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# COVID-19 PAYMENT DEFERRAL-ELIGIBILITY AND LIMITATIONS

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The Covid-19 pandemic shook our communities when it stormed the scene in March 2020, twisting and bending the archetype of all industries. The mortgage industry was no exception and simultaneously faced foreclosure moratoriums while navigating the financial insecurity of millions of borrowers who were unable to make payments. In response to the crisis, the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") was enacted, which provided for streamlined mortgage payment forbearances offering instant respite to borrowers dealing with Covid-19 related hardships. As these temporary forbearance plans begin to expire, both borrowers and servicers are faced with determining the most effective way to cure the forbearance arrears. Many borrowers, especially those in bankruptcy, may struggle to repay the forbearance arrears at the end of the forbearance period. The GSEs addressed this concern by developing an option beyond reinstatement and repayment plans.

In July 2020, Fannie Mae and Freddie Mac implemented a new payment deferral option designed to help borrowers become current on their mortgages as efficiently as possible. The Covid-19 Payment Deferral option permits eligible borrowers to defer the unpaid mortgage payments from their forbearance period into a non-interest-bearing balance that is due either upon loan maturity or the earlier of, the sale of the property, a refinance, or payoff of the loan. In order to be eligible for this option, the Debtor:

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1. Must be on a Covid-19 related forbearance plan
2. Experienced a financial hardship due to Covid-19 that impacted their ability to make mortgage payments
3. Resolved the hardship
4. Can resume making full monthly mortgage payments
5. Cannot reinstate the mortgage or afford a repayment plan to cure the delinquency
6. Was less than two months delinquent as of March 1, 2020, and
7. Is not more than 12 months delinquent when evaluated for the deferral option

If a borrower qualifies for the Covid-19 Payment Deferral, the deferred balance may consist of up to twelve months of past due principal and interest payments and out of pocket escrow advances. However, neither the escrow portion of the missed monthly mortgage payments nor projected escrow shortage may be included in the deferred balance. Additionally, allowable servicing advances made in the ordinary course of business may be included in the deferred balance but any notary, title or recording fees generated by the deferral cannot be included.

The benefits of this option are the ease of determining eligibility and the simplicity in bringing the borrower current as opposed to tracking a lengthy repayment plan in conjunction with ongoing mortgage payments and Chapter 13 bankruptcy plan payments. In some jurisdictions a Notice of Payment Deferral may be sufficient to advise the Court of the resolution. In other jurisdictions, a Motion to Approve the Payment Deferral may be required like motions seeking approval for loan modifications. However, there are also some potential burdens to overcome with this option such as, ensuring lien priority especially when there is a

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second mortgage and potential vulnerability to lien stripping as the deferred balance may be viewed as a junior lien. Given the novelty of the Covid-19 forbearance and the evolving nature of resolution options, the framework continues to develop in Bankruptcy Courts and is magnified by the jurisdictional nuances in this dynamic arena.