

# Avoiding Foreclosure after the Expiration of the COVID-19 Mortgage Forbearance

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March 24, 2021

# Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to [NCLER@acl.hhs.gov](mailto:NCLER@acl.hhs.gov).
- Written materials and a recording will be available at [NCLER.acl.gov](http://NCLER.acl.gov). See also the chat box for this web address.

# About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

# About NCLC

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S.

NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services; and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.

# Key Lessons

- Basic knowledge of options available for borrowers who cannot pay their mortgage due to a COVID-19 hardship
  - What a forbearance plan is and how it can provide immediate relief for borrowers
  - What options are available to borrowers after they complete a forbearance plan
- Identification of basic terms regarding borrowers' mortgages and relief options
- How to get help for clients

# Older Homeowners Need Help More Than Ever

- Because of their age and pre-existing medical conditions, older adults are at a much higher risk of severe illness from COVID-19
  - 8 out of 10 COVID-19 deaths reported in the U.S. have been in adults 65 or older
- Older Americans are carrying more debt than ever before:
  - The number of households led by people aged 65 and older with any type of debt increased from 38% in 1989 to 61% in 2016 with the mortgage the primary debt
  - Even higher now with COVID-19-related income loss and increased expenses

# Older Homeowners are Suffering

- In US Census Bureau Household Pulse Survey: about 13% of homeowners surveyed over age 65 believe they will have to leave their home in the next two months due to foreclosure
- As of mid-February, about 10% of the people surveyed over age 65 had moderate to no confidence they could make next month's mortgage payment
- Source: [Census Household Pulse Survey](#)

# Disparate Impact

- Per the US Census Household Pulse Survey, in February 2021, over 10% of Hispanic or Latino, Black, and Asian households surveyed were behind on their mortgage compared to 5% for white households
- 15% of Hispanic or Latino, Black, and Asian households surveyed said they had slight to no confidence they could make next month's mortgage payment compared to 5% for white households



# Key Definitions (1 of 2)

- **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

# Key Definitions (2 of 2)

- **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 *separate lien* on the property so that they must be paid when the property is paid off or transferred

# Where to Get Help

- Older Americans Act Title III-B Legal Assistance programs through the [Elder Care Locator](#)
- 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](#)

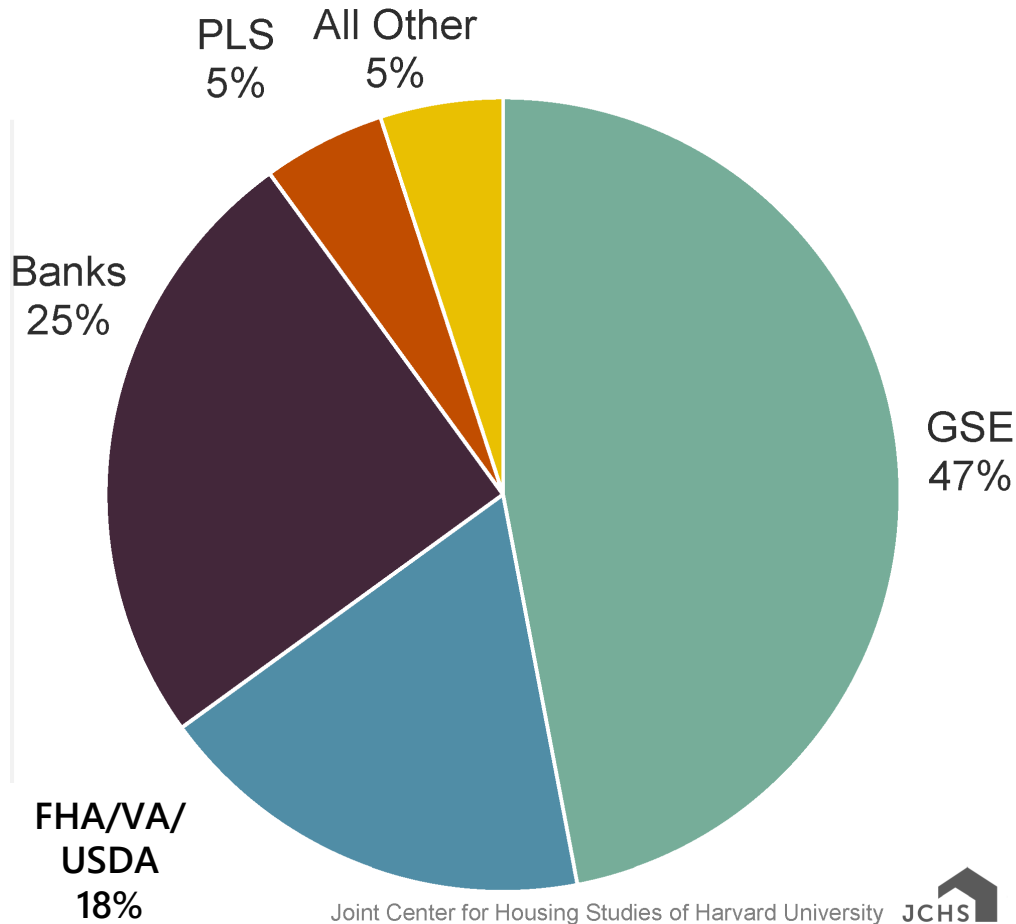
# A Word About Forbearance

- 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 the COVID–19
- Temporary reprieve from making payments but have to pay them eventually

# Federally Backed Loans

- **Fannie Mae & Freddie Mac:** borrowers with a COVID-19 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-19 hardship who were in a forbearance plan by June 30, 2020 can get up to 18 months of forbearance.
- **All federally backed mortgages:** Moratorium on foreclosures until June 30, 2021

# “Federally Backed Mortgage Loan”



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

# Fannie Mae and Freddie Mac

## Look up 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 for 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.**

# Credit Reporting

- CARES Act: If current on their mortgage at the time a COVID-19 related forbearance is offered, report as current during forbearance.
- Equifax, Experian, and TransUnion are now offering free weekly online reports through April 2021.
  - [www.AnnualCreditReport.com](http://www.AnnualCreditReport.com)



# 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)

# 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 re-default

# 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;
- 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
- 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**
  - The Borrower is ineligible to bring 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;
  - The Property is owner-occupied; and
  - Partial Claim can't exceed the arrears on the loan and can't be more than 30 percent of unpaid principal balance.

## Next on the Waterfall: FHA-HAMP Combination Loan Modification & 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

# FHA-HAMP Combination Loan Modification and Partial Claim

- 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

[https://www.hud.gov/program\\_offices/housing/sfh/nsc](https://www.hud.gov/program_offices/housing/sfh/nsc)

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
- 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-19 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 Home Loan Guarantee & Loan Guarantees for Native Hawaiian Housing

- 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 American Indian or Alaska Native who is a member of a federally recognized tribe or Native Hawaiian

# Section 184/184A Indian Home Loan Guarantee & Loan Guarantees for Native Hawaiian Housing

- 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, Oregon, NY, pending bills elsewhere
- 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.

Questions?

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# Case Consultations

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at [ConsultNCLER@acl.hhs.gov](mailto:ConsultNCLER@acl.hhs.gov).