



**STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL**

December 13, 2021

Dear Servicer:

Eighteen months ago, at the outset of the COVID-19 pandemic, I reached out to you and other members of the mortgage industry to set out my expectations as New York State's Attorney General concerning the need to help keep New Yorkers in their homes and to sustain affordable homeownership during the pandemic and beyond.

As we near the end of COVID-19 forbearance plans and New York State's foreclosure moratorium, I am following up to reiterate those expectations and remind servicers of their obligations under New York law. I also want to inform you of the role that my office will have in helping to oversee the distribution of New York State's Homeowner Assistance Fund (HAF), and in ensuring that mortgage servicers play their part by offering homeowners all available loss mitigation options *before* that homeowner seeks an outside grant.

Over the past 18 months, various federal agencies as well as Fannie Mae and Freddie Mac have expanded their streamlined modification programs, making it easy for homeowners to resume their mortgage payments and (where needed) reduce their monthly mortgage bill through an affordable modification. Additionally, in June 2020, New York State adopted Banking Law § 9-x which requires servicers of mortgages owned by private investors through private label securities (PLS) or by banks in their own portfolios to provide similar relief to what is offered to federally-backed mortgages. By mandating such parity, New York State made clear that it will not tolerate an unfair disparity between PLS and federally-backed mortgages.

Since the onset of the pandemic, my office has escalated dozens of complaints from homeowners to their mortgage servicers. I have appreciated the industry's cooperation in responding to those requests, which has helped ensure that homeowners are afforded the relief to which they are entitled. But these complaints have also identified areas where the mortgage industry must improve its provision of relief to distressed homeowners. For example, my office is currently investigating whether certain servicers of privately-owned mortgages have failed to offer homeowners the forbearance relief and post-forbearance modifications required by New York Banking Law § 9-x. We will continue to monitor compliance and initiate enforcement actions against individual mortgage servicers as needed to protect New York homeowners.

We are now at another critical juncture that will require further government-industry cooperation. Many mortgage forbearance plans will expire in the weeks ahead, and New York homeowners will again be calling their mortgage servicers for help. Fortunately, many of these

homeowners should be able to make a seamless transition into the post-COVID forbearance programs that federal and state authorities require, so long as servicers communicate effectively with their customers.

As I emphasized at the outset of the pandemic, mortgage servicers must invest in adequate staffing and improve their customer communications, so that they can handle any surge in requests for assistance. Further, streamlined modification programs should help prevent the delays and frustrations that accompanied earlier homeowner relief efforts. Thus, lack of preparedness is no excuse.

If any servicers failed to prepare for this moment, that lack of diligence will be taken into account in our enforcement decisions. I will continue to monitor consumer complaints and industry metrics to make sure that New York homeowners are not deterred from seeking relief by long hold times, dropped calls, or other communications problems, including a lack of resources for homeowners with limited English proficiency (LEP). Servicers should also take a close look at their call time metrics and other policies and procedures to ensure that they do not discriminate against LEP borrowers or have unintended consequences that would prevent homeowners from getting appropriate and needed assistance.

For those homeowners that these streamlined programs cannot reach, New York State, through its Division of Housing and Community Renewal (HCR), will be distributing roughly \$450 million in Homeowner Assistance Fund (HAF) grants. Among other uses, HAF grants may be used to pay off arrears or reduce mortgage principal so that homeowners can qualify for an affordable loan modification. While the fund is significant, it may not be enough to assist every homeowner negatively impacted by COVID-19.

To ensure that HAF relief is distributed efficiently and reaches the greatest number of struggling homeowners, HCR has asked my office to ensure that mortgage servicers are fulfilling their obligation to provide affordable modifications, as required by Treasury rules as a precondition of any HAF award. As a result, I am directing our HAF Mortgage Enforcement Unit (MEU) to review HAF applications for mortgaged borrowers to assess whether mortgage servicers have offered all available and affordable loan modification options to these homeowners.

To ensure HAF funds can be distributed expeditiously, we again seek industry's cooperation by abiding by your obligations under New York law and by swiftly engaging with the MEU's review process, both described in more detail in the attached Appendix. This also includes the provision of timely and accurate data. Full and accurate completion of the Common Data File data will obviate the MEU's need to obtain that data through further servicer outreach and speed along its evaluations. Your cooperation will help my office ensure that applications are timely reviewed. But make no mistake, in reviewing HAF applications, the MEU will monitor for systemic misapplication of federal or state law, regulations or guidance. My office will ensure compliance with the law and guarantee New York homeowners receive the benefits to which they are entitled.

It is always better economically for both the owners of the loans and homeowners to negotiate an acceptable workout option rather than proceed to foreclosure. Over the past 18 months, many in

the mortgage industry have recognized this fact by rapidly placing homeowners into forbearance as required by state and federal laws and regulations. It is now important that the industry takes necessary steps to help homeowners seamlessly transition into resuming their payments, and that we save as many homes from unnecessary foreclosure as possible.

To expedite the award of grant funds to eligible New York homeowners, and to prevent questions about servicer compliance from slowing down these applications, mortgage servicers should contact the MEU (via email at MEU@ag.ny.gov) to provide a point of contact and the best method of communication. The MEU will be following up with that contact to discuss next steps, and you can also contact the MEU with any questions about this letter or the HAF review process.

We look forward to engaging with you to take every step we can to help all of New York's homeowners and communities persevere through these challenging times.

Sincerely,

A handwritten signature in blue ink that reads "Letitia James". The signature is written in a cursive, flowing style.

Letitia James
New York Attorney General

APPENDIX: Loss Mitigation Requirements and Requests for Mortgage Loan Servicers

This Appendix is intended to advise mortgage loan servicers concerning the OAG's expectations and interpretations of New York law and other applicable requirements as applied to certain categories of home mortgage loans. Please contact the OAG's Mortgage Enforcement Unit (MEU) at MEU@ag.ny.gov with any questions about the guidelines or requests for information described below.

Industry-wide Practices: As the Attorney General emphasized at the outset of the pandemic, New York law requires mortgage servicers to work in good faith and fairly with their customers, including by considering an affordable and sustainable loan modification as an alternative to foreclosure. *See* 3 N.Y.C.R.R. § 419.10(b).

Accordingly, servicers must first offer their customers all available and affordable home preservation options. Then, servicers should educate customers who would not otherwise qualify for an affordable deferral agreement or loan modification about the availability of HAF funds.¹ In such cases, servicers must also incorporate the possibility of a HAF grant of up to \$50,000 into their loss mitigation analysis.²

The Attorney General will be monitoring compliance with these general obligations to ensure that New York State's limited HAF funds benefit as many homeowners and communities as possible.

Mortgage servicers must communicate effectively and accurately about all available loan remediation options with their customers. The Attorney General's office will continue to gauge mortgage servicers' responsiveness to borrowers' inquires, including whether servicers have

¹ New York State Department of Financial Services (DFS) has similarly advised mortgage servicers to ensure that HAF is used as a resource of last resort. *See* DFS, Industry Guidance Letter Re: Loss Mitigation for Borrowers Impacted by COVID-19 (Oct. 28, 2021) available at https://www.dfs.ny.gov/industry_guidance/industry_letters/il20211028_loss_mitigation. As DFS explains:

Servicers are expected to notify borrowers about HAF and provide information relating to the website and address that borrowers can apply or request an application. Servicers should not refer borrowers to HAF in place of offering all available loss mitigation options as directed by state and federal law. The HAF program is intended to supplement loss mitigation in cases where a loan modification is otherwise not achievable.

² DFS's October 28, 2021 guidance letter similarly instructs the mortgage servicing industry to incorporate HAF funds into any potential loss mitigation analysis:

Servicers are expected to work with borrowers who apply for HAF by factoring those resources into their loss mitigation analysis prior to the issuance of any denial notices to such borrowers. Also, Servicers are expected to incorporate the deferral of principal as one of several steps in calculating a sustainable loan modification.

adequate staffing levels to manage an influx of calls and provide language access for homeowners with limited English proficiency.

Federally-Backed Mortgages:³ For federally-backed mortgages, the MEU will ensure that homeowners who can resume their monthly payments were offered deferral modifications (which move any forbore payments to the end of the loan or creates a partial claim), and that homeowners who need a payment reduction were offered an affordable streamlined option.⁴ Where the application review confirms that a HAF grant is needed to reduce a homeowner’s arrears and create eligibility for an affordable streamlined payment reduction modification, the MEU will calculate the minimum amount of HAF funds needed to create eligibility, in order to ensure that these limited funds are distributed to as many homeowners’ accounts as possible.

To speed along MEU’s review, it is critical that servicers’ internal loss mitigation reviews consider whether a HAF grant of up to \$50,000 will allow an otherwise-ineligible homeowner to qualify for a loan modification under the established program rules for federally-backed mortgages, and to provide that analysis to MEU. The more information a servicer can provide upfront, the more quickly MEU can engage the servicer to determine if a HAF grant request should be approved.

PLS and Portfolio Mortgages: The MEU will also ensure that homeowners are offered affordable and sustainable post-COVID forbearance relief as required by New York law. *See* N.Y. Banking Law § 9-x(3). This statute requires PLS and portfolio servicers to extend a homeowner’s loan term or defer arrears as a non-interest bearing balloon where homeowners can resume their monthly payments. *See id.* § 9-x(3)(a), (d); *see also* NYS Dep’t of Financial Services, Banking Law 9-x FAQs, *available at* https://www.dfs.ny.gov/apps_and_licensing/mortgage_companies/mortgage_forbearance_statute_sect9x_faqs.

The statute also requires PLS and portfolio servicers to offer an affordable loan modification that “meets the changed circumstances” of a qualified borrower. *See* Banking Law § 9-x(3)(c). While Banking Law § 9-x does not define the terms of this option, investors and servicers have proactively taken steps to meet this requirement by offering programs modeled on Fannie Mae’s streamlined modification program. The OAG considers such programs to be consistent with the loan modification requirement set forth by New York law. DFS has similarly advised that it “expects Servicers of private label and portfolio loans to offer streamlined and flex modification programs similar to GSEs and government agencies COVID-19 related loss mitigation initiatives.” *See* DFS Industry Guidance Letter (Oct. 28, 2021).

³ For purposes of this letter, “federally-backed mortgages” means those backed by the government-sponsored enterprises (GSEs) Fannie Mae and Freddie Mac, and those insured by a federal program such as the Federal Housing Administration, Veterans Administration or the U.S. Department of Agriculture.

⁴ MEU will review affordability of a monthly mortgage payment in accordance with HAF guidelines published by HCR, which are available at <https://www.nyhomeownerfund.org/>.

The Attorney General will be scrutinizing alternative loan modification protocols to ensure that they meet the servicer's obligation to "act in good faith and deal fairly with borrowers," including by structuring any necessary "loan modifications to result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made." *See* 3 N.Y.C.R.R. § 419.10(b)(5). That includes servicers' obligation to document applicable investor restrictions; seek waivers from investors when necessary and appropriate; and ensure that applicable investor restrictions are consistent with New York law including Banking Law § 9-x.⁵

Finally, as with the federally-backed mortgages described above, PLS and portfolio servicers should also incorporate the possibility of a HAF grant of up to \$50,000 into their loss mitigation reviews and document that analysis.

⁵ *See also* DFS Industry Guidance Letter (Oct. 28, 2021) ("Servicers are expected to fully document all investor requirements and restrictions which preclude such Servicers from offering modifications on terms similar to those offered by government agencies and GSEs or prohibit the inclusion of deferred principal as a step in calculating loan modifications.")