



FINANCIAL REGULATORY | Federal Housing Agencies and GSEs Announce Updates to COVID-19 Relief Measures for Mortgage Loan Borrowers

In recent weeks, the US federal housing agencies and government-sponsored enterprises (GSEs) that insure, guarantee, or purchase “federally backed mortgage loans” covered by Section 4022 of the [CARES Act](#) (Act) have continued their intense pace of issuing temporary measures, and updates to such measures, intended to implement the Act’s provisions applicable to such loans. These actions aim to provide assistance to mortgage loan borrowers facing financial hardship in connection with the COVID-19 outbreak during and after the forbearance period set forth in the Act. The agencies and GSEs also have issued several announcements regarding flexibility for servicers and originators of “federally backed mortgage loans” to address certain of the unintended consequences of the broad forbearance relief authorized by the Act.

This Legal Update summarizes some of the significant guidance related to the Act’s broad mortgage forbearance provisions and certain of the unintended consequences. Specifically, we provide details regarding: (1) updates to the federal housing agencies’ and GSEs’ foreclosure and eviction moratoria; (2) updates to the GSEs’ COVID-19 Payment Deferral option; (3) announcements by the US Department of Housing and Urban Development’s (HUD) Federal Housing Administration (FHA) and the GSEs regarding their insurance endorsement or purchase of mortgage loans that go into forbearance post-closing and prior to endorsement or purchase, subject to certain important conditions; and (4) the GSEs’ announcement that certain borrowers in forbearance are temporarily eligible for refinancing and new home purchases.

Extension of FHFA and HUD Foreclosure and Eviction Moratoria

Most recently, on June 17, 2020, both the Federal Housing Finance Agency (FHFA) and HUD announced extensions of the moratoria on foreclosure and eviction previously announced by Fannie Mae, Freddie Mac, and FHA to assist borrowers impacted by COVID-19. Specifically, both the [announcement](#) from FHFA and [HUD's Mortgagee Letter 2020-19](#) extend their existing foreclosure and eviction moratoria for single family mortgage loans through August 31, 2020. As with past extensions, HUD's extension does not apply to vacant or abandoned properties, but continues to extend both the first legal action and reasonable diligence timelines applicable to foreclosure by 90 days from the expiration date of the moratorium.

COVID-19 Payment Deferral Updates

As discussed in our [April 9](#) and [April 21](#) Legal Updates regarding the federal housing agencies' implementation of the Act's requirements, determining how to establish loss mitigation options available to borrowers at the end of the forbearance period, which could last up to 360 days, is one of the key unanswered questions raised under Section 4022 of the Act. In response, the federal housing agencies and the GSEs have introduced specific loss mitigation options and waterfall requirements for borrowers impacted by COVID-19 and receiving mortgage payment forbearance. For regulators and legislators that want servicers to provide borrowers at the time they seek forbearance with up-front disclosures of subsequently available loss mitigation options, the complexity that follows demonstrates the difficulty of achieving this objective.#

One such loss mitigation tool announced by the GSEs was the COVID-19 Payment Deferral. Since announcing the new COVID-19 Payment Deferral option in May of 2020 in [Lender Letter LL-2020-07](#) and [Bulletin 2020-15](#), Fannie Mae and Freddie Mac have released additional guidance to assist servicers in implementing this option for borrowers impacted by the COVID-19 national emergency. Most recently, on June 10, 2020, the GSEs issued updated guidance to implement servicer incentives for COVID-19 Payment Deferrals, as well as incentives for other workout options. Below, we provide a description of the COVID-19 Payment Deferral option, including useful resources the GSEs have recently made available to implement this option, and briefly summarize the recent updates.

Overview of the COVID-19 Payment Deferral Option

The COVID-19 Payment Deferral is a retention workout option designed to assist borrowers who missed up to twelve months of forbore payments due to COVID-19 hardships that have been resolved and return their mortgage to a current status. To accomplish this workout option, the servicer defers the following amounts as a non-interest bearing balance on the loan: (i) up to twelve months of past-due principal and interest payments, (ii) out-of-pocket escrow advances paid to third parties, and (iii) servicing advances paid to third parties in the ordinary course of business and not retained by the servicer. The deferral balance is due and payable at maturity of the mortgage loan, or earlier upon the sale or transfer of the property, refinance of the mortgage loan, or payoff of the interest-bearing unpaid principal balance. All other terms of the mortgage loan must remain unchanged.

Beginning July 1, 2020, servicers must evaluate a borrower's eligibility for a COVID-19 Payment Deferral by achieving Quality Right Party Contact (QRPC) (for Fannie Mae loans) or Limited QRPC as specified in [Bulletin 2020-10](#) (for Freddie Mac loans). QRPC is a defined term that generally means creating a uniform standard for communicating with the borrower or his or her representative to

determine the reason for delinquency, the occupancy status of the property, whether the borrower has the willingness and ability to repay, and to discuss available workout options.¹ After discussing reinstatement and repayment plan options with the borrower, the servicer must evaluate the borrower for the COVID-19 Payment Deferral by confirming that the borrower (1) has resolved the COVID-19 hardship, (2) is able to continue making the existing contractual mortgage payment, and (3) is unable to afford a repayment plan or full reinstatement of the mortgage. Any late charges must be waived upon completion of a COVID-19 Payment Deferral. Fannie Mae additionally provides that all penalties, stop payment fees, or similar charges must be waived. Servicers also must confirm that borrowers meet certain additional requirements, such as ensuring the borrower has not previously received a COVID-19 Payment Deferral, which are set forth in Fannie Mae's Lender Letter 2020-07 and Freddie Mac's Bulletins 2020-15 and [2020-21](#).

The COVID-19 Payment Deferral is a modified version of the standard Payment Deferral solutions announced by Fannie Mae (in [Lender Letter LL-2020-05](#)) and Freddie Mac (in [Bulletin 2020-06](#)) on March 25, 2020. The COVID-19 Payment Deferral includes several significant differences from the standard Payment Deferral, including, among others, that: (i) the borrower's delinquency must have been caused by a COVID-19-related hardship and the hardship must be resolved; (ii) the borrower must have been current or less than 31 days delinquent as of the National Emergency declaration date, March 1, 2020;² (iii) the mortgage must be 31 or more days delinquent but less than or equal to 360 days delinquent as of the date of evaluation; and (4) there is no origination seasoning requirement. On May 28, 2020, Fannie Mae published a [matrix](#) setting forth the differences between its Payment Deferral and COVID-19 Payment Deferral to assist servicers in navigating the two options.

A servicer implementing the COVID-19 Payment Deferral option must comply with GSE requirements relating to borrower eligibility, evaluation, and solicitation practices, as well as documentation, timing, and other aspects of program administration, all of which are detailed in Fannie Mae's Lender Letter 2020-07, as updated, and Freddie Mac Bulletins 2020-15 and 2020-21. Importantly, until the servicer implements a COVID-19 Payment Deferral, it must continue to evaluate the borrower for standard loss mitigation options. Once the servicer implements the COVID-19 Payment Deferral option, the servicer must evaluate the borrower according to the following hierarchy: COVID-19 Payment Deferral, Flex Modification,³ and then standard short sale or standard deed-in-lieu of foreclosure, as appropriate.

If the servicer is unable to establish QRPC for an otherwise eligible borrower while the borrower is on a COVID-19-related forbearance plan, the servicer must proactively solicit the borrower to offer a COVID-19 Payment Deferral within 15 days after the forbearance plan's expiration. If the borrower is ineligible for a COVID-19 Payment Deferral, the servicer must solicit the borrower, if eligible, for a streamlined (i.e., with reduced eligibility requirements) Flex Modification within 15 days after the expiration of the forbearance plan. If the borrower is eligible for a COVID-19 Payment Deferral but fails to accept the offer within the required timeframe, the servicer must evaluate the borrower for a streamlined Flex Modification within 15 days after the expiration of the COVID-19 Payment Deferral offer. Finally, if the borrower defaults (as defined in the GSE announcements) after accepting a COVID-19 Payment Deferral, the servicer must evaluate the borrower for a streamlined Flex Modification.

In addition to the Lender Letters and Bulletins describing the program requirements for the COVID-19 Payment Deferral and the loss mitigation hierarchy for borrowers impacted by COVID-19, [Fannie Mae](#)

and [Freddie Mac](#) have both issued Frequently Asked Questions (FAQ) documents. The GSEs continue to update these FAQs with additional information on evaluating borrowers for, and the implementation of, relief options related to the COVID-19 national emergency.

Recently Announced Updates to the COVID-19 Payment Deferral Option

On June 10, 2020, both Fannie Mae and Freddie Mac announced the servicer incentive amounts that the GSEs will pay for COVID-19 Payment Deferrals, as well as updated incentive amounts for other workout options. In [Lender Letter 2020-09](#) and [Bulletin 2020-21](#), the GSEs announced the following incentive payments:

- Repayment Plan: \$500, effective for all repayment plans with a first payment due date under the repayment plan on or after July 1, 2020;
- Payment Deferral/COVID-19 Payment Deferral: \$500, effective immediately for all payment deferrals, payable upon completion of the payment deferral;
- Flex Modification: \$1,000, effective for all Flex Modifications completed with a Trial Period Plan effective date on or after July 1, 2020.

Both of the GSE announcements clarify that incentive fees will be cumulatively capped at a total of \$1,000 per mortgage loan, regardless of whether the workout options were the result of the same hardship, and that workout options already begun prior to June 10, 2020, will not be subject to the cumulative incentive fee cap. Fannie Mae's announcement includes examples of how to calculate the incentive fee for retention workout options under three different scenarios. Fannie Mae's announcement also includes certain additional conditions that must be met for each of the workout options for the servicer to collect the incentive fee. Both announcements expressly state that existing incentive fees for liquidation workout options remain unchanged at this time.

In addition to the announcement regarding incentives, Fannie Mae's June 10 reissuance of [Lender Letter 2020-02](#) and Freddie Mac's [Bulletin 2020-21](#) clarified that servicers are not required to send a payment reminder notice to the borrower during an active forbearance plan term. Both announcements stated that this guidance applies: (i) without regard to whether the borrower's monthly payment is reduced or suspended during the forbearance plan; and (ii) to forbearance plans for borrowers with any eligible hardship type, including a COVID-19-related hardship. This announcement should be welcomed by servicers, as sending such notices during the forbearance term could result in confusion for borrowers. The GSEs' June 10 announcements also clarified that servicers are authorized to continue proactive solicitation for a Flex Modification based on the reduced eligibility criteria set forth in Freddie Mae's [Bulletin 2020-15](#) and prior versions of Fannie Mae's [Lender Letter 2020-07](#) when a borrower has defaulted on a COVID-19 Payment Deferral, at the servicer's discretion, unless the property has a scheduled foreclosure sale date within 60 days of the evaluation date if the property is in a judicial state, or within 30 days of the evaluation date if the property is in a non-judicial state.

Fannie Mae's [Lender Letter 2020-07](#) also announced a revised payment deferral agreement that it updated in reference to the Act's provisions. In an earlier update to [Lender Letter 2020-07](#) issued on May 27, 2020, Fannie Mae announced, among other items, that it would reimburse the servicer for allowable out-of-pocket expenses in accordance with its Servicing Guide for COVID-19 Payment Deferrals, but noted that the servicer must request reimbursement of such expenses from Fannie Mae

within 60 days of the completion of the COVID-19 Payment Deferral.

Insurance and Purchase of Loans in Forbearance

The number of loans going into forbearance pursuant to the Act shortly after the loan is originated, but before the loan is purchased by the GSEs or insured by FHA is another issue that has arisen as a result of the COVID-19 national emergency and the Act's forbearance provisions.

To address this issue and provide liquidity options for lenders of such loans, both HUD and the GSEs have issued guidance on the conditions under which they will insure or purchase such loans. Most recently, HUD issued [Mortgagee Letter 2020-16](#) on June 4, 2020, in which it announced that FHA would temporarily endorse mortgages with active forbearance plans submitted for FHA insurance on or after June 15, 2020, and through November 30, 2020. The guidance applies to all FHA Title II single-family forward mortgage programs, except non FHA-to-FHA cash-out refinances. Unfortunately, to obtain FHA insurance endorsement for such loans, the lender must agree to sign a "partial indemnification agreement" in connection with each of these loans.

For a loan to be eligible for FHA insurance endorsement when the loan involves a borrower who has experienced a financial hardship, directly or indirectly, as a result of COVID-19, the following requirements must be met:

- The borrower has requested forbearance, or the mortgage is subject to a forbearance agreement for one or more payments due to relief provided to borrowers impacted by COVID-19;
- At the time the forbearance was initiated, the mortgage was current;
- At the time of the mortgage closing, the mortgage satisfied all requirements for FHA insurance; and
- The mortgagee executes a two-year partial indemnification agreement.

According to the terms of the [partial indemnification agreement](#), the amount of the partial indemnification will be equal to 20 percent of the *initial* loan amount. The mortgagee will be responsible for paying this amount of losses incurred by HUD if the borrower fails to make two or more payments when due under the terms of the FHA-insured mortgage at any point within two years from the date of endorsement and the borrower remains in default until the filing of an FHA insurance claim. If the borrower enters into forbearance and subsequently brings the loan current, either pursuant to the terms of the mortgage or a permanent loss mitigation option, through the date that is two years from the date of endorsement of the mortgage, the indemnification agreement will terminate.

Both Mortgagee Letter 2020-16 and [corresponding guidance](#) published by HUD in FHA Info 2020-36 provide instructions on how to complete the FHA Connection process for loans submitted for endorsement while in forbearance, as well as instructions on completing and submitting the partial indemnification agreement to HUD. The Mortgagee Letter states that HUD will continue to monitor the impacts of this guidance on the markets and to the FHA Insurance Fund, and may adjust the level of partial indemnification accordingly for future indemnification contracts.

For mortgages submitted for FHA insurance endorsement pursuant to Mortgagee Letter 2020-16, and for which the lender is made aware of a change in employment status due to COVID-19 after the loan

closing, the Mortgagee Letter permits the mortgagee to provide a separate addendum to the Mortgagee's Certification stating that "the executed Mortgagee's Certification excludes certification of knowledge of the borrower's employment status as provided in the Form HUD-92900-A, page 4, paragraph (a)." This is a positive development for mortgagees who elect to submit mortgages in forbearance that resulted from a change in job status for insurance endorsement, as it will prevent the mortgagee's knowledge of employment status at the time of submission for endorsement from constituting an alleged false certification of the standard mortgagee certifications required for endorsement.

HUD's announcement in Mortgagee Letter 2020-16 came on the heels of the GSEs' prior announcements at the end of April that they would purchase loans that went into forbearance after closing but prior to sale to the GSEs, subject to several conditions including loan-level price adjustments of 500 basis points for first-time homebuyers and 700 basis points for all other eligible loans. Similar to FHA's announcement, the GSEs made clear that cash-out refinance transactions in forbearance prior to sale are not eligible for purchase by the GSEs and require that the loans being purchased are no more than one month delinquent, as defined in [Lender Letter 2020-06](#) and [Bulletin 2020-12](#). Both of the GSEs have since extended the timeframes during which they will purchase such loans, first in a [May 19 announcement](#) in which FHFA announced that it was extending the ability of Fannie Mae and Freddie Mac to purchase qualified single-family mortgages in forbearance, and most recently on June 11, 2020, when [Fannie Mae](#) and [Freddie Mac](#) announced an additional extension. This GSE purchase authority, as extended, now applies to forbore loans with note dates on or after April 1, 2020, and on or before July 31, 2020, as long as (1) they are delivered to the GSEs by September 30, 2020, and (2) only one mortgage payment has been missed.⁴

Our colleague recently published [an article](#) regarding the negative policy implications of transferring the risk of loans going into forbearance from FHA and the GSEs to the originating lender.

Refinance and Home Purchase Eligibility for Borrowers Impacted by COVID-19 Forbearance

One additional question that has been at the center of the Act's implementation is whether loans that are in a forbearance plan are eligible for refinance as an alternative to the loss mitigation options provided by the GSEs and federal housing agencies. This is particularly important in this national emergency, given the low interest rates available to mortgage borrowers and the high percentage of loans that are in a forbearance plan but remain contractually current as borrowers continue to make timely mortgage payments. To date, only the GSEs have provided guidance on this topic. Specifically, days after announcing the COVID-19 Payment Deferral program, [FHFA announced](#) on May 19, 2020, that borrowers in, or recently out of, forbearance will be eligible to refinance their existing loan or purchase a new home. [Fannie Mae](#) and [Freddie Mac](#) issued guidance setting out the requirements for borrower eligibility and seller due diligence, which we discuss in detail below. These temporary policies are effective until further notice and may be applied to loans in process and must be applied to loans with application dates on or after June 2, 2020.

The GSE guidance sets forth eligibility requirements for borrowers impacted by the COVID-19 pandemic who have either reinstated their existing loan, or are resolving a delinquency through a loss mitigation solution. Specifically, if the borrower resolved any missed payments through a reinstatement, the borrower will be eligible for a new mortgage loan. In this circumstance, if the

reinstatement was completed after the application date of the new transaction, the lender must document and confirm the eligibility of the source of funds used for reinstatement, and such source must meet the GSEs' eligibility requirements for sources of funds. Both Fannie Mae and Freddie Mac expressly state that proceeds of the new transaction may not be used to reinstate any mortgage.

If outstanding payments have been or will be resolved through loss mitigation, the borrower is eligible for a new mortgage loan if they have, as of the note date, made at least three qualifying timely payments as provided below:

- Repayment Plan. A borrower subject to a repayment plan must either have (1) completed the repayment plan or (2) have completed at least three payments.⁵
- Payment Deferral. A borrower subject to a payment deferral must have made at least three consecutive payments after the deferral took effect.
- Loan Modification Trial Period Plan. A borrower subject to a modification must have completed the trial payment period.
- Other Loss Mitigation Solution. A borrower subject to any other loss mitigation program must either have (1) successfully completed the program, or (2) completed at least three consecutive full monthly payments.⁶

Sellers must continue to review the borrower's credit report to determine the status of all of the borrower's mortgage loans. The seller also must conduct due diligence on each of the borrower's mortgage loans, including co-signed mortgages and mortgages unrelated to the subject transaction, to determine whether they are subject to any of the above programs and whether payments are current.⁷

We understand that other federal housing agencies are considering guidance regarding refinancing federally insured or guaranteed loans. Given the importance of providing borrowers impacted by COVID-19 with as much flexibility as possible to resolve their hardships and return to current mortgage payments, we hope that such guidance will be forthcoming.

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As the COVID-19 national emergency continues to disrupt the residential mortgage market, we can expect the GSEs and federal housing agencies to continue to update the programs and guidance discussed above, as well as announce new requirements designed to address the unique circumstances presented by the pandemic.

Our prior Legal Updates discussing the federal housing agencies' ongoing response to the COVID-19 crisis can be found on our [Financial Regulatory COVID-19 Portal](#). We will issue Legal Updates to keep you up-to-date on any significant future announcements.

If you have any questions about recent announcements regarding the federal housing agencies' and GSEs' response to developments related to COVID-19, please contact Krista Cooley at 202.263.3315 or kcooley@mayerbrown.com.

In addition, if you wish to receive regular updates on the range of the complex issues confronting businesses in the face of the novel coronavirus, please [subscribe](#) to our COVID-19 "Special Interest"

mailing list.

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¹ For complete definitions of QRPC and Limited QRPC, please refer to Section D2-2-01 of the Fannie Mae Servicing Guide, Section 9102.3(b) of the Freddie Mac Seller/Servicer Guide, and Freddie Mac's Bulletin 2020-10.² If a borrower had a COVID-19-related hardship, but was 31 or more days delinquent as of the effective date of the National Emergency declaration (March 1, 2020), and the servicer determines that the borrower can maintain the existing monthly contractual payment, the servicer may seek approval for COVID-19 Payment Deferral from Fannie Mae or Freddie Mac.

³ In general, a Flex Modification targets a 20 percent payment reduction while bringing the loan current by adding to the unpaid loan balance any past due amounts, including unpaid interest, real estate taxes, insurance premiums, and certain assessments paid on the borrower's behalf to a third party, and extending the loan term and/or reducing the loan's interest rate.

⁴ With regard to VA-guaranteed loans, on April 27, 2020, the VA issued [Circular 26-20-10](#), Change 1, in which it expressly stated that "the Secretary has the authority to delegate the responsibility to an approved lender to close loans on an automatic basis. Any loan closed under this authority is considered guaranteed as of the date of loan closing." As a result, there is no gap in time between loan closing and issuance of the guaranty for VA-guaranteed loans.

⁵ Freddie Mac's guidance additionally provides that the borrower must be performing under the repayment plan (i.e., no missed payments) and that the three payments must have been consecutive.

⁶ Freddie Mac's guidance additionally provides that the borrower must be performing under the loss mitigation plan (i.e., no missed payments).

⁷ For the purposes of this policy, Fannie Mae and Freddie Mac define "current" to mean that the borrower has made all mortgage payments due in the month prior to the note date of the new transaction no later than the last business day of that month