



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

OFFICE OF THE ASSISTANT SECRETARY
FOR HOUSING-FEDERAL HOUSING COMMISSIONER

Notice 2004 - 10

Special Attention of:

Director, National Servicing Center
Deputy Director, National Servicing Center Directors,
Homeownership Centers
Deputy Directors, Homeownership Centers
Regional Directors
Deputy Regional Directors

Issued: July 12, 2004

Expires: July 31, 2005

Cross References:

Subject: Secretary-Held Mortgages – The Interest Rate Reduction Program

The purpose of this Housing Notice is to reiterate the Department's policy concerning reduction of interest rates on Secretary-held mortgages. The Department is continuing its policy to reduce interest rates on certain Secretary-held single-family mortgages (SHMs) in order to prevent foreclosure. By lowering interest rates, HUD will lower the monthly payment due on these mortgages. Lower monthly payments will allow more borrowers to achieve debt-free homeownership and keep their homes. Also, the Department will not incur the costs and losses resulting from foreclosure acquisition and resale.

The Department has procured the services of a contractor to service the Secretary-held mortgages now held by the Department. The National Servicing Center (NSC) is the principal contact point for issues relating to Secretary-held mortgages as well as insured servicing matters.

Before the SHM servicing was contracted out, field offices with single-family functions had the authority to review their Secretary-held portfolio and make decisions when appropriate on using the interest rate reduction program to avoid foreclosure. Now, the contractor, with oversight by NSC, will conduct an analysis of the mortgage in question to determine whether that mortgage qualifies for an interest rate reduction and, if so, calculate the appropriate amount of the interest rate reduction. The contractor will then provide this information to the NSC, who will either accept or reject the recommendation. The following criteria must be met in order for a homeowner to be considered for an interest rate reduction on their Secretary-held mortgage:

1. The mortgage must be in danger of foreclosure. The contractor will analyze all mortgages (except bulk mortgages) prior to sending the Notice of Intent to Foreclose.
2. The lower market-level interest rate would enable the mortgagor to make the full monthly payments within the terms of the mortgage.

The analysis to determine if the lower market-level interest rate would enable the mortgagor to make the full monthly payments and amortize all mortgage debt (including any accumulated delinquency) within the terms of the mortgage, extended up to 10 years, if necessary consists of the following steps:

- The contractor shall obtain the modification interest rate by referencing the Federal Reserve Statistical Release H.15 (519), which the Federal Reserve publishes daily. The contractor shall use a rate that allows the mortgagor the ability to repay the debt based upon the mortgagor's financials.
- Using software designed by HUD for interest rate reduction calculation, or similar software provided by the contractor, the contractor will calculate a new principal balance that includes all interest bearing items, such as tax advances or other advances and any non-interest bearing items, such as delinquent interest and delinquent escrow, including any delinquency. The software shall add these items to the unpaid principal balance of the mortgage when making the calculations.
- The contractor shall review the mortgagor's current financial information form, verification of employment form, and credit report to determine the mortgagor's current income and expenses. If any of these documents are over three months old, the contractor shall obtain new data. The contractor shall calculate the maximum monthly payment that the mortgagor is able to pay.

The contractor will prepare a memorandum to the NSC recommending a modification of the mortgage interest rate within 10 days of determination. This request shall include an estimated amortization schedule of the loan under a modification agreement. If the request is acceptable, the NSC will send a conditional approval of the modification to the contractor, by e-mail, which will be valid for 30 calendar days. A copy of the e-mailed approval will be made a part of the case file. The approval will contain:

- The estimated new principal balance;
- The estimated non-interest-bearing delinquency;
- The estimated new interest rate;
- The estimated new monthly payment; and
- The estimated new term.

Before the mortgagors sign the modification documents, the contractor shall fill in the exact amounts as of the date of mortgagors' signature, as calculated by the computer software developed for the Interest Rate Reduction Program. If any tax advances or other advances have been made since the conditional approval, the contractor shall add this interest-bearing debt to the unpaid principal balance of the mortgage when making the calculation.

Upon receipt of the conditional approval, the contractor shall obtain a title report on the property. The cost of the title report will be paid by the contractor and is a reimbursable item. If there are one or more subordinate liens on the property, the contractor shall notify the subordinate lien holder(s) of HUD's intent to modify its mortgage, and request that the subordinate lien holder(s) agree to remain subordinate to HUD's primary lien position. Depending on the state, it may be necessary for the contractor to obtain and record a subordination agreement signed by the subordinate lien holder(s). If a subordination agreement is not required, then the contractor shall take whatever steps are necessary to ensure that HUD maintains its first lien position.

If the subordinate lien holder(s) will not agree to sign the subordination agreement or other documents (depending on the state requirements), the contractor shall not modify the HUD mortgage.

If the title report shows no secondary lien on the property, or if the subordinate lien holder(s) agrees not to challenge the Department's primary lien position, then the contractor shall prepare the legal documents necessary to modify the mortgage, using the sample Mortgage Modification Agreement attached to this Notice (Exhibit 1). The contractor shall review the modification documents to ensure compliance with state law.

All available owners of record (except those who are deceased, incompetent, or unlocatable) must sign the modification within 15 business days after the modification documents are prepared. If all available mortgagors sign the modification, then the contractor will modify the mortgage.

The contractor shall sign the modification documents on behalf of the Department. (A Power of Attorney is on file authorizing the contractor to act on the Department's behalf). The contractor shall immediately record the signed original mortgage modification documents, and notify the NSC, via e-mail, within five business days of execution. The contractor shall implement the modifications in an accounting system to be specified and approved by HUD, and enter a code in this system which will identify the modified account for future monitoring. The recording fee paid by the contractor to record the modification documents is a reimbursable item.

If the mortgage previously carried a service charge, the contractor shall waive that charge at the point of entering the modification in HUD's Accounting System, for the duration of the mortgage, effective on the date of interest rate reduction.

The contractor shall modify eligible mortgages only once. If the mortgage is an adjustable-rate mortgage or a graduated-payment mortgage, the contractor shall inform the mortgagor, in writing, that the interest rate reduction will convert the mortgage to a fixed-rate mortgage.

The contractor may resubmit modification recommendations that the NSC has previously rejected, if the grounds for rejection have changed.

If you have questions concerning this Housing Notice, please contact the NSC (toll-free) at (888) 297-8685. All inquiries from mortgagors concerning FHA-insured loans are to be referred first to the lender servicing the loan and then to the NSC.

John C. Weicher
Assistant Secretary for Housing-
Federal Housing Commissioner

Attachment

Exhibit 1

SAMPLE MODIFICATION AGREEMENT

This agreement is made this _____ day of _____, _____, between the United States of America, acting by and through the Secretary of the Department of Housing and Urban Development (HUD), herein referred to as the Mortgagee, and borrower(s), herein referred to as the Mortgagor(s), for property located at city, county, state, Zip Code.

THE PARTIES RECITE AND DECLARE THAT:

- A. The Mortgagee is the holder of a certain Note conditioned for the payment of amount of ORIGINAL Promissory Note - written out Dollars (\$ _____) made by the Mortgagor(s) on the date ORIGINAL note executed, and due on maturity date of ORIGINAL note.
- B. Such note is secured by a Mortgage/Deed of Trust, recorded on date in Boob/Roll/Instrument _____, Page/Image/Number _____ of _____, in the office of the _____, which Mortgage/Deed of Trust is now a lien on the premises identified above, legally described as follows:

Legal description of property

- C. On such Note and Mortgage/Deed of Trust, there is now owing the sum of _____ Dollars (\$ _____) principal, with interest thereon at the rate of original interest rate percent (_____%) per annum, from date of ORIGINAL note executed.
- D. The Mortgagor(s) is/are now the owner(s) and holder(s) of such premises, on which such Mortgage/Deed of Trust is a valid lien in the amount of _____ Dollars (\$ _____) principal, with interest thereon at the rate of original interest rates percent (_____%) per annum, and there are no defenses or offsets to the Mortgage/Deed of Trust, or to the debt it secures.
- E. On such Note and Mortgage/Deed of Trust, there are now owing the following interest-bearing delinquencies:
 1. Tax advances: _____ Dollars (\$ _____);
 2. Other advances: _____ Dollars (\$ _____);
 The total interest-bearing delinquency is _____ Dollars (\$ _____).
- F. On such Note and Mortgage/Deed of Trust, there are now owing the following non-interest-bearing delinquencies:
 1. Interest on tax advances: _____ Dollars (\$ _____);
 2. Interest on other advances: _____ Dollars (\$ _____);
 3. Escrow: _____ Dollars (\$ _____);

4. Service charge: _____ Dollars (\$_____);
5. Returned check fee: _____ Dollars (\$_____);
6. Interest: _____ Dollars (\$_____).

The total non-interest-bearing delinquency is _____ Dollars (\$_____). The Mortgagee will credit the Mortgagor's monthly payment to this non-interest-bearing delinquency until it has been paid off, before applying the Mortgagor's monthly payments to principal and interest.

FOR THE REASONS SET FORTH ABOVE AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES OF THE PARTIES HERETO, MORTGAGOR(S) AND MORTGAGEE COVENANT AND AGREE AS FOLLOWS:

1. The foregoing recitals are hereby incorporated herein and made a part hereof by this reference.
2. MODIFICATION OF PRINCIPAL BALANCE: The Mortgagee does hereby modify the principal balance due on the Note and Mortgage/Deed of Trust to _____ Dollars (\$_____). This new principal balance includes the following amounts designated as interest-bearing delinquencies in paragraph E above:
 - a. Tax advances: _____ Dollars (\$_____);
 - b. Other advances: _____ Dollars (\$_____).
3. PAYMENT OF NON-INTEREST-BEARING DELINQUENCY: On the Note and Mortgage/Deed of Trust, there is now owing the non-interest-bearing delinquency of _____ Dollars (\$_____). The Mortgagee will credit the Mortgagor's monthly payment to this non-interest-bearing delinquency until it has been paid off, before applying the Mortgagor's monthly payments to principal and interest.
4. MODIFICATION OF INTEREST RATE AND CONTINUING ACCRUAL OF INTEREST: The Mortgagee does hereby modify the interest rate on the Note and Mortgage/Deed of Trust to _____ percent (_____%) per annum, from the first day of the month following the date of execution of this Modification.

Interest on the modified principal balance will continue to accrue at the modified interest rate during the time that the Mortgagor pays off the non-interest-bearing delinquency listed in the preceding paragraph. The Mortgagor's must pay off this accrued interest before the Mortgagee will apply the Mortgagor's monthly payments to principal.

If the mortgage was originally an adjustable-rate mortgage (ARM) or a graduated-payment mortgage (GPM), the mortgage is now converted to a fixed-rate mortgage.

5. MODIFICATION OF MONTHLY PAYMENT: The Mortgagee does hereby modify the monthly payment due on the Note and Mortgage/Deed of Trust to _____ Dollars (\$_____). The Mortgagor may pay any amount in addition to the monthly payment at any time without penalty. The Mortgagee will credit the Mortgagor's monthly payment, and any additional payment, to any outstanding non-interest-bearing delinquency until such delinquency has been paid off, before

applying the Mortgagor's monthly payments, and any additional payments, to principal and interest.

- 6. MODIFICATION OF MATURITY DATE: The Mortgagee does hereby modify the time of payment of the principal indebtedness secured by the Note and Mortgage/Deed of Trust to the first day of (new maturity date).
- 7. PRINCIPAL AND INTEREST PAYMENTS: Mortgagor(s), in consideration of the above modification, and other valuable consideration, the receipt of which is hereby acknowledged, shall pay the principal sum and other terms of the Note and Mortgage/Deed of Trust, except as expressly modified herein.
- 8. TERM AND PROVISIONS: When the terms and provisions in the Note and Mortgage/Deed of Trust in any way conflict with the terms and provision herein, the terms and provisions herein shall prevail. The original Note and Mortgage/Deed of Trust is hereby ratified and confirmed. The failure or omission of either party to exercise, in one or more instances, any option given herein, or in the original Note and Mortgage/Deed of Trust, shall not be construed as a waiver or relinquishment of right to such option in the case of any other default, but the right to such further option shall remain in full force and effect.
- 9. BINDING EFFECT OF AGREEMENT: The Agreement shall be binding on the heirs, executors, administrations, successors and assigns of the respective parties.

IN WITNESS WHEREOF, the parties execute this Agreement this _____ day of _____, _____, at (city), (county), (state).

Mortgagor

Mortgagor

FOR THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT,

_____, Director of Housing Management

HUD Office: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the above State and County, personally

appeared Mortgagor(s) whose signature(s) is/are affixed above, personally known to me to be the identical person(s) who executed the above and foregoing instrument as Mortgagor(s), and Director of Housing Management, authorized signatory of the Department of Housing and Urban Development, and they have acknowledged the said instrument and the execution thereof to be their voluntary act and deed for the purpose therein expressed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal as of the day and date above written.

SEAL: _____, Notary Public

Approved as to form and content:

DATE: _____

By: _____

SAMPLE LETTER TO SECONDARY LIENHOLDER

(Send two copies)

Dear Subordinate Lienholder:

A search of the records reveals that you hold a subordinate lien on the property of (insert name of mortgagor) located at (insert address). The Department of Housing and Urban Development (HUD) holds the first lien on this property. HUD is considering modifying its mortgage to lower the interest rate and extend the term of the mortgage. This modification will make it possible for the mortgagor to pay his or her monthly first mortgage payment, as well as other expenses.

The Department will modify its first lien only if you agree not to challenge HUD's first lien position on the grounds that the modification may affect your interest in the property. In fact, because the modification will lower the mortgagor's monthly first mortgage payment, the mortgagor will be able to pay other monthly expenses, including the amount owing on the secondary lien.

If you agree not to challenge the Department's first lien position on the grounds that the modification may affect your interest in the property, please sign and date the enclosed copy of this letter, and return it to HUD in the enclosed postage-paid envelope as soon as possible.

If you have questions, please contact _____ at the following (address & telephone number). Thank you for your prompt attention to this matter.

Sincerely,

Enclosures