

HUD NATIONAL SERVICING CENTER



FHA PREFORECLOSURE SALE PROGRAM *For Real Estate Professionals*

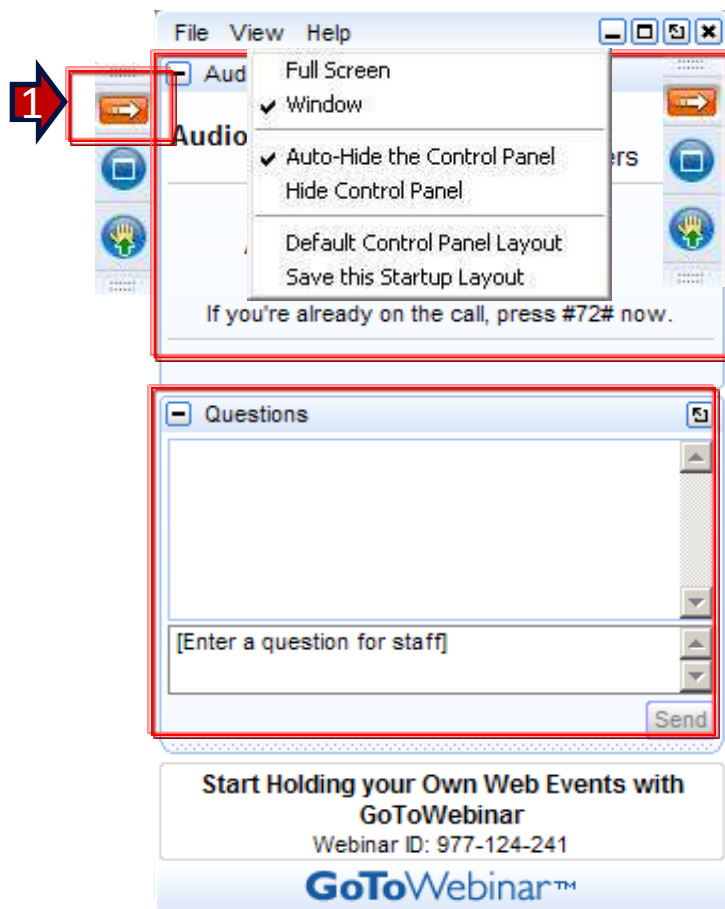
Presented By:

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HUD National Servicing Center



FEDERAL HOUSING ADMINISTRATION
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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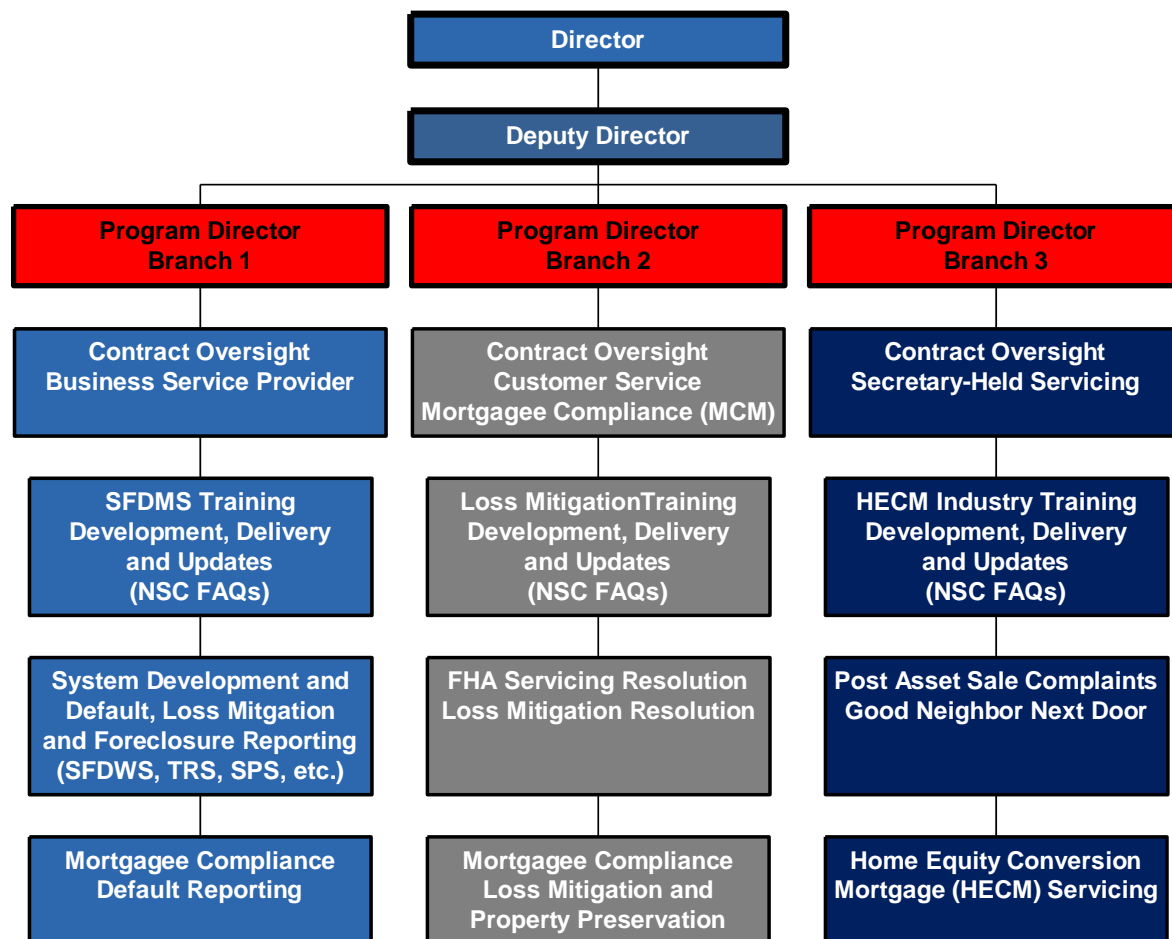
LEARNING OBJECTIVES

At the end of this course, you will be able to:

- Describe how HUD Servicers are required to apply loss mitigation tools to homeowners in need.
- Identify the benefits, features, and qualification criteria for *FHA's Preforeclosure Sale Program*.
- Recognize the difference between the market/appraised value for a property and the minimum acceptable net sale proceeds.
- Identify *Realtor Best Practices* when utilizing FHA's Preforeclosure Program.

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NSC ORGANIZATIONAL STRUCTURE





FHA SERVICER REQUIREMENTS

General Requirements

- FHA delegates authority and responsibility to Servicers to mitigate mortgage losses
- Servicers must utilize loss mitigation whenever feasible to avoid foreclosure
- Servicers have latitude in selecting the appropriate loss mitigation strategy for each FHA borrower
- FHA Servicers and sub-servicers require FHA approval
- FHA Servicer participation is not optional!



KEY TERMS – GENERAL LOSS MITIGATION

PAYMENT DUE DATE: FHA considers payment due on the 1st day of every month; *all months consist of 30 days*

IMMINENT DEFAULT: Homeowner is either current or less than 30 days past due on their mortgage, and is experiencing a significant reduction in income or some other hardship that will prevent them from making their next mortgage payment

DELINQUENT: 1+ days past the oldest unpaid installment (OUI)

DATE OF DEFAULT (DOD): 30 days past the oldest unpaid installment (60 days delinquent)

Example: Last paid installment (LPI) – Feb. 1
First payment missed – March 1
Date of default - April 1

FIRST LEGAL DEADLINE (FLD): 6 months past the date of default (8 months)

Example: Last paid installment – May 1, 2011
Oldest unpaid installment – June 1, 2011
Date of default – July 1, 2011
First legal deadline = Jan. 1, 2012



FHA SERVICER REQUIREMENTS

FHA-Approved Servicers must commit to:

- Evaluate each delinquent loan within the first 30 days but no later than the 90th day of delinquency:
 - Document continual attempts to contact homeowner(s)
 - Gather information about the homeowner's intentions, circumstances, and financial condition
- Re-evaluate monthly until reinstatement or foreclosure
- Initiate foreclosure within 6 months of the default date unless pursuing a HUD Loss Mitigation Option
- Document compliance with all HUD Loss Mitigation requirements

Non-compliance with these requirements may result in:

- Loss of incentive compensation
- Reduced reimbursement of foreclosure and acquisition cost
- Interest curtailment related to foreclosure delays
- Referral to the Mortgagee Review Board



EARLY DELINQUENCY SERVICING

HUD's Minimum Early Delinquency Servicing Requirements

- **1st day of month:** Payment Due Date for FHA-insured mortgages
- **17th of the month:** Late Charges may be Assessed
- **20th day of the month:** Send automatic notices and/or personal letters
- **30th day of delinquency:** Servicer must report to the Single Family Default Monitoring System
- **45th day of delinquency:** Servicers are subject to homeownership counseling notification requirements:
 - [HUD notice PA-426-H pamphlet "How to Avoid Foreclosure"](#)
 - [Service member's Civil Relief Act \(SCRA\) Notice:](#)
Toll-free military one-source number (1-800-342-9647)
 - [HUD-approved Housing Counseling Agencies](#)
(1-800-569-4287)
 - If unable to reach homeowner – Property Inspection completed by 45th day of delinquency
- **90th day of Delinquency:** Servicer is to evaluate Homeowner for HUD's Loss Mitigation Program

HUD'S LOSS MITIGATION PROGRAM



Basic Qualifications

- Loan must be FHA insured mortgage
- Must have an adverse and unavoidable, verifiable, increase in expenses or decrease in income
- Property may not have been purchased as investment property*
 - *PFS Program non-owner occupant exceptions:
 - Need to vacate related to cause of default
 - Property not purchased as a rental, or used as a rental for more than 18 months prior to PFS approval

LOSS MITIGATION OPTION PRIORITY

Home Retention Options:

- Special Forbearance
- Loan Modification
- Partial Claim
- FHA's Home Affordable Modification Program (HAMP)

Disposition Options:

- Preforeclosure Sale
- Deed-In-Lieu of Foreclosure



HUD LOSS MITIGATION OPTIONS AT-A-GLANCE

HUD recommends borrowers be evaluated for loss mitigation as early as 30 days past the last paid installment. This enables the Servicer to begin the process early, allowing time to validate financials and be ready for the borrower to sign an agreement at the appropriate time of delinquency. *(Content is subject to change. This document is not intended to substitute or alter requirements and guidelines found in FHA handbooks, mortgagee letters, and other official FHA publications.)*

| | | | Minimum # of Installments Due and Unpaid | 0 | 1 | 2 | 3 | 4 |
|-------------|---|--|---|----------|----|-----|-----|-----|
| | | | Days Past Due (DPD) | Imminent | 1+ | 31+ | 61+ | 91+ |
| | Type | DDS Code | Description/Requirements | | | | | |
| COLLECTIONS | Informal FB HUD HB 4330.1 REV-5, Chapter 7 | • 12- Repayment | <ul style="list-style-type: none"> Verbal agreement to increase, reduce or suspend payments Duration < 3 months Verbal financials required for agreements over 30 days | ✓ | ✓ | ✓ | | |
| | Formal FB HUD HB 4330.1 REV-5, Chapter 7 | • 12- Repayment | <ul style="list-style-type: none"> Written agreement to increase, reduce or suspend payments Duration minimum 3 months Verified/documented financials required for agreements over 30 days | ✓ | ✓ | ✓ | | |
| RETENTION | Special Forbearance (SFB) ML 2011-23 ML 2002-17 | • 09-Special Forbearance | <ul style="list-style-type: none"> Structured plan to repay a loan delinquency over time (initial period for financial recovery followed by a payment schedule based on the borrower's ability to repay) Cannot exceed 12 months PITI Duration minimum 4 months - SFB Type I increased payments Duration minimum 6 months - SFB Type I on a combination of suspended, reduced or increased payments | | | | ✓ | ✓ |
| | • Type I ML 2011-23 | | Special Provision Type I - CAUSE OF DEFAULT IS UNEMPLOYMENT – <ul style="list-style-type: none"> Duration minimum 12 months May be used to reinstate a loan to facilitate the eventual sale or assumption of the property | | | | ✓ | ✓ |
| | Trial Payment Plan ML 2011-28 | • 08 - Type II/Special Forbearance/ Trial Payment Plan | <ul style="list-style-type: none"> Prerequisite for executing a permanent standard Loan Modification and/or Partial Claim Requires 3 month trial prior to execution of permanent Loan Mod or Partial Claim Cannot exceed 12 months delinquent PITI for Partial Claim Option Loan Mod or Partial Claim is concurrent with the end of the Trial Payment Plan | | | | ✓ | ✓ |
| | Loan Modification ML 2011-28 ML 2009-35 | <ul style="list-style-type: none"> 08 - Type II/Special Forbearance/ Trial Payment Plan 28- Modification Started | <ul style="list-style-type: none"> Permanent change in 1 or more of the terms, allows the loan to be reinstated and results in a payment a borrower can afford May include a change in the a) interest rate, b) capitalization of the delinquent principal, interest or escrow items, c) extension of the time available to repay the loan and/or, d) re-amortization of the balance due 3- month Trial Payment Plan required | | | | ✓ | ✓ |

HUD'S LOSS MITIGATION OPTIONS AT-A-GLANCE

(Content is subject to change. This document is not intended to substitute or alter requirements and guidelines found in FHA handbooks, mortgagee letters, and other official FHA publications.)

| | | | Minimum # of Installments Due and Unpaid | 0 | 1 | 2 | 3 | 4 |
|-------------|--|---|---|----------|----|-----|-----|-----|
| | | | Days Past Due (DPD) | Imminent | 1+ | 31+ | 61+ | 91+ |
| Type | DDS Code | Description/Requirements | | | | | | |
| RETENTION | Partial Claim (PC) ML 2003-19 ML 2011-28 | <ul style="list-style-type: none"> 08 - Type II/Special Forbearance/Trial Payment Plan 10 - Partial Claim Started | <ul style="list-style-type: none"> Servicer will advance funds on behalf of the borrower in an amount to reinstate a delinquent loan (not to exceed 12 months PITI) Borrower executes promissory note and subordinate mortgage payable to HUD (carries no interest and not payable until the borrower either pays off the first mortgage or no longer owns the property) 3-month Trial Payment Plan required | | | | | ✓ |
| | FHA HAMP ML 2009-23 ML 2009-35 | <ul style="list-style-type: none"> 39 - FHA-HAMP Trial 41-FHA HAMP Modification Started | <ul style="list-style-type: none"> Allows the use of a Partial Claim up to 30% of the UPB as of the date of default and combine it with a Loan Modification Must successfully complete a trial payment plan (4 months for imminent default and 3 months for 90+ delinquent) Front ratio not less than 31% and back ratio must not exceed 55% | ✓ | ✓ | ✓ | ✓ | ✓ |
| DISPOSITION | Pre-Foreclosure Sale (Short Sale) ML 2008-43 | <ul style="list-style-type: none"> 15 - Pre-Foreclosure Acceptance Plan Available | <ul style="list-style-type: none"> Allows a borrower in default to sell home and use proceeds to satisfy the mortgage debt even if the proceeds are less than the amount owed Commit to actively market the property for 4-6 months Borrower qualifications: occupy as primary residence; list property with licensed real estate broker with a cancellation clause in the event the terms of the PFS sale are not acceptable to HUD; make good effort to aggressively market property, perform all normal maintenance and repairs; standard "As Is" FHA appraisal; marketable title; Non-Owner Occupant Exceptions available; Tiered Net Proceeds Requirements – 1st 30 days 88% - 2nd 30 days 86% - Remainder of marketing time 84%; Funds available for discharge of Subordinate Liens. | | ✓ | ✓ | ✓ | ✓ |
| | Deed-in-Lieu (DIL) ML 2000-05 | <ul style="list-style-type: none"> 44 - Deed-in-Lieu Started | <ul style="list-style-type: none"> Borrower voluntary deeds collateral to HUD in exchange for release from all obligations under the mortgage Servicer must enter into a written agreement with the borrower stating specific actions that the borrower must perform in order to take advantage of this option and receive financial consideration Borrower qualifications: cause of default is incurable; occupy the property as a primary residence; collateral property must be non-occupied at the time of conveyance; good and marketable title Occupancy Exceptions: Verifiable that the need to vacate was related to the cause of 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 18 months | | ✓ | ✓ | ✓ | ✓ |

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FHA PREFORECLOSURE SALE PROGRAM



PRE-FORECLOSURE SALE PROGRAM (PFS)



Overview

- HUD's version of a short sale - the only short sale authorized for FHA insured mortgages
- Allows a homeowner in default to sell the property and use the sale proceeds to satisfy the mortgage debt, even if the proceeds are less than the amount owed
- Must be an outright sale of the property
- Homeowner must be reviewed for HUD's Home Retention Options prior to participation in PFS
- No Strategic Defaults

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HOMEOWNER & PROPERTY REQUIREMENTS **PREFORECLOSURE SALE PROGRAM**





PREFORECLOSURE SALE PROGRAM

Homeowner Requirements

- Must be at least 31 days delinquent at the time of PFS Closing
- Owner Occupant
 - Servicer may grant reasonable exceptions to non-occupant homeowners if need to vacate was related to cause of default
- Must have negative equity
- Only has one FHA insured mortgage
- Must be an individual - no corporation or a partnership



PREFORECLOSURE SALE PROGRAM

Homeowner Requirements

- Must notify Servicer of interest to participate in PFS program
- Cooperate with Servicer requests for financial documentation
- Upon approval for program, *must return* signed HUD-90045 “Approval to Participate” to Servicer within 7 days of receiving the form



PREFORECLOSURE SALE PROGRAM

Financial Analysis

- Servicer requests homeowner's financial documentation:
 - Evaluates the Homeowner's ability to support the mortgage debt
 - Must independently verify the financial information
- If the Homeowner is not eligible for a PFS:
 - Servicer must advise in writing,
 - Explain the reason for denial, **and**
 - Allow Homeowner at least 7 calendar days to respond



PREFORECLOSURE SALE PROGRAM

Property Value

- PFS Properties are to be listed at no less than the “As Is” appraised value
- A standard electronically-formatted appraisal from an appraiser on FHA’s Appraiser roster must be obtained for this purpose
 - “As Is”
 - Valid for 120 days
 - No Distress Sales



PREFORECLOSURE SALE PROGRAM

Property Value

- Upon request, Servicer must provide a copy of the appraisal to the homeowner or their sales agent
- Servicer may obtain a new FHA appraisal even if the property was appraised within the preceding 120 days



PREFORECLOSURE SALE PROGRAM

Condition of Title

- Property must have marketable title
- Servicers are expected to assist in clearing title issues
- Homeowner's incentive must be applied to satisfy or release any secondary lien(s)
- If Homeowner's incentive is not sufficient, Servicer can obligate an additional amount towards secondary lien(s)



PREFORECLOSURE SALE PROGRAM

Available funds for payment of junior liens

- *PFS closes within first 90 days:*
 - **Homeowner's Incentive** - \$1,000
 - Additional - \$1,500
 - Total - \$2,500
- *PFS closes after first 90 days:*
 - **Homeowner's Incentive** - \$750
 - Additional - \$1,500
 - Total - \$2,250

PREFORECLOSURE SALE PROGRAM



Approval to Participate

- Servicer provides *HUD Form 90045 Approval to Participate*
 - Pre-foreclosure Sale Procedure
 - Property Sales Information
 - Property Occupancy & Maintenance
- Homeowner must acknowledge within 7 days of receipt

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PARTICIPATION REQUIREMENTS **Preforeclosure Sale Program**



PRE-FORECLOSURE SALE PROGRAM



Participation Requirements

Use of Real Estate Broker

- A real estate broker/agent must be retained to market a property within seven (7) days of the date the *approval to participate* is granted
- Any conflict of interest, appearance of a conflict or any self-dealing by any of the parties is strictly prohibited
- Broker/Agent shall never be permitted to claim a sales commission on a PFS of his or her own property, or that of an immediate family member
- Listing Agreement must include the cancellation clause

PRE-FORECLOSURE SALE PROGRAM



Participation Requirements

Property Maintenance

- Homeowner must maintain the property in “ready to show” condition
- Homeowner must make basic repairs and perform all normal property maintenance activities

Arms Length Transaction

- The PFS must be between two unrelated parties
- A relocation service affiliated with the Homeowner’s employer may contribute a fixed sum towards the proceeds of the PFS, without altering the arms-length nature of the sale



PREFORECLOSURE SALE PROGRAM

Duration

- Homeowners have 4 months from the date of the Servicer's *"Approval to Participate"* in the PFS program to obtain a signed sales contract
- Homeowners have a pre-approved extension of two additional months to complete the PFS sale if one of the following exists:
 - The Servicer is in the Tier 1 category of the Tier Ranking System,
 - There is a signed Contract of Sale but settlement has not occurred by the end of the fourth month



PREFORECLOSURE SALE PROGRAM

Early Termination

- Un-resolvable title problems
- Homeowner not acting in good faith to market property
- Significant change in property condition or value
- Re-evaluation of the information provided by the Homeowner indicates that the case does not qualify for the PFS option



PREFORECLOSURE SALE PROGRAM

PFS Failure

- Homeowner will be re-evaluated by the Servicer for other loss mitigation options
- Must be reviewed within 90 days of the expiration of the PFS period, or foreclosure must commence
- If foreclosure does occur, neither HUD nor the Servicer will pursue the Homeowner for a deficiency judgment as a result of the Homeowner's **good faith effort** in the Preforeclosure Sale program

Quiz



- 1. A Homeowner must list the property for sale and have a valid contract before requesting “Approval to Participate” in the PFS program.**
 - A. True*
 - B. False*

- 2. The homeowner may sell their property to a relative after being approved to participate.**
 - A. True*
 - B. False*

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CONTRACT APPROVAL **Preforeclosure Sale Program**





PRE-FORECLOSURE SALE PROGRAM

Contract Approval

Minimum Net Sale Proceeds

- **0-30 days of marketing period** - Net 88% of “As Is” appraised FMV
- **31- 60 days of marketing period** - Net 86% of “As Is” appraised FMV
- **61 days - duration of PFS** - Net 84% of “As Is” appraised FMV

“Net Sale Proceeds” is defined as the sales price minus closing/settlement costs



PRE-FORECLOSURE SALE PROGRAM

Contract Approval

Allowable Settlement Costs

- Up to 6% sales commission
- Real estate taxes
- Local/state transfer tax stamps and other closing costs customarily paid by the seller
- Incentive Compensation paid to the Seller either \$750 or \$1,000 (Not applicable if used to discharge junior liens)
 - Up to \$2500 for the discharge of junior liens
- Outstanding Partial Claim
- Up to 1% of the buyer's first mortgage amount if the sale includes FHA financing

Unacceptable Settlement Costs

- Repair reimbursements or allowances
- Home Warranty fees
- Discount points or loan fees for non FHA financing
- Servicer's Title Insurance fee



Preforeclosure Sale Program

Contract Approval

- Servicer has 5 working days from receipt of an executed Contract for Sale to respond back to the Homeowner using Form *HUD-90051 Sales Contract Review*
- No sale by assumption is permitted



PRE-FORECLOSURE SALE PROGRAM

Closing and Post Closing

- Servicer to provide Closing Agent with Form HUD-90052 “Closing Worksheet”
- Closing Agent to provide Servicer a copy of HUD-1 Settlement Statement for final review
- Upon final approval from Servicer, Closing Agent must pay expenses and forward the net sales proceeds and final HUD-1 to Servicer
- PFS must be reported to National Credit Bureaus as a “short sale”

QUIZ



Up to 1% of the buyer's first mortgage amount for a conventional loan is an allowable closing cost.

- A. True*
- B. False*

What is the minimum ratio for net sales proceeds, if a FHA Homeowner approaches their Servicer with a Pre-Existing purchaser's contract?

- A. 88%*
- B. 86%*
- C. 84%*



CASE STUDY - Mr. Harris

Mr. Harris is currently two payments past due on his mortgage. His delinquency is due to losing his job of ten years. He contacted his Servicer to advise them he has recently secured employment, but his income is 30% less than his previous job and the new employer is located 50 miles away from his home. Due to the reduction in income and the added expense of commuting, Mr. Harris states that **he vacated the home** and moved closer to the new job two weeks ago. Mr. Harris also indicates that he no longer can afford the home.

Assumptions: He has occupied the property since origination; mortgage payment is included in expenses. The property has never been rented. (Current rent is included in expenses noted below.)

| | |
|---------------------|---------------|
| Monthly Mortgage: | \$972.46 |
| Interest Rate: | 7.5% (Fixed) |
| Loan Originated: | April 1, 2005 |
| Income: | \$2,500.00 |
| Expenses: | \$3,284.75 |
| Surplus Income: | -\$784.75 |
| Surplus Percentage: | -23.89% |
| Total Delinquency: | \$1,944.92 |

Based upon this information, is Mr. Harris eligible for HUD's Loss Mitigation Program?

CASE STUDY - Ms. Dove

Ms. Dove is three (3) payments delinquent on her mortgage. She has contacted her servicer to advise she has experienced a loss of income and an increase in expenses; she feels she can no longer afford the mortgage. Ms. Dove has previously been delinquent on her mortgage and was approved for a Partial Claim two years ago. She has occupied the property since origination, July 1, 2006. The mortgage payment is included in expenses.

| | |
|------------------------------------|--------------|
| Monthly Mortgage: | \$1,200.00 |
| Interest Rate: | 5.5% (Fixed) |
| Loan Originated: | July 1, 2006 |
| Income: | \$3,500.00 |
| Expenses (includes mortgage pymt): | \$3,784.75 |
| Surplus Income: | -\$284.75 |
| Surplus Percentage: | -7.5% |
| Total Delinquency: | \$3,600.00 |



Ms. Dove has received a previous Partial Claim, will that prohibit her from being approved for FHA's Preforeclosure Option?

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Best Practices Preforeclosure Sale Program



BEST PRACTICES



Step One – Interview the Homeowner

- Verify loan is FHA
- Is the property owner-occupied?
- Is homeowner delinquent?
- Are there any junior liens or outstanding partial claims on the property?
- Has homeowner contacted the Servicing Lender to request approval to participate?



REALTOR BEST PRACTICES

Step Two – Approval to Participate

- Servicer to complete financial analysis
- Servicer to obtain FHA Appraisal – establish market value & verify property condition
- Servicer verifies property has marketable title
- Servicer provides homeowner Form HUD-90045 “Approval to Participate”
- Homeowner must acknowledge Form HUD -90045 within 7 days of receipt
- Real estate broker/agent must be retained to market property within 7 days of the date the “approval to participate” is granted

REALTOR BEST PRACTICES

Step Three – Marketing the Property

- Verify Listing Agreement includes required cancellation clause
- Request copy of Appraisal from Homeowner's Servicer
- Property must be listed at no less than the "As Is" value
- Appraisal is valid for 4 months
- Property must be "actively" marketed
- Ensure Homeowner is maintaining the property in "ready to show" condition
- Communicate with the Servicer
- Timelines – 4 months to market the property

REALTOR BEST PRACTICES

Step Four – Contract Execution

- Ensure Arms Length Transaction
- Verify offer meets minimum Net Sales Proceeds
- Verify Seller's closing costs meet HUD allowable costs
- Servicer to respond to contract submissions within 5 business days from receipt



REALTOR BEST PRACTICES

Step Five – The Closing

- Servicer to provide Closing Agent Form HUD-90052 (Closing Worksheet)
- Closing Agent must calculate actual net proceeds and provide Servicer with HUD-I
- Servicer must review HUD-I to ensure compliance with HUD guidelines
- Servicer provides final approval to close
- Closing Agent to provide final HUD-I and forward net proceeds to Servicer

PRE-FORECLOSURE SALE PROGRAM (PFS) REFERENCE MATERIALS



- [Mortgagee Letter 2008-43](#) : Preforeclosure Sale Program – Utilizing the Preforeclosure Sale Loss Mitigation Option to Assist Families Facing Foreclosure
- [Mortgagee Letter 2003-19](#): Partial Claims: Program Changes and Updates
- [FHA Preforeclosure Program FAQs](#)
- [Mortgagee Letter 2010-08](#) :HUD REO Appraisal Validity Period and Second Appraisals
- [Real Estate Brokers and Agents](#): Learn about selling HUD Homes and the advantages of FHA loans



LOSS MITIGATION ONLINE RESOURCES

[Code of Federal Regulations](#): 24 CFR 202.2, 203.331, 203.355, 203.356, 203.502, 203.600, 203.606, and 203.608

[HUD Handbook 4330.1 Rev-5](#): Administration of Insured Home Mortgages, Chapter 7

[National Servicing Center Website](#)

[NSC Loan Servicing Guidance](#)

[Loss Mitigation Mortgagee Letters](#)

[NSC Loan Servicing and Loss Mitigation FAQ](#)

[HUD Approved Counseling Agencies](#)



NSC CONTACT INFORMATION

**U.S. Department of HUD
National Servicing Center
301 NW 6th Street, Suite 200
Oklahoma City, OK 73102
1-877-622-8525**

Secretary Held Servicing Contractor: (877) 622-8525

Home Equity Conversion Mortgage (HECM) Servicing:
HECMServicing@hud.gov



WHERE TO GET MORE INFORMATION

FHA Resource Center Frequently Asked Questions

www.hud.gov/answers

Available 24/7

- A web site containing almost 1,300 questions and answers about FHA programs, underwriting and processing (website available 24/7)
- The FHA Resource Center acts as the first line of response for the majority of industry and public inquiries about FHA programs and services
- Searchable by keyword and category

Telephone:

1-800-CALL FHA (1-800-225-5342)

Monday-Friday 8:00AM – 8:00 PM (Eastern Time)

E-mail: answers@hud.gov

Thank you for your time!

We very much appreciate your skill and professionalism in selling FHA-Insured properties and look forward to working with you!