Agency Waterfalls & CFPB Mortgage Servicing Rule

Tuesday, August 31, 2021

Sid Alvarado: Hello, everyone. Welcome to today's webinar, "Agency Waterfalls & CFPB Mortgage Serving Rule." Before we get started on our content for today, I just wanted to go over a few things and let you know how we will be using this Zoom platform. You as participants are in listen-only mode. We're going to be using the chat box to submit any technical issues. So if you're having any technical issues at any time, please make sure that you use the chat box to send messages.

For questions and answers for this particular webinar today, we ask that you submit all questions that you have that are related to this content via the Q&A box. And we'll be taking time to answer those questions toward the end. If you'd like to get credit for this webinar, you can go to HUD Exchange in the webinar archive. You can find this webinar by date or by topic. You can obtain credit by selecting the webinar and clicking on "Get Credit for this Training."

This, as well as future webinars and educational opportunities, can be found on HUD Exchange. You can visit the training digest on HUD Exchange for any upcoming training that is hosted by HUD, as well as other partners. To get this webinar underway, we are going to have Jerrold Mayer provide us with a welcome. He's the director of HUD's Office of Housing Counseling, and the Office of Outreach & Capacity Building. Jerry?

Jerrold Mayer: Well, thank you, Sid. And welcome to all the housing counselors and stakeholders to today's presentation. We're going to be featuring information on protections for borrowers affected by the COVID-19 emergency under the Real Estate Settlement Procedures Act, Regulation X, as well as a panel of experts from federal agencies who will present updates on their COVID recovery waterfall options. I want to thank all our panelists for joining us today to talk about their programs and options for consumers.

We're going to provide that overview of CFPB's amendment to Regulation X. And folks from CFPB will be taking the mic soon to talk to you about that. Our panel of federal agency experts will be here to talk to you about the waterfall options that are available to homeowners. And then we'll identify options for housing counselors to educate homeowners impacted by COVID-19 on all the various programs and options available to them. Next slide, please. Our producers today are Sid Alvarado and Joseph Sant from ICF, who are helping us produce today's program.

And we'll also be hearing from Beth Spring, who is a mortgage servicing program manager at CFPB; and Eileen Zaenger, who is a senior policy analyst at the Office of Housing and Regulatory Policy at the FHFA; Matt Martin, who is a director at HUD's National Servicing Center in Single-Family Housing with FHA; Richard Kane, the deputy director of loan servicing at USDA; Katie Graham, the central office servicer liaison at the VA; and Will Corbett, a senior policy advisor at the Department of the Treasury. Next slide, please.

During today's webinar, the goal is really to understand the agencies on the panel and the different roles that each agency plays with their various products. We'll be hearing updates from CFPB on process protections for homeowners. Agencies will discuss tailored waterfall options. And Treasury will discuss the homeowner assistance fund.

And recognize that if the federal agency owns or backs the loan, this affects COVID-19 relief options that are available to the homeowner. And here are some tools from Fannie and Freddie that you can use to look up individual loans. Next slide. And without further ado, I'm going to turn the mic over to Joseph to take us through the rest of the program.

Joseph Sant: Hello, everybody. My name is Joseph Sant. I'm going to give additional context to set up this presentation. This is a really timely webinar, as we're preparing to assist homeowners who have suffered a financial hardship due to the COVID-19 pandemic. As many of you know, the federal foreclosure moratorium ended on July 31. And we have many homeowners who need to resolve their missed mortgage payments after being on forbearance plans for a number of months.

So we put this training together to equip counselors for helping homeowners through those challenges ahead so they can preserve homeownership. So since there's a lot of ground to cover -- and we're going to have to cover it quickly today -- I'm going to give you a road map of what to listen for as we're going along. So, as Jerry said, first, we're going to get an update from CFPB. They'll provide an overview of the agency's new mortgage servicing regulations. And what I encourage counselors to listen for there are the process protections that homeowners have thanks to these new regulations

The second thing I want to highlight and encourage you to listen for is how the COVID-19 loss mitigation waterfalls have been updated. There have been a number of updates in the last several weeks that counselors should know about. So what we want you to come away with is what those options look like as of right now based on each investor's agency waterfall. And keep in mind the very important practice point -- for each of your homeowner clients, the COVID-19 loss mitigation options that are available to them will depend on who the loan's investor is.

And that's why representing to you in sequence what each federal investor is offering under their loss mitigate waterfall. The last thing I'll suggest you listen to -- we're going to hear from Will Corbett at the U.S. Treasury about the Homeowner Assistance Fund. That's a federally funded program that will allow states, tribes, and territories to give direct financial assistance to homeowners. So as you're tuning in, understand that this program will supplement and augment the aid available through the loss mitigation waterfalls we're covering today.

So this is a great program. It's right on time, given where we are in the pandemic and the needs of homeowners. And let's keep moving. But before we dive in, I just want to remind counselors about foreclosure prevention counseling resources that are available on the HUD Exchange. You see them on screen right now. You can learn about the importance of foreclosure prevention counseling, types of foreclosure, options available to homeowners, recaps of their rights.

This is a good place to go to get to the fundamentals of foreclosure prevention that are not specific to the COVID-specific topics we're covering today. So I encourage you to check that out, especially if you need a refresher. So let's get going. I'm going to hand it off from here to my colleague Sid, who is going to run the polling questions.

Sid Alvarado: Okay. I know some of you have been in previous webinars that we've had and you've had the opportunity to use Mentimeter. So what you're going to do now is you are going to get your mobile devices, or you could also just go to www.menti.com, to answer our first polling question for this particular session here. And that first question is, what type of agency do you represent? We always want to know who is with us on these webinars. So you can go to menti.com. You're going to use the code 7279-2780.

And I'll also take this link and I'll put it in the chat box for you as well, so that way you'll have an opportunity to get it from there as well. And I see that some of you have already taken the time to answer. But we always like to know what type of agency. We are going to have an opportunity for one more Menti question toward the end, but this is our first one. We'd like to know who is with us on today. Okay. Thank you for taking time to answer that question there. Now we're going to get into the content for this webinar. And we're going to do that by starting with Beth Spring, who is with CFPB. Beth?

Beth Spring: Thank you. Next slide past the disclaimer. Okay. Thank you very much. My name is Beth Spring. I work in the Bureau's Office of Research Markets and Regulations. I'm happy to present today, as the Bureau remains very concerned with the large volume of seriously delinquent borrowers that will be at risk of foreclosure initiation this fall. So, as such, the Bureau issued a final mortgage servicing rule on June 28.

The rule is just one of several initiatives that are designed to help ensure a smooth and orderly transition as other federal and state protections for mortgage borrowers end this fall, by providing borrowers with a meaningful opportunity to explore ways to resume making their mortgage payments and ultimately avoid foreclosure. The final rule also helps promote housing security by preventing avoidable foreclosures and keeping borrowers on the path to wealth creation through homeownership.

All of the amendments in the rule are temporary. That's either because they include a specific sunset date, or because they're linked to programs made available to borrowers with COVID-related hardships. They also only apply to principal residences. The rules apply to most servicers. However, none of the amendments apply to small servicers. The final rule takes effect today, on August 31. There are four main amendments that we adopted in the final rule. And I'll describe each one in a little bit more detail.

The first is the temporary special pre-COVID-19 procedural safeguard. An exception making it easier for servicers to offer certain streamline modifications expanded early intervention messaging and timing requirements for reasonable diligence contacts that servicers must make at the end of forbearances. Next slide. I'm going to talk about the temporary special COVID-19 procedural safeguards. This amendment will help ensure that borrowers have meaningful opportunity to be reviewed for loss mitigation options before foreclosure referral through the end of this year. It only applies to certain mortgages, which I'll discuss more shortly.

So under the final rule until December 31, a servicer must ensure that one of the three procedural safeguards is met before the servicer can make the first notice or filing required for foreclosure.

So the servicer may proceed with the first notice or filing before the end of the year if any one of the three safeguards is met.

The first safeguard is a complete loss mitigation review. Generally, this means that if the borrower submitted a complete loss mitigation application, the servicer must have reviewed the complete application, gone through all of the notifications and procedures that are required by our existing mortgage servicing rules.

And if the servicer determine that the borrower is not eligible for any loss mitigation options, or the borrower has rejected all offered loss mitigation options, or the borrower failed to perform on a loss mitigation option -- such as failing their TPP -- in this situation, the servicer then may proceed with the first notice or filing because they've met all of the requirements under the existing mortgage servicing rules.

The second safeguard is that the property securing the mortgage loan is abandoned under state or local law when the servicer made the first notice or filing. If the property has been determined to be abandoned, the servicer may proceed with foreclosure. The third safeguard is that the servicer must have conducted specific outreach during the 90-day period before making the first notice or filing, and the borrower is unresponsive or did not otherwise communicate with the servicer during that period.

And if the borrower was in a forbearance program, then the servicer must not make that first notice or filing until 30 days after the borrower's forbearance ends. If the borrower is unresponsive and the servicer conducts this required outreach, the servicer may proceed with the first notice or filing. I want to note for this group that a borrower wouldn't be considered unresponsive if the servicer is working directly with the housing counselor.

This special COVID-19 procedural safeguards generally apply to only certain loans. They apply to, one, if the borrower's mortgage loan obligation became more than 120 days delinquent on or after March 1, 2020; and two, the statute of limitations applicable to the foreclosure actions expires on or after January 1, 2022. In other words, the procedural safeguards are not applicable for borrowers who had serious delinquencies before the pandemic. So this final rule provision is in effect until January 1, 2022. Next slide.

The second amendment in the find rule which makes it easier for servicers to offer borrowers certain streamline loan modifications, the Bureau's mortgaging servicing rules generally prohibit a servicer from offering a loss mitigation application based on the evaluation of an incomplete application. So the final rule creates a new exception to that requirement that permits servicers to offer certain streamline loan modification options made available to borrowers with COVID-19 hardships based on the evaluation of an incomplete loss mitigation application.

This flexibility can allow servicers to get borrowers into affordable mortgage payments faster with less paperwork for both the borrower and the servicer. Eligible loan modifications must satisfy certain criteria that aim to establish sufficient protections to help ensure that a borrower is not harmed if the borrower chooses to accept an offer of an eligible loan modification based on this evaluation of an incomplete application.

For example, to be eligible, the loan modification may not cause the borrower's monthly required principal and interest payment to increase. And the servicer may not charge any fee in connection with the loan modification. Another example is that the servicer must waive all existing late charges, penalties, stop-payment fees, or similar charges that were [incurred?] on or after March 1, 2020 promptly upon the borrower 's acceptance of the loan modification.

The next two amendments I'll discuss are amendments to the live contact early intervention requirements and the amendments to loss mitigation reasonable diligence obligations. So both sets of changes are meant to ensure that servicers are communicating timely and accurate information to borrowers about their loss mitigation options during the current crisis. Next slide.. In general, the final rule requires servicers to discuss additional COVID-19-related information during the live contacts with delinquent borrowers that are already required under our existing rules.

The final rule expands the messages that servicers must convey to delinquent borrowers if the servicer establishes live contact with the borrower in two circumstances. The first is, the borrower's delinquent and they're not in forbearance. And then the second is the borrower is near the end of the COVID-19-related hardship forbearance. So in those circumstances, the final rule requires servicers to share certain information with the borrower about their options and information about how to contact a HUD housing counselor. This provision is temporary, and it expires on October 1, 2022.

Finally, the last amendment adopted in the final rule clarifies servicers' reasonable diligence obligations to try to collect a complete loss mitigation application from the borrower when the borrower is in a COVID-19-related hardship forbearance program made available to the borrower based on the evaluation of an incomplete application. The final rule specifies that a servicer must contact the borrower no later than 30 days before the end of the forbearance period if the borrower remains delinquent to determine if the borrower wishes to complete the loss mitigation application and proceed with the full mitigation evaluation.

So those are the main components of the temporary provisions in the final rule. As I said earlier, the rule is effective today. Next slide. Just a couple quick additional notes -- first, we have a lot of resources for homeowners and renters on our website in our housing hub portal. This includes resources for limited English proficient borrowers. Next slide. We also like to encourage housing counselors to submit complaints using the Bureau's complaint form. We expect mortgage-related complaints to increase in the coming months. And they really help to inform the Bureau on the problems in the marketplace and help us focus our efforts. With that, I will now turn it over to Eileen from FHFA.

Eileen Zaenger: Excellent. Thank you so much, Beth. I appreciate hearing everything you had to share about what's the new rule at CFPB. It's really useful. My name is Eileen Zaenger, and I'm a senior policy analyst at the Office of Housing and Regulatory Policy at FHFA. FHFA is responsible for overseeing Fannie Mae and Freddie Mac, which we often refer to as the "enterprises," if that comes up in a presentation.

My work over the past 10 years has been focused on policy development, primarily on foreclosure prevention and neighborhood stabilization. I've worked closely with Fannie Mae and Freddie Mac to create delinquency management standards and develop loss mitigation tools, such as the flex mod and the new payment deferral that is going to be a really key factor in helping borrowers to maintain homeownership after the pandemic when they come out of their forbearances.

This work has been done through the Servicing Alignment Initiative, which fosters greater consistency, transparency, and efficiency in mortgage servicing. That started back at the last crisis and we continued with it. Okay. So today we're here really to talk about borrowers with COVID-19 hardships and what we've done most recently. It's a special case of the work we've done since the prior crisis. So I really wanted to start with, what is a hardship? And that's what makes up our eligible for loss mitigation.

It could be unemployment, reduction in income, increase in housing-related expenses, divorce, disability, death of the homeowner or the secondary wage earner, or natural disaster. Within COVID-19 hardships -- I wanted to list this here so you'd see them -- it's a really broad category. Certainly, it includes all those borrowers who were on CARES Act forbearances that are coming off them soon. But it also includes borrowers who may have unemployment, a reduction in regular work hours due to COVID-19, illness due to COVID-19, a dependent family member that was contributing to the mortgage, that them being impacted by COVID-19.

So it's broader than just those borrowers who were on CARES Act forbearances. The next slide I have here is it's super important for borrowers to understand who their servicer is and be in contact with their servicer. That's how they are best going to be able to be helped and work through the waterfall that I'm going to walk you through on the next slide and really explore those options to stay in their home. Some of those options require the mortgage assistance application. But many do not.

And we've been focused on reducing barriers to maintaining homeownership. So often these are streamlined and really don't require filling out all that paperwork. And that was a lesson learned from the prior crisis. Here we have the loss mitigation waterfall. I'm going to walk through each of these options in detail on the next two slides. But I wanted to look at how to kind of set out here for you to see. You start at the top of the waterfall with the servicer discussing with the borrower what option is really going to work for them.

So they start with -- it's for borrowers with all sorts of delinquencies, including forbearances. And when they're ready to start paying back their delinquencies, the servicer works with them to see where they need to end up in the waterfall, where they will be successful. So they start at the top with reinstatement. And that would be when a borrower can really just pay off everything they owe in a lump sum. We don't expect that ever to be the predominant way people are leaving. But it is the first thing they are asked. And they don't have to accept it.

The servicer then walks them through the next options, including repayment plan, payment deferral, flex mod. And flex mod is our modification that reduces the payment permanently for borrowers. And that is really the workhorse that we have for the enterprises in maintaining homeownership for borrowers.

If they can't do that, then the next options are these alternatives to foreclosure, such as short sale and deed-in-lieu. But we really hope to be able to help all borrowers with the home retention solutions you see at the top. Next slide. So here what I've done is laid out all the various pieces of the waterfall. The servicer starts at the top of the waterfall and asks the borrower are they able to be successful in this option. So forbearance plan, that's where most borrowers are today. When they exit that, then they're asked the next solution.

So reinstatement, can they pay it all back in a single payment? For many borrowers, the answer is going to be no. Then the servicer moves to the next option, which is a repayment plan. And then they're going to be asking them can they pay the past-due amounts? Can they catch up over an extended period by making an extra payment every month. And that must not exceed 150 percent of their current payment or extend more than 12 months. That is not going to be a realistic option for many borrowers, but for those who can do it, that is a super option to get them back on track and protect their credit.

The next option if they cannot do that, let's go back one slide to payment deferral. I want to stay on that one for a little bit. That's a newly created option that allows borrowers to delay the repayment of past-due principal and interest payments. And this creates a non-interest bearing balance that is due at the end of the mortgage, so the maturity date, the payoff date, or the sale or transfer of the property. That's a fantastic option for borrowers. They end up with this non-interest-bearing balance. They pay off those delinquent amounts when the mortgage is over.

That works for borrowers who can resume their monthly mortgage payment. It can increase if there are escrow amounts that were not advanced. But for the most part, they're going to be getting back to the regular monthly mortgage payment. And it's important to understand that interest is not charged on those past-due amounts, which makes it a fantastic option. Next slide. Now, here we are at modification at the enterprise. This is called the flex modification. This is for borrowers who have a permanent reduction in income and really need more assistance.

It permanently changes some of the terms of their mortgage -- such as the interest rate, the term -- and it lowers the monthly payment amount permanently. And that is the amount they pay for the rest of the term of the mortgage. It generally requires three months of a trial period plan payment to ensure that the borrower can actually afford to make these payments. And then at the end, they need to sign the document to make it a permanent mod. I really wanted to highlight here that we've reduced the documentation requirements for this.

It's streamlined for most borrowers, because most borrowers are already 90 days delinquent, and that allows them to be eligible under our streamlined requirements. They can accept it verbally, or by just making a payment to their servicer. They'll get this offer in the mail. And the same happens with payment deferral, that those offers will come in the mail. But I encourage all of your clients or you to be in contact with the servicer to make this process efficient and get them into these solutions as soon as possible. Next slide.

And then we move on to options to leave your home. Like I said, I'm hoping most borrowers don't end up in this situation. We've really worked hard to make flex mod as inclusive as possible, and allow payment reductions wherever we can. But here we have short sale. And in that case, the borrower sells the house and pays off the mortgage for less than the full amount. They need to work with their servicer to get this solution. The benefit is they can depart the home without going through foreclosure and the threat of impacts.

And they also could be eligible for relocation assistance. Mortgage release is very similar, except that they transfer the ownership of the home to Fannie Mae or Freddie Mac. Next slide. And now I want to talk to you about the recent servicing updates that are specific to COVID-19 borrowers. And there are a bunch of them that are really important. The first one I want to talk about is we were early adopters of the CFPB rule. So we have the enterprises pause all new referrals to foreclosure through December 31, 2021.

There will be no first notice or filing of foreclosure that would have been prohibited by the CFPB rule before the rule takes effect. However, if the property is vacant or abandoned or properties had a prior foreclosure referral prior to March 2020, those borrowers can still proceed through foreclosure. The second bullet here is we have extended the REO eviction moratorium through September 30, 2021. So that will be helpful. And then moving down to loss mitigation, I wanted to highlight what's going on in terms of forbearance and payment deferral allowing those to be extended up to 18 months.

That happened back in February, but I think it's just really important to highlight that borrowers with enterprise loans can be eligible for forbearance up to 18 months if they were on a COVID-19 forbearance plan as of February 28, 2021. And the COVID-19 payment deferral allows them when they finish their forbearance to take all those delinquent amounts and put them into the payment deferral. Those are two really important announcements. And then the last bullet was an announcement we made at the end of June.

And that is about updating flex mod where there's an expanded use of the interest rate reduction for borrowers with a COVID-19 hardship. This results in increased eligibility for borrowers, the flex mod, and increased payment reductions. The reduction in interest rate just makes a huge difference from borrowers. Currently, it's 3 percent is what the interest rate would be lowered to for these borrowers. To be eligible, there's a couple key requirements. They have to be current or less than 2 months delinquent as of March 1, 2020, the date of the national emergency.

So it has to really be a COVID-19 hardship. And there has to be a COVID-19 hardship. So those are the two key pieces there. And that's what I'm really excited about. I think it's a huge win for borrowers, and it's going to help a lot of people. And the next slide is really about resources. And I wanted to highlight that Fannie and Freddie have specific resources, like Fannie's Know Your Options and Freddie Mac's Help Starts Here. And then at FHFA, there are some specific resources I wanted to point out.

There are servicer scripts and resources to help with messaging. And that's in multiple languages, including English, which is really good. So the site there is fhfa.gov/mortgagetranslations. And then, in addition, I just listed a few extra resources from HUD and CFPB. And with that, I will turn it over to Matt.

Matt Martin: Thank you, Eileen. Welcome. My name is Matt Martin. I'm the director of the HUD National Servicing Center in Oklahoma City. We're a division of the Office of Single-Family Asset Management out of headquarters. I just wanted to go over briefly some of the things that we've done recently for the COVID waterfall. We recently put out mortgagee letter 2021-05, which consisted of a standalone partial claim for borrowers that can resume making their monthly payments and to cure the arrearages.

If you don't know, a partial claim is a 0-interest note that's put as a subordinate mortgage on the property. And once the borrower pays off their FHA-insured first mortgage, sells their property, then that partial claim, that would become due and payable. Next, we have the COVID-19 owner occupant standalone modification, the combo partial claim and loan modification, and then the HAMP combo PC loan modification with limited documentation. Recently, though, we just published mortgagee letter 2021-18, which was published on July 23, 2021, which enhanced our COVID loss mitigation, and is a revised COVID recovery waterfall.

The pre-waterfall, we have what we call an advance loan modification. So we had servicers of FHA loans that were 90 days or more delinquent review the portfolios. And if they looked at borrowers that may have a higher interest rate or were seasoned loans, if they could achieve a 25 percent principal and interest payment reduction, then they would send out the loan modification documents to the borrower. The borrower could choose to accept those terms and sign the documents and return those back -- go with the reduced payment, and bring the loan current.

If the borrower decided that for whatever reason -- maybe they were now underemployed after COVID -- that they weren't able to make that payment, then the next step in the waterfall would be the recovery standalone partial claim for borrowers that could resume their current payments. If the borrower said that they can't resume their current payment, then they would be able to go to the recovery mod; which basically what happens is that the servicer looks at a rate and term modification back out to 30 years, brings the loan down to a market rate. They target a 25 percent P&I calculation for the payment reduction, no DTI calculation.

The interest rate is at PMMS flat rounded to the nearest 1/8. And the partial claim is for the arrearages. We do limit the partial claim to 25 percent of the outstanding principal balance, so if a servicer can go up to that full amount of 25 percent to help the borrower and reduce the payment. If the borrower still can't make that payment -- again, these are all streamlined documentation -- there's nothing required by the borrower to provide as far as payment stubs, bank statements, or anything like that -- they're simply engaging with their servicer and saying, I can make the payment, or I can't.

So if they determine that they cannot make the payment, the next step is, b, they go to a 30-year loan modification with partial claim and principal deferment, again, a rate and term modification taken down to market rate. They use the partial claim for arrearages. And then they use principal deferment on the first mortgage to reduce the principal balance to get down to a target P&I reduction of 25 percent.

In some cases, the borrower may advise a servicer that 25 percent P&I reduction is not sufficient; they can't afford that. And the servicer does have the ability to go higher than the 25 percent P&I reduction, understanding that they are limited to 25 percent of the outstanding UPB for the maximum they can use on the partial claim. For example, if the loan amount was $100,000, then the maximum partial claim the borrower could use would be $25,000 for the 25 percent of the partial claim. But they can go up to the higher P&I reduction and use a maximum partial claim amount of 25 percent.

If a borrower has possible use of partial claim in the past -- they don't have as much available or don't have any available -- the servicer can use what they do have available to get them the lowest possible payment that they can to be able to get a payment reduction. Next slide. I have listed some online loss mitigation resources. We do have several web pages -- our Single-Family Housing Handbook, the supplemental documents, housing counseling agencies, and the different resources available for you. Next slide.

I also wanted to let you know of our FHA resource center. If you are having situations where you are having issues with a lender that you don't feel that they are helping your client or getting the loss mitigation that they need, you can always call the resource center. Then they will take the information and escalate the call. And we will reach out to you from the National Servicing Center to try to assist you to resolve any issues that there may be. The resource center is also knowledge based, so they can answer some basic questions based on the current policy out there. I appreciate your time. And I will next turn it over to Richard Kane at USDA.

Richard Kane: All right. Thanks, Matt. I appreciate it. My name is Richard Kane. I am the deputy director over loan servicing policy here at the Single Family Housing Guaranteed Loan Program at USDA. So here at USDA, we've recently released a new waterfall specifically for borrowers transitioning off of a COVID-related forbearance. The new guidance is released and it got delivery on July 30. And our 3555 technical handbook will be updated with the new guidance shortly.

Prior to this update, all of our disaster guidance was lumped together. And with this update, we've created COVID-specific, temporary special relief measures. In order to be eligible for the following options, the property must be owner-occupied, the borrower was less than 120 days delinquent prior to the COVID hardship, and they've requested assistance prior to September 30, 2021. If the borrower is eligible for any of these options, or any of these options can be offered with no financial documents required, no trial payments, and as soon as the borrower indicates they are ready to resume making on-time payments. Next slide.

Our COVID post-forbearance options can be divided into two categories. First, borrowers who are ready to resume their payments and can afford their payment as it was prior to the COVID hardship. Each of these options are designed to cure the arrearage and provide the borrower with a flat, or in some instances, a slightly reduced payment. But in no cases should the borrower's principal and interest payment be higher than it was prior to the hardship.

The borrower -- the mortgage servicer can evaluate the borrower for all three options simultaneously, and should offer the borrower the best available option based on the outcome and the servicer's policy. Keep in mind this is the lender's decision or the servicer's decision and is based on their own policy and the waterfall priority. The three options are as listed here. We have a payment deferral, which is where you're going to defer all of the missed payment to the end of the loan.

One of the restrictions we have as an agency is we're not allowed to have any kind of balloon payments on our guaranteed loans. So this does require the lender to defer the payments one at a time and extend the term as necessary, so the borrower can continue to make those payments at the end of the mortgage.

The second option is the capitalization of arrearage and rate reduction/term extension. It's a simple option. We capitalize all of the arrearage of the borrower's missed payments, then use a combination of rate reduction and term extension to provide the borrower with a payment that is similar to their pre-disaster payment.

And then the last option is the mortgage recovery advance, which is very similar to Matt's partial claim over at FHA. We'll just create a secondary junior lien balance for all of that arrearage that will go on to the end of the mortgage. And then the borrower will just continue making their regularly scheduled mortgage payment once they're ready. That mortgage recovery advance balance is a junior lien. That is a 0 interest, 0 payment balance that is due and payable when the loan either matures or refinances or pays off.

Once a lender makes the determination, they can offer that modification to the borrower with only a signature on the final agreement required. If the borrower indicates the COVID has impacted in a way in which the borrower can no longer afford their pre-hardship payment, we have created an additional option that is designed to provide the borrower with greater payment relief. Once this determination is made, the servicer can evaluate the borrower under the following terms -- all of the arrearage should be capitalized into the borrower's principal balance.

The lender should set a target payment reduction of 20 percent, and use a combination of rate reduction and term extension to get to that target payment. If the target payment is not achieved, they can continue to reduce the borrower's interest-bearing principal balance with that mortgage recovery advance along with the rate reduction and term extension. Once again, this is similar to FHA's partial claim, creates that 0 interest, 0 payment secondary balance that's due from the borrower when the first lien either matures, pays off, or is refinanced.

This advance is limited to 30 percent of the principal balance at the time of default. And the maximum amount can also be reduced by any previous mortgage recovery advances provided to the borrower. Using these three steps, the lender should get as close to the target payment -- which is a 20 percent payment reduction -- as possible, without exceeding that 20 percent reduction. Once again, if the borrower is eligible, this option may be offered with no financials required from the borrower, and only a signature on the final documents are necessary.

Next slide. All right. This is my name contact information. You have my phone number and my email address if you have any questions. We also have a Single Family Housing Guaranteed Loan servicing inbox specific for this. The link is there. You can send us any questions that you have on our program, and we will get back to you within 24 hours. And next, I will turn it over to my colleague Katie at the VA. Thank you.

Katie Graham: All right. Thank you, Richard. My name is Katie Graham. I'm the VA central office servicer liaison for the Department of Veterans Affairs. Next slide. Today we're going to be talking about our COVID-19 Veterans Assistance Partial Claim Payment Program. This is a new option for borrowers with a VA-guaranteed loan released in response to the pandemic. And then we'll walk through the VA home retention waterfall, and we'll take a look at the VA partial claim published rule, a circular that further expands our partial claim program, and two exhibits that help outline the expanded options.

And then on the last slide, we're going to take a closer look at Exhibit A, which is a flowchart to help servicers walk through our waterfall. Next slide. All right. Our partial claim is the basis for our waterfall. So before we walk through the waterfall, I did want to take a couple of minutes to provide some information about our new partial claim option. This option is similar to the partial claim program that Matt outlined for FHA borrowers and the mortgage recovery advance that Richard just outlined.

VA essentially is going to be purchasing the delinquent or past-due payments. And that indebtedness or the partial claim payment amount is going to be secured as a junior lien. A couple of items to note -- these junior lien is not going to accrue any interest and it doesn't require any monthly payments. That amount would only become due when the property is sold, the guaranteed loan is paid off, or the guaranteed loan is refinanced, whichever comes first.

So you'll see I have some requirements outlined on the slide. The COVID-19 partial claim payment is a new and a temporary program. You'll see on the bottom box that our program is only available from July 27, 2021 through October 28, 2022. And we do have a few requirements for this program. The borrower first must have a guaranteed mortgage. So this program isn't specific to Veteran borrowers -- but borrowers with a VA-guaranteed mortgage. So that would include our surviving spouses and the veteran's family as long as it's secured by a VA-guaranteed loan.

The borrower must meet some payment delinquency requirements. The borrower must have received a COVID-19 forbearance and missed at least one scheduled mortgage payment. They must occupy the property as their primary residence and have indicated that they can resume making regular monthly payments. And lastly, the borrower must be willing to execute an agreement to repay the partial claim and allow VA to create that second junior lien on the property. Next slide.

So this is VA's waterfall, which we have outlined in VA Circular 26-21-13, which I'll have a link for on the next slide. And I also provided some of the supporting documents for the presentation today. So I'm just going to quickly go over starting points I and II. But just to note, the starting points are indicated by the borrower's affordability. So this is where the borrower can provide information to the servicer and let the servicer know what they are able to afford.

And starting points I and II are something you guys are probably all familiar with. Starting point I would be if the borrower indicates they could start with a repayment plan. Starting point II is loan modification and loan deferment. And then you're going to see that new option, our VA partial claim payment. So this would be the standalone partial claim payment where the Veteran has indicated that they can resume those monthly payments and that partial claim criteria can be met.

And then starting point III is what's newly outlined in VA circular 26-21-13. This is going to outline what we're calling the COVID-19 Refund Modification. And essentially, what this is, is it's a partial claim payment, plus some extra assistance. So essentially, VA has taken our partial claim option and expanded on it further. So with that, we have three different steps that our servicers can look at when working with a veteran borrower. And, again, this is going to be based on what the borrower has indicated that they can afford.

So if the partial claim payment isn't going to provide enough of a payment reduction to allow that borrower to continue making payments or to resume their monthly payments, then they can further expand on that with different modification options. So essentially, VA would allow the completion of that partial claim payment in conjunction with a modification to further reduce that payment. Next slide.

So this is our partial claim information. You can see the Federal Register is where we've published the final rule for the VA partial claim payment. So this final rule is going to walk you through all of the additional requirements for the partial claim payment. And then our circular 26-21-13, which I mentioned, is going to outline that refund modification option, or that partial claim payment with additional modification options. And that's where we've outlined our home retention waterfall or those starting points that I highlighted on the previous slide.

And then with that VA circular, we have Exhibits A and B. We're going to take a closer look at Exhibit A. That's a flowchart walking the servicers through their review of the different starting points. But Exhibit B is something that you'll be provided with the documents for today's presentation. It's a chart that compares the different modification options -- or what we've called those refund modifications -- looking at those programs side by side. So it can help servicers decide which option may be best for our borrowers and comparing those side by side.

And then I've got a link there to VA circulars in those exhibits on the bottom of the screen. You can visit our VA website. And we have a link for VA circulars. And then on the last slide, I just wanted to take a closer look at Exhibit A. As I mentioned, this is going to walk you through starting points I, II, and III. Starting point I is when the veteran borrower has indicated a repayment plan would be most affordable for them. And then you can see where it's going to walk the servicer through how to evaluate.

If the repayment plan comes back and it's not affordable to the borrower, then they should be advancing down to starting point II, where they would be looking at that loan modification, the payment deferral option, or that VA partial claim payment as a standalone option.

Again, if the Veteran borrower has indicated that they're not able to resume payments or that those options don't make the payment affordable for them, then the servicer should be reviewing at starting point III, which we'll take a look at that partial claim payment plus additional modification options to hopefully reduce that payment enough to make it affordable to resume those monthly payments.

So I know it's a little small here on the slide deck, this Exhibit A, but this really is a great flowchart to show how the waterfall should be reviewed. So that'll be included in the documents after today's presentation. So that concludes everything that I have for today. I am going to turn this over to Will Corbett with the Department of Treasury. Thank you.

Will Corbett: Thank you, Katie. As Katie mentioned, my name's Will Corbett. I'm a senior policy advisor at the Department of Treasury. And I'm going to talk you to today about the Homeowner Assistance Fund. Next slide. The Homeowner Assistance Fund is part of the American Rescue Plan, which makes $9.96 million available in homeowner assistance funds available to states, territories, and tribes to aid households struggling to pay mortgages and utilities.

The key objectives of HAF are to prevent mortgage delinquencies and defaults, foreclosures, loss of utilities or home energy services and displacement of homeowners experiencing financial hardship after January 21, 2020; and to provide funds for mortgage payments, homeowner's insurance, payments, utility payments, and other specified purposes. Fund prioritizes funds for homeowners who have experienced the greatest hardships, leveraging local and national income indicators to maximize the impact. Next slide.

So just a little bit about the implementation of the HAF Program -- states, territories, and tribes are the eligible entities that will administer the HAF funds under Treasury's guidance. States have received a minimum of $50 million in their allocations, is a $30 million territorial set-aside, and also allocations to tribes and tribal entities. States and territories had a deadline of April 25, 2021 to submit a notice of funds request to begin participating in the program.

Tribes, tribal entities, and the Department of Hawaiian Home Lands have until September 30 to submit their notice of funds request. And as part of the initial rolling out of the program, Treasury for those states and territories and tribes that submitted a notice of funds request and completed some other documents for getting the funds rolling got 10 percent of the funds out the door very quickly and encouraged HAF participants to use these initial funds to create or fund pilot programs that serve targeted populations and focus on activities likely to deliver resources quickly.

Now what is happening is, under Treasury's guidance, states, territories, and tribes are submitting plans for how they're going to use the full allocations they're receiving. The Treasury is in the process of reviewing plans as those are submitted. Next slide. Just real quickly since I know we're stressed for time and there are going to be some questions, I wanted to go over some of the qualified expenses that are eligible. This would vary depending on the HAF Program.

But as you can see, there's mortgage assistance, which covers all types of assistance to help homeowners both get current and also get into affordable, sustainable mortgage options in combination with some of the programs you've heard talked about today; but also assistance for delinquent property taxes to prevent tax foreclosure, to help with utilities, energy, and broadband internet delinquencies, as well as homeowner's insurance, HOA fees, down payment assistance loans provided by nonprofit or government entities, as well as other measures to prevent displacement. Next slide.

And just some other highlights of the HAF Program -- under the American Rescue Plan, 60 percent of each HAF participant's funds have to be used to assist homeowners with income of less than 100 percent of the area median income, or 100 percent of the U.S. median income, whichever is greater. So that part is targeted based on income. Any amount that's not made available to homeowners that meet that income targeting requirement must be prioritized for assistance to socially disadvantaged individuals with the funds remaining after such prioritization being made available for other homeowners.

Key things about overall HAF eligibility -- which is not different slightly from the targeting -- first of all, the homeowner must have had a financial hardship experienced after January 21, 2020; and also must have an income equal to or less than 150 percent of the area median income, or 100 percent of the median income for the United States, whichever is greater. And a HAF participant may provide HAF funds to the homeowner with respect to qualified expenses related only to the homeowner's primary residence.

Another key part of the guidance from Treasury up to 5 percent of HAF participants' funding may be used for counseling or educational efforts by housing counseling agencies approved by HUD or a tribal government, or legal services targeted to households eligible to be served with funding from the homeowner assistance fund related to foreclosure prevention or displacement -- so helping homeowners avoid displacement, that's a key component of the HAF Program that we've specified in the guidance.

And encouraging states and territories in developing their guidance to take into account the effect and value of housing counseling in that process. Next slide. Thank you. And there you have a little bit of information. Please feel free to visit the HAF website, which is at: www.treasury.gov/haf. And we look forward to working with housing counselors as we begin to roll out this program and hopefully help alongside the other programs that you've heard about today save as many homes from foreclosure as possible. And I'll turn it over now to Sid. Thanks.

Sid Alvarado: Thank you so much, Will. And now we are going to have our second and final Mentimeter question for this webinar. And our next question is, what future training topics do you need on COVID-19 specific to foreclosure prevention? So once again, you can either put menti.com in your browser. You can use the link that we put into the chat box. But we'd love to hear from you on what future topics do you feel that you need. And in addition to answering that last Mentimeter question, we are also going to go over some resources.

So as stated, you can grab your phone. You can put it into your browser and vote. But we definitely want to hear from you so that it would help us to develop possible future topics, future webinars on this particular topic. While you're answering that particular question, I'm going to go over some resources. There are quite a few resources that were included in the presentations that you just heard.

In addition to that, we talked a little bit earlier when we opened up about HUD Exchange where you can go there and find resources on providing foreclosure prevention counseling. So take an opportunity to go through that. There are some additional resources that you could find on CFPB's website, that housing portal resources, as well as being able to submit a complaint for FHA recovering options for homeowners. And then for VA, there were quite a few resources that were mentioned there that you have the opportunity to go to after this webinar is over.

There is information on the Homeowner Assistance Fund. And we always want to invite you to the website for the Office of Housing Counseling website where you will stay in the know, as well as the Bridge Newsletter, which often provides different topics and opportunities for housing counselors to read and to engage in. And if you have any questions after this webinar, you can always email HUD at housing.counseling@hud.gov.

And while we keep that Mentimeter open for you to answer that, we are also going to provide an opportunity for questions and answers. There are many questions that we are seeing here. I know that my colleague Joseph has been looking over the question-and-answers box. We will not have the opportunity to go through all the questions that are there, but we are definitely going to take some time to go over as many as possible. So this will be an opportunity for us to do that. And, Joseph, I will go ahead and hand it over to you for some of the common questions that you're seeing coming in. And we'll take a few moments to go through those questions.

Joseph Sant: That's good. And please just let me know when we're running up against time. They are great questions. A great number of questions and concerns have been posed about escrow amounts. So I want to ask all of the investor participants today, the federal agency investors, to chime in on your waterfall, if you can. So can delinquent escrow advances be included in the COVID-19 payment deferrals, partial claims, and loan mod options covered today? And what about escrow shortages -- can those be included as well? So I wanted to see if the investor participants could answer that question.

Katie Graham: Yes. I can answer that. VA does allow the inclusion of past-due tax and insurance payments, and also the missed T&I, or the taxes and insurance portion of the payment. That can be included in our partial claim option.

Matt Martin: I'll chime in for FHA. We do allow the escrow shortages and projected shortages to be included, and we require an escrow analysis to cover those.

Richard Kane: Lastly, from USDA, we allow any actual advances to be included. Any projected advances should be recast over 60 months. But any amount that's actually been advanced for the borrower's benefit -- taxes and insurance -- can be included in all of our programs.

Eileen Zaenger: Yeah. This is Eileen from FHA. I cannot speak for Fannie Mae and Freddie Mac, but in general, advances can be included. So it's the advances -- those portions that have already been paid can be included.

Joseph Sant: Okay. And one more all-agency question -- so does the fact that the homeowner had previous loan modifications affect whether they can qualify for my of the loss mit options that have been covered today? And I would love just another round robin, if folks could do that.

Matt Martin: No. It doesn't preclude them as long. As it's code related, it does not preclude them from getting another loan modification.

Richard Kane: USDA, the same -- there's no restrictions on any kind of COVID loan modification. The only thing I'll say is that if the borrower has previously received a mortgage recovery advance, that could limit the amount of mortgage recovery advancement available to them with a COVID option.

Katie Graham: VA, same thing -- a previous modification wouldn't preclude. But our partial claim payment is a one-time option.

Eileen Zaenger: Again, I can't speak for the enterprises, but in general, as long as it's a COVID hardship, prior mods don't preclude them from getting the flex mod with the COVID hardship.

Joseph Sant: Okay. Thanks. And I'll throw this one out there for anyone to answer. And I feel like any of you probably could. What about private loan investors -- will homeowners with loans owned by a private investor have any of the options covered today? And feel free to jump in if you know the answer.

Richard Kane: For USDA, the investor, if the loan is guaranteed by our agency, all of these options are available regardless of the investor.

Will Corbett: And the HAF Program is not tied to who the investor is, so that's available as long as the homeowner is eligible and consistent with the state's plans as they set them up.

Matt Martin: For FHA, our waterfall is specific to FHA-insured loans.

Katie Graham: And that would be the same for VA. Our options are for VA-guaranteed loans, but the investor wouldn't preclude.

Eileen Zaenger: Same for Fannie Mae and Freddie Mac.

Joseph Sant: There are a lot of questions and a lot of interest came in for Matt. I wonder if you can answer this one about FHA. It concerns the maximum partial claim amount. A few questions came in about borrowers that needed deeper payment reduction, including possibly more than the 25 percent P&I target. If the borrower is being offered a mod that hits that P&I target but they still need a deeper payment reduction -- I think you mentioned that if there's partial claim available, that that might be also explored and applied. Could you clarify? Is that correct? Can the borrower ask the servicer to include additional partial claim assistance? How does that work?

Will Corbett: Yes. If they have it available. So in your example, if the lender calculates the 25 percent P&I reduction and the borrower advises that their situation, they need greater payment relief, as long as they've got the partial claim allocation available -- 25 percent of the UPB -- then the servicer can take them to a higher P&I reduction as long as they don't exceed the 25 percent UPB partial claim allocation.

Joseph Sant: Excellent. So I'll keep going, Sid. But tell me if we run out of time. This question is for Eileen, but others can please jump in as well. Do the borrowers who are receiving a payment deferral, do they sign an agreement in order to make that payment deferral effective? Should they be expecting something to sign from their servicer for a payment deferral?

Eileen Zaenger: I believe so. But I haven't looked at this recently, so I can't tell you definitively. I can get back to you on that.

Joseph Sant: Thank you. Okay. And here's one for CFPB, Beth. If a homeowner is declined a modification, does Regulation X speak to what documents the servicer has to provide back to the borrower about that decline?

Beth Spring: They have to provide all of the loss mitigation options that the borrower was evaluated for and the reason that the borrower wasn't offered those loss mitigation options.

Joseph Sant: Excellent. And, Beth, while I have you, I've got a lot of questions that just came in about, what if the servicer isn't offering my client the options that I think they're supposed to be getting? Can I send a complaint to CFPB? And how do I do that?

Beth Spring: Absolutely. I had mentioned in my presentation that housing counselors can submit complaints on behalf of consumers. And those come into the Bureau. Those are reviewed. Especially if there is a foreclosure sale date that is coming up in the near future, those are flagged and expedited for review. So we would certainly encourage any borrower that the housing counselor is working with that's especially having a hard time getting a loss mitigation option as they exit forbearance to submit those claims on behalf of the borrower.

Joseph Sant: Okay. Thank you, Beth. And I think we probably have time for one more. Does that sound right to you, Sid?

Sid Alvarado: Yes. That's right.

Joseph Sant: Okay. All right. So here's one more for all investor panelists. In all of these waterfall options, are there restrictions on allowing the servicer to charge certain fees? And what are those restrictions? What can and cannot be included in a loss mitigation package?

Beth Spring: If you're talking about the amendment that I discussed today, when a borrower accepts an offer for a streamline loan modification, it must end any preexisting delinquency on the mortgage loan [inaudible] borrower satisfying the servicer's requirements for completing the TPP. And then the servicer must waive all existing late charges, penalties, stop-payment fees, and similar charges that were accrued after March 1.

Eileen Zaenger: We follow that exact same guidance, that its late fees have to be waived. And then in terms of the last question, I would encourage counselors to go to the actual bulletins that are put out by Fannie Mae and Freddie Mac. The Fannie bulletin for that specific question would be 2021-07, which was published on June 30. I was desperately trying to find you the answer, but it will be there.

Joseph Sant: Thanks, Eileen. I appreciate that. Okay. Sid, I'm going to hand it back to you. I think that's about all the time we have.

Sid Alvarado: Okay. Thank you so much, Joseph. And thank you so much to all of our speakers on today for joining us. And thank you for everyone that registered to be a part of this webinar. If you haven't already, don't hesitate to chime in on our last question for Mentimeter. We definitely want to hear from you about future topics relating to this particular topic that would be useful and helpful to you. And in the meantime, don't forget to visit the training digest on HUD Exchange for upcoming webinars on similar topics. Thank you all for joining us for today, and have a great day.