

# Federal Updates to COVID-19 Mortgage Relief Options

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# Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
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- 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.

# Agenda

- Update on the impact of the pandemic on mortgage borrowers
- Overview of the types of relief available for borrowers with COVID hardships
- Federal policy updates on COVID relief options
- Brief discussion of options for reverse mortgage borrowers

# Impact on Mortgage Borrowers

- According to Black Knight, an industry provider of mortgage data, there are 1.7 million seriously delinquent mortgage borrowers
  - Compare that to around 500-600k pre-pandemic
- Per HUD's Neighborhood Watch database, there are around 759,000 FHA-insured borrowers behind 90+ days
  - Compare that number to around 300,000 in April of 2020

# Scope of the Problem

- The pandemic has hit older mortgage borrowers hard, and those borrowers will need relief.
- According to the [Economic Policy Institute](#), “[l]abor market outcomes were far worse for older workers in this recession as compared to their experience in the Great Recession.”

# Scope of the Problem (cont.)

- And according to the [Urban Institute](#), “The pandemic and economic fallout hit older workers twice over. In addition to the nearly 1 million workers age 65 and over who left the labor force over the past 12 months, another 165,000 older workers remained in the labor force but joined the unemployment rolls while they looked for a job or sat on furlough.”
- People are going to need mortgage relief.



# Mortgage Advocacy (1 of 2)

- We are at the hardest part of the crisis for mortgage borrowers—moving borrowers from pauses on their payments (forbearance) to plans to bring them current (loss mitigation)
- Policy is changing very rapidly on all fronts (CFPB, FHFA, HUD, VA, USDA)

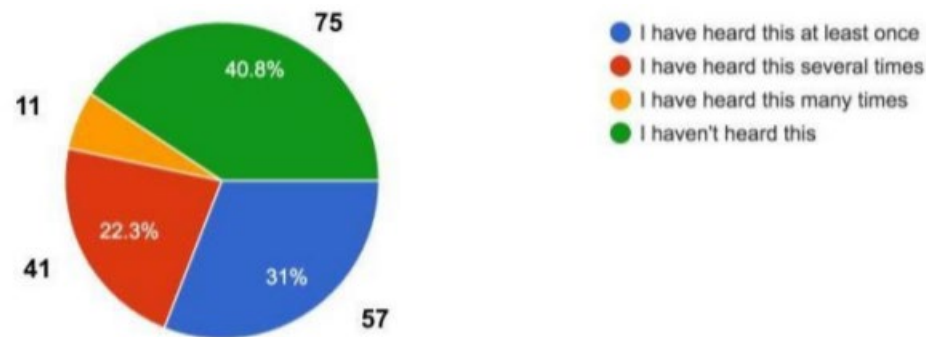
# Mortgage Advocacy (2 of 2)

- Advocates are very busy
- We have a widely-attended monthly call
  - If you are interested in signing up, email me at [ssharpe@nclc.org](mailto:ssharpe@nclc.org)
  - We are taking what we are hearing on the ground to inform policy advocacy
  - We are also finding out what policies are not being followed
- For example, we had a survey and story component to our [May 2021 comments](#) to the CFPB on its very important procedural rule for borrowers with COVID hardships.

# Nationwide Survey of Homeowner Advocates

## National Consumer Law Center, May 2021

- The National Consumer Law Center conducted a nationwide survey of attorneys, housing counselors, and other homeowner advocates in May 2021. The 185 individuals responding to the survey assist homeowners in 31 states, including Alabama, Arizona, California, Connecticut, Florida, Georgia, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin. The respondents include 94 housing counselors, 57 legal services attorneys, 14 private consumer attorneys, and 20 other advocates. Certain respondents did not answer every question, but each question received at least 180 responses. Those responses are reflected in the charts below.
  - Have you spoken to homeowners who were told by their servicer that they could not be evaluated for post-forbearance options while in forbearance? (184 responses)



# Basic Categories of Relief

- Moratorium
- Forbearance
- Loss mitigation options/modifications

# Basic Categories of Relief (cont.)

- Current policies for COVID hardships have their roots in the CARES Act, which passed in March of 2020.
- The federal agencies have implemented the CARES Act and continue to develop relief policies.

# CARES Act Recap

- Provided forbearance rights and a now-expired moratorium on foreclosures.
- Applied to federally-backed mortgages.
- Put heavy emphasis on determining the investor as the first step in helping a borrower.
  - Private label securities and loans in portfolio not covered.

# Relief for Borrowers

- How to determine investor:
  - Fannie Mae and Freddie Mac have loan look up tools.
  - For FHA and VA, look to closing documents.
  - USDA direct loans are from the government directly.
  - USDA guaranteed is challenging.
- Helpful [article](#) from NCLC

# Categories of Relief

- There are some recent protections for non-federally backed loans.
- Amendments to the CFPB's Regulation X provide procedural protection for borrowers with COVID-19 hardships.
  - Regulation X does not provide specific loss mitigation options.
- NCLC [Information on Regulation X](#)



# Categories of Relief – Regulation X

- Most importantly, the protections of Regulation X, including the new amendments for COVID hardships, apply to **federally-related loans**, which has a broader definition than the federally-backed definition of the CARES Act.
- The Regulation X protections are effective August 31, 2021

# Regulation X for COVID Hardships

- Temporary procedural safeguards prior to initiation of a foreclosure (effective from 8/31/21 – 12/31/21)
- Allowance of streamlined modifications
- Early intervention requirements (effective from 8/31/21 – 10/1/22)

# Policy Updates

- A lot of activity from Fannie Mae, Freddie Mac, FHA, VA, and USDA to shape relief for borrowers with COVID hardships.
- We counted [14 updates](#) between June 24 and July 23, 2021

# Moratoriums (1 of 2)

- Fannie Mae, Freddie Mac, FHA, VA, and USDA all ceased their foreclosure moratoriums on July 31, 2021.
- This is different than eviction moratoriums that cover regaining possession of property with a mortgage on it.
  - For example, FHA's Mortgagee Letter extends the eviction moratorium through September 30, 2021.
  - “During the moratorium, a Mortgagee must not initiate or continue with an eviction **to acquire possession of the foreclosed property.**”

# Moratoriums (2 of 2)

- Fannie Mae and Freddie Mac, however, have implemented a bridge between the end of their moratoriums and the effective date of Regulation X.
- [FHFA Press Release](#): “Fannie Mae and Freddie Mac (the Enterprises) servicers will not be permitted to make a first notice or filing for foreclosure that would be prohibited by the . . . [Regulation X Final Rule] before the CFPB rule takes effect.”
- FHA, VA, and USDA did not follow Fannie Mae and Freddie Mac’s lead and implement a bridge.

# Forbearance (1 of 3)

- Fannie Mae and Freddie Mac have no deadlines for starting forbearance plans.
  - Given the current state of the pandemic, this makes sense.
- Pursuant to a White House announcement, FHA, VA, and USDA allow borrowers until September 30, 2021 to start initial forbearance plans.
  - Previously, borrowers had to start their initial forbearance plans by June 30, 2021.

# Forbearance (2 of 3)

- In Mortgagee Letter 2021-18, FHA limits the maximum length of forbearance plans for borrowers starting forbearance after June 30, 2021.
  - Borrowers in that position can only access six month of forbearance.
- Mortgagee Letter 2021-18 includes a chart displaying maximum forbearance terms.
- Advocates have pushed back on HUD's decision to limit forbearance to six months.

# Forbearance (3 of 3)

- VA, USDA, Fannie Mae, and Freddie Mac don't have such limits.
- USDA has clearly stated that maximum forbearance terms are 12 months, not 6 months.
- VA's guidance just extended previously issued forbearance rights.



# Post-Forbearance Concepts

- Partial claims/deferrals
- Combining partial claims with loan modifications
- Targeted payment reductions

# Fannie Mae and Freddie Mac

- [Update to Flex Modification guidelines](#)
- Prior to the policy change, borrowers with significant equity in their properties were generally unable to obtain an interest rate reduction in connection with a Flex Modification.
- Under the new policy, Fannie and Freddie allow rate reductions for borrowers with equity seeking a Flex Modification to address a COVID-19 hardship.

# Fannie Mae and Freddie Mac (cont.)

- This is a big change
- Borrowers who may have been denied may now qualify for a Flex Modification
- Borrowers may now get deeper payment relief

# FHA Mortgagee Letter

- Mortgagee Letter 2021-18 provides a total revision to the options available to address COVID-19 hardships.
  - Still shouldn't need a financial package for the COVID options
  - Also, still no trial plan needed

# FHA Home Retention Options (1 of 2)

- Under ML 2021-18, there are now two basic home retention options for owner-occupants who contact their servicer:
  - COVID-19 Recovery Standalone Partial Claim
  - COVID-19 Recovery Modification

# FHA Home Retention Options (2 of 2)

- The standalone partial claim option is for borrowers who can afford their pre-hardship payment.
- The COVID-19 Recovery Modification is for people who need a reduction of their pre-hardship payment.
  - Targets a 25% reduction of the principal and interest payment
  - Can involve the combination of a partial claim with a loan modification

# FHA Advance Loan Modification

- In addition, FHA has created the Advance Loan Modification (ALM), which is not part of the waterfall.
  - For the ALM, servicers review loans to see if a standard modification (capitalization of arrears, market interest rate, and 360 month term) can result in a 25% reduction of the principal and interest payment.
  - Offers sent without any application or request.

# FHA Home Affordable Modification Program (HAMP)

- For borrowers who need more than 25% reductions in their principal and interest payments, presumably they apply for FHA-HAMP.
- Question about how the conversation goes between the borrower and the servicer



# VA Borrowers

- Total update for borrowers facing COVID hardships through [VA Circular 26-21-13](#) and attachments
- VA creates three categories of borrowers:
  - Borrowers who can afford to restart their pre-hardship mortgage payments and can pay their arrears;
  - Borrowers who can afford to restart their pre-hardship mortgage payments, but need help to cover arrears; and
  - Borrowers who cannot afford their pre-hardship payment.

# VA Borrower Options (1 of 2)

- Borrowers who can pay arrears (category one) are offered a repayment plan.
- For borrowers who can afford their pre-hardship payment but not arrears, VA's newly released partial claim program should help.

# VA Borrower Options (2 of 2)

- For borrowers who need payment relief, VA has created a loan modification system targeting a 20%-25% reduction in the principal and interest payment.
- VA is also now allowing the combination of a partial claim type product with a loan modification to achieve the payment relief.

# USDA Guaranteed

- USDA added an option for borrowers facing COVID-hardship.
- If borrowers facing COVID-19 hardships cannot afford standard relief measures, the servicer should evaluate for a COVID specific modification.
- Like the VA, the USDA modification targets a 20% reduction in the principal and interest payment.
  - The reduction is achieved through a combination of an interest rate reduction, term extension, and Mortgage Recovery Advance (like a partial claim).

# “HECM Extension Period” (COVID-19 Forbearance for Reverse Mortgages)

- ML 2020-06; ML 2021-18
  - May request it up until 9/30/21 (now for 6-month term)
- Servicer will delay calling loan due and payable upon borrower’s request (despite property charge default)
  - Must waive any late charges, fees, and penalties
- For loans that already became “due and payable”:
  - Automatically extend foreclosure deadlines and deadlines for lenders to file a claim with HUD
- No documentation requirement

# Available Property Charge Loss Mitigation Options

- Repayment plan (Option 1, ML 2015-11)
  - Includes any property charges coming due in next 90 days
  - Not include HOA dues
  - Term as long as 60 months, unless shorter is affordable (25% of surplus income rule)
- At-Risk Extension (Option 2, ML 2015-11)
  - Youngest borrower over age 80
  - Critical circumstances, including terminal illness, long-term disability, or “unique” occupancy need

# Loss Mitigation Options

- **ML 2016-07: Informal Delay of Due and Payable Notice**
  - If arrears less than \$2,000; and
  - Borrower expressed willingness to pay and is attempting to pay or lender has not yet been able to reach the borrower.
  - Not available after loan already called due (per HUD NSC).
- **ML 2016-07: Mortgagee-Funded Cure**
  - Advanced amount is not added to HECM loan balance;
  - Advanced funds may not be included in a claim to HUD; and
  - Mortgagee agrees not to assign loan for three years after the cure.
- Reinstatement
- Refinance
- Chapter 13 Bankruptcy

# Non-Borrowing Spouses

- Different rules depending on loan date:
  - Pre-Aug 4, 2020: Spouse must request the Mortgagee Optional Election (MOE); servicer assigns loan to HUD now
  - Post-Aug 4, 2020: Spouse should enter a Deferral Period now (loan will not be assigned)
- HUD has fixed most of the issues! No requirement to show Good and Marketable Title (ML 2019-15, ML 2021-11)



# Questions?

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