
Today's Loss Mitigation Landscape

April 15, 2020

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What is Loss Mitigation?

- Policy to minimize losses to investors from unnecessary foreclosures
- Consists of series of options/alternatives to foreclosure
- Goal is to keep loans performing, avoid liquidation losses

What Was HAMP?

- Treasury Dept. created, using TARP funds for servicer/investor incentives
- In effect for applications 2009-2016
 - Permanent mod had to be effective 12/1/2017
- Most servicers were participants
- Targeted new payment at 31% of gross household income
- Used a “Net Present Value Test”
- 1,474,000 permanent mods (Tier I) in U.S.
- 1712 permanent HAMP modifications in Vermont

Variations of HAMP

Treasury's HAMP

Participating
servicers
screen
everybody,
subject only
to investor
limits

GSE HAMP

All loans
guaranteed/
owned by
Fannie or
Freddie
must be
screened for
GSE HAMP

Other governmental insured loans

FHA

VA

RHS

HAMP Mod “Waterfall”

Capitalize arrearages



Reduce interest rate



Extend amortization term to 40 years



Principal forbearance



Payment reduced to 31% of the gross income

Where are we now?

- Avoidance of loan-by-loan, transparent NPV tests
- % payment reduction sets target payment, not income-based payment
- Streamlined evaluation, not review based on an application and documents
- Fixed term extension, limited uniform interest rate reduction, and principal forbearance drive reduction

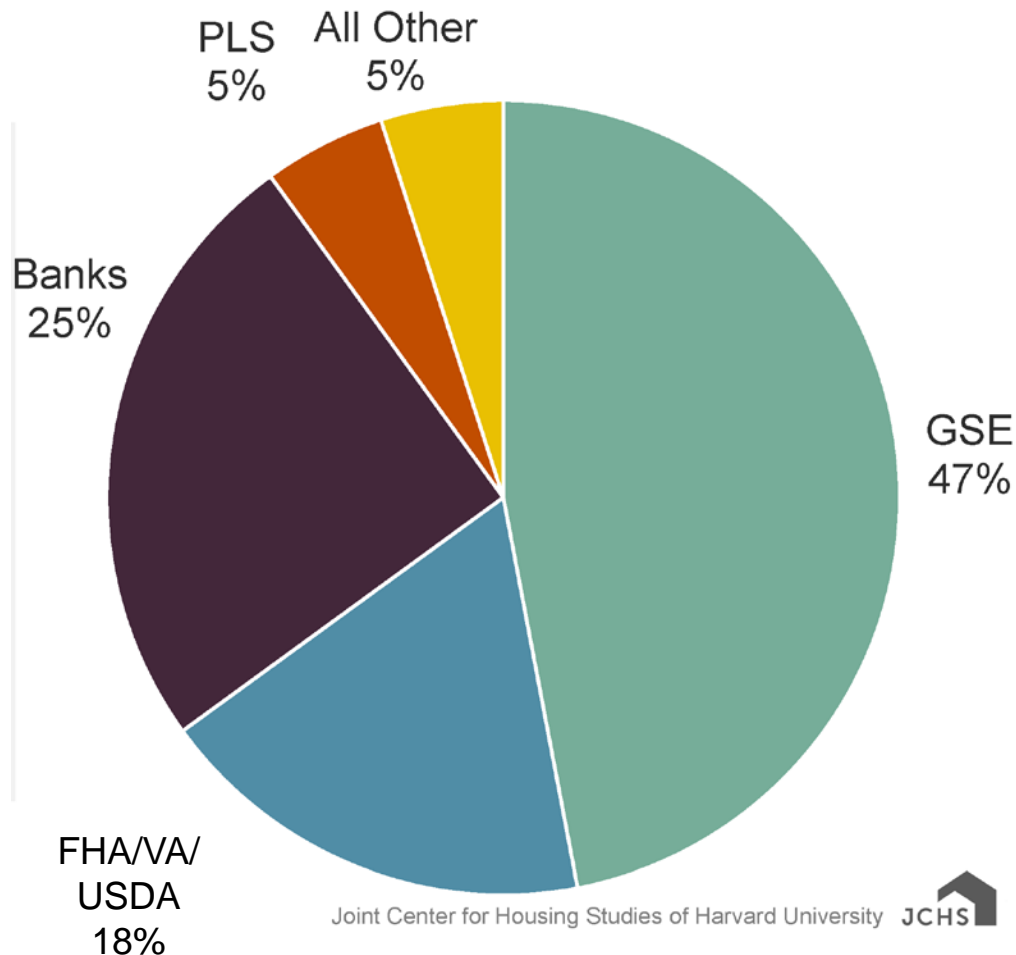
Where are we now?

- No unified program across all servicers (HAMP)
- Three major groupings:
 - The GSEs
 - Government-insured loans (FHA, VA, RHS)
 - Private conventional mortgages in proprietary pools

Impact on Mediations

- Potentially fewer disputes over borrower income documentation for modifications
- No more net present value tests
- Heightened need to identify accurately the type of loan involved (e.g. GSE, federally insured, private label)
- For Covid-19 crisis options, focus on role of forbearance

“Federally Backed Mortgage Loan”



The GSE's Loss Mitigation

- Loans owned/guaranteed by Fannie Mae or Freddie Mac
- Large market share and influence
 - freddiemac.com/mymortgage/
 - fanniemae.com/loanlookup/
 - RESPA 24 C.F.R. § 1024.36 (Request for Information)
 - TILA § 1641(f)(2) (request to identify owner of loan)

Key Resources for GSE Loans

- Fannie Mae Single Family Servicing Guide
 - <https://singlefamily.fanniemae.com/servicing>
 - Part D covers loss mitigation
- Freddie Mac Single Family Seller/Servicing Guide
 - <https://guide.freddiemac.com/app/guide/>
 - Part 9000 covers loss mitigation
- These guides are regularly updated, supplemented by GSE Bulletins, Lender Letters

The GSE's Standard Loss Mit Hierarchy

- The GSEs require servicers to consider a “hierarchy” of loss mitigation options in order:
 - Repayment and **forbearance** plans, payment deferral, then
 - **Modifications** (“Flex Modification”), then
 - Disposition options: short sale, deed in lieu
- Applicants who have a temporary hardship or unemployment as hardship must be offered repayment/forbearance plans and not a modification.
- Disposition Options: Short sale; deed in lieu

The GSEs & Covid-19 Forbearance

- Fannie and Freddie owned/guaranteed loans are “Federally-Backed Mortgage Loans” under CARES Act. Pub. L. No. 11-136 (§ 4022(a)(2)).
- Two important provisions of CARES Act apply to all GSE loans:
 - 60-day moratorium on foreclosure proceedings from March 18, 2020 (§ 4022(c)(2));
 - Servicer “shall” upon borrower request provide forbearance for up to 180 days, with option for additional 180-day extension (§ 4022(c)(1)).
 - CARES Act creates a “government loss mitigation program” under 12 V.S.A. § 4631(e)(2).

The GSE's Covid-19 Forbearance

- Fannie Mae Lender Letter (LL-2020-02)
(3/18/20, revised 3/25/2020 and 4/8/2020)
- Freddie Mac Bulletins 2020-4 (3/18/2020) and 2020-10 (April 8, 2020)
- Key issues:
 - What is forbearance?
 - How do you apply?
 - What happens at the end of the forbearance period?

What is Forbearance?

- Forbearance is a temporary suspension of borrower's obligation to make scheduled installments payments for interest, principal, and escrow.
- Scheduled payments may be reduced or suspended completely.
- Borrower's contractual obligation for debt for interest, principal, and escrow that accrue during forbearance *is not waived*.

Forbearance: How Do You Apply?

- According to CARES Act, servicer shall approve forbearance:
 - “[u]pon receiving a request for forbearance . . . with no additional documentation required other than the borrower’s attestation to a financial hardship caused by COVID-19” (CARES Act § 4022(c)(1))
- Servicer not required to obtain documentation of hardship (Fannie Mae LL 2020-02; Freddie Mac Bulletin 2020-4)

CARES Act -Terms of Forbearance

- Without income documentation, forbearance likely to consist of complete suspension of scheduled payments for defined period.
- Up to 180 days, can be extended to 180 more.
- Restriction on negative credit reporting (to 120 days after cessation of emergency) CARES Act § 4021.
- Borrower must be given written statement of forbearance terms (GSE guidelines, also RESPA Rule 12 C.F.R. §1024.41(c)).

CARES Act-Terms of Forbearance

- During the forbearance period:
“no fees, penalties, or interest (beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract)” shall be charged to the borrower in connection with the forbearance.” CARES Act § 4022(c)(1))

What Happens When Forbearance Ends?

- CARES Act does not address servicer action at end of forbearance.
- Will depend on insurer/guarantor guidelines
- Federally-backed loans have published guidelines for end-of-forbearance
- Some private loans may not – this could be a problem!
 - E.g., does PSA allow term extension?

End of Forbearance Options

- GSE options
 - A payment plan
 - Payment Deferral (non-interest bearing lien for accrued arrearage)
 - An “Extend Modification”
 - Extend loan term equal to forbearance term
 - Maintain pre-forbearance payment level
 - May have to repay an escrow shortage separately
 - A “Cap and Extend Modification”
 - Can capitalize escrow shortage & extend term
 - A GSE “Flex Modification”
 - Can include principal forbearance
 - Creates long-term reduction of pre-forbearance payment
 - Only mod option if default preceded COVID-19 emergency

The GSE Flex Modification

- A standard loss mitigation option for all loans owned/guaranteed by Fannie Mae or Freddie Mac
- Replaces the GSEs' version of HAMP as primary loan modification option
- Servicers of GSE loans had to fully implement the Flex Modification program as of Oct. 1, 2017

Fannie Mae Resources

- Fannie Mae Lender Letter LL-2016-06 (12/14/16)
- Fannie Mae Flex Mod FAQ (12/14/16)
- Flex Modification Online Course (with examples)
- Fannie Mae Single Family Servicing Guide (Part D2-3.2-06 (9/18/18) (eligibility) and Part F-1-28 (5/15/19) (waterfall))

Freddie Mac Resources

- Freddie Mac Bulletin 2016-22 (Dec. 14, 2016)
- Freddie Mac Flex Modification Reference Guide (Jan. 2018) (w/ examples)
- Freddie Mac Flex Modification FAQ (7/17)
- Freddie Mac Seller/Servicer Guide Topic 9206.5 (7/1/18)(eligibility); 9206.10 (7/1/18) (waterfall)

Flex Mod: Basic Structure

- Uniform terms (program uses same fixed interest rate for all mods; same repayment term extension for all mods)
- Minimal reliance on individual borrower information
- One basic waterfall (five steps)
- Just one variation in part of 5th step: for borrowers who submit an application before loan is 90 days delinquent

Getting a Flex Mod

- Two methods:
 - Borrower submits an application to servicer, or
 - Servicer finds borrower eligible based on servicer's unilateral proactive review of loan file

How to Apply

- Same application process for all GSE loss mit options
- Borrower must complete GSE Mortgage Assistance Application Form (Form 710)
- Submit Form with required documentation (of income) & hardship certification
- Whole packet called a “Borrower Review Package” or “BRP.”
 - Note: borrowers do not need to submit application/BRP just to get forbearance

When to Apply

- Must be at least 60 days delinquent or meet GSE “imminent default” standard
- No outer time limit to apply, but:
 - May run into dual tracking problem
 - Dual tracking protections apply if submit borrower’s first BRP 37+ days before foreclosure sale

Trial Period Plan

- If found eligible, servicer offers trial plan
- Duration 3-4 months
- No signed document until final (permanent) mod
- No documents due during trial period- just make payments & sign permanent mod
- Foreclosure stayed while comply

Mod Offer Based on Unilateral Review

- Servicer may offer trial plan without application, without looking at any information submitted by borrower
- Servicer uses own loan file data on arrearage, UPB, property value, interest rate, and current payment amount
- Borrower income irrelevant

General Eligibility Requirements

- Can still apply and be found eligible for Flex Mod if:
 - Received a Flex Mod offer in the past and did not accept it.
 - Applied in the past and found not eligible
 - Now have changed circumstances, or
 - Past eligibility determination was erroneous

Basic Flex Modification Waterfall

- Same waterfall applies whether review based on application or unilateral servicer action,
 - But a variation in fifth and final waterfall step can apply if borrower submits complete BRP before 90 days delinquent

Basic Flex Mod Waterfall

- **Five Steps** (See Fannie Mae LL 2016-06 pp. 4-6)
 1. Capitalize arrears
 2. Set fixed interest rate
 - Generally set at current Standard GSE Mod Rate (3.500% as of 3/13/20) unless below 80% LTV
 3. Extend term to 480 months - always
 4. Principal forbearance (in two stages)

Flex Mod Principal Forbearance

- Two stages of principal reduction
- First, forbear enough UPB to set UPB at 100% of property's fair market value
- Second, if doesn't reduce P&I payment by 20%, then
 - Forbear to as low as 80% UPB to reach 20% reduction
- Total forbearance always subject to cap of 30% of modified UPB
- A limited income-based additional forbearance allowed if apply before 90 days delinquent

Online Calculators

- Mobilization for Justice (NY legal services program) provides online calculators for:
 - GSE Flex mod
 - FHA HAMP
 - Treasury HAMP (expired)
- <http://mobilizationforjustice.org/publications-and-report/waterfall-worksheets/>

Waiver of Waterfall Steps

- Servicer may request that a GSE make exceptions to Flex Mod eligibility requirements, including waterfall steps.
- Servicer makes request based on determination that “acceptable mitigating circumstances” exist.

Payment Reduction Drivers

- Principal forbearance plays major role in payment reduction, but tied to property value and not income
- Cap on principal forbearance limits how far payment reduction can go (30% of UPB)
- Change in interest rate can also determine percentage payment reduction
- Not eligible if waterfall produces mod that increases monthly payment

Flex Mod and Mediation

- Plaintiff must produce “inputs and calculations used” for modification review. 12 V.S.A. § 4633(a)(3)(B).
 - Also to be documented in mediator report. 12 V.S.A. § 4634(a)
- Property valuation is key input.
- Total unpaid principal balance (UPB) limits amount of forbearance.
- Income is factor if borrower applied within 90 days of default.

Flex Mod Bottom Lines

- Income-based affordability is usually not the goal
 - Driven by % reduction in payment
- Forbearance major driver of lower payments
 - Means more benefit for underwater borrowers, less for borrowers with equity
- Interest rate reduction also drives lower payment
 - But if have substantial equity, you keep current interest rate

Federally Insured Home Loans



THREE FEDERAL AGENCIES

- HUD – manages FHA single-family insured loan program
- VA – manages VA single-family insured loan program
- USDA – manages two distinct programs:
 - USDA insured single-family home loan program
 - USDA direct loan program (purchase and home repair loans)

Structural Similarities - Authority

- Federal Statute
- Codified Regulation (C.F.R.)
- Agency Handbook
- Administrative updates (on website)
- Court decisions
- These insured loan programs still have loan modification protocols that target affordable payment (based on % of income)

FHA LOSS MITIGATION AUTHORITY

- Statute; 12 U.S.C. § 1715u
- HUD Regulations: 24 C.F.R. § 203.500, *et seq.* and §203.600, *et seq.*
- HUD Mortgagee Letters
- New HUD Handbooks 4000.1 (2016, and regularly revised)
- Court Decisions
- HUD/FHA website: <http://www.hud.gov/offices/adm/hudclips/>
(contains HUD Mortgagee Letters, Handbooks)

Defense to Foreclosure

- Compliance with regulatory framework as condition precedent to foreclosure
- Enforce regulations to defeat foreclosure
- Enforce loan contract that incorporates regulatory obligations

Breach of Contract

- *Mathews v. PHH Mortgage Corp*, 724 S.E.2d 196 (Va. 2012)
- *Pfeifer v. Countrywide Home Loans*, 211 Cal. Rptr. 4th 1250 (Cal. Ct. App. 2012)
- *Wells Fargo v. Neal*, 922 A.2d 538 (Md. 2007) (equitable defense to foreclosure)

FHA Loss Mitigation Tools

- FHA loss mitigation options described in HUD Handbook 4000.1:
 - Repayment and forbearance
 - “Special forbearance”
 - FHA HAMP, includes:
 - Income-based modification and/or
 - “Partial Claim” (principal forbearance)
 - Pre-foreclosure sale
 - Deed in lieu of foreclosure

FHA-HAMP: The Basic Concept

- May combine a partial claim with a loan modification (30-year term, fixed interest rate)
- Uses “partial claim” (principal forbearance) to reach a target payment
 - Either percentage of income, or
 - Percentage payment reduction
- The total partial claim (principal forbearance) may not exceed 30 percent of the unpaid principal balance as of the default date.
- No formal NPV test.
- Important summary chart: “FHA Loss Mitigation Home Retention Option Priority Order Waterfall” in HUD Handbook 4000.1 § III.A.2.j (revised periodically)

FHA – HAMP – Fixed Loan Term and Interest Rate

- Two fixed terms to FHA HAMP modification
- **Loan term** extended to 360 months from date of modification
- **Interest rate** reduced to 25 basis points over the Freddie Mac PMMS rate
- PMMS Rate at <http://www.freddiemac.com/pmms/> (3.500% as of 3/13/2020)

FHA Covid 19 Options

- HUD Mortgagee Letter 2020-06 (4/1/2020) (proposed)
- Implements CARES Act for FHA loans
 - Servicer must offer forbearance upon request if borrower asserts Covid-19 hardship
- New version of FHA partial claim
 - Non-interest bearing lien for unpaid arrears
 - But must have been less than 30 days in arrears as of 3/1/2020 *and*
 - Able to resume pre-forbearance payments

Reverse Mortgages

- Subject to HUD regulations
 - 24 C.F.R. Part 206
 - ML 2015-11 (4/23/2015), ML 2016-07 (3/30/16) HUD's HECM Loss Mit guidelines
- Mortgagee Letter 2020-06 (4/1/2020)
 - Servicers must delay calling loan due and payable, delay foreclosure for up to six months with additional extension if requested

FHA National Servicing Center

Oklahoma City Office

U.S. Department of HUD
301 NW 6th Street, Ste 200
Oklahoma City, OK 73102

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

www.hud.gov/offices/hsg/sfh/nsc/nschome.cfm

E-mail: hsg-lossmit@hud.gov

1-877-622-8525

See *also* HUD Neighborhood Watch: <https://entp.hud.gov/sfnw/public/> (data on
FHA loss mitigation activity by state and by servicer)

RURAL HOUSING LOANS

- U.S.D.A.'s Rural Housing Service (“RHS,” formerly “FmHA”) manages two single-family home loan programs for borrowers in rural areas.
 - *Guaranteed Loan Program*: private lender, guarantees loan, not obvious from mortgage and note (see closing documents)
 - *Direct Loan Program*: The United States is the lender and this is obvious

RHS RESOURCES

Guaranteed Loans:

42 U.S.C. § 1472, *et seq.*

USDA Regulations: 7 C.F.R. § 3555.301, *et seq.*

RHS Handbook HB-1-3555 SFH Guaranteed Loan
Program Technical Handbook

<https://www.rd.usda.gov/resources/directives/handbooks>

Handbook Chapter 18 – Loss Mitigation

RHS Guaranteed Loan Program

- RHS Guaranteed Loans: Loss Mitigation obligation: 42 U.S.C. § 1472(h)(13)
- Options for RHS Guaranteed Loans
 - Special Forbearance
 - Loan Modification (“standard”)
 - Loan Modification (“special loan servicing”)
 - Pre-Foreclosure Sale
 - Deed-in-Lieu

Rural Housing Direct Loans

These are loans directly from the United States government (USDA) to the borrower for purchase or construction of residence

- “Section 502” loans under U.S. Housing Act
 - Regulations: 7 C.F.R. Part 3550
 - Handbook HB-2-3550 (Centralized Servicing Center):
<https://www.rd.usda.gov/resources/directives/handbooks>
<http://www.rurdev.usda.gov/regs/hblist.htm>
 - Chapter 5 “Special Servicing”

RHS Direct Loans

- Direct Loans Special Features:
- Interest credit/payment assistance reduces monthly payment toward interest based on household income
- Periodic payment adjustments and review
- Forborne interest is subject to “recapture”
- “Moratorium” relief, 42 U.S.C. § 1475
- Foreclosure defense: *U.S. v. Shields*, 733 S. Supp. 787 (D. Vt. 1989)

RHS Covid-19 Options

- USDA “Stakeholder Announcement” April 8, 2020
- https://www.rd.usda.gov/sites/default/files/USDA_RD_SA_COVID19_ProgramImmediateActions04082020.pdf
- RHS Direct Loans:
 - Refers to existing payment assistance and moratorium options
 - CARES Act impact on eligibility not clear
- RHS Guaranteed Loans:
 - Implements CARES Act forbearance
 - At end of forbearance loan term extension to be granted at borrower’s request, other standard RHS loss mitigation options available

VA Loans - Introduction

- VA guarantees loans by private lenders
- Available for eligible veterans
- Can be for purchase, construction, refinance
- Relatively low interest rate, no down payment

VA Loans Resources

- Regulations: 38 C.F.R. § 36.4800-4893 & 38 C.F.R. § 4316-19
- VA Handbook M26-4 (2017)
https://www.benefits.va.gov/WARMS/M26_4.asp
- Help from regional servicing centers
https://www.benefits.va.gov/homeloans/contact_rlc_info.asp

(Cleveland office serves Vermont)

What are the VA Options?

- Repayment Plan
- Special Forbearance
- Loan Modification – standard
- “VA Affordable Modification” (31% DTI target)
- Compromise (short) sale
- Deed-in-Lieu of foreclosure
- Refinance
- Assumption
- Refunding- VA takes over loan
- Foreclosure challenge: *Wilkins v. Wells Fargo*, 2016 WL 6775692 (E.D. Va. Nov. 15, 2016)

VA Loans and Covid-19

- VA loans are subject to CARES Act forbearance and moratorium terms
- VA Circular 26-10-12 (4/8/2020)
 - Must grant forbearances upon attestation of Covid 19 hardship
 - Borrower determines length (up to total 360 days)
 - End of forbearance: must consider “all possible” regular VA options, including “extend” modification
 - Demand for lump sum repayment prohibited

Private Loans

- Use RESPA Request for Information (“RFI”) to ask for applicable loss mit guidelines
- If none applicable, argue GSE guidelines as industry standard
- Review PSA
- In mediation, servicer has obligation to produce guidelines, show limits on actions

Mediation Decisions – Disclosure of Loss Mit Barriers

- U.S. Bank v. Lisman, 2016 WL 8078137 (Vt. Super. Ct. May 1, 2016) (12 V.S.A. § 4633(c) violation to fail to disclose source of alleged investor limit on modifications)
- Wells Fargo Bank, N.A. v. Sult, No. 71-3-13 Oosc (Apr. 21, 2014) (bad faith not to document PSA that limited term extension)
- BAC Home Loans Servicing, LP v. Rollins, No. 1230-09 CnC (Oct. 21, 2013) (bad faith to misrepresent terms of final modification)

RESPA & TILA Servicing Rules



National
Consumer Law
Center
*Fighting Together
for Economic Justice*

Andrea Bopp Stark
Vermont Bar Assoc. Foreclosure
Defense and Mediation Training
April 2020

RESPA & TILA

- Focus on Regulation X: 12 CFR §1024:
 - 12 CFR §1024.35: Error Resolution Procedures
 - 12 CFR §1024.36: Request for Information
 - 12 CFR §1024.41: Loss Mitigation Procedures
- Successors in Interest
- TILA Servicing Rules: 12 C.F.R. §§ 1026.20, 1026.36, 1024.41

Hypothetical

- Part 1: For 4/15/2020 Webinar
- After the death of her spouse, Amy Debet fell behind on her mortgage. Both she and her spouse were on the mortgage and note. She used the Fannie Mae loan look up online and found out her loan was guaranteed by Fannie Mae. She requested and received a BRP Form 710 from her loan servicer, Large Loan Servicing (LLS) and provided all the documents they requested in a timely manner including the completed BRP, financial documents, and death certificate. Before they could give her an answer, LLS transferred the loan to Huge Loan Servicing (HLS). Amy reached out to LLS and HLS about her loan modification application but heard nothing. HLS then sent her a solicitation letter asking her to provide a whole new loan modification application. Amy complied and sent in the documents requested including the BRP and financial documentation. Three months later, HLS sent her a notice acknowledging her application and asking for a BRP for “all financial contributors.” Amy lives alone. There are no other “financial contributors” and she explained this to HLS. HLS then sent a notice denying the modification stating she failed to provide the requested documents.
- Amy sent a Request for Information (RFI) and Notice of Error (NOE) to HLS explaining that she had a complete application with LLS, asked HLS to connect with LLS to get the application, and also asked for an explanation on the denial of the recent application and that HLS provide her with a response on the documents she submitted to LLS and HLS. HLS responded that she had not provided the documents requested but did not provide any further response. With the help of an attorney costing \$100, she sent a second QWR/RFI/NOE to HLS via certified mail costing \$6.00 in which she itemized the documents she sent to LLS and to HLS and asked HLS to use those documents to evaluate her for a loan modification. She also explained again that HLS did not need a BRP from a contributor because there was no contributor. She said that HLS was in error in denying her application for lack of documents as HLS had or could have gotten all the documents it needed. HLS replied that it would evaluate her again if she reapplied because at this point, all the documents were stale. HLS then began calling Amy several times a day to find out when she would pay the full amount owed. When she could not pay, HLS sent notice and then filed a foreclosure action against her.

Notice of Error and Request for Information: 12 C.F.R. §1024.35 & 36

- Why is it such an important tool?
 - Access to information within set time period
 - Puts servicer on notice of error
 - Even if no private right of action for specific servicing error, may have claim here



Scope of Error Resolution

Failure to accept a conforming payment

Failure to apply a payment correctly

Failure to timely credit a payment

Failure to make timely escrow disbursements

Imposing an unreasonable fee

Failure to provide a payoff statement

Failure to do a servicing transfer correctly

Filing a foreclosure without giving the correct notices re. loss mitigation

Moving for foreclosure judgment or sale without following the loss mitigation protocols

Any other error relating to the servicing of a borrower's mortgage loan

- NOE's Can Help with COVID-19 issues:
 - Failure to provide accurate loss mitigation information
 - Wrongful denial of loss mitigation option (forbearance, loan mod)

Not Subject to NOE

- 12 C.F.R. § 1024.35(g) & Official Bureau Interpretation § 1024.35(b)-1
- Origination of loan
- Underwriting of loan
- Securitization or transfer of ownership of loan
- Duplicative requests
- Overbroad requests
- NOEs more than one year after loan discharged or no longer servicer
- Servicer must notify borrower in writing within 5 business days after making determination not to comply



Covered or Not Covered?

- **COVERED:** failure to implement modification
Nunez v. J.P. Morgan Chase Bank, N.A., 648 F. App'x 905 (11th Cir. 2016):
- **COVERED:** failure to properly review for loss mitigation options
Johnson v. Specialized Loan Servicing, LLC, 2018 WL 4403838 (M.D. Fla. Sept. 17, 2018)
- **COVERED:** failure to follow Fannie Mae servicing guidelines related to HAMP loan modification
St. Claire v. Ditech Fin., LLC, 2018 WL 4850127 (N.D. Ga. Sept. 21, 2018):
- **NOT COVERED:** servicer's wrongful denial of a loan modification- appeals process set forth in § 1024.41(h) is the sole method for challenging
In re Rosa, 2018 WL 4352168 (Bankr. D.N.J. Aug. 9, 2018)
- **NOT COVERED:** servicer errors in making loss mitigation decisions.
Sutton v. CitiMortgage, Inc., 228 F. Supp. 3d 254 (S.D.N.Y. 2017)

Scope of Information RFI

- information with respect to the borrower's mortgage loan
- information relating to the servicing of the mortgage loan

COVID-19:

- Identify owner of the loan (also TILA - § 1641(f)(2))
- Identify loss mitigation options available

Also:

- Find out when servicer received a complete application

Is Amy Debet's RFI/NOE covered?

- asked HLS to connect with LLS to get the application
- asked for an explanation on the denial of the recent application
- HLS provide her with a response on the documents she submitted to LLS and HLS
- in error in denying her application for lack of documents as they had or could have gotten all the documents they needed

- Both must include:
 - Written notice from the borrower
 - Asserts an error/ Requests information
 - Name of borrower
 - Information to identify loan ie: address, account number, last 4 digits of SSN, DOB, etc.

- Practice tips:
 - Have borrower send via certified mail
 - Keep copies of signed letter and stamped envelope

- Very Important!
 - If the servicer has an address for NOEs, RFIs, QWRs, the borrower MUST use that address
 - Servicer must provide notice of address to borrower- usually on transfer of service or mortgage statement
 - Do not confuse with Correspondence Address

Wease v. Ocwen Loan Servicing, L.L.C., 915 F.3d 987 (5th Cir. 2019) Facts: Borrower sent QWRs to three different addresses, none of which were the designated QWR address indicated in Ocwen's servicing transfer notice.

Held: There can be no RESPA liability for violating QWR requirements when request is sent to address other than the designated QWR address. Borrower's arguments that Ocwen changed and/or provided inconsistent QWR addresses could not be raised for the first time on appeal

IMPORTANT DISCLOSURES

-INQUIRIES & COMPLAINTS-

For inquiries and complaints about your mortgage loan, please contact our CUSTOMER SERVICE DEPARTMENT by writing to Carrington Mortgage Services, LLC, Attention: Customer Service, P.O. Box 3489, Anaheim, CA 92803, or calling (800) 561-4567. Please include your loan number on all pages of correspondence. The CUSTOMER SERVICE DEPARTMENT for Carrington Mortgage Services, LLC is toll free and you may call from 8:00 a.m. to 8:00 p.m., Eastern Time, Monday through Friday. You may also visit our website at <https://carringtonms.com>.

-IMPORTANT BANKRUPTCY NOTICE-

If you have been discharged from personal liability on the mortgage because of bankruptcy proceedings and have not reaffirmed the mortgage, or if you are the subject of a pending bankruptcy proceeding, this letter is not an attempt to collect a debt from you but merely provides informational notice regarding the status of the loan. If you are represented by an attorney with respect to your mortgage, please forward this document to your attorney.

-CREDIT REPORTING-

We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report. As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

-MINI MIRANDA-

This communication is from a debt collector and it is for the purpose of collecting a debt and any information obtained will be used for that purpose. This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the bankruptcy laws of the United States.

-HUD COUNSELOR INFORMATION-

If you would like counseling or assistance, you may obtain a list of HUD-approved homeownership counselors or counseling organizations in your area by calling the HUD nationwide toll-free telephone number at (800) 569-4287 or toll-free TDD (800) 877-8339, or by going to <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>. You can also contact the CFPB at (855) 411-2372, or by going to www.consumerfinance.gov/find-a-housing-counselor.

-EQUAL CREDIT OPPORTUNITY ACT NOTICE-

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers CMS' compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

-SCRA DISCLOSURE-

MILITARY PERSONNEL/SERVICEMEMBERS: If you or your spouse is a member of the military, please contact us immediately. The federal Servicemembers Civil Relief Act and comparable state laws afford significant protections and benefits to eligible military service personnel, including protections from foreclosure as well as interest rate relief. For additional information and to determine eligibility please contact our Military Assistance Team toll free at (888) 267-5474.

-NOTICES OF ERROR AND INFORMATION REQUESTS-

You have the right to request documents we relied upon in reaching our determination. You may request such documents or receive further assistance by contacting the Customer Service Department at (800) 561-4567, Monday through Friday, 8:00 a.m. to 8:00 p.m. Eastern Time or by mail at P.O. Box 3489, Anaheim, CA 92803.

Payment Information

Please visit the website at www.CarringtonMS.com for convenient payment options. Payments can be made by Check or AutoPay at no charge. Information about additional payment options is available at www.CarringtonMS.com. If you choose to mail your payment, or are mailing additional principal or escrow funds, please complete and detach the coupon portion of this statement, and mail it with your check or money order to the Payment Processing Center using the return envelope provided. Be sure that the address shows through the window of the envelope. Be sure to write your account number on your check or money order. **PLEASE DO NOT SEND CASH.** Do not delay payments if you are awaiting correspondence, research or a new billing statement. Please do not send the entire statement. Please do not include correspondence on or with your payment. Postdated checks will be processed on the date received unless prohibited by applicable law.

When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic funds transfer from your account or to process the payment as a check transaction.

When we use information from your check to make an electronic funds transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution.

Other Payment Options

Western Union/Quick Collect

To use Quick Collect to make a payment, follow these easy steps:

1. Call 1-800-325-6000, press #2 to locate the Western Union Agent nearest you or go to www.westernunion.com.
2. At the Agent location, select and fill in the blue Payment Form completely. Include the following information:
Pay to: Carrington Mortgage Services, LLC
City Code: CarringtonMS
State: CA
3. Be sure your name and account number are correctly written on the form.

This transaction will cost you a nominal fee. To contact Western Union Customer Service, please call 1-800-238-5772.

MoneyGram

To use MoneyGram to make a payment, follow these easy steps:

1. Call 1-800-926-9400 to locate a MoneyGram Agent or go to www.moneygram.com/efinsUs/.
2. At the Agent location, select and fill in the blue Payment Form completely. Include the following information:
Pay to: Carrington Mortgage Services, LLC
Receive Code: 7998
3. Be sure your name and account number are correctly written on the form.

This transaction will cost you a nominal fee. To contact MoneyGram Customer Service, please call 1-800-555-3133.

Note: Payments transmitted to our office after the close of business will be applied to your account the next business day.

Insurance

Hazard Insurance - Fire and extended coverage is required on all accounts as specified in your loan documents.

Flood Insurance - If your property is located in a designated flood area, adequate Flood Insurance is required.

Proof of insurance coverage is required on an annual basis. Please consult with your insurance agent to ensure that we are notified of your policy's status and that we receive copies of all renewal notices. We reserve the right to place insurance coverage to protect our mortgage interest if your insurance cancels or we are not notified of the renewal of your policy. The cost of this lender placed coverage may be higher than the policy of your choice and the coverage may not be equivalent to your prior policy. Your account will be charged for this coverage and your monthly payments may be increased accordingly.

Property Taxes

If we escrow for your taxes, please forward all bills to us to ensure proper payment. Timely payment of Real Estate taxes is required on all Non-Escrow accounts. In the event that we are notified of non-payment of taxes by your taxing authority, we may exercise our option to advance payment for taxes.

NOTE: This will result in an increase in your monthly payments.

Important Notices

Mini Miranda - This communication is from a debt collector and it is for the purpose of collecting a debt and any information obtained will be used for that purpose. This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the bankruptcy laws of the United States.

Credit Reporting - We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report. As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

HUD Counselor Information - If you would like counseling or assistance, you may obtain a list of HUD-approved homeownership counselors or counseling organizations in your area by calling the HUD nationwide toll-free telephone number at (800) 569-4287 or toll-free TDD (800) 877-8339, or by going to <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>. You can also contact the CFPB at (855) 411-2372, or by going to www.consumerfinance.gov/find-a-housing-counselor.

Important Bankruptcy Notice

If you have been discharged from personal liability on the mortgage because of bankruptcy proceedings and have not reaffirmed the mortgage, or if you are the subject of a pending bankruptcy proceeding, this letter is not an attempt to collect a debt from you but merely provides informational notice regarding the status of the loan. If you are represented by an attorney with respect to your mortgage, please forward this document to your attorney.

Additional Information

Escrow - This portion of the mortgage payment may include amounts collected for mortgage insurance premiums.

Negative Amortization - The unpaid principal balance includes the negative amortization balance, if applicable. Negative amortization only occurs on certain loan products.

Errors and Information Requests (inquiries & complaints)

Notices of Error, Requests for Information and Qualified Written Requests (as defined in RESPA) must be sent to: PO Box 5001, Westfield, IN 46074. Please include your account number with all correspondence. You have certain rights under federal law to resolve errors and request information related to your account. For more information, please contact us at (800) 561-4567, Monday through Friday, 8:00 a.m. to 8:00 p.m. Eastern Time.

Servicemembers Civil Relief Act

The Servicemembers Civil Relief Act (SCRA) may offer protection or relief including protections from foreclosure as well as interest rate relief to members of the military who have been called to active duty. If either you have been called to active duty, or you are the spouse, registered domestic partner, partner in a civil union, or financial dependent of a person who has been called to active duty, and you haven't yet made us aware of your status, please contact our Military Assistance Team toll free at 1-888-267-5474.

Correspondence (for inquiries & complaints)

Carrington Mortgage Services, LLC P.O. Box 5001, Westfield, IN 46074

Overnight Payment Mailing Address:

Carrington Mortgage Services, LLC
Cashiering Dept. 2-270
1600 South Douglass Road, Suites 110 & 200-A
Anaheim, CA 92806

Important Telephone Numbers

Customer Service (for inquiries & complaints): 1-800-561-4567
Customer Service Fax: 1-800-486-5134
Refinance: 1-888-267-0584
Payoff Request Fax (include borrower authorization): 1-866-624-6154

Loan Payoff Information

The Current Principal Balance on Page 1 is not your payoff amount. Payoff requests may be obtained by:
• Fax (include borrower authorization): 1-866-624-6154
• Customer Service Toll Free Telephone: 1-800-561-4567



Timing

Within 5 days*  Acknowledge receipt

Within 7 days*  Respond re: payoff balance error

Within 10 days*  Provide owner information

Within 30 days*  Respond to all other errors/
requests for information

*excludes legal public holidays, Saturdays, and Sundays

Investigation and Response Requirements

- NOE
 - Correct the error and notify borrower
 - Conduct a reasonable investigation and notify borrower if no error found and why

What is a Reasonable Investigation?



- No reasonable investigation when servicer failed to obtain pre-transfer payment history from prior servicer.
- No reasonable investigation when failed to examine and address the pre-transfer history after borrower supplied it to servicer.

Wirtz v. Specialized Loan Servicing, 886 F.3d 713, 717 (8th Cir. 2018):

- No reasonable investigation when servicer intentionally provided vague and contradictory statements in response to NoE for failure to modify (e.g., one response said “no error occurred” while the other indicated error corrected by later mod), without specific explanation for denial of mod.

Johnson v. Specialized Loan Servicing, LLC, 2018 WL 4403838 (M.D. Fla. Sept. 17, 2018)

What about Amy's NOE?

- Explained error: had complete app with LLS and HLS needed to access
- Asked for response on documents submitted
- HLS: responded that she had not provided the documents requested but did not provide any further response.
- 2d NOE: denial error
- HLS said would reevaluate with new app

Investigation and response requirements

- RFIs
 - Provide the borrower with the requested information
 - Conduct a reasonable search for the requested information
 - Provide written notification not available
 - Contact information for further assistance

Servicer does not have to respond when...

- Sent to wrong address
- Duplicative request already answered
- Notice is overly broad
- Delivered one year after servicing transferred or mortgage is discharged

Loss Mitigation Rules

Loss Mitigation Rules: 1024.41: “Complete Application”

- Timeframes triggered by receipt of “complete application.”
- When servicer “has received all the information that the servicer requires” to evaluate for “the loss mitigation options available to the borrower.” (§1024.41(b)(1))

The “Complete” Application”

- Application is complete if borrower provides all required information within borrower’s control even if additional information not in the control of the borrower is required (e.g., credit report)
- Servicer has duty to assist in completion
- Must give 5-day notice of:
 - What is needed to complete the application
 - Deadline for completion
- *Amy? What about financial contributor RMA?*

The “Incomplete Application”

- Servicers have flexibility to establish their own application requirements

BUT

- A servicer shall exercise **reasonable diligence** in obtaining documents and information to complete a loss mitigation application.

Reasonable Diligence



- (i) request duplicative and confusing additional docs; (ii) requesting docs that servicer had already determined were not necessary for the application (including an RMA from her autistic, blind son and abusive ex-husband)

Benner v. Wells Fargo Bank, N.A., 2018 WL 1548683 (D. Me. Mar. 29, 2018)

- (i) servicer requested docs it already had (previously submitted pay stubs); and (ii) servicer requested docs it knew or should have known were not needed for a complete app (RMA, 4506T: letters sent provided contradictory information)

Dionne v. Fed. Nat'l Mortg. Ass'n, 2016 WL 6892465 (D.N.H. Nov. 21, 2016)

- request docs already submitted such as tax returns and social security letters.
- notify borrower that application was incomplete, without specifying which documents were missing.
- delay in requesting missing docs was not reasonably diligent Not reasonable to wait 4 months before notifying borrower need to submit new hardship affidavit where the need for such submission was readily apparent to servicer

Jackson v. Bank of Am., N.A., 2017 WL 5598856 (W.D.N.Y. Nov. 21, 2017)

Short-term loss mitigation options for incomplete app

Forbearance or repayment plan

- Must provide a written notice:
 - payment terms and duration of plan
 - plan was based on incomplete app
 - that other loss mitigation options may be available, and
 - that the borrower has the option to submit a complete loss mitigation application to receive an evaluation for all loss mitigation options
- Cannot initiate FC if borrower performing under plan
- See COVID-19/ CARES Act Relief

A “Facially Complete Application”

- Means borrower submitted all missing docs, nothing more due
- Must treat the application as complete for the purposes of being able to proceed with foreclosure
- Servicer may later request more docs, but borrower retains all protections re: notices, dual tracking, appeals and must be given reasonable opportunity to comply
- Once complete, considered complete as of date it was facially complete

Notice of Complete Application

Notice must be sent by servicer within 5 business days stating:

- Loss mitigation application is complete;
- Date servicer received complete application;
- Servicer expects to complete evaluation within 30 days of that date; and
- That the borrower is entitled to certain foreclosure protections

What Happens When the Servicer Gets a “Complete” Application?

- Upon receipt of “complete” application more than 37 days before a foreclosure sale
 - Servicer must “evaluate”
 - For all “available” options
 - Not just the ones borrower asked about
- Written notice of decision in 30 days
 - *Specific* reason for denial of *each available loan modification option*
 - Notice of right to appeal (escalate)
 - *Amy? HLS took 3 months to respond*

Denial and Appeal Notice Requirements


- If denied based on a requirement set by loan owner or assignee, notice must identify owner or assignee and specific requirement that was basis for denial
- If denied based on net present value test, notice must state this reason and include the inputs used for the calculation
- Denial notice must also describe borrower's right to appeal, the deadline to appeal, and any requirements for making an appeal, if applicable
- 12 CFR § 1024.41 (d), Comment 41(d)

Appeal Rights

- Appeal rights apply only to decisions:
 - involving eligibility for loan modifications
 - made on complete (or facially complete) applications submitted 90 days or more before a scheduled foreclosure sale, before foreclosure is scheduled, or during the 120-day pre-foreclosure review period
- Borrower must request an appeal within 14 days after servicer provides initial notice of determination
- Review must be by “different personnel than those responsible for evaluating” application
- Servicer must decide appeal and provide notice of determination to borrower within 30 days of appeal request

12 CFR § 1024.41 (h), Comment 41(b)

Transfer Requirements

- New servicer must obtain loss mitigation documents and information submitted by borrower to former servicer and comply with § 1024.41
 - *HLS?* 
- If borrower's complete application is being evaluated when mortgage is transferred, new servicer should "continue the evaluation to the extent practicable"
- Documents in a complete application are received for purposes of timelines as of date they were received by former servicer, not new servicer

Case law

Benner v. Wells Fargo Bank, N.A., 2018 WL 1548683 (D. Me. Mar. 29, 2018):

- **Re servicing transfer while loss mit submission pending**

Borrower overcame MSJ on reasonable diligence claim where QoF:

- (i) whether transferee servicer knew or should have known of prior loss mit submission to transferor servicer;
- (ii) when transferee knew or should have known of prior submission; and
- (iii) regardless of notice, whether transferee was reasonably diligent in obtaining and reviewing prior submission.

CFPB Dual Tracking Restrictions

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graph TD; A[Two stages] --> B[120 day pre-foreclosure review period]; A --> C[Period from initiation of foreclosure to sale];
```

Two stages

120 day pre-foreclosure review period

Period from initiation of foreclosure to sale

Pre-foreclosure review period

- A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless:
 - (i) A borrower's mortgage loan obligation is more than 120 days delinquent

Complete application received before foreclosure referral

- Servicer shall not initiate any judicial or non-judicial foreclosure process unless:
 - Send borrower notice of denial and no appeal sought;
 - Borrower rejects loss mit offers; or
 - Borrower fails to perform under agreement

Complete application received more than 37 days before sale before foreclosure sale

- If complete application is received
 - After the first notice or filing but
 - 37 days before foreclosure case
- Cannot conduct sale unless:
 - Send borrower notice of denial and there is no appeal;
 - Borrower rejects loss mit offers; or
 - Borrower fails to perform under agreement

RESPA Remedies

FOR INDIVIDUALS

- actual damages to the borrower **as a result** of the failure; and
- any additional damages, as the court may allow, in the case of a **pattern or practice of noncompliance** with the requirements of this section, in an amount not to exceed \$2,000.



SUCCESSORS IN INTEREST

§ 1024.31 Definitions

Successor in interest means a person to whom an ownership interest in a property securing a mortgage loan subject to this subpart is transferred from a borrower, provided that the transfer is:

- (1) A transfer by devise, descent, or operation of law on the **death of a joint tenant or tenant by the entirety (Amy)**;
- (2) A transfer to a relative resulting from the death of a borrower;
- (3) A transfer where the spouse or children of the borrower become an owner of the property;
- (4) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or incidental property settlement agreement; or
- (5) A transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

§ 1024.31 Definitions

Confirmed successor in interest means a successor in interest once a servicer **has confirmed** the successor in interest's **identity and ownership interest** in a property that secures a mortgage loan subject to this subpart.

1024.38(b)(1)(vi)

(A) Upon receiving notice of the death of a borrower or of any transfer of the property securing a mortgage loan, promptly facilitate communication with any potential or **confirmed successors in interest** regarding the property;

HLS?



(B) Upon **receiving notice of the existence of a potential successor in interest**

- promptly determine the documents the servicer **reasonably requires** to confirm that person's **identity and ownership interest in the property** and
- **promptly provide** to the potential successor in interest **a description of those documents** and how the person may submit a written request under § 1024.36(i) (including the appropriate address); and

New Limited RFI, 1024.36(i)

Written request from a person that indicates that the person may be a successor in interest and that

- includes the name of the transferor borrower and
- information that enables the servicer to identify the mortgage loan account,

Servicer shall respond by providing the potential successor in interest with

- a written description of the documents the servicer **reasonably requires** to confirm the person's identity and ownership interest in the property and
- contact information, including a telephone number, for further assistance.

THE TILA SERVICING RULES

Servicers' Duties under TILA – Regulation Z

- Promptly Credit Payments
- Provide Periodic Mortgage Statements
- Provide Payoff Statements
- Provide Payment Change Notices
- Provide Transfer of Ownership Notices
- 12 C.F.R. §§ 1026.36, 1024.41

Periodic Statements

- Servicer must send statement for each billing cycle with the following categories of information:
 - amount due for the billing period
 - explanation of amount due including fees imposed
 - past payment breakdown
 - transaction activity
 - partial payment information
 - contact and account information, and
 - delinquency information, if applicable
- Disclosure required of payments servicer decides to hold in suspense account rather than apply to account

Bankruptcy Statements:

Servicer is exempt from sending periodic statements if **any** consumer on loan is debtor in bankruptcy or has received a discharge of loan, AND at least one of these conditions applies:

1. Any consumer requests in writing that servicer stop sending periodic statements;
2. Consumer's most recent plan provides for surrender or lien avoidance, or does not provide for cure or maintain
3. Court enters an order avoiding the lien, lifting the stay, or ordering servicer to stop sending statements, OR
4. Consumer files Statement of Intention to surrender and no partial or full payment made since case was filed

Statements on Charged-Off Loans

- Servicers can stop sending periodic statements if mortgage loan charged off and consumer will not be charged any additional fees or interest, IF
 - Servicer sends consumer within 30 days of charge-off or last periodic statement, a document clearly labeled “Suspension of Statements & Notice of Charge Off - Retain This Copy for Your Records”
- If servicer later stops treating loan as charged off or charges any fees or interest, servicer must resume providing statements and must not retroactively assess fees or interest

Payment Change Notices

- For ARMs, notice must be provided between 210 and 240 days before first payment is due after first rate adjustment
- Notice also must be sent between 60 and 120 days before payment at new amount is due when payment change is caused by a rate adjustment

Payoff Statement – TILA Request

- Payoff statements must be sent within 7 business days after written request received
- •Reg. X 1024.36(a) - servicers need not treat request for payoff balances as RESPA request for information. RESPA ban on servicer fees for response to information requests does not apply
- •Failure to provide accurate payoff statement based on a TILA request is subject to error resolution under RESPA
- •Rule applies to all loans secured by a consumer's dwelling, including open-end loans (HELOCs) and reverse mortgages
- •No blanket exemption for loans in default, foreclosure, or bankruptcy – “reasonable time” required if unable to provide within 7 days.

TILA Remedies

- Actual Damages, Costs, and Attorney's Fees
- •Statutory Damages: twice the finance charge, up to \$4,000 for closed-end mortgage violations, effective July 30, 2009
- •Statutory damages are not available for violations involving the periodic statement requirement
- •TILA § 1640 refers to “creditor”, which is typically the loan originator



Since 1969, the nonprofit **National Consumer Law Center® (NCLC®)** has worked for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. **www.nclc.org**

Template for Request for Information on Post-Forbearance Agreement Options

Date:

To:

[Your mortgage servicer

Your mortgage servicer's address:

Make sure you use the address specifically for: "Qualified Written Requests- (QWRs); Requests for Information- (RFIs); and/or Notices of Error- (NOEs) found on your mortgage statement or on the servicer's website]

From:

[Your full name

Your street address

Your city, state, and ZIP Code]

RE: Request for Information

Mortgage Loan Number: *[Your loan number]*

I am writing to request the information described below in regard to the mortgage on my property at *[Your home address]*.

I am requesting information regarding the identity of, and address or other relevant contact information for, the owner or assignee of my mortgage loan.

Please provide the full name, address, and contact information for any trust that owns my loan and the trustee

Please identify any federally related entity that owns, insures, or guarantees my loan, including Fannie Mae, Freddie Mac, the Federal Housing Administration, or the U.S.D.A. Rural Housing Service

I recently [requested/received] a forbearance of my mortgage payments for ___ months. I am writing to request information about the following:

- What the total amount due will be at the end of the forbearance period;
- Any and all loss mitigation options available to me at the end of that forbearance period. Please include information about all loan modification, repayment, deferment or other options available to address repayment of the amounts that became due during the forbearance period;
- Instructions on how to apply for and/or request each loss mitigation option; and
- The guidelines for determining eligibility for each loss mitigation option, including any investor guidelines that describe limits on loss mitigation options available for my loan.

[Add a full description of any additional the information you are requesting. Be as specific as possible.]

If you need to contact me to discuss this request, I can be reached at *[Include the best contact information, which may be your home address, work or mobile phone, or email address.]*

I look forward to hearing from you in 10 business days regarding the owner of my loan and 30 business days for my other requests. Thank you.

Sincerely,

[Your name, Co-borrower's name]

STATE OF VERMONT

VERMONT SUPERIOR COURT
CHITTENDEN UNIT

CIVIL DIVISION
DOCKET NO. S1230-09 CnC

BAC HOME LOANS SERVICING, LP

VERMONT SUPERIOR COURT

v.

OCT 21 2013

RICHARD ROLLINS, et al.

Chittenden Unit

DECISION AND ENTRY ORDER

This matter is before the court on Defendant Richard Rollin's motion (filed March 14, 2013) and supplemental motion (filed September 10, 2013) for sanctions against the Plaintiff BAC Home Loans Servicing, LP, under 12 V.S.A. § 4635(b), because the appointed mediator had determined – at least in part and at previous times before the most recent mediation session on May 17, 2013 – that Plaintiff had allegedly failed to discharge its mediation obligations in “good faith,” *see* 12 V.S.A. § 4634(b)(6)(A)(ii). Not unexpectedly, Plaintiff opposes the imposition of any sanctions. A hearing was held on September 20, 2013, at which counsel for both parties appeared and provided further legal argument, but no evidence was presented.

This mortgage foreclosure action, initially filed four (4) years prior (on September 21, 2009) to that latest hearing on 9/20/13, has been beset by interminable delay and constant errors in the processing of mortgage modification information and/or documentation provided by the Defendant(s). Indeed, the HAMP program, and the duty to mediate under Vermont law, *see* 12 V.S.A. § 4631 et seq., did not really come into existence until after this case had already been filed, but nonetheless Defendants/mortgagors became entitled to the benefits of the statutory mediation program on order and referral of the court (entered December 22, 2011).

The first two mediation sessions were held on February 20, 2012 and July 23, 2012. The mediator's combined report (filed October 10, 2012) expressly stated that Plaintiff had not engaged in “good faith” efforts to mediate the dispute and seek any and all applicable loan modification (or other settlement) remedies. The mediator's 10/9/12 report contains an extended, and quite detailed account of the trials and tribulations, and ensuing delay, encountered by the Defendant in continuously providing necessary information and updated documentation, only to be rebuffed repeatedly by Plaintiff without any convincing rationale as to why restructuring of the subject mortgage loan could not be accommodated. Plaintiff was repeatedly shown to be using outdated or incorrect information, and/or incorrect assumptions in continuing deny any effective loan modification. Nor did Plaintiff move with all deliberate dispatch in discharging its statutory obligations, such as obtaining any updated property appraisal on which it wished to base its loan modification decision.

Nonetheless, the mediation efforts were continued, and a further session was held on February 19, 2013. In the subsequent report on this session (filed February 25, 2013), the mediator again expressly stated that Plaintiff had not engaged in “good faith” mediation efforts. Again, the mediator recites a litany of errors and misinformation, and untimely processing by the Plaintiff that had infected the mediation process, including various representatives of the Plaintiff making opposite representations as to whether Defendant had, or had not been approved for a HAMP loan modification. Extraordinary efforts by the mediator to clear up this confusion during the course of the mediation session went for naught, as Plaintiff invoked its bureaucratic privilege by insisting that its mediation representative could not offer a revised loan modification “on the spot” and that it all had to be reviewed and approved “by underwriting,” thus guaranteeing additional and further delay.

A fourth mediation session was scheduled for and held on May 17, 2013. Finally, Defendant was at least offered a “HAMP Trial Period Plan,” by which he was to make 3 timely payments of \$802.66 per month for June, July and August 2013. Defendant did in fact make all three of those monthly payments, as required. However, the mediator stated that “the borrower’s [Defendant’s] acceptance of the trial plan is contingent upon receipt of satisfactory terms on the permanent loan modification. The permanent loan modification terms are not currently available and will not be available until the borrower has successfully completed the three-month trial plan.” Based on this assessment, the mediator determined that as of the 5/17/13 session, the Plaintiff had met its mediation obligations in “good faith” and so stated in the report of that session (filed May 23, 2013). However, there is no explanation, or reasons stated why disclosure of the permanent loan modification terms have to wait until the 3-month trial period is over;¹ that in itself strikes the court as a less-than-good-faith approach because it essentially requires the mortgagor to front-load the 3 trial payments without any reliable idea if the permanent loan terms will be acceptable, which is precisely what occurred here.

Complicating this picture, however, is that counsel for the Defendant received from one of the attorneys representing the Plaintiff – on May 10, 2013, prior to the 5/17/13 mediation session – an e-mail which stated specific “figures” for a “work-out,” which would include “\$61,759.80 capitalized (added to the loan [principal]) No balloon payment 2% interest rate for the first 5 years, then steps up 1% over the next 3 years until it reaches market rate (this will likely happen in year 7 or 8) 480 month [40 years] term”.² Why the final loan details could still not be confirmed at the mediation session a week later, on 5/17/13, is not explained.

¹ Certainly, entry into and final execution of the permanent loan modification itself can wait until the bank receives some assurance, by the 3 months’ worth of payments, that the borrower is in fact able to handle the new payment schedule.

² Plaintiff’s motion (filed October 4, 2013) to strike the affidavit of Defendant’s counsel (filed 9/30/13), is **denied**. The substance of the 5/10/13 e-mail from the Plaintiff’s co-counsel is not disputed, and was fully presented in the Defendant’s Supplemental Motion for Sanctions (filed earlier, on 9/10/13).

In any event, sometime after August 6, 2013, Defendant received from the Plaintiff its “Loan Modification CLARITY COMMITMENT®” informing Defendant that the capitalized amount to be added to the principal loan balance would instead be \$70,819.87, with an applicable interest rate starting at 2% for years 1-5, then increasing each year for 3 years until the rate reached 4.375% for years 8-40. The monthly payment for years 1-5 would stay at \$802.66 (but subject to change depending on the necessary escrow for taxes and insurance), increasing to a projected \$999.46 for years 8-40. But the kicker was that at the end of 40 years of further payments, Defendant(s) would then still owe a “deferred principal” balance of \$78,058.80.

Defendant immediately cried foul, contending this was contrary to the 5/10/13 e-mail which said “No balloon payment.” Plaintiff has responded that the “deferred principal” is not a “balloon payment” because the \$78,058.80 just sits there, for 40 years, not accruing any interest. Whether it accrues interest or not, it is a lump sum payment to be made at the end of the loan term, which in anybody else’s book is a “balloon payment.” This clear disparity, and incongruity between what Defendant and his counsel were informed of in connection with the mediation, and subsequently in Plaintiff’s “Loan Modification CLARITY COMMITMENT®” constitutes additional evidence of “bad faith” engagement in the mediation process. It is a classic “bait and switch” technique.

The fact that the mediator determined Plaintiff to have acted in “good faith” for purposes of the latest mediation session on 5/17/13 is not dispositive, or binding on the court. Under 12 V.S.A. § 4635(b), the court itself can make a “determination of noncompliance with the [Plaintiff’s statutory] obligations,” and can do so “without a hearing,” *id.* § 4635(a). What is left undefined by the Legislature, however, is the scope or type of remedies, and the “appropriate sanctions,” *id.*, § 4635(b), which the court may impose to address instances of “bad faith” mediation, which here extended over all 4 mediation sessions – as determined by the mediator for the first three; as determined by the court for the 4th session – and more than 18 months since mediation was initially ordered by the court.

Accordingly, Defendant Richard Rollin’s motion (filed March 14, 2013), and supplemental motion (filed September 10, 2013) for sanctions against the Plaintiff BAC Home Loans Servicing, LP, are **granted** pursuant to 12 V.S.A. § 4635(b).

While the clear, and significant discrepancy between the 5/10/13 e-mail from Plaintiff’s counsel and the 8/6/13 “Loan Modification CLARITY COMMITMENT®” supports a finding of “bad faith” mediation on Plaintiff’s part, the court does not believe the Legislature intended that the court then engage in what would amount to specific enforcement of offers and counter-offers made during the mediation process, or that the court itself become involved in devising, or dictating specific loan terms for the parties which are otherwise disputed. After all, the mediator’s last 5/23/13 report makes it very clear that the parties did not reach any “meeting of the minds” on final loan modification terms, and thus there is no binding agreement to be enforced.

Instead, the court will fashion a sanction remedy which relies on some of the basic loan figures Plaintiff itself used as the basis for the 8/6/13 "Loan Modification CLARITY COMMITMENT®", but disallow and require Plaintiff to forfeit all interest accrued and "servicing fees" during the pendency of these mediation proceedings. That is, Plaintiff shall prepare a revised "Loan Modification CLARITY COMMITMENT®" to the Defendant, and accompanying HAMP Loan Modification Agreement, and tender the same within 15 days of the date hereof, which

(1) begins with the "old" principal balance of \$170,467.34, to which the taxes and insurance advanced on Defendant's behalf (\$17,537.94) may be added (i.e., capitalized), but no other items may be added, i.e., the \$13,193.58 in "servicing expenses" is forfeited, as well as all interest accrued from December 22, 2011 (the date of the initial mediation order) through the date the revised "Loan Modification CLARITY COMMITMENT®" is submitted to the Defendant;

(2) allows Defendant ten (10) days from receipt to accept said revised "Loan Modification CLARITY COMMITMENT®", in writing;


(3) otherwise keeps intact and uses the same length-of-loan term (480 months) and the interest rates stated in the 8/6/13 loan modification commitment, i.e., 2% for years 1-5, 3% for year 6, 4% for year 7, and 4.375% for years 8-40;

(4) has initial payments for years 1-5 that may be less than, but no more than \$802.66 per month (subject, of course, to adjustment for required tax and insurance escrow); and

(4) commences as of June 1, 2013, so that Defendant's "trial period" payments to date are fully credited against the revised mortgage loan.

Further, if Defendant has in fact continued to make payments of \$802.66 for September and/or October 2013, Plaintiff shall accept those payments and credit them as above; if said payments have not been made, Defendant shall have the right to make them, in full, within 15 days of the date hereof, without penalty and without threat of default or withdrawal of the revised "Loan Modification CLARITY COMMITMENT®" which is required by this order. If the revised loan modification has not been finalized in time for the November 2013 payment, then the same rules apply for that payment.

IT IS SO ORDERED, at Burlington, Vermont, this 21st day of October, 2013.


Dennis R. Pearson, Superior Judge



Lender Letter LL-2016-06

December 14, 2016*

To: All Fannie Mae Single-Family Servicers Fannie Mae Flex Modification

**reposted December 15, 2016*

Fannie Mae is introducing a new mortgage loan modification jointly developed with Freddie Mac at the direction of the Federal Housing Finance Agency. The Fannie Mae Flex Modification combines features of the Fannie Mae HAMP, Standard Modification, and Streamlined Modification, and is intended to replace Standard and Streamlined Modifications as of the effective date provided below. The Fannie Mae Flex Modification can be applied to all mortgage loan delinquencies, and to mortgage loans that are determined to be in imminent default in accordance with the *Servicing Guide*.

Borrowers with mortgage loans less than 90 days delinquent must submit a complete Borrower Response Package (BRP) in accordance with this Lender Letter, and will be evaluated for a Fannie Mae Flex Modification which will target a 20% payment reduction and a 40% Housing Expense-to-Income (HTI) Ratio. Borrowers with mortgage loans 90 or more days delinquent are not required to submit a BRP and will be evaluated for a Fannie Mae Flex Modification which will target a 20% payment reduction.

Effective Date

The servicer is encouraged to implement the policies in this Lender Letter as early as March 1, 2017; however, the servicer must begin evaluating borrowers for the Fannie Mae Flex Modification no later than October 1, 2017. Once implemented, the servicer must offer the Fannie Mae Flex Modification to all eligible borrowers according to the requirements in this Lender Letter and not evaluate borrowers for a Fannie Mae Standard or Streamlined Modification.

Date of Servicing Guide Update

The policy changes in this Lender Letter will be reflected in the October 2017 update of the *Servicing Guide*.

This Lender Letter covers the following requirements for the Fannie Mae Flex Modification:

- Documentation Requirements
- Determining Eligibility for a Fannie Mae Flex Modification
- Determining Eligibility for a Fannie Mae Flex Modification for a Texas Section 50(a)(6) Mortgage Loan
- Obtaining a Property Valuation
- Performing an Escrow Analysis
- Determining the Fannie Mae Flex Modification Terms
- Calculating the Housing Expense-to-Income Ratio
- Offering a Trial Period Plan and Completing a Fannie Mae Flex Modification
- Soliciting the Borrower for a Fannie Mae Flex Modification
- Handling a Complete Borrower Response Package
- Preparing the Loan Modification Agreement
- Executing and Recording the Loan Modification Agreement
- Adjusting the Mortgage Loan Account-Post Mortgage Loan Modification



- *Processing a Fannie Mae Flex Modification for a Mortgage Loan with Mortgage Insurance*
- *Handling Fees and Late Charges in Connection with a Fannie Mae Flex Modification*
- *Incentive Fees*
- Changes to Fannie Mae Streamlined Modification Post Disaster Forbearance and Fannie Mae Cap and Extend Modification for Disaster Relief

The italicized and underlined topics above have not been altered from policy within the Fannie Mae *Servicing Guide* as of the date of this Lender Letter. If there are changes to these topics after the date of this Lender Letter, the updated guidance will supersede the existing requirements.

Documentation Requirements

If the mortgage loan is current or less than 90 days delinquent, the borrower must submit a complete BRP except as described below.

If the borrower submitted a complete BRP prior to the 90th day of delinquency, the servicer must use the information from the Uniform Borrower Assistance Form ([Form 710](#)), or equivalent, to determine borrower's hardship, total assets and income, and the servicer must evaluate the borrower for all workout options in accordance with *Servicing Guide* D2-3.1-01, Determining the Appropriate Workout Option, including the Fannie Mae Flex Modification.

If the mortgage loan is 90 or more days delinquent, a complete BRP is not required and the servicer may solicit an eligible borrower as described in *Soliciting the Borrower for a Fannie Mae Flex Modification*. In addition, a complete BRP is not required if the mortgage loan was previously modified into a mortgage loan with a step-rate feature, an interest rate adjustment occurred within the last 12 months and the mortgage loan became 60 days delinquent after the interest rate adjustment.

NOTE: *For purposes of determining the submission date in connection with borrower's submission of a complete BRP, the servicer must use the date of the postmark or other independent indicator such as date and time stamp (electronic or otherwise).*

Determining Eligibility for a Fannie Mae Flex Modification

In order to be eligible for a Fannie Mae Flex Modification, all of the criteria in the following table must be met.

✓	Eligibility Criteria for a Fannie Mae Flex Modification
	The mortgage loan must be a conventional first lien mortgage loan.
	A mortgage loan secured by a principal residence must be at least 60 days delinquent or, if the mortgage loan is current or less than 60 days delinquent, the servicer has determined that the borrower's monthly payment is in imminent default in accordance with <i>Servicing Guide</i> D2-1-02, Using Freddie Mac's Imminent Default Indicator.
	A mortgage loan secured by a second home or an investment property must be at least 60 days delinquent.
	The property securing the mortgage loan may be vacant or condemned.
	The mortgage loan must have been originated at least 12 months prior to the evaluation date for the mortgage loan modification.
	The mortgage loan must not be subject to: <ul style="list-style-type: none">• a recourse or indemnification arrangement under which Fannie Mae purchased or securitized the mortgage loan or that was imposed by Fannie Mae after the mortgage loan was purchased or securitized;



✓	Eligibility Criteria for a Fannie Mae Flex Modification
	<ul style="list-style-type: none">• an approved liquidation workout option;• an active and performing forbearance plan or repayment plan, unless otherwise directed by Fannie Mae;• a current offer for another mortgage loan modification or other workout option; or• an active and performing modification Trial Period Plan.
	The mortgage loan must not have been modified three or more times previously, regardless of the mortgage loan modification program or dates of prior mortgage loan modifications.
	The borrower must not have failed a Fannie Mae Flex Modification Trial Period Plan within 12 months of being evaluated for eligibility for another Fannie Mae Flex Modification.
	The mortgage loan must not have received a Fannie Mae Flex Modification and become 60 days or more delinquent within the first 12 months of the effective date of the mortgage loan modification without being reinstated.

If the eligibility criteria for a Fannie Mae Flex Modification is not satisfied, but the servicer determines there are acceptable mitigating circumstances, the servicer is authorized to offer a modification outside of these requirements by submitting a request to Fannie Mae through HSSN for review and obtaining prior approval from Fannie Mae.

If the borrower converts from a Trial Period Plan to an Unemployment Forbearance, the borrower may subsequently be eligible for a Fannie Mae Flex Modification upon successful completion of the Unemployment Forbearance and, if eligible, must be placed in a new Fannie Mae Flex Modification Trial Period Plan based on the delinquency status at the time of the evaluation for the Fannie Mae Flex Modification.

Determining Eligibility for a Fannie Mae Flex Modification for a Texas 50(a)(6) Mortgage Loan

A Texas Section 50(a)(6) mortgage loan is eligible for a Fannie Mae Flex Modification if

- the requirements described in *Determining Eligibility for a Fannie Mae Flex Modification* are satisfied, and
- modified in accordance with applicable law.

If the servicer receives a notice from the borrower that a modification fails to comply with the Texas Section 50(a)(6) requirements, the servicer must immediately, but no later than seven business days after receipt, take the actions listed in the following table.

✓	The servicer must...
	Inform Fannie Mae's Legal department by submitting a <i>Non-Routine Litigation Form</i> (Form 20) and include the borrower notice in its submission.
	Collaborate with Fannie Mae on the appropriate response, including any cure that may be necessary, within the 60-day time frame provided by requirements of Texas Section 50(a)(6).

Obtaining a Property Valuation

The servicer must obtain a property valuation, which must not be more than 90 days old at the time the servicer evaluates the borrower for the mortgage loan modification, using one of the following:

- an exterior BPO;
- an appraisal;
- Fannie Mae's APS;
- Freddie Mac's AVM;



- a third-party AVM; or
- the servicer's own internal AVM, provided that
 - the servicer is subject to supervision by a federal regulatory agency, and
 - the servicer's primary federal regulatory agency has reviewed the model.

If Fannie Mae's APS, Freddie Mac's AVM, the third-party AVM, or the servicer's internal AVM does not render a reliable confidence score, the servicer must obtain an assessment of the property value utilizing an exterior BPO, an appraisal, or a property valuation method documented as acceptable to the servicer's federal regulatory supervisor. The property value assessment must be rendered in accordance with the FDIC's Interagency Appraisal and Evaluation Guidelines regardless of whether such guidelines apply to mortgage loan modifications.

The servicer must attach the valuation and documentation when submitting its proposed recommendation to Fannie Mae through HSSN.

Performing an Escrow Analysis

The servicer must perform an escrow analysis prior to offering a Trial Period Plan. See *Administering an Escrow Account in Connection With a Mortgage Loan Modification* in *Servicing Guide B-1-01*, Administering an Escrow Account and Paying Expenses for additional information.

Any escrow account shortage that is identified at the time of the mortgage loan modification must not be capitalized and the servicer is not required to fund any existing escrow account shortage.

If applicable law prohibits the establishment of the escrow account, the servicer must ensure that the T&I premiums are paid to date.

Determining the Fannie Mae Flex Modification Terms

The servicer must determine the post-modification MTMLTV ratio, which is defined as the gross UPB of the mortgage loan including capitalized arrearages, divided by the current value of the property.

The servicer must complete all the steps in the order shown in the following table to determine the borrower's new modified mortgage loan terms.

Step	Action
1	<p>Capitalize eligible arrearages.</p> <p>The following are considered as acceptable arrearages for capitalization:</p> <ul style="list-style-type: none">• accrued interest,• out-of-pocket escrow advances to third parties,• any required escrow advances that will be paid to third parties by the servicer during the Trial Period Plan, and• servicing advances paid to third parties in the ordinary course of business and not retained by the servicer, if allowed by state laws. <p>NOTE: <i>If applicable state law prohibits capitalization of past due interest or any other amount, the servicer must collect such funds from the borrower over a period not to exceed 60 months unless the borrower decides to pay</i></p>



Step	Action								
	<p><i>the amount up-front. Late charges may not be capitalized and must be waived if the borrower satisfies all conditions of the Trial Period Plan.</i></p> <p>See <i>Administering an Escrow Account in Connection With a Mortgage Loan Modification</i> in <i>Servicing Guide B-1-01</i>, <i>Administering an Escrow Account and Paying Expenses</i> for additional information.</p>								
2	<p>Set the modification interest rate to a fixed rate based on the requirements in the following table using the contractual interest rate in effect for the periodic payment due in the month of the evaluation date.</p> <table> <tr> <th>If the mortgage loan is...</th><th>Then the servicer must ...</th></tr> <tr> <td>a fixed rate, including an ARM or step-rate that has reached its final interest rate with a post-modification MTMLTV less than 80%</td><td>set the modified interest rate to the borrower's contractual interest rate.</td></tr> <tr> <td>a fixed rate, including an ARM or step-rate that has reached its final interest rate with a post-modification MTMLTV greater than or equal to 80%</td><td>set the modified interest rate to the lesser of <ul style="list-style-type: none"> the Fannie Mae Standard Modification Interest Rate, or the borrower's contractual interest rate. </td></tr> <tr> <td>an ARM or step-rate that has not reached its final interest rate</td><td>set the interest rate to the lesser of <ul style="list-style-type: none"> the Fannie Mae Standard Modification Interest Rate, the final interest rate for the step-rate modification, or the lifetime interest rate cap for the ARM . </td></tr> </table>	If the mortgage loan is...	Then the servicer must ...	a fixed rate, including an ARM or step-rate that has reached its final interest rate with a post-modification MTMLTV less than 80%	set the modified interest rate to the borrower's contractual interest rate.	a fixed rate, including an ARM or step-rate that has reached its final interest rate with a post-modification MTMLTV greater than or equal to 80%	set the modified interest rate to the lesser of <ul style="list-style-type: none"> the Fannie Mae Standard Modification Interest Rate, or the borrower's contractual interest rate. 	an ARM or step-rate that has not reached its final interest rate	set the interest rate to the lesser of <ul style="list-style-type: none"> the Fannie Mae Standard Modification Interest Rate, the final interest rate for the step-rate modification, or the lifetime interest rate cap for the ARM .
If the mortgage loan is...	Then the servicer must ...								
a fixed rate, including an ARM or step-rate that has reached its final interest rate with a post-modification MTMLTV less than 80%	set the modified interest rate to the borrower's contractual interest rate.								
a fixed rate, including an ARM or step-rate that has reached its final interest rate with a post-modification MTMLTV greater than or equal to 80%	set the modified interest rate to the lesser of <ul style="list-style-type: none"> the Fannie Mae Standard Modification Interest Rate, or the borrower's contractual interest rate. 								
an ARM or step-rate that has not reached its final interest rate	set the interest rate to the lesser of <ul style="list-style-type: none"> the Fannie Mae Standard Modification Interest Rate, the final interest rate for the step-rate modification, or the lifetime interest rate cap for the ARM . 								
3	<p>Extend the term to 480 months from the modification effective date.</p> <p><i>NOTE: When the mortgage loan is secured by a property where the title is held as a leasehold estate, the term of the leasehold estate must not expire prior to the date that is five years beyond the new maturity date of the modified mortgage loan. In the event that the current term of the leasehold estate would expire prior to such date, the term of the leasehold estate must be renegotiated to satisfy this requirement for the mortgage loan to be eligible for the mortgage loan modification.</i></p>								
4	<p>Forbear principal if the post-modification MTMLTV ratio is greater than 100%, in an amount that is the lesser of</p> <ul style="list-style-type: none"> an amount that would create a post-modification MTMLTV ratio of 100% using the interest-bearing principal balance, or 30% of the gross post-modification UPB of the mortgage loan. 								
5	<p>Provide or increase principal forbearance based on the requirements in the following table.</p> <table> <tr> <th>If the mortgage loan is ...</th><th>Then the servicer must ...</th></tr> </table>	If the mortgage loan is ...	Then the servicer must ...						
If the mortgage loan is ...	Then the servicer must ...								



Step	Action
	<p>less than 90 days past due when the borrower submitted a complete BRP</p> <p>provide or increase principal forbearance until a 20% P&I payment reduction and a 40% HTI are achieved; however, the servicer must not forbear more than</p> <ul style="list-style-type: none"> an amount that would create a post-modification MTMLTV ratio less than 80% using the interest-bearing principal balance, or 30% of the gross post-modification UPB of the mortgage loan. <p>NOTE: <i>Calculating the Housing Expense-to-Income Ratio provides instructions on this calculation.</i></p>
	<p>greater than or equal to 90 days past due and the borrower did not submit a complete BRP before the 90th day of delinquency</p> <p>provide or increase principal forbearance until a 20% payment reduction is achieved; however, the servicer must not forbear more than</p> <ul style="list-style-type: none"> an amount that would create a post-modification MTMLTV ratio less than 80% using the interest-bearing principal balance, or 30% of the gross post-modification UPB of the mortgage loan. <p>NOTE: <i>If the mortgage loan was previously modified into a mortgage loan with a step-rate feature, an interest rate adjustment occurred within the last 12 months, the mortgage loan became 60 days delinquent after the interest rate adjustment and the borrower did not submit a complete BRP, the servicer must use this portion of Step 5 for purposes of determining additional principal forbearance.</i></p>

NOTE: *Interest must not accrue on any principal forbearance. Principal forbearance is payable upon the earliest of the maturity of the mortgage loan modification, sale or transfer of the property, refinance of the mortgage loan, or payoff of the interest-bearing UPB.*

If the 20% payment reduction or 40% HTI targets are not achieved as described above, the mortgage loan remains eligible for a Fannie Mae Flex Modification if the monthly P&I payment satisfies the requirements below.

The following table lists additional Fannie Mae Flex Modification requirements.

✓	The Fannie Mae Flex Modification must result in...
	<p>A fixed rate mortgage loan.</p> <p>NOTE: <i>An ARM or interest-only mortgage loan must be converted to a fully amortizing mortgage loan and may not be a bi-weekly or daily simple interest mortgage loan.</i></p>



✓	The Fannie Mae Flex Modification must result in...	
	A monthly P&I payment as described in the following table.	
	If, at the time of evaluation, the mortgage loan is...	Then the monthly P&I payment must be...
	current or less than 31 days delinquent	less than the borrower's pre-modification P&I payment.
	31 or more days delinquent	less than or equal to the pre-modification P&I payment.

When the servicer submits a request through HSSN for Fannie Mae's approval of a Fannie Mae Flex Modification based on borrower submission of a BRP, in accordance with applicable law it must:

- immediately provide the borrower with notice of the right to receive a copy of all appraisals and other valuations developed in connection with the mortgage loan modification, and
- provide the borrower a copy of all appraisals and other valuations developed in connection with the mortgage loan modification.

Prior to granting a permanent mortgage loan modification, the servicer must place the borrower in a Trial Period Plan using the new modified mortgage loan terms. See *Offering a Trial Period Plan and Completing a Fannie Mae Flex Modification*.

Calculating the Housing Expense-to-Income Ratio

The borrower's monthly gross income is defined as the borrower's monthly income amount before any payroll deductions and includes the following items, as applicable:

- wages and salaries;
- overtime pay;
- commissions;
- fees;
- tips;
- bonuses;
- housing allowances;
- other compensation for personal services;
- Social Security payments (including Social Security received by adults on behalf of minors or by minors intended for their own support); and
- monthly income from annuities, insurance policies, retirement funds, pensions, disability or death benefits, rental income, and other income such as adoption assistance.

NOTE: *The servicer must not consider unemployment insurance benefits or any other temporary sources of income related to employment (such as severance payments), as part of the monthly gross income for mortgage loans being evaluated for a mortgage loan modification.*



The servicer must calculate the post-modification housing expense-to-income ratio depending upon the type of property, as described in the following table.

If the mortgage loan is secured by...	Then the servicer must...
a principal residence	<p>divide the borrower's monthly housing expense, which includes the following items (as applicable), by the borrower's monthly gross income:</p> <ul style="list-style-type: none"> • P&I; • property and flood insurance premiums; • real estate taxes; • ground rent; • special assessments; • HOA dues (including utility charges that are attributable to the common areas, but excluding any utility charges that apply to the individual unit); • co-op corporation fee (less the pro rata share of the master utility charges for servicing individual units that is attributable to the borrower's unit); and • any projected monthly escrow shortage payment. <p>NOTE: <i>The servicer must exclude monthly MIPs from the monthly housing expense-to-income calculation.</i></p>
a second home	<p>add the monthly housing expense of the second home to the monthly housing expense on the borrower's principal residence and divide this amount by the borrower's monthly gross income.</p>
an investment property	<p>add any monthly net rental income on the subject property to the borrower's gross monthly income for purposes of calculating the post-modification housing expense-to-income ratio.</p> <ul style="list-style-type: none"> • The net rental income (or net rental loss) on the subject property must be calculated as 75% of the monthly gross rental income, reduced by the monthly housing expense on the rental property. • Add any monthly negative net rental income (i.e., net rental loss) on the subject property to the monthly housing expense on the borrower's principal residence and divide this amount by the borrower's monthly gross income. • If the borrower currently is not receiving rental income on the subject property, the monthly housing expense on the subject property must be added to the monthly housing expense on the borrower's principal residence and then divided by the borrower's monthly gross income.



Offering a Trial Period Plan and Completing a Fannie Mae Flex Modification

For an MBS mortgage loan, the servicer must also see *Conditions of a First and Second Lien Mortgage Loan Modification for an MBS Mortgage Loan* in *Servicing Guide D2-3.1-02, Working with an MBS Mortgage Loan for Certain Workout Options*.

The servicer must communicate with the borrower that the mortgage loan modification will not be binding, enforceable, or effective unless all conditions of the mortgage loan modification have been satisfied, which is when all of the following have occurred:

- the borrower has satisfied all of the requirements of the Trial Period Plan,
- the borrower has executed and returned a copy of the *Loan Modification Agreement* ([Form 3179](#)), and
- the servicer or Fannie Mae (depending upon the entity that is the mortgagee of record) executes and dates [Form 3179](#).

The servicer must use the applicable [Evaluation Notice](#) to document the borrower's Trial Period Plan. See *Sending a Notice of Decision on a Workout Option* in *Servicing Guide D2-2-05, Receiving a Borrower Response Package*, for requirements relating to the [Evaluation Notice](#), and the additional requirements provided in the table below.

If the mortgage loan modification is...	Then the servicer must send the Fannie Mae Flex Modification Trial Period Plan using the following Evaluation Notice...
based on an evaluation of a complete BRP, regardless of post-modification MTMLTV	Standard Modification Trial Period Plan Notice – based on MTMLTV ratio greater than or equal to 80%.
not based on an evaluation of a complete BRP and has a post-modification MTMLTV ratio less than 80%	Streamlined Modification Trial Period Plan Notice – based on MTMLTV ratio less than 80%.
not based on an evaluation of a complete BRP and has a post-modification MTMLTV ratio greater than or equal to 80%	Streamlined Modification Trial Period Plan Notice – based on MTMLTV ratio greater than or equal to 80%.

NOTE: The servicer must make appropriate adjustments to the Evaluation Notices to reflect the terms of the Fannie Mae Flex Modification as calculated in accordance with *Determining the Fannie Mae Flex Modification Terms*, and to remove any provisions authorizing the borrower to submit a complete BRP to be evaluated for another modification.

The servicer must use the applicable [Evaluation Notice](#) and include the payment due date as required in the following table.

If the servicer mails the Evaluation Notice...	Then the servicer...
on or before the 15th day of a calendar month	must use the first day of the following month as the first Trial Period Plan payment due date.
after the 15th day of a calendar month	must use the first day of the month after the next month as the first Trial Period Plan payment due date.



The following table provides the requirements for the length of the Trial Period Plan, which must not change even if the borrower makes scheduled payments earlier than required.

If the mortgage loan at the time of evaluation is...	Then the Trial Period Plan must be...
current or less than 31 days delinquent	four months long.
31 or more days delinquent	three months long.

If the borrower fails to make a Trial Period Plan payment by the last day of the month in which it is due, the borrower is considered to have failed the Trial Period Plan and the servicer must not grant the borrower a permanent Fannie Mae Flex Modification.

The servicer must see *Servicing Guide* E-3.4-01, Suspending Foreclosure Proceedings for Workout Negotiations for the requirements for suspending foreclosure.

Soliciting the Borrower for a Fannie Mae Flex Modification

Except as noted below, if the mortgage loan is 90 or more days delinquent and the servicer determines that the borrower is eligible for a Fannie Mae Flex Modification and at least one of the following circumstances are met, the servicer must mail the borrower a Fannie Mae Flex Modification Solicitation Letter with the appropriate *Evaluation Notice* between the 90th and 105th day of delinquency:

- the borrower did not submit a complete BRP before the 90th day of delinquency;
- prior to sending the Fannie Mae Flex Modification Solicitation Letter, the servicer previously conducted an evaluation of the complete BRP and determined that the borrower was not eligible for a workout option in accordance with the *Servicing Guide*; or
- the borrower has rejected all other alternatives to foreclosure offered by the servicer.

NOTE: *If the mortgage loan was previously modified into a mortgage loan with a step-rate feature, an interest rate adjustment occurred within the last 12 months and the mortgage loan became 60 days delinquent after the interest rate adjustment, and the servicer determines that the borrower is eligible for a Fannie Mae Flex Modification without a complete BRP, the servicer must mail the borrower a Fannie Mae Flex Modification Solicitation Letter between the 60th and 75th day of delinquency.*

If for any reason the servicer fails to send the Fannie Mae Flex Modification solicitation letter within the prescribed time frame, it must send the solicitation as soon as possible thereafter.

While the borrower remains eligible for a Fannie Mae Flex Modification if a payment is received following the borrower evaluation or solicitation that results in the mortgage loan subsequently becoming less than 90 days delinquent (or less than 60 days delinquent if the mortgage loan was previously modified into a mortgage loan with a step-rate feature and an interest rate adjustment occurred within the last 12 months), the servicer must ensure that the mortgage loan is at least 30 days or more delinquent prior to the commencement of the Fannie Mae Flex Modification Trial Period Plan.

The servicer is authorized to use the [Streamlined Modification Solicitation Letter](#) for the Fannie Mae Flex Modification solicitation letter and make appropriate adjustments to comply with the requirements of this Lender Letter.



The servicer must send the applicable *Trial Period Plan Evaluation Notice* to the borrower with the Fannie Mae Flex Modification solicitation letter. See *Offering a Trial Period Plan and Completing a Fannie Mae Flex Modification* for additional information on the Fannie Mae Flex Modification Solicitation Letter, and Trial Period Plan Evaluation Notice.

The servicer is authorized to continue proactive solicitation for a Fannie Mae Flex Modification at its discretion, but must not solicit a borrower if 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.

Handling a Complete Borrower Response Package

The servicer must process a BRP in accordance with the *Servicing Guide* and applicable law.

The servicer must acknowledge receipt of the BRP in accordance with *Acknowledging Receipt of a Borrower Response Package* in *Servicing Guide* D2-2-05, *Receiving a Borrower Response Package* and provide any Incomplete Information Notice, if applicable, in accordance with *Sending a Notice of Incomplete Information* in *Servicing Guide* D2-2-05, *Receiving a Borrower Response Package*.

If the borrower submits a complete BRP when the mortgage loan is 90 or more days delinquent, the servicer must evaluate the borrower for all workout options in accordance with *Servicing Guide* D2-3.1-01, *Determining the Appropriate Workout Option*, as described in this Lender Letter.

The following table provides the servicer's requirements if the borrower submitted a complete BRP prior to the 90th day of delinquency but the servicer received the complete BRP after soliciting the borrower for a Fannie Mae Flex Modification in accordance with *Soliciting the Borrower for a Fannie Mae Flex Modification*. See *Documentation Requirements* to determine the submission date of a complete BRP.

If the borrower submitted a complete BRP prior to the 90th day of delinquency, and the servicer receives the complete BRP...	Then the servicer must...
prior to mailing the Flex Modification Solicitation Letter	review the BRP in accordance with <i>Servicing Guide</i> D2-2-05, <i>Receiving a Borrower Response Package</i> , and evaluate the borrower for all workout options in accordance with <i>Chapter D2-3, Fannie Mae's Home Retention and Liquidation Workout Options</i> , including the Fannie Mae Flex Modification based on borrower submission of a complete BRP.
after mailing the Flex Modification Solicitation Letter and prior to mailing the Flex Loan Modification Agreement to the borrower for signature	either <ul style="list-style-type: none">• evaluate the borrower for all workout options in accordance with <i>Chapter D2-3, Fannie Mae's Home Retention and Liquidation Workout Options</i>, including the Fannie Mae Flex Modification based on borrower submission of a complete BRP, if the borrower has not accepted the Flex Modification Solicitation offer, or• re-evaluate the borrower for a Fannie Mae Flex modification based on borrower submission of a complete BRP if the borrower has accepted the Flex Modification Solicitation offer<ul style="list-style-type: none">○ If the P&I payment amount based on borrower submission of a complete BRP is less than the P&I



If the borrower submitted a complete BRP prior to the 90th day of delinquency, and the servicer receives the complete BRP...	Then the servicer must...
	payment amount reflected in the solicitation Trial Period Plan, inform the borrower that if he or she makes the Trial Period Plan payments in accordance with the plan, the mortgage loan will be permanently modified with the lower P&I payment amount which will be reflected in the Loan Modification Agreement.

Preparing the Loan Modification Agreement

The servicer must prepare the Loan Modification Agreement early enough in the Trial Period Plan to allow sufficient processing time so that the mortgage loan modification becomes effective on the first day of the month following the Trial Period Plan (modification effective date). The servicer is authorized to, at its discretion, complete the Loan Modification Agreement so the mortgage loan modification becomes effective on the first day of the second month following the final Trial Period Plan payment to allow for sufficient processing time. However, the servicer must treat all borrowers the same in applying this option by selecting, at its discretion and as evidenced by a written policy, the date by which the final Trial Period Plan payment must be submitted before the servicer applies this option ("cut-off date"). The cut-off date must be after the due date for the final Trial Period Plan payment as set forth in the [Evaluation Notice](#).

NOTE: If the servicer elects this option, the borrower will not be required to make an additional Trial Period Plan payment during the month (the "interim month") in between the final Trial Period Plan month and the month in which the mortgage loan modification becomes effective. For example, if the last Trial Period Plan month is March and the servicer elects the option described above, the borrower is not required to make any payment during April, and the mortgage loan modification becomes effective, and the first payment under the Loan Modification Agreement is due, on May 1.

The servicer must use the *Form Modification Cover Letter* to communicate a borrower's eligibility for a permanent Fannie Mae Flex Modification, which must be accompanied by a completed [Form 3179](#). The servicer must incorporate into the Loan Modification Agreement ([Form 3179](#)) the applicable provisions in accordance with the requirements in *Summary: Modification Agreement Form 3179*.

The servicer must ensure that the modified mortgage loan retains its first lien position and is fully enforceable in accordance with its terms.

Electronic documents and signatures for Fannie Mae Flex Modifications are acceptable as long as the electronic record complies with Fannie Mae's requirements. See *Servicing Guide A2-5.2-01, Storage of Individual Mortgage Loan Files and Records for Fannie Mae's requirements for electronic records*.

The servicer must follow the procedures in *Executing and Recording the Loan Modification Agreement, and Adjusting the Mortgage Loan Account Post-Mortgage Loan Modification* in this Lender Letter for preparing, executing, and recording [Form 3179](#) and adjusting the mortgage loan account upon completion of the mortgage loan modification. The servicer must also follow the procedures in *Loan Modifications for an eMortgage* in *Servicing Guide F-1-38, Servicing eMortgages* for additional requirements when the modified mortgage loan is an eMortgage.



Executing and Recording the Loan Modification Agreement

The servicer is responsible for ensuring that the mortgage loan as modified complies with applicable laws, preserves Fannie Mae's first lien position, and is enforceable against the borrower(s) in accordance with its terms. In order to ensure that the modified mortgage loan retains its first lien position and is fully enforceable, the servicer must take the actions described in the following table.

✓	The servicer must...
	<p>Ensure that the Loan Modification Agreement is executed by the borrower(s).</p> <p><i>NOTE: The servicer may encounter circumstances where a co-borrower signature is not obtainable for the Loan Modification Agreement, for reasons such as mental incapacity or military deployment. When a co-borrower's signature is not obtainable and the servicer decides to continue with the mortgage loan modification, the servicer must appropriately document the basis for the exception in the servicing records.</i></p>
	<p>Ensure all real estate taxes and assessments that could become a first lien are current, especially those for manufactured homes taxed as personal property, personal property taxes, condo/HOA fees, utility assessments (such as water bills), ground rent, and other assessments.</p>
	<p>Obtain a title endorsement or similar title insurance product issued by a title insurance company if the modification agreement will be recorded.</p>
	<p>Record the executed Loan Modification Agreement if:</p> <ul style="list-style-type: none">• recordation is necessary to ensure that the modified mortgage loan retains its first lien position and is enforceable in accordance with its terms at the time of the modification, throughout its modified term, and during any bankruptcy or foreclosure proceeding involving the modified mortgage loan; or• the Loan Modification Agreement includes assignment of leases and rents provisions.

If the mortgage loan is for a manufactured home, and the lien was created, evidenced, or perfected by collateral documents that are not recorded in the land records, the servicer must also take such action as may be necessary, including any amendment, recording, and/or filing that may be required, to ensure that the collateral documents reflect the mortgage loan modification, in order to preserve Fannie Mae's lien status for the entire amount owed. See *Identifying Manufactured Home Mortgage Loans* in *Servicing Guide A2-5.1-02, Overview of Individual Mortgage Loan Files and Records* for additional information regarding collateral documents.

The servicer must execute and record the Loan Modification Agreement based upon the entity that is the mortgagee of record in accordance with *Servicing Guide A2-1-03, Execution of Legal Documents*. In addition, the servicer must send the Loan Modification Agreement to the document custodian if the mortgagee of record is

- the servicer;
- MERS; or
- Fannie Mae, and Fannie Mae has given the servicer an Limited Power of Attorney that allows it to execute this type of document on Fannie Mae's behalf.



NOTE: *If Fannie Mae's DDC is the custodian, the documents must be annotated with the Fannie Mae loan number and, if applicable, the MERS number, and mailed to The Bank of New York Mellon Trust Company, NA (see Servicing Guide F-4-03, List of Contacts).*

When the servicer is required to send the Loan Modification Agreement to the document custodian, the servicer must follow the requirements outlined in the following table.

If the Loan Modification Agreement...	Then the servicer must...
is required to be recorded	<ul style="list-style-type: none"> send a certified copy of the fully executed Loan Modification Agreement to the document custodian within 25 days of receipt from the borrower, and send the original Loan Modification Agreement that is returned from the recorder's office to the document custodian within 5 business days of receipt.
is not required to be recorded	send the fully executed original Loan Modification Agreement to the document custodian within 25 days of receipt from the borrower.

Adjusting the Mortgage Loan Account Post-Mortgage Loan Modification

After a mortgage loan modification is executed, the servicer must adjust the mortgage loan as described in the following table.

✓	The servicer must...
	<p>For a portfolio mortgage loan, add any amounts to be capitalized to the UPB of the mortgage loan as of the date specified in the agreement. Usually, the capitalization date is one month before the new modified payment will be due.</p> <p>NOTE: <i>The servicer may request reimbursement from Fannie Mae when any of its costs are capitalized.</i></p>
	Revise the borrower's payment records to provide for collection of the modified payment.
	<p>Apply any funds that</p> <ul style="list-style-type: none"> the borrower deposited with the servicer as a condition of the mortgage loan modification, have been deposited on behalf of the borrower in connection with the mortgage loan modification, or the mortgage insurer contributed in connection with the mortgage loan modification. <p>NOTE: <i>Amounts due for repayment of principal, interest, or advances must be remitted promptly to Fannie Mae. The remaining funds may be used to clear any advances made by the servicer or to credit the borrower's escrow deposit account.</i></p>
	Determine if it must change the servicing fee in accordance with <i>Servicing Guide A2-3-02, Servicing Fees for Portfolio and MBS Mortgage Loans.</i>

Processing a Fannie Mae Flex Modification for a Mortgage Loan with Mortgage Insurance

For purposes of the Fannie Mae Flex Modification, the servicer must refer to *Servicing Guide F-2-07, Mortgage Insurer Delegations for Workout Options*, for the list of conventional mortgage insurers from which Fannie Mae has obtained



delegation of authority on behalf of all servicers. The Fannie Mae Streamlined Modification delegations also apply to the Fannie Mae Flex Modification.

Handling Fees and Late Charges in Connection with a Fannie Mae Flex Modification

The servicer must not charge the borrower administrative fees.

The servicer is authorized to assess late charges during the Trial Period Plan. The servicer must waive all late charges, penalties, stop payment fees, or similar charges upon the borrower's conversion to a permanent mortgage loan modification.

The servicer must follow the procedures in *Requesting Reimbursement for Expenses Associated with Workout Options* in *Servicing Guide F-1-06*, Expense Reimbursement for advancing funds and requesting reimbursement.

Incentive Fees

The servicer is eligible for incentive fees in accordance with *Servicing Guide F-2-03*, Incentive Fees for Workout Options as described for a Fannie Mae Streamlined Modification.

Changes to Fannie Mae Streamlined Modification Post Disaster Forbearance and Fannie Mae Cap and Extend Modification for Disaster Relief

The requirements described in *Determining the Fannie Mae Flex Modification Terms* above will replace the requirements in *Servicing Guide F-1-23*, Processing a Fannie Mae Streamlined Modification Post Disaster Forbearance, *Determining the New Modified Mortgage Loan Terms* and *Servicing Guide F-1-17*, Processing a Fannie Mae Cap and Extend Modification for Disaster Relief, *Determining the New Modified Mortgage Loan Terms* as specified below. The servicer must use the Streamlined Modification Post-Disaster Forbearance Trial Period Plan Evaluation Notice, and make appropriate adjustments as described in *Offering a Trial Period Plan and Completing a Fannie Mae Flex Modification*. The servicer must implement these changes to both disaster modifications concurrently with the implementation of the Fannie Mae Flex Modification and as described in the following table.

The requirements for...	<i>Determining the New Modified Mortgage Loan steps...</i>	Are replaced with the following steps in <i>Determining the Fannie Mae Flex Modification Terms...</i>
Fannie Mae Streamlined Modification Post Disaster Forbearance	2 and 4	2, 4 and 5.
Fannie Mae Cap and Extend Modification for Disaster Relief	2	2.

Please contact your Servicing Consultant, Portfolio Manager, or Fannie Mae's Single-Family Servicing Servicer Support Center at 1-800-2FANNIE (1-800-232-6643) with any questions regarding this Lender Letter.

Malloy Evans
Vice President
Single-Family Servicing

Hypothetical for RESPA and TILA Servicing Rules

Part 1: For 4/15/2020 Webinar

After the death of her spouse, Amy Debet fell behind on her mortgage. Both she and her spouse were on the mortgage and note. She used the Fannie Mae loan look up online and found out her loan was guaranteed by Fannie Mae. She requested and received a BRP Form 710 from her loan servicer, Large Loan Servicing (LLS) and provided all the documents they requested in a timely manner including the completed BRP, financial documents, and death certificate. Before they could give her an answer, LLS transferred the loan to Huge Loan Servicing (HLS). Amy reached out to LLS and HLS about her loan modification application but heard nothing. HLS then sent her a solicitation letter asking her to provide a whole new loan modification application. Amy complied and sent in the documents requested including the BRP and financial documentation. Three months later, HLS sent her a notice acknowledging her application and asking for a BRP for “all financial contributors.” Amy lives alone. There are no other “financial contributors” and she explained this to HLS. HLS then sent a notice denying the modification stating she failed to provide the requested documents.

Amy sent a Request for Information (RFI) and Notice of Error (NOE) to HLS explaining that she had a complete application with LLS, asked HLS to connect with LLS to get the application, and also asked for an explanation on the denial of the recent application and that HLS provide her with a response on the documents she submitted to LLS and HLS. HLS responded that she had not provided the documents requested but did not provide any further response. With the help of an attorney costing \$100, she sent a second QWR/RFI/NOE to HLS via certified mail costing \$6.00 in which she itemized the documents she sent to LLS and to HLS and asked HLS to use those documents to evaluate her for a loan modification. She also explained again that HLS did not need a BRP from a contributor because there was no contributor. She said that HLS was in error in denying her application for lack of documents as HLS had or could have gotten all the documents it needed. HLS replied that it would evaluate her again if she reapplied because at this point, all the documents were stale. HLS then began calling Amy several times a day to find out when she would pay the full amount owed. When she could not pay, HLS sent notice and then filed a foreclosure action against her.

Part II: For 4/25/2020 Webinar

Amy became anxious, upset, and distraught about being able to keep her house. She could not sleep and stopped going out with friends or playing golf because she felt so desperate. She agreed to mediation of the foreclosure action. She attended the first mediation but the HLS representative said they had no record of her ever applying for a modification and that she would have to send in all the paperwork again. Amy sent in the paperwork and, at the next mediation, HLS was supposed to give her an answer on the application. Instead, they told her she needed to send in the death certificate, which she pointed out she had already provided them at least twice. Nonetheless, because she wanted to save her home, she sent in the certificate. At the third mediation, HLS said they had not fully reviewed the application but they were looking at adding the past due amounts to the principal balance and extending out the term. By the time they finally offered Amy a modification with such terms, thousands of dollars of interest had accrued while HLS hobbled through the review process. That interest will now be added to her loan and she will have to pay interest on that.

STATE OF VERMONT

SUPERIOR COURT
Bennington Unit

CIVIL DIVISION
Docket No. 373-10-14 Bncv

U.S. Bank National Association,
Plaintiff

v.

Marilyn S. Lisman,
Defendant

DECISION ON MOTION

Opinion

This is a foreclosure case. It has gone through the mediation process and the parties have failed to reach a mutually agreeable resolution. Defendant borrower objects to the mediator's conclusion that Plaintiff, the mortgage servicer, participated in mediation in good faith. Defendant moves the court to order a new mediation in which Plaintiff would be required to re-determine Defendant's eligibility for a loan modification using specific criteria, including a 2% interest rate and a forty (40) year loan term. Defendant also seeks attorney's fees. Plaintiff asserts that it did act in good faith and opposes Defendant's requests.

On March 31, 2016 a hearing was held on the motion. Defendant filed a supplemental response on April 18, 2016.

For the following reasons, the court GRANTS IN PART and DENIES IN PART Defendant's motion.

Background

On October 20, 2014, Plaintiff filed this foreclosure action. On December 24, 2014, the case was referred to mediation.

On February 27, 2015, Defendant sent a packet of financial information to Plaintiff so that Plaintiff could determine whether she was eligible for a loan modification.

On July 16, 2015, Plaintiff issued a letter informing Defendant that it had found her ineligible for a modification. The letter explained that based on the net present value (NPV) calculation (which used certain inputs listed in an attachment to the letter) her loan could not be modified under either Tier 1 or Tier 2 of the Home Affordable Modification Program (HAMP). The reason the loan could not be modified was because the modified monthly mortgage payment, along with her tax and insurance obligations, would have exceeded 31% of her monthly income (referred to as the affordable payment threshold). The letter did not explicitly mention the applicable Pooling and

Servicing Agreement (PSA), which Defendant later learned prohibited Plaintiff from lowering her interest rate to 2% and extending the loan term to forty (40) years. Line 40 of the attachment said that the applicable interest rate was 6.375%, which was the original note interest rate. Also, the attachment included line 43 saying, “Investor Override of Tier 2 Modification – YES.” Plaintiff did not seek a waiver of the PSA terms from the investor at this time. According to the letter, Defendant had thirty (30) days to appeal the decision.

By August 12, 2015, Defendant had not received the July 16 letter. On that day, she contacted Plaintiff. Plaintiff sent her the letter, but refused to extend the appeal deadline. Defendant was unable to obtain a new property appraisal to submit with her appeal.

On October 9, 2015, Plaintiff informed Defendant that pursuant to the PSA, her interest rate and term could not be modified. In the PSA, it listed nine loan servicing groups that were “designated.” All other loans were “non-designated.” Only “designated” loans were eligible for a reduction in the interest rate to 2% and an extension of the loan term to forty (40) years.

On November 18, 2015, the mediation session took place. During the mediation session, Defendant requested a waiver of the PSA restrictions from the mortgage investor. Contact was made, but the investor replied that the servicer had to comply with the governing servicing documents, i.e. the PSA.

On November 30, 2015, the mediator filed a report indicating that both parties had participated in good faith and that a loan modification was not offered.

Defendant objects to the mediator’s conclusion. Defendant argues that Plaintiff did not act in good faith because Plaintiff knew from the time Defendant sent her income information in February 2015 that her loan was in the “non-designated” category. Therefore, the Plaintiff also knew that she was not eligible to have the term and interest rate modified, which was the only way the parties could keep the modified monthly payment under the 31% affordable payment threshold.

Defendant argues the July 2015 letter was misleading because it referred to HAMP and not the Pooling and Servicing Agreement (PSA). This reference to HAMP led her to believe that she could have her term and interest rate modified. It was only in October 2015 that Plaintiff disclosed the PSA. Defendant asserts that Plaintiff’s failure to timely notify her of the PSA restrictions regarding the interest rate and loan term caused her to spend significant attorney’s fees pursuing mediation efforts that Plaintiff should have known would be futile as early as February 2015.

Additionally, Defendant asserts that Plaintiff’s computation of her eligibility for either HAMP tier modification in connection with the July 2015 letter was flawed. Defendant points to § 6.5 of the Making Home Affordable Program Handbook for Servicers of Non-GSE Mortgages (MHAP Handbook) issued by the U.S. Department of the Treasury. She contends that pursuant to § 6.5, Plaintiff should have sought a waiver of the PSA restrictions from the investor prior to calculating her eligibility for a HAMP modification.

Defendant moves this court to order a new mediation session in which Plaintiff would be required to determine Defendant's eligibility for a modification under HAMP, including modifications to the interest rate, lowering it to 2%, and extending the term to forty (40) years. Defendant also requests that the court award it attorney's fees from February 27, 2015, to the present, which were \$13,747.00 as of April 13, 2016.

Plaintiff responds that it did act in good faith throughout the process. It notes that Defendant's loan could be modified, just not as to the interest rate and loan term factors. It claims it did not know that a modification using other factors would fail to produce a mortgage payment below the affordable payment threshold until it had confirmed Defendant's income and input all the variables into its formula, which occurred in connection with the July 2015 letter.

Plaintiff also argues that it did not mislead Defendant as to the inability to modify the interest rate and loan term for two reasons. First, because lines 40 and 43 of the attachment to the July 2015 letter indicated that the PSA prevented this. Second, it sent a copy of the PSA to Defendant's counsel on October 9, 2015, with specific references to the relevant sections of the PSA. Defendant should have been aware by that point that she had a "non-designated" loan because the definition of "designated" listed nine loan servicing groups, which did not include her servicer group and the "non-designated" definition explained that any mortgage not "designated" was "non-designated." This information was sent over a month before the mediation session took place.

Plaintiff notes that it subsequently recalculated the feasibility of a modified mortgage using remaining loan balance (\$340,247.68) instead of either the appraised property value (\$500,000.00) or the Broker's Price Opinion value (\$390,000.00). The formula used the constraints of the PSA and resulted in a modified payment that would have exceeded Defendant's affordable payment threshold.

Plaintiff argues the foreclosure mediation statute does not require a plaintiff to produce any pooling and servicing restrictions at the inception of the mediation process. Plaintiff interprets the word "during" as used in 12 V.S.A. § 4633(a) to mean that it is only required to disclose the PSA at the mediation session, not at the outset of the mediation process.¹ It also states that the investor did reject its request for a waiver.

Plaintiff further contends that it was not required to seek the waiver at the inception of the review process under § 6.5 of the MHAP Handbook because the handbook uses the word "should" not "must." It argues that the language in § 6.5 is vague as to the time when it must seek the waiver from the investor because § 6.5 refers to restrictions making modification "unfeasible," and modifications are only determined to be unfeasible at the end of the process.

Plaintiff claims that even if the debt was amortized over forty (40) years at 2% interest, the resultant payment figure would exceed the affordable payment threshold. Defendant's monthly income was \$7,810.00. Thus, the affordable payment threshold (31%) would be \$2,421.10. This figure includes her tax and insurance obligations as well as the principal and interest mortgage payments. Plaintiff believes Defendant's monthly tax and insurance obligations were \$1,289.98

¹ 12 V.S.A. § 4633(a) begins with the words "[d]uring all mediations."

during the mediation process. It was this high, according to Plaintiff, because Defendant had sought extensions in filing her taxes and homestead exemption. Subtracting \$1,289.98 from \$2,421.10 results in a maximum possible mortgage payment of \$1,131.12. Plaintiff explained that if the \$486,468.00 debt was amortized over forty (40) years at 2% monthly interest, the needed monthly principal and interest payment would have been \$1,473.15, or \$342.03 over the threshold. Thus, Plaintiff attributes its inability to offer a modification not to its refusal to modify the interest rate and loan term, but to Defendant's tax and insurance obligations and the size of her debt.

Finally, Plaintiff argues that caselaw does not support the position of forcing a servicer to modify a loan; HAMP only requires the servicers to consider eligible loans for modification. It cites several federal district court decisions holding that the applicable statute does not require servicers to modify loans; it only requires the Secretary of the Treasury to encourage services to modify loans. See e.g. *Hart v. Countrywide Home Loans, Inc.*, 735 F.Supp.2d 741, 747-48 (E.D. Mich. 2010).

Following an invitation by the court after oral argument, Defendant submitted a response to Plaintiff's reference to *Hart* and the other decisions. She contends that the decisions cited by Defendant are distinguishable because they address the issue of the borrower's lack of standing to sue after mediation has been completed, not the extent to which a court can issue orders that ensure the borrower is treated fairly within the mediation. She also suggests that Plaintiff's interpretation of the case, that it could deny a modified loan after determining that a borrower is eligible for a modified loan, would result in a mediator finding that the servicer did not mediate in good faith.

Defendant further noted that she had requested that the November mediation session be postponed until after she had submitted her federal tax returns and her prebate was determined. Defendant anticipated this would lead to a reduced tax bill. She also expected to obtain less costly homeowners insurance. Both the reduced tax and insurance bills would have had an impact on Plaintiff's determination of whether she could have met the affordable payment threshold under a 40 year extended term at 2% interest as explained above.

Analysis

Defendant urges the court to determine that Plaintiff did not comply with its obligation to engage in the mediation process in good faith because: (1) it failed to timely disclose the PSA's prohibition of modifying the interest rate and loan term; (2) it failed to give her sufficient time to appeal its July 2015 decision; (3) it failed to seek a waiver from the investor in or before July 2015; and (4) its explanation as to why her loan does not qualify as a "designated" loan during the mediation session was inadequate. She seeks attorney's fees to date and a re-referral to mediation with a specific order that the Defendant's eligibility for a mortgage be reviewed at a specific rate and with a specific duration.

The statutes controlling the inquiry before the court are 12 V.S.A. §§ 4633, 4635.

The law requires, in part, that “[d]uring all mediations”:

(3) The mortgagee shall produce for the mortgagor and mediator:

(A) if a modification or other agreement is not offered, an explanation why the mortgagor was not offered a modification or other agreement; and

(B) for any applicable government loss mitigation program, the criteria for the program and the inputs and calculations used in determining the homeowner’s eligibility for a modification or other program.

(4) Where the mortgagee claims that a pooling and servicing or other similar agreement prohibits modification, the mortgagee shall produce a copy of the agreement.

12 V.S.A. § 4633(a)(3), (4).

Moreover, the mortgagee is under an obligation to “produce the information required by subsections (a) ... of this section in a timely manner so as to permit the mediation process to function effectively.” 12 V.S.A. § 4633(c).

After receiving the mediator’s report, the court is required to make a determination of whether the servicer complied with its obligations under § 4633(a). 12 V.S.A. § 4635(a). If the court determines that the servicer was noncompliant, it may impose appropriate sanctions, including reasonable attorney’s fees. 12 V.S.A. § 4635(b).

Defendant has set forth four arguments for the court to consider in its determination of whether the servicer complied with its obligations under the statute.

First, Defendant contends that Plaintiff should have disclosed the PSA restrictions shortly after receiving her financial information in February 2015, rather than at the mediation session in November 2015.

The language “[d]uring all mediations” in § 4633(a) refers to the mediation process as a whole, not the mediation session itself. The Plaintiff was required to disclose the PSA prior to the mediation session held on November 18, 2015.

Given that finding, the question turns to whether the PSA restriction should have been disclosed earlier than it was. Pursuant to § 4633(b)(2), the parties should have held a mediation preconference within 45 days of the mediator being appointed on December 24, 2014. At that conference the parties could have – and arguably from Defendant’s perspective should have – identified the PSA. The relevant PSA provisions were not disclosed by Plaintiff until October 9, 2015. This was over a month before the mediation session occurred. Yet, this was approximately three months after the July 2015 letter which relied on calculations based on the PSA. The PSA became relevant at that time of the July letter and a timely disclosure of the PSA should have occurred in conjunction with that letter. See 12 V.S.A. § 4633(c).

Second, Defendant raises the issue of the Plaintiff's timeline for the Defendant to appeal the July 2015 letter.

The thirty day timeline in the July letter from Plaintiff to Defendant was a unilateral deadline imposed by the Plaintiff.² The undisputed facts in this case are that Defendant did not receive the letter until the deadline had nearly expired and Plaintiff refused to extend the deadline.

A mortgagee's unilateral imposition of a deadline and subsequent refusal to extend that deadline when notice was not timely given does not permit the process to function effectively. See 12 V.S.A. § 4633(c).

Third, Defendant has raised an issue regarding Plaintiff's failure to request a waiver of the PSA restrictions prior to performing the NPV evaluation on or about July 2015.

It would have been preferable had Plaintiff sought the waiver of the PSA restrictions prior to the mediation session. The court acknowledges that Plaintiff could only determine that a modification would have been unfeasible without waiving the PSA restrictions after it had confirmed the input values. However, after determining that a modification using the existing interest rate and loan term was unfeasible on or about July 2015, Plaintiff could have sought a waiver from the investor prior to sending Defendant the letter. Despite receiving the actual PSA on October 9, 2015 Defendant waited until the mediation session on November 18, 2015 to ask Plaintiff to request the waiver from the investor.

The Plaintiff should have requested the waiver on its own prior to sending the July 2015 letter, therefore the lateness of Defendant's request has no impact on the court's finding that Plaintiff did not comply with its statutory obligations.

The MHAP Handbook § 6.5 states:

If a servicing agreement ... restricts or prohibits a modification step in the standard or alternative modification waterfalls (HAMP Tier 1 or Tier 2) and the servicer partially performs it or skips it, the modification may still qualify for HAMP. If the servicer is subject to restrictions that make it unfeasible to complete the modification waterfall steps, the servicer should identify this prior to performing the NPV evaluation and not perform an NPV evaluation. Servicers must maintain evidence in the loan file documenting the nature of any deviation from taking any sequential modification step in the modification waterfall and the fact that the applicable servicing agreement, investor guideline or law restricted or prohibited fully performing the modification waterfall step. The documentation must show that the servicer made a reasonable effort to seek a waiver from the investor and whether that waiver was approved or denied.

Applying § 6.5 to this case, the PSA prohibited the modification of the interest rate and loan term. The Plaintiff partially performed the PSA. The restrictions regarding the interest rate and loan term made a modification unfeasible because the resulting potential monthly mortgage payment

² Neither party has cited a statutorily mandated deadline for the appeal of the letter.

was greater than the affordable payment threshold. Thus, rather than performing the NPV evaluation, the results of which were sent to Defendant in the July 2015 letter, Plaintiff was required to make a reasonable effort to seek a waiver from the investor and maintain evidence in the file showing whether that waiver was approved or denied. If the investor approved the waiver, Plaintiff was not required to actually modify those terms or otherwise deviate from the modification waterfall.

While Defendant has not cited TARP or other law indicating that Plaintiff is bound by the Handbook's terms, the relevant section of the Handbook, § 6.5, is persuasive as to what Plaintiff was required to do in order to permit the mediation process to function effectively. Proper attention must be paid to this step in the process because "[t]he HAMP-related 'net present value' calculation (NPV) for purposes of determining eligibility for modification is a critical component of foreclosure mediation." *Wells Fargo Bank, N.A. v. Betit*, No. 408-5-10 Rdcv, 2012 WL 4294091 (Vt. Super. Ct. Aug. 27, 2012) (Teachout, J.). Rather than waiting for a homeowner with far less experience than the servicer to make the request, a servicer should make this request as soon as reasonably feasible. This allows all the parties to determine whether a waiver of these terms would be relevant going into the mediation session. Waiting until the last minute, particularly when the servicer can or should foresee the waiver request being desirable, or even necessary, is not permitting the mediation process to function effectively. Thus, Plaintiff's failure to make reasonable efforts to seek a waiver prior to sending the July 2015 letter is another instance where it inhibited the mediation process from functioning effectively.

Fourth, Defendant has raised the issue that Plaintiff's explanation as to why her loan does not qualify as a "designated" loan was inadequate.

Plaintiff refused to provide Defendant with a list of the factors that determine whether a loan is "designated" or "non-designated" under the PSA. Plaintiff provided Defendant with a copy of the PSA more than one month before the mediation session and pointed out the specific relevant provisions in the document. The PSA itself made it clear that there were only nine loan servicing groups that qualified as "designated" and that all other groups were "non-designated." Defendant's loan was not among the nine listed groups; that was the determining factor as to whether the investor's PSA would permit modification of the interest rate and loan term. Defendant had sufficient warning of this.

To the extent that Defendant wanted additional information in order to determine whether the exclusion of her mortgage from that list was improper, Plaintiff was not required to provide that information. This situation is distinguishable from the facts of *Betit*, in which the court awarded attorney's fees to the defendant where the Plaintiff merely provided conclusory statements of position and a website summary of that position rather than the required documents or statutory references. Plaintiff met its obligation to identify the basis of its position that the loan was ineligible for modification by providing the PSA documents on October 9, 2015.

In sum, individually, three of the events cited by Defendant³ provide a basis for finding that Plaintiff did not comply with its statutory obligations. Cumulatively, those events provide an even stronger basis for this conclusion.

Pursuant to the reasoning set forth above, disclosure required by § 4633(a) did not occur in a timely manner so as to permit the mediation process to function effectively. See § 4633(c). Therefore, Plaintiff did not comply with its obligations under § 4633(a). Having determined that Plaintiff was noncompliant in part, the court may impose appropriate sanctions, including reasonable attorney's fees. 12 V.S.A. § 4635(b).

Defendant seeks sanctions in the form of a court order for a new mediation in which Plaintiff would be required to re-determine her eligibility for a loan modification using specific criteria, including a 2% interest rate and a forty (40) year loan term. Defendant also seeks attorney's fees.

As noted above, Plaintiff has made the calculations with the 2% interest rate and 40 year loan term and concluded that the resultant monthly payment would still be above the affordable payment threshold. Defendant has not shown any facts suggesting that this conclusion is inaccurate. Additionally, while this court may impose appropriate sanctions, it does not conclude that an order to determine eligibility of a loan modification with specific criteria is within the authority of the court. Although not exclusive, § 4635(b) does not include re-ordering mediation with specific criteria to be one of the suggested forms of sanctions. As with Rule 11 sanctions, the court has "the discretion to fashion sanctions to fit the circumstances of specific cases." 5A Fed. Prac. & Proc. Civ. § 1336.3 (3d ed.). The court will not order a new mediation of this matter.

However, sanctions of reasonable attorney's fees are appropriate. See § 4635(b)(2). Plaintiff's actions were noncompliant with its statutory obligations and resulted in Defendant incurring attorney's fees to show the non-compliance. Defendant is therefore awarded attorney's fees in conjunction with showing non-compliance. Fees are awarded from December 2015 through the hearing of this motion and filing of the response in the amount of \$8,847.00.

Order

WHEREFORE, for the reasons set forth above, Defendant's Motion Objecting to the Mediator's Conclusions and Request for Relief is GRANTED IN PART and DENIED IN PART. Plaintiff is ORDERED, no later than June 10, 2016, to pay Defendant's attorney's fees in the amount of \$8,847.00. The Mediator's Report is otherwise approved and consideration of the foreclosure complaint will proceed as contemplated by V.R.C.P. Rule 80.1.

Electronically signed on May 13, 2016 at 10:31 AM pursuant to V.R.E.F. 7(d).

John W. Valente
Superior Court Judge

³ These events are: the disclosure of the PSA on October 9, 2015, three months after it sent the July 2015 letter; the unilateral imposition of a deadline and subsequent refusal to extend the deadline when notice was not timely given to Defendant; and the failure to seek a waiver of the PSA terms prior to sending the July 2015 letter.

STATE OF VERMONT

SUPERIOR COURT

ORLEANS COUNTY

WELLS FARGO BANK, N.A.,
Plaintiff,

CIVIL DIVISION

v.

JAMES SULT, ET AL.,
Defendant.

FILED
APR 21 2014
VERMONT SUPERIOR
COURT
ORLEANS UNIT

DOCKET NO. 71-3-13 Oscv

ORDER ON RENEWED MOTION FOR SANCTIONS

This matter is before the Court on Defendant James Sult's February 21, 2014 Motion to Reconsider and Renewed Motion for Sanctions. Sandra Paritz, Esq., of Vermont Legal Aid represents Defendant Sult, and Richard J. Volpe, Esq. represents Plaintiff Wells Fargo Bank, N.A (Wells Fargo). The Court previously considered Mr. Sult's Motion for Sanctions against Wells Fargo on February 3, 2014. At that time, the Court denied the Motion to the extent it was based on arguments relating to the "pooling and service agreement." Mr. Sult now urges the Court to reconsider. Wells Fargo filed its reply brief on March 7, 2014 and a surreply was received from Mr. Sult on March 18, 2014. After considering the written memoranda of the parties, the Court makes the following determinations.

FACTUAL BACKGROUND

Wells Fargo sued Mr. Sult for foreclosure of real property located at 31 Auger Hole Road in Barton Vermont. On April 22, 2013, the Court referred this case to foreclosure mediation. Mr. Sult submitted a complete loan modification application with supporting documentation to both Wells Fargo and the Mediator two weeks prior to the mediation. The parties met for mediation on July 25, 2013, where Wells Fargo requested additional supporting documentation. The mediator scheduled a second mediation for September 3, 2013 so Wells Fargo would have an opportunity to review the additional documents.

Before the second mediation, Wells Fargo advised Mr. Sult by mail that it was denying his request for a loan modification, stating that the modified payments options under established guidelines required higher income levels than were reflected in Mr. Sult's application. The parties still met for mediation on September 3, at which point Wells Fargo through counsel stated that it was unable to approve a modification under the Home Affordable Modification Program (HAMP) because the trust which owns the loan purportedly had a "pooling and service agreement" that did not allow a decrease in the interest rate below 5% or an extension of the loan beyond the original maturity date.

Mr. Sult requested to see a copy of the pooling and service agreement at the mediation, but it was not provided. The mediator, David Polow, Esq. filed a Foreclosure Mediation Report to the Court on September 12, 2013 stating that Wells Fargo failed to supply documentation as required by Vermont's foreclosure mediation statute, 12 V.S.A. § 4631, as a result of neglecting to produce the pooling and service agreement. The mediation led to Mr. Sult's first motion for sanctions. In reply, Wells Fargo submitted copies of the "Wells Fargo Bank, NA ABFC 2004-OPT 5" pooling and service agreement, which

purportedly governed Mr. Sult's mortgage. At that time, the Court was persuaded that Wells Fargo had complied with the foreclosure mediation statute and dismissed Mr. Sult's motion so far as it pertained to failure to provide a copy of the service agreement.

ANALYSIS

In his renewed motion, Mr. Sult argues that there is nothing that links the restrictions in the pooling and servicing agreement provided to his mortgage. Mr. Sult also maintains that there is nothing in the pooling and service agreement provided that states that loans may not be extended beyond the original maturity date. He finally claims that HAMP guidelines require that mortgage servicers keep evidence documenting the agreement that prevents them from performing a modification, including showing a "reasonable effort" to obtain a waiver from the lender, which was allegedly not done in this case. See MHA Handbook, 6.5.

Wells Fargo's position is that the pooling and service agreement provided to Mr. Sult is indeed connected to his mortgage, and that the foreclosure mediation statute only states that an agreement used as a basis for modification denial need not be provided at mediation, as long as it is provided. The Court disagrees. The foreclosure mediation statute provides that during all mediations: "where the mortgagee claims that a pooling and servicing or other similar agreement prohibits modification, the mortgagee shall produce a copy of the agreement." 12 V.S.A. § 4633 (a)(3).

At the foreclosure mediation in this case, Wells Fargo claimed that it was not possible to fashion a modification within HAMP guidelines because of the restrictions contained within the pooling and service agreement. According to Wells Fargo, those restrictions prevented lowering the interest rate below 5% and changing the maturity date on the loans. But, on review of the service agreement provided by Wells Fargo, there is no restriction on extending the maturity date. Based on the calculations of Mr. Sult's counsel, if the maturity date were extended to forty years, which is permissible in HAMP, and reduced the interest rate to 5%, he may be able to qualify for a HAMP Tier II modification.

Because the pooling and service agreement was never produced at the mediation, this option was never discussed. It is hard to believe that there was no prejudice to Mr. Sult's interests under those circumstances. While Wells Fargo may indeed have been forthright about the reasons for denying Mr. Sult a modification, it did not afford Mr. Sult the opportunity to verify that determination and work out an alternative position.

Based on this conduct, the Court concludes that at the very least, Mr. Sult should have the opportunity to engage in meaningful mediation with access to the information necessary to ensure that *all* available options are considered. See 12 V.S.A. § 4633 (a)(1). The Court also concludes that the imposition of sanctions are necessary to convey to Wells Fargo the importance of full compliance in the mediation process. Mediation is a court-ordered and court-sanctioned process. See *Bank of America, N.A., v. Sumner*, No. 64-3-12 Oecv at 4 (Vt. Super. 2012) (Trial Order). By not affording Mr. Sult an opportunity to meaningfully partake in mediation, Wells Fargo harmed the integrity of the judicial process in foreclosure proceedings. The Court has the inherent power to order compensatory sanctions to protect that process. *Lamell Lumber Corp. v. Newstress Int'l, Inc.*, 2007 VT 83, ¶123.

ORDER

In light of the foregoing, Defendant's Motion for Sanctions is *granted*. The Court hereby orders Wells Fargo to reenter into mediation with Mr. Sult, and grants Mr. Sult leave to reapply for HAMP. All interest and fees from the date of mediation to the date of a loan modification under HAMP, if any, are additionally suspended.

So Ordered at Newport, Orleans County, Vermont this 17th day of April, 2014.

A handwritten signature in black ink, reading "H. E. VanBenthuyzen", is written over a horizontal line.

Howard E. VanBenthuyzen

Superior Judge

Presiding

RESPA and TILA Servicing Rules: Links to Statutes

RESPA: [12 U.S. Code § 2605.Servicing of mortgage loans and administration of escrow accounts](#)

Regulation X

[12 CFR § 1024.35 - Error resolution procedures.](#)

[12 CFR § 1024.36 - Requests for information.](#)

[12 CFR § 1024.41 - Loss mitigation procedures.](#)

TILA: Regulation Z

[12 CFR § 1026.36 - Prohibited acts or practices and certain requirements for credit secured by a dwelling.](#)

[12 CFR § 1026.41 - Periodic statements for residential mortgage loans.](#)

[Sample Request for Information \(forbearance and loan ownership\)](#)

[Attached pdf](#)

Covid-19 Special Servicing Options

Corona Virus Emergency: What Consumers Need to Know About Mortgage Relief (NCLC April 2020)

https://www.nclc.org/images/pdf/special_projects/covid-19/IB_Consumer_Mortgage_Relief.pdf

Text of CARES Act (Pub. Law No. 116-136) section 4022

Pdf attached

Fannie Mae Loans

Lender Letter 2020-02 April 8, 2020

<https://singlefamily.fanniemae.com/media/22261/display>

[Fannie Mae Lender Letter 2016-06 \(Dec. 15, 2016\) \(Implementation of Flex Modification\)](#)

[Pdf attached](#)

[Vermont Trial Court Mediation Decisions](#)

[BAC Home Loans Servicing, LP v. Rollins, No. 1230-09 CnC \(Oct. 21, 2013\)](#)

[Pdf attached](#)

[Wells Fargo Bank, N.A. v. Sult, No. 71-3-13 Oscv \(Apr. 21, 2014\)](#)

[Pdf attached](#)

[U.S. Bank v. Lisman, 2016 WL 8078137 \(Vt. Super. Ct. May 1, 2016\)](#)

pdf attached

Freddie Mac Loans

Bulletin 2020-10 April 8, 2020

https://guide.freddiemac.com/ci/okcsFattach/get/1003791_7

Bulletin 2020-4 March 18, 2020

<https://guide.freddiemac.com/app/guide/bulletin/2020-4>

FHA Loans

HUD Mortgage Letter 2020-06 (4/1/2020)

<https://www.hud.gov/sites/dfiles/OCHCO/documents/20-06hsngml.pdf>

VA Loans

VA Circular 26-10-12 (April 8, 2020)

https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_20_12.pdf

USDA Direct Loans and USDA Guaranteed Loans

USDA RHS Stakeholder Announcement April 8, 2020

https://www.rd.usda.gov/sites/default/files/USDA_RD_SA_COVID19_ProgramImmediateActions04082020.pdf