American Bankruptcy Institute

Northeast Bankruptcy Conference and Consumer Forum

Consumer Forum

Regulatory Changes Affecting Consumers/Consumer Bankruptcy

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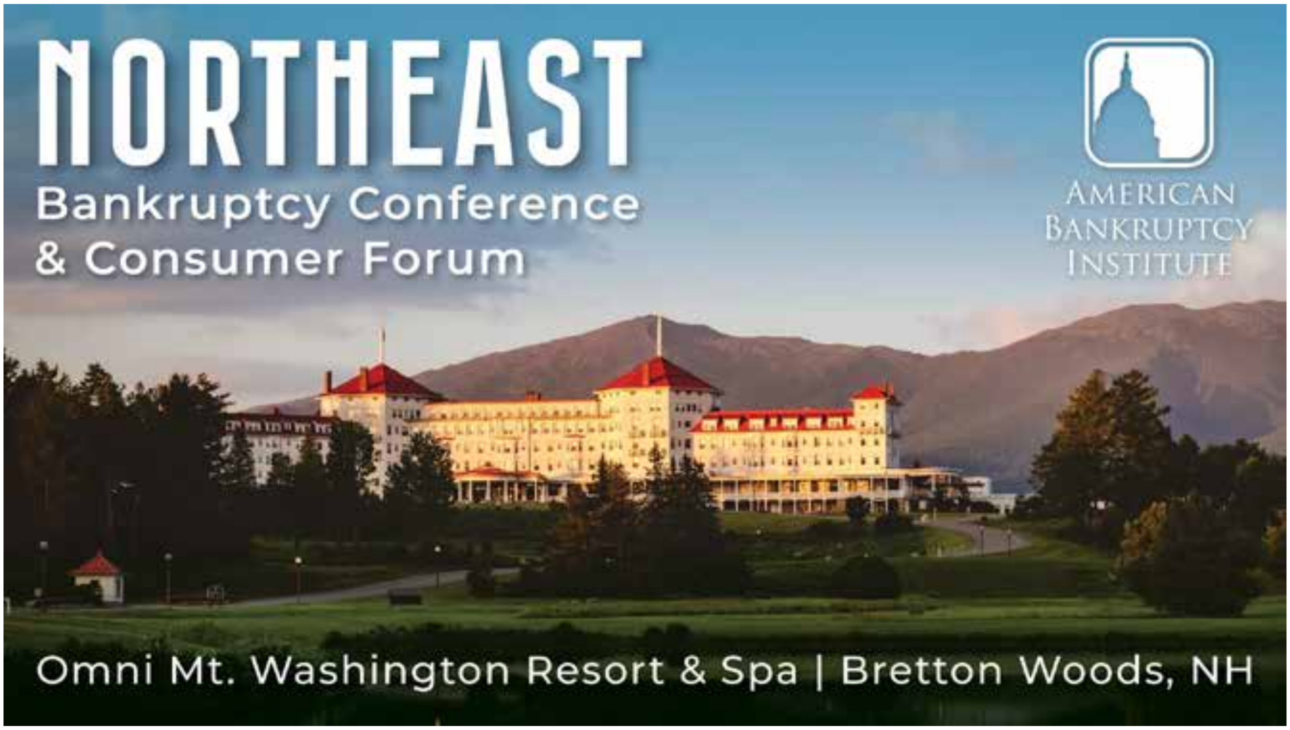
Pine Tree Legal Assistance, Inc. | Portland, Maine

CONCURRENT SESSION

2025



REGULATORY CHANGES AFFECTING CONSUMERS/CONSUMER BK

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CONSUMER FINANCIAL PROTECTION BUREAU

- Created in 2010 as part of Dodd-Frank financial reforms (12 U.S.C. § 5492(a)(10))
- Charged with implementing federal consumer financial laws through rule-making, orders, guidance, policy statements, bank examinations, and enforcement action
- Executive agency with a sole director; Not funded by Congressional appropriation but through petitioning the Federal Reserve for funds “reasonably necessary” to perform official agency functions

CFPB MISSION

- Authorized to administer, enforce, and implement consumer financial laws

- Exclusive authority to prescribe rules to implement consumer protection laws, e.g., Truth in Lending Act, Reg Z, Equal Credit Opportunity Act, Fair Debt Collection Practices Act, Fair Credit Reporting Act, Real Estate Settlement Practices Act

CHANGES TO CFPB IN 2025

- Acting Director Russell Vought appointed 2/7/2025; also serves as Director of Office of Management & Budget
- On 2/8/2025, CFPB employees instructed by email to stop working; Probationary and contract employees terminated; Most operations frozen
- AD Vought has advised that he would not petition the Federal Reserve for operating funds

NATIONAL TREASURY EMPLOYEES UNION, ET AL. V. VOUGHT, 2025 WL 942772 (D. D.C. 3/28/2025)

- On 2/9/2025, union membership, consumer groups, and a pastor's estate sued to challenge efforts to dismantle the CFPB as violating Dodd-Frank, exceeding executive authority, usurping legislative authority, and violating the Administrative Procedures Act
- Plaintiffs sought a preliminary injunction

NTEU, ET AL V. VOUGHT

- **On 3/28/2025, Judge Amy Berman Jackson entered a preliminary injunction, finding:**
- Court had subject matter jurisdiction
- AD Vought's stop-work order and other official acts were subject to judicial review
- Plaintiffs had sustained injuries in fact traceable to CFPB actions
- Plaintiffs had established prerequisites to injunctive relief

NTEU, ET AL. V. VOUGHT

- **P/I required CFPB to preserve data, reinstate terminated employees, refrain from further employee termination**
- **D.C. Circuit partially stayed the P/I, allowing terminations to stand if, after a particularized assessment, the particular employee was deemed unnecessary; also imposed limitations on reinstatements and further terminations**

NTEU, ET AL. V. VOUGHT

- **Appeal has been expedited**
- **23 Attorneys General and several *amici curae* have joined the appeal**
- **Outcome remains uncertain, as does the CFPB's ability to fulfill its statutory duties in light of employee terminations**

STATUS OF CFPB GUIDANCE AND REGULATIONS

- **Congressional Review Act overview:**
- Within 60 days (in session) from the date a Rule or Reg. is published in the Federal Register, Congress can introduce a resolution to kill it
- Simple majority of each chamber will result in passage of CRA Resolution
- If signed into law, the CRA Resolution repeals the Rule or Reg. and prohibits any "substantially similar" Rule or Reg. forever, without Congressional action

RECENT CRA RESOLUTIONS ON CFPB RULES

- **Digital Payment Apps Rule**
- Allowed supervision of non-bank payment apps (Zelle, Cash App, PayPal, Venmo, X Money, etc.) and allowed consumers to dispute errors or unauthorized charges
- CRA Resolution killing DPA Rule signed into law
- State banking regulators currently have some jurisdiction over these apps, to the extent they are registered as “money transmitters”

RECENT CRA RESOLUTIONS ON CFPB RULES

- **Consumer Reporting of Medical Debt Rule**
- Banned medical fills on consumer credit reports and prohibited lenders from considering medical information in lending decisions
- CRA Resolution to repeal has been introduced
- **Overdraft Fee Rule**
- Slashed most bank overdraft fees from $35 to $5 and regulated overdraft credit products
- CRA Resolution to repeal signed into law, BUT banks might compete with each other regarding lower overdraft fees

STATUS OF CFPB GUIDANCE

- **At least 70 Guidance documents have been withdrawn, including:**
- Fair Debt Collection Practices Act (Reg. F): Deceptive and unfair collection of medical debt
- Fair Debt Collection Practices Act (Reg. F): Collection of time-barred debt
- Fair Debt Collection Practices Act (Reg. F): “Pay to Play” fees

STATUS OF CFPB GUIDANCE

- Consumer Financial Protection Circular 2022-5: Debt collection and consumer reporting practices involving invalid nursing home debt
- Bulletin 2022-01: Medical debt collection and consumer reporting requirements in connection with the No Surprises Act
- Bulletin 2015-07: In-person collection of consumer debt
- Bulletin 2013-07: Prohibition on unfair, deceptive, or abusive acts or practices in the collection of consumer debt

STATUS OF CFPB ENFORCEMENT ACTIONS

- **NTEU, et al. v. Vought injunction did not prohibit CFPB from voluntarily dismissing pending enforcement actions**
- **Dismissed actions include:**
- CFPB v. Capital One: misleading consumers regarding savings accounts
- CFPB v. Bank of America, et al.: regarding fraud via Zelle
- CFPB v. Walmart: drivers allegedly forced to use Branch accounts to get paid
- CFPB v. Rocket Mortgage: Kickbacks to real estate brokers
- CFPB v. Heights Finance: Excessive loan costs and junk fees

ALTERNATIVES TO CFPB

- State AGs have jurisdiction to enforce consumer protection laws and have stepped up focus on elder abuse and scams; lending algorithms; payday loan abuse; and auto lending abuse. Resource limitations might constrain state action.
- State financial regulators have jurisdiction over state-chartered banks and non-bank entities registered as “money transmitters” such as Paypal, Venmo, crypto kiosk operators, etc.
- State AGs and financial regulators often collaborate

ALTERNATIVES TO CFPB

- Federal Trade Commission can sometimes assist with debt collection abuse
- There might be gaps in enforcement options for issues with federally chartered banks; CFPB is not currently conducting bank examinations or supervision
- For consumer BK debtors, consider lien avoidance under 11 U.S.C. § 522 or mortgage modification options in Chapter 13 when appropriate

CHANGING SEC ENFORCEMENT AND CRYPTO SCAMS

- **Between 2021-2025, the SEC brought numerous enforcement actions under federal securities laws arising from alleged unregistered activity, failure to disclose material risks, fraud, and mishandling of funds:**
- SEC v. Terraform Labs
- SEC v. Ripple Labs
- SEC v. Coinbase Global and Coinbase, Inc.
- SEC v. Binance Holdings Ltd., et al.
- SEC v. Payward Ventures dba Kraken, et al.

CHANGING SEC ENFORCEMENT

- 1/2025: Crypto Task Force formed for the purpose of developing a comprehensive regulatory framework; no rules promulgated yet
- 2/2025: S.D.N.Y approves a stipulation dismissing the Coinbase enforcement action
- 5/2025: SEC dismisses enforcement actions against Binance, Ripple Labs, and Kraken
- Current regulatory uncertainty as to the status of digital assets; continued volatility; concerns that crypto industry might try to take advantage of current conditions

DIGITAL ASSET MARKET CLARITY ACT, H.R. 3363

- Purpose: "To provide for a system of regulation of the offer and sale of digital commodities by the SEC and CFTC"
- Legislation introduced; some committee hearings held; possible bipartisan support
- DAMCA effectively removes digital commodities from the definition of "investment contract" under federal securities laws, attempting to clarify that a digital commodity sold pursuant to an investment contract is not itself an investment contract, which might limit the ability of the SEC and (perhaps) state securities regulators to use securities laws to take enforcement action against crypto companies

DIGITAL ASSET MARKET CLARITY ACT, H.R. 3363

- Exempts primary blockchain transactions by “mature blockchains” and many secondary market digital asset transactions from SEC regulation
- Limits SEC jurisdiction over stablecoin transactions
- Provides for registration of the digital asset companies with the CFTC
- Provides for rulemaking by the SEC and the CFTC
- Prohibits manipulative and deceptive acts
- Might create opportunities for crypto kiosk operators to evade regulation; if they qualify as “digital commodity brokers,” they will fall under DAMCA, making it much harder for federal regulators to enforce “money transmitter” laws against them

DIGITAL ASSET MARKET CLARITY ACT, H.R. 3363

- Preempts state laws except with respect to fraud; amends federal securities law to exempt digital commodities from state securities law; provides for CFTC registration by digital commodity brokers, making it much harder for states to keep crypto kiosk restrictions in place
- Fraud is often discovered through the enforcement of a more benign law, such as a securities registration requirement or a restriction on operating a crypto kiosk

DISCHARGE AND REPAYMENT OF STUDENT LOANS

Student Loan Background and Facts

Types of Loans – Federal and Private

Federal

Made or guaranteed by Federal gov't
Various programs; since 2010, all loans Direct
Credit check not generally required
Special borrower protection afforded
Indefinite collectability; broad collection power

Private

Made by private lending institution
Loans based on credit
Co-signer might be required
Borrower protections rare
Subject to SOL; no special power

STUDENT LOAN DEBT – FACTS AND STATISTICS

- 93% Federal Student Loan Debt
- 43,000,000 borrowers have federal student loan debt
- $39,075 = Average student loan debt per borrower
- 9,300,000 = Student loan borrowers in default or seriously delinquent
- Total Federal student loan debt has roughly tripled since 2007

COVID PROTECTIONS AND REPAYMENT RESUMPTION

- **3/2020: Initial COVID Protections**
- Federal student loan payments and interest accrual suspended
- **2020-2023: Multiple Extensions of COVID Protections**
- **9/1/2023: COVID Protections end . . . Sort of**
- Federal student loan interest accrual resumed 9/1/2023; payments resume 10/2023
- But borrowers who miss payments are not considered delinquent, not reported to credit bureaus, not placed in default, not referred to debt collection agencies
- **10/1/2024: Credit Reporting Resumes**
- Borrowers who missed payments now reported delinquent; credit scores plummet
- **5/2025: DOE Announces Resumption of Collection Activities**
- Wage garnishments, SS offsets, tax refund intercepts resume
- Est'd default = 25% of federal student loan portfolio; 38% of borrowers current

DISCHARGING STUDENT LOANS

- **11 U.S.C. § 523(a)(8)**
- Requires a showing of undue hardship, which is not defined
- **Majority Rule: <u>Brunner v. NY State Higher Educ. Svcs. Corp.</u>, 831 F.2d 395 (2d Cir. 1987)**
- Undue hardship exists where:
    - Debtor cannot presently maintain a minimal standard of living if forced to repay student loans
    - Debtor's financial situation is likely to persist for a significant portion of the loan repayment period
    - Debtor has made a good faith effort to repay

DOE/DOJ STUDENT LOAN GUIDANCE

- **2018: DOE begins developing new policy re: discharge of student loans in BK**
- Focused on how to better determine when an "undue hardship" exists
- **2022: DOE/DOJ issues Guidance detailing how undue hardship cases would be processed**
- **2025: Guidance to remain in place**
- 5/1/2025: Guidance website and related forms updated

DOE/DOJ STUDENT LOAN GUIDANCE

- **Provides objective standards and a streamlined process for assessing undue hardship**
- Applies in Chs. 7 and 13
- DOJ/DOE may stipulate to discharge if:
  - D presently lacks an ability to repay the loan(s)
  - D's inability to repay is likely to persist
  - D has acted in good faith in attempting to repay
- Debtor provides facts via "Attestation"; Guidance provides objective criteria for each requirement; Avoids full-blown discovery

DOE/DOJ STUDENT LOAN GUIDANCE

- Commence adversary proceeding
- After AP filed, Debtor provides completed Attestation and supporting documentation to DOJ
- DOJ and DOE review Attestation and consult
- DOJ reports result to Debtor's counsel
  - If DOJ agrees there is an undue hardship, parties could stipulate to full or partial discharge
  - If DOJ does not agree that an undue hardship exists, Debtor can still explore other repayment options outside BK
- **85% of actions proceeding under Guidance have resulted in full or partial discharge**

DOE/DOJ STUDENT LOAN GUIDANCE

- **Status in 2025 – Full Steam Ahead!**
- AUSAs instructed to proceed under Guidance
- Stipulations to full or partial discharge continue to be filed
- DOJ updated Attestation in 5/2025 in accordance with new IRS standards
- Some members of DOE are on record stating that student loan debt should be handled through BK

DOE/DOJ STUDENT LOAN GUIDANCE

- **Guidance does not apply to Private Student Loans, but:**
- Guidance does help define “undue hardship” which continues to govern discharge of private student loans
- Federal student loans are more borrower friendly, with more borrower protections, so it might be easier to prove “undue hardship” with respect to private student loans
- Discharges of federal student loans might motivate private lenders to stipulate to full or partial discharge

STUDENT LOAN REPAYMENT PLANS

The “Big Beautiful Bill” Overhauls Federal Repayment Plans

- Plans **eliminated** as of July 1, 2028 – ICR, PAYE, SAVE (old REPAYE)
- New Plans **available** as of July 1, 2026 – New Standard and Repayment Assistance Plan (RAP)
- Repayment options depend on if borrower loans were taken/consolidation disbursed before OR on or after **July 1, 2026** and current repayment plan

STUDENT LOAN REPAYMENT PLANS

Loans taken/consolidation disbursed BEFORE 7/1/2026:

- If on Standard, Graduated, Extended or IBR, can **KEEP** existing plan
- If on ICR, PAYE or SAVE, must **TRANSITION** to new plan by 7/1/28
    - Available plans: IBR, new RAP, current Standard, Graduated, or Extended

STUDENT LOAN REPAYMENT PLANS

Loans taken/consolidation disbursed ON or AFTER 7/1/2026:

ONLY new Standard Plan or RAP available. NO other options.

STUDENT LOAN REPAYMENT PLANS

Existing Repayment Plans Still Available:

- **Standard –** 10 year term
- **Graduated –** 10 year term; payments step up every 2 yrs
- **Extended –** Balance > $30K; 25 yr term
- **Extended Graduated –** Balance > $30K; payments step up every 2 years; up to 25 year term
- **IBR –** 15% of discretionary income; 25 yr term
- **IBR New** (first loan after 7/1/14) **–** 10% of discretionary income; 20 yr term

STUDENT LOAN REPAYMENT PLANS

NEW Standard Repayment Plan:

- Fixed monthly payment; full loan amount repaid based on balance, term, and interest rate
- Loan term determined by balance:
  - 10 years – if loan balance less than $25,000
  - 15 years – if loan balance between $25,000 and $50,000
  - 20 years – if loan balance between $50,000 and $100,000
  - 25 years - if loan balance greater than $100,000

STUDENT LOAN REPAYMENT PLANS

RAP Payments:

$0 - $10,000	$10/mo. min paymt	$60,001 - $70,000	6% of annual income
$10,001 - $20,000	1% of annual income	$70,001 - $80,000	7% of annual income
$20,001 - $30,000	2% of annual income	$80,001 - $90,000	8% of annual income
$30,001 - $40,000	3% of annual income	$90,001 - $100,000	9% of annual income
$40,001 - $50,000	4% of annual income	$100,001+	10% of annual income
$50,001 - $60,000	5% of annual income		

STUDENT LOAN REPAYMENT PLANS

NEW Repayment Assistance Plan (RAP):

- Income driven repayment plan based on total AGI (not discretionary income like prior IDRs)
- Payment reduced $50 for each dependent child under 17
- $10 minimum payment
- Forgiveness timeline = 30 years
- Waives unpaid monthly interest
- Allows married borrowers to file taxes separately

STUDENT LOAN REPAYMENT PLANS

Parent PLUS Loans:

- NO IDRs available; NOT eligible for RAP
- Exception: Parent PLUS borrowers are eligible for IBR if:
  - Fully consolidated before June 30, 2026
  - Enrolled in any IDR and made payment on IDR plan before June 30, 2028

STUDENT LOAN REPAYMENT PLANS

Serious Implications for Debtors in Ch. 13 Bankruptcy:

- When debtors are in bankruptcy, federal loans are typically placed in administrative forbearance, which means servicers will not speak with them or process plan changes.
- As a result, debtors currently in bankruptcy may lose ability to enroll in optimal repayment plan.
- To solve, work with servicers to include plan language allowing debtor to enroll in and make payments under IDR, OR work through court Student Loan Management Program (where available).

LOAN FORGIVENESS AND ADMINISTRATIVE DISCHARGE

Forgiveness Programs

- **Public Service Loan Forgiveness (PSLF)**
- Must work for government or eligible non-profit
- Must make 120 payments under IDR Plan
- **Teacher Loan Forgiveness**
- Full-time for 5 complete and consecutive academic years at certain schools
- May be eligible for up to $17,500
- Cannot receive credit under TLF and PSLF at the same time

LOAN FORGIVENESS AND ADMINISTRATIVE DISCHARGE

Administrative Discharge

- **Must complete and submit an application**
- **Total and Permanent Disability**
- Borrower unable to work due to a permanent physical or mental disability
- Requires certification from doctor, SSA, or VA
- **Death**
- Borrower dies
- Requires death certificate

LOAN FORGIVENESS AND ADMINISTRATIVE DISCHARGE

Other Administrative Discharges

- Borrower Defense Discharge
- Closed School Discharge
- Unpaid Refund Discharge
- False Certification – Disqualifying Status
- False Certification – High School Graduation Status
- False Certification – Identity Theft
- False Certification – Unauthorized Signature/Payment
- Forgery

ETHICAL ISSUES

- **It is no longer sufficient to say "student loans are nondischargeable"**
- **Attorneys have been sued for not analyzing the dischargeability of a debtor's student loans**
- **Bottom Line: Discuss dischargeability options with your debtor clients and if they wish to pursue, help them or send them to someone who can**

MORTGAGE RELIEF IN CURRENT INTEREST ENVIRONMENT

- **Fannie Mae/Freddie Mac (~ 70% of market)**
- Flex Mod update: Revised the MTMLTV benchmark from 80% to 50%
    - I.e., if LTV $\geq$ 50%, can lower rate to Fannie Mod rate AND forbear principal (balloon deferment) as part of modification
    - Can offer modification even if target not reached
- **FHA (~ 15% of market)**
- Streamlined "Standalone Partial Claim"
- "Payment Supplement": 3-year payment reduction by utilizing available partial claim
- "Recovery Modification": Offered even if target payment reduction not reached

MORTGAGE RELIEF IN CURRENT INTEREST ENVIRONMENT

- **USDA Guaranteed**
- Can defer arrears up to 30% of UPB as non-interest-bearing balloon, called "Standalone Mortgage Recovery Advance"; interest rate remains the same on interest-bearing principal
- Can modify even if payment increases, so long as modified payment $\leq$ 31% of gross income
- **VA Home Loans (~ 10% of market)**
- Can offer 40 year modification even without payment reduction
- VASP rescinded and terminated 5/2025; allowed VA to purchase loans and modify at 2% interest
- VA Partial Claim legislation has passed U.S. House

MORTGAGE RELIEF IN CURRENT INTEREST ENVIRONMENT

RESPA Regulation X/Loss Mitigation Rules Update

- **July 2024: CFPB proposes major change to Loss Mitigation Rules and requests comment**
- Replace "complete application" with "request for loss mitigation" as trigger for homeowner procedural protections
- Purpose: Reflects trend post-COVID toward streamline (i.e., no document) loan modification reviews by many federal and private investors
- Rule changes have been tabled and it is unclear whether or in what form discussion might resume

HELPFUL LINKS

- **DOE/DOJ Student Loan Guidance:** www.justice.gov/ust/student-loan-guidance
- **[Additional Links to be provided]**

THANK YOU!

QUESTIONS?

Fannie Mae

Lender Letter (LL-2024-02)

Updated Oct. 2, 2024

To: All Fannie Mae Single-Family Servicers
Updates to Determining the Flex Modification Terms

We remain committed to ensuring our retention workout options provide appropriate borrower assistance regardless of the economic environment. Accordingly, we are updating the steps for determining the Fannie Mae Flex Modification terms in alignment with Freddie Mac and at the direction of FHFA. The updates expand eligibility by revising the mark-to-market loan-to-value (MTMLTV) based requirements and provide more equitable payment reduction to eligible borrowers by applying the terms incrementally and targeting a 20% P&I payment reduction. In accordance with these policy updates, we are also publishing revised Evaluation Notices that must be implemented as of the effective date below.

Oct. 2, 2024

We are clarifying that when determining the final Fannie Mae Flex Modification terms, the servicer must use the same interest rate as established when determining the terms for the Trial Period Plan.

This clarification is effective upon the servicer's implementation of the updated Fannie Mae Flex Modification policy in accordance with this Lender Letter.

This Lender Letter contains

- Updates to the Fannie Mae Flex Modification terms
- Appendix

With the exception of the updates in this Lender Letter that replace the referenced Guide policy, the servicer must otherwise refer to the existing requirements in *Servicing Guide* D2-3.2-06, Fannie Mae Flex Modification and F-1-27, Processing a Fannie Mae Flex Modification for evaluating, processing, and completing a Fannie Mae Flex Modification. Additionally, when we update the *Servicing Guide* with the revised steps, we will replace the term "interim month" with "processing month" in relation to a Fannie Mae Flex Modification to align the terminology with that used for payment deferral.

Effective: As early as Nov. 1, 2024, but no later than Dec. 1, 2024, servicers must determine the borrower's new modified mortgage loan terms for a Fannie Mae Flex Modification in accordance with this Lender Letter. Once implemented, the servicer must offer the Fannie Mae Flex Modification to all eligible borrowers according to the requirements in this Lender Letter. These policy changes will be reflected in the November 2024 *Servicing Guide* update.

Updates to the Fannie Mae Flex Modification terms

The following updates will replace the referenced Guide policy in its entirety upon the effective date described above. While only the steps for determining the new modified mortgage loan terms are being updated, we included other related policies as they will appear in the Guide update for clarity.

Determining the Fannie Mae Flex Modification Terms in D2-3.2-06, Fannie Mae Flex Modification

The servicer must follow the procedures in *Obtaining a Property Valuation* in F-1-27, Processing a Fannie Mae Flex Modification and *Determining the New Modified Mortgage Loan Terms* below for determining the property value and determining the borrower's new modified mortgage loan terms, including calculating the post-modification MTMLTV.

Also see A4-2.1-07, Servicer's Duties and Responsibilities Related to Mortgage Loans with an Outstanding Non-Interest-Bearing Balance for additional information.

The following table lists additional Fannie Mae Flex Modification criteria that must be met when determining the borrower's new modified mortgage loan terms.

<table>
<tr><th>✓</th><th colspan="2">The Fannie Mae Flex Modification must result in...</th></tr>
<tr><td></td><td colspan="2">A fixed rate mortgage loan.

NOTE: An ARM or interest-only mortgage loan must be converted to a fully amortizing mortgage loan and may not be a biweekly or daily simple interest mortgage loan.</td></tr>
<tr><td rowspan="4"></td><td colspan="2">A monthly P&I payment as described in the following table.</td></tr>
<tr><td>If at the time of evaluation the mortgage loan is...</td><td>Then the monthly P&I payment must be...</td></tr>
<tr><td>current or less than 31 days delinquent</td><td>less than the borrower's pre-modification P&I payment.</td></tr>
<tr><td>31 or more days delinquent</td><td>less than or equal to the pre-modification P&I payment.</td></tr>
</table>

Prior to granting a permanent mortgage loan modification, the servicer must place the borrower in a Trial Period Plan using the new modified mortgage loan terms.

The servicer must request our prior written approval through our servicing solutions system to deviate from the prescribed steps for determining the new modified mortgage payment terms, unless a certain step is prohibited by applicable state law.

When the servicer submits a request through Fannie Mae's servicing solutions system for our approval of a Fannie Mae Flex Modification based on the borrower's submission of a BRP, in accordance with applicable law it must

- immediately provide the borrower with notice of the right to receive a copy of all appraisals and other valuations developed in connection with the mortgage loan modification, and
- provide the borrower a copy of all appraisals and other valuations developed in connection with the mortgage loan modification.

Determining the New Modified Mortgage Loan Terms in F-1-27, Processing a Fannie Mae Flex Modification Updated Oct. 2, 2024

The servicer must determine the borrower's new modified mortgage loan terms in accordance with *Determining the Fannie Mae Flex Modification Terms* above and the requirements below.

The servicer must determine the post-modification MTMLTV ratio, which is defined as the gross UPB of the mortgage loan including capitalized arrearages, divided by the current value of the property.

In order to determine the borrower’s new modified mortgage loan terms, the servicer must apply the steps in the order shown in the following table, unless prohibited by applicable law, until the earlier of

- achieving a 20% P&I payment reduction target, or
- exhausting the steps for determining the Fannie Mae Flex Modification terms.

NOTE: With regard to achieving the 20% P&I payment reduction target, the servicer must apply the increment or amount as described in each step of the following table to result in a payment reduction that exceeds but is as close as possible to 20% (e.g., 20.01%). Refer to the Appendix for examples on achieving the 20% P&I payment reduction target.

NOTE: When determining the final Fannie Mae Flex Modification terms prior to granting the permanent mortgage loan modification, the servicer must use the same interest rate as established when determining the terms for the Trial Period Plan.

<table>
<tr><th>Step</th><th>Action</th></tr>
<tr><td>1</td><td>Capitalize eligible arrearages. The following are considered as acceptable arrearages for capitalization:
▪ accrued interest;
▪ out-of-pocket escrow advances to third parties, provided they are paid prior to the effective date of the mortgage loan modification;
▪ servicing advances paid to third parties in the ordinary course of business and not retained by the servicer, provided they are paid prior to the effective date of the mortgage loan modification, if allowed by state laws; and
▪ any outstanding non-interest bearing balance from a previously completed loan modification or a previously completed payment deferral.

NOTE: If applicable state law prohibits capitalization of past due interest or any other amount, the servicer must collect such funds from the borrower over a period not to exceed 60 months unless the borrower decides to pay the amount up-front. Late charges may not be capitalized and must be waived if the borrower satisfies all conditions of the Trial Period Plan.

See Administering an Escrow Account in Connection With a Mortgage Loan Modification in B-1-01, Administering an Escrow Account and Paying Expenses for additional information.</td></tr>
<tr><td>2</td><td>Set the interest rate to a fixed rate based on the requirements in the following table.
<table>
<tr><th>If the mortgage loan is…</th><th>Then the servicer must…</th></tr>
<tr><td>a fixed rate (including an ARM or step-rate that has reached its final step)</td><td>set the interest rate to the contractual interest rate in effect for the periodic payment due in the month of the evaluation date.</td></tr>
<tr><td>an ARM or step-rate that has not reached its final interest rate</td><td>set the interest rate to the greater of
▪ the contractual interest rate in effect for the periodic payment due in the month of the evaluation date, or
▪ the Fannie Mae Modification Interest Rate.

NOTE: If the Fannie Mae Modification Interest Rate exceeds the lifetime interest rate cap of the ARM or the final interest rate for the step-rate, then the servicer must set the contractual interest rate to the lifetime interest rate cap for the ARM or the final interest rate for the step-rate, as applicable.</td></tr>
</table></td></tr>
</table>

3	If the mortgage loan has a post-modification MTMLTV greater than or equal to 50% and the interest rate as determined in step 2 is greater than the Fannie Mae Modification Interest Rate, then the servicer must reduce the rate in 0.125% increments until the earlier of ▪ achieving the 20% P&I payment reduction target, or ▪ reaching the Fannie Mae Modification Interest Rate. ***NOTE:*** *In instances where the 20% P&I payment reduction target has not yet been achieved but applying a full 0.125% increment would set the modified interest rate to a rate below the Fannie Mae Modification Interest Rate, the servicer must apply a partial rate reduction increment (i.e., an amount less than 0.125%) to reach the Fannie Mae Modification Interest Rate. Refer to the Appendix for examples on applying the interest rate reduction increments.*
4	Extend the term in monthly increments until the earlier of ▪ achieving the 20% P&I payment reduction target, or ▪ reaching a term that is 480 months from the mortgage loan modification effective date. ***NOTE:*** *When the mortgage loan is secured by a property where the title is held as a leasehold estate, the term of the leasehold estate must not expire prior to the date that is five years beyond the new maturity date of the modified mortgage loan. In the event that the current term of the leasehold estate would expire prior to such date, the term of the leasehold estate must be renegotiated to satisfy this requirement for the mortgage loan to be eligible for the mortgage loan modification.*
5	Forbear principal if the post-modification MTMLTV ratio is greater than 50%, in an amount that is the lesser of ▪ an amount that would achieve the 20% P&I payment reduction target, ▪ an amount that would create a post-modification MTMLTV of 50% using the interest-bearing principal balance, or ▪ 30% of the gross post-modification UPB of the mortgage loan. ***NOTE****: Interest must not accrue on any principal forbearance. Principal forbearance is payable upon the earliest of the maturity of the mortgage loan modification, sale or transfer of the property, refinance of the mortgage loan, or payoff of the interest-bearing UPB.*

If the steps are exhausted without achieving the 20% P&I payment reduction target, then the servicer must offer the resulting terms to the borrower provided the monthly P&I payment satisfies the P&I-specific requirements in *Determining the Fannie Mae Flex Modification Terms* above.

Calculating the Housing Expense-to-Income Ratio in F-1-27, Processing a Fannie Mae Flex Modification

This topic has been deleted.

Servicers who have questions about this Lender Letter should contact their Fannie Mae Account Team, Portfolio Manager, or Fannie Mae's Single-Family Servicer Support Center at 1-800-2FANNIE (1-800-232-6643).
Have Guide questions? Get answers to all your policy questions, straight from the source. Ask Poli.

Appendix

Examples Related to Achieving the 20% P&I Payment Reduction Target

Refer to the examples below related to applying the increment or amount to result in a payment reduction that exceeds but is as close as possible to 20%.

Example 1: 20% P&I Payment Reduction Target Achieved Before the Fannie Mae Modification Interest Rate is Reached

Loan Information

Pre-modification P&I: $1,778.50

Pre-modification remaining term: 335 months

Post-capitalization UPB: $250,000

Fannie Mae Modification Interest Rate: 5.00%

Interest rate after completing Steps 1 and 2: 7.625%

P&I after completing Steps 1 and 2: $1,804.76

Modified Interest Rate	Modified P&I	Payment Reduction %
7.625%	$1,804.76	N/A – Payment increase
Reduce the interest rate in 0.125% increments until the earlier of achieving a 20% payment reduction or reaching the Fannie Mae Modification Interest Rate.		
7.500%	$1,783.74	N/A – Payment increase
Continue to reduce the interest rate in 0.125% increments…		
… 5.250%	$1,423.55	19.96%
5.125%	$1,404.63	**21.02%**
The 20% P&I payment reduction target has been achieved prior to reaching the Fannie Mae Modification Interest Rate. The servicer must offer the resulting terms of the modification to the borrower and must not proceed to Step 4.		

Example 2: 20% P&I Payment Reduction Target is Achieved via Term Extension

Loan Information

Pre-Modification P&I: $1,696.05

Remaining Mortgage Term: 312 months

Post capitalized UPB: $280,000

Modified Interest Rate after completing Step 1-3: 5.00%

P&I after completing Steps 1-3: $1,605.36

Modified Term	Modified P&I	Payment Reduction %
312 Months	$1,605.36	5.35%
Extend the term in monthly increments until the earlier of achieving the 20% P&I payment reduction target or reaching a term that is 480 months from the mortgage loan modification effective date		
313 Months	$1,602.86	5.49%
Continue to increase term in monthly increments…		
…471 Months	$1,358.30	19.91%
472 Months	$1,357.37	19.97%
473 Months	$1,356.45	**20.02%**
The 20% P&I payment reduction target has been achieved. The servicer must offer the resulting terms of the modification to the borrower and must not proceed to Step 5.		

Example 3: 20% P&I Payment Reduction Target is Achieved via Principal Forbearance

Loan Information

Pre-Modification P&I: $1,235.98

Property Value: $321,739.00

Post capitalized UPB: $215,206.50

Modified Interest Rate after completing Step 1-3: 5.125%

Remaining Mortgage Term after completing Step 4: 480 months

P&I after completing Steps 1-4: $1,055.60

Interest Bearing UPB	Forborne Principal	Modified P&I	MTMLTV Ratio – Interest Bearing UPB	Forborne Principal % of gross post-modification UPB	Payment Reduction %
$215,206.50	N/A	$1,055.60	66.69%	N/A	14.59%
Forbear principal in an amount that is the lesser of: an amount that would achieve the 20% P&I payment reduction target, an amount that would create a post-modification MTMLTV of 50% using the interest-bearing principal balance, or 30% of the gross post-modification UPB.					
$201,585.24	$13,621.26	$988.78	62.65%	6.33%	**20.0003%**
A modified P&I of $988.78 achieves a payment reduction that exceeds but is as close as possible to 20% (any modified P&I payment greater than $988.78 fails to achieve the 20% P&I payment reduction target). The servicer must offer the resulting terms of the modification to the borrower.					

Example 4: 20% P&I Payment Reduction Target is Achieved via Principal Forbearance

Loan Information

Pre-Modification P&I: $1,000.00

Property Value: $171,500

Post capitalized UPB: $154,750.00

Modified Interest Rate after completing Step 1-3: 6.875%

Remaining Mortgage Term after completing Step 4: 480 months

P&I after completing Steps 1-4: $947.65

Interest Bearing UPB	Forborne Principal	Modified P&I	MTMLTV Ratio – Interest Bearing UPB	Forborne Principal % of gross post-modification UPB	Payment Reduction %
$154,750.00	N/A	$947.65	90.23%	N/A	5.24%
Forbear principal in an amount that is the lesser of: an amount that would achieve the 20% P&I payment reduction target, an amount that would create a post-modification MTMLTV of 50% using the interest-bearing principal balance, or 30% of the gross post-modification UPB.					
$130,640.19	$24,109.81	$800.00	76.18%	15.58%	20.00%
At this point, the payment reduction is exactly equal to 20% and additional principal must be forborne to achieve a payment reduction that exceeds but is as close as possible to 20%.					
$130,638.56	$24,111.44	$799.99	76.17%	15.58%	**20.001%**
A modified P&I of $799.99 achieves a payment reduction that exceeds but is as close as possible to 20% (any modified P&I payment greater than $799.99 fails to achieve the 20% P&I payment reduction target). The servicer must offer the resulting terms of the modification to the borrower.					

Examples Related to Applying the Interest Rate Reduction Increments

Refer to the examples below related to applying the interest rate reduction increments as described in Step 3 to achieve the Flex Modification Payment Reduction Target or reaching the Fannie Mae Modification Interest Rate.

Example 1: Fannie Mae Modification Interest Rate Reached Before 20% P&I Payment Reduction Target is Achieved

Loan Information

Pre-modification P&I: $1,684.75

Pre-modification remaining term: 335 months

Post-capitalization UPB: $250,000

Fannie Mae Modification Interest Rate: 5.00%

Interest rate after completing Steps 1 and 2: 7.150%

P&I after completing Steps 1 and 2: $1,725.41

Modified Interest Rate	Modified P&I	Payment Reduction %
7.150%	$1,725.41	N/A – Payment increase
Reduce the interest rate in 0.125% increments until the earlier of achieving a 20% payment reduction or reaching the Fannie Mae Modification Interest Rate.		
7.025%	$1,704.77	N/A – Payment increase
Continue to reduce the interest rate in 0.125% increments…		
… 5.150%	$1,408.40	16.40%
5.025%	$1,389.58	17.52%
Reduce the interest rate by a partial increment of 0.025% rather than the full 0.125% to reach the Fannie Mae Modification Interest Rate.		
5.00%	$1,385.83	17.74%
The Fannie Mae Modification Interest Rate has been reached prior to achieving the 20% P&I payment reduction target. The servicer must proceed to Step 4.		

Example 2: Fannie Mae Modification Interest Rate Reached and 20% P&I Payment Reduction Target is Achieved

Loan Information

Pre-modification P&I: $1,630.05

Pre-modification remaining term: 335

Post-capitalization UPB: $235,000

Fannie Mae Modification Interest Rate: 5.00%

Interest rate after completing Steps 1 and 2: 7.525%

P&I after completing Steps 1 and 2: $1,680.66

Modified Interest Rate	Modified P&I	Payment Reduction %
7.525%	$1,680.66	N/A – Payment increase
Reduce the interest rate in 0.125% increments until the earlier of achieving a 20% P&I payment reduction or reaching the Fannie Mae Modification Interest Rate.		
7.400%	$1,660.97	N/A – Payment increase
Continue to reduce the interest rate in 0.125% increments…		
… 5.150%	$1,323.90	18.78%
5.025%	$1,306.21	19.87%
Reduce the interest rate by a partial increment of 0.025% rather than the full 0.125% to reach the Fannie Mae Modification Interest Rate.		
5.00%	$1,302.68	20.08%
The Fannie Mae Modification Interest Rate has been reached while also achieving the 20% P&I payment reduction target. In this instance the servicer must offer the resulting terms of the modification to the borrower and must not proceed to Step 4.		

Faculty

Hon. Hannah L. Blumenstiel is a U.S. Bankruptcy Judge for the Northern District of California in San Francisco. Prior to her appointment on Feb. 11, 2013, Judge Blumenstiel was an associate (2003-08) and then a partner (2008-12) with Winston & Strawn LLP, where she focused her practice on creditors' rights litigation in state and federal court, including bankruptcy court. From 2001-03, Judge Blumenstiel was an associate with Murphy Sheneman Julian & Rogers LLP, where she represented debtors, creditors and trustees in bankruptcy cases and adversary proceedings. She served as a law clerk to Hon. Charles M. Caldwell of the U.S. Bankruptcy Court for the Southern District of Ohio (Eastern Division) from 1998 to 2001, and from 1997-98, she represented the State of Ohio's interests in bankruptcy cases as an assistant attorney general with the Revenue Recovery Section of the Ohio Attorney General's Office. Judge Blumenstiel is ABI's Vice President-Research Grants and serves as an Executive Editor of the *ABI Journal*. She received her J.D. from Capital University Law School in 1997 while working full-time for the Columbus Bar Association as director of its *pro bono* initiative, "Lawyers for Justice," and her B.A. from Ohio State University in 1992.

Igor Roitburg is a senior managing director with Stretto in New York and has more than 25 years of combined legal, bankruptcy industry and technology proficiency. Prior to joining Stretto, he served as COO at Default Mitigation Management LLC (DMM), acquired by Stretto, where he co-created the DMM Portal, the industry's leading technology platform specifically designed to facilitate mortgage and student loan debt resolution. Mr. Roitburg is responsible for overseeing the day-to-day development and integration of the DMM Portal. He directs a team of subject-matter experts who are focused on expanding the adoption of both the mortgage and student loan modification programs with the goal of making debt-resolution a more simplified process for an increased number of nationwide borrowers. Mr. Roitburg has a thorough understanding of the consumer bankruptcy process and the administrative hurdles both lawyers and their clients must navigate to ensure a successful resolution. He received his J.D. from Cornell Law School.

Jennifer Rood is assistant general counsel at the Vermont Department of Financial Regulation in Montpelier, Vt., which regulates banking, insurance, captive insurance and securities. She serves as lead enforcement attorney for securities fraud and insurance market conduct violation matters, and as lead counsel in captive insurance insolvency proceedings. In addition, Ms. Rood has also played a significant role in advising multistate securities-enforcement working groups in several large cryptocurrency bankruptcy cases. Prior to joining the Department in January 2016, she worked as a bankruptcy lawyer and litigator for almost 30 years in New Hampshire, representing both business and consumer debtors in a variety of bankruptcy matters. She is admitted to practice in Vermont, New Hampshire and Maine. Ms. Rood received her J.D. in 1985 from Vermont Law and Graduate School.

Jonathan E. Selkowitz is the managing attorney of the Consumer Protection Unit at Pine Tree Legal Assistance, Inc. in Portland, Maine, the state's general civil legal services organization. Since joining Pine Tree in 2016, his work has focused on foreclosure defense, mortgage servicing, debt-collection practices, auto fraud and other consumer protection litigation. Mr. Selkowitz routinely testifies before the Maine Legislature and presents at regional and national conferences on consumer laws that impact low-income communities. He has successfully handled a number consumer law appeals before the Maine Supreme Judicial Court and impact litigation in federal court. Prior to law school, Mr. Selkowitz was a predatory lending and consumer protection investigator at the U.S. Attorney's office in Philadelphia. Before relocating to Maine, he served a two-year clerkship for a federal district court judge in Philadelphia and practiced commercial litigation at a national law firm. Mr. Selkowitz received his B.A. in 2005 in political science from Haverford College, and his J.D. *magna cum laude* in 2011 from Temple University James E. Beasley School of Law.