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# Forbearance and Post-forbearance Options for Homeowners



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Andrea Bopp Stark, Esq.  
National Consumer Law  
Center

# 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 changes 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 through 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

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# Post-Forbearance Options for Government Sponsored Enterprise (GSE) Loans: Fannie Mae and Freddie Mac



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# 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

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# Post-Forbearance Options for Federally Insured Home Loans



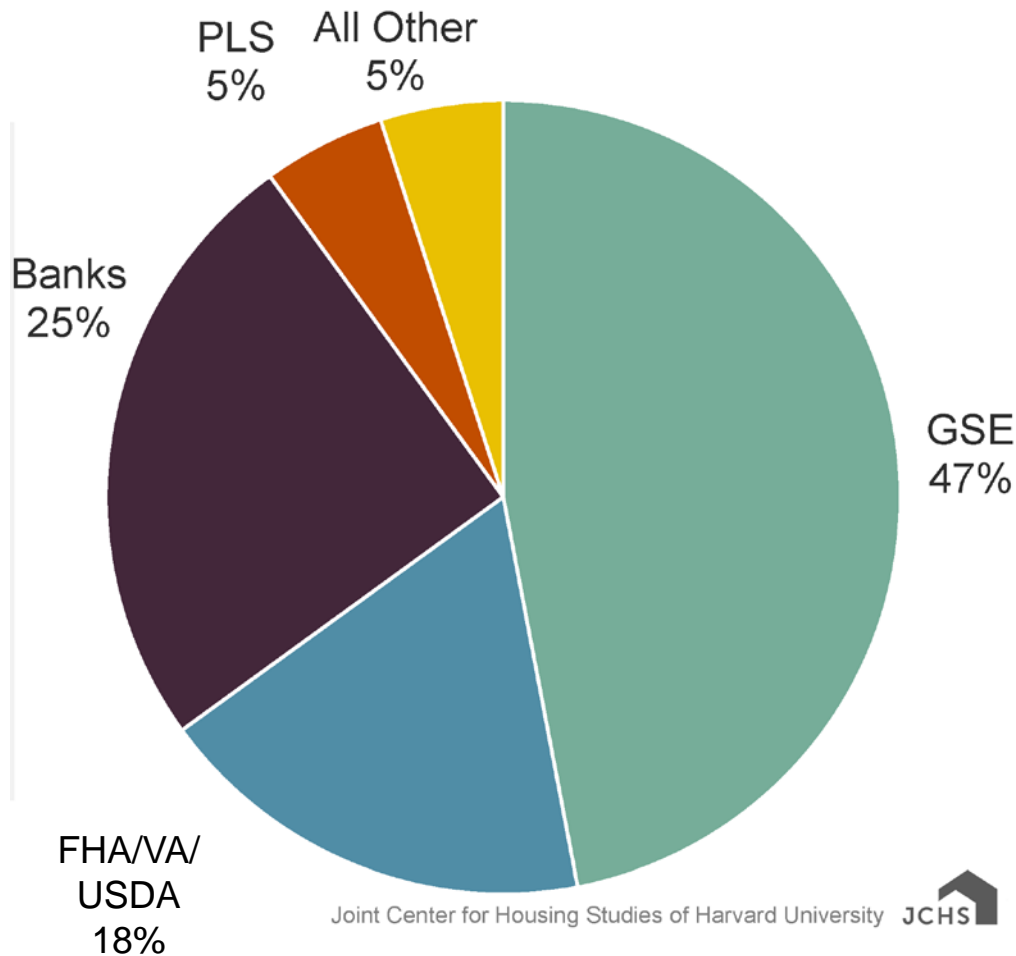
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# THREE FEDERAL AGENCIES

- 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”





# 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.

# Next on Waterfall: FHA HAMP Combination Loan Modification and Partial Claim

- 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 6<sup>th</sup> Street, Ste 200  
Oklahoma City, OK 73102

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

[www.hud.gov/offices/hsg/sfh/nsc/nschome.cfm](http://www.hud.gov/offices/hsg/sfh/nsc/nschome.cfm)

E-mail: [hsg-lossmit@hud.gov](mailto: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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