FANNIE MAE AND FREDDIE MAC
“FLEX MODIFICATION”

NATIONAL FAIR HOUSING ALLIANCE

WEBINAR PRESENTATION
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Reference Materials

- Links to access all guidelines referenced in the presentation are provided on the slides in the “On-Line Resources” section of the presentation.
- A link to download a copy of today’s presentation with additional materials will be sent to attendees after the webinar.

Common Mortgage Servicing Acronyms

- ARM  Adjustable Rate Mortgage
- BRP  Borrower Response Package
- CFPB  Consumer Financial Protection Bureau
- CFR  Code of Federal Regulations
- DTI  Debt to Income
- FMV  Fair Market Value
- GMI  Gross Monthly Income
- GSEs  Fannie Mae and Freddie Mac are “Government Sponsored Enterprises”
- HTI  Housing Expense-to-Income Ratio
Common Mortgage Servicing Acronyms

- HAMP  Home Affordable Modification Program
- LTV   Loan to Value
- MTMLTV  Mark-to-Market Loan to Value
- NPV   Net Present Value
- P&I   Principal & Interest
- PITIA  Monthly Payment of Principal, Interest, Taxes, Insurance, Homeowner Association/Condominium Dues
- PLS  Private Label Securities
- PMI  Private Mortgage Insurance
- TPP  Trial Period Plan

Fannie Mae and Freddie Mac “Flex Modification”

Effective Date
Options Prior to Effective Date
Flex Modification Types
Flex Modification Target Modified P&I (Principal and Interest)
Eligibility Criteria
Ineligibility Criteria
Flex Modification Terms
Comparison: Flex and HAMP Features
**Fannie Mae and Freddie Mac Flex Modification**

**Effective Date**

Servicers must implement Flex Modification no later than October 1, 2017

- Early Implementation was voluntary:
  - Freddie Mac servicers February 15, 2017
  - Fannie Mae servicers March 1, 2017
  - Nationstar (now “Mr. Cooper”) began early implementation

Replaces HAMP and Standard and Streamlined Modifications

- Fannie Mae Lender Letter LL-2016-06
- Freddie Mac Bulletin 2016-22

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**Flex Modification Types**

**Flex Modification**

- Review based on complete Borrower Response Package (BRP) received prior to 90 days delinquency

- Distinguishes between short and long-term hardships
- Modification for long term hardships only

**Streamlined Flex Modification – GSEs not using term “Streamlined”**

- No borrower documentation required
- Servicer reviews after 90 days delinquent to determine eligibility and sends Streamlined offer to eligible borrowers
**Flex Modification**

Flex Modification Based on Complete BRP Received Prior to 90 days Delinquency

- Completed and signed Form 710 Uniform Borrower Assistance Form or its equivalent
- Income documentation outlined in Form 710 based on income type
- Hardship documentation per Form 710 based on hardship type
- IRS Form 4506T-EZ or 4506T Request for Individual Tax Return Transcript signed by borrower if requested by servicer - *4506-T is no longer required in all situations*
  - Change regarding prior mandatory collection of 4506-T or EZ was effective mid-February 2017
    - Freddie Mac Bulletin 2017-1
    - Fannie Mae Serv Announcement 2017-02

**Streamlined Flex Modification**

- Servicer reviews for the Streamlined offer when
  - Borrower becomes 90 days delinquent OR
  - When borrower with a Step-Rate Mortgage becomes 60 days delinquent within the 12 months following the first payment due date resulting from an interest rate adjustment

- Servicer authorized to continue proactive solicitation for Streamlined Flex Modification at its discretion but must not solicit if property has a scheduled foreclosure sale date
  - Within 60 days of the evaluation date if the property is in a judicial foreclosure state or within 30 days of the evaluation date if the property is in a non-judicial foreclosure state
  - *Unless the Servicer is required to continue contact attempts by applicable law*
  - Freddie Mac Bulletin 2017-6; Fannie Mae Serv Announcement 2017-04
**Flex Modification Target Payments**

**Flex Modification with Complete BRP Prior to 90 Days Delinquent**

- **Targeted** modified payment:
  - 20% reduction in principal and interest (P&I) payment and
  - 40% maximum Housing Expense-to-Income (HTI) Ratio
    - PITIA not greater than 40% of borrower’s gross monthly income
    - As in HAMP, PITIA excludes monthly Mortgage Insurance Premium (MIP) and subordinate mortgages

**Flex Modification Target Payments**

**Streamlined Flex – BRP Not Required**

- **Targeted** modified payment: 20% reduction in P&I payment

- GSEs appear to be dropping the term “Streamlined” with the Flex Modification.

- Fannie Mae Lender Letter refers to “soliciting the borrower” for a Fannie Mae Flex Modification
**Flex Modification Target Payments Not Met**

- For BRP and Streamlined Options – borrower eligible for modification even if target payment is not achieved as long as proposed Flex P&I modified payment is less than or equal to existing contractual payment.
- Exception – If reviewed for imminent default (current or less than 31 days delinquent), proposed Flex P&I payment must be less than existing contractual payment.
- Unlike HAMP where modification would be denied if the targeted 31% GMI payment could not be achieved.

**Flex Modification Eligibility Checklist**

- Conventional First Lien Mortgage Loan
- Property and Delinquency Criteria
  - Principal residence
    - At least 60 days delinquent or
    - If current or less than 60 days delinquent – meets imminent default criteria
  - Second home or investment property must be at least 60 days delinquent
  - Property may be vacant or condemned
- Origination date at least 12 months prior to evaluation date
**Flex Modification Eligibility Checklist**

- Modified P&I Criteria
  - Must be less than pre-modified payment for borrower who was current or less than 31 days delinquent at time of evaluation **OR**
  - Must be less than or equal to pre-modified payment for borrower 31 or more days delinquent at time of evaluation

- If an ARM or Interest-Only Mortgage
  - Modification must result in fully amortizing loan and may not be a bi-weekly or daily simple interest loan

- Modified loan retains first lien priority

- Borrower satisfied all requirements of the TPP
  - Timely first TPP payment is evidence of acceptance of TPP offer
  - Timely payments: Borrower made all TPP payments by the last day of the month in which it is due
  - TPP may be extended up to an additional 9 months to obtain approval in bankruptcy

- Borrower executed and returned the Flex Loan Modification Agreement

- Servicer or Fannie Mae/Freddie Mac (depending upon the entity that is the mortgagee of record) executes and dates the Flex Loan Modification Agreement
**Flex Modification Ineligibility Checklist**

☐ Loan is subject to any of the following:
  - Recourse Agreement
  - Indemnification Agreement – Fannie Mae
    - Freddie Mac eligible if certain conditions are met
  - An approved liquidation workout option
  - An active and performing forbearance plan or repayment plan – Freddie Mac
    - unless otherwise directed by Fannie Mae
  - A current offer for another mortgage loan modification or other workout option
  - An active and performing modification Trial Period Plan

☐ Loan has been modified 3 or more times previously, regardless of the modification program or dates of prior modifications

☐ Borrower failed Flex Mod TPP within 12 months of being evaluated for eligibility for another Flex Mod

☐ Borrower became 60 days or more delinquent within first 12 months of Flex Modification effective date and has not brought the mortgage current following the delinquency
**FLEX MODIFICATION EXCEPTION CRITERIA**

- If the eligibility criteria are not satisfied but servicer determines there are acceptable mitigating circumstances, the servicer may submit a request to Fannie Mae or Freddie Mac for review and approval to offer Flex Mod TPP (see Bulletin 2016-22, Freddie Mac Flex Mod. Ref. Guide March 2017 p. 4.)

- Examples of exceptions:
  - Unusual hardship
  - 3 or more previous modifications
  - Failed TPP less than 12 months ago
  - Became delinquent on prior mod after <12 months

- No exceptions for non-conventional loans (FHA, VA, RH) or loans subject to a recourse agreement.

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**FLEX MODIFICATION WATERFALL**

Fannie Mae LL 2016-06 at p. 4-6; Freddie Mac Bulletin at p. 4-6

1. Capitalize eligible arrearages

2. Set modification interest rate to a fixed rate depending upon whether existing rate is fixed, step-rate or ARM and whether post-modification LTV (loan-to-value) is less than, greater than or equal to 80%
   (see p.4-6 for more details regarding ARMS and Step-Rates)
   - Use existing interest rate if capitalized LTV less than 80%
   - Use lesser of existing rate or posted Flex Mod Rate if LTV is 80% or greater
   - LTV - Guidelines use term “Mark-to-Market Loan to Value” - MTMLTV

3. Extend term to 480 months from the modification effective date
**Flex Modification Waterfall**

4. Forbear principal *ONLY IF* capitalized unpaid principal balance (UPB) LTV ratio is greater than 100%  
   • Forbear lesser of  
   o An amount that would create a post-modification LTV ratio of 100% using interest-bearing principal balance **OR**  
   o 30% of the gross post-modification UPB of the mortgage loan  
   • No authority to forgive principal

5. Provide or increase principal forbearance based on whether loan is  
   • Less than 90 days past due when borrower submitted complete BRP **OR**  
   • Greater than or equal to 90 days past due and borrower did not submit a complete BRP before the 90th day of delinquency

**Flex Modification Waterfall**

5. If the loan is **less than 90 days past due when borrower submitted complete BRP**  
   • Provide or increase principal forbearance (if permitted by FB cap below) until a 20% P&I payment reduction **AND** a 40% HTI are achieved **but must NOT forbear more than**  
   • An amount that would create a post-modification LTV ratio less than 80% using the interest-bearing principal balance **OR**  
   • 30% of the gross post-modification UPB of the loan  
   • Interest must not accrue on any principal forbearance  
   • *Complete BRP prior to 90 days delinquency is the only time income information is used in Flex Mod evaluation*
**Flex Modification Waterfall**

5. If the loan is greater than or equal to 90 days past due and borrower did not submit a complete BRP before the 90th day of delinquency

- Provide or increase principal forbearance until a 20% P&I payment reduction is achieved but must NOT forbear more than
  - An amount that creates postmodification LTV ratio less than 80% using the interest-bearing principal balance OR
  - 30% of the gross post-modification UPB of the loan
- Interest must not accrue on any principal forbearance
- HTI is not a factor for loans 90 or more days past due – no income info is considered

**Determining Flex Modification Terms**

Final Modification Terms are Heavily Dependent on LTV

- Specific acceptable methods to determine current fair market value are described in Fannie Mae and Freddie Mac servicing guidelines and the Fannie Mae “e-learning course”
- Servicer may not rely on local tax assessment value to determine fair market value
- If capitalized UPB results in LTV less than 80%, no forbearance will be offered
Fannie Mae offers an on-demand eLearning course that walks you through the Fannie Mae Flex Modification analysis. The course covers Flex Modification eligibility, terms, trial period plan, and how to complete a modification. It also describes the servicer's responsibilities in implementing Flex Mod and retiring the current Standard and Streamlined Modifications.

To access this course and other resources at your convenience:
https://www.fanniemae.com/singlefamily/servicing-training

Go to “Borrower Solutions and Default Management” – then to “Flex Modification” in right hand box under tab “Online Courses/Microlearning”

A printout of the e-learning course will be included in the materials you will receive after the webinar.

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**EXAMPLE #1: EQUITY IN THE HOUSE**

**LTV < 80% AFTER CAPITALIZATION OF ARREARS**

- Step 1 - New capitalized UPB $75,000 and Property Valuation $100,000
- Step 2 - Current Interest Rate is fixed.
  - No reduction in interest rate because new capitalized balance is < 80% LTV
  - See Waterfall Step 2 for additional interest rates situations
- Step 3 - Extend term to 480 months from mod effective date at current rate
- Step 4 No forbearance allowed because LTV < 100% AFTER CAPITALIZATION OF ARREARS
- Servicer offers modification if modified P&I is ≤ contractual P&I, even if target 20% reduction in P&I is not met
  - Except modified P&I must be less than contractual if borrower is current or less than 31 days delinquent
- Step 5 Income is not a factor in this example whether or not the borrower applies before the loan is 90 days delinquent because no additional forbearance allowed because LTV < 80% AFTER CAPITALIZATION OF ARREARS
**Example #2: The Difference 90 Days Makes**

- Step 1: New Capitalized UPB $120,000, Property Value $100,000 result is LTV > 100%
- Step 2: Current interest rate is 5.5% fixed, P&I $575, T&I $200. Flex mod rate is 4.5%.
- Step 3: Extend term to 480 months from mod effective date
- Step 4: In Waterfall: Forbear *lesser of*: amount to create post-mod LTV of 100% or 30% of gross post-mod UPB ($20,000 vs $36,000)
- First forbear $20K to create 100% MTMLTV: $100,000 Interest Bearing

**Example #2: The Difference 90 Days Makes**

- Amortize $100K at 4.5% over 480 months
  - P&I of $449.56, PITI of $649.56. Reduction in P&I is 22.2%. HTI is 43.3%
  - Approve if >90 days behind *because income is irrelevant*
  - *If complete BRP less than 90 days*: modified P&I must be $400 to achieve target 40% HTI.
  - Forbear another $11,100 (within 30% forbearance cap), amortize remaining $88,900 480 months at 4.5%: P&I $399.66 – PITI $599.66 ($49.90 less)
**SHOULD BORROWER SUBMIT BRP AFTER 90 DAYS?**

**YES**

- All borrowers should submit a complete BRP which triggers servicer compliance with the CFPB Loss Mitigation Rule 12 CFR §1024.41

**COMPARISON OF FLEX AND HAMP MODIFICATION FEATURES**

**Similarities**

- Servicers have delegated authority to offer TPP and modification to eligible borrowers
- Unpaid late fees are waived and no up front contribution or modification fee
- Escrows are required
- Borrowers in active Chapter 13 or Chapter 7 bankruptcy are eligible upon request to servicer for review/modification may need bankruptcy court approval
- Allows for simultaneous assumption and modification
  - Freddie Mac § 9207.2
- Mortgage insurer must approve if servicer does not have delegated authority from insurer to offer Flex modification
**Comparison of Flex and HAMP Modification Features**

**Differences**

- No pre-January 2009 loan origination requirement
- No minimum monthly pre-modified PITIA payment threshold
- **No individual NPV test**
- No borrower incentives
- Eligible for modification even if target payment not achieved
- May be evaluated for Flex Modification more than once even if failed a Flex TPP or Flex Modification (if time requirements met - see eligibility slides)
- No collection of Government Monitoring Data
- Dodd-Frank Affidavit not required

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**Private Label Securities (PLS) and Loans Held in Portfolio**

**Mortgage Bankers Association**

September 2016 “One Mod” Proposal: *Life After Hamp – The Future of Loss Mitigation*

[https://www.mba.org/issues/residential-issues/one-mod-a-post-hamp-loan-modification](https://www.mba.org/issues/residential-issues/one-mod-a-post-hamp-loan-modification)

MBA Working Group drafted proposal to offer recommendations to the servicing industry and to Fannie Mae/Freddie Mac regarding post-HAMP loss mitigation protocols

Some but not all features of One Mod proposal were adopted by Fannie Mae and Freddie Mac in the Flex Modification
**IN-HOUSE/PROPRIETARY MODIFICATIONS**

**PLS AND PORTFOLIO LOANS**

- They seem to be all over the place
- Temporary interest rate and payment reductions
- Return of the “up front contribution” – Rushmore
- Criteria are vague, mysterious, and contradictory:
  - Denied because “Income is insufficient to afford required payment”
  - Denied because “Current payment is affordable based on your income”

**DEALING WITH MYSTERY MOD PROGRAMS**

- CFPB Loss Mitigation Regulation 12 CFR 1024.41: (a) no right to any specific loss mitigation program BUT (d) denial notice must state specific reasons for the denial
- Appeal denials and demand specificity about loan mod eligibility criteria and the inputs considered in your case
- Send Request for Information re: loss mitigation review (12 CFR 1024.36) and/or use discovery if in litigation
- File CFPB Complaint: [https://www.consumerfinance.gov/complaint/](https://www.consumerfinance.gov/complaint/)
- Share information with advocates
**DOCUMENTING WHAT IS OFFERED POST-HAMP**

- Send examples of TPPs, modifications, forbearance agreements to dcipollone@nationalfairhousing.org

If another organization announces a similar collection effort, send to either Diane or other agency. We will collaborate and share information received.

Include

1. Identity of investor or whether FHA/VA/RH loan
2. Is the offer affordable in the long term?
3. Will borrower accept the offer?
4. Please send final modification agreement if you first send a TPP

**DOCUMENTING WHAT IS OFFERED POST-HAMP**

- Features to look for regarding loss mitigation options offered on securitized loans and loans held in servicer’s portfolio:
  - whether modification is temporary or permanent
  - upfront contribution
  - does not capitalize all arrears
  - loan modification administrative fee
  - interest bearing balloons
  - waivers of claims and defenses
  - requiring borrower discharged in bankruptcy to reaffirm the debt
  - other features not in borrower’s best interests
On-Line Resources
End of HAMP

- https://www.hmpadmin.com
  - MHA Supplemental Directive 16-02
  - MHA Supplemental Directive 16-03
- Fannie Mae: https://www.fanniemae.com/content/guide/servicing/d2/3.2/07.html
- Freddie Mac: http://www.freddiemac.com/singlefamily/service/mha_modification.html

On-Line Resources
Servicing Guidelines as of 9/25/17

Confirm whether client’s loan is owned by Fannie Mae or Freddie Mac

- Fannie Mae  https://www.knowyouroptions.com/loanlookup
- Freddie Mac  https://ww3.freddiemac.com/loanlookup/

Confirm whether loan is still FHA Insured, i.e., has not been sold by HUD through the DASP program

- Call HUD National Servicing Center, Oklahoma at (877) 622-8525
- Send Request for Information CFPB 12 CFR § 1024.36 to the servicer’s designated address
ON-LINE RESOURCES
SERVICING GUIDELINES AS OF 9/25/17

FANNIE MAE GUIDELINES

Fannie Mae Lender Letter LL -2016-06 Announcing Flex Modification
https://www.fanniemae.com/content/announcement/ll1606.pdf

Access current and prior Fannie Mae Servicing Guides, Lender Letters, Servicing Announcements and forms via Fannie Mae website with link to servicing guide on AllRegs https://www.fanniemae.com/singlefamily/servicing
- Part D - Providing Solutions to a Borrower
  - D2: Assisting a Borrower Who is Facing Default or in Default

ON-LINE RESOURCES
SERVICING GUIDELINES AS OF 9/25/17

FREDDIE MAC GUIDELINES

Freddie Mac Bulletin 2016-22 Announcing Flex Modification December 14, 2016

Freddie Mac Flex Modification Web Page - Access Flex Mod Fact Sheet and Term Sheet http://www.freddiemac.com/singlefamily/service/flex_modification.html
ON-LINE RESOURCES
SERVICING GUIDELINES AS OF 9/26/17

FREDDIE MAC GUIDELINES
Access current and prior Freddie Mac Servicing Guides, Bulletins, Industry Letters and forms on AllRegs via Freddie Mac website: http://www.freddiemac.com/singlefamily/guide/

Mortgage Servicing Sections
- Series 9000 Servicing Default Management
  - Chapter 9101 – Delinquency Management for Mortgages Secured by Primary Residences

ON-LINE RESOURCES AS OF 9/26/17

CONSUMER FINANCIAL PROTECTION BUREAU
MORTGAGE SERVICING REGULATIONS

These are the regulations currently in effect. Amendments to some of these regulations take effect on October 19, 2017

RESPA Subpart C – Mortgage Servicing (Real Estate Settlement Procedures Act)
http://www.ecfr.gov/cgi-bin/text-idx?SID=a45139c86eb3d16799f924f117d48c89&mc=true&node=sp12.8.1024.c&rgn=div6

TILA Subparts C and E (Truth in Lending Act)
http://www.ecfr.gov/cgi-bin/text-index-c?c=ecfr&tpl=/ecfrbrowse/Title12/12cfr1026_main_02.tpl
**ON-LINE RESOURCES AS OF 9/26/17**

**MFY SPREADSHEETS**

- MFY Legal Services, now known as “Mobilization for Justice” has developed spreadsheets with explanations to check eligibility for the Flex Mod, FHA-HAMP and the current Fannie Mae/Freddie Mac Standard and Streamlined Modifications.


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**Reminder – Please send all types of TPPs and Loan Modification Offers to**

**Diane Cipollone**

dcipollone@nationalfairhousing.org  
410.693.0943
Save the Date for Upcoming Webinar

Wednesday, October 18, 2017 – 2:00-3:30 p.m. Eastern time

Amendments to the CFPB Mortgage Servicing Regulations

The October webinar will cover amendments regarding notice of a complete application, transfer of servicing, dual tracking, and the duplicate request rule, which are effective Oct. 19, 2017. The webinar will also include a brief overview of additional new regulations regarding successors in interest and the amendments relating to monthly statements for borrowers in bankruptcy, which are effective April 19, 2018. Registration information will be sent in early October.

QUESTIONS AND ANSWERS