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# Emerging from the Pandemic: COVID-19 Mortgage Relief Options for Vermont Foreclosure Mediation



National  
Consumer Law  
Center  
*Fighting Together  
for Economic Justice*

February 1, 2022  
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# Mortgages in the Pandemic

- Since the onset of the COVID-19 pandemic 8.2 million home mortgages throughout the U.S. have entered into forbearance
- 79% of those are now performing, have voluntarily paid off, or are on a loss mitigation plan
  - Fed. Res. Bank of Phila./Black Knight Data Dec. 7, 2021

# Status of Loans Ever in a COVID-19 Forbearance as of December 7, 2021

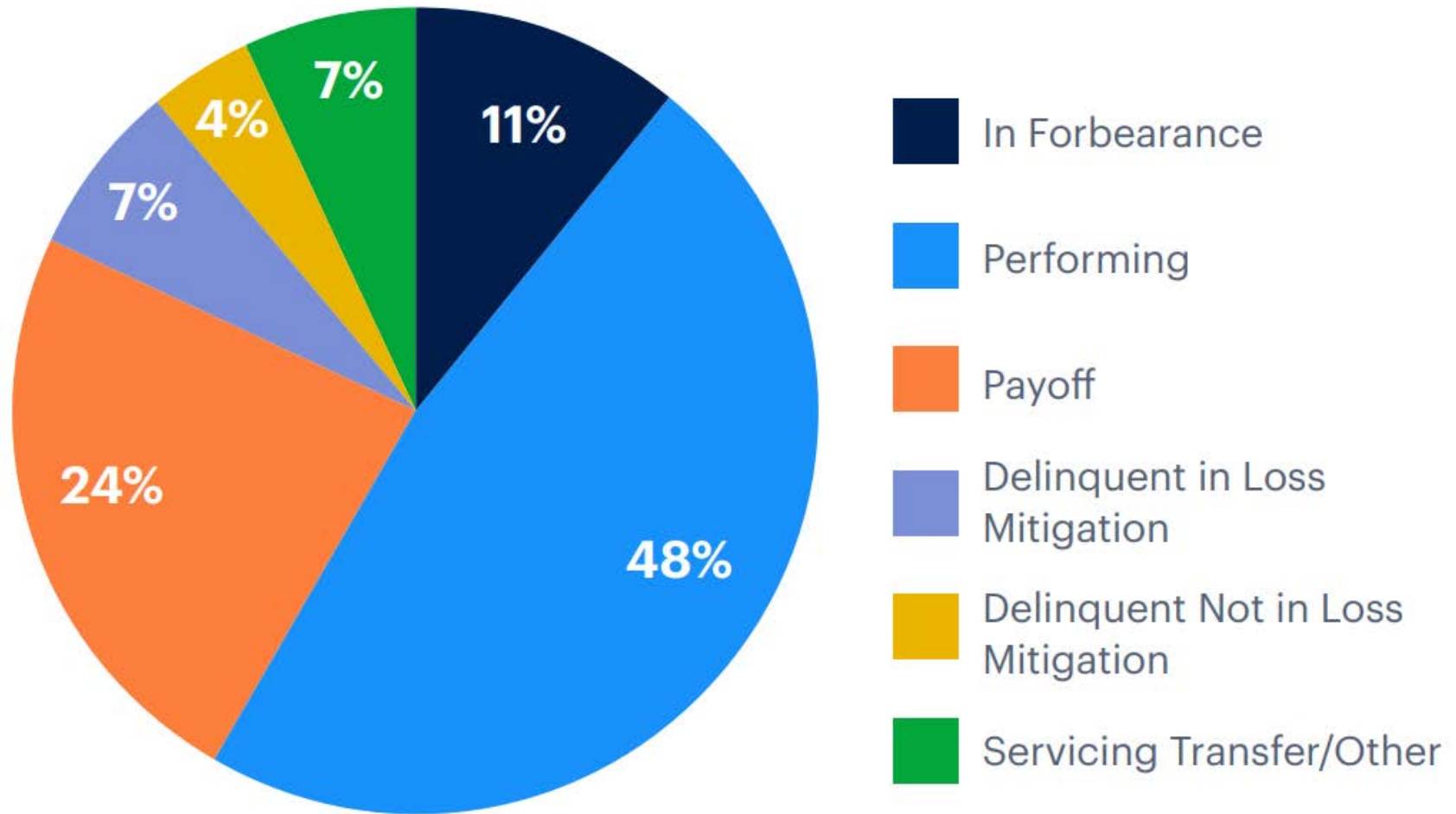


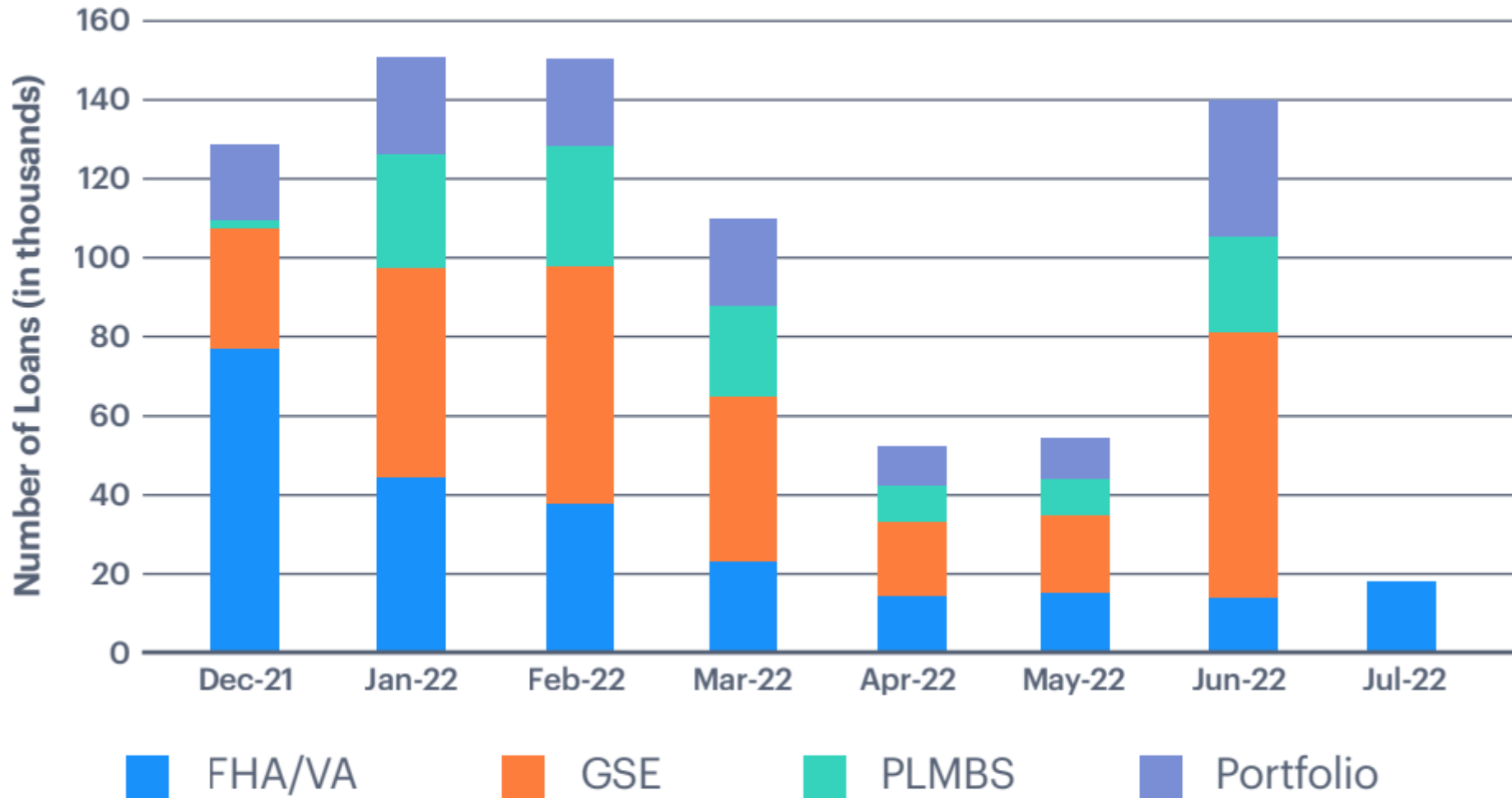
Chart: Fed. Reserve Bank of Phila./Black Knight, Fig 2, p. 2, Dec. 17, 2021

# Mortgage Loans in Forbearance by Investor Type as of December 7, 2021

Counts and Balances	FHAVA	GSEs	PLMBS	Portfolio	Total
Active Loan Count (Mil)	12.1	27.9	2.5	10.5	53.0
Loans in Forbearance - Counts	314,189	295,865	126,485	146,908	883,447
UPB of Loan Balances in Forbearance – UPB (\$Bil)	65	63	24	18	170
Share of Loans in Forbearance	2.6%	1.1%	5.1%	1.4%	1.7%

Adapted from Fed. Reserve Bank of Phila./Black Knight, Table 1, p. 1, Dec. 17, 2021

# Projected Forbearance Exits as of December 7, 2021



Adapted from Fed. Reserve Bank of Phila./Black Knight, Fig 1, p. 1, Dec. 17, 2021

# Agenda

- Moratoriums and forbearances
- Post-forbearance options
- Loss mitigation process

# Investor guidelines

- **The first step is to determine the relevant investor guidelines:**
  - Government insurers/guarantors
    - Federal Housing Administration (FHA)
    - Veterans Administration (VA)
    - U.S. Department of Agriculture (USDA)/Rural Development (RD)
  - Private label securitized loans
  - Portfolio –private investor owned loans

# Resources

- Updated NCLC Chart:  
[https://www.nclc.org/images/pdf/special\\_projects/covid-19/COVID19\\_Mortgage\\_Chart.pdf](https://www.nclc.org/images/pdf/special_projects/covid-19/COVID19_Mortgage_Chart.pdf)
- [Updated Chapter 12.3, Mortgage Servicing and Loan Modifications](#)  
<https://library.nclc.org/free-access-new-chapter-homeowner-rights-during-covid-pandemic>



# REFRESHER

## Moratoriums

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

# REFRESHER:

## CARES Act

- Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136
- Section [4022](#):
  - Provides **temporary** forbearance relief for borrowers with “**federally backed mortgage loans**”
  - Short-term foreclosure moratorium (expired 2020)
  - Applies to FHA; USDA; VA; Fannie Mae & Freddie Mac

# Forbearance Deadlines

- Fannie Mae and Freddie Mac have never included deadlines for starting COVID-19 forbearance plans.
- **FHA/VA/USDA – borrower must request initial forbearance by the end of the COVID-19 National Emergency.**

# Forbearance Limits

- **FHA**
  - [Mortgagee Letter 2021-24](#) explains when a borrower can get a full 12 months of forbearance (see chart on page 4 of Letter and follow up discussion)
  - Depends on when entered into forbearance
- **Fannie/Freddie**
  - Up to 18 months if entered on or before 2/28/21

# Post-forbearance concepts

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

# Policy

- Fannie Mae
  - [Lender Letter 2021-07](#) (Updated 11/17/21)
  - [Lender Letter 2021-02](#) (Updated 6/30/21)
  - [Fannie Mae Servicing Guide](#)
- Freddie Mac
  - [Freddie Mac Bulletin 2021-35](#)
  - [Freddie Mac Bulletin 2021-24](#)
  - [Freddie Mac Bulletin 2021-8](#)
  - [Freddie Mac Seller/Service Guide](#)

# Fannie Mae and Freddie Mac

- Fannie:  
<https://www.knowyouroptions.com/loanlookup>
- Freddie:  
<https://ww3.freddie.mac.com/loanlookup/>

# Fannie Mae and Freddie Mac **Waterfall *if can't reinstate***

- 1. COVID-19 Payment Deferral
- 2. Flex Modification (in accordance with the requirements described in Bulletin 2020-7, if applicable)
- 3. Standard Short Sale
- 4. Standard Deed-in-Lieu of Foreclosure



# Fannie and Freddie

## COVID-19 Payment Deferral

- For borrowers who have resolved a temporary hardship and can resume their monthly contractual payments but cannot afford either a full reinstatement or repayment plan to bring the loan current.
- Fannie Mae Lender Letter [LL-2020-07](#); [2021-07](#)
- Freddie Mac Bulletin [2020-15](#); [2021-8](#)

# Deferral Terms

- **How the deferral works**
  - Up to 18 months of payments deferred
  - Non-interest bearing balance
  - Includes principal and interest payment *and escrow advances (not shortages)*
  - Accrued and unpaid late fees waived
  - Due at maturity, or upon the sale, transfer, refinance or payoff
  - All other terms of the mortgage loan must remain unchanged.

# Deferral Requirements

- Current or less than 2 months delinquent as of **March 1, 2020** *and*
  - 1 to 18 months delinquent
  - **No limit on number of deferrals**-- but only up to 18 months can be deferred
    - Get 18 months if in forbearance as of **February 28, 2021** - otherwise 12
- \*Can always ask for an exception*

# Escrow

- Escrow **advances** can be deferred
- Escrow **shortages**:
  - **As of March 1, 2022**: servicers required to perform an escrow analysis when evaluating eligibility for a COVID-19 payment deferral or a Fannie Mae Flex Modification for COVID-19 impacted borrowers Letter [LL-2021-27](#) (Nov. 17, 2021)
  - Must offer repayment over 60 months

# Deferral Solicitation Timelines

- If no contact with borrower = Blind Offer
  - Must solicit the Borrower to offer a COVID-19 Payment Deferral **within 15 days after the expiration of the forbearance plan** if:
    - mortgage was current or < 31 days delinquent as of March 1, 2020 and
    - not otherwise excluded

# Deferral Timelines

## Servicer:

- Must complete COVID-19 Payment Deferral in the same month it determines the Borrower is eligible.
- Must send Agreement **within 5 days of approval.**
- If borrower is more than 18 months behind when applies, must make payment or go to Flex Mod – only 18 months can be deferred
- If not eligible, must review for all loss mit. Options – Flex Mod

# Effect on HAMP

**\*\*** If in good standing in a HAMP modification when enter forbearance and transitions directly to COVID-19 Payment Deferral, will not lose good standing

# Deferral? – The Big Question in Mediation

- Can the borrower afford to resume pre-forbearance payments?
  - Who decides?
  - What are the standards?
  - What happens if decision to accept deferral turns out to be wrong?
  - What is risk/impact of rejecting a deferral?
  - Same issues for FHA, VA, USDA guaranteed programs
  - What about V-HAP funds?



# Flex Modification

- 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

# 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 (3.55% as of 1/27/22) 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 forbearance

- First, forbear enough UPB to set interest-bearing UPB at **100% of property's fair market value**
- Second, if doesn't **reduce P&I payment by 20%**, then forbear enough principal (subject to program cap) to reach **20% reduction in P&I payment**.
  - *Could potentially use VHAP if hit forbearance cap*
- Can reduce interest bearing principal to as low as 80% of FMV.
- Modified payment must be less than or equal to pre-modification P&I.

# Getting a Flex Mod

- Two methods:
  - Borrower submits a “Borrower Review Package” or “BRP” with 710 Form  
OR
  - Servicer finds borrower eligible based on servicer’s unilateral proactive review of loan file- solicits borrower

# Streamlined Flex Modification Evaluations for Borrowers with a COVID-19 Related Hardship

- COVID-19 related hardship
- Current or less than 31 days delinquent as of March 1, 2020
- At least 90 days delinquent
- Not eligible for COVID-19 Payment Deferral
- Servicer must also evaluate for Flex Mod if:
  - cannot establish contact and borrower is ineligible for COVID-19 payment deferral –Or
  - If offered COVID-19 payment deferral but did not respond

# Reduced Eligibility Criteria

- Typically, loan must not have been modified > 3 times previously BUT
- A COVID-19 payment deferral does not count as a modification when determining the number of times the loan has been modified

# Timing of Offer of Flex Mod

- If no response to deferral offer, solicit the borrower for a Flex Modification *within 15 days after the expiration of the COVID-19 Payment Deferral offer*
- If approved, send within *15 days after the expiration of the forbearance plan* – dual tracking issue again
- If failed a COVID-19 Payment Deferral, must be evaluated and if eligible, offered mod **no later than *the 75th day of Delinquency***

# Fannie Mae and Freddie Mac

- ★ **Update** to Flex Modification guidelines - <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Expands-Use-of-IRR-to-Help-Borrowers.aspx>
- ★ Prior to the policy change, borrowers with significant equity in their properties were generally unable to obtain an interest rate reduction in connection with a Flex Modification.
- ★ Under the new policy, Fannie and Freddie allow rate reductions for borrowers with equity seeking a Flex Modification to address a COVID-19 hardship.



# Fannie Mae and Freddie Mac

- This is a big change - but there are timing limitations. For example, the policy change applies only to borrowers who were **less than 31 days delinquent as of March 1, 2020**.
- ✦ Borrowers who may have been denied may now qualify for a Flex Modification.
- ✦ Borrowers may now get deeper payment relief.

# Standard Short Sale

- Must have eligible hardship
- Arm's length transaction
- Listed for sale with licensed agent for at least 5 days
- If > 31 days delinquent:
  - Must occupy property
  - 55% DTI

# Deed-in-lieu

- Unable to sell at fair market value
- must submit a complete Borrower Response Package if < 90 days delinquent
- Must be able to convey clear and marketable title to the property
- May be eligible for relocation assistance

# FHA's Covid-19 Responses

- Key resource:
  - FHA Single Family Housing Policy Handbook [4000.1](#)
- HUD/FHA Mortgagee Letters (ML):  
[https://www.hud.gov/program\\_offices/administration/hudclips/letters/mortgagee](https://www.hud.gov/program_offices/administration/hudclips/letters/mortgagee)
- ML 2020-06 (4/1/2020)
  - Addresses COVID-19 forbearance access
  - Created a standalone partial claim for COVID-19 hardships
  - Forbearance schedule modified ML 2021-24 (9/27/2021)
- ML 2021-15 (6/25/2021)
  - Added Advance Loan Modification (ALM) as a loss mitigation option for COVID-19 hardship
  - Revised forbearance access

# FHA's Covid-19 Responses

- ML 2021-18 (7/23/2021)
- FHA's total revision to the options available to address COVID-19 hardships.
- FHA's Covid-19 waterfall now consists of two basic home retention options for owner-occupants who contact their servicer:
  - COVID-19 Recovery Standalone Partial Claim
  - COVID-19 Recovery Modification

# FHA's Covid-19 Waterfall

- FHA refers to two offerings as “Covid-19 Recovery” options
- The **Covid-19 Recovery Standalone Partial Claim** option is for borrowers who can afford their pre-hardship payment.
- The **Covid-19 Recovery Modification** is for people who need a reduction of their pre-hardship payment - or who don't have enough partial claim available for a standalone partial claim.
  - Targets a 25% reduction of the principal and interest payment
  - Can involve the combination of a partial claim with a loan modification
  - Even if the servicer cannot achieve the target payment, it must still offer the borrower the lowest P&I payment it can reach.

# FHA's new "Pre-Waterfall" Option - ALM

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

# FHA's Covid-19 Loss Mit Options

- To be implemented by October 23, 2021
- No submission of financial documents is needed
  - The borrower “indicates” that the relevant option is affordable.
- Borrowers can have more than one COVID-19 option if needed.
- A Trial Payment Plan (TPP) is not required for a Borrower to be eligible for the COVID-19 Recovery Options.



# FHA's ALM

- Advance Loan Modification (ALM) is a new blind offer loan modification program.
- The servicer reviews their portfolio of loans that are within 30 days of the expiration of the forbearance.
- Additionally, servicers review borrowers who are 90 or more days delinquent and not on COVID-19 Forbearance
  - This is through the termination of the COVID-19 National Emergency

# FHA's ALM

- The servicer sends out a modification offer if pre-set modification terms generate a **minimum of 25% reduction in principal and interest.**
- The standard modification involves:
  - Capitalizing arrears
  - Extending the payment term to 360 months
  - Reduce the interest rate to the Market Rate, defined as the Primary Mortgage Market Survey (PMMS) Rate rounded to the nearest one-eighth of 1 percent (0.125 percent)

# ALM Example

- Over 10 years ago, Borrower obtained a \$150,000 loan at 6% interest with a \$899.33 **monthly principal and interest payment** (not PITI).
- Borrower is 30 days from an expiring COVID-19 forbearance and has a balance of \$125,527.94.
- The arrears that are eligible for capitalization are \$11,000.00.
- The market interest rate is 3.5%

# FHA's ALM

- Should this borrower receive an ALM?
- First question: What would be a 25% reduction in principal and interest?
- $\$899.33(.25) = \$224.83$
- $\$899.33 - \$224.83 = \mathbf{\$674.50}$  is the **target payment** (25% reduction)

# FHA's ALM

- Next step - apply the standard modification terms
  - $\$125,527.94 + \$11,000 = \$136,527.94$  balance
  - $\$136,527.94$ , paid over 360 months, at 3.5% interest (PMMS) generates a  $\$613.07$  monthly principal and interest payment
  - $\$613.07/\text{month}$  provides **more than a 25%** reduction

# FHA's ALM

- Borrower should receive the ALM!
- Borrower is eligible even though the modification will reduce by more than 25%.

# FHA's ALM

- The ALM is separate from the COVID-19 waterfall – borrowers should receive an offer of the ALM if they fit the criteria.
- Otherwise, borrowers should be reviewed under the COVID-19 waterfall.

# FHA's COVID-19 Waterfall

- The first option is the **COVID-19 Recovery Standalone Partial Claim**
- Under this program, “The COVID-19 Recovery Standalone Partial Claim reinstates the Mortgage through the use of a Partial Claim for Borrowers impacted by COVID-19 who are able to resume their Mortgage Payments.”



# FHA's COVID-19 Waterfall

- The **COVID-19 Recovery Standalone Partial Claim** provides a simple solution for borrowers who have recovered income.
- The mortgage term, interest rate, and payment do not change.
- The loan is reinstated through a partial claim, which is a 0% interest loan from HUD.
- There are no monthly payments on the partial claim.

# FHA's COVID-19 Waterfall

- The partial claim under this option covers arrears, which can include:
  - Earned but unpaid interest
  - Mortgagee advances for escrow items;
  - Projected escrow shortage amount; and
  - Related legal fees and foreclosure and bankruptcy costs not higher than the foreclosure-related fees costs HUD has identified as customary and reasonable

# FHA's COVID-19 Waterfall

- What happens if Borrower previously received partial claims?
- Previous partial claims can impact eligibility.
- Outside of Covid relief, standard FHA partial claim subject to statutory limit equal to 30% of the **unpaid principal balance at the time of the first partial claim.**

# FHA's COVID-19 Waterfall

- Mortgagee Letter 2021-18 imposes a separate limit.
- “[F]or a **COVID-19 Recovery Standalone Partial Claim**, the Partial Claim must not exceed **25 percent** of the unpaid principal balance as of the date of Default at the time of payment of the **initial** Partial Claim less any previous Partial Claims paid.”

# FHA's COVID-19 Waterfall

- ML 2021-18 leaves some partial claim available for future issues, though not much.
- Borrowers may not be able to access the partial claim if they have had previous partial claims.
- Query: Could V-HAP funds be used to reduce arrearage to fit borrower under partial claim limit?

# FHA's COVID-19 Waterfall

- Let's do a quick maximum partial claim for COVID-19 check.
- Borrower's current unpaid principal balance is \$110,000 and the arrears are \$10,000.
- When Borrower's loan was at \$125,000 balance, Borrower received a \$7,000 partial claim.

# FHA's COVID-19 Waterfall

- Borrower is seeking a COVID-19 Recovery Standalone Partial Claim.
- What is the max partial claim Borrower could receive?

# FHA's COVID-19 Waterfall

- **\$125,000 (.25) = \$31,250**
  - Not start at \$110,000 or \$120,000
- Then you have to subtract \$7,000
- **The maximum partial claim for COVID-19 is \$31,250 – \$7,000 = \$24,250**
  - **Under this case, Borrower only needs \$10,000.**



# FHA's COVID-19 Waterfall

- What about a borrower who needs a loan modification?
- Servicer reviews for the **COVID-19 Recovery Modification**
- The modification targets a 25% reduction in the principal and interest payment.

# FHA's COVID-19 Waterfall

- The COVID-19 Recovery Modification is not automatically offered like the ALM.
- It allows for the combination of a partial claim and loan modification to achieve 25% reduction of payment.
  - The modification is similar terms to the ALM

# FHA's COVID-19 Recovery Modification Waterfall

- COVID-19 Recovery Modification terms:
- Capitalize arrears
- Extend the payment term to 360 months
- Reduce the interest rate to the Market Rate, defined as the Primary Mortgage Market Survey (PMMS) Rate rounded to the nearest one-eighth of 1 percent (0.125 percent)

# FHA's COVID-19 Recovery Waterfall

- Apply these standard modification terms
- See if P&I reduced by at least 25%
- If yes, stop
- If not, use partial claim (deferral) to reduce interest-bearing principal
- Same limit to partial claim: can't exceed 25% of UPB now or at time of first partial claim
- New option: to reach target payment, may use 40-yr. mod term with partial claim.

# FHA COVID-19 Waterfall

- Borrower's monthly income does not impact the calculation at all.
- P&I payment may decrease by more than 25% if this is outcome of mod terms without a partial claim
- Final mod may not reduce P&I by 25% if insufficient partial claim available
  - Borrower can accept mod with smaller reduction if can afford

# FHA COVID-19 Waterfall

- There is an example of FHA COVID-19 Recovery Modification calculation at end of this presentation.
- FHA-HAMP remains available as a loss mitigation option, requiring application with documentation
- Considers borrower income, targets PITI at 31% of gross income
- Important summary chart: “FHA Loss Mitigation Home Retention Option Priority Order Waterfall” in HUD Handbook 4000.1

# Policy

- VA
  - [VA Circulars](#), including
    - [VA Circular 26-21-13](#), [Exhibit A](#), [Exhibit B](#)
    - [VA Circular 26-21-20](#)
  - [VA Handbook M26-4](#), Chapter 5
- USDA (Guaranteed Loans)
  - USDA Handbook HB-1-3555, [Chapter 18](#)

# VA

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



# VA

- Borrowers who can pay arrears (category one) are offered a repayment plan.
- For borrowers who can afford their pre-hardship payment but not arrears, VA's newly released partial claim program should help. (38 C.F.R. § 36.4800, *et seq.*).

# VA

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

# USDA Guaranteed

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

# Waterfall Resources

- Mobilization for Justice (N.Y.) provides online calculator for;
  - GSE Flex Mod
  - FHA-HAMP modification
- <https://mobilizationforjustice.org/publications-and-report/waterfall-worksheets/>
- These are standard waterfalls, not COVID-specific

# Loss mitigation process

- Escalations
  - FHA - contact National Servicing Center, (877) 622-8525
  - VA - Talk to assigned VA loan technician - if don't know, call 877-827-3702
  - USDA – Servicing contacts link:  
<https://usdalinc.sc.egov.usda.gov/docs/rd/sfh/lossclaim/ServicingContacts.pdf>

# Loss mitigation process

- Escalations
  - Fannie Mae -  
[nclc\\_escalations@fanniemae.com](mailto:nclc_escalations@fanniemae.com)
    - Note this is a special email address for housing counselors and consumer attorneys representing homeowners with COVID hardships where the servicer has not been able to resolve the presenting issue(s) – you should provide specific details about the improperly applied policy.
  - Freddie Mac: 1-800-Freddie option 2

# Non-Federally Backed Loans

- Roughly one-third of home mortgages
- CARES Act never applied to them
- Servicers may have treated like federally-backed for forbearance purposes
- Post-forbearance options will depend on securitization terms (PSA) or lender's own guidelines
- Borrower may use RESPA Request for Information to learn guidelines
- Disclosure should be part of obligation to participate in mediation in good faith



# Procedural Safeguards





# 12 CFR Part 1024 - Real Estate Settlement Procedures Act (Regulation X) **AS AMENDED AUG. 31, 2021**

- COVID-19 Procedural Safeguards (eff. through 12/31/21)
- COVID-19 Early Intervention Rules
- COVID-19 Reasonable Diligence Rules
- Streamlined Mods

# Procedural Safeguards

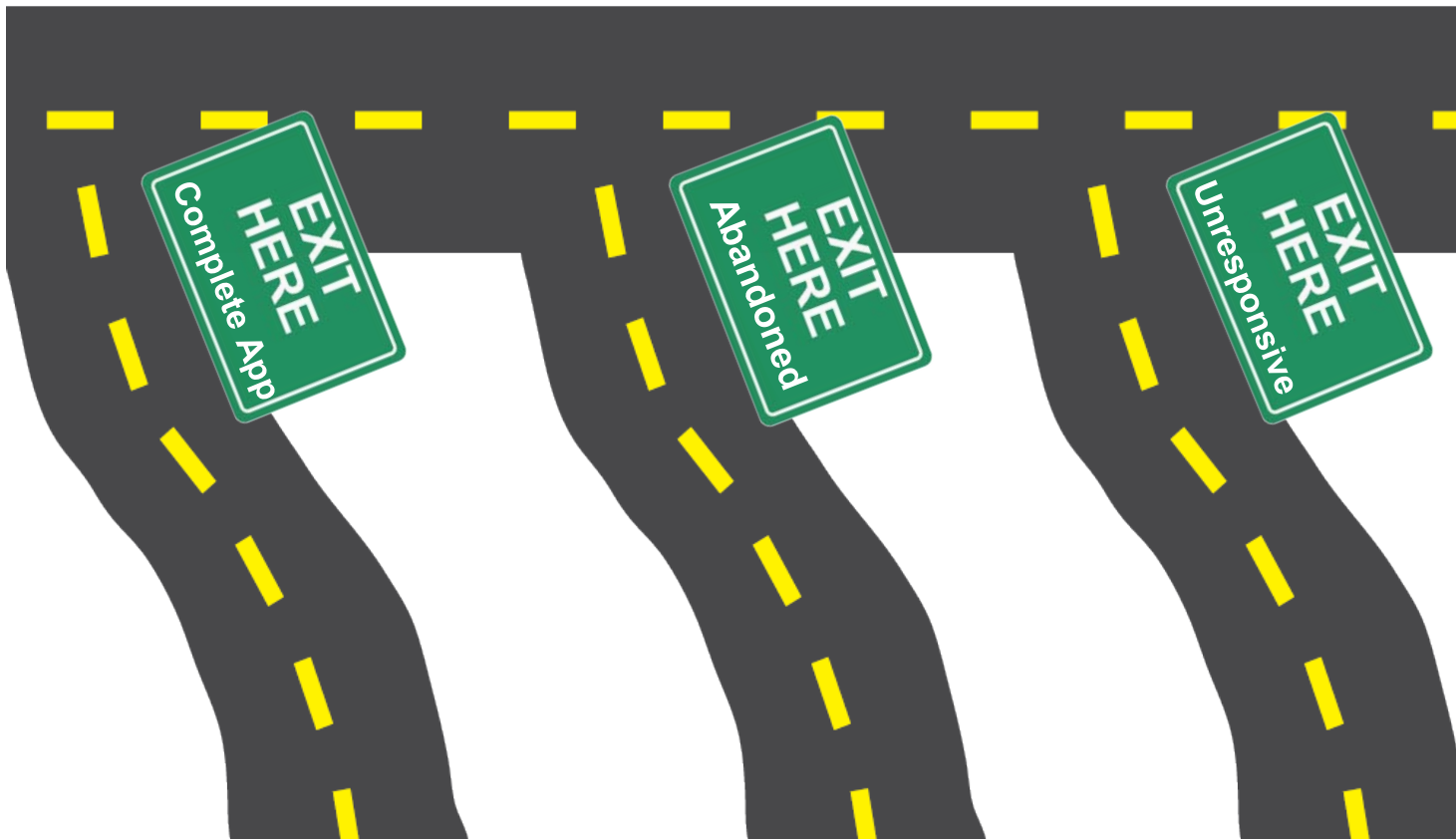
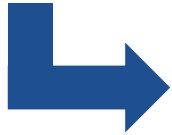
- From **8/31/21 to 12/31/21**, servicer could not make the “**first notice or filing**” necessary to initiate foreclosure under state law unless one of three safeguards was satisfied.

# The “No Foreclosure Start” Highway

Who gets on the highway:

- Not a small servicer;
- Fell 120 days DLQ after 3/1/20;
- No SOL to fc prior to 1/1/22

Jan. 1, 2022:  
Everybody  
Gets Off



# Early Intervention

- During live contact with borrower **not in forbearance until Oct. 1, 2022**
  - Servicer must inform borrower of
    - forbearance programs,
    - how borrower can access them, and
    - how borrower can get contact information for homeownership counseling services

# Early Intervention

- Additional information for **borrowers in forbearance** :
  - Servicer must provide info re:
    - date forbearance is scheduled to end;
    - each type of forbearance extension, repayment options, and other loss mitigation options,
    - actions borrower must take to be evaluated for such options; and
    - at least one way borrower can get contact information for homeownership counseling services.

# Reasonable Diligence

- CFPB amended Official Interpretations to provide that **servicer must contact the borrower no later than 30 days before the scheduled end of a COVID-19-related forbearance.**

OI 1024.41(b)1-4.iv

# Reasonable Diligence

- Servicer must determine if borrower wishes to complete application and proceed with a full loss mitigation evaluation.
- If borrower requests further assistance, servicer must exercise reasonable diligence to complete the application before the end of the forbearance.

# RESPA's Complete Application Framework

- Most RESPA protections are triggered by receipt of a “complete application”
  - 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))
  - 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, title search)
- Servicer has duty to assist in completion (reasonable diligence)
- Avoiding “piecemeal” reviews for one option at a time



# Duty to Get to Complete Application

- Reasonable Diligence –
  - Upon receipt of an application, servicer “shall exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application” (1024.41(b)(1))
  - Upon receipt of complete application, servicer shall evaluate borrower for **all loss mitigation options** available to borrower (1024.41(c)(1))

# Acknowledgement Notice

## Reg. X § 1024.41(b)(2)

- If Application is submitted > 45 days before foreclosure
- Servicer must conduct review to determine whether application is complete
- Within 5 business days of receiving application, provide written notice to borrower that:
  - acknowledges application is complete, or
  - describes documents and information needed to complete the application, and
  - provides “reasonable date” by which borrower should submit missing documents and information

# Streamlined Mods

- New exception permits servicer to offer a loan modification based on **an incomplete app**, provided that:
  - Loan term no more than 480 months
  - Does not cause payment to increase
  - Deferred amounts, if any, are non-interest bearing (partial claim, etc.)
  - Waiver of late charges, penalties, stop-payment fees

# Streamlined Mods

(Requirements, continued):

- Mod is made available to borrowers experiencing a COVID-19 hardship
- Acceptance of the offer will end the delinquency (or it will end after a TPP)
- If the borrower fails to perform on a streamlined mod TPP, servicer must resume reasonable diligence

# Calculation Example: FHA COVID-19 Recovery Modification

- Two years ago, Borrower obtained a \$150,000 FHA-insured loan at 6% interest with a **\$899.33 monthly principal and interest payment** (not PITI).
- Borrower is 30 days from an expiring COVID-19 forbearance, needs a modification, and calls the servicer for options.
- Borrower has never had a partial claim.

# FHA COVID-19 Recovery Modification

- The balance on this loan is \$146,202.23
- The arrears that are eligible for capitalization are \$11,000.00.
- The market interest rate is 3.5%

# FHA COVID-19 Recovery Modification

- Like the ALM analysis, we are still targeting a 25% reduction in payment – from \$899.33 to \$674.50

# FHA COVID-19 Recovery Modification

- What happens if you just ran the modification with no partial claim?
  - Capitalizing arrears
  - Extending the payment term to 360 months
  - Reduce the interest rate to the Market Rate, defined as the Primary Mortgage Market Survey (PMMS) Rate rounded to the nearest one-eighth of 1 percent (0.125 percent)



# FHA COVID-19 Recovery Modification

- $\$146,202.23 + \$11,000 = \$157,202.23$
- The monthly principal and interest payment needed to pay  $\$157,202.23$  over 360 months at 3.5% interest is **\$705.91**.
- This is only a 21.5% decrease and not a 25%.

# FHA COVID-19 Recovery Modification

- How do you achieve a 25% reduction?
- By using a partial claim to cut into the amount owed.
- You have to determine the proper loan balance.
- This is where you need a good calculator – I suggest this one:  
<https://bretwhissel.net/cgi-bin/amortize>

# FHA COVID-19 Recovery Modification

- The first step is to figure out what the Target Payment is.
- Here it's still \$674.50, which is a 25% reduction from \$899.33

# FHA COVID-19 Recovery Modification

- Next given that we need a \$674.50 payment and that we have a 3.5% interest rate and a term of 360 months, **what's the balance we need?**
- The Answer is \$150,207.77

# FHA COVID-19 Recovery Modification

- To achieve that balance, the servicer should offer a partial claim of \$6,994.46
- $\$157,202.23$  (amount to resolve) -  $\$150,207.77$  (target balance) =  $\$6,994.46$

# FHA COVID-19 Recovery Modification

- In this case, Borrower can receive a COVID-19 Recovery Modification that includes:
  - A \$674.50/month principal and interest payment to pay down \$150,207.77 in balance at 3.5% interest for 360 months.
  - And a partial claim at 0% interest for \$6994.46



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](http://www.nclc.org)**

## MEMO

To: Civil Rules Committee

From: Civil Oversight Committee (by Chair, Helen Toor)

Re: Proposals to Amend A.O. 49 re VHAP Funds

Date: January 20, 2022

As you know, both Legal Aid and the Vermont Bankers' Association have made proposals for an amendment to A.O. 49 to respond to the now-available federal funds to assist borrowers with overdue mortgages in hopes of stopping foreclosures. The Civil Division Oversight Committee has reviewed both proposals as well as seeking input from judges sitting in civil courts and several attorneys who bring many of the foreclosures by out-of-state banks. (I am attaching the comments from those lawyers to this email). Our proposal, which incorporates suggestions from many of those sources, is below. I would be happy to answer any questions if I am available at the time of your meeting, but let me mention a few points now.

First, we do not want to place the burden on our overwhelmed court staff either to issue notices in each case as to the availability of funds, or to issue stay orders in each case when we receive notice that a VHAP application is filed, and then subsequent orders ending the stays — the work involved in doing this in eviction cases was significant. Therefore, our proposal places the burden on the plaintiffs to send notices about the program, and makes the stay of certain steps in a case automatic once the court and plaintiff have notice. Because a handful of lawyers handle almost all foreclosure cases, they will not need notice from the court to know the stay is triggered.

Second, we felt the A.O. should be clear about the penalty for the plaintiff failing to file a certification, so we added that the court could stay a case until one is filed.

Third, rather than staying the entire case, which can lead the banks to feel they cannot take any steps forward (such as preparing a motion to file when the stay ends, or preparing to schedule a sale if the case does not resolve), we are specific about what acts are stayed.

Fourth, unlike the Bankers' proposal, we do not believe that a request to stay due to a VHAP application should be denied merely because we receive a letter rather than the exact form that is being provided, so we changed "must" to "should" regarding use of the form.

Fifth, we do not want the built-in delays necessitated by requiring a motion that needs a response from the plaintiff (and of course the reply time for the movant—for a total of 34 days) before the stay goes into effect, as it is likely that in most cases there will not be any objection. We thus placed the burden on the plaintiff to file a motion to terminate the stay if they do object.



Finally, we removed the list of entities that can assist (other than Legal Aid) because we have not confirmed that each is willing to be on our notices and because we understand that once someone applies for VHAP funds they will get a notice listing the agencies that are able to assist.

Our proposal is below. Please let me know if you have any questions.

PROPOSAL:

Administrative Order 49 ¶ 22 is amended to add the following:

h) Notice of Vermont Homeowner Assistance Program (VHAP)

1. In all one-to-four-unit residential property foreclosure actions pursuant to 12 V.S.A. § 4941 or 12 V.S.A. § 4945 and residential mobile home replevin actions pursuant to 9A V.S.A. § 9-609 filed after the effective date of this section, the plaintiff shall attest, by completing and filing with proof of service of the foreclosure or replevin complaint, a certification in substantially the form at Appendix E, that the plaintiff served the borrower defendant with notice of the availability of the Vermont Homeowner Assistance Program (VHAP) in the form attached as Appendix F at the time of service of the foreclosure or replevin complaint, or that this Section h does not apply because the subject property is not owned and occupied by a borrower defendant as his or her primary residence.

In all one-to-four-unit residential property foreclosure actions pursuant to 12 V.S.A. § 4941 or 12 V.S.A. § 4945 and residential mobile home replevin actions pursuant to 9A V.S.A. § 9-609 filed before the effective date of this Section h, the plaintiff shall file a certification in substantially the form at Appendix E within 21 days of the effective date of this Section h. If Plaintiff fails to file the required certification, the court may stay the case until the certification is filed.

2. In any residential foreclosure action or replevin of a mobile home where a defendant files a request to stay, and sends a copy to the plaintiff, representing that he or she has submitted a VHAP application and believes he/she meets the requirements of the program, any entry of judgment, notice of sale, sale of the property, or order of replevin shall be automatically stayed without further order of the court for a period of 60 days from the date the court received notice.

Any Plaintiff objecting to such a stay may file a motion to terminate the stay. The court shall terminate the stay if it finds that the request to stay has been filed solely for the purpose of delay, the arrearage exceeds the \$30,000 VHAP program maximum and the Defendant is unable to make up the difference through other sources, or a stay is not necessary in order for the borrower to access VHAP funds. If neither party notifies the court of a decision on the VHAP application prior to the end of the 60-day period or seeks an extension of the stay, the stay shall automatically expire.

If a Plaintiff in a residential foreclosure action or replevin of a mobile home, or its agent, has knowledge that any Defendant in the action has applied for VHAP, Plaintiff shall timely inform the court of the pending VHAP application, and the court shall have the option of staying the case or taking other appropriate action.

3. Unless otherwise agreed by the parties or ordered by the court, any stay under this Section h will not stay an order for foreclosure mediation pursuant to 12 V.S.A. § 4632 and the parties may participate in foreclosure mediation while the stay is in effect.
4. Any stay pursuant to this Section h shall be terminated by the court upon notice from the plaintiff or borrower defendant that the mortgagor's VHAP application has been denied.
5. This Section h shall expire on September 30, 2025, or upon notice to the Court Administrator from Vermont Housing Finance Agency that VHAP funding has been exhausted, whichever is earlier. The Court Administrator shall provide notice to members of the Vermont Bar upon receipt of notice from Vermont Housing Finance Agency that VHAP funding has been exhausted.

## **APPENDIX E**

### **CERTIFICATION OF COMPLIANCE WITH OR EXEMPTION FROM Administrative Order 49 ¶ 22 (h)**

The undersigned authorized representative or agent of Plaintiff does hereby certify:

At the time of service of this foreclosure or replevin action, the Plaintiff served the borrower defendant with notice of the availability of the Vermont Homeowner Assistance Program (VHAP) in the form set forth in Appendix F to AO 49 ¶22h; OR

This action was pending on the effective date of Administrative Order 49 ¶ 22 (h) and prior to or at the time of filing this certification, the Plaintiff gave the borrower defendant notice by first class mail to the Borrower Defendant at the address of the property securing the mortgage as well as last known mailing address and, if available, by email, of the availability of the Vermont Homeowner Assistance Program (VHAP) in the form set forth in Appendix F to AO 49 ¶22h;  
OR

The mortgaged property that is the subject of this foreclosure action or mobile home that is the subject of this replevin action is not a one to four unit residential dwelling that is owned and occupied by a borrower defendant as his or her primary residence and therefore Administrative Order 49 ¶22(h) does not apply.; OR

No notice is required because a Certificate of Non-redemption or Writ of Replevin has previously been issued by the court.

I declare that the above statements are true and accurate to the best of my knowledge and belief. I understand that if the above statements are false, I will be subject to the penalty of perjury or other sanctions in the discretion of the court.

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Name and Title of Plaintiff's Authorized Agent/Representative (Printed)

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Signature of Plaintiff's Authorized Agent/Representative

---

Date

## APPENDIX F

### NOTICE TO HOMEOWNER RE: VERMONT HOMEOWNER ASSISTANCE PROGRAM

You may be able to get help with past-due mortgage payments through the Vermont Homeowner Assistance Program ("VHAP"). VHAP may be able to help you avoid foreclosure by paying up to \$30,000 in past due mortgage payments, escrow charges, and other fees.

You can apply for VHAP online at [vermonthap.vhfa.org](http://vermonthap.vhfa.org). For advice about the program and help completing the application, call Vermont Legal Aid at 1-800-889-2047 or go to: <https://vtlawhelp.org/coronavirus-updates>

If you inform the court that you have applied for VHAP funds, any judgment or sale in the foreclosure case will be put on hold ("stayed") for 60 days while your application is reviewed, unless the Plaintiff files an objection and the court ends the stay. If you want to ask the court for a stay, you should fill out and sign the attached form, file it with the court, and send a copy to the plaintiff's attorney.

**HOMEOWNER’S REQUEST FOR STAY UNDER  
Administrative Order 49 ¶ 22 (h)**

**HOMEOWNER: If you wish to ask the court to put this case on hold while you apply for the Vermont Homeowner Assistance Program, you should file this motion with the court and send a copy to the plaintiff’s lawyer.**

I am a defendant in this case and am requesting a stay of this case for 60 days. I swear to or affirm that all of the following statements are true:

I own and live in the house, condominium, or mobile home that is the subject of this case as my primary residence.

I have applied for funds under the Vermont Homeowner Assistance Program (VHAP) to pay past due mortgage or mobile home loan payments.

I have not previously received VHAP funds for mortgage or mobile home loan payments on or after January 1, 2022.

I experienced a financial hardship after January 21, 2020 associated with the COVID-19 pandemic.

I believe I meet the income guidelines for VHAP.

I agree to notify the court and the plaintiff’s lawyer as soon as I receive notice of the results of my VHAP application.

I have mailed or emailed a copy of this request to the Plaintiff’s lawyer (or the plaintiff, if there is no lawyer) at the following address or email address:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

I declare that the above statements are true and accurate to the best of my knowledge and belief. I understand that if the above statements are false, I will be subject to the penalty of perjury or other sanctions in the discretion of the court.

\_\_\_\_\_  
Homeowner’s Name (Printed)

\_\_\_\_\_  
Homeowner’s Signature

\_\_\_\_\_  
Date

## VERMONT HOMEOWNER ASSISTANCE PROGRAM

### TERM SHEETS

#### General Criteria

To be eligible, Vermont homeowners must:

- Have experienced a financial hardship after January 21, 2020 related to the Covid-19 pandemic;
- Have income equal to or less than 150% area median income, as published by VHFA based on household size (assistance will be prioritized for those with income equal to or less than 100% of area median income, as published by VHFA based on household size, and for Historically Underserved Populations), and income limits may be reduced to meet the requirement that 60% of all HAF grants be made to household with incomes less than or equal to the area median income, as published by VHFA based on household size);
- Own and occupy as a primary residence the property for which assistance is sought; and
- Submit a hardship affidavit as explanation of a material reduction of household income or material increase in household expenses.

One- to four-family properties and condominiums in Vermont, including mobile homes, are eligible. Property must be the applicant's primary residence.

The Vermont HAF program provides one-time lump sum assistance grants for the benefit of eligible Vermont homeowners. Funds are paid directly to the existing mortgage servicer, tax authority, homeowner association or other common ownership entity, or applicable utility company(ies).

Up to \$30,000 of HAF assistance is available per household across all HAF program grants. This cap subject to adjustment based on program usage and applicant needs. Assistance to any particular household will be prioritized in the following order: mortgage assistance, property tax assistance, assistance with homeowner association fees and other common charges, utility assistance.

Applicants will be provided opportunities to request legal services and/or HUD-approved credit counseling services as part of the application process.

A narrative of the Homeowner Assistance Fund Plan is included as a separate PDF for further reference relating to Homeowner Needs and Engagement, Program Design and Budget Estimates. An additional separate PDF includes narrative responses to Treasury Feedback on the initial Homeowner Assistance Fund Plan submission.

## MORTGAGE ASSISTANCE PROGRAM

### Brief Description

Provide funds to eliminate or reduce past due payments and other delinquent amounts, including payments under a forbearance plan, on forward mortgages, reverse mortgages, loans secured by manufactured homes, or contracts for deed.

Assistance can be used to pay, but may not be limited to:

- Delinquent principal, interest and mortgage escrow payments (including tax and insurance escrows), including past due fees and charges, including attorney's fees related to foreclosure/forbearance or similar services
- Delinquent tax and insurance payment advances by Reverse Mortgage holders

Funds may be used to supplement other loss mitigation options offered by the servicer under investor requirements or where, without program funds, the homeowner would not qualify for that loss mitigation option. Homeowners in forbearance or other loss mitigation process which results in the servicer determining that their loans are not delinquent may not be eligible.

### Maximum Amount of Assistance Per Household

Up to \$30,000 of HAF assistance is available per household across all HAF program grants. This cap subject to adjustment based on program usage and applicant needs. Assistance to any particular household will be prioritized in the following order: mortgage assistance, property tax assistance, assistance with homeowner association fees and other common charges, and utility assistance.

### Homeowner Eligibility Criteria and Documentation Requirements

General Criteria apply plus homeowner will be required to provide information regarding the loan and the loan servicer, including a copy of their most recent statement. Servicers will be required to confirm the delinquent balance and provide information confirming that the original loan balance did not exceed then-applicable conforming loan limits. Applicants for mortgage assistance will be encouraged, but not required, to explore loss mitigation options with their servicer and receive mortgage counseling.

### Loan Eligibility Criteria Specific to the Program

Delinquent by at least one payment, including any payments during a forbearance period.



## PROPERTY CHARGE ASSISTANCE PROGRAM

### Brief Description

Provide funds to resolve any property charge default that threatens a homeowner's ability to sustain ownership of the property, whether concurrently with other loss mitigation options offered by any mortgage loan servicer or in conjunction with other assistance programs, or otherwise. Past due property taxes, HOA fees, condominium fees, cooperative maintenance or common charges that threaten sustained ownership of the property must be brought current by program assistance or resolved concurrently with the program providing assistance.

### Maximum Amount of Assistance Per Household

Up to \$30,000 of HAF assistance is available per household across all HAF program grants. This cap subject to adjustment based on program usage and applicant needs. Assistance to any particular household will be prioritized in the following order: mortgage assistance, property tax assistance, assistance with homeowner association fees and other common charges, and utility assistance.

### Homeowner Eligibility Criteria and Documentation Requirements

General Criteria apply plus Homeowner is at least one installment payment in arrears on one or more property charges including:

- Property Taxes
- HOA Fees, condominium fees, cooperative maintenance fees or other common charges.

Homeowner will be required to provide information regarding the payments due, including a copy of the most recent statement. The relevant taxing authority, homeowner association, etc., will be required to confirm the delinquent balance.

## UTILITY PAYMENT ASSISTANCE PROGRAM

### Brief Description

Provide funds to resolve delinquent payments for utility services. HAF funds may be used to pay delinquent amounts in full, including interest or reasonably required legal fees, under circumstances in which a delinquency threatens access to utility services. The provided assistance must bring the homeowner's account current.

### Maximum Amount of Assistance Per Household

Up to \$30,000 of HAF assistance is available per household across all HAF program grants. This cap subject to adjustment based on program usage and applicant needs. Assistance to any particular household will be prioritized in the following order: mortgage assistance, property tax assistance, assistance with homeowner association fees and other common charges, and utility assistance.

### Homeowner Eligibility Criteria and Documentation Requirements

General Criteria apply plus Homeowner is at least one installment payment in arrears on one or more property charges including:

- Electricity
- Natural Gas
- Other commercial home energy (heating oil, propane)
- Water
- Sewer

Homeowner will be required to provide information regarding the payments due, including a copy of the most recent statement. The relevant utility provider will be required to confirm the delinquent balance.

Vermont Bar Association

Foreclosure Mediation and Defense Training

February 1, 2022

Additional link to application portal <https://vermonthap.vhfa.org/>