appendix A).

Please confirm the calculation of the \$5000 cap excludes work completed per over allowable approval from HUD's MCM contractor.

FHA Response: The Maximum Property Preservation Allowance is increased by any over-allowables approved after the \$5,000 cap has been reached. As stated in Section IV.A.2.D(1) of the FHA Single Family Policy Handbook (4000.1), HUD will reimburse Mortgagees up to the Maximum Property Preservation Allowance, or as permitted by HUD as approved over-allowables, for Property P&P actions so long as:

- the actions are performed before the date of conveyance, even if the Mortgagee renders payment after conveyance; and
- the actions are performed in accordance with HUD guidance

2. Conveyance of Properties without Prior HUD Approval

The mortgagee may convey properties without prior written approval if the property is in conveyance condition, with no Surchargeable Damage, and the aggregate of all allowable property P&P expenses does not exceed the Maximum Property Preservation Allowance and claimed P&P costs do not exceed the line-item Property Preservation Allowances.

Please confirm that servicers are not required to seek prior approval to convey a property when the maximum property cap has been exceeded and HUD or its contractor has approved work via over allowable approval. Over allowable approvals from HUD or its contractor should constitute pre-approval to convey with those incurred costs over the maximum property preservation allowable of \$5000.

FHA Response: HUD's Mortgagee Compliance Manager (MCM) does not make a surchargeable/non-surchargeable decision when reviewing over-allowable requests. The review is only to determine the reasonable cost and necessity of property preservation and protection actions. The Mortgagee may convey Properties without prior written approval when:

- **the Property is in conveyance condition**, with no Surchargeable Damage; and
- the aggregate of all allowable Property P&P expenses does not exceed the Maximum Property Preservation Allowance or an additional amount permitted by HUD as approved

over-allowables and claimed P&P costs do not exceed the line item Property Preservation Allowances.

However, to be conveyable without prior approval, the mortgagee must properly certify the conveyance condition of the property as provided under FHA regulation 24 CFR § 203.380. Per that regulation, the mortgagee must certify that **the property was undamaged while the property was in the possession of the mortgagee** for mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's underwriter on or after November 19, 1992. If the property was damaged while in possession of the mortgagee on such a case, the mortgagee must provide notice of such damage to the Secretary and may not convey until directed to do so by the Secretary as provided under FHA Regulation 24 CFR § 203.379(b). That requirement is also specified in Section III.A.2.D(2), *Conveyance Requiring HUD Approval*, of the FHA Single Family Policy Handbook.

In cases of Non-Surchageable Damage that occurred during the time of the Mortgagee's possession, HUD may require the Mortgagee to repair such damage before conveyance, and HUD will reimburse the Mortgagee for reasonable payments not in excess of the Secretary's estimate of the cost of repair, less any insurance recovery as provided in FHA Regulation 24 CFR § 203.379(b) and specified in Section IV.A.2.ii(A)(2)(a).

3. Vacant property inspections are required to be performed every 25-35 days. However, the claims handbook section refers to inspections "performed for each 30-day cycle..."

Please reconcile the language in the claims section and confirm HUD's intent is to ensure monthly inspections are completed within the 25-35 day timeframe regardless of occupancy status.

FHA Response: No reconciliation of language is needed and FHA will not provide the confirmation requested. Sections III and IV of the FHA Single Family Policy Handbook each refer to a periodic 25-35 day timeframe for property inspections performed in accordance with HUD guidance. That guidance calls for monthly inspections of **vacant properties**. The FHA Single Family Policy Handbook provides one exception for Occupancy inspections during Bankruptcy. For Bankruptcy cases, the mortgagee must continue to perform exterior-only visual inspections until the default is cured, the property is disposed of, or the bankruptcy court has granted approval for the mortgagee to contact the borrower or to take any required property P&P actions. If the mortgagee determines that the property is vacant or abandoned during the period in which the mortgagee is prohibited from contacting the borrower, the mortgagee must:

- note the date it made its determination in the servicing file; and
- contact the bankruptcy trustee or borrower's attorney to determine whether the mortgagee may begin property P&P actions.

4. The mortgagee must ensure that all equipment, fixtures, and appliances present at the FTV Property Inspection and associated with origination collateral remain in the property...”

Please confirm appliances not present at FTV, regardless of whether they were associated with origination collateral, are not required to be replaced prior to conveyance.

FHA Response: The cited guidance addresses the situation where equipment, fixtures and appliances are present in the property when the first time vacancy inspection is performed. If any of those items are absent, the mortgagee must document the absence in the first-time vacancy inspection report and associated photographs of the interior areas. The documentation requirements for the First-Time Vacant Property Inspection are specified in the FHA Single Family Policy Handbook.

When prior existing damage is properly documented, the mortgagee shall not be liable for the damage and would not be required to replace the missing items. If not properly documented at the time of the first-time vacancy inspection, HUD will consider the damage to have been sustained during the time of the mortgagee’s possession. In those cases, HUD may require the missing items to be replaced prior to conveyance and the mortgagee shall be responsible for the damage when it is due to mortgagee neglect.

5. Over allowable requests are required when:

- Initial efforts to eliminate the mold or organic growth and to remove moisture are ineffective and additional treatments are needed to remove moisture and prevent mold and moisture damage; or
- The mold or organic growth poses a potential health and safety hazard.

Where the mold or organic growth poses a potential health and safety hazard, the mortgagee must submit two independent bids for mold remediation.

Please confirm that an over allowable request can be submitted without the need for two independent bids for full remediation in situations in which the mold can be treated or cleaned for an amount above the allowable of \$300 in Appendix A.

FHA Response: As stated in Section III.A.2.t.ii(C)(7)(e)(ii) of the FHA Single Family Policy Handbook (4000.1), the Mortgagee must include at least two bids from licensed or certified mold remediation or hazardous materials Contractors with an over-allowable request when the mold or organic growth poses a potential health and safety hazard. Two bids would not otherwise be required for over-allowable requests to exceed the line item(s) in Appendix 6.0 for Molds, Fungus, Discoloration and Related Moisture Damage and Organic Growth or when initial efforts

to eliminate the mold or organic growth and to remove moisture are ineffective and additional treatments are needed to remove moisture and prevent mold and moisture damage.

6. ML 2016-02 is silent on eviction allowables and process. ML 2008-31 stated, “If a Mortgagee is required by local law to remove trash and debris from the property as part of an eviction and the Mortgagee has no control over the timing of removal, the costs for removing the items are considered eviction expenses and are not subject to the debris removal cost guidelines”. The 2010-18 FAQ guidance provided the following questions and answers:

77) Please provide clarification that eviction man hours and/or sheriff directed services are not to be included in the max cap for a property.

Answer–The eviction process has not changed. Man hours are not included in the \$2,500 property cap.

78) The reimbursement rate for evictions is not defined. Please confirm the allowable rate will remain at \$20 per man hour?

Answer–Yes, that rate will remain \$20/man hour.”

Please incorporate the prior guidance and confirm that servicers should continue to remove debris associated with an eviction per man hour at \$20 per man hour, as required by local law enforcement and that such eviction costs are not included in the max cap for a property.

FHA Response: Eviction man hours and/or sheriff directed services are eviction expenses and should not be included or claimed as P&P expenses. Claimed costs must be both reasonable and customary and that is the standard that mortgagees should follow at this time. As stated in Section III.A.2.s.viii of the FHA Single Family Policy Handbook (4000.1), the Mortgagee must ensure that evictions are conducted in accordance with state and local law and:

- with no more than four people for a townhouse or condominium; and
- with no more than six people for a Single Family detached dwelling.

In addition, the Mortgagee must include in the Claim Review File:

- photographs showing that all Personal Property and debris have been removed from the Property as part of the eviction;
- the number of people required and present to complete the eviction;
- whether the eviction was canceled or re-scheduled; and
- documentation supporting eviction costs, including those costs due to state or local law requirements for eviction timeframe, removal, or storage.

The maximum allowance for Storage and disposition of Personal Property is \$300 per property as stated in Appendix 6.0 of FHA Single Family Policy Handbook (4000.1)

7. Appendix A is very detailed with regard to the allowable limits per unit or calendar year or life of the loan but does not contain reference to cleaning refrigerators, freezers, and toilets.

Please confirm that the allowables for cleaning of the refrigerator/freezer or toilet should be applied as “per unit” or “each.” Note that most properties only have 1 refrigerator, so multiples should be an exception.

FHA Response: Appendix 6.0 of the FHA Single Family Policy Handbook (4000.1) provides a line item maximum of \$50 for each refrigerator/freezer cleaning and \$50 for each toilet cleaning. Mortgagees must submit an over-allowable request for related costs exceeding those amounts per property.

8. HUD has always honored over allowable approvals for work completed and bid after the fact due to emergent conditions or local laws requiring immediate completion, such as debris removal due to excessive amount posing a code violation.

Please confirm that servicers do not need over allowable approval to protect the property and that work completed prior to the approval date is reimbursable subject to appropriate supporting documentation.

FHA Response: FHA has established maximum line item and per property preservation allowances. Regardless of when the work is done, mortgagees must submit over-allowable requests for costs exceeding those allowances and the excess costs are only reimbursable in an insurance benefits claim if the mortgagee has received over-allowable approval. Please keep in mind that over-allowables must be submitted any time the \$5,000 property cap is being exceeded.

9. The industry is appreciative of the expanded allowables, including the “actual cost to register and comply with all VPR ordinance requirements.” However, fees in some jurisdictions are in excess of \$1000 which will significantly limit the servicer’s ability to perform necessary work at time of initial secure. For example, the city of Minneapolis is \$6948 and St. Paul is \$2025.

As the initial registration fee is not controllable by the servicer, please clarify that VPR ordinance and registration fees should be excluded from the calculation of the \$5000 property cap.

FHA Response: The actual cost to register and comply with all VPR ordinance requirements (provide supporting documentation) is reimbursable in an insurance benefit claim and the cost is

an excluded item that the mortgage should not include in calculating the P&P Expense total for the property.

10. The first column heading on the over allowable table is confusing: If Total P&P Expenses Minus Excluded Line Items Claimed on form HUD-27011, Part C is:

Please change the heading to read “If claimed property preservation expenses are:”

FHA Response: The purpose of the heading is to communicate that HUD identified exclusions that must be claimed on form HUD-27011, Part C should be deducted from the P&P Expense total. The actual cost to register and comply with VPR ordinance requirements (provide supporting documentation) is an excluded cost for determining the need for over-allowable approval.

HUD ML 2016-03 Clarification Requests

1. Reasonable Diligence Compliance: Related to Self-Curtailment

Mortgagees are responsible for self-curtailment of interest and property expenses on single-family claims when Reasonable Diligence timeframes or reporting requirements are not met.

- What are the specific regulations that provide FHA with the authority to curtail property expenses for failure to meet reasonable diligence? Note that FHA defines property expenses as excluding real estate taxes and hazard insurance premiums.
- Please confirm whether the effective date is the same as the effective date for the Reasonable diligence timeframes or just for cases in which the first legal is filed on or after 1/1/16.
- Please clarify what expenses are considered “property expenses”? Please confirm that property expenses do not include attorney fees and costs, MIP or eviction costs in addition to real estate taxes and hazard insurance premiums.
- Please clarify whether the reporting requirements are limited to the 68 reporting for the foreclosure first legal action where the interest and expenses are curtailed when the requirement is not met. If not, please confirm that delay in reporting SFDMS does not result in curtailment of expenses for operating or preserving the property, or removing debris from the property.

FHA Response: Regulations 24 CFR § 203.402(g)(2) and 24 CFR § 203.359(b) provide authority for HUD to curtail property expenses for failure to meet reasonable diligence requirements. 24 CFR § 203.402(g)(2) lists among items includable in insurance benefit claims (for insurance commitments on or after November 19, 1992) “reasonable payments made by the mortgagee, with the approval of the Secretary, for the purpose of protecting, operating, or

preserving the property, or removing debris from the property **prior to the time of conveyance required by § 203.359** of this part.” 24 CFR § 203.359(b) states:

“The mortgagee **must** acquire good marketable title and transfer the property to the Secretary **within 30 days of the later of:**

- (i) Filing for record the foreclosure deed;
- (ii) Recording date of deed in lieu of foreclosure;
- (iii) Acquiring possession of the property;
- (iv) Expiration of the redemption period; or
- (v) Such further time as the Secretary may approve in writing.

The curtailment requirement for failure to meet reasonable diligence requirements of 24 CFR § 203.359(b) applies to insurance benefit claims for insurance commitments on or after November 19, 1992. The referenced property expenses are payments made by the mortgagee for the purpose of protecting, operating, or preserving the property, or removing debris from the property, as stated in 24 CFR § 203.402(g)(2).

2. Effective Date - Reasonable Diligence

The updated Reasonable Diligence timeframes are effective for all cases in which the deadline for taking First Legal Action to initiate foreclosure occurs on or after January 1, 2016.

This language is significantly different from previous guidance which based the effective date on the date the first legal action was actually filed.

FHA Response: FHA agrees that the language is different than that previously used. However, the new language properly conveys the intended meaning. The updated Reasonable Diligence timeframes are effective for all cases in which the deadline for taking First Legal Action to initiate foreclosure occurs on or after January 1, 2016.

3. Reasonable Diligence Timeframe Delay due to Bankruptcy

The timeframe for recommencing foreclosure varies based on the Chapter under which the bankruptcy is filed as provided below:

- For a Chapter 7 bankruptcy, HUD automatically grants an extension through the date that is 90 days after the date of the release of stay;
- For Chapter 11, 12, or 13 bankruptcies, HUD automatically grants an extension through the date that is 90 days from the date that the payments under the Bankruptcy Plan became 60 days delinquent

The automatic extension should begin based on the relief of stay and not tied to payments being past due. Trustees make plan payments and often hold payments for months before making them. Borrowers have no control over when the trustee makes the payments and could be current on their post-petition mortgage payments even if the trustee has not made plan payments.

FHA Response: 90 days from the date plan payments become 60 days delinquent provides ample time for mortgagees to either obtain Bankruptcy Plan payment from the Trustee or relief from the bankruptcy stay. FHA will not make the requested change to the authorized timeframe for recommencing foreclosure for Chapter 11, 12, or 13 bankruptcies.

4. Attachment 3 Schedule of Attorney Fees

Attachment 3 includes non-judicial foreclosure fees for MD and UT and judicial foreclosure fees for HI and SD. However, Attachment 1 provides Reasonable Diligence timeframes for both Judicial and Non Judicial actions in these states.

Please provide attorney fees for both judicial and non-judicial foreclosure actions in MD, UT, HI and SD.

FHA Response: A non-judicial process is the primary method of foreclosure in Maryland, Utah and South Dakota. A judicial process is the primary method of foreclosure in Hawaii. Mortgagees should normally use the primary foreclosure process available in each of those states. If the mortgagee determines that an alternate foreclosure process is warranted for a particular mortgage, the mortgagee may claim, without prior approval, an attorney fee up to the amount authorized for the primary foreclosure process in the applicable state. Prior approval from HUD is required to exceed the amount in the Attorney Fee Schedule for the applicable state.

Appendix 4.0 of FHA Single Family Policy Handbook (4000.1) will be revised to provide clarification in a Handbook update.

5. Example 5

In this example, possessory action should have been initiated by February 9, 2014 but was not initiated until February 19, 2014. The example states that the curtailment date on form HUD-27011, Item 31 (Mortgagee Reported Curtailment date) should be February 19, 2014.

Please confirm that the correct the curtailment date should be 2/9/14.

FHA Response: The correct curtailment date should be February 9, 2014.

6. Example 6

Date of Possession and Acquisition of Marketable Title was acquired by the mortgagee on December 29, 2013, and the mortgagee had 30 days from that date (i.e., until January 28, 2014) to convey the property to HUD. The deed to HUD was not filed for recording until February 28, 2014. Accordingly, the mortgagee's failure to timely convey the property to HUD requires a curtailment of interest to January 28, 2014, and this date must be reflected on form HUD-27011, Item 31 (Mortgagee Reported Curtailment Date).

Example 6 indicates a curtailment date is required due to failed conveyance timeframe; however, this may result in an error code. Per 4330.4 2-10, the date in Item 31 should never be equal to or later than the date in Item 9.

FHA Response: FHA will address this conflict in an upcoming directive.

7. Reasonable Diligence Requirements

Attachment 1 lists Nebraska's normal method of foreclosure as judicial and Petition as the first legal action. However, the primary method of foreclosure in Nebraska is non-judicial and the first legal action required to commence a non-judicial foreclosure is the Recording of the Notice of Default. Neb. Rev. Stat. §§ 76-1006, 76-1008

FHA Response: FHA agrees that a non-judicial process is the primary method of foreclosure in Nebraska and recordation of a notice of default is the first required legal action to initiate a non-judicial foreclosure. Appendix 5.0 of FHA Single Family Policy Handbook (4000.1) will be revised to provide the correct First Legal Action to Initiate Foreclosure in a Handbook update.

8. Delays and Compliance with Reasonable Diligence Timeframes

When certain delays in completing foreclosure and acquiring possession are caused by circumstances beyond the mortgagee's control, the mortgagee may obtain an extension to Reasonable Diligence timeframes. The period of time associated with delays in completing the foreclosure process may be excluded from the calculation of the time to complete foreclosure when HUD has granted an extension or permitted the use of an automatic extension.

However, the Handbook states: When circumstances beyond the Mortgagee's control occur, the Mortgagee may treat delays in completing the foreclosure process as exceptions to the Reasonable Diligence Timeframes and may exclude such delays when calculating the time to complete a foreclosure if an extension has been granted by HUD.

Please amend the Handbook to reflect that granted extensions are not necessary for delays beyond a servicers control such as court or mediation delays or other automatic extensions.

FHA Response: The referenced circumstances beyond the Mortgagee's control that may be treated as exceptions to the Reasonable Diligence Timeframes are those listed in Section III.A.2.r.ii(E)(2) of the FHA Single Family Policy Handbook (4000.1). Those are:

- (a) Delay Due to Use of Loss Mitigation Home Retention Option
- (b) Delay Due to Foreclosure Mediation
- (c) Delay Due to Active Duty Military Service
- (d) Delay Due to Bankruptcy
- (e) Delay in Acquiring Possession

FHA has granted specific extensions of time for each of those situations in this referenced Handbook section and the requested revision is not necessary.

HUD ML 2016-04 Clarification Requests

1. The Mortgagee Letter is effective for all FHA-insured mortgages in default on or after October 1, 2015.

Please confirm that this includes all loans with a default date of 10/1/15 or after.

FHA Response: Mortgagee Letter 2016-04 is effective for all FHA-insured mortgages in an active default status on or after October 1, 2015. The initial default date may be before October 1, 2015.

2. HUD provides an automatic 90-day extension to the initiation of foreclosure timeline for those cases in which the mortgagee needs additional time to comply with the appeals process required by the CFPB. The 90-day extension begins on the date the mortgagee denies loss mitigation and sends the borrower the notice required under CFPB regulations.

The appeal process does not begin until the borrower responds to the denial. The borrower has 14 days from the denial to appeal. Further, the servicer has 30 days to formally respond to the borrower appeal. In the case where a borrower exercises their right to an appeal, foreclosure is prohibited until the servicer formally responds to the borrower's appeal.

Please clarify that the 90-day extension begins from the date the servicer formally responds to the borrower's appeal and not from the point of loss mitigation denial.

FHA Response: Mortgagees are allowed an automatic 90-day extension, from the date the borrower has been denied loss mitigation, to comply with the appeals process required by federal regulation as is stated in Mortgagee Letter 2016-04. The authorized 90-day extension provides

ample time for the required appeal and appeal response periods under the applicable CFPB regulation and to commence foreclosure proceedings when necessary. No additional automatic extension of time to initiate foreclosure will be provided.

3. Where a federal regulation requires a delay in the initiation of foreclosure and such delays are not otherwise covered by any other available automatic extensions, the mortgagee must initiate foreclosure no later than 90 days after the expiration of the time during which foreclosure is prohibited.

SFDMS reporting does not support a code for Federal Regulation. Will the SFDMS codes be updated to reflect a code or will a current code be designated?

FHA Response: FHA intends to establish a new SFDMS code for Federal regulation delays for future mortgagee use.

Handbook 2.12.16

1. SCRA: Obligations and/or Liabilities Prior to Entering into Active Military Service FHA (6% Interest Rate Cap – Duration)

The February 2016 version of the Handbook states that Obligations or liabilities incurred by a servicemember ... must not bear interest at a rate in excess of 6 percent per year during the period of military service and nine months thereafter, in the case of an obligation or liability consisting of a Mortgage, trust deed, or other security in the nature of a Mortgage.

However the version released on 6/24/15 states prohibits interest at a rate in excess of 6 percent during the period of military service and one year thereafter, in the case of an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage

Please confirm that the prohibition of interest in excess of 6 percent extends one year after the period of military service.

FHA Response: The existing language in the FHA Single Family Policy Handbook (4000.1) indicating that the interest rate cap of 6 percent per year applies during the period of military service and **nine months thereafter** is in error and will be corrected in the next Handbook Update. 50 USC §3937(a)(1) of the Servicemembers Civil Relief Act provides that a debt incurred by a servicemember, or servicemember and spouse jointly, prior to entering military service shall not bear interest at a rate above 6 percent per year during the period of military service and **one year thereafter**, in the case of an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage, or during the period of military service in the case of any other obligation or liability. There is no expiration date on that provision.

2. Reasonable Diligence Timeframe (CA)

The February 2016 version of the Handbook lists the Reasonable diligence timeframe for California as 11 months. However, ML 16-03 lists the timeframe as 12 months.

Please confirm that the timeframe is 12 months.

FHA Response: The existing reasonable diligence timeframe for California is 12 months as stated in Mortgage Letter 2016-03. Appendix 5.0 of FHA Single Family Policy Handbook (4000.1) will be revised to provide the correct California timeframe in a Handbook update.

3. Modification Borrower Qualifications

For Loan Modifications and FHA HAMP, the February 2016 version of the Handbook requires a mortgagee to ensure that the Borrower has recently experienced a verified loss of income or increase in living expenses

However, ML 13-32 referred to the household or mortgagor(s)' verifiable loss of income or increase in living expenses.

Please clarify that mortgagees consider the household or mortgagor(s) loss of income or increase in living expenses. Failure to use household income/expenses will decrease number of eligible borrowers.

FHA Response: The referenced Mortgagee Letter 2013-32 has been superseded by the FHA Single Family Policy Handbook (4000.1) and the language was changed in the Handbook to clarify applicable evaluation criteria and ensure that servicers do not misapply them. The present applicable criteria for Loan Modification eligibility is that the **Borrower** has recently experienced a verified loss of income or increase in living expenses. An increase in household expenses for which a borrower/obligor is responsible fulfills that criteria. An increase in expenses of an individual in the household for which a borrower/obligor is not responsible does not. A reduction in income of a non-obligor is only relevant for Loss Mitigation evaluation if the non-obligor will become an obligor on the loan.

4. Trial Payment Plan Failure

The Handbook states that a Borrower has failed the TPP when one of the following occurs:

- The Borrower does not return the executed TPP Agreement within the month the first trial payment is due;
- The Borrower vacates or abandons the Property; or

- The Borrower does not make a scheduled TPP payment by the last Day of the month it was due.

CFPB regulations (12 CFR 1024.41) state that a borrower who does not satisfy the servicer's requirements for accepting a trial loan modification plan, but submits the payments that would be owed pursuant to any such plan within [the regulatory time requirements] shall be provided a reasonable period of time to fulfill any remaining requirements of the servicer for acceptance of the trial loan modification plan beyond the deadline established pursuant to [the regulatory time requirements]. The CFPB regulations also require a servicer to give a borrower at least 14 days to accept or reject a loss mitigation option received 90 days or more before a foreclosure sale and at least 7 days for applications received between 90 days and 37 days.

A clear conflict emerges if the borrower pays on last day of month because the CFPB rule is so prescriptive: “a borrower...shall be provided a reasonable period of time.” This “reasonable period of time” runs per the rule following receipt of a payment while the FHA timelines run concurrently, allowing either receipt of a signed plan or acceptance of payment by the end of the month. Thus, when payment is received on the last day of month, that borrower fails per FHA rules the next day because they have not returned an executed TPP agreement within the month the first trial payment is due.

While a servicer who provides a borrower with TPP documents for signature a least two weeks before the signature is required would comply with this portion of the rule, the conflict still exists and would occur as follows: 6) TPP Agreement Sent to Borrower on March 15 7) First TPP Payment Due on April 1 8) TPP Agreement “Due” on April 15th 9) Borrower does not return signed agreement but makes payment on April 30.7 10) Borrower “fails” per HUD Rules for not returning trial payment plan by April 30.

Per the Handbook, a borrower who submits a payment on the last day of the month should have that payment accepted. Also per the Handbook a servicer must fail the borrower if they have not submitted a trial payment plan by that day (“within the month the payment is due”). That directly contradicts the CFPB rule that a borrower who submits the payment owed on the TPP “shall be provided a reasonable period of time to fulfill any remaining requirements of the servicer for acceptance of the trial loan modification plan beyond the deadline established pursuant to paragraph (e)(1) of this section.” Thus, under the current Handbook guidance, a servicer could not provide that “reasonable period of time” to a borrower that pays on the last day of the month but has not submitted an executed TPP agreement.

It has been suggested that the servicer could “fail” the borrower on April 15th in the hypothetical above for failure to return the signed TPP. This is not a workable solution under the current Handbook as FHA would not allow the failure to have occurred or be reported until the last day of the month. As a threshold matter, this could discourage borrowers from making payments and returning the signed agreement when they would still—by regulation—be required to be

accepted. This is potentially misleading to consumers. Such a practice would also expose servicers to potential audit risk as any subsequent investigation would not be able to determine the actual parameters of the TPP. To maximize borrower protections, servicers must establish the due date for the return of the signed TPP to coincide with FHA's time period for failure.

Additionally, in cases of bankruptcy, particularly in Conduit Jurisdictions, there may be delays in receiving both payments and/or signed agreements due to the requirement of working through Trustees and the courts. HUD does not seem to provide any flexibility here, unlike the GSEs (see page 7 in the attached Freddie Bulletin) and MHA (see page 141 / physical page 128 in the following:

https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/mhahandbook_5.pdf

FHA Response: FHA has previously reviewed this matter and has determined that there is no existing conflict between CFPB regulations and FHA requirements.

The RESPA Loss mitigation procedures rule at 12 CFR §1024.41e(2)(ii) states:

<http://www.ecfr.gov/cgi-bin/text->

[idx?SID=de773ab70dbbd7e7be5af2d10df039fc&node=12:8.0.2.8.18.3.1.12&rgn=div8](http://www.ecfr.gov/cgi-bin/text-idx?SID=de773ab70dbbd7e7be5af2d10df039fc&node=12:8.0.2.8.18.3.1.12&rgn=div8))

“A borrower who does not satisfy the servicer's requirements for **accepting** a trial loan modification plan, **but submits the payments that would be owed pursuant to any such plan within the deadline established pursuant to paragraph (e)(1) of this section**, shall be provided a reasonable period of time to fulfill any remaining requirements of the servicer for acceptance of the trial loan modification plan beyond the deadline established pursuant to paragraph (e)(1) of this section.” The referenced paragraph (e)(1) deadline is the date by which the servicer requires that a borrower accept or reject an offer of a loss mitigation option after the servicer provides the offer of a loss mitigation option to the borrower. No additional time for fulfilling requirements for acceptance of a trial loan modification plan is required if the borrower has not made payment owed pursuant to the plan by the established due date for offer acceptance.

In no event should that deadline for borrower acceptance or rejection of a loss mitigation offer be later than the date the first trial plan payment is due and payable as indicated in the example the MBA provided. It established a first trial payment due date of April 1 and a TPP Agreement “Due” on April 15, fourteen days later. That must never be done. If the mortgagee wanted to give the borrower a full thirty (30) days from the March 15th offer date to accept or reject the offer, the first trial payment due date should have been set for May 1. Had that been done, the borrower would have had far more time than the CFPB rule requires that a borrower be given to accept or reject an offer of a loss mitigation option and a total of 75 days to return the signed TPP Agreement before option failure (June 1).

Communication from the borrower(s) accepting, rejecting or appealing an offer of loss mitigation is essential to the Loss Mitigation process and FHA requires that acceptance be made through execution and return of a written TPP Agreement. The established policy provides ample time for the borrower(s) to comply and the requirements will not be changed.

5. Definition of full payment

The Handbook defines a partial payment as any amount less than full amount ... including late charges and amounts advanced on behalf of borrower.

CFPB regulations (1026.36(c)(1)(i)) define a periodic payment as an amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle. A payment qualifies as a periodic payment even if it does not include amounts required to cover late fees, other fees, or non-escrow payments a servicer has advanced on a consumer's behalf.

FHA Response: CFPB and FHA regulations are compatible. The referenced CFPB regulation defines a periodic payment as an amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle. Such a payment may also be less than the full amount due under the terms of the mortgage at the time the payment is tendered and be considered a partial payment of amounts owed as stated in FHA regulation 24 CFR § 203.556(a).

6. Application of Payments

Application of Partial Payments Totaling a Full Monthly Payment

(A) Standard: When Partial Payments held for disposition total a full monthly payment, the Mortgagee must apply these payments to the Borrower's account, after deduction of amounts due to the Mortgagee for Late Charges and refunds of Mortgagee advances.

This application of Partial Payments as a full monthly installment advances the date of the oldest unpaid installment, but not the date on which the account first became Delinquent.

Definition of full monthly payment/ posting to late charges first is inconsistent with CFPB Servicing rules (TILA) which consider a payment to advance the due date if it is inclusive of PITI but not late fees.

FHA Response: The referenced CFPB rule does not address the situation where a loan is in default (30 or more days past due) and FHA does not agree that its regulations are in conflict. The FHA regulation at 24 CFR § 203.554(b) does not allow a late charge attributable to a particular installment payment due under the mortgage to be deducted from that installment. However, if the mortgagee thereafter notifies the mortgagor of his obligation to pay a late charge, such a charge may be deducted from any subsequent payment or payments. That is not

inconsistent with the CFPB rule at 12 CFR § 1026.36(c)(1)(i) which simply requires the crediting of a periodic payment to the consumer's loan account as of the date of receipt but does not require that a mortgage servicer post the payment to the consumer's loan account on a particular date. Further, the CFPB rule does not dictate the manner in which a periodic payment shall be applied. As explained in the official CFPB interpretation, the method by which periodic payments shall be credited is based on the legal obligation between the creditor and consumer, subject to applicable law.”

7. Manufactured Housing Review

The Handbook requires a mortgagee to cure title defects prior to foreclosure referral:

- review each Property at the time of foreclosure referral to determine if the collateral for the Mortgage is a Manufactured Home; and
- ensure that the Manufactured Home title has been surrendered or canceled prior to referring to foreclosure.

However, ML 12-11 permitted title defects to be cured prior to foreclosure. The foreclosure process is used to cure the title problem. As drafted there is no reasonable way to cure the defect.

FHA Response: FHA agrees that a title defect may only be curable during the foreclosure process. A revision to the Manufactured Housing Review language will be made in an update to the FHA Single Family Policy Handbook (4000.1).

8. Obligations and/or Liabilities Prior to Entering Into Active Military Service

The Handbook lists the following as Required Documentation:

- a written notice;
- a copy of military orders calling the service member to military service; and
- orders further extending military service, if any.

While (C) Verification of Military Service appears to allow use of a DMDC, it is not clear that a DMDC can be used to satisfy the documentation requirements.

Please confirm that a DMDC can be used to satisfy the documentation requirements.

FHA Response: The documentation that a servicemember shall provide in order for an obligation or liability to be subject to the six percent interest rate limitation is specified in 50 USC §3937(b) of the Servicemembers Civil Relief Act. The FHA Handbook follows the language of the statute in specifying the conditions under which the mortgagee **must** apply the interest rate cap. Mortgagees may voluntarily establish lesser documentation requirements for

providing interest rate relief to eligible servicemembers and mortgagees may verify military service by requesting a statement of military service from the Defense Manpower Data Center website (<https://www.dmdc.osd.mil/appj/scra/welcome.xhtml>) as stated Section III.A.3.j.i.(C) of the FHA Single Family Policy Handbook (4000.1).

9. SCRA

Mortgagee Is Not Notified of SCRA Applicability:

Where the servicemember does not notify the Mortgagee of their eligibility for SCRA protection and submits a reduced payment, the Mortgagee must:

- attempt to contact the Borrower or representative to determine whether the Borrower is on Active Duty; and
- return insufficient payment if appropriate explanation is not provided and otherwise in compliance with HUD guidance.

The requirement to attempt contact will add a significant burden to servicers. It would require a servicer to attempt to contact everyone that submits insufficient payment because they will not have information on which Borrowers may be covered by SCRA. Additionally, the requirement to return insufficient payments will create problems for timely application of borrower payments since payment will not accumulate to advance the due date.

FHA Response: FHA will address this issue in an update to the FHA Single Family Policy Handbook (4000.1).