

**alfn intersect**  
servicing + bankruptcy

**HOT TOPICS**

*Thursday, March 25, 2021  
12:00 – 1:15 PM Central Time*

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## Session Overview

During the past year there have been many unexpected challenges in the bankruptcy forum.

- This panel will discuss the hot topic surrounding these challenges while taking a deep dive into the intersection of Forbearance agreements and bankruptcy.
- The panel will also discuss how the CARES Act has affected the loss mitigation programs instituted by many of the bankruptcy courts pre-covid, specifically as it related to the bankruptcy mediation programs popping up across the country.
- The panel will address the interaction between bankruptcy and credit reporting.

## Forbearance Agreements

- The CARES Act provides a mortgage payment forbearance option for borrowers who, either directly or indirectly, suffer a financial hardship due to the coronavirus (COVID-19) national emergency.
- No documentation is required to prove the hardship beyond a hardship assertion from the Borrower.
- Borrowers are entitled to an initial forbearance period of up to 180 days which may be extended for up to an additional 180 days. However, a borrower can, at any time, choose to shorten the forbearance and resume repayment of the loan. Recently extended to 18 months.
- Borrowers in Bankruptcy are eligible, and servicers are prohibited from denying the Borrower due to a Bankruptcy status.
- Tracking Hardship Assertions, Forbearance Requests, and Forbearance Extensions or Stops with technology

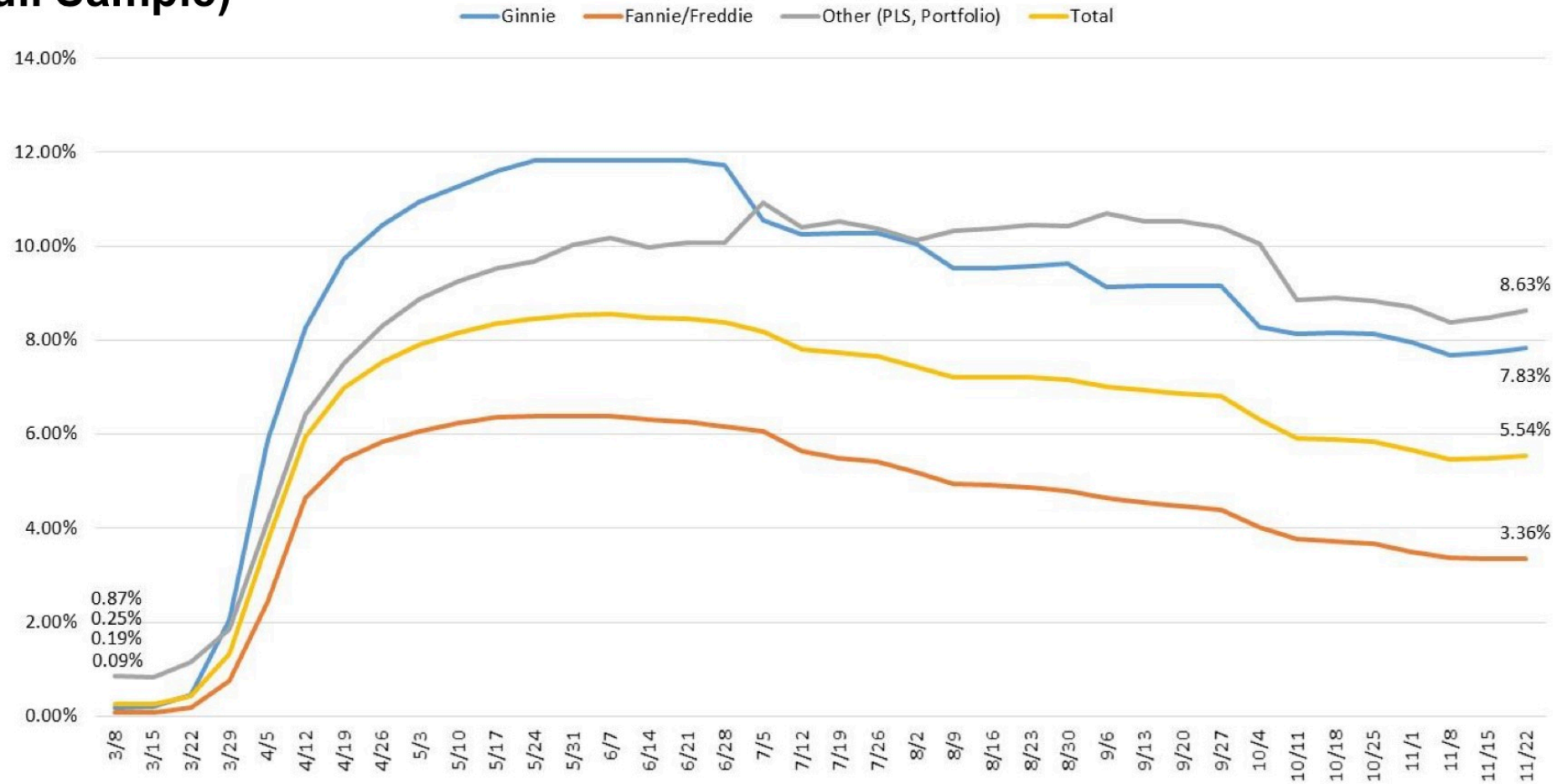
# Forbearance Agreements

## Additional Considerations if the Borrower is in Bankruptcy

- **Confirm the Forbearance was Requested**
  - Did the Borrower request and/or agree to the Forbearance?
  - Is the Borrower in a confirmed Chapter 13 plan?
    - Is the plan a conduit plan?
    - Was a Motion to Modify filed to Address Forbearance?
    - What notice was provided?
      - If no notice, was the Trustee remitting payments?
      - Determine what action to take with the payments received during the Forbearance
- **Provide Disclosure / Notice**
  - File a Notice of Forbearance with the Court
  - Notice of extended Forbearance
  - Notice of expired Forbearance? If expired, what next?
- **Using the right workflow technology, servicers intake automated forbearance requests in bulk and disclosure notices with operational controls and visibility in real time**



# % of Servicing Portfolio Volume in Forbearance by Investor Type over Time (Full Sample)



Source: MBA's Weekly Forbearance and Call Volume Survey, as of 11/22/20  
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## Polling Question

Are Mortgage Servicers converting most of the active Forbearances into Loan Modifications, extending the Forbearance term or is the Debtor bringing the loan current when the Forbearance expires?

- a. Converting to loan modifications
- b. Extending additional forbearance
- c. Debtor is curing the default
- d. Still unknown at this time

## **Proof of Claim**

- If debtor is in an active Forbearance Agreement, should the pre-petition payments be included in the POC?
- What happens when the plan becomes a conduit due to pre-petition default, but those payments are in Forbearance?
- Does the Plan address treatment of the payments in the Forbearance Agreement?

## **Response to Notice of Final Cure**

- Do you file an Agree or Disagree response?
- Should you add a disclaimer?

## **Managing the Compliance, Volume and Velocity**

- Establishing changing automated workflow processes for determinations
- Create additional rules and decisioning down to the jurisdiction level

## When to file a Motion for Relief if Default Occurs in a Bankruptcy

- **Timing of Motion for Relief**
  - Confirm status of Forbearance – offered, expired, extended?
  - Add details regarding status of Forbearance to Motion for full disclosure
  - Repayment plan through an agreed order?
    - Tracking concerns?
- **Confirm Accounting**
  - Are the payments during Forbearance included?
  - Review account for non-recoverable fees, penalties or interest associated with the forbearance
  - Will likely see objections to fees associated with motions for relief
  - Escrow concerns
  - Application on payments once the forbearance term expires

**What should the Servicer know about the technology they use?**

# Issues and Challenges with Forbearance Agreements

- **Supplemental Proofs of Claim**

- Consolidated Appropriations Act of 2021: Provided permission to file supplemental claims related to CARES Act forbearances, modifications and deferrals; and related modifications to Chapter 13 plans based on such supplemental claims.
- Servicers may file late supplemental proofs of claim for claims that are modified by the CARES Act. This allows mortgage servicers to file a supplemental proof of claim for payments forborne, deferred or otherwise modified under the CARES Act even though the claim bar date has passed. Notably, the CARES Act relief extends to federally backed mortgage loans.
- These supplemental proofs of claim must include a description of the forbearance agreement or loan modification and a copy of the forbearance agreement or loan modification (to the extent one exists) and must be filed no later than 120 days after the end of the forbearance period.
- How Workflow Automation Handles Supplemental Proofs of Claim

**Fill in this information to identify the case:**

Debtor 1 \_\_\_\_\_

Debtor 2 \_\_\_\_\_  
 (Spouse, if filing)

United States Bankruptcy Court for the \_\_\_\_\_ District of \_\_\_\_\_  
 (State)

Case number \_\_\_\_\_

Form 4100S

**Supplemental Proof of Claim for CARES Forbearance Claim**

02/21

This Supplemental Proof of Claim is filed in compliance with the requirements of 11 U.S.C. § 501(f)(1) as the Debtor was granted a forbearance under the CARES Act (15 U.S.C. § 9056 or 9057). "Creditor" in this form means "eligible creditor" under 11 U.S.C. § 501(f). File this form as a supplement to your proof of claim.

Name of creditor: \_\_\_\_\_

Court claim no. (if known):

\_\_\_\_\_

Last 4 digits of any number you use to identify the debtor's account: \_\_\_\_\_

Property address:

Number Street

\_\_\_\_\_

City State ZIP Code

**Part 1: Amount of Loan That Was Not Received During Forbearance Period**

List of payments not received during forbearance period:

Date: \_\_\_\_\_ Amount: \_\_\_\_\_ Date: \_\_\_\_\_ Amount: \_\_\_\_\_

Date: \_\_\_\_\_ Amount: \_\_\_\_\_ Date: \_\_\_\_\_ Amount: \_\_\_\_\_

## Considerations:

- Internal processes may need to be updated to ensure such supplemental claims are completed consistently and in a manner that accurately describes the CARES Act relief.
- Servicers should be mindful of when debtors' CARES Act relief expires to ensure that supplemental proofs of claim are timely filed.
- If supplemental proofs of claim are not filed within the 120 days after the end of the forbearance period, they will likely be barred, and any amounts owed will be unrecoverable. What about if the lender is not "eligible"?
  - \*File Motion to Allow Late Claim?
- Servicers may file a Motion to Modify a Chapter 13 Plan if the debtor fails to do so after the Servicer files a supplemental proof of claim. Servicers should be prepared to file their own motions before the plan ends. This change applies to Chapter 13 cases.
- Note that each jurisdiction may also implement local rules that address these changes. Overall, the practical considerations regarding some of the changes require creditors to examine the loan closely.



- **Modified Plans**

- Most jurisdictions now allow for post-petition defaults to be included in a modified plan.
  - What if the Debtor does not file a motion to modify a confirmed plan? Can a Creditor file a motion to modify the Debtor's confirmed plan to include post-petition default?
    - How is Creditor able to show the Debtor can afford their new plan payment?

- **Service Transfer Loans**

- Best practice is to review all documents and/or bankruptcies upon acquiring a loan
- Remedy any missed notices upon service transfer
- Ensure extra measures are in place to package loan for transfers

## Polling Question

If Mortgage Servicers are converting a Forbearance Agreement to a Loan Modification, will the Debtor automatically qualify, or will they have to apply for the Loan Modification?

- a. The Debtor will automatically qualify for the Loan Modification if they previously qualified for the Forbearance
- b. The Debtor must apply for the Loan Modification
- c. Unknown at this time

## **Loan Modifications:**

- Unlikely but Ideal – the loan term is extended by the months the loan is in forbearance – kind of like an “automatic loan modification”
- Likely but a Pain – Debtor will have to apply for a loan modification
- With automated workflow designed to decision and process in bulk, disruption from modifications under the CARES Act becomes manageable, traceable and fluid. Collaborating with counsel is critical to getting this right.

# Loan Modifications in Bankruptcy

## **Bankruptcy Mediation Programs – now active in CA, NV, AZ, WI, OH, IN, PA, NC, SC, GA, NY, VT and FL**

- Many individuals that file for bankruptcy, particularly Chapter 13 bankruptcy, are in the process of trying to save their homes.
- To facilitate options, Bankruptcy courts throughout the country have created a program referred to as the mortgage modification mediation.
- This program creates a set of procedures for qualifying debtors to begin a mediation process with their mortgage lenders for loan modification.
- The lender can also initiate the mediation. Neither party is obligated to reach an agreement – all that's required is good faith negotiation.
- Although the program is voluntary, if the Court grants an order to refer the matter to mediation, the servicers must comply and work through the mediation process through the assigned portals.

- The impact of errors on credit
- Managing Reporting Uniformity Under CARES
  - Retroactive reporting
  - Loan Agreements
  - Disaster codes
  - Trade line guidelines
  - Special comment codes
  - Account status values
- Link to a “future” regulation and amendments on behalf of the CFPB as related to credit reporting (just released):
  - [§ 1006.30 Other prohibited practices. | Consumer Financial Protection Bureau \(consumerfinance.gov\)](https://www.consumerfinance.gov/section-1006.30)
- There is not a lot that is specific to COVID-19 and bankruptcy; however, the above forthcoming policy (1006.30) touches on debt handling, secured claims in bankruptcy, and other moderately related topics.
- Remedies & Solutions
  - Legal remedies coupled with technological and operation changes are critical

## Polling Question

How does technology provide additional safety nets for servicers and attorneys?

- a. Retroactive Reporting
- b. Complete Auditable Trail
- c. Improved Reporting Accuracy
- d. All of the Above



## Webinar Wrap-Up

### Questions

If you have a question regarding today's presentation, please contact the ALFN or any of the presenters directly.

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## **Legislative Updates Part 2 – Bankruptcy Impacts from the “CARES 2” Bill and Potential New Legislative Changes**

*Tuesday, March 30, 2021*

12:00-1:15 PM Central Time (10:00-11:15 AM Pacific, 11:00-12:15 PM Mountain, 1:00-2:15 PM Eastern)

## **Chapter 13 Best Practices (Including PPFN, Notice of Final Cure & POC)**

*Wednesday, April 7, 2021*

12-1:15 Central Time (10-11:15 Pacific, 11-12:15 Mountain, 1-2:15 Eastern)

## **Chapter 11 Basics for the Mortgage Lender**

*Friday, April 9, 2021*

12:00-1:15 PM Central Time (10:00-11:15 AM Pacific, 11:00-12:15 PM Mountain, 1:00-2:15 PM Eastern)

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