Forbearance and Post-forbearance Options for Homeowners

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Key Definitions

- **Forbearance**: When the mortgage servicer or lender allows the borrower to temporarily stop making payments on the loan.
  - *Important note about a forbearance*: it does not make the payments go away; the borrower must still make the payments sooner or later unless other steps are taken.

- **Federally Backed Loans**:
  - Loans guaranteed by Fannie Mae or Freddie Mac
  - Loans insured or guaranteed by FHA/USDA/VA

- **Loan Modification**: Certain terms of the loan are changed such as the principal balance, interest rate, or length of the loan

- **Deferral**: Missed payments are deferred or put on the end of the loan and not due until the loan is paid off through a refinance or sale or the property is transferred

- **Partial Claim**: the missed payments are put into a lien on the property so that they must be paid when the property is paid off or transferred
Where to get help

- Legal assistance for low-income clients through the Legal Services Corporation
- Find an attorney though the National Association of Consumer Advocates
- A HUD-certified housing counselor
Why You Are Needed More Than Ever!

- Just over 10 million homeowners are behind on mortgage payments
- People of color face even greater hardship and are more likely to have deferred or missed payments, putting them at greater risk of foreclosure.
- About 2.7 million homeowners are in a COVID forbearance
American Rescue Plan §3204

- Signed into law 3/11/2021
- $100 million available until September 30, 2025, for grants to housing counseling intermediaries approved by HUD, State housing finance agencies, and NeighborWorks organizations for providing housing counseling services and grants
Homeowner assistance fund §3206

- Almost $10 billion to remain available until September 30, 2025, for qualified expenses
  - ie: mortgage payments, amounts to reinstate, principal reduction, etc.

- for the purpose of preventing homeowner mortgage delinquencies, defaults, foreclosures, loss of utilities or home energy services, and displacement of homeowners experiencing financial hardship after January 21, 2020
HAF

- Based on medium income levels
- Administered by Dept. of Treasury
- Funds provided to States based on homeowner “need” ie: loans past due or in foreclosure compared to other States
- No less than $50 million/ state
- Distributed within 45 days of enactment to States that request payment
Basic Review of Forbearance

- CARES Act passed March 2020 required “federally backed loans” to provide forbearance of mortgage payments for up to 12 months for borrowers experiencing a financial hardship due, directly or indirectly, to COVID–19
Federally Backed Loans

- **Fannie Mae & Freddie Mac**: borrowers with a COVID hardship who are already in a forbearance plan by February 28, 2021 can get up to 18 months of payments forborne.
- **FHA/VA/USDA**: borrowers with a COVID hardship who were in a forbearance plan by June 30, 2020 can get up to 18 months of forbearance. Can enroll until June 30, 2021.
- **All federally backed mortgages**: Moratorium on foreclosures until June 30, 2021.
Post-Forbearance Options for Government Sponsored Enterprise (GSE) Loans: Fannie Mae and Freddie Mac
Fannie Mae and Freddie Mac

Lookup the loan:

- Fannie Link; Freddie Link
- Borrowers will not be required to repay missed payments all at once.
- When the forbearance ends, servicer must work with the homeowner to determine how they will repay missed payments.
Waterfall *if can’t reinstate*

- 1. COVID-19 **Payment Deferral**
- 2. **Flex Modification** (in accordance with the requirements described in Bulletin 2020-7, if applicable)
- 3. Standard **Short Sale**
- 4. Standard **Deed-in-Lieu of Foreclosure**
Fannie/Freddie Servicer Duties

- Must begin attempts to contact the borrower 30 days prior to the expiration of the forbearance
- First question for borrower with COVID hardship: Can you afford your pre-forbearance payment now?
COVID-19 Payment Deferral Plan

- If YES: borrower is offered a COVID-19 Payment Deferral Plan:
  - *Up to* 18 months of missed payments are put into a non-interest bearing balance
  - Not due until end of loan: paid off, sold, refinanced, or transferred
  - No documentation is required
  - The property may be a Primary Residence, second home or Investment Property and may be vacant or condemned.
Who Is Eligible GSE COVID-19 payment deferral?

- Borrower must:
  - Have experienced financial hardship resulting from COVID-19 that impacted ability to make full monthly payment
  - Have resolved the COVID-19 hardship
  - Be able to continue making the full monthly payment, and
  - Be unable to reinstate or afford a repayment plan
There’s Always a But…

- Borrower must have been less than 31 days delinquent as of March 1, 2020 (can ask for a waiver)
- Escrow shortages will not be deferred
What if They Keep Missing the Borrower

- The servicer must send the borrower an offer within 15 days of finishing a forbearance plan if:
  - Unable to contact the borrower
  - The mortgage was less than 31 days delinquent on March 1, 2021
  - Not otherwise ineligible
Timelines

Servicer:

- Must complete COVID-19 Payment Deferral in the same month it determines the Borrower is eligible.
- Must send Agreement within 5 days of approval.
What’s Next?

What if the borrower can’t resume their pre-COVID forbearance monthly payment due to a loss of hours or increase in expenses?

Must evaluate for the Fannie/Freddie Flex Mod.
Flex Modification

- Program uses same fixed interest rate & same repayment term extension for all mods

- To get the payment lower they will:
  - Add the missed payments to the balance
  - Lower the interest rate to a fixed rate
  - Extend the term of the loan to 480 months
  - Might also defer some principal to the end

- Must send within 15 days after forbearance expires
What if Can’t Contact Borrower?

- Must also evaluate for Flex Mod if:
  - cannot establish contact and borrower is ineligible for COVID-19 payment deferral – Or
  - If approved for COVID-19 payment deferral but does not respond to offer, send a Flex Mod within 15 days after expiration of offer
Post-Forbearance Options for Federally Insured Home Loans
THREE FEDERAL AGENCIES

- HUD – manages FHA single-family insured loan program
- VA – manages VA single-family guaranteed loan program
- USDA – manages two distinct programs:
  - USDA guaranteed single-family home loan program
  - USDA direct loan program (purchase and home repair loans)
- All are “federally backed mortgage loans” under CARES Act § 4022(a)(2)
“Federally Backed Mortgage Loan”

- GSE: 47%
- FHA/VA/USDA: 18%
- Banks: 25%
- All Other: 5%
- PLS: 5%
Post-forbearance Options for FHA Loans

- Waterfall of options

- Owner-Occupant Borrowers are eligible to be reviewed for the:
  - COVID-19 Standalone Partial Claim;
  - COVID-19 Owner-Occupant Loan Modification;
  - COVID-19 Combination Partial Claim and Loan Modification; and
  - COVID-19 FHA Home Affordable Modification Program (FHA-HAMP)

- Non-Occupant Borrowers are eligible to be reviewed for the
  - COVID-19 Non-Occupant Loan Modification.

- Can receive more than one option if redefault
Stand Alone Partial Claim

- The missed mortgage payments are placed into a junior lien, which is only repaid when the homeowner sells the home, refinances the mortgage, or the mortgage is otherwise extinguished.

- All Late Charges, fees, and penalties accumulated after March 1, 2020 are waived.
Who Can Get FHA Partial Claim?

- For borrowers who were on a COVID-19 forbearance plan; and
- indicate they have the ability to resume making on-time Mortgage Payments;
- Property is owner-occupied; and
- Current or less than 30 days past due as of March 1, 2020.
FHA Partial Claim

- Claim can’t be more than 30 percent of unpaid principal balance.
  - Won’t necessarily get full 30%
  - Past partial claims count toward 30%

- Must be evaluated by end of forbearance period
What if Borrower Does not Qualify for Partial Claim?

Move down the waterfall

- Must review the Borrower for a COVID-19 Owner-Occupant Loan Modification at the end of the COVID-19 Forbearance period.
- Modifies:
  - the rate: fixed to no more than HUD market rate and
  - the term: up to 360 months
- Late charges and fees are waived
- Past due amounts of interest and escrow added to the balance
Eligibility for COVID-19 Owner-Occupant Loan Modification

- The Borrower indicates they have the ability to make the modified Mortgage Payment, and
- The Property is owner-occupied
Next on the Waterfall: COVID-19 Combination Partial Claim and Loan Modification

- Eligible Owner-Occupant Borrowers must be reviewed for the COVID-19 Combination Partial Claim and Loan Modifications when:
  - The modified monthly Mortgage Payment will increase utilizing the COVID-19 Owner Occupant Loan Modification, and
COVID-19 Combination Partial Claim and Loan Modification

- The Borrower is ineligible for the Mortgage current through the COVID-19 Standalone Partial Claim or
- The Borrower cannot resume their existing monthly Mortgage Payments with a COVID-19 Standalone Partial Claim.
Eligibility for COVID-19 Combination Partial Claim and Loan Modification

- Same eligibility criteria as COVID-19 Partial Claim and Loan Modification including:
  - The Borrower indicates they have the ability to make the modified Mortgage Payments; and
  - The Property is owner-occupied
  - Partial Claim can’t exceed the arrears on the loan and can’t be more than 30 percent of unpaid principal balance.
Borrowers may provide income documentation to be reviewed for an affordable monthly payment under a COVID-19 FHA-HAMP Combination Loan Modification and Partial Claim with Reduced Documentation, which may include a Principal Deferment.
For borrowers who:

- Are not eligible for prior COVID-19 options because can’t resume pre-forbearance payment or cannot make a modified payment
- Have not reached FHA Partial Claim total limit
- Have properties that are owner-occupied
FHA-HAMP: The Basic Concept

- Allows combination of a partial claim with a loan modification, or either option alone

  - Loan term extended to 360 months
  - Interest rate reduced
  - Then Partial Claim is option to reach target payment
FHA-HAMP

- Income-based evaluation to reach an affordable payment
- Borrower must provide
  - Proof of income
  - Bank Statements
FHA National Servicing Center

Oklahoma City Office
U.S. Department of HUD
301 NW 6th Street, Ste 200
Oklahoma City, OK  73102

Fax:  (405) 609-8405 or
(405) 609-8421

www.hud.gov/offices/hsg/sfh/nsc/nschome.cfm
E-mail:  hsg-lossmit@hud.gov
1-877-622-8525
VA Loans: COVID-19 Post Forbearance Relief

- VA loans are subject to CARES Act’s forbearance and moratorium terms
- VA Circular 26-10-12 (4/8/2020)
  - Servicer must grant forbearances upon borrower’s attestation of Covid 19 hardship
  - Borrower determines length (up to total 360 days)
  - End of forbearance: servicer must consider “all possible” regular VA options, including “extend” disaster modification
- Demand for lump sum repayment prohibited
What are the VA Options?

- Repayment Plan
- Special Forbearance
- Loan Modification – traditional and streamline
- “VA Affordable Modification” (31% DTI target)
- Disaster modifications (with extend feature)
- Compromise (short) sale
- Deed-in-Lieu of foreclosure
- Refinance
- Assumption
- Refunding- VA takes over loan
RURAL HOUSING LOANS

- USDA’s Rural Housing Service ("RHS," formerly "FmHA") manages two single-family home loan programs for borrowers in rural areas:
  - **Guaranteed Loan Program**: private lender, RHS guarantees loan, not obvious from mortgage and note (see closing documents)
  - **Direct Loan Program**: The United States is the lender and this is obvious
Options for RHS Guaranteed Loans

**Standard USDA Waterfall**
- Special Forbearance
- Loan Modification ("standard")
- Loan Modification ("special loan servicing")
- Pre-Foreclosure Sale
- Deed-in-Lieu
Post-forbearance for guaranteed loan borrowers

- Not a separate program but lender must communicate with borrower about options
  - re-payment plan to resolve amounts due or
  - Extend the loan term for a period that is at least the length of the forbearance.
  - Unclear if requires submission of any financial information.
- Borrowers who cannot afford post-forbearance payments should be reviewed for standard USDA guaranteed loan loss mitigation options.
Post-forbearance relief for direct loan borrowers

- No specific relief for direct loan borrowers facing COVID hardships
- Problem: standard post-forbearance options do not allow for an interest rate reduction or loan term extension
- Can apply for an additional 12 months of forbearance under “moratorium”
Post-forbearance options for Section 184/184A Indian and Native Hawaiian guaranteed loans

- How to find out if client has a Section 184/184A loan:
  - It will usually say on the loan or closing disclosures and there may also be a guarantee attached to the note; borrower will be an Indian or Native Hawaiian
Section 184/184A Indian and Native Hawaiian Guaranteed Loans

- Section 184/184A loan options (owner-occupied):
  - COVID-19 Loss Mitigation Advance: similar to a partial claim, impact on borrower is the same as partial claim
  - all existing Loss Mitigation Options for the Section 184 and 184A programs
  - HUD will issue further guidance in the near future.
What if Borrower Does not Qualify for Relief?

*Standard Short Sale:*

- Must have eligible hardship
- Arm’s length transaction
- Listed for sale with licensed agent for at least 5 days
- If > 31 days delinquent:
  - Must occupy property
  - 55% DTI
Deed-in-lieu of Foreclosure

- Unable to sell at fair market value
- must submit a complete Borrower Response Package if < 90 days delinquent
- Must be able to convey clear and marketable title to the property
- May be eligible for relocation assistance
Non Federally-Backed Loans

- Use Request for Information to learn options
- Possible coverage under state laws
  - Massachusetts: current for forbearance/pending for post-forbearance
- Chapter 13 bankruptcy option
  - Can cure arrearage under plan over 3-5 years
  - Litigate claims
  - Must file chapter 13 petition for relief before completion of foreclosure sale under state law.
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