This is the ninth in a series of articles from NCLC that provide advice for families in financial difficulty. Other articles address debt collection harassment, medical debt, reverse mortgages, car repossessions, wage and bank account garnishment, criminal justice debt, and debts owed to the IRS. Click here [1] for a list linking to all the articles in this series.

This is also the second in a series of three articles dealing with home mortgages. This article details options to lowering or delaying mortgage payments for Fannie Mae, Freddie Mac, FHA, VA, and RHS mortgages. The article [2] covered how to obtain information about your mortgage payments, what happens if you make only a partial payment, disputing the amount due, and key information about escrow, property taxes, and insurance. The next article will explain rights to defend or delay a foreclosure. All of these topics are examined in detail in NCLC’s Foreclosures and Mortgage Servicing [3].

The Help Offered Depends on the Lender Involved

Different lenders have different loss mitigation guidelines. Fortunately, just a few entities own, insure, or guarantee almost all residential mortgage loans in the United States: Fannie Mae, Freddie Mac, the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA), and the U.S. Department of Agriculture’s Rural Housing Service (RHS). You must identify who owns or insures your mortgage in order to know your options for modifying your mortgage payments. To determine who owns your loan, use these tips:

- Fannie Mae: Go to www.knowyouroptions.com/loanlookup.
- Freddie Mac: Go to https://ww3.freddiemac.com/loanlookup.
- FHA: Because some lenders use FHA forms for all their mortgages, do not assume you have an FHA mortgage just because your loan documents say FHA or HUD. Look at your monthly statements for an itemized charge for FHA insurance. Or look for a box checked off “FHA insured” on your settlement statement.
- VA-insured: Loans and billing statements identify VA insurance.
- RHS guaranteed loan: Closing documents will reference to RHS insurance coverage. Older loans may refer to FmHA insurance or guarantees.
- RHS direct loans: Closing documents should mention the “Section 502 Single-Family Housing Program” and the loan will be serviced by a national servicing center in St. Louis identifying itself as a servicer of RHS direct loans.
- For all loans: Send a request for information letter to your servicer (see the previous article [2] in this series.).

In unusual situations, someone other than the above entities will own your mortgage loan, and then it may be more difficult to learn your loss mitigation options. Try asking for options similar to those available for Fannie Mae and Freddie Mac loans, since these set the industry standard.

The HAMP Program Has Expired for New Applications. The Home Affordable Modification Program (HAMP), a major federal effort to reduce foreclosures during the Great Recession, and related programs expired at the end of 2016. This article instead describes loan modification programs in place today. (Note though that FHA calls its current loan modification program FHA-HAMP.)

Options for Fannie Mae and Freddie Mac Loans

Fannie Mae and Freddie Mac are large government-chartered corporations that own or guarantee over one-half of the home mortgages in the country. Fannie Mae and Freddie Mac have similar loss mitigation guidelines, divided between short-term options for temporary problems and long-term options for significant changes in your financial circumstances. When you ask for loss mitigation help for a Fannie or Freddie loan, your servicer must review your request by considering a series of specific options in a required order. If you do not qualify for the first one on the list, your servicer must go on to the second, continuing until you qualify for some form of relief.

To request loss mitigation from either Fannie or Freddie, complete and submit Form 710—Mortgage Assistance Application [4] to your servicer. Indicate you are experiencing hardship, either a loss of income or increase in expenses. You need not be in default, if default is “imminent” due to a change in your financial circumstances.

Options for Temporary Hardships. Under Fannie and Freddie guidelines, if your servicer considers your hardship to be temporary, it should offer you a repayment or forbearance plan. A temporary hardship might be a short-term drop in income (such as a loss of your job) or a one-time major expense. You may not agree with a servicer’s assessment that your hardship is
only temporary, such as when your loss of income is long-term due to a divorce or medical condition. Press this point because, as described below, you have more options where a hardship is long term.

Repayment plans are applicable when your temporary hardship is now over, but you are so far behind on your mortgage payments that you cannot get caught up right away. Fannie and Freddie will offer you a repayment plan where for up to a year you make each month your regular mortgage payments and a portion of your back-due payments. The repayment plan must be realistic, so that you can make the increased payments over the repayment plan period. In judging what you can afford, remember that your temporary financial difficulties will also have left you with other overdue obligations, such as utility bills or urgent needs for your children that have been postponed.

Forbearance plans, on the other hand, apply when you are currently experiencing a temporary hardship. A forbearance plan allows for reduced or suspended payments for up to six months, and even longer if you are unemployed. At the end of the forbearance period, the servicer must evaluate you for a long-term solution. What that option will be will depend on your financial circumstances at the time. It could be a repayment plan, a permanent reduction in payments, or an option involving your loss of ownership of the home.

Home Retention Options for Long-Term Hardships—The Flex Modification. The Flex Modification is Fannie and Freddie’s primary loss mitigation option for borrowers who want to keep their homes but are facing a long-term hardship (such as your disability, the death of your spouse, or divorce). Your servicer can offer you a “Flex Mod” in response to your loss mitigation application, or your servicer can offer this option unsolicited, based on its unilateral determination that you qualify.

The Flex Mod Based on the Servicer’s Unilateral Evaluation. Fannie and Freddie require that their servicers review all borrowers for eligibility for a Flex Mod when a borrower is between 90 and 105 days behind in payments (they can also do this review a second time later). The servicer performs this evaluation based solely on information from its own records, including a property valuation, your current interest rate, the amount of your arrearage, and the unpaid balance that you owe. The servicer does not need income or any other information directly from you to decide on your eligibility. Instead, it applies a formula to the information it already has.

If the result shows you are eligible, the servicer will offer you a trial modification plan that will lower your payments. After you make three-to-four required monthly trial payments, you sign a permanent Flex Modification agreement and your loan is modified so that your mortgage payments are reduced.

The Flex Mod Based on Your Loss Mitigation Application. You can also apply directly to your servicer for a Flex Modification using the Form 710 application. To qualify, the servicer must find that your hardship is not temporary and that you are at least 60 days in default or meet the “imminent default” standard if you are less than 60 days behind. You can apply for a Flex Mod as long as a foreclosure sale has not yet occurred. If you submit your initial complete application at least 37 days before a scheduled foreclosure sale, the foreclosure must be delayed.

The Flex Modification Terms. With one exception which will be discussed below, the terms of a Flex Mod is the same whether you receive a unilateral offer from your servicer or apply for the modification yourself. The Flex Mod formula favors borrowers with little or no equity in their homes, and particularly borrowers who are underwater (meaning they owe more on the mortgage than the home is worth). The formula can also provide a significant benefit for borrowers whose interest rate is well above the current market interest rate. The servicer must offer you the modification if the modification reduces your monthly payment.

The flex modification involves four changes to your loan terms. First the servicer adds your current arrearage to your unpaid principal balance, so that you repay your arrearage gradually each month over the full term of the loan. Second, as long as your equity in the home is less than 20% of the home’s current market value, the servicer reduces your interest rate to a current national market rate. Third, the servicer extends the repayment term of your loan to forty years from the date of the modification, thus reducing your monthly payments.

And fourth, you are charged interest only on part of the principal balance, called principal forbearance; the remainder of your loan principal is a zero interest loan. The smaller the portion of your balance that is subject to interest charges, the lower your monthly payment. You still owe the part of the principal that has zero percent interest and you must repay it eventually; also, this portion of the loan is still secured by your home. First, the servicer sets aside the amount of your outstanding principal on the loan that exceeds your home’s current market value. For that part of your principal, you pay zero percent interest.

After modifying your loan using the four steps described above, the servicer determines if the resulting payment of interest and
principal reduces your payments by at least 20%. If not, the servicer may further reduce the interest-bearing principal to an amount equal to only 80% of the property’s current market value, further reducing your monthly payment. Nevertheless, no more than 30% of your principal can be charged zero interest.

The Special Flex Mod Terms for Borrowers Who Submit an Application. In a Flex Modification calculation available only for those who initiate the application process before the loan is 90 days overdue, the servicer targets a new payment (for principal, interest, and escrow) that is not more than 40% of the borrower’s gross household income. This is over and above any reduction created by the Flex Mod evaluation described immediately above.

Options That Involve Giving Up Your Home. If your servicer finds you are not eligible for other Fannie or Freddie loan modification options, it must then evaluate you for options that involve giving up your home. You may also want to consider these scenarios even though you qualify for an option that instead reduces or delays your mortgage payments.

No one likes to give up their home, but there are options which involve giving up your home that are better for you if a foreclosure is otherwise inevitable. This is a hard decision, as it involves emotional as well as family and financial considerations. But sometimes not saving your home is the wisest financial move you can make, particularly if your house is worth substantially less than the combined amount of your mortgages.

On the other hand, moving may involve leaving your neighborhood, result in your children having to change schools, or require you and your partner to make a difficult commute. You will have to consider the costs and benefits of renting as well.

Fannie and Freddie may propose a “short sale” that offers you benefits if your home is worth less than the mortgage balance. In this scenario, you would sell your home yourself to a third party, usually through a realtor. Fannie or Freddie accepts the sale proceeds to satisfy your mortgage, even if the proceeds are less than the amount owed. Realtors, particularly those who have experience dealing with a particular servicer, may help convince the servicer to agree to a short sale. As a last resort, the servicer will consider a “deed in lieu of foreclosure” transaction, where you voluntarily transfer title to your property to the servicer in exchange for a release from your liability on the mortgage debt.

Servicers are authorized to provide relocation assistance up to $3,000 in connection with these options. In the “deed in lieu” scenario, there is also a short-term lease option available which can ease the move from the home.

Short sales and deeds in lieu are almost always poor choices if your home is worth significantly more than your outstanding mortgage balances. If you have to lose your home, it is far better to sell it on your own because you get to keep the amount by which the sale price exceeds the total of first and second mortgages on the home. But you have to act quickly before the home is sold in foreclosure. If you ask, the servicer is likely to give you a short delay in a foreclosure to let you sell the home yourself, but only if you already have made substantial progress toward a sale, such as a signed “purchase and sale” agreement.

If you have favorable mortgage terms, it might be attractive for the buyer of your home to assume your mortgage, that is take over your mortgage payments. A mortgage is assumable if the original loan documents say it is or, in most states, if the documents are silent on the issue. Other mortgages contain a “due-on-sale” clause, preventing assumption in most situations. But even then lenders cannot block certain transfers from parent to child or from one spouse to another. Lenders also may voluntarily agree to an assumption even when the mortgage contains a due-on-sale clause.

You should apply for a short sale or deed in lieu of foreclosure by completing and sending the servicer the same Form 710 loss mitigation application, which prevents a foreclosure sale while your request is being considered. For both short sales and deeds in lieu the documentation requirements are less strict the further behind in payments you are. If your financial documentation shows that you have the ability to contribute funds to reduce the amount owed, the servicer can require that you make some contribution to reduce the debt before a short sale or deed in lieu can be approved. Be sure to get the terms of a short sale or a deed in lieu in writing, including any release from liability that the servicer agrees to give you.

Second mortgages and other liens against your property may create barriers to a short sale or a deed in lieu, because the new owner will not have clear title. However, Fannie and Freddie guidelines allow the servicer to advance you funds to get rid of small junior liens if this facilitates the transfer of the property.

Tax Consequences of Short Sales and Deeds in Lieu. Many short sales and “deeds in lieu of foreclosure” cancel part of your debt, which has tax implications since forgiveness of debt can be treated as taxable income in the year the forgiveness took place. Nevertheless, you will typically not owe any additional taxes. There are several common situations where the IRS will not count the discharged debt as income. Because tax issues are complicated, get help from a qualified tax professional.
Some lenders will still send an IRS Form 1099-C both to you and to the IRS any time they agree to forgive your debt. Do not ignore this Form 1099-C, but instead file IRS Form 982 with the IRS, attaching an explanation, if applicable, why the discharged debt should not count as income. You also will have to file the longer Form 1040 tax return.

**Options for FHA-Insured Mortgages**


HUD-funded foreclosure prevention counseling can be obtained from your HUD regional office or you can call 800-569-4287 (TDD 800-877-8339) or go on www.hud.gov to find HUD-approved counselors. Check a counseling agency’s website to see if it provides foreclosure prevention counseling.

If you experience difficulties with a servicer who is not following FHA guidelines, you can seek help through the FHA National Servicing Center (NSC). Mail Department of Housing and Urban Development, National Servicing Center, 301 N.W. 6th St., Suite 200, Oklahoma City, OK 73201 or call 888-297-8685. Be sure to send your servicer a copy of any letter you send to the NSC.

**Servicer Initial Obligations When You Are Delinquent.** Servicers will send you notice of your default of an FHA mortgage which explains what you need to do to get your loan reinstated. Servicers must also make reasonable efforts to arrange a face-to-face interview with you before three full monthly installments are overdue. The servicer may not initiate foreclosure until it has considered whether you qualify for one of the loss mitigation options discussed below.

**Before You Get to the FHA-HAMP Program.** While FHA-HAMP can reduce your monthly loan payment, some borrowers are not eligible for FHA-HAMP—they only qualify for a repayment plan or a forbearance agreement, which do not permanently change the basic terms of their loans. In a repayment plan, each month you make your normal monthly payment plus pay a portion of your delinquent payments on top of that. The plan gives you the opportunity to get caught up on your back-due payments over a period of months. A forbearance agreement does not excuse you from eventually making all your payments, but does allow you for a period of months to reduce or skip your payments.

There are three basic situations where you will only be offered a repayment plan or a forbearance agreement instead of the FHA-HAMP program:

1. **If you have not experienced a verified loss of income or increase in living expenses,** the servicer must offer you a short-term repayment plan or forbearance agreement. If the plan is going to extend for longer than three months, it must be in writing; shorter plans can be provided orally. The plans cannot extend longer than six months, unless HUD authorizes the extension.
2. **You do not have “continuous income”** that is reasonably likely to continue through at least the next twelve months. Continuous income includes employment income, pensions, Social Security, disability, veterans’ benefits, and child support payments. FHA’s option for borrowers without continuous income is a special forbearance plan that reduces or suspends your payments for a fixed time or until you begin to receive continuous income, up to a maximum of one year. At the end of the forbearance period the servicer must evaluate you for the full range of FHA loss mitigation options.
3. **If you have too much income,** you can be forced into a repayment agreement of up to six months. This happens if you have sufficient net income left after you pay your normal monthly living expenses and your recurring monthly debt, so that you can handle a repayment agreement that will bring you current within six months. In addition, if your current total mortgage payments take up less than 31% of your gross income, you must also be considered for a repayment plan of up to six months.

**Who Qualifies for the FHA-HAMP Program.** Unless you are excluded by one of the threshold tests described above, your servicer must evaluate you for FHA-HAMP which can permanently reduce your monthly payments. FHA-HAMP uses a complicated formula set out below to determine your loan modification, based on your income and loan payment. Once this loan modification is determined, you will be on a three-month trial plan on reduced payments. If that goes well, you will receive a permanent modification with lower mortgage payments.
To qualify for the FHA-HAMP program, the property must be owner-occupied. The borrowers must be in default or at imminent risk of default. Borrowers who have received a chapter 7 bankruptcy discharge and did not reaffirm their mortgage debt are eligible for FHA-HAMP, as are borrowers currently in bankruptcy. A default on an FHA-HAMP trial modification does not preclude later eligibility for a new modification, so long as the borrower can demonstrate changed circumstances justifying the new application. Borrowers are limited to one permanent FHA-HAMP modification in a two-year period.

Calculating Your FHA-HAMP Loan Modification. The first step in determining your FHA-HAMP loan modification is to calculate a monthly payment that FHA thinks you can afford, called the “target payment amount.” Select the greater of 80% of your current monthly payment (including escrow) with 25% of your gross monthly income. The target payment is the lesser of that resulting number and 31% of your gross monthly income.

The next step initially calculates a proposed modification. The total amount of outstanding unpaid interest, advances, and legitimate foreclosure fees and costs are added to the existing principal balance to form a new modified principal balance. This new balance is amortized over a 360-month term running from the modification date. A new fixed interest rate is set at a current market rate. These calculations generate a new monthly payment, which is added to the current monthly escrow payment to produce an estimated total monthly modified payment.

If this initial modification calculation produces a number at or below the “target payment amount,” the servicer should offer you a modification with those fixed terms. If it produces a number higher than the “target payment amount,” then FHA determines that you need more help. Your servicer must then reduce the principal balance to which the new interest rate and 360-month term is applied to reach a lower monthly payment for you. With one exception discussed below, the principal balance is reduced enough so that your payment gets down to the target monthly payment. FHA calls the amount of the principal balance that is reduced a “partial claim.”

A partial claim does not eliminate your obligation to pay the amount reduced from your principal balance, but instead is an interest-free loan, secured by a secondary lien on your home. You do not have to pay this loan off until you pay off your FHA first mortgage or stop living in the home. The FHA-HAMP program can provide you with as large a partial claim as you will need to bring your payments down to a “target payment,” but the total number of partial claims FHA will offer you during your mortgage is limited to 30% of the unpaid principal balance owed at the time of default.

If the cap is reached, your payment is lowered as far as possible until the partial claim cap is reached, as long as your total modified monthly payment is lower than 40% of your gross monthly income. If your payment would be higher than 40% of your gross income, you should be considered for special forbearance or an option involving loss of your home.

Short Sales and Deeds in Lieu of Foreclosure. FHA provides for a short sale, letting you sell your home and use the proceeds to satisfy your mortgage even if the proceeds are less than the amount you owe on the loan. The FHA limits approvals of short sales based on the ratio of the property’s value to the outstanding debt and on the ratio between the short sale purchase price and the property’s value. To qualify for an FHA short sale you must document financial hardship. No documentation is needed if you occupy the property, are ninety days or more delinquent, and have a credit score below 620.

You must be able to sell your home within four months of your approval. This period may be extended for two more months if you have a signed purchase and sale agreement or if your lender qualifies under certain program rules. The sale proceeds must pay off any liens that are junior to the FHA mortgage. The FHA will provide you with an incentive payment of up to $3,000 when you complete the short sale.

FHA offers a “deed in lieu of foreclosure” option that lets you transfer your home voluntarily to the FHA in exchange for a release from all your obligations under the mortgage. You must submit verification of hardship, and a complete application with calculation of your cash reserves. You can avoid this documentation requirement if you occupy the property, are ninety days or more delinquent, and have a credit score below 620. The FHA will generally not accept a “deed in lieu” if you have a tenant. Instead you must first attempt to sell your home through a short sale.

The FHA pays you $2,000 for completing a deed in lieu. However, if there are any other liens on the property, the payment may be used to help pay off those liens. The deed in lieu option will not be approved unless all junior liens can be paid off with the transfer.

A short sale and a deed in lieu of foreclosure can have tax implications. For more on both these tax implications and for other useful information about short sales and deeds in lieu, refer to the discussion above in this article concerning Fannie Mae and Freddie Mac short sales and deeds in lieu.
Options for VA Mortgages

For mortgage loans guaranteed by the Department of Veterans Affairs (VA), the VA expects the servicer to exhaust all possible alternatives before pursuing foreclosure. (In some cases, the VA actually takes over the loan and then you work with the VA instead of the servicer.) If the servicer fails to exhaust the alternatives discussed below, contact one of the eight VA regional centers. The contact information for the center serving your state is found at www.benefits.va.gov/HOMELOANS/contact_rlc_info.asp.

The major loss mitigation options for VA-guaranteed loans are describe below. For more information, see VA Servicer Handbook M26-4, available at www.benefits.va.gov/WARMS/M26_4.asp.

Repayment Plans. A repayment plan is a written agreement between you and your servicer to reinstate a loan that is at least two months in default. For a period of at least three months (you can request a longer period) you pay the normal monthly payment and an agreed upon portion of the arrearage. Repayment plans may be renegotiated at any time.

Special Forbearance. Special forbearance is a written agreement between you and the servicer setting out terms for reinstating a loan that is at least two months in default. The servicer agrees to suspend all payments or accept reduced payments typically for three-to-four months, but the forbearance can be approved for longer periods. You agree to pay the total delinquency at the end of the forbearance period or agree to some other repayment option at that time.

Modifications. The servicer may modify a VA-insured loan without the agency’s prior approval. The loan must be in default or, with VA approval, at imminent risk of default. The cause for the default must have been addressed so that it is not expected to re-occur. You must be considered a good credit risk, but a past default is not determinative for this factor, and you must have made at least twelve payments on the loan.

If you meet these conditions you can qualify for a “standard VA modification,” where your servicer adds unpaid interest, taxes, insurance, certain assessments (such as for water and sewer charges) to the new principal balance. Legal fees and foreclosure costs may also be added to the modified balance, if they do not exceed the VA’s fee schedule. Late fees and processing costs may not be added. The new principal balance is then amortized over a longer period of time and with a different interest rate, thus lowering your mortgage payments.

The standard modification may result in a decrease or up to a one percent increase in the interest rate, and the new rate must be fixed. The modification may extend the loan term to the shorter of 360 months from the date of the modification or 120 months from the original loan maturity date (unless the original loan term was less than 360 months, in which case the loan term may be extended to 480 months from the loan origination date).

Without VA approval, a loan cannot be modified more than once within three years and not more than three times during the life of the loan. A modification that does not meet the standard guidelines discussed above may still be approved if the VA determines that the modification is in the best interest of the veteran and the agency.

A “VA Affordable Modification” is another option that targets a total monthly payment not greater than 31% of your gross monthly income. After your arrears are added to your principal balance, the interest rate may be reduced to a fixed level based on current market rates, the term may be extended, and payments may be further reduced through principal forbearance. You must submit a complete loss mitigation application to be considered for this option.

Finally, the VA allows servicers at their discretion to offer a trial plan for a “Streamline Modification” without a complete application. The offer should provide for a reduction in the principal and interest payment of at least 10%. The borrower accepts the offer by beginning trial plan payments, and, after making three monthly payments, signs a permanent modification agreement.

Assumptions. If a workout is unsuccessful, your servicer may hold off a foreclosure for a reasonable amount of time to permit you to sell or transfer of the property to someone else. It may be attractive for the new owner to “assume,” that is take over, your mortgage payments. The VA must approve the assumption and the new owner must pay a fee of one-half of 1% of the loan balance as of the date of transfer. There is also a processing charge that cannot exceed $300 and the cost of a credit report, unless state law sets a lower amount. The VA in appropriate circumstances can even reduce the loan balance for the new owner to the amount the new owner paid for the home.
Compromise Sales and Deeds in Lieu of Foreclosure. A “compromise sale” is what the VA calls a short sale. For both the compromise sale and deed in lieu of foreclosure, the servicer does not have to review your financial information if you are more than 60 days past due (being past due is also referred to as being “in arrears”). For both options, you lose your home, but your mortgage loan debt is fully satisfied. The VA authorizes servicers to advance you up to $1,500 for moving expenses.

In a compromise sale, you sell the home yourself. In the “deed in lieu” scenario, you turn the home’s title over to the servicer. The VA must approve any deed in lieu, although it strongly encourages servicers to accept deeds in lieu if no alternative allows retention of the home and there is little likelihood of a short sale. The deed in lieu will usually not be accepted if there are any junior liens on the property. For more advice on short sales and deeds in lieu, see this article’s discussion concerning Fannie Mae and Freddie Mac short sales and deeds in lieu.

Options for the Rural Housing Service (RHS) Guaranteed Loan Program

The Rural Housing Service (RHS), a division of the U.S. Department of Agriculture and formerly known as FmHA, runs two home loan programs. This section describes options for the program that guarantees loans made by private lenders. For more detail, see chapter 18 of RHS Handbook HB-1-3555, available at www.rd.usda.gov/files/hb-1-3555.pdf. The next section describes options for the RHS program that makes government loans directly to borrowers.

Special Forbearance. An RHS special forbearance is an agreement between you and the servicer to temporarily reduce or suspend payments for one or more months, followed by a repayment plan which may be combined with a loan modification. There is no time limit on the repayment plan, so long as, during the term of the plan, the amount past due (also referred to as “accumulated arrears”) do not exceed an amount equal to twelve monthly mortgage payments. To be eligible for a forbearance plan you must have experienced a loss of income or increase in expenses and your payment must be at least thirty days past due (“in arrears”).

Modification. RHS offers two modification options that permanently change one or more loan term. These options, described below, are available if you have experienced a permanent drop in income or increase in expenses, have regular income to support reduced payments, and are in default or at imminent risk of default.

The Standard Modification. This option allows your servicer to add onto your principal balance delinquent interest, escrow advances, and foreclosure fees and costs (except for late fees and administrative costs). It then sets a fixed interest rate that can even be below the current market rate, and extends the repayment term up to thirty years from the date of the modification. No trial period is required. If the loan has been modified within the last two years, the RHS’s approval is required to authorize a second modification.

The “Special Loan Servicing” Modification. This option allows for a more flexible restructuring of the loan by extending the term up to forty years, reducing the interest rate to the current market rate or below, and setting aside a portion of your principle balanced called a “mortgage recovery advance.” The advance amount, which is a non-interest bearing lien on the property, cannot exceed an amount equal to twelve months of principal and interest due under the mortgage plus foreclosure fees and costs. Subject to this limit, the servicer must apply enough of an advance so that the modified total monthly payment (including escrow) is no more than 31% of your current monthly gross income. After the modification, the ratio of the total debt payments to your monthly income can be no more than 55%. If you are in default you must complete a three-month trial plan before the modification becomes permanent. You can receive only one permanent Special Loan Servicing Modification over the life of your loan.

Preforeclosure Sale and Deed in Lieu of Foreclosure. A pre-foreclosure sale is the RHS’s term for a short sale. It allows you to cancel the mortgage debt with the proceeds of a market sale, even if the sale proceeds are less than the amount owed. You must submit an application and be approved for this option. The sale price must fall within a certain range based on the property’s market value and the sale must be completed within a designated time frame. Get written confirmation that you do not owe anything on the loan even if the sale proceeds are less than the outstanding debt.

A deed in lieu of foreclosure lets you voluntarily transfer the property in exchange for a release from all your obligations under the mortgage. The agreement must be in writing and should clearly state that you have no further obligation on the mortgage loan after turning over the deed. Other loss mitigation options should be considered first, including a pre-foreclosure sale. More information about short sales and “deeds in lieu” is found earlier in this article’s section on Fannie Mae and Freddie Mac short sales and deeds in lieu.
The RHS Direct Loan Program

RHS administers a direct loan program where the U.S. Department of Agriculture extends the loan and remains the owner of the loan at all times, including during foreclosure. You deal with the single Customer Service Center (formerly the “Centralized Servicing Center”) in St. Louis, Missouri, 800-793-8861. It is easier to get assistance if you have your account number handy.

RHS offers a number of special servicing programs designed to assist you, but only when your mortgage payments are at least two months overdue. Apply for these special servicing options quickly, because foreclosure can start just a month later.

**Payment Assistance.** You may be eligible for payment subsidies, referred to as “interest credit” or “payment assistance.” The subsidies are set yearly and reduce the amount of interest you have to pay. If your income drops during the year, you can lower your payments by documenting this promptly with the Customer Service Center. Much but not all your payment subsidies are added back on to the principal balance owed if you sell the property, so that the amount you owe may not even go down over time.

**Payment Moratorium.** A payment moratorium is available when circumstances beyond your control mean that you are temporarily unable to continue making full payments without substantially impairing your standard of living. Courts are divided as to whether you can apply for a payment moratorium after RHS has decided to foreclose.

Under a payment moratorium your monthly payments may be reduced or suspended, based on need, for up to two years. Eligibility for the moratorium program is reviewed at least once every six months and you should be provided with sixty days’ notice before the moratorium is terminated. When the moratorium is terminated, your monthly payments are recalculated based on the balance at that time. If you are unable to afford the payments after they are recalculated, some or all of the interest that came due during moratorium may be canceled.

**Delinquency Workout Agreement.** A “delinquency workout agreement” allows you, over a period of no more than two years, to get caught up on delinquent payments by paying a portion of the delinquent amount in addition to your scheduled mortgage payment.

**Protective Advance.** A “protective advance” is an RHS advance of money to pay your taxes or insurance and then recalculates the loan balance and payments. The RHS may demand the advance’s repayment within one year or amortize the advanced amounts over the loan’s remaining life.

**Loan Modification.** Sometimes repayment plans are not feasible because your finances have suffered a long-term setback and will not recover. In such a situation the RHS can add onto your principal balance the unpaid interest and escrow advances (but not foreclosure costs, late fees, and other administrative expenses). Because the length of the repayment term of RHS direct loans cannot be extended for any substantial additional time, these modifications almost invariably increase your monthly payment.

**Short Sale and Deed in Lieu of Foreclosure.** A short sale allows you to satisfy the full debt owed to the government with the proceeds of a sale, even if the sale proceeds are less than the amount of the debt. RHS must approve short sales and the price must meet RHS requirements related to the value of the property and size of the total debt. RHS may set time limits for the completion of the sale. The short sale is overseen by a local RHS office and not by the centralized Customer Service Center.

If you apply for debt forgiveness and the application is approved, a deed in lieu of foreclosure allows you to transfer the home voluntarily to the government in return for a release of all liability for the debt. The RHS typically looks at this as the last option, when a short sale cannot be arranged.

In a short sale and in a “deed-in-lieu,” follow the correct procedures to make sure you are not liable for the remaining debt after the sale proceeds are deducted, particularly when your RHS subsidies are added back onto the debt when you sell the home or provide a deed in lieu. Otherwise the federal government aggressively pursues these remaining balances. Submit an application with current financial information to RHS. If approved, you will receive written confirmation of the release of liability from the full debt. More information about short sales and deeds in lieu is found earlier in this article’s section on Fannie Mae and Freddie Mac short sales and deeds in lieu.

**Appeals.** You can appeal certain RHS decisions, such as a denial of a moratorium application or the commencement of foreclosure. You lose the right to appeal if you do not act within the required time (usually 30 days from notice of the
Appeal options include mediation or a formal hearing before a USDA hearing officer.

The Loss Mitigation Application Process

Start Loss Mitigation Discussions As Early As Possible. Starting early avoids the difficulty of negotiating at the last minute with a potential foreclosure sale date pending and also avoids potential foreclosure fees and costs, which can be substantial. It is better to begin negotiations before the lender has turned the matter over to a foreclosure lawyer. You also appear more responsible if you try to prevent the problem from getting out of hand.

In some cases you can even apply for relief before you default on your mortgage when a default is reasonably foreseeable—for example, after you lost your job or your adjustable rate mortgage is about to reset to unaffordable monthly payments. Some servicers are reluctant to consider loan mitigation if you are not in default, but they may have the authority to do that if your default is imminent.

When a foreclosure is pending, careful attention must be given to preventing the sale as part of your request for a modification. A foreclosure sale cuts off your ability to modify the mortgage loan and also ends your ownership in your home. You should also request a modification prior to filing for bankruptcy. Once bankruptcy is filed, some servicers may (incorrectly) act as though their options for assisting you are more limited, when in fact they are not.

The Importance of Getting Help. Find a nonprofit counselor or lawyer with experience with mortgage workouts to help you through the process. In many cases, counselors will have access to programs and lender personnel that you cannot reach directly yourself.

Find a nearby HUD-approved counseling agency by calling 800-569-4287 (TDD 800-877-8339) or by checking www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm. Many cities and states also have programs to assist homeowners in default. Contact your local government housing office or a community group that addresses housing and homeownership to see if they can refer you to a counselor. If you received pre-purchase education about homeownership, contact the organization that provided your classes to find out if they also provide foreclosure prevention assistance or can refer you to an organization that does. It also can’t hurt to ask the servicer if it has a program for homeowner assistance in your community.

If someone unsolicited offers to help, make sure you are dealing with a legitimate nonprofit agency with experience in default and delinquency counseling. Too often, someone who advertises or approaches you about mortgage counseling is really just a con artist who will get you into more trouble.

Your Loss Mitigation Application. In applying for loss mitigation, do not contact the owner of your mortgage loan, but instead, contact your mortgage servicer. The servicer should have workout specialists who will tell you what documents you need to provide, take your application, and provide information on the application process.

Some servicers will ask you to speak only to their attorney once the legal process of foreclosure has begun. Although some attorneys will readily participate in workout discussions or give you permission to speak with the servicer directly, others will need to be pushed. Unresponsive attorneys should be reported to the servicer or to the mortgage owner if necessary.

Federal rules require that your servicer assist you in completing the application. As long as a foreclosure sale is not scheduled within 45 days, your servicer must acknowledge in writing within 5 days that it received your application and must describe any missing documents you still need to send.

As long as the servicer has received your complete loss mitigation application at least 37 days before a scheduled foreclosure sale, it must within 30 days evaluate you for all available loss mitigation options and tell you which ones you are eligible for. You do not have to ask for a specific option, although there is nothing wrong with doing so. The servicer’s letter must give specific reasons for any denial of a loan modification. As long as the servicer receives your complete application at least 90 days before a scheduled foreclosure sale, you can appeal the denial of a loan modification.

These rules only apply to your initial application to a given servicer. You can always submit multiple applications to the same servicer, however the servicer has more discretion as to the nature and speed of its responses for any subsequent applications.

Pay Attention to Any Pending Foreclosure Sale. It is not unusual for mortgage servicers to continue with a foreclosure while you request loss mitigation options. Often the servicer’s loss mitigation department and the servicer’s lawyers conducting a foreclosure sale do not communicate. But if you submit your first complete loss mitigation application at least 37 days before a
scheduled foreclosure sale, federal rules require the servicer to delay the sale, review the application, and give you a written decision before allowing a sale.

If this rule does not protect you, always request a delay of a foreclosure sale long enough to complete the loss mitigation review. Unless the servicer agrees in writing to suspend the foreclosure proceeding, assume that the foreclosure process will continue. If the foreclosure sale is a court-supervised process, make sure you notify the court of your agreement with the servicer to delay the foreclosure. Always verify that the sale is actually canceled.

**Loss Mitigation Fees, Foreclosure Fees, and Late Charges.** While modification fees are not permitted under some loss mitigation programs, servicers otherwise may charge a fee for handling workout options. Some servicers want this fee at the beginning of the workout process regardless of the application’s outcome. Request a waiver or a fee reduction to make the workout affordable. Late charges will almost always be waived.

The servicer’s out-of-pocket costs to modify your mortgage, such as appraisal fees and credit report charges, probably will not be waived. The servicer will also expect reimbursement from you for foreclosure fees and costs if the servicer has already begun to incur such fees. Examine all fees to make sure that they are reasonable. You can also request an agreement to pay some or all of the fees in installments or to have the fee lumped together with the loan balance.

Where you are charged attorney fees for a foreclosure and the foreclosure does not take place due to your loss mitigation agreement, ask for them to be credited back to your account. Refunds or credits for fees paid to auctioneers, sheriffs or court officials, or for legal advertisements should also be made depending upon when the foreclosure sale is canceled. To the extent foreclosure fees and costs are valid, they need to be paid or otherwise accounted for in the loss mitigation process.

**Documenting a Workout Agreement.** Even if there is a delay in signing the final forms for the workout, make sure you have a writing spelling out the agreement’s basic terms and that any foreclosure proceeding is postponed or stayed. Never sign a release or similar agreement asking you to give up all your legal claims against the lender until after the actual workout agreement is finalized. Make sure the lender signs the agreement and it is recorded, if necessary, with the mortgage in the property registry.

**If Your Loss Mitigation Review Is Not Going Well.** If you aren’t receiving sufficient cooperation from a servicer in reaching a loss mitigation resolution, ask to speak to a supervisor. You also can appeal a denial, and the servicer’s supervisory staff not involved in the original decision must review your appeal and notify you in writing of their decision. You can also complain directly to the mortgage’s owner or insurer. Fannie Mae, Freddie Mac, and some other owners have “loss-mitigation” departments that will intervene, if pushed, to address a proposed workout.

You can also send the servicer a notice of error and request for information, as described in the previous article [2] in this series. This may get your servicer to focus appropriately on your loss mitigation review. You can also register a complaint about a mortgage servicer directly with the Consumer Financial Protection Bureau that may attempt at least an informal resolution at [www.consumerfinance.gov/complaint](http://www.consumerfinance.gov/complaint).

Your efforts in all of these steps may be more effective with the help of a housing counselor or attorney. Even if you tried to obtain a workout on your own, it may be time to seek help if the negotiation with the lender is not working out well.

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**About Author:**

Geoffry Walsh is a staff attorney at the National Consumer Law Center (NCLC) who focuses on foreclosure prevention, consumer bankruptcy, and other consumer credit issues. He has provided written testimony and engaged in policy advocacy at the federal and state levels on the topic of foreclosure mediation. He has served as a panelist and instructor at trainings and legal education seminars on foreclosure prevention and bankruptcy topics, and is an active member of the National Association of Consumer Bankruptcy Attorneys. Walsh is co-author of Foreclosures and Mortgage Servicing, Consumer Bankruptcy Law and Practice, Foreclosure Prevention Counseling, Student Loan Law, and Credit Discrimination. Walsh previously worked as an attorney with Vermont Legal Aid, Inc. in Springfield, Vt. from 1991 to 2008, specializing in housing, consumer, and bankruptcy areas. From 1980 to 1991, he worked as a staff attorney with Community Legal Services, Inc. in Philadelphia, Pa., where he also specialized in housing and consumer litigation. Walsh earned his B.A. from University of Michigan and is a graduate of Temple University Law School.