



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

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

**September 26, 2008**

**MORTGAGEE LETTER 2008-27**

**TO: ALL HUD-APPROVED MORTGAGEES**

**SUBJECT: Treble Damages for Failure to Engage in  
Loss Mitigation**

The purpose of this Mortgagee Letter is to provide information regarding the Civil Money Penalty that will result in Treble Damages for a mortgagee's failure to engage in loss mitigation.

Treble Damages may be assessed when a mortgagee fails to engage in loss mitigation. On April 26, 2005, the Department published a final rule, "Treble Damages for Failure to Engage in Loss Mitigation", advising the industry of this Civil Money Penalty. A copy of the final rule is available at <http://www.gpoaccess.gov/fr/index.html>.

**Available Resources to Assist Mortgagees**

HUD's National Servicing Center (NSC) is available to assist mortgagees in complying with FHA servicing requirements, including loss mitigation evaluation. The NSC offers Loss Mitigation training to lenders via scheduled classes throughout the year and participates in joint training with regional and national industry groups such as the Mortgage Bankers Association (MBA).

The NSC provides a toll-free telephone line (1-888-297-8685) to provide assistance regarding FHA's Servicing requirements, including HUD's Loss Mitigation Program. This assistance is available to mortgagors and mortgage industry professionals. Information from HUD's National Servicing Center (NSC) is available via the following website: <http://www.hud.gov/offices/hsg/sfh/nschome.cfm>.

**Avoiding Treble Damage Penalty Assessments**

There are three key actions that mortgagees must take to help avoid assessment of treble damages for failure to engage in loss mitigation. First, mortgagees must ensure that the loss mitigation evaluations are completed for all delinquent mortgages before four full monthly installments are due and unpaid. Second, mortgagees must ensure that the appropriate action is taken based on these evaluations. Third, mortgagees must maintain documentation of all initial and subsequent loss mitigation evaluations and actions taken.

## **Failure to Engage in Loss Mitigation**

Failure to engage in loss mitigation is defined as:

1. A mortgagee's failure to evaluate a loan for loss mitigation before four full monthly mortgage installments are due and unpaid to determine which, if any, loss mitigation techniques are appropriate (see 24 CFR § 203.605); and/or
2. A subsequent failure to take appropriate loss mitigation action(s).

Mortgagees must be able to provide documentation of their loss mitigation evaluations and actions. Mortgagees will be considered to be in compliance with 24 CFR § 203.501 where plausible loss mitigation options were offered to eligible borrowers. The Department will not consider a mortgagee to have "failed to engage in loss mitigation" where the mortgagee can demonstrate that a borrower was uncooperative or ineligible.

## **Treble Damages' Assessments**

HUD assesses civil money penalties against approved mortgagees through the Mortgagee Review Board (the Board) under 24 C.F.R. Parts 25 and 30. HUD will not assess treble damages for failure to engage in loss mitigation on any loan where the date of default occurred before May 26, 2005, the rule's effective date. If it is determined that civil money penalties for failure to engage in loss mitigation, or other violations of 24 CFR § 30.35 are warranted, the mortgagee will receive a notice from the Board. Mortgagees will have 30 days from receipt of any notice to provide the Board with a written response. If a mortgagee does not respond, the Board will determine the appropriate action to be taken, based upon all available information. Mortgagees may appeal Board determinations to HUD's Office of Administrative Law Judges.

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control numbers 2502-0060, 2502-0523 and 2502-0429. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB Control Number.

Questions regarding this Mortgagee Letter may be directed to HUD's National Servicing Center at (888) 297-8685.

Sincerely,

Brian D. Montgomery  
Assistant Secretary for Housing –  
Federal Housing Commissioner