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Financial Services Update: COVID-19 and Mortgage Servicing

Fannie Lends Assistance to Servicers; CARES Act Forbearance – Servicers’ Communications  
with Borrowers Concerning Repayment

This alert provides information about CARES Act issues that developed this week regarding mortgage servicing. First, the Federal Home Finance Agency (“FHFA”) provided its own form of “forbearance” to servicers of Fannie Mae (“Fannie”) mortgages. Second, the FHFA issued a statement providing guidance to servicers about borrowers’ repayment options at the conclusion of CARES Act forbearance agreements.

I. Fannie Mae and Freddie Mac Assist Mortgage Servicers

Earlier this week, the number of borrowers who requested and were granted forbearance pursuant to the CARES Act was in excess of three million, which, according to the Mortgage Bankers Association, represents six percent of all mortgages nationwide. That figure will undoubtedly grow in the coming weeks. As a result, the FHFA updated its policies and guidance for its regulated entities, namely Fannie, Freddie, and the Federal Home Loan Banks.

First, the FHFA announced a revised policy for Fannie regarding its servicers’ obligations to advance scheduled monthly principal and interest payments for single-family mortgage loans.<sup>1</sup> Previously, when a federally-backed mortgage loan was in a mortgage-backed security, Fannie servicers with scheduled payment remittances were responsible for advancing the principal and interest payments regardless of borrowers’ delinquency and/or forbearance status with the servicers. Conversely, Freddie servicers, who are generally responsible for advancing scheduled interest, are only obligated to advance four months of missed borrower interest payments.

Now, Fannie’s revised policy is now consistent with Freddie’s policy, and essentially provides forbearance to mortgage servicers. Practically, what does that mean for servicers? According to the new Fannie policy, once a servicer has advanced four months of missed payments on a loan in forbearance pursuant to the CARES Act, the servicer will have no further obligation to continue to advance scheduled payments. In addition, the FHFA approved the purchase of certain single-family mortgages in forbearance that meet specific eligibility criteria

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<sup>1</sup> <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Addresses-Servicer-Liquidity-Concerns-Announces-Four-Month-Advance-Obligation-Limit-for-Loans-in-Forbearance.aspx>

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by Fannie Mae and Freddie Mac.<sup>2</sup> Until that policy revision, mortgage loans either in forbearance or delinquent, particularly those becoming delinquent or in forbearance shortly after closing, were ineligible for delivery under Fannie and Freddie requirements.

## II. CARES Act Forbearance – Servicers’ Communications with Borrowers

As a result of alleged misinformation or inconsistent information being provided, inadvertently, by servicers to borrowers in forbearance, the FHFA also issued a statement this week concerning borrowers’ missed payments pursuant to forbearance agreements with servicers. According to the FHFA’s statement issued earlier this week, borrowers in forbearance with a Fannie- or Freddie-backed mortgage are *not* required to repay the missed payments *in one lump sum*.<sup>3</sup>

To clarify repayment options, the FHFA’s statement included three potential options for borrowers who have opted or will opt for forbearance due to COVID-19, *none* of which include lump sum repayments. According to the FHFA, if the COVID-19 forbearance hardship has not been resolved, the forbearance plan can be extended. If, however, the hardship has been resolved, the servicer will work with the borrower to either “[s]et up a repayment plan; [m]odify the loan so the borrower’s payments are added to the end of the mortgage; or [s]et up a modification that reduces the borrower’s monthly mortgage payment.”<sup>4</sup>

Political think-tanks and the media have already focused their attention on this particular issue.<sup>5</sup> Servicers should be mindful of this important guidance from the FHFA going forward and instruct their customer relations and business operations personnel accordingly so that there is uniform and proper communication to borrowers consistent with the FHFA’s guidance.

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<sup>2</sup><https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-that-Enterprises-will-Purchase-Qualified-Loans.aspx>

<sup>3</sup><https://www.fhfa.gov/Media/PublicAffairs/Pages/No-Lump-Sum-Required-at-the-End-of-Forbearance-says-FHFAs-Calabria.aspx>

<sup>4</sup> *Id.*

<sup>5</sup><https://prospect.org/coronavirus/unsanitized-mortgage-servicers-trying-to-steal-homes-again/>;  
<https://www.cnbc.com/2020/03/27/bank-of-americas-mortgage-deferrals-called-misleading-here-is-what-to-know.html>