



## BEST PRACTICE OVERVIEW

The COVID-19 pandemic is an unprecedented event that has in some way affected every person in the U.S. For private lenders, this means many borrowers will be reaching out to request payment deferrals or other temporary assistance as they navigate economic hardship that has come as a result.

As a general matter, private lenders will need to implement policies to determine whether a borrower's request for a forbearance is appropriate.

**DO NOT issue blanket denials of forbearance without an evaluation of the facts. In the current climate, borrowers are facing real challenges and hardships. Outside of the blowback on the lender for such harsh practices amid widespread circumstances outside human control, the blanket implementation of forbearance denials will place the industry under extreme scrutiny for increased future regulation.**

**DO be generous and provide affected borrowers temporary forbearances when they can demonstrate that they have been directly affected by the pandemic.**

## STEP 1: LET BORROWERS REQUEST FORBEARANCE

Provide borrowers with an opportunity to easily and formally request a forbearance and to provide backup documentation to support their claim.

- » We recommend that you make a COVID-19 Forbearance Request Form available on your website to streamline and make it easier to review the requests you receive.
- » A sample form is included as an attachment to this guide.

## STEP 2 REVIEW THE REQUEST

Review each request and the relevant backup documentation provided by the borrower. Backup documentation may vary significantly depending on the request reason.

**EXAMPLE 1** // For decreases in rental income, we would at minimum suggest reviewing:

- » The borrower's bank deposit statements for the account that collects rental payments.
- » Written requests from the borrower's tenants to postpone rental payments.

**EXAMPLE 2** // For hardship due to a decrease in household income, we would at minimum suggest reviewing:

- » Employer letters of termination.
- » Documentation showing a reduction in pay/hours.
- » Applications for unemployment benefits.



## STEP 3: DETERMINE IF THE CLAIM IS QUALIFIED

Borrower claims for forbearance may be wholly, partially, or unqualified depending on the request itself and the documentation provided. Establish procedures and processes for treating all claims equally.

### FOR WHOLLY QUALIFIED CLAIMS

- » Enter a formal, written, and signed forbearance agreement rather than informal processes such as an agreement through e-mail that may more easily be subject to future litigation.
- » Typical terms include:
  - » 60-90-day payment deferrals until the maturity date.
  - » Automatic lender discretionary extensions of this time period.
  - » No late charges or default interest accruing on the deferred payments.

**FOR PARTIAL HARDSHIP CLAIMS** // You can be more flexible about the type of forbearance. These options should cater directly to what the borrower can do at the time. Suggestions include:

- » Defer partial monthly payments, while requiring the other portion of the payment to remain due on schedule.
- » Wholly defer the payments, but charge default interest or late charges on such payments, assuming state law permits these charges during this time period.

**FOR COMPLETELY UNQUALIFIED CLAIMS** // Whether due to a lack of supporting documentation or other determination that the borrower is not facing a hardship that warrants payment deferral, you should take steps to protect your loan.

You should not wait it out or otherwise take no action, which would allow the borrower to support a claim that you waived your rights under the loan or otherwise silently accepted a forbearance without documentation.

You should:

- » Deny the claim in writing with the reasons supporting your decision to deny the request.
- » Next, if they do not pay on schedule, send a demand letter to the borrower requesting compliance with the loan terms.
- » Finally, if available, initiate the foreclosure process or otherwise take action to enforce your rights under your loan documents.

By following these best practices when approaching requests for payment deferrals, private lenders reduce the risk for borrower complaints or litigation. In the event there is litigation by showing a clearly defined – and fair – process made available to all borrowers, it will help end that dispute sooner.

