

## CHAPTER 9. WORKOUTS (EFFECTIVE MARCH 1, 2024)

### 9.1 General Provisions

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#### 9.1.1 Workouts Overview

All attempts should be made to assist borrowers facing default or imminent default to avoid Foreclosure. The loss mitigation options described in this chapter are the only workout options available for MPF Traditional Mortgage Loans, and should be considered based on the workout hierarchy as provided for in Section 9.1.24 Workout Hierarchy.

In assessing and offering borrowers a workout option Servicers are required to comply with all Applicable Laws, including CFPB regulations, insurer requirements, and the requirements of this Servicing Guide.

#### 9.1.2 Government Loans

The Servicer must comply with applicable Government Agency requirements for loss mitigation and required approvals. Servicers are responsible for ensuring the government insurance or guarantee is in place at all times and no workout option that may result in a loss of the government insurance or guarantee, may be offered or granted. Additional guidance on short sales is included in Section “9.3.1.2 Government Loans” and on loan modifications restrictions are in Section “9.2.4.14 Government Mortgage Loan Modifications.” Repurchase guidance related to delinquent Government Loans are at Section “8.2 Delinquent Government Loans.”

#### 9.1.3 Mortgage Insurers

For any Mortgage Loan with Mortgage Insurance, the Servicer must ensure any workout option offered meets the applicable MI company’s requirements and, where required, obtain prior approval from the MI company. Proof must be retained in the Mortgage File.

#### 9.1.4 Borrower Impacted by a Major Disaster Event

The workout options outlined in this chapter are for mortgage loans or Borrowers not affected by a Major Disaster event. If a Servicer learns of a Borrower impacted by a Major Disaster, it should make every effort to work with the Borrower whose income was affected by a disaster, or whose property is located in a Major Disaster area in accordance to Section “8.5.2 Offering Assistance to the Borrower” of this Guide.

For Government Loans, Servicers are required to follow the applicable Government Agency requirements for providing major disaster assistance.

#### 9.1.5 MPF Bank Approvals

As provided for in specific loss mitigation plan requirements in this Chapter, in some instances Servicers may have discretion to extend appropriate relief options to Borrowers encountering a hardship, while in other instances Servicers are required to obtain prior approval from the MPF Bank. Servicers must obtain MPF Banks approval when required by the applicable subsections of this Chapter and when recommending a loss mitigation offering that deviates from the Guide requirements in any way.

Generally, forbearance plans, repayment plans, payment deferrals, and loan modifications that meet Guide requirements do not require pre-approval from the MPF Bank before offering to the Borrower. For workout specific pre-approval requirements see:

- Loan modifications where new maturity date exceeds initial maturity date by more than 20 years, Section “9.2.4.6.2 Determining New Modified Mortgage Loan Terms.”
- Short Sales, Section “9.3.1 Short Sale.”
- Deed in Lieu of Foreclosure, Section “9.3.2 Deed in Lieu of Foreclosure.”

While prior approval by the MPF Bank is not required for Payment Deferrals and Loan Modifications that meet MPF Guide requirements, Servicers must submit the Form SG354 via eMAQCSplus upon complete execution of the agreements (Note: Form SG354 must be used, no alternative or equivalent forms are permitted). See Sections “9.2.3 Payment Deferral” and “9.2.4 Loan Modification” for additional information regarding submitting SG354.

### **9.1.6 Submission to MPF Banks**

Requests for approval of a workout requiring prior approval by the MPF Bank or of any recommendation for a workout that does not meet MPF Program requirements must be submitted to the MPF Provider by completing a Workout Worksheet (Form SG354) on eMAQCS®plus (Note: Form SG354 must be used, no alternative or equivalent forms are permitted). All recommendations must be adequately documented by the Servicer using the Workout Worksheet and all required supporting documentation as indicated on the Workout Worksheet.

### **9.1.7 Submission for Exceptions**

In all instances where the Servicer is recommending an exception, the recommendation (including a detailed justification for the recommendation and the proposed terms of the recommendation) must be submitted via eMAQCSplus using the Workout Worksheet (Form SG354) (Note: Form SG354 must be used, no alternative or equivalent forms are permitted) and must be granted approval by the MPF Bank before offering the option to the Borrower. Submission of a recommendation for exception must be accompanied by all supporting documentation that is relevant to the recommendation.

### **9.1.8 MPF Provider and MPF Bank Response Time**

Servicers are responsible for ensuring they meet all regulatory requirements for responding to a Borrower’s request for loss mitigation. Servicers must allow at least 5 Business Days for any request to the MPF Provider or the MPF Bank to be reviewed. To avoid any delays, Servicers must ensure a submission is complete and accurate.

### **9.1.9 Reliance on Servicer**

Servicers are responsible for resolving any loan level discrepancies prior to completing any workout, specifically loan modifications or payment deferrals, and for ensuring loan and borrower eligibility prior to making any workout related offer to a Borrower. This responsibility applies whether or not the MPF Bank’s approval was required and obtained. Any MPF Bank approval of a Servicer’s workout recommendation will be made based on data and the recommendation submitted by Servicer. When a workout plan offered to a Borrower is found does not meet MPF Guide requirements or, where MPF Guides are silent, industry standards, regardless of whether the workout plan was approved by the MPF Bank prior to offering it to the Borrower, the Servicer may be required to purchase or repurchase the

Mortgage Loan, and/or indemnify the MPF Bank or MPF Provider for any related losses, damages, costs, fees and expenses. Any such related losses, damages, costs, fees and expenses shall not be allocated to or covered by the First Loss Account or Credit Enhancement for the Master Commitment.

#### **9.1.10 MPF Reporting**

Servicers are required to ensure proper reporting to the MPF Provider and MPF Bank on the status of all loans. Delinquent loans being considered for workout options are subject to the reporting requirements of MPF Servicing Guide Section “8.4.1 Reporting to the MPF Provider,” including the monthly Delinquent Mortgage & Bankruptcy Status Report (Exhibit B) until a workout option is finalized or the status of the loan is no longer delinquent. Once a workout option is finalized, Servicers are required to report the new status of the loan pursuant to any specific requirements provided for in the applicable workout option sections of this Chapter, and including the monthly Delinquent Mortgage & Bankruptcy Status Report (Exhibit B).

In addition, Servicer is required to ensure their Monthly Summary and Remittance Report (SG300) reflects the correct the loan level data (including UPB) Servicer is relying on to determine an applicable workout. See Section “2.14.1 Monthly Accounting Reports.” Loan Level discrepancies must be resolved prior to completing a Payment Deferral or Loan Modification.

These reporting requirements are in addition to any obligation the Servicer may have to provide the MPF Provider and the MPF Bank final workout documents, as provided for in other sections of this Chapter.

#### **9.1.11 Servicing Advances**

The Servicer may charge the Borrower for any recording or similar costs associated with a workout option. Servicers are responsible for advancing their own funds to cover all expenses incurred as a result of Servicing Mortgage Loans.

When finalizing any retention options, Servicers must ensure all servicing related expenses and advances incurred during the delinquency that are legally permitted to be recovered from the Borrower are incorporated into the workout offering.

When a liquidation option is finalized, any servicing related expenses and advances incurred during the delinquency the Servicer was unable to recover from the Borrower or the proceeds of the short sale, if applicable, will be addressed as part of the reimbursement process detailed in Section “11.9 Realized Losses or Gains.”

Servicers will only be reimbursed at liquidation for items noted as reimbursable pursuant to Section “11.9 Realized Losses or Gains” and to Calculation of Realized Loss or Gain form (Form SG332), and subject to available balance on the applicable First Loss Account (FLA).

All costs and expenses related to Servicing and collection of the Mortgage Loans not recovered from the Borrower and not reimbursable shall be borne solely by the Servicer and shall not be recoverable by the Servicer from the MPF Bank or from Liquidation Proceeds, Insurance Proceeds, payments on the Mortgage Loan, or any other source relating to the Mortgage Loan or the related Mortgaged Property.

### **9.1.12 Mortgage Files**

Servicers are required to maintain all data, information, and documentation relied on for evaluating and granting any workout offerings, and any relevant communications with borrowers in the Mortgage Loan File.

### **9.1.13 Document execution**

Any document required to be executed pursuant to this Chapter must be executed in compliance with requirements and limitations of the MPF Guides, including section MPF Program Guide Section 7.4 Electronic Signatures in Global and National Commerce Act (E-Sign).

### **9.1.14 Required Forms**

Whenever a form or specific minimum verbiage is required by the Guides to be provided to a Borrower, Servicers are only permitted to make changes to such form or verbiage when necessary to ensure compliance with laws. Unless otherwise provided for in a specific section of this Guide, Servicers are permitted to use equivalent forms, including their own form or industry standard forms (such as those used by Fannie Mae and Freddie Mac), but only if those forms contain at minimum, the information contained in the applicable MPF form. In all instances Servicers are required to ensure forms meet all Applicable Laws.

### **9.1.15 Notices and Disclosures**

The Servicer must provide Borrowers with all required notices and disclosures related to evaluating for or granting workout required by the MPF Guides, Applicable Standards, including the CFPB Servicing Rules and Equal Credit Opportunity Act (ECOA)/Regulation B adverse action notices.

### **9.1.16 IRS Reporting**

The Servicer must comply with all applicable Internal Revenue Service (IRS) reporting requirements, including requirements related to Form 1099 and Form 1098, as may apply to specific loss mitigation options.

### **9.1.17 Property Inspection**

Regardless of loss mitigation status, Servicers are required to comply with the property inspection requirements in this Guide, including requirements in Section “8.3.5 Property Inspections”, and in any loss mitigation plan specific requirements in this Chapter. In addition, the servicer must maintain vacant properties regardless of loss mitigation status and regardless of Quality Right Party Contact (QRPC). If a legally responsible party for the mortgage loan confirms that the property is being maintained, the servicer may choose not to complete maintenance during loss mitigation activities. The real estate agent/broker listing a property is not considered a legally responsible party. The servicer is responsible for ensuring the property is preserved and maintained even if the servicer allows the legally responsible party and/or the real estate agent/broker listing a property to preserve and maintain on the servicer’s behalf.

### **9.1.18 Texas 50(a)(6) loans**

Servicers handling Texas 50(a)(6) loans should contact their MPF Bank for guidance, prior to offering any workout to Borrowers.

### **9.1.19 Bankruptcy**

In addition to following the requirements of “Chapter 7. Bankruptcy Of Borrower”, including as it applies to cramdowns, the Servicer must immediately suspend any and all debt collection efforts, including loss mitigation reviews, upon notification of a bankruptcy filing, unless Servicer’s legal counsel expressly advises it that certain collection efforts may be continued.

When identifying loss mitigation opportunities for mortgage loans in any phase of a bankruptcy process, Servicers must work with their law firm to ensure compliance with all applicable laws and requirements. The law firm should contact the borrower’s counsel to discuss the different loss mitigation options that might be suitable for the borrower, when the borrower is contractually delinquent. If the borrower is not represented by counsel, the law firm may contact the borrower directly. Servicers must seek approval from the MPF Bank and the bankruptcy court and trustee, as required, when a loss mitigation opportunity is identified.

Once a Chapter 7 automatic stay is terminated, or the case is dismissed or discharged with a trustee abandonment of the property, the Servicer may consider the possibility of arranging a loss mitigation option. When the loan is not reaffirmed in the bankruptcy, Servicers must ensure that all communications with the borrower and any workout option offered to the borrower meet all applicable laws.

### **9.1.20 Borrower in Foreclosure**

The Servicer must maintain policies and procedures to ensure compliance with any and all applicable laws when assessing borrowers for workout options who are in active foreclosure (“dual tracking”).

When a delinquent mortgage loan is referred to a law firm, the Servicer must continue to work with the borrower to bring the mortgage loan current or finalize a workout arrangement up to the date of the foreclosure sale, unless the servicer has determined that all workout options are not feasible.

If the Borrower is pursuing any workout alternatives, the Servicer must ensure legal counsel is notified and must work with the law firm to ensure postponement of the Foreclosure sale as legal counsel deems appropriate, pursuant to the provisions of this section and pursuant to Applicable Laws (e.g., CFPB), and shall immediately notify the MPF Provider by submitting a comment in eMAQCSplus.

A Servicer seeking the postponement of a Foreclosure that is not pursuant this section or to an Applicable Law or a court ordered stay, must submit a request for approval to the MPF Provider by submitting the explanation of the reason and allowing 5 Business Days for the request to be reviewed.

The Servicer shall ensure that any action it takes to postpone Foreclosure proceedings will not affect its right to file a mortgage insurance or guaranty claim in the future. Specifically, the Servicer shall ensure any delay in Foreclosure complies with any applicable mortgage insurance company or Government Agency requirements, including, when required, obtaining their prior written approval. The Servicer shall document the Mortgage Loan File regarding all Servicing actions taken during this time to ensure that any future insurance or guaranty claims will not be adversely affected.

#### **9.1.20.1 Receipt of a complete Workout Request Package (WRP)**

If a mortgage loan has been referred to foreclosure prior to receipt of a complete Workout Request Package (“WRP”) (See Section “9.1.22 Borrower Workout Package”), the Servicer may delay the foreclosure process pursuant to the terms and conditions set forth below:

- the WRP must be complete before any legal action may be postponed, except if an offer for a short sale has been made based upon the servicer’s evaluation of the borrower for a short sale

without receiving a complete WRP in accordance with Section “9.1.22 Borrower Workout Package”);

- in cases where a payment is required under the terms of a retention offer including a Trial Period Plan based on a complete WRP, and the borrower indicates acceptance of the offer (either verbally or in writing), the servicer must delay the next legal action in the foreclosure proceeding until the borrower fails to make the first payment under the terms of the proposed workout. Verbal or written acceptance, without payment or execution of required documents, serves only to postpone the foreclosure process. A workout plan may not be consummated without a notice of decisions as required by the particular workout plan;
- if the Servicer receives the first payment in a timely manner in accordance with the terms of a Trial Period Plan, repayment plan, or forbearance plan, the servicer must delay the next legal action until the borrower breaches the plan;
- fourteen-day delay periods may be extended in order to postpone or repeat the next legal action or postpone a foreclosure sale if necessary under state or local law;
- if the MPF Bank approves a short sale purchase offer, the Servicer must suspend the foreclosure sale to allow the short sale to close as permitted under state or local law; and
- if a notice of trustee/sheriff sale has been recorded and the Servicer is notified of borrower approval by a mortgage assistance fund program provider and the Servicer believes the funds will reinstate the mortgage loan, the Servicer is authorized to postpone the foreclosure proceedings. However, if a foreclosure sale is scheduled less than seven days from the date the Servicer is notified of borrower approval by the mortgage assistance fund program provider, the Servicer must not notify the attorney to “place on hold” or suspend the foreclosure proceedings.

When the Servicer receives a complete WRP, it must delay the next legal action in the foreclosure process as required by these provisions as long as delays are permitted under applicable law. The next legal action will be the next step required by law to proceed with the foreclosure action, such as publication or service of process, but does not include administrative actions, such as title searches or document preparation.

In some states, the judge may dismiss the case for “lack of prosecution” if the workout plan is not filed with the court as part of the foreclosure proceedings. If this happens and the borrower subsequently defaults under the executed workout plan, the foreclosure proceedings will have to be restarted, which will result in extra foreclosure fees and expenses. In such cases, the Servicer will not be reimbursed for the resulting additional fees and expenses.

The Servicer is not in violation of these requirements to the extent that a court or public official fails or refuses to halt some or all activities in the matter after the Servicer has made reasonable efforts to move the court or request the public official for a cessation of the activity or event.

In applicable foreclosure actions where there is no foreclosure sale and title is transferred by court order, where possible and subject to applicable law, the Servicer must use the estimated court order docket date, if known, in place of the foreclosure sale date in this topic’s requirements.

The limitations described in the remainder of this section do not apply to suspensions otherwise required by the MPF Guides or as otherwise advised by foreclosure counsel.

### **9.1.20.2 Complete WRP Received More Than 37 Days Prior to the Foreclosure Sale Date**

The following are requirements for suspending foreclosure proceedings when a complete WRP is received after foreclosure referral but more than 37 days prior to the foreclosure sale date and where the requirements of the prior sections do not apply. The Servicer must work with foreclosure counsel to ensure all applicable laws are met.

Stage of Evaluation	Requirements
A complete WRP has been received and is being evaluated	No delay in legal action is required.
A complete WRP and a short sale offer have been received	The Servicer must attempt to conduct a review of the complete WRP and short sale offer in accordance with MPF Guides required timelines. If the Servicer cannot do so, it must conduct an expedited review of the complete WRP and short sale offer prior to the foreclosure certification date.
A notice of decisions was sent to the borrower and a retention offer has been extended	No delay in legal action is required unless the foreclosure sale is within the borrower's 14-day response period. In those instances, the Servicer must delay the foreclosure sale for up to 14 days to allow the borrower to respond.

For guidance and requirement for reviewing a WRP, see “9.1.22 Borrower Workout Package.”

### **9.1.20.3 Complete WRP Received Less Than 37 Days Prior to the Foreclosure Sale Date**

The following are requirements for suspending foreclosure proceedings when a complete WRP is received after foreclosure referral but with less than 37 days prior to the foreclosure sale date and where the requirements of the prior sections do not apply.

Generally, when a complete WRP is received during this period, no delay in legal action is required. The Servicer must conduct an expedited review of the complete WRP (and short sale purchase offer, if applicable) prior to the foreclosure certification date.

In instances where a decision notice was sent to the Borrower, no delay in legal action is required unless a retention offer is made and the foreclosure sale is within the borrower's 14-day response period. In those instances, the servicer must delay the foreclosure sale for up to 14 days to allow the borrower to respond.

The Servicer must not offer a Deed in Lieu of Foreclosure option during this time period.

If the Servicer receives a complete WRP with less than 15 days prior to foreclosure sale date and completes its review of the complete WRP it must notify the borrower prior to the foreclosure sale as to the results of the review. If the servicer did not complete its review of the complete WRP, it must advise the borrower of its inability to review the package prior to the sale.

For guidance and requirement for reviewing a WRP, see Section “9.1.22 Borrower Workout Package.”

### **9.1.21 Shared Funding**

For Mortgage Loans in the following two pools: One Mortgage Partners, LLC Mortgage Pass-Through Certificates MPF Shared Funding™ Program Series 2003-1 Trust; and One Mortgage Partners, LLC Mortgage Pass-Through Certificates MPF Shared Funding Program Series 2003-2 Trust, when a Servicer applies a workout as defined in this Guide, the Servicer is affirming that they have confirmed with internal or external legal or compliance resources to confirm that the treatment applied does not violate the REMIC rules applicable to loans in these pools.

### **9.1.22 Borrower Workout Request Package (WRP)**

Unless otherwise provided for in this Guide, Servicers must obtain a complete Workout Request Package (WRP) from Borrowers in order to evaluate them for applicable workout options. See Section “9.1.22 Borrower Workout Package”).

#### **9.1.22.1 Determining Whether a Workout Request Package is Complete**

Unless a Borrower or co-Borrower is deceased or divorced, all parties whose income was used to qualify for the original mortgage loan and who signed the mortgage loan Note must submit the items required for a complete WRP. The following table lists the documentation that the Servicer must obtain for a WRP to be complete:

- A complete Borrower Workout Request Application (WRA) (Form SG355), or equivalent form containing at minimum the same information contained on Form SG355.
- Income documentation as outlined in the WRA based on income type. Income documentation must be no more than 90 days old as of the date the Servicer first determines that the Borrower submitted a complete WRA or at the time of a subsequent evaluation for another workout option.
  - **Non-Borrower income:** Servicers must not consider the expenses of a non-Borrower household member and may only consider the amount of the non-Borrower’s income that they routinely contribute to the household. Servicers may include income of a non-Borrower who contributes to the mortgage loan payment in monthly gross income if the income is voluntarily provided by the Borrower, is documented and verified by the Servicer using the same standards used for verifying a Borrower’s income, and if
    - Servicer verifies that the non-Borrower occupies the subject property as a primary residence based on a review of the credit report or any other available document; and
    - there is documentary evidence to support that the income has been, and reasonably can continue to be, relied upon to support the mortgage loan payment.



- **Non-taxable income:** When the Borrower's income is non-taxable, and the income and its tax-exempt status are likely to continue, the Servicer must develop an "adjusted gross income" by adding an amount equivalent to 25% of the non-taxable income to the Borrower's income. If the Servicer can determine that the actual amount of federal and state taxes is more than 25% of the Borrower's non-taxable income, the Servicer is authorized to use that amount to develop the adjusted gross income.
- **Income documented by bank statements:** When the Borrower's income is documented by bank statements, the Servicer must develop an adjusted gross income by adding an amount equivalent to 25% of the amount documented by the bank statements. If the Servicer can determine that the actual amount of federal and state taxes is more than 25% of the Borrower's income documented by bank statements, the Servicer is authorized to use that amount to verify the Borrower's income.
- Hardship documentation as outlined in WRA based on hardship type.
- Servicers are required to obtain tax transcripts for Borrowers under the following circumstances:
  - to reconcile inconsistencies between other information the Borrower provided (e.g., information the Borrower provided in the WRA) and the income documentation; or
  - if the workout option the Borrower is being evaluated for requires it.
  - **Note:** If tax transcripts are required, Servicers must obtain them directly from the IRS. Servicers are required to provide express consent from the taxpayers to obtain the transcripts and to share the transcripts with investors, as permitted by applicable law, this includes the Taxpayer First Act.

The Servicer is authorized to:

- permit the Borrower to complete, sign, and fax or email the documents required for a complete WRP to the Servicer in accordance with applicable law;
- provide a secure means of access through which a Borrower may prepare and electronically deliver the documents required for a complete WRP to the Servicer; or
- use a third-party verification vendor to verify income and asset information the Borrower provided in the WRA as long as the Servicer:
  - ensures the automated validation service utilized is one approved by Fannie Mae or Freddie Mac;
  - complies with the requirements of the MPF Guides relating to vendor oversight;
  - understands it will be held accountable for the security, accuracy, and integrity of the information obtained from the third-party verification vendor;

- obtains legal authorization from the Borrower to use this verification method; and
- retains all verification reports received from the third-party verification vendor in the loan file.

**Note:** The Servicer must supplement the verification report by obtaining any missing information, or any information necessary to address inconsistencies, from the Borrower.

Servicers are responsible for obtaining any special documentation that is required to support information provided by the Borrower.

A WRP is not considered complete if the Borrower submits a WRA or equivalent, that is

- only partially completed,
- not accompanied by all required income and hardship documentation, or
- not accompanied by tax transcripts under the circumstances described in this section above.

For purposes of determining the submission date in connection with the borrower's submission of a complete WRP, the servicer must use the date of the postmark or other independent indicator such as date and time stamp (electronic or otherwise).

#### **9.1.22.1.1 Borrower in Chapter 7 or Chapter 13 Bankruptcy**

When a Borrower is in an active Chapter 7 or Chapter 13 bankruptcy, the Servicer must comply with the requirements outlined in the Guides, including in “Chapter 7 Bankruptcy Of Borrower” and Section “9.3.19 Bankruptcy,” and is authorized to:

- accept a copy of the bankruptcy schedule(s) in lieu of a WRA, provided that the schedule(s) is not more than 90 days old on the date the Servicer receives the schedule(s)
- accept tax returns, if returns are required to be filed; and
- use this information, along with any required income and hardship documentation as specified in WRA, to determine Borrower eligibility for workout options.

#### **9.1.22.2 Acknowledging Receipt of a Workout Request Package**

Within five business days, the Servicer must acknowledge its receipt of a WRP to the Borrower in writing, and must indicate whether the WRP is complete or incomplete. The acknowledgment must include:

- A statement indicating whether the WRP is complete or incomplete; and if complete, providing any other information required by applicable law.
- The Servicer’s evaluation process and response time frame.
- An explanation of the foreclosure process, including that
  - the foreclosure process may continue, and

- foreclosure referral will not occur if the Servicer is reviewing a complete WRP or if the Servicer extends an offer for a home retention workout option and the Borrower's response time for acceptance has not expired.

In addition, for Borrowers who submit a complete WRP 37 days or less prior to a scheduled foreclosure sale, Servicers must ensure legal counsel is notified and must take action based on advice provided by counsel as to the suspension of the foreclosure sale. Servicers are responsible for ensuring all related regulatory requirements/deadlines are met and must take into account the number of days needed to obtain a response from MPF Provider and/or MPF Bank to any recommendation, which in most instances is 5 business days. See Section "9.1.6 Submission to MPF Banks" and "9.1.8 The MPF Provider and MPF Bank Response Time."

### **9.1.22.3 Sending a Notice of Incomplete Information**

Servicers must send an Incomplete Information Notice to the Borrower no later than 5 business days from receipt of documentation from the Borrower if the Servicer determines that documentation is missing. The notice must meet all Applicable Laws and must include the following items:

- A list of missing documents or information needed to begin an evaluation of the Borrower for a workout option.
- A toll-free number for the Borrower to contact the Servicer if the Borrower has any questions.
- A reference to the HUD website for HUD-approved counselors as a resource available to help the Borrower complete the package.
- A reminder that failure to submit all the required documentation or information may result in ineligibility for a workout option and the foreclosure proceedings will continue, including referral to foreclosure if the mortgage loan was not previously referred.
- A statement that depending on the timing of when the necessary information or documentation is received, there is no guarantee of an evaluation for a workout option and suspension of foreclosure proceedings.

If the WRP is incomplete, the Servicer is authorized to combine the Incomplete Information Notice with the acknowledgment of its receipt of the WRP.

Servicers are authorized, but not required to send an Incomplete Information Notice to a Borrower who submits incomplete documentation 37 days or less prior to a scheduled foreclosure sale. The Servicer is strongly encouraged to work with Borrowers who submit incomplete documentation 37 days or less prior to a scheduled foreclosure sale to obtain a complete WRP and expedite a decision. Servicers must ensure legal counsel is notified and must take action based on advice provided by counsel as to the suspension of the foreclosure sale. Servicers are responsible for ensuring all related regulatory requirements/deadlines are met and must take into account the number of days needed to obtain a response from MPF Provider and/or MPF Bank to any recommendation, which in most instances is 5 business days. See Section "9.1.6 Submission to MPF Banks" and "9.1.8 The MPF Provider and MPF Bank Response Time."

Servicers must continue to attempt to obtain missing documentation using outbound contact methods as described in Section “8.3.2 Contacting Borrowers.”

#### **9.1.22.4 Sending a Notice of Decision on a Workout Option**

Servicers must review and evaluate a complete WRP and communicate a decision to the Borrower by sending a notice no later than 30 days following the receipt of a complete WRP, which must:

- Meet Applicable Law.
- Meet any minimum requirements for such notices or offers provided for in the applicable workout sections of this Chapter.
- Be written in clear and concise language.
- Identify whether the Borrower is receiving an offer of a workout option and, if so, the decision for the workout option that is being offered to the Borrower.
- Description of the workout option being offered.
- Provide the steps the Borrower must take to participate in or accept any offer.
- Provide a 14-day time frame for the Borrower to accept or decline the workout option or inform the Servicer of the Borrower’s intent to accept the workout option, if applicable.
- Provide description of consequences of Borrower failing to meet the terms specified in the notice or the workout option.
- Include all other disclosures required by applicable law.

Unless a workout option has specific acceptance requirements, an acceptance by the Borrower of a workout option may be in the form of verbal or written communication, or receipt of a payment, if applicable. The type of acceptance may vary based on the status of the foreclosure action of the mortgage loan and on the type of workout option being offered.

#### **9.1.23 Determining the Appropriate Workout Option**

##### **9.1.23.1 Evaluating the Mortgage Loan for Workout Options**

Servicers must be familiar with the terms and eligibility requirements of each of the workout options available to help Borrowers when the mortgage loan becomes delinquent or when the Borrower’s monthly payment is in imminent default.

If the eligibility criteria for a particular workout option are not satisfied but the Servicer determines that there are acceptable mitigating circumstances, it must submit a recommendation to the MPF Provider for review in accordance to Section “9.1.6 Submission to MPF Banks” and “9.1.7 Submission for Exceptions.”

##### **9.1.23.2 Evaluating a Borrower for Workout Options**

Servicers must evaluate Borrowers for workout options in accordance to the Workout Hierarchy in Section “9.1.24 Workout Hierarchy.” The Servicer must analyze each case carefully before

determining which workout option is most appropriate. To ensure that the final workout option agreed upon is realistic, the Servicer must consider the Borrower's financial condition, except as otherwise authorized under this Guide. See Section "9.1.22 Borrower Workout Package" for information on evaluating the Borrower for workout options.

The Servicer must not require the Borrower to make an upfront cash contribution to be considered for a workout option.

### **9.1.23.3 Imminent Default**

Servicer must consider available workout options when the Servicer is notified or otherwise becomes aware of events or factors that are expected to cause the borrower's monthly payment to be in default within the next 90 days ("imminent default"). To determine whether a borrower's monthly payment is in imminent default, the servicer must:

- Evaluate the Borrower's financial and hardship condition. See Section "9.1.22 Borrower Workout Package" for information on evaluating the borrower for workout options when the Borrower submits a complete WRP.
- Evaluate the condition of and the circumstances affecting the property securing the mortgage loan by consulting with the Borrower.

If the Servicer determines that a borrower whose mortgage loan was less than 60 days delinquent did not qualify for any workout options, and the borrower's mortgage loan subsequently becomes 60 or more days delinquent, the Servicer must continue its solicitation and collection efforts with the borrower in accordance with Section "8.3.2 Contacting a Borrower."

Workout specific requirements in addressing Borrower in imminent default must be followed. See Section "9.2.4.4.1 Evaluating a Borrower for Imminent Default for Mortgage Loan Modification," Section "9.3.1.4.1 Evaluating a Borrower for Imminent Default for Short Sale," and Section "9.3.1.4.1 Evaluating a Borrower for Imminent Default for Deed in Lieu of Foreclosure."

### **9.1.24 Workout Hierarchy**

Servicers must consider a reinstatement when the mortgage loan is delinquent and the Servicer has determined that the Borrower has the ability to bring the mortgage loan current.

Servicers must consider Borrowers for the workout option most suitable for the Borrower's situation, according to the table below, and based on whether the Borrower's hardship is temporary or permanent.

The following table provides guidance and the order of evaluation for available workout options for MPF Traditional (Conventional) loans. To ensure eligibility, Servicers must evaluate Borrowers in accordance to the specific eligibility requirements as provided for in the applicable Guide section for each workout option.

<b>Temporary Hardship</b>	
The following table describes the Servicer’s requirements if the Borrower is experiencing or has experienced a temporary hardship resulting from a short-term decrease in income or increase in expenses.	
<b>If the hardship has...</b>	<b>Then the Servicer must consider a...</b>
not been resolved	Forbearance Plan (see MPF Traditional Servicing Guide Section “9.2.1 Forbearance Plan”)
been resolved and the Borrower does not have the ability to reinstate the mortgage loan	Repayment Plan (see MPF Traditional Servicing Guide Section “9.2.2 Repayment Plan”)
been resolved and the Borrower does not have the ability to afford a repayment plan	Payment Deferral (see MPF Traditional Servicing Guide Section “9.2.3 Payment Deferral”)
<b>Permanent Hardship</b>	
If the Borrower is experiencing a hardship that has resulted in a permanent or long-term decrease in income or increase in expenses, the Servicer must evaluate the Borrower for a workout option in the following order:	
<ul style="list-style-type: none"> <li>▪ Loan Modification (MPF Traditional Servicing Guide Section “9.2.4 Loan Modification”)</li> <li>▪ Short Sale (MPF Traditional Servicing Guide Section “9.3.1 Short Sale”)</li> <li>▪ Deed in Lieu of Foreclosure (MPF Traditional Servicing Guide Section “9.3.2 Deed in Lieu (mortgage Release)”)</li> </ul>	
<b>NOTE:</b> If a Borrower requests to be evaluated for a liquidation workout option, the Servicer must first evaluate the Borrower for a liquidation workout option.	

**9.2 Retention Workout Options**

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**9.2.1 Forbearance Plan**

**9.2.1.1 Overview**

Servicers must consider a forbearance plan when the Borrower is experiencing a temporary hardship that has not been resolved. Servicers are authorized to offer the Borrower a forbearance plan that would reduce or suspend the Borrowers payments in increments, not to exceed a cumulative term of 12 months. Servicers are not required to obtain prior approval from the MPF Bank if all of the requirements outlined in this section are met. Any exceptions to eligibility requirements or to forbearance plan terms must be submitted for MPF Bank approval prior to offering the forbearance plan in accordance to Section “9.1.6 Submission to MPF Banks.” If the Borrower is not eligible for a forbearance plan, Servicers are required to evaluate Borrowers for other options in the order based on the Workout Hierarchy in Section “9.1.24 Workout Hierarchy.”

**9.2.1.2 Determining Eligibility for a Forbearance Plan**

Servicers are authorized to evaluate the Borrower for a forbearance plan without receiving a complete Workout Request Package (WRP).

The following eligibility criteria for a forbearance plan must be met at the time of evaluation:

- The Servicer must achieve QRPC with the Borrower, in accordance to Section “8.3.2 Contacting Borrowers.”
- The Borrower must have an eligible hardship:
  - Note: While a WRP is not required, see the Workout Request Application (Form SG355) for types of eligible hardships.
- The property securing the mortgage loan must be a primary residence.
- The property securing the mortgage loan must not be condemned or abandoned.
  - Note: The property securing the mortgage loan may not be vacant.

If the Servicer determines the Borrower is not eligible for a forbearance plan but there are acceptable mitigating circumstances, it must request prior written approval from the MPF Bank by submitting the completed Form SG354 and all supporting documentation to the MPF Provider via eMAQCSplus. See Section “9.1.6 Submission to MPF Banks” and Section “9.1.7 Submission for Exceptions.” Generally, the Servicer’s determination of acceptable mitigating circumstances should be based on a review of the Borrower’s complete WRP.

### **9.2.1.3 Forbearance Plan Terms**

If the Borrower meets the eligibility criteria for a Forbearance Plan, the Servicer is authorized to:

- offer an initial forbearance plan term of up to 6 months, and
- grant an extension of the initial forbearance plan term of up to 6 additional months.

**Note:** Servicers are authorized to offer the 6-month terms in separate, shorter increments.

Servicers must receive prior written approval from the MPF Bank for a forbearance plan to:

- exceed a cumulative term of 12 months as measured from the start date of the initial forbearance plan, or
- result in the mortgage loan becoming greater than 12 months delinquent.

The Borrower’s monthly payment must be reduced or suspended during the forbearance plan term.

When the Servicer requires the Borrower to make reduced payments, the payment must be received on or before the last day of the month in which it is due, unless the Servicer determines that acceptable mitigating circumstances caused the payment to be late.

The forbearance plan terms must be provided to the Borrower in writing. No MPF Program form is required, but the decisions notice used by the Servicer must provide Borrower with, at minimum, the following information:

- Borrower name(s)

- Property address
- Loan number (i.e. borrower facing loan number if different than MPF loan number)
- Any information or notice required by Applicable Law
- Servicer contact information
- If plan reduces payments:
  - Total term in number of months
  - Break down for each payment of:
    - Reduced Monthly Payment
    - Due Date
  - Statement that Borrower can accept the plan by making the first reduced payment amount noted in notice by the due date
- If plan suspends payments:
  - Forbearance period beginning payment date (i.e. when it starts)
  - total number of months

See Section “9.1.22.4 Sending a Notice of Decision on a Workout Option” for additional information.

Once the forbearance plan is complete, one of the following must occur:

- the mortgage loan must be brought current through a reinstatement,
- the Borrower is approved for another workout option pursuant to the Workout Hierarchy in Section “9.1.24 Workout Hierarchy” of this Guide,
- the mortgage loan is paid in full, or
- the Servicer refers the mortgage loan to foreclosure in accordance with applicable law.

Servicers must terminate the forbearance plan and proceed as if the plan was complete if it determines:

- the Borrower failed to meet any terms specified in the forbearance plan
- any of the eligibility criteria for the forbearance plan are no longer satisfied,
- the Borrower’s hardship is resolved, or
- the Borrower requests that the forbearance plan be terminated.

#### **9.2.1.4 Contacting the Borrower During a Forbearance Plan Term**

Servicers must begin attempts to contact the Borrower no later than 30 days prior to the expiration of any forbearance plan term and must continue outreach attempts until either QRPC is achieved or the forbearance plan term has expired.



Servicers must follow the below requirements depending upon whether QRPC is achieved:

- If QRPC is achieved, Servicer must determine the following:
  - if the Borrower's hardship has been resolved,
  - the Borrower's intention with respect to the property, and
  - whether the Borrower needs to submit a complete WRP to be evaluated for other workout options.

For additional information on contacting the Borrower refer to See Section "8.3.2 Contacting Borrowers" for details on QRPC requirements.

### **9.2.1.5 Handling Late Charges in Connection with a Forbearance Plan**

The Servicer must not accrue or collect late charges from the Borrower during the forbearance plan. If the borrower defaults on the terms of the forbearance plan, the Servicer is authorized to accrue late charges from the date the Borrower defaulted on the plan.

### **9.2.1.6 MPF Reporting**

Once the Borrower agrees to the terms of the forbearance plan, the Servicer must report the forbearance plan on the Delinquent Mortgage & Bankruptcy Status Report (Exhibit B) monthly with an Action Code = 20, a Delinquency Status Code = 9, the applicable Delinquency Reason Code, a Loss Mitigation Type = FFA or **Formal Forbearance Plan** accompanied by the Loss Mitigation Approval (effective) Date and Loss Mitigation Estimated Completion Date or Loss Mitigation Actual Completion Date, as applicable.

## **9.2.2 Repayment Plan**

### **9.2.2.1 Overview**

Servicers must consider a repayment plan when the Borrower's temporary hardship appears to have been resolved and the Borrower is not able to reinstate the mortgage loan. Servicers are authorized to offer the Borrower a repayment plan that would allow Borrower to make payments in excess of the regular monthly payments over a period not to exceed 12 months. Servicers are not required to obtain prior approval from the MPF Bank if all of the requirements outlined in this section are met. Any exceptions to eligibility requirements or to repayment plan terms must be submitted for MPF Bank approval prior to offering the repayment plan in accordance to Section "9.1.7 Submission for Exceptions." If the Borrower is not eligible for a repayment plan, Servicers are required to evaluate Borrowers for other options in the order based on the Workout Hierarchy in "9.1.24 Workout Hierarchy."

### **9.2.2.2 Repayment Plan Terms**

Servicers are authorized to evaluate the Borrower for a repayment plan without receiving a complete Workout Request Package (WRP). However, if the Borrower submitted a complete WRP, the Servicer must evaluate the Borrower in accordance with the evaluation requirements as indicated in Section "9.1.23 Determining the Appropriate Workout Option."

The following requirements apply to repayment plans:

- Servicer must consider a repayment plan when the delinquency resulted from a temporary hardship that no longer appears to be a problem.
- The total monthly repayment plan payment must not exceed 150% of the full monthly contractual payment.

The repayment plan terms must be provided to the Borrower in writing. No MPF Program form is required, but the decisions notice used by the Servicer must provide Borrower with, at minimum, the following information:

- Borrower name(s)
- Property address
- Loan number (i.e. borrower facing loan number if different than MPF loan number)
- Any information or notice required by Applicable Law
- Servicer contact information
- Total past due amount
- Number of payments
- Break down for each payment of:
  - Regular Monthly Payment
  - Additional Monthly Payment
  - Total Monthly Payment Amount
  - Due Date
- Statement that Borrower can accept the plan by making the first Total Monthly Payment Amount noted in notice by the due date

See Section “9.1.22.4 Sending a Notice of Decision on a Workout Option” for additional information.

Repayment plans must meet the following requirements:

- If, at the time of evaluation, the mortgage loan is less than or equal to 90 days delinquent and the term of the repayment plan does not exceed six months then:
  - The Borrower is not required to submit a complete WRP.
  - The Borrower must have the financial capacity to bring the mortgage loan current during the repayment plan; which may be verified through QRPC if the offer is not based on a complete WRP.
- If, at the time of evaluation, the mortgage loan is greater than 90 days delinquent **or** the term of the repayment plan exceeds six months, the Borrower is required to submit a complete WRP and:

- If the repayment plan exceeds 12 months, Servicer must obtain MPF Bank approval prior to offering the repayment plan by submitting Form SG354 (Note: Form SG354 must be used, no alternative or equivalent forms are permitted) and required supporting documentation in accordance to Section “9.1.7 Submission for Exceptions.” (Note: If repayment plan is less than 12 months, no prior approval is required)
- The Servicer may evaluate the Borrower for other workout options as an alternative to a repayment plan in the order based on the Workout Hierarchy in “9.1.24 Workout Hierarchy.”

### **9.2.2.3 Handling Late Charges with a Repayment Plan**

The repayment plan may include accrued late charges due when the plan is established between the Servicer and the Borrower. The Servicer must waive late charges accrued during the repayment plan period as long as the terms of the repayment plan are maintained by the Borrower.

### **9.2.2.4 MPF Reporting**

Once the Borrower agrees to the terms of the repayment plan, the Servicer must report the repayment plan on the Delinquent Mortgage & Bankruptcy Status Report (Exhibit B) monthly with an Action Code = 20, a Delinquency Status Code = 12, the applicable Delinquency Reason Code, a Loss Mitigation Type = **Repayment Plan** or **REPAYMENT PLAN** accompanied by the Loss Mitigation Approval (effective) Date and Loss Mitigation Estimated Completion Date or Loss Mitigation Actual Completion Date, as applicable.

## **9.2.3 Payment Deferral**

### **9.2.3.1 Overview**

Servicers must consider a payment deferral, for Borrowers that have resolved a temporary hardship and are prepared to resume their monthly contractual payments but cannot afford either a full reinstatement or repayment plan to bring the mortgage loan current. Servicers are authorized to offer the Borrower a deferral, that will defer the past-due P&I payments as a non-interest bearing balance, due and payable at maturity of the mortgage loan, or earlier upon the sale or transfer of the property, refinance of the mortgage loan, or payoff of the interest-bearing UPB. Servicers are not required to obtain prior approval from the MPF Bank if all of the requirements outlined in this section are met, but Servicers are required to submit a completed Workout Worksheet (Form SG354) (Note: Form SG354 must be used, no alternative or equivalent forms are permitted) via eMAQCSplus in accordance to Section “9.2.3.5 Completing a Payment Deferral.” Any exceptions to eligibility or other payment deferral requirements must be submitted for MPF Bank approval prior to offering the payment deferral in accordance to Section “9.1.7 Submission for Exceptions.” If the Borrower is not eligible for a payment deferral, Servicers must consider the Borrower for a loan modification pursuant to the eligibility criteria and the Workout Hierarchy in Section “9.1.24 Workout Hierarchy.”

### 9.2.3.2 Determining Eligibility for Payment Deferral

The Servicer is authorized to evaluate the Borrower for a payment deferral without receiving a complete Workout Request Package (WRP). If the Borrower submitted a complete WRP, then the Servicer must evaluate the Borrower in accordance with Section 9.1.23: "Determining the Appropriate Workout Option." Servicers are authorized to use Form SG356: Payment Deferral Agreement, while the use of Form XX SG356 is optional, it reflects the minimum level of information that the Servicer must provide to the Borrower. If a Servicer is not using Form SG356, refer to Section "9.2.3.7 Use of the Payment Deferral Agreement" for additional information.

In order to be eligible for a payment deferral, the following criteria must be met:

- The mortgage loan must be a conventional first lien mortgage loan, and remain in first lien position during the Payment Deferral.
  - **Note:** The property securing the mortgage loan may not be vacant or condemned.
- The mortgage loan must meet the following delinquency parameters:
  - The mortgage loan must be equal to or greater than 2 months delinquent but less than or equal to 6 months delinquent as of the date of evaluation; or
  - The loan is currently in a Forbearance Plan or a COVID-19 Forbearance Plan.

**Note:** Servicers must receive the Borrower's full monthly contractual payment due for the month of evaluation. If the Servicer has not received this full monthly contractual payment as of the date of evaluation, the Borrower may still be eligible for a payment deferral if they make the full monthly contractual payment by the end of the evaluation month.

- Servicer must achieve QRPC with the Borrower in accordance with Section "8.3.2 Contacting Borrowers,"
- Servicer must confirm that the Borrower:
  - has resolved the hardship,
  - is able to continue making the full monthly contractual payment including the amount required to repay any escrow shortage amount over a term of up to 60 months, and
  - is unable to reinstate the mortgage loan or afford a repayment plan to cure the delinquency.
- The mortgage loan must have been originated at least 12 months prior to the evaluation date for a payment deferral.
- The mortgage loan may receive more than one payment deferral; however, no more than 12 months of cumulative past-due P&I payments as a result of a payment deferral may be deferred over the life of the mortgage loan.

- NOTE: This cumulative cap does not include past-due P&I payments deferred as the result of a COVID-19 payment deferral.
- The mortgage loan must not have received a prior payment deferral with an effective date within 12 months of the evaluation date.
- The mortgage loan must not be within 36 months of its maturity or projected payoff date.
  - ⊖ NOTE: If the Borrower is otherwise eligible for a payment deferral and the Servicer determines that a payment deferral is the appropriate solution based on the borrower's circumstances, then the Servicer must submit a request for an exception in accordance to Section "9.1.7 Submission for Exceptions."
- The mortgage loan must not be subject to:
  - a recourse or indemnification arrangement under which the MPF Bank purchased the mortgage loan or that was imposed by the MPF Bank after the mortgage loan was purchased,
  - an approved liquidation workout option,
  - an active and performing repayment plan,
  - a current offer for another retention workout option, or
  - an active and performing mortgage loan modification Trial Period Plan.
- The Borrower must not have failed a non-disaster related mortgage loan modification Trial Period Plan within 12 months of being evaluated for eligibility for a payment deferral.
  - Note: Converting from a Trial Period Plan to a forbearance plan is not considered a failed Trial Period Plan.
- The mortgage loan must not have been modified with a permanent Mortgage Loan Modification within the previous 12 months of being evaluated for eligibility for a payment deferral.

### **9.2.3.3 Performing an escrow analysis for a Payment Deferral**

When a Borrower is eligible for a payment deferral and the Servicer was not collecting escrows on the existing mortgage loan, the Servicer is not required to revoke any escrow deposit account waiver and establish an escrow deposit account as a condition of the payment deferral if the Servicer confirms the Borrower is current on the payments for taxes, special assessments, property and flood insurance payments, payments for borrower-purchased MI, ground rents, and similar items.

Prior to offering a payment deferral, the Servicer must analyze an existing escrow account to estimate the periodic escrow deposit required to ensure adequate funds are available to pay future charges, taking into consideration T&I payments that may come due during the processing month, if applicable.

If the Servicer identifies an escrow shortage as the result of an escrow analysis in connection with a payment deferral, the Servicer must spread repayment of the escrow shortage amount in equal monthly payments over a term of 60 months, unless the Borrower decides to pay the shortage amount up-front or over a shorter period, not less than 12 months. Any subsequent escrow shortage that may be identified in the next annual analysis cycle must be spread out over either the remaining term of the initial escrow shortage repayment period or another period of up to 60 months.

Any escrow account shortage that is identified at the time of the payment deferral must not be included in the non-interest bearing balance and the Servicer is not required to fund any existing escrow account shortage.

If applicable law prohibits the establishment of the escrow account, the servicer must ensure that the T&I payments are paid to date.

#### **9.2.3.4 Payment Deferral Terms**

The Servicer must defer the following amounts as a non-interest bearing balance, due and payable at maturity of the mortgage loan, or earlier upon the sale or transfer of the property, refinance of the mortgage loan, or payoff of the interest-bearing UPB:

- at least 2 months and up to 6 months of past-due P&I payments, provided that it does not result in more than 12 months of past-due P&I payments cumulatively deferred as a result of a payment deferral;
- out-of-pocket escrow advances resulting from a delinquency and paid to third parties, provided they are paid prior to the effective date of the payment deferral; and
- servicing advances resulting from a delinquency, 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 payment deferral, if allowed by state law.

All other terms of the mortgage loan must remain unchanged. The Servicer represents and warrants that application of the payment deferral to the mortgage loan does not impair our first lien position or enforceability against the borrower(s) in accordance with its terms.

Any existing non-interest bearing balance on the mortgage loan remains due and payable at maturity of the mortgage loan, or earlier upon the sale or transfer of the property, refinance of the mortgage loan, or payoff of the interest-bearing UPB.

**Servicer is required to ensure that the loan is not out of balance with the Investor on their TAR (Turn Around Report) and that their Monthly Summary and Remittance Report (SG300) reflects the correct the loan level data (including UPB) Servicer is relying on to determine eligibility. Loan Level discrepancies require resolution prior to completing a Payment Deferral. See Section "2.14.1 Monthly Accounting Reports."**

#### **9.2.3.5 Completing a Payment Deferral**

Servicers must complete a payment deferral in the same month in which it determines the Borrower is eligible by submitting a completed Workout Worksheet (Form SG354) (Note: Form SG354 must be used, no alternative or equivalent forms are permitted) via eMAQCSplus, with all required supporting documentation as indicated on the Workout Worksheet.

If the Servicer is unable to complete the payment deferral prior to the 15th day of the evaluation month, then the Servicer is authorized to allow for sufficient processing time (via a “processing month”) to complete a payment deferral. The Servicer must treat all borrowers equally in applying the processing month, as evidenced by a written policy.

Servicers are authorized to use an additional month to allow for sufficient processing time (“processing month”) to complete a payment deferral. In this circumstance:

- the Borrower must make their full monthly contractual payment during the processing month, and
- the Servicer must complete the payment deferral within the processing month after receipt of the Borrower’s full monthly contractual payment due during that month.

**Note:** Servicers must treat all Borrowers equally in applying the processing month, as evidenced by a written policy.

Servicers must send the Form SG356 Payment Deferral Agreement, or equivalent to the Borrower no later than five days after the completion of the payment deferral. While use of Form SG356 Payment Deferral Agreement is not required, it reflects the minimum level of information that the Servicer must provide to the Borrower.

If the Servicer determines the Borrower’s signature is required on Form SG356 Payment Deferral Agreement, it must receive the executed agreement prior to completing the payment deferral.

The Servicer’s application of a payment deferral to the mortgage loan must not impair our first lien position or enforceability against the Borrower(s) in accordance with its terms.

Servicers must record Form SG356 Payment Deferral Agreement or its equivalent, if the Servicer determines that recordation is required to comply with law and ensure that the mortgage loan retains its first lien position. The Servicer must obtain a title endorsement or similar title insurance product issues by a title insurance company if the Form SG356 Payment Deferral Agreement will be recorded.

Servicers must also provide documents to the document custodian in accordance with the following:

<b>If the payment deferral agreement is...</b>	<b>Then the Servicer must send...</b>
not required to be signed by the Borrower	a copy of the Form SG356 Payment Deferral Agreement signed by the Servicer to the document Custodian within 25 days of the effective date of the payment deferral.
required to be signed by the Borrower but not recorded	the fully executed original Form SG356 Payment Deferral Agreement to the document Custodian within 25 days of the effective date of the payment deferral.
required to be recorded	<ul style="list-style-type: none"> <li>○ a certified copy of the fully executed Form SG356 Payment Deferral Agreement to the document Custodian within 25 days of the effective date of the payment deferral, and</li> <li>○ the original payment deferral agreement that is returned from the recorder's office to the document custodian within 5 business days of receipt.</li> </ul>

**9.2.3.6 Requirement to make a payment during a processing month for a payment deferral**

The Borrower must make their fully monthly contractual payment during a processing month if, as of the date of evaluation,

- the mortgage loan is 6 months delinquent, or
- the payment deferral would cause the mortgage loan to exceed 12 months of cumulative deferred past-due P&I payments.

In this circumstance, the servicer must complete the payment deferral within the processing month as applicable after receipt of the borrower's full monthly contractual payment due during that month.

**9.2.3.7 Handling Fees and Late Charges in Connection with a Payment Deferral**



Servicers must not charge the Borrower administrative fees. The Servicer must waive all late charges, penalties, stop payment fees, or similar charges upon completing a payment deferral.

Servicers must follow the procedures in Section “9.2.3.10 Paying Expenses and Requesting Reimbursement Related to a Payment Deferral.”

### **9.2.3.8 Servicing Fees for a payment deferral**

The Servicer will continue to receive the servicing fee it was receiving prior to the payment deferral becoming effective. Servicing Fees will be reimbursed for mortgage loans that receive a payment deferral at the time the mortgage loan upon liquidation of the mortgage loan, in accordance to MPF Traditional Servicing guide Section “3.1 Servicing Fees.”

### **9.2.3.9 Paying expenses and requesting reimbursement related to a payment deferral**

The Servicer must pay any necessary and actual out-of-pocket expenses in accordance with the Servicing Guide associated with the execution of a payment deferral, including, but not limited to the following, as applicable:

- required notary fees,
- recording costs,
- title costs, or
- any other allowable and documented expense.

NOTE: The above expenses must not be included in the non-interest bearing balance created by the payment deferral.

Servicing Fees will be reimbursed for mortgage loans that receive a payment deferral upon liquidation of the mortgage loan, in accordance to MPF Traditional Servicing guide Section “3.1 Servicing Fees.”

### **9.2.3.10 MPF Reporting**

Once the Borrower agrees to the terms of the payment deferral, and the Payment Deferral becomes effective, the mortgage loan no longer needs to be reported on the Servicer's Monthly Delinquent Mortgage & Bankruptcy Status Report (Exhibit B). In addition, Servicers must submit a complete Form SG354 (Note: Form SG354 must be used, no alternative or equivalent forms are permitted) via eMAQCSplus upon the plan becoming effective.

## **9.2.4 Loan Modification**

### **9.2.4.1 Overview**

Servicers of MPF Traditional loans owned by **FHLB San Francisco** must only offer temporary loan modifications that meet the requirements detailed in **Exhibit FF** and permanent loan modifications will only be considered on an exception basis after all other loss mitigation options

have been considered (See “9.1.7. Submission for Exceptions.”) All other Servicers may only offer the permanent loan modifications as provided for in this section and may **NOT** offer temporary loan modifications. See “9.2.4.2 Temporary Loan Modification.”

Servicers must consider a permanent Loan Modification when the Borrower is experiencing a permanent or long-term decrease in income or increase in expenses, who can resume a monthly payment but cannot afford their monthly contractual payments. Servicers are not required to obtain prior approval from the MPF Bank if all of the requirements outlined in this section are met, but may need to submit the Loan Modification Agreement (Form 3179) for execution by MPF Bank (depending upon the entity that is the mortgagee of record) to finalize the agreement. (Note: Form 3179 is a required Form, only changes permitted by Fannie Mae or Freddie Mac are permitted) See Section “9.2.4.12 Executing and Recording the Loan Modification Agreement.” Any exceptions to eligibility or other loan modification requirements must be submitted for MPF Bank approval prior to offering the loan modification in accordance to Section “9.1.7 Submission for Exceptions.” If the Borrower is not eligible for a loan modification, Servicers are required to evaluate Borrowers for other options in the order based on the Workout Hierarchy in Section “9.1.24 Workout Hierarchy.” Servicers are required to submit a completed Workout Worksheet (Form SG354) (Note: Form SG354 must be used, no alternative or equivalent forms are permitted) via eMAQCSplus in accordance to Section “9.2.4.8 Offering a Trial Period Plan and Completing a Loan Modification.”

#### **9.2.4.2 Temporary Loan Modifications**

Borrowers in temporary loan modification plans granted prior to March 1, 2024, must be evaluated based on a complete WRP. Based on the Workout Hierarchy in Section “9.1.24 Workout Hierarchy,” Borrowers who experienced a permanent or long-term decrease in income or increase in expenses, who cannot afford their original monthly contractual payments should be considered for a permanent loan modification at the end of the temporary loan modification term. No temporary loan modifications may be granted or extensions of existing temporary loan modifications may be granted on or after March 1, 2024.

#### **9.2.4.3 Documentation Requirements**

If the mortgage loan is current or less than 90 days delinquent, the borrower must submit a complete WRP except as described below.

If the borrower submitted a complete WRP prior to the 90th day of delinquency, the servicer must

- use the information from the WRA, or equivalent, to determine the borrower's hardship, total income and assets, and
- evaluate the borrower for all workout options in accordance with Section “9.1.24 Workout Hierarchy.”

#### 9.2.4.4 Determining Eligibility for a Loan Modification

In order to be eligible for a Loan Modification, the following criteria must all be met:

- The mortgage loan must be a conventional first lien mortgage loan and will remain in first lien position during the Loan Modification plan.
  - **Note:** The property securing the mortgage loan may not be vacant or condemned.
- The mortgage loan must be at least 60 days delinquent or the servicer has determined that the borrower's monthly payment is in imminent default in accordance with Section "9.2.4.4.1 Evaluating a Borrower for Imminent Default for Mortgage Loan Modification Eligibility."
- The mortgage loan must have been originated at least 12 months prior to the evaluation date for the mortgage loan modification and must not be considered an Early Payment Default loan according to Section "8.8 Early Payment Default."
- The mortgage loan must not be subject to:
  - a recourse or indemnification arrangement under which the MPF Bank purchased the mortgage loan or that was imposed by the MPF Bank after the mortgage loan was purchased;
  - an approved liquidation workout option;
  - an active and performing repayment plan;
  - a current offer for another mortgage loan modification or other workout option; or
  - an active and performing mortgage loan modification Trial Period Plan
- The mortgage loan must not have been permanently modified previously, regardless of the mortgage loan modification program (temporary or permanent) or dates of prior mortgage loan modifications.
  - **Note:** A payment deferral does not count as a mortgage loan modification when determining the number of times the mortgage loan has previously been modified for purposes of determining eligibility for a Loan Modification.
- The borrower must not have failed a Loan Modification Trial Period Plan within 12 months of being evaluated for eligibility for another Loan Modification.
  - **Note:** Converting from a Trial Period Plan to a forbearance plan is not considered a failed Trial Period Plan.
- The mortgage loan must not have received a Loan Modification and become 60 days or more delinquent within the first 12 months of the effective date of the mortgage loan modification without being reinstated.
- The mortgage loan must not be serviced under one of the following:

- One Mortgage Partners, LLC Mortgage Pass-Through Certificates MPF Shared Funding™ Program Series 2003-1 Trust; or
- One Mortgage Partners, LLC Mortgage Pass-Through Certificates MPF Shared Funding Program Series 2003-2 Trust.

If the borrower converts from a Trial Period Plan to a forbearance plan, the borrower may subsequently be eligible for a Loan Modification upon successful completion of the forbearance plan and, if eligible, must be placed in a new Loan Modification Trial Period Plan based on the delinquency status at the time of the evaluation for the Loan Modification.

**9.2.4.4.1 Evaluating a Borrower for Imminent Default for Mortgage Loan Modification Eligibility**

For a Borrower’s monthly payment to be considered in imminent default for the purpose of determining eligibility for a conventional mortgage loan modification, the borrower must satisfy

- the initial eligibility criteria, and
- either:
  - the credit eligibility criteria; or
  - the hardship eligibility criteria.

The Servicer must confirm the following eligibility criteria:

- The mortgage loan is current or less than 60 days delinquent as of the evaluation date.
- The property securing the mortgage loan is occupied as a primary residence by at least one borrower.
- The borrower submits a complete WRP (see Section “9.1.22 Borrower Workout Request Package (WRP) for additional information).
- The borrower’s non-retirement cash reserves are less than \$25,000 based on information provided in the WRA, or equivalent.
- The borrower has a hardship as documented in accordance with WRA or equivalent.

Servicer must also determine whether either the following credit or hardship eligibility criteria is satisfied:

Credit	<p>A FICO credit score less than or equal to 620, and either</p> <ul style="list-style-type: none"> <li>• two or more 30-day delinquencies on the mortgage loan in the six months immediately preceding the month of the evaluation, or</li> </ul> <p><b>Note:</b> The servicer must not consider a missed contractual payment that becomes 60 or more days delinquent as having two or more 30-day delinquencies in the six-month period immediately preceding the month of the evaluation.</p>
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	<ul style="list-style-type: none"> <li>• a pre-modification housing expense-to-income ratio greater than 40% calculated in accordance with the procedures in Section “9.2.4.4.1.1 Calculating the Housing Expense-to-Income Ratio for Imminent Default for a Loan Modification.”</li> </ul> <p><b>Note:</b> The FICO credit score must be no more than 90 days old as of the date of evaluation. If the servicer obtains multiple credit scores for a single borrower, it must select a representative credit score using the lower of two or the middle of three credit scores. If there are multiple borrowers, the servicer must determine the representative score for each borrower and use the lowest representative score as the credit score for the evaluation.</p>
Hardship	<p>The borrower has one of the following hardships as documented in accordance with WRA or equivalent:</p> <ul style="list-style-type: none"> <li>• death of a borrower or death of either the primary or secondary wage earner in the household;</li> <li>• long-term or permanent disability, or serious illness of a borrower, co-borrower, or dependent family member;</li> <li>• divorce or legal separation;</li> <li>• separation of borrowers unrelated by marriage, civil union, or similar domestic partnership under applicable law; or</li> <li>• an increased monthly P&amp;I payment occurred as result of an interest rate adjustment within the last 12 months for a mortgage loan previously modified with a step-rate feature.</li> </ul>

If a Borrower whose mortgage loan is current (i.e., not delinquent or in default) is declined a loan modification, the Servicer is responsible for providing Borrower with an Adverse Action Notice compliant with Applicable Laws within 30 days the decision, unless the servicer offers the borrower another retention workout option and the borrower accepts the counteroffer within the 30-day period.

When requesting the MPF Banks’ approval of a recommendation for a loan modification for a borrower facing imminent default, the servicer must either include the draft adverse action notice in its submission, or, if the Servicer has a system that automatically sends such notices, the text of such notice and a statement certifying that it has a process to send notices in accordance with the requirements of this Guide.

**9.2.4.4.1.1 Calculating the Housing Expense-to-Income Ratio for Imminent Default for a Mortgage Loan Modification**

The borrower’s monthly gross income is defined as the borrower’s monthly income amount before any payroll deductions and includes the following items, as applicable:

- wages and salaries;
- overtime pay;

- commissions;
- fees;
- tips;
- bonuses;
- housing allowances;
- other compensation for personal services;
- Social Security payments (including Social Security received by adults on behalf of minors or by minors intended for their own support); and
- monthly income from annuities, insurance policies, retirement funds, pensions, disability or death benefits, rental income, and other income such as adoption assistance.

**Note:** The servicer generally should not consider temporary sources of income related to employment (such as severance payments) as part of the monthly gross income for mortgage loans being evaluated for a workout option. However, public assistance income (such as unemployment) may be considered if done in compliance with applicable laws, and if the servicer determines the probable continuance of such income. The servicer must then divide the borrower’s pre-modification monthly housing expense on the property securing the mortgage loan, which includes the following items (as applicable), by the borrower’s monthly gross income (  $\text{monthly housing expense ratio} = \frac{\text{monthly housing expense}}{\text{total monthly income}}$  ):

- P&I for all mortgage liens on the property;
- property and flood insurance premiums;
- real estate taxes;
- ground rent;
- special assessments;
- HOA dues (including utility charges that are attributable to the common areas, but excluding any utility charges that apply to the individual unit); and
- any escrow shortage currently included as part of the full monthly contractual payment.

**Note:** The servicer must exclude monthly mortgage insurance premiums from the monthly housing expense-to-income calculation.

#### **9.2.4.5 Performing an Escrow Analysis**

Servicer must perform an escrow analysis prior to offering a Trial Period Plan. See Section “9.2.4.7 Administering an Escrow Account in Connection With a Mortgage Loan Modification.”

Any escrow account shortage that is identified at the time of the mortgage loan modification must not be capitalized and the servicer is not required to fund any existing escrow account shortage.

When Servicer was not collecting escrows on the existing mortgage loan, the Servicer is required to establish an escrow deposit account as a condition of the mortgage loan modification unless otherwise prohibited by applicable law. If applicable law prohibits the establishment of the escrow account, the servicer must ensure that the T&I payments are paid to date.

**9.2.4.6 Loan Modification Term**

**9.2.4.6.1 Obtaining a Property Valuation**

The servicer must obtain a property valuation, which must not be more than 90 days old at the time the servicer evaluates the borrower for the mortgage loan modification, using one of the following:

- an exterior BPO;
- an appraisal;
- a third-party AVM; or
- the servicer’s own internal AVM, provided that
  - the servicer is subject to supervision by a federal regulatory agency, and
  - the servicer’s primary federal regulatory agency has reviewed the model.

If the third-party AVM, or the Servicer’s internal AVM does not render a reliable confidence score, the servicer must obtain an assessment of the property value utilizing an exterior BPO, an appraisal, or a property valuation method documented as acceptable to the Servicer’s federal regulatory supervisor. The property value assessment must be rendered in accordance with the FDIC’s Interagency Appraisal and Evaluation Guidelines regardless of whether such guidelines apply to mortgage loan modifications.

The servicer must attach the valuation and documentation when submitting a recommendation for exception to MPF Bank. See Section “9.1.7 Submission for Exceptions.”

**9.2.4.6.2 Determining New Modified Mortgage Loan Terms**

To determine the borrower's new modified mortgage loan terms, the Servicer must determine the post-modification mark-to-market loan-to-value (“MTMLTV”) ratio, which is defined as the gross UPB of the mortgage loan including capitalized arrearages, divided by the current value of the property.

The servicer must complete all the steps in the order shown in the following table, unless prohibited by applicable law, to determine the borrower's new modified mortgage loan terms.

Step	Servicer Action
1	Capitalize eligible arrearages. The following are considered as acceptable arrearages for capitalization: <ul style="list-style-type: none"> <li>• accrued interest;</li> </ul>

Step	Servicer Action
	<ul style="list-style-type: none"> <li>• out-of-pocket escrow advances to third parties, provided they are paid prior to the effective date of the mortgage loan modification;</li> <li>• 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</li> <li>• any outstanding non-interest bearing balance from a previously completed loan modification or a previously completed payment deferral.</li> </ul> <p><b>Note:</b> 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.</p> <p>See Section “9.2.4.7 Administering an Escrow Account in Connection With a Mortgage Loan Modification” for additional information.</p>
2	<p>Set the modification interest rate to a fixed rate based on the following requirements using the contractual interest rate in effect for the monthly payment due in the month of the evaluation date:</p> <ul style="list-style-type: none"> <li>• if the post-modification MTMLTV less than 80%, the modified interest rate is the borrower's contractual interest rate</li> <li>• if the post-modification MTMLTV greater than or equal to 80%, the modified interest rate is the lesser of: <ul style="list-style-type: none"> <li>○ the MPF Traditional Loan Modification Interest Rate (See Exhibit EE), or</li> <li>○ the borrower's contractual interest rate.</li> </ul> </li> </ul> <p><b>Note:</b> The interest rate used to determine the final modification terms must be the same fixed interest rate that was used when determining eligibility for the Trial Period Plan and calculating the Trial Period Plan payment.</p>
3	<p>Extend the term to 480 months from the mortgage loan modification effective date.</p> <p><b>Notes:</b></p>



Step	Servicer Action
	<ul style="list-style-type: none"> <li>• Any loan modification extending the maturity date by more than 20 years from original maturity date, requires MPF Bank approval prior to offering to Borrower.</li> <li>• 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.</li> </ul>
4	<p>Forbear principal if the post-modification MTMLTV ratio is greater than 100%, in an amount that is the lesser of</p> <ul style="list-style-type: none"> <li>• an amount that would create a post-modification MTMLTV ratio of 100% using the interest-bearing UPB, or</li> <li>• 30% of the gross post-modification UPB of the mortgage loan.</li> </ul>
5	<p>Provide or increase principal forbearance until a 20% P&amp;I payment reduction is achieved; however, the servicer must not forbear more than:</p> <ul style="list-style-type: none"> <li>• an amount that would create a post-modification MTMLTV ratio less than 80% using the interest-bearing principal balance, or</li> <li>• 30% of the gross post-modification UPB of the mortgage loan.</li> </ul>
6	<p>Continue to forbear principal if the mortgage loan is less than 90 days past due when the borrower submitted a complete WRP until a 40% Housing Expense-to-Income Ratio (HTI) is achieved (See Section “9.2.4.6.3 Calculating the Housing Expense-to-Income Ratio”); however, the servicer must not forbear more than:</p> <ul style="list-style-type: none"> <li>• an amount that would create a post-modification MTMLTV ratio less than 80% using the interest-bearing principal balance, or</li> <li>• 30% of the gross post-modification UPB of the mortgage loan.</li> </ul>

Servicers are strongly encouraged to use Form SG357 Permanent Loan Modification Worksheet, or its equivalent, to determine the loan modification terms, as Servicers are required to submit that worksheet with the SG354.

The servicer must request MPF Bank's prior written approval by submitting a request through eMAQCSplus to deviate from the prescribed steps for determining the new modified mortgage payment terms, unless a certain step is prohibited by applicable state law.

**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.

The Loan Modification must result in a fixed rate mortgage loan with a monthly P&I payment that is:

- less than the borrower's pre-modification P&I payment, if, at the time of evaluation, the mortgage loan is current or less than 31 days delinquent or
- less than or equal to the pre-modification P&I payment, if, at the time of evaluation, the mortgage loan is 31 or more days delinquent.

Servicer is required to ensure that the loan is not falling out on their TAR (Turn Around Report) and that their Monthly Summary and Remittance Report (SG300) reflects the correct loan level data (including UPB) Servicer is relying on to determine eligibility. Loan Level discrepancies require resolution prior to completing a Loan Modification. See Section "2.14.1 Monthly Accounting Reports."

Servicers are strongly encouraged to use the Loan Modification Worksheet (see attachment to Form SG354) when determining the modified terms, to ensure the proper amounts are being considered, as that worksheet will be required to be submitted with the Form SG354 once the loan modification is finalized.

#### **9.2.4.6.3 Calculating the Housing Expense-to-Income Ratio**

The Borrower's monthly housing expense is needed in order to calculate the Expense-to-income ratio. The borrower's monthly gross income is defined as the borrower's monthly income amount before any payroll deductions and includes the following items, as applicable:

- wages and salaries;
- overtime pay;
- commissions;
- fees;

- tips;
- bonuses;
- housing allowances;
- other compensation for personal services;
- Social Security payments (including Social Security received by adults on behalf of minors or by minors intended for their own support); and
- monthly income from annuities, insurance policies, retirement funds, pensions, disability or death benefits, rental income, and other income such as adoption assistance.

**Note:** The servicer generally should not consider temporary sources of income related to employment (such as severance payments) as part of the monthly gross income for mortgage loans being evaluated for a workout option. However, public assistance income (such as unemployment) may be considered if done in compliance with applicable laws, and if the servicer determines the probable continuance of such income. The Servicer must calculate the post-modification housing expense-to-income ratio by dividing the borrower's monthly housing expense, which includes the following items (as applicable), by the borrower's monthly gross income (  $\frac{\text{monthly housing expense}}{\text{total monthly income}}$  ):

- P&I of all mortgage liens on the property;
- property and flood insurance premiums;
- real estate taxes;
- ground rent;
- special assessments;
- HOA dues (including utility charges that are attributable to the common areas, but excluding any utility charges that apply to the individual unit); and
- any projected monthly escrow shortage payment.

**Note:** The servicer must exclude monthly MIPs from the monthly housing expense-to-income calculation.

#### **9.2.4.7 Administering an Escrow Account in Connection With a Mortgage Loan Modification**

When evaluating a borrower for a mortgage loan modification, the Servicer must:

- Revoke any escrow deposit account waiver and establish an escrow deposit account prior to the beginning of the trial payment period in accordance with MPF Program requirements
  - If applicable law prohibits the establishment of the escrow account, the Servicer must ensure that the T&I premiums are paid to date.

- Analyze any existing escrow account to estimate the periodic escrow deposit required to ensure adequate funds are available to pay future charges, taking into consideration T&I payments that may come due during any Trial Period Plan. In the event the initial escrow analysis identifies an escrow shortage, the servicer must spread any escrow shortage repayment amount in equal monthly payments over a period of 60 months, unless the borrower decides to pay the escrow shortage amount in a lump sum up-front or over a shorter period, not less than 12 months. Any subsequent escrow shortage that may be identified in the next annual analysis cycle must be spread out over either the remaining term of the initial escrow shortage repayment period or another period of up to 60 months.
- Ensure the borrower's monthly mortgage loan payments, including trial period payments, include an escrow payment.

#### **9.2.4.8 Offering a Trial Period Plan and Completing a Loan Modification**

The Servicer must communicate with the borrower that the mortgage loan modification will not be binding, enforceable, or effective unless all conditions of the mortgage loan modification have been satisfied, which is when all of the following have occurred:

- the borrower has satisfied all of the requirements of the Trial Period Plan,
- the borrower has executed and returned a copy of the *Loan Modification Agreement* (Fannie Mae [Form 3179](#)) (Note: Form 3179 is a required form, only changes permitted by Fannie Mae or Freddie Mac are permitted), and
- the Servicer or MPF Bank (depending upon the entity that is the mortgagee of record) executes and dates [Form 3179](#).

The servicer must use the Form SG358 Permanent Loan Modification Trial Period Plan Notice, or an equivalent form, to document the borrower's Trial Period Plan and comply with the requirements in Section "9.1.22.4 Sending a Notice of Decision on a Workout Option," and the following:

- if the decision notice is sent on or before the 15th day of a calendar month, the first day of the following month must be the first Trial Period Plan payment due date
- if the decision notice is sent after the 15th day of a calendar month, the first day of the after the next month must be the first Trial Period Plan payment due date.

If the Borrower and loan modification meets all eligibility requirements of the Loan Modification Plan, the Servicer does not need to obtain approval prior to providing Borrower a Trial Period Plan Notice. Any exceptions to eligibility or other Loan Modification Plan requirements must be submitted to MPF Provider for approval prior to communicating the terms of the loan modification Trial Period Plan to Borrower.

The length of the Trial Period Plan, which must not change even if the borrower makes scheduled payments earlier than required, must be:

- Four months long if at the time of evaluation the mortgage loan is current or less than 31 days delinquent, or
- Three months long if at the time of evaluation the mortgage loan is 31 or more days delinquent.

If the borrower fails to make a Trial Period Plan payment by the last day of the month in which it is due, the borrower is considered to have failed the Trial Period Plan and the servicer must not grant the borrower a permanent Loan Modification.

Near the end of the Trial Plan, the Servicer must use Form SG359 Permanent Loan Modification Cover Letter, or an equivalent form, to communicate a borrower's eligibility for a permanent Loan Modification, which must be accompanied by a completed [Form 3179](#) (Note: Form 3179 is a required Form, only changes permitted by Fannie Mae or Freddie Mac are permitted). See Section "9.2.4.11 Preparing the Loan Modification Agreement.

The Servicer must ensure that the modified mortgage loan retains its first lien position and is fully enforceable in accordance with its terms.

Electronic signatures are not permitted on any document modifying or supplementing the Note or Security Instrument. Any other document permitted to be electronically signed, must comply with Electronic documents, signatures, and notarizations for Loan Modifications are acceptable as long as the electronic record complies with the MPF Program requirements including MPF Program Guide Section 7.4 Electronic Signatures in Global and National Commerce Act (E-Sign).

The Servicer must follow the procedures in Section "9.2.4.12 Executing and Recording the Loan Modification Agreement" and Section "9.2.4.13.1 Adjusting the Mortgage Loan Account Post-Mortgage Loan Modification" for preparing, executing, recording [Form 3179](#) and Section "9.2.4.13\_MPF Reporting" for adjusting the mortgage loan account upon completion of the mortgage loan modification.

Servicers do not need to obtain prior approval from the MPF Provider, and do not need to provide the MPF Provider or MPF Bank with any documentation other than submitting a completed Workout Worksheet (Form SG354) (Note: Form SG354 must be used, no alternative or equivalent forms are permitted) via eMAQCSplus, with all required supporting documentation as indicated on the Workout Worksheet.

#### **9.2.4.9 Resolving an Appeal of a Mortgage Loan Modification Trial Period Plan Denial for a Primary Residence**

The servicer must comply with all Applicable Laws as to receiving, assessing and providing Borrower with its decision to a Borrower's appeal when a loan modification has been denied on a primary residence.

In order for the borrower to be eligible for an appeal of a denial of a mortgage loan modification Trial Period Plan, the following conditions must be met:

- the mortgage loan must be secured by a primary residence, and
- the borrower must have submitted a complete WRP 90 days or more before a scheduled foreclosure sale date, or the foreclosure sale date is unknown.

If, after review of an appeal, the servicer determines that the Borrower was eligible for a mortgage loan modification Trial Period Plan for which the borrower was previously denied, the Servicer must:

- Send the borrower an offer for such a Trial Period Plan for which the borrower was initially denied.
- Provide the borrower 14 days from the date of the servicer's appeal decision notice to indicate their intent to accept either the new offer or the initial offer, provided that the borrower continues to be eligible for the initial offer, in accordance with Section "9.1.22.4 Sending a Notice of Decision on a Workout Option."

The servicer's appeal decision is final and not subject to further appeal. The servicer must make information related to the appeals process available to MPF Provider and MPF Bank upon request.

#### **9.2.4.10 Handling Fees and Late Charges in Connection with a Loan Modification**

The Servicer must not charge the borrower administrative fees. No referral fees, as defined by RESPA, are allowed in connection with Modification Plans.

The Servicer is authorized to assess late charges during the Trial Period Plan, but all late charges, penalties, stop payment fees, or similar charges must be waived when the Trial Plan converts to a permanent mortgage loan modification.

The Servicer must follow the procedures in Section "3.2 Reimbursement of Servicing Expenses for advancing funds and requesting reimbursement.

#### **9.2.4.11 Preparing the Loan Modification Agreement**

The servicer must prepare the Loan Modification Agreement ([Form 3179](#)) (Note: Form 3179 is a required Form, only changes permitted by Fannie Mae or Freddie Mac are permitted) early enough in the Trial Period Plan to allow sufficient processing time so that the mortgage loan modification becomes effective on the first day of the month following the Trial Period Plan (modification effective date). The servicer is authorized to, at its discretion, complete the Loan Modification Agreement so the mortgage loan modification becomes effective on the first day of the second month following the final Trial Period Plan payment to allow for sufficient processing time. However, the servicer must treat all borrowers the same in applying this option by selecting, at its discretion and as evidenced by a written policy, the date by which the final Trial Period Plan payment must be submitted before the servicer applies this option ("cut-off date"). The cut-off date must be after the due date for the final Trial Period Plan payment as set forth in the Form SG358 Permanent Loan Modification Trial Period Plan Notice.

**Note:** If the servicer elects this option, the borrower will not be required to make an additional Trial Period Plan payment during the month (the "interim month") in between the final Trial Period Plan month and the month in which the mortgage loan modification becomes effective. For example, if the last Trial Period Plan month is March and the servicer elects the option described above, the borrower is not required to make any payment during April, and the mortgage loan modification becomes effective, and the first payment under the Loan Modification Agreement is due, on May 1.

The servicer must incorporate into the [Form 3179](#) the applicable provisions in accordance with the requirements in Fannie Mae's *Summary: Modification Agreement* ([Form 3179](#)).

#### **9.2.4.12 Executing and Recording the Loan Modification Agreement**

The Servicer is responsible for ensuring that the mortgage loan as modified complies with applicable laws, preserves its first lien position, and is enforceable against the borrower(s) in accordance with its terms.

In order to ensure that the modified mortgage loan retains its first lien position and is fully enforceable, the servicer must take the actions described in the following table.

**The servicer must...**

Ensure that the Loan Modification Agreement (Form 3179) (Note: Form 3179 is a required Form, only changes permitted by Fannie Mae or Freddie Mac are permitted) is executed by all the Borrower(s) who executed the original Note or individuals who acquired interest in the Mortgaged Property as a result of a transfer of ownership that was exempt from the Due-On-Sale Clause.

**Note:** The servicer may encounter circumstances where a co-borrower signature is not obtainable for the Loan Modification Agreement, for reasons such as mental incapacity or military deployment. When a co-borrower's signature is not obtainable and the servicer decides to continue with the mortgage loan modification, the servicer must appropriately document the basis for the exception in the servicing records.

Ensure all real estate taxes and assessments that could become superior to the first lien are current, especially those for manufactured homes taxed as personal property, personal property taxes, condo/HOA fees, utility assessments (such as water bills), ground rent, and other assessments.

Obtain a title endorsement or similar title insurance product issued by a title insurance company if the Loan Modification Agreement will be recorded.

Record the executed Loan Modification Agreement if:

- recordation is necessary to ensure that the modified mortgage loan retains its first lien position and is enforceable in accordance with its terms at the time of the modification, throughout its modified term, and during any bankruptcy or foreclosure proceeding involving the modified mortgage loan; or
- the Loan Modification Agreement includes assignment of leases and rents provisions.

**Note:** The Servicer may charge the Borrower for any recording or similar costs associated with the Loan Modification.

Obtain subordination agreements from other lien holders when recordation is required to maintain first lien position. If the Servicer is unable to obtain all necessary subordination agreements, the Servicer may not implement the Modification Plan.

**The servicer must...**

If the Mortgage Loan is covered by primary and/or supplemental mortgage insurance (MI), satisfy all requirements of the MI Company, notify the MI Company of the loan modification in accordance with MI Company requirements, and obtain the approval of the MI Company prior to the modification.

If the mortgage loan is for a manufactured home, and the lien was created, evidenced, or perfected by collateral documents that are not recorded in the land records, the servicer must also take such action as may be necessary, including any amendment, recording, and/or filing that may be required, to ensure that the collateral documents reflect the mortgage loan modification, in order to preserve the first lien status for the entire amount owed.

The servicer must ensure proper execution based upon the entity that is the mortgagee of record and recording of the Loan Modification Agreement

Servicers must allow at least 5 Business Days for any request to the MPF Provider or the MPF Bank to be reviewed. To avoid any delays, Servicers must ensure a submission is complete and accurate. See Section "9.1.8MPF Provider and MPF Bank Response Time."

In addition, the servicer must send the Loan Modification Agreement to the document custodian. If the Loan Modification Agreement is required to be recorded, the servicer must:

- send a certified copy of the fully executed Loan Modification Agreement to the document custodian within 25 days of receipt from the borrower, and
- send the original Loan Modification Agreement that is returned from the recorder's office to the document custodian within 5 business days of receipt.

If the Loan Modification Agreement is not required to be recorded, the servicer must send the fully executed original Loan Modification Agreement to the document custodian within 25 days of receipt from the borrower.

#### **9.2.4.13 MPF Reporting**

The Servicer must report the mortgage loan on the Delinquent Mortgage & Bankruptcy Status Report (Exhibit B) monthly with an Action Code = 12, a Delinquency Status Code = BF during the Trial Payment Period or 28 after successful completion of the Trial Payment Period, the applicable Delinquency Reason Code, a Loss Mitigation Type = Modification or MODIFICATION accompanied by the Loss Mitigation Approval (effective) Date and Loss Mitigation Estimated Completion Date or Loss Mitigation Actual Completion Date, as applicable.



While prior approval by the MPF Bank is not required for Loan Modifications, Servicers must submit the Form SG354 (Note: Form SG354 must be used, no alternative or equivalent forms are permitted) via eMAQCSplus upon their completion.

### 9.2.4.13.1 Adjusting the Mortgage Loan Account Post-Mortgage Loan Modification

The servicer must complete the mortgage loan modification in accordance with Section “9.2.4.8 Offering a Trial Period Plan and Completing a Loan Modification.”

After a mortgage loan modification is executed and the Form SG354 has been submit to MPF Provider for processing via eMAQCSplus, the servicer must adjust the mortgage loan as described in the following table.

✓	<b>The servicer must...</b>
	Add any amounts to be capitalized to the UPB of the mortgage loan as of the date specified in the agreement. Usually, the capitalization date is one month before the new modified payment will be due.
	Revise the borrower's payment records to provide for collection of the modified payment.
	<p>Apply any funds that</p> <ul style="list-style-type: none"> <li>• the borrower deposited with the servicer as a condition of the mortgage loan modification,</li> <li>• have been deposited on behalf of the borrower in connection with the mortgage loan modification, or</li> <li>• the mortgage insurer contributed in connection with the mortgage loan modification.</li> </ul> <p><b>Note:</b> Amounts due for repayment of principal, interest, or advances must be remitted promptly to MPF Bank. The remaining funds may be used to clear any advances made by the servicer or to credit the borrower's escrow deposit account.</p>

### 9.2.4.14 Government Mortgage Loan Modifications

FHA loans repurchased in compliance with the policies of this chapter may be modified in accordance with FHA’s loss mitigation requirements and re-sold to the MPF Bank. FHA loans repurchased from a Person other than the MPF Bank may not be sold to the MPF Bank. Modified FHA loans brought current must meet all the eligibility criteria for Government Mortgage Loans.

The modified FHA loan term may not be greater than three-hundred sixty (360) months from the due date of the first installment payable under the modification agreement. The Servicer must ensure that the modified FHA loan constitutes a first lien, which may require a subordination agreement from any junior lienholder and/or an endorsement to the title policy. The Servicer must determine whether the modification agreement must be recorded in order for the full amount of the FHA loan to be insured or guaranteed by the FHA. The Servicer should contact the MPF Service Center for delivery information.

## **9.3 Liquidation Workout Options**

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### **9.3.1 Short Sale**

#### **9.3.1.1 Overview**

Servicers must consider a short sale when the Borrower is experiencing a permanent hardship that has not been resolved and the Borrower is not eligible for other workout options and the sale would reduce the loss that would otherwise be incurred from foreclosing on the Mortgaged Property. Servicers are required to obtain prior approval from the MPF Bank prior to agreeing to a short sale only if the proceeds of the sale, combined with the proceeds of any insurance or guarantee will result in a loss. See Section “9.1.6 Submission to MPF Banks.” If a short sale is not an option, Servicers are required to evaluate Borrowers for other options in the order based on the Workout Hierarchy in Section “9.1.24 Workout Hierarchy.”

When the proceeds of the sale, combined with the proceeds of any insurance or guarantee, will not result in a loss, Servicers must process the full pay off amount pursuant to Section “2.10.7 Mortgage Loan Payoffs and Liquidation Proceeds.”

#### **9.3.1.2 Government Loans**

The Servicer shall make the MPF Bank whole, paying all principal and interest through the payoff date. No deduction for mortgage insurance premiums, or any other debits or charges may be excluded from the one hundred percent (100%) payoff amount due the MPF Bank. The Servicer will be responsible for any expenses it incurs which are not reimbursed by the Government Agency (called Unreimbursed Servicing Expenses in the Applicable Agreements). The Servicer will not be required to obtain the MPF Bank’s approval to proceed with a short sale even though it may result in a short payoff, as the short sale will not reduce the payoff amount due the MPF Bank.

#### **9.3.1.3 Short Sale Requirements**

In addition to the requirements related to short sales provided for this Chapter, Servicers are also required to:

- Review each sales contract in detail to verify that the terms comply with this Guide.
- Review the settlement statement prior to the short sale closing for proper transfer of title.

- Work with the title company to resolve any issues that may delay the closing, including assisting in subordinate lien releases.
- Provide instructions to the title company regarding closing of the transaction in compliance with this Guide.
- Ensure that the borrower has waived reimbursement of any escrow, buydown funds, or prepaid items and assigned any insurance proceeds to MPF Bank, if applicable.
- Ensure the sales proceeds are received on a timely basis. The Servicer is required to deposit all short sale proceeds into the appropriate P&I Custodial Account within one (1) Business Day of receipt. Within two (2) Business Days of receipt, the Servicer must submit to the MPF Provider copies of the buyer and seller's Settlement Statements, closing statements or escrow instructions, and an estimate of total advances made to date. The Servicer should liquidate the Mortgage Loan within thirty (30) days of disposition of the property. Allowable related expenses will be curtailed if that time frame is not met.
- Provide evidence of the borrower's indication of intent to pursue a short sale to MPF Bank or MPF Provider upon request.

If the Servicer is responding to an unsolicited short sale request from a borrower, it is authorized to proceed directly with evaluating the borrower for a short sale without first conducting an evaluation for a home retention workout option. See Section "9.1.22 Borrower Workout Request Package (WRP)" for information on evaluating the borrower for workout options.

#### **9.3.1.3.1 Communicating with a Borrower Regarding a Short Sale**

When communicating with a Borrower regarding a short sale, the Servicer must advise Borrower that:

- Listing the property for sale may not delay the initiation of foreclosure proceedings, if the foreclosure process has not yet started.
- They must cooperate with vendor(s), including allowing timely and sufficient access to the property for the purpose of obtaining the valuation or property maintenance.
- They will remain responsible for maintenance of the property until it is sold and the settlement has occurred.
  - In the event the borrower cannot maintain the property and the property is vacant or abandoned on a delinquent mortgage loan, the servicer must maintain the property in accordance with Sections "8.3.5 Property Inspections" and "9.1.17 Property Inspection."
- Since the sales proceeds combined with any mortgage insurance proceeds may not be sufficient to satisfy the mortgage loan debt, they may be required to contribute funds to reduce the mortgage loan holder's loss.

- There may be tax consequences if any portion of the outstanding debt is forgiven, and recommend they consult with a tax expert to gain a better understanding.
- They must execute all documents that are necessary to sell the property, even though the documents will indicate that the sales proceeds must be paid to the mortgage holder.
- All sales contracts that will not fully satisfy the outstanding debt must include a contingency clause making the sale of the property “contingent on the mortgage holder’s and the mortgage insurer’s, if applicable, agreement to the sale.”
- All sales contracts must include the following cancellation clause: “The seller’s obligation to perform on this contract is subject to the rights of the mortgage insurer (if any) and the mortgage holder relating to the conveyance of the property.”

#### **9.3.1.4 Evaluating a Borrower to Determine Eligibility for a Short Sale**

If, at the time of evaluation, the mortgage loan is current or less than 60 days delinquent, the servicer must determine whether the borrower’s monthly payment is in imminent default in accordance with Section “9.3.1.4.1 Evaluating a Borrower for Imminent Default for Short Sale.” If the mortgage loan is between 60 days and 90 days delinquent, the Servicer must evaluate the borrower for a short sale based on a complete WRP. See Section “9.1.22 Borrower Workout Request Package (WRP).”

If the mortgage loan is between 90 days and 18 months delinquent, the Servicer must evaluate the borrower for a short sale based on a complete WRP, unless one of the following conditions applies, in which case the servicer must evaluate the borrower for a Short Sale without receiving a complete WRP:

- the borrower failed a Loan Modification Trial Plan;
- the borrower received a Loan Modification and become 60 days or more delinquent within the first 12 months of the effective date of the mortgage loan modification without reinstating;
- the borrower completed a permanent mortgage loan modification;
- the borrower received a forbearance plan as a result of a hardship where applicable law has special requirements related to credit bureau reporting (e.g., disaster event) and became 90 days or more delinquent prior to the evaluation for a short sale; or
- the borrower’s FICO credit score is less than or equal to 620.

The FICO credit score used must be no more than 90 days old as of the date of evaluation. If the Servicer obtains multiple credit scores for a single borrower, it must select a representative credit score using the lower of two or the middle of three credit scores. If there are multiple borrowers, the servicer must determine the representative score for each borrower and use the lowest representative score as the credit score for the evaluation.

If the mortgage loan is greater than 18 months delinquent, the Servicer must evaluate the borrower for a short sale without receiving a complete WRP. If the borrower's debt has been discharged pursuant to Chapter 7 of the U.S. bankruptcy code, the Servicer must evaluate the borrower for a short sale without receiving a complete WRP regardless of the delinquency status of the mortgage loan at the time of evaluation. The servicer must obtain proof that the mortgage loan was included in the borrower's Chapter 7 bankruptcy filing, such as notification from the court or a copy of the order of discharge showing the mortgage loan as discharged. For additional requirements see Section "9.1.19 Bankruptcy" and generally "Chapter 7 Bankruptcy of Borrower."

If the Servicer determines the borrower is eligible for a short sale, and the proceeds of the sale combined with the proceeds of any insurance/guarantee may result in a loss, the Servicer must obtain MPF Bank approval. See Section "9.1.5 MPF Bank Approval."

If a borrower who was evaluated without a complete WRP fully reinstated the mortgage loan after the initial short sale evaluation, the borrower is no longer eligible for a short sale based on the initial eligibility evaluation.

#### **9.3.1.4.1 Evaluating a Borrower for Imminent Default for Short Sale**

For a borrower's monthly payment to be considered in imminent default for the purpose of determining eligibility for a Short Sale, the Borrower must satisfy:

- the initial eligibility criteria, and
- either
  - the credit eligibility criteria or
  - the hardship eligibility criteria.

The Servicer must confirm the following eligibility criteria:

- The mortgage loan is current or less than 60 days delinquent as of the evaluation date.
- The property securing the mortgage loan is occupied as a primary residence by at least one borrower.
  - If a servicemember receives a Permanent Change of Station (PCS) order where the transfer or new employment location is greater than 50 miles one way from the property securing the mortgage loan, the property securing the mortgage loan must have been or currently be the servicemember's primary residence.
- The borrower submits a complete WRP (see Section "9.1.22 Borrower Workout Request Package (WRP)" for additional information).
- The borrower's non-retirement cash reserves are less than \$25,000 based on information provided in the WRA, or equivalent.

- If a servicemember receives a PCS order where the transfer or new employment location is greater than 50 miles one way from the property securing the mortgage loan, and the property securing the mortgage loan was or currently is the servicemember’s primary residence, they are exempt from the non-retirement cash reserves requirement.
- The borrower has a hardship as documented in accordance with WRA or equivalent.

Servicer must also determine whether either the following credit or hardship eligibility criteria is satisfied:

Credit	<p>A FICO credit score less than or equal to 620, and either</p> <ul style="list-style-type: none"> <li>● two or more 30-day delinquencies on the mortgage loan in the six months immediately preceding the month of the evaluation, or</li> </ul> <p><b>Note:</b> The servicer must not consider a missed contractual payment that becomes 60 or more days delinquent as having two or more 30-day delinquencies in the six-month period immediately preceding the month of the evaluation.</p> <ul style="list-style-type: none"> <li>● a pre-modification housing expense-to-income ratio greater than 40% calculated in accordance with the procedures in Section “9.3.1.4.1.1 Calculating the Housing Expense-to-Income Ratio for Imminent Default for a Short Sale.”</li> </ul> <p><b>Note:</b> The FICO credit score must be no more than 90 days old as of the date of evaluation. If the servicer obtains multiple credit scores for a single borrower, it must select a representative credit score using the lower of two or the middle of three credit scores. If there are multiple borrowers, the servicer must determine the representative score for each borrower and use the lowest representative score as the credit score for the evaluation.</p>
Hardship	<p>The borrower has one of the following hardships as documented in accordance with WRA or equivalent:</p> <ul style="list-style-type: none"> <li>● death of a borrower or death of either the primary or secondary wage earner in the household;</li> <li>● long-term or permanent disability, or serious illness of a borrower, co-borrower, or dependent family member;</li> <li>● divorce or legal separation;</li> <li>● separation of borrowers unrelated by marriage, civil union, or similar domestic partnership under applicable law; or</li> <li>● distant employment transfer/relocation, including a PCS order, greater than 50 miles one way from the property securing the mortgage loan.</li> </ul>

If the Borrower's debt has been discharged pursuant to Chapter 7 of the of the U.S. bankruptcy code, the servicer must evaluate the borrower for a short sale in accordance Section "9.3.1.4 Evaluating a Borrower to Determine Eligibility for a Short Sale."

#### **9.3.1.4.1.1 Calculating the Housing Expense-to-Income Ratio for Imminent Default for a Short Sale**

The borrower's monthly gross income is defined as the borrower's monthly income amount before any payroll deductions and includes the following items, as applicable:

- wages and salaries;
- overtime pay;
- commissions;
- fees;
- tips;
- bonuses;
- housing allowances;
- other compensation for personal services;
- Social Security payments (including Social Security received by adults on behalf of minors or by minors intended for their own support); and
- monthly income from annuities, insurance policies, retirement funds, pensions, disability or death benefits, rental income, and other income such as adoption assistance.

**Note:** The servicer generally should not consider temporary sources of income related to employment (such as severance payments) as part of the monthly gross income for mortgage loans being evaluated for a workout option. However, public assistance income (such as unemployment) may be considered if done in compliance with applicable laws, and if the servicer determines the probable continuance of such income. The servicer must then divide the borrower's monthly housing expense on the property securing the mortgage loan, which includes the following items (as applicable), by the borrower's monthly gross income (

monthly housing expense ratio =  $\frac{\text{monthly housing expense}}{\text{total monthly income}}$ ):

- P&I for all mortgage liens on the property;
- property and flood insurance premiums;
- real estate taxes;
- ground rent;
- special assessments;

- HOA dues (including utility charges that are attributable to the common areas, but excluding any utility charges that apply to the individual unit); and
- any escrow shortage currently included as part of the full monthly contractual payment.

The servicer must exclude monthly mortgage insurance premiums from the monthly housing expense-to-income calculation.

### **9.3.1.5 Evaluating a Borrower's Ability to Make a Cash Contribution**

The Servicer must not evaluate the borrower for a cash contribution if:

- prohibited by applicable law;
- the servicer evaluated the borrower for a short sale without receiving a complete WRP in accordance with Section "9.3.1.4 Evaluating a Borrower to Determine Eligibility for a Short Sale;" or
- they are a servicemember with Permanent Change of Station (PCS) orders relocating them greater than 50 miles one way from the property securing the mortgage loan and the property securing the mortgage loan was or currently is the servicemember's primary residence.

In all other instances, the servicer must evaluate the borrower for a cash contribution and request a cash contribution, if:

- the borrower's non-retirement cash reserves, as stated on the WRA and verified as provided for in Section "9.1.22 Borrower Workout Request Package (WRP)," are in excess of \$10,000; or
- the borrower's housing expense-to-income ratio is less than or equal to 40% as calculated in accordance with Section "9.3.1.15 Calculating the Borrower's Housing Expense-to-Income Ratio for Short Sales."

The Servicer must initially request a cash contribution of the greater of the following, rounded to the nearest \$100 and not to exceed the amount of the deficiency:

- 20% of the Borrower's non-retirement cash reserves, or
- four times the contractual monthly mortgage loan payment including PITI. If the servicer does not escrow for T&I, it must estimate the borrower's monthly tax and insurance premium amounts.

If the Servicer determines it is warranted based on its assessment of the Borrower's individual situation and circumstances and ability to contribute, it may:

- request a lower initial cash contribution amount,
- negotiate a lower cash contribution amount, or
- agree to no cash contribution amount.



However, if the mortgage loan is current or less than 60 days delinquent, the borrower must contribute a minimum of 20% of their non-retirement cash reserves.

The requirement for a cash contribution is waived if the contribution amount is less than \$500.

When evaluating a Borrower's ability to make a cash contribution based on documentation greater than 90 days old, the Servicer must obtain a new credit report but must not request any other updated documentation from the Borrower.

### **9.3.1.6 Evaluating the Credit Report for New Mortgage Loans Obtained**

For all short sales except those in which the Servicer evaluated the borrower for a short sale without receiving a complete WRP in accordance with Section "9.3.1.4 Evaluating a Borrower to Determine Eligibility for a Short Sale," the Servicer must review each borrower's credit report to determine:

- if the Borrower(s) obtained a new mortgage loan in the six months preceding the delinquency on the mortgage loan secured by the subject property; or
- in the case of a current mortgage loan, in the six months preceding the evaluation for a short sale.

If the Servicer determines that the borrower obtained a new mortgage loan in the six months preceding the delinquency, or preceding the evaluation for a short sale, as applicable, the mortgage loan is only eligible if the hardship, as documented on the WRA, was due to:

- a distant employment transfer/relocation greater than 50 miles one way from the property securing the mortgage loan and the property securing the mortgage loan is the borrower's primary residence,
- new employment greater than 50 miles one way from the property securing the mortgage loan and the property securing the mortgage loan is the borrower's primary residence, or
- Permanent Change of Station (PCS) orders relocating a servicemember greater than 50 miles one way from the property securing the mortgage loan and the property securing the mortgage loan was or currently is the servicemember's primary residence.

### **9.3.1.7 Obtaining a Property Valuation**

If the borrower expresses interest in a short sale and the Servicer determines that the Borrower meets the eligibility criteria for a short sale, the Servicer must obtain a property valuation dated within 90 calendar days of the short sale approval, using one of the following:

- an exterior BPO;
- an appraisal;
- a third-party AVM; or
- the servicer's own internal AVM, provided that
  - the servicer is subject to supervision by a federal regulatory agency, and

- the servicer's primary federal regulatory agency has reviewed the model.

If the third-party AVM, or the Servicer's internal AVM does not render a reliable confidence score, the servicer must obtain an assessment of the property value utilizing an exterior BPO, an appraisal, or a property valuation method documented as acceptable to the Servicer's federal regulatory supervisor. The property value assessment must be rendered in accordance with the FDIC's Interagency Appraisal and Evaluation Guidelines regardless of whether such guidelines apply to mortgage loan modifications.

The servicer must attach the valuation and documentation when submitting recommendation to MPF Bank. See Section "9.1.6 Submission to MPF Bank."

### **9.3.1.8 Short Sale Transaction Costs**

The MPF Program permits typical and customary costs to be deducted from the contract sale price, but prohibits the following transaction costs to be deducted:

- any outsourcing fees or non-customary third party fees;
- real estate sales commission paid to the borrower or the purchaser;
- buyer's discount points or mortgage loan origination costs; or
- fees that are not usual or customary for the local market.

### **9.3.1.9 Listing the Property**

If the property is listed with a real estate agent, the Servicer must ask the Borrower to provide the real estate agent's name and contact information (address, and telephone number) and must contact the agent to explain the MPF Program requirements related to the short sale.

The property must be listed with a licensed real estate agent who is not a borrower on the mortgage loan.

The Servicer must provide written correspondence to the Borrower and/or the Borrower's real estate agent providing:

- a statement that an offer at or above the list price may not automatically result in an approval of the short sale by the MPF Bank; and
- the types of transaction costs that the MPF Bank prohibits from being deducted from the contract sales price, as provided for in Section "9.3.1.8 Short Sale Transaction Costs"

The property must be listed with an active status on an MLS for a minimum of five consecutive calendar days, including a Saturday and a Sunday, prior to the Servicer submitting the short sale recommendation to the MPF Bank for approval.

The property must be listed on the applicable MLS which covers the geographic area in which the property is located. If a property is located in an area that is not covered by an MLS, the property must be advertised in a manner customary for that real estate market for at least five consecutive calendar days, including a Saturday and a Sunday.

### 9.3.1.10 Evaluating the Short Sale

The following table provides the required time frames for the Servicer to evaluate the short sale and close the short sale transaction.

<b>Time Frame</b>	<b>The Servicer must</b>
Within five business days of receipt of an initial short sale offer	<ul style="list-style-type: none"><li>• Acknowledge receipt of the short sale offer.</li><li>• Provide the Borrower with a checklist of required documentation, including any documentation required for a complete WRP, if necessary, if the short sale offer is submitted with incomplete information (see Section “9.3.1.4 Evaluating a Borrower to Determine Eligibility for a Short Sale”).</li></ul>
Within 30 calendar days of receipt of a complete WRP, if required, and an initial short sale offer	Provide, in writing, the MPF Bank’s response to the short sale offer, to: <ul style="list-style-type: none"><li>• approve,</li><li>• counteroffer requesting a response from the Borrower within five business days (also see Section “9.1.20 Borrower in Foreclosure”), or</li><li>• decline.</li></ul>
Within ten business days of receipt of any revised short sales offer	Communicate a decision to the Borrower on the revised short sale offer.
Within 60 calendar days of the servicer’s approval of a short sale offer	The short sale transaction must close unless the servicer requests written approval from the MPF Bank to extend this time frame.

### 9.3.1.11 Allowable Payments to Subordinate Lienholders

Payments to subordinate lienholders must be paid from the sales proceeds at the closing of the short sale transaction and are only permitted in exchange for:

- a lien release,
- a full release of liability for the borrower, and
- extinguishment of the indebtedness secured by the subject property.

Payments from the sales proceeds to all subordinate lienholders to facilitate lien releases must not exceed \$6,000 in aggregate. If an individual subordinate lien or total subordinate liens are less than \$6,000, the payoff must not exceed the subordinate lien amount owed. If there are multiple subordinate lienholders, the Servicer has discretion to divide the subordinate lien payments among the subordinate lienholders.

Funds must only be used for subordinate mortgage liens or deeds of trust recorded in the land records that constitute a valid lien against the subject property, and may not be used for payment of other types of liens which may include, but are not limited to, the following:

- HOA liens,
- judgments,
- mechanic's liens, and
- materialmen's liens.

Prior to releasing any funds to a subordinate lienholder, the Servicer must obtain written commitment from the subordinate lienholder that it will:

- release the Borrower from all claims and liability relating to the subordinate lien in exchange for receiving the agreed-upon payoff amount,
- waive all rights to seek a deficiency judgment against the Borrower, and
- not require a cash contribution as a condition for releasing its lien and releasing the Borrower from personal liability.

Servicer must submit proof of this commitment with any short sale recommendation in eMAQCSplus.

A subordinate lienholder who releases its lien but does not agree to release the borrower from liability on the note, cannot receive a payment.

The Servicer must always obtain written commitment from the subordinate lienholder(s) to release the lien, regardless of whether payment is made to the subordinate lienholder.

The servicer must require the closing law firm or settlement agent to either:

- confirm that they are in receipt of the written commitment from subordinate lienholder(s) to release the lien(s), or
- request that a copy of the written commitment provided by the subordinate lienholder be sent to the Servicer with the settlement statement which is provided in advance of the closing.

### **9.3.1.12 Incentive Payments to Borrower**

When a property securing the mortgage loan is the borrower's primary residence at the time of the evaluation for short sale, the Servicer may offer Borrower an incentive to assist with relocation expenses following the successful completion of the short sale. Any such incentive must be pursuant to Servicer's established policies and procedures, based on industry standards, and must be included in the short sale recommendation submitted to the MPF Bank in eMAQCplus. See Section "9.1.6 Submission to MPF Banks."

### **9.3.1.13 Deficiency Waiver**

The servicer must release the borrower from liability for any deficiency associated with the Mortgage Loan upon successful completion of a short sale for mortgage loans that do not have MI.

The servicer must provide a deficiency waiver to the borrower at the closing, if applicable.

### **9.3.1.14 Anti-Fraud Measures**

Servicers are required to ensure that all short sales meet the following requirements:

- The sale of the property is an "arm's length" transaction, between Seller(s) and Buyer(s) who are unrelated and unaffiliated by family, marriage, or commercial enterprise;
- There are no agreements, understandings or contracts between the Seller(s) and Buyer(s) that the Seller(s) will remain in the property as tenants or later obtain title or ownership of the property, except that the Sellers(s) are permitted to remain as tenants in the property for a short term, as is common and customary in the market but no longer than ninety (90) days, in order to facilitate relocation;
- Neither the Sellers(s) nor the Buyer(s) will receive any funds or commissions from the sale of the property except that the Seller(s) may receive a payment if it is offered by the Servicer, approved by the investor and, if the payment is made at closing of the short sale of the property, reflected on the Settlement Statement;
- The Seller's Listing Agent has presented all offers for the purchase of the property to the Borrower and no offers have been held, concealed or delayed due to action or inaction by any Agent;
- There are no agreements, understandings or contracts relating to the current sale or subsequent sale of the property that have not been disclosed to the Servicer; and
- All amounts to be paid to any person or entity, including holders of other liens on the Property, in connection with the short sale have been disclosed to and approved by the Servicer and will be reflected on the Settlement Statement.

Short sales that do not meet these requirements are ineligible.

### 9.3.1.15 Calculating the Borrower's Housing Expense-to-Income Ratio for Short Sales

The borrower's monthly gross income is defined as the borrower's monthly income amount before any payroll deductions and includes the following items, as applicable:

- wages and salaries;
- overtime pay;
- commissions;
- fees;
- tips;
- bonuses;
- housing allowances;
- other compensation for personal services;
- Social Security payments (including Social Security received by adults on behalf of minors or by minors intended for their own support); and
- monthly income from annuities, insurance policies, retirement funds, pensions, disability or death benefits, rental income, and other income such as adoption assistance.

**Note:** The servicer generally should not consider temporary sources of income related to employment (such as severance payments) as part of the monthly gross income for mortgage loans being evaluated for a workout option. However, public assistance income (such as unemployment) may be considered if done in compliance with applicable laws, and if the servicer determines the probable continuance of such income. The servicer must then divide the borrower's monthly housing expense on the property securing the mortgage loan, which includes the following items (as applicable), by the borrower's monthly gross income (

monthly housing expense ratio =  $\frac{\text{monthly housing expense}}{\text{total monthly income}}$  ):

- P&I of all mortgage liens on the property;
- property and flood insurance premiums;
- real estate taxes;
- ground rent;
- special assessments;
- HOA dues (including utility charges that are attributable to the common areas, but excluding any utility charges that apply to the individual unit); and
- any escrow shortage currently included as part of the full monthly contractual payment.

The servicer must exclude monthly mortgage insurance premiums from the monthly housing expense-to-income calculation.

### **9.3.1.16 Processing a Short Sale**

Within two business days of the short sale transaction closing, the servicer must review the settlement statement to validate compliance with this Guide and for accuracy, including the following items:

- that the purchaser and the sales price match the purchase contract;
- that the settlement statement is consistent with the closing instructions, particularly ineligible transfer of title to related parties; and
- that the deed has been sent for recordation in the name of the buyer.

The Servicer is also required to notify the MPF Provider within two (2) Business Days of the close of the sale by submitting copies of the buyer and seller's Settlement Statements, closing statements or escrow instructions, an estimate of total advances made to date, and a copy of the proceeds check.

The Servicer is required to deposit all short sale proceeds to the P&I Custodial Account within one (1) Business Day of receipt. All other refunds for overpayment of taxes or hazard insurance received by the Servicer after completion of the short sale are to be forwarded to the MPF Bank.

For any Mortgage Loan with MI, the Servicer shall then file a mortgage insurance claim in the Servicer's name so as to cause claim proceeds to be paid directly to the Servicer. The Servicer shall simultaneously provide the MPF Provider with a copy of claim filed.

### **9.3.1.17 MPF Reporting**

Once the Borrower agrees to the terms of the short sale, the Servicer must report the short sale on the Delinquent Mortgage & Bankruptcy Status Report (Exhibit B) monthly with an Action Code = 20, the applicable Delinquency Status Code = 15 or 17, the applicable Delinquency Reason Code, a Loss Mitigation Type = SS accompanied by the Loss Mitigation Approval (effective) Date and Loss Mitigation Estimated Completion Date or Loss Mitigation Actual Completion Date, as applicable.

## **9.3.2 Deed in Lieu of Foreclosure (Mortgage Release)**

### **9.3.2.1 Overview**

Servicers must consider a deed in lieu of foreclosure (also known as a mortgage release or "DIL") when the Borrower is experiencing a permanent hardship that has not been resolved and the Borrower is not eligible for other workout options. The deed in lieu of foreclosure would reduce the loss that would otherwise be incurred from foreclosing on the Mortgaged Property. Servicers are required to obtain prior approval from the MPF Bank prior to agreeing to a deed in lieu of Foreclosure. See Section "9.1.6 Submission to MPF Banks."

### **9.3.2.2 Government Loans**

The Servicer shall make the MPF Bank whole, paying all principal and interest. The Servicer will be responsible for any expenses it incurs which are not reimbursed by the Government Agency

(called Unreimbursed Servicing Expenses in the Applicable Agreements). The Servicer will not be required to obtain the MPF Bank's approval to proceed with a deed in lieu of foreclosure.

### **9.3.2.3 Deed in Lieu of Foreclosure Requirements**

In addition to the requirements related to deeds in lieu of foreclosure provided for this Chapter, Servicers are also required to:

- Evaluate the borrower to see if there are currently any legal impediments to pursuing a routine foreclosure, and if so, accept the Deed in Lieu of foreclosure.
- Advise the borrower there may be tax consequences if any portion of the outstanding debt is forgiven, and recommend they consult with a tax expert to gain a better understanding.
- Work with the borrower to complete all requirements associated with completing and executing the deed in lieu of foreclosure and ensure that there is sufficient time to complete the processing of the deed in lieu of foreclosure, including sending the Deed in Lieu of foreclosure offer to the borrower, so that an executed deed can be received no later than 30 days prior to the foreclosure sale date, or in applicable foreclosure actions where there is no foreclosure sale and title is transferred by court order, the estimated court order docket date (if known).
- Work with the title company to resolve any issues that may delay the closing, including assisting the borrower in subordinate lien releases, and ensure that the borrower can convey clear and marketable title by ordering a title search and reviewing the following:
  - readily available information provided by the borrower,
  - the borrower's credit report,
  - the mortgage loan servicing file, and
  - other sources identifying subordinate liens and other claims on title.

While the servicer is not required to order a title insurance policy, the servicer is authorized to do so if it deems it necessary to complete the Deed in Lieu of Foreclosure. The MPF Bank will reimburse the servicer for title insurance costs in accordance with the Guides, including guidance in Section "8.3.6 Costs and Expenses."

- Submit the deed for recordation within five business days of the servicer's acceptance of the executed deed from the borrower.
- Release the first lien mortgage loan within the time required by applicable state or local law or, if state or local law does not require release of the first lien mortgage loan within a specific time frame, within 30 business days after the occurrence of the following:
  - the acceptance of the deed in lieu of foreclosure by the servicer, and
    - confirmation by the interior property inspection that the subject property is vacant and secured (unless the borrower is eligible for a transition option. See Section "9.3.2.4 Evaluating a Borrower for Deed in Lieu of Foreclosure Transition Options").



- Provide evidence of the borrower's indication of intent to pursue a Deed in Lieu of foreclosure to the MPF Bank or MPF Provider upon request.

#### **9.3.2.4 Evaluating a Borrower to Determine Eligibility for a Deed in Lieu of Foreclosure**

If, at the time of evaluation, the mortgage loan is current or less than 60 days delinquent, the servicer must determine whether the borrower's monthly payment is in imminent default in accordance with Section "9.3.2.4.1 Evaluating a Borrower for Imminent Default for Deed in Lieu of Foreclosure." If the mortgage loan is between 60 days and 90 days delinquent, the Servicer must evaluate the borrower for a deed in lieu of foreclosure based on a complete WRP. See Section "9.1.22 Borrower Workout Request Package (WRP)."

If the mortgage loan is between 90 days and 18 months delinquent, the Servicer must evaluate the borrower for a deed in lieu of foreclosure based on a complete WRP, unless one of the following conditions applies, in which case the servicer must evaluate the borrower for a deed in lieu of foreclosure without receiving a complete WRP:

- the borrower failed a Loan Modification within the previous 12 months;
- the borrower received a Loan Modification and become 60 days or more delinquent within the first 12 months of the effective date of the mortgage loan modification without reinstating;
- the borrower completed three or more mortgage loan modifications;
- the borrower received a forbearance plan as a result of a hardship where applicable law has special requirements related to credit bureau reporting (e.g., disaster event) and became 90 days or more delinquent prior to the evaluation for a deed in lieu of foreclosure; or
- the borrower's FICO credit score is less than or equal to 620.

The FICO credit score used must be no more than 90 days old as of the date of evaluation. If the Servicer obtains multiple credit scores for a single borrower, it must select a representative credit score using the lower of two or the middle of three credit scores. If there are multiple borrowers, the servicer must determine the representative score for each borrower and use the lowest representative score as the credit score for the evaluation.

If the mortgage loan is greater than 18 months delinquent, the Servicer must evaluate the borrower for a deed in lieu of foreclosure without receiving a complete WRP.

If the borrower's debt has been discharged pursuant to Chapter 7 of the U.S. bankruptcy code, the Servicer must evaluate the borrower for a deed in lieu of foreclosure without receiving a complete WRP regardless of the delinquency status of the mortgage loan at the time of evaluation. The servicer must obtain proof that the mortgage loan was included in the borrower's Chapter 7 bankruptcy filing, such as notification from the court or a copy of the order of discharge showing the mortgage loan as discharged. For additional requirements see Section "9.1.19 Bankruptcy" and generally "Chapter 7 Bankruptcy of Borrower."

If a borrower who was evaluated without a complete WRP fully reinstated the mortgage loan after the initial deed in lieu of foreclosure evaluation, the borrower is no longer eligible for a deed in lieu of foreclosure based on the initial eligibility evaluation.

#### **9.3.2.4.1 Evaluating a Borrower for Imminent Default for Deed in Lieu of Foreclosure**

For a borrower’s monthly payment to be considered in imminent default for the purpose of determining eligibility for a deed in lieu of foreclosure, the Borrower must satisfy:

- the initial eligibility criteria, and
- either
  - the credit eligibility criteria or
  - the hardship eligibility criteria.

The Servicer must confirm the following eligibility criteria:

- The mortgage loan is current or less than 60 days delinquent as of the evaluation date.
- The property securing the mortgage loan is occupied as a primary residence by at least one borrower.
  - If a servicemember receives a PCS order where the transfer or new employment location is greater than 50 miles one way from the property securing the mortgage loan, the property securing the mortgage loan must have been or currently be the servicemember’s primary residence.
- The borrower submits a complete WRP (see Section “9.1.22 Borrower Workout Request Package (WRP)” for additional information).
- The borrower’s non-retirement cash reserves are less than \$25,000 based on information provided in the WRA, or equivalent.
  - If a servicemember receives a PCS order where the transfer or new employment location is greater than 50 miles one way from the property securing the mortgage loan, and the property securing the mortgage loan was or currently is the servicemember’s primary residence, they are exempt from the non-retirement cash reserves requirement.
- The borrower has a hardship as documented in accordance with WRA or equivalent.

Servicer must also determine whether either the following credit or hardship eligibility criteria is satisfied:

Credit	A FICO credit score less than or equal to 620, and either
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	<ul style="list-style-type: none"> <li>• two or more 30-day delinquencies on the mortgage loan in the six months immediately preceding the month of the evaluation, or</li> </ul> <p><b>Note:</b> The servicer must not consider a missed contractual payment that becomes 60 or more days delinquent as having two or more 30-day delinquencies in the six-month period immediately preceding the month of the evaluation.</p> <ul style="list-style-type: none"> <li>• a pre-modification housing expense-to-income ratio greater than 40% calculated in accordance with the procedures in Section “9.3.2.4.1.1 Calculating the Housing Expense-to-Income Ratio for Imminent Default for a Deed in Lieu of Foreclosure.”</li> </ul> <p><b>Note:</b> The FICO credit score must be no more than 90 days old as of the date of evaluation. If the servicer obtains multiple credit scores for a single borrower, it must select a representative credit score using the lower of two or the middle of three credit scores. If there are multiple borrowers, the servicer must determine the representative score for each borrower and use the lowest representative score as the credit score for the evaluation.</p>
Hardship	<p>The borrower has one of the following hardships as documented in accordance with WRA or equivalent:</p> <ul style="list-style-type: none"> <li>• death of a borrower or death of either the primary or secondary wage earner in the household;</li> <li>• long-term or permanent disability, or serious illness of a borrower, co-borrower, or dependent family member;</li> <li>• divorce or legal separation;</li> <li>• separation of borrowers unrelated by marriage, civil union, or similar domestic partnership under applicable law; or</li> <li>• distant employment transfer/relocation, including a PCS order, greater than 50 miles one way from the property securing the mortgage loan.</li> </ul>

If the Borrower’s debt has been discharged pursuant to Chapter 7 of the of the U.S. bankruptcy code, the servicer must evaluate the borrower for a short sale in accordance Section “9.3.2.4 Evaluating a Borrower to Determine Eligibility for a Deed in Lieu of Foreclosure.”

**9.3.2.4.1.1 Calculating the Housing Expense-to-Income Ratio for Imminent Default for a Deed In Lieu of Foreclosure**

The borrower’s monthly gross income is defined as the borrower’s monthly income amount before any payroll deductions and includes the following items, as applicable:

- wages and salaries;

- overtime pay;
- commissions;
- fees;
- tips;
- bonuses;
- housing allowances;
- other compensation for personal services;
- Social Security payments (including Social Security received by adults on behalf of minors or by minors intended for their own support); and
- monthly income from annuities, insurance policies, retirement funds, pensions, disability or death benefits, rental income, and other income such as adoption assistance.

**Note:** The servicer generally should not consider temporary sources of income related to employment (such as severance payments) as part of the monthly gross income for mortgage loans being evaluated for a workout option. However, public assistance income (such as unemployment) may be considered if done in compliance with applicable laws, and if the servicer determines the probable continuance of such income. The servicer must then divide the borrower's monthly housing expense on the property securing the mortgage loan, which includes the following items (as applicable), by the borrower's monthly gross income (

monthly housing expense ratio =  $\frac{\text{monthly housing expense}}{\text{total monthly income}}$  ):

- P&I of all mortgage liens on the property;
- property and flood insurance premiums;
- real estate taxes;
- ground rent;
- special assessments;
- HOA dues (including utility charges that are attributable to the common areas, but excluding any utility charges that apply to the individual unit); and
- any escrow shortage currently included as part of the full monthly contractual payment.

The servicer must exclude monthly mortgage insurance premiums from the monthly housing expense-to-income calculation.

### **9.3.2.5 Calculating the Borrower's Housing Expense-to-Income Ratio for Deed in Lieu of Foreclosure**

The borrower's monthly gross income is defined as the borrower's monthly income amount before any payroll deductions and includes the following items, as applicable:

- wages and salaries;
- overtime pay;
- commissions;
- fees;
- tips;
- bonuses;
- housing allowances;
- other compensation for personal services;
- Social Security payments (including Social Security received by adults on behalf of minors or by minors intended for their own support); and
- monthly income from annuities, insurance policies, retirement funds, pensions, disability or death benefits, rental income, and other income such as adoption assistance.

**Note:** The servicer generally should not consider temporary sources of income related to employment (such as severance payments) as part of the monthly gross income for mortgage loans being evaluated for a workout option. However, public assistance income (such as unemployment) may be considered if done in compliance with applicable laws, and if the servicer determines the probable continuance of such income.

The servicer must then divide the borrower's monthly housing expense on the property securing the mortgage loan, which includes the following items (as applicable), by the borrower's monthly gross income (  $\text{monthly housing expense ratio} = \frac{\text{monthly housing expense}}{\text{total monthly income}}$  ):

- P&I of all mortgage liens on the property;
- property and flood insurance premiums;
- real estate taxes;
- ground rent;
- special assessments;
- HOA dues (including utility charges that are attributable to the common areas, but excluding any utility charges that apply to the individual unit); and
- any escrow shortage currently included as part of the full monthly contractual payment.

The servicer must exclude monthly mortgage insurance premiums from the monthly housing expense-to-income calculation.

### **9.3.2.6 Evaluating a Borrower for Deed in Lieu of Foreclosure Transition Options**

Once the Servicer determines that the Borrower is eligible for a deed in lieu of foreclosure and the Borrower expresses interest in a deed in lieu of foreclosure transition option, the servicer must screen the borrower for eligibility for a three-month transition lease with no rent payment required.

For the mortgage loan and the borrower to be eligible:

- The mortgage loan must be a first lien mortgage loan secured by a single-family property.
- The subject property must be the borrower's primary residence.
- Clear and marketable title must be able to be conveyed.
- Subordinate lien releases must be able to be obtained, if applicable.

#### **9.3.2.6.1 Processing a Deed in Lieu of Foreclosure Transition Option**

When the servicer makes a deed in lieu of foreclosure recommendation to the MPF Bank, it must provide any transition option recommendation with it.

To be eligible for a transition options, the property must meet the following requirements:

- There are no zoning or HOA rental limitations that would prevent a deed in lieu of foreclosure transition option.
- If a property inspection or property valuation reveals damage to the subject property, the estimated total cost to repair the subject property must be less than 10% of its estimated market value (estimated "As Is" sales price)
- The subject property does not have any environmental contaminations or pose any potential legal risk.
- The subject property is in compliance with local rules and laws, or can be brought into compliance within 30 days.
- The subject property is not within a target area for any corporate, government, or community neighborhood stabilization plan which may need the property as part of the plan for purposes other than residential.

To be eligible for a transition option, the occupant must meet the following requirements:

- The occupant agrees to:
  - be responsible for regular maintenance,
  - keep the property in good condition, and
  - permit marketing of the property for sale beginning on the 30th day of the use and occupancy agreement.
- The number of occupants is appropriate for the home and in compliance with local laws and HOA rules, if applicable.
- If pets are present, renter's insurance is obtained, if required.

- The occupants signing the lease agreement must agree to a credit review, and all residents over 18 years of age must have an acceptable background check, including receiving clearance from OFAC.
- There are no signs or reports of illegal activities conducted at the property.
- The property is to be used as a primary residence.

The MPF Bank will inform Servicer whether or not the lease terms are acceptable and whether the deed in lieu of foreclosure is contingent on the property being vacant. Servicer will then be responsible for finalizing the deed in lieu of foreclosure accordingly.

The servicer must notify the MPF Bank if a deed in lieu of foreclosure is not successfully executed for any case that was approved for deed in lieu of foreclosure transition options consideration.

Prior to acceptance of a deed in lieu of foreclosure with a transition option, the Servicer must ensure that the borrowers execute (in favor of the MPF Bank, the servicer, and their agents) a general release of all claims arising prior to the acceptance of the deed in lieu of foreclosure which relate in any way to the mortgage loan or the subject property.

The Servicer has five weeks from the MPF Bank's approval to complete the transaction to allow enough time for the lease approval process.

### **9.3.2.7 Evaluating the Credit Report for New Mortgage Loans Obtained**

For all deeds in lieu of foreclosure, except those in which the Servicer evaluated the borrower for a deed in lieu of foreclosure without receiving a complete WRP in accordance with Section "9.3.2.4 Evaluating a Borrower to Determine Eligibility for a Deed in Lieu of Foreclosure," the Servicer must review each borrower's credit report to determine:

- if the Borrower(s) obtained a new mortgage loan in the six months preceding the delinquency on the mortgage loan secured by the subject property; or
- in the case of a current mortgage loan, in the six months preceding the evaluation for a deed in lieu of foreclosure.

If the Servicer determines that the borrower obtained a new mortgage loan in the six months preceding the delinquency, or preceding the evaluation for a deed in lieu, as applicable, the mortgage loan is only eligible if the hardship, as documented on the WRA, was due to:

- a distant employment transfer/relocation greater than 50 miles one way from the property securing the mortgage loan and the property securing the mortgage loan is the borrower's primary residence,
- new employment greater than 50 miles one way from the property securing the mortgage loan and the property securing the mortgage loan is the borrower's primary residence, or
- Permanent Change of Station (PCS) orders relocating a servicemember greater than 50 miles one way from the property securing the mortgage loan and the property securing the mortgage loan was or currently is the servicemember's primary residence.

### **9.3.2.8 Obtaining a Property Valuation and Evaluating the Condition of the Property**

If the Servicer determines that the Borrower meets the eligibility criteria for a deed in lieu of foreclosure, it must obtain a property valuation to determine the market value of the property securing the mortgage loan.

Prior to the borrower executing a deed in lieu of foreclosure, the servicer must schedule property inspections to ensure that the property is free of environmental contamination and does not pose potential legal risks. See Section “9.1.17 Property Inspection” and Section “8.3.5 Property Inspections.”

A Servicer who previously ordered a BPO, is authorized to use the interior BPO to determine whether the property condition is acceptable prior to final execution of the deed in lieu of foreclosure, as long as the BPO is dated within 90 days of the borrower’s approval for a deed in lieu of foreclosure.

If a BPO had not previously been ordered, Servicer must order an interior inspection of the property and verify the property is in acceptable condition within 60 days of the borrower’s acceptance of the deed in lieu of foreclosure.

If the property inspection or property valuation reveals that the subject property has been poorly maintained, needs major repairs, or has structural or foundation problems, see Section “4.6 Property Loss Events and Insurance Loss Settlements” for additional information.

When any property inspection or property valuation that reveals that the subject property contains environmental contamination or poses potential legal risks, Servicer should escalate immediately to MPF Provider and should not proceed with offering or processing a deed in lieu of foreclosure until it receives further instructions from the MPF Bank.

### **9.3.2.9 Allowable Payments to Subordinate Lienholders**

Payments to subordinate lienholders are only permitted in exchange for:

- a lien release,
- a full release of liability for the borrower, and
- extinguishment of the indebtedness secured by the subject property.

Payments to all subordinate lienholders to facilitate lien releases must not exceed \$6,000 in aggregate. If an individual subordinate lien or total subordinate liens are less than \$6,000, the payoff must not exceed the subordinate lien amount owed. If there are multiple subordinate lienholders, the Servicer has discretion to divide the subordinate lien payments among the subordinate lienholders.

Funds must only be used for subordinate mortgage liens or deeds of trust recorded in the land records that constitute a valid lien against the subject property, and may not be used for payment of other types of liens which may include, but are not limited to, the following:



- HOA liens,
- judgments,
- mechanic's liens, and
- materialmen's liens.

Prior to releasing any funds to a subordinate lienholder, the Servicer must obtain written commitment from the subordinate lienholder that it will:

- release the Borrower from all claims and liability relating to the subordinate lien in exchange for receiving the agreed-upon payoff amount,
- waive all rights to seek a deficiency judgment against the Borrower, and
- not require a cash contribution as a condition for releasing its lien and releasing the Borrower from personal liability.

Servicer must submit proof of this commitment with any deed in lieu of foreclosure recommendation in eMAQCSplus.

A subordinate lienholder who releases its lien but does not agree to release the borrower from liability on the note, cannot receive a payment.

The Servicer must always obtain written commitment from the subordinate lienholder(s) to release the lien, regardless of whether payment is made to the subordinate lienholder.

The servicer must require the closing law firm or settlement agent to either:

- confirm that they are in receipt of the written commitment from subordinate lienholder(s) to release the lien(s), or
- request that a copy of the written commitment provided by the subordinate lienholder be sent to the Servicer with the settlement statement which is provided in advance of the closing.

### **9.3.2.10 Incentive Payments to Borrower**

When a property securing the mortgage loan is the borrower's primary residence at the time of the evaluation for deed in lieu of foreclosure, the Servicer may offer Borrower an incentive to assist with relocation expenses following the successful completion of the deed in lieu of foreclosure. Any such incentive must be pursuant to Servicer's established policies and procedures, based on industry standards, and must be included in the deed in lieu of foreclosure recommendation submitted to the MPF Bank in eMAQCSplus.

### **9.3.2.11 Evaluating a Borrower's Ability to Make a Cash Contribution**

The Servicer must not evaluate the borrower for a cash contribution if:

- prohibited by applicable law;

- the servicer evaluated the borrower for a deed in lieu of foreclosure without receiving a complete WRP in accordance with Section “9.3.2.4 Evaluating a Borrower to Determine Eligibility for a Deed In Lieu of Foreclosure;” or
- they are a servicemember with Permanent Change of Station (PCS) orders relocating them greater than 50 miles one way from the property securing the mortgage loan and the property securing the mortgage loan was or currently is the servicemember’s primary residence.

In all other instances, the servicer must evaluate the borrower for a cash contribution and request a cash contribution, if:

- the borrower’s non-retirement cash reserves, as stated on the WRA and verified as provided for in Section “9.1.22 Borrower Workout Request Package (WRP),” are in excess of \$10,000; or
- the borrower’s housing expense-to-income ratio is less than or equal to 40% as calculated in accordance with Section “9.3.2.5 Calculating the Borrower’s Housing Expense-to-Income Ratio for Deed in Lieu of Foreclosure.”

The Servicer must initially request a cash contribution of the greater of the following, rounded to the nearest \$100 and not to exceed the amount of the deficiency:

- 20% of the Borrower’s non-retirement cash reserves, or
- four times the contractual monthly mortgage loan payment including PITI. If the servicer does not escrow for T&I, it must estimate the borrower’s monthly tax and insurance premium amounts.

If the Servicer determines it is warranted based on its assessment of the Borrower’s individual situation and circumstances and ability to contribute, it may:

- request a lower initial cash contribution amount,
- negotiate a lower cash contribution amount, or
- agree to no cash contribution amount.

However, if the mortgage loan is current or less than 60 days delinquent, the borrower must contribute a minimum of 20% of their non-retirement cash reserves.

The requirement for a cash contribution is waived if the contribution amount is less than \$500.

When evaluating a Borrower’s ability to make a cash contribution based on documentation greater than 90 days old, the Servicer must obtain a new credit report but must not request any other updated documentation from the Borrower.

### **9.3.2.12 Requirements for Accepting a Deed in Lieu of Foreclosure**

The Servicer must obtain the following items within 60 days of the borrower’s acceptance of the offer for a deed in lieu of foreclosure:

- The deed and a personal property release executed by the borrower.
  - The personal property release form used must at minimum provide for:
    - Borrower to leave the property in broom-swept condition free of interior and exterior trash, debris or damage;
    - Borrower to remove all personal property from the property;
    - Borrower allowing Servicer to dispose of any personal property remaining in the property following the vacancy date in any manner and that the Servicer deems fit;
    - Borrower releases and holds harmless Servicer, Investor and their servicers, representatives, agents, attorneys, Officers, Directors, employees, successors and assigns from any claim or liability, loss, cost, or expense, including reasonable attorney's fees, for any and all personal property left in the property after the agreed upon vacancy date.
- The mortgage insurer's approval, if applicable.
- Agreement(s) that the subordinate lienholder(s) will release:
  - the subordinate lien, and
  - the borrower from liability if accepting payment.
- Clear and marketable title.
- The cash contribution, if applicable.
- The interior property inspection report, if applicable, indicating that there are no environmental hazards or potential legal risks, and that the property is vacant, secure, and in broom swept condition, unless the borrower is eligible in accordance with Section "9.3.2.6 Evaluating a Borrower for Deed in Lieu Transition Options."
  - For a deed in lieu of foreclosure transition option, the servicer must review the interior property valuation to ensure the subject property's habitability.

If the servicer is unable to resolve all issues within 60 days, an extension of 30 days is permitted as long as the servicer provides the borrower with written or verbal weekly status updates indicating the reason that the deed in lieu of foreclosure is still pending. Upon receiving the first approval, if additional time is needed, the servicer will be required to submit a new recommendation to the MPF Bank in eMAQCSplus.

The servicer must request the MPF Bank's approval to accept the deed if it receives the executed deed less than 30 days prior to the foreclosure sale date, or in applicable foreclosure actions where there is no foreclosure sale and title is transferred by court order, the estimated court order docket date (if known). The servicer is responsible for any costs incurred due to the acceptance of a deed in lieu of foreclosure that results in a delay in acquisition of the property.

### **9.3.2.13 Deficiency Waiver**

The servicer must release the borrower from liability for any deficiency associated with the Mortgage Loan upon successful completion of a Deed in Lieu of Foreclosure for mortgage loans that do not have MI.

The servicer must provide a deficiency waiver to the borrower after the Servicer's acceptance of the executed deed from the borrower, if applicable.

### **9.3.2.14 Processing a Deed in Lieu of Foreclosure for a Mortgage Loan with Mortgage Insurance.**

For loans with mortgage insurance, the servicer must not agree to a Deed in Lieu of Foreclosure unless the mortgage insurer agrees in writing to the following:

- to waive its property acquisition rights before the claim is filed, and
- to settle the claim by paying the lesser of the full percentage option under the terms of the master policy or the amount required to make the MPF Bank whole.

### **9.3.2.15 MPF Reporting**

Once the Borrower agrees to the terms of the deed in lieu of foreclosure, the Servicer must report the deed in lieu of foreclosure on the Delinquent Mortgage & Bankruptcy Status Report (Exhibit B) monthly with an Action Code = 20, a Delinquency Status Code = 44, the applicable Delinquency Reason Code, a Loss Mitigation Type = DIL accompanied by the Loss Mitigation Approval (effective) Date and Loss Mitigation Estimated Completion Date or Loss Mitigation Actual Completion Date, as applicable.

Within 24 hours of acquiring such Mortgaged Property, the Servicer shall promptly notify the MPF Provider using the Notice of Acquired Property form (Form SG334 submitted via eMAQCSplus) and shall notify the applicable mortgage insurer/guarantor. Title shall be conveyed directly from the Borrower to the Servicer.