
COVID-19 and Mortgage Relief for Homeowners: CARES Act Protections

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National
Consumer Law
Center

*Fighting Together
for Economic Justice*

Overview

- Forbearance rights under the CARES Act for federally backed mortgages
- CARES Act foreclosure moratorium
- Post-forbearance options
- RESPA issues

* Note: a **quickly shifting** landscape.
Watch for updates in Pubs articles

Poll 1: Who is in the audience?

- What is your practice setting?
 - A. Private law firm or solo practice
 - B. Legal services program
 - C. Housing counseling agency
 - D. Other nonprofit or advocacy group
 - E. Other

Poll 2: Experience?

- Which of these best describes your experience level with mortgage issues?
 - A. I'm new to this area
 - B. 0-2 years of experience
 - C. 2-5 years of experience
 - D. More than 5 years of experience

Poll 3: What are you hearing?

- What are you hearing from homeowners during this time? Check all that apply.
 - A. Struggling to reach servicers on the phone
 - B. Being offered a 90-day forbearance
 - C. Offered 90-day forbearance, no mention of extensions
 - D. Confusion about post-forbearance options
 - E. Other (feel free to type in chat box)
 - F. I'm not hearing much at all yet

Forbearance and Moratorium Rights under the CARES Act

Mortgage Relief

- Encourage borrowers to pay mortgage if can afford it.
- If not: relief may be available but not for all loans
- For all loans: must be 120 days behind to start foreclosure (Under RESPA, 12 CFR 1024.41)

CARES Act

- Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136
- [Link to the CARES Act](#) (NCLC [summary](#))
- Section [4022](#):
 - Provides **temporary** forbearance relief for borrowers with “**federally backed mortgage loans:**”
 - any loan which is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives)
 - designed principally for the occupancy of from 1- to 4-families
 - that is owned or backed by a federal agency:
 - FHA; USDA; VA; Fannie Mae & Freddie Mac

Type of Loan

- Need to find out what kind of loan borrower has
 - Fannie:
<https://www.knowyouroptions.com/loanlookup>
 - Freddie:
<https://ww3.freddie.mac.com/loanlookup/>
- Cannot assume loan is still a Fannie or Freddie

Type of Loan

- FHA: Mortgage statement or closing docs
- However, HUD has sold many delinquent FHA loans through the Distressed Asset Stabilization Program (DASP) program
- Confirm whether loan is **STILL** FHA insured.
 - Look on monthly statement to see if the monthly Mortgage Insurance Premium (MIP) is on the account.
 - You can call the HUD National Servicing Center at 877-622-8525

Type of Loan

Links to guidance that the agencies and entities are giving and contact information

- [U.S. Department of Housing and Urban Development \(HUD\)](#)
- [U. S. Department of Agriculture](#)
 - [USDA Direct](#)
 - [USDA Guaranteed](#)
- [U.S. Department of Veterans Affairs \(VA\)](#)
- [Federal Housing Administration \(FHA\) \(Includes reverse mortgages\)](#)

From CFPB: Guide to coronavirus mortgage relief options:
<https://www.consumerfinance.gov/about-us/blog/guide-coronavirus-mortgage-relief-options/> -

For All Loans: Request for Information

- Write a Request for Information asking for:
 - identity of, and address or other relevant contact information for, the owner or assignee of my mortgage loan;
 - the full name, address, and contact information for any trust that owns the loan and the trustee; or
 - any federally related entity that owns, insures, or guarantees my loan, including Fannie Mae, Freddie Mac, the Federal Housing Administration, or the U.S.D.A. Rural Housing Service

Request for Information

- Must use correct QWR/RFI address
- Response in 10 business days
- Find sample and instructions at:
<https://www.consumerfinance.gov/ask-cfpb/how-can-i-tell-who-owns-my-mortgage-en-214/>

Federally Backed Loans

- During the covered period, a borrower with a Federally backed mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID–19 emergency may request forbearance on the Federally backed mortgage loan, **regardless of delinquency status**, by—
 - (A) submitting a request to the borrower’s servicer; and
 - (B) affirming that the borrower is experiencing a financial hardship during the COVID–19 emergency.

What is a Forbearance Agreement?

- A reduction or suspension of payments for a set amount of time.
- The payments are not waived or forgiven; they will have to be paid back.
- Does not cover taxes, insurance, or condo fees if no escrow account

Federally Backed Loans

Covered period

- Not defined in 4022
- In 4023 for multifamily forbearance:
 - the period beginning on the date of enactment of this Act (3/27/2020) and ending on the sooner of—
 - (A) the termination date of the national emergency concerning the novel coronavirus disease (COVID–19) outbreak declared by the President on March 13, 2020 under the National Emergencies Act ([50 U.S.C. 1601](#) et seq.); or
 - (B) December 31, 2020.

Federally Backed Loans

- Forbearance:

Upon a request by a borrower for forbearance under paragraph (1), such forbearance shall be granted for up to 180 days, and shall be extended for an additional period of up to 180 days at the request of the borrower, provided that, at the borrower's request, either the initial or extended period of forbearance may be shortened= **ONE YEAR OF RELIEF**

Federally Backed Loans

- **Servicer's Requirements:**
 - Upon receiving a request for forbearance:
 - the servicer shall **with no additional documentation required** other than the borrower's attestation to a financial hardship caused by the COVID-19 emergency and with **no fees, penalties, or interest** (beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract) charged to the borrower in connection with the forbearance,

- provide the forbearance for up to 180 days, which may be extended for an additional period of up to 180 days at the request of the borrower, provided that, **the borrower's request for an extension is made during the covered period**, and, at the borrower's request, either the initial or extended period of forbearance may be shortened.

Federally Backed Loans

- Foreclosure Moratorium;
 - may not initiate any judicial or non-judicial foreclosure process,
 - move for a foreclosure judgment or order of sale,
 - or **execute a foreclosure-related eviction** or foreclosure sale for not less than the 60-day period beginning on March 18, 2020= (**May 17, 2020**).

Multifamily Properties With Federally Backed Loans

- Sec. 4023: Forbearance for Multifamily (5+) Properties
- Must have been current as of February 1, 2020
- Forbearance up to 30 days plus up to 2 additional 30 day periods = 90 days total
- Cannot evict during forbearance

If The Loan Is Not Federally Backed

- Depends on the owner/investor of the loan
- To find out options:
 - Call, review website or
 - Write Request for Information asking for all loss mitigation options available for the particular loan and instructions on how to apply for and/or request each loss mitigation option.

Another Request for Information

- Must use correct address
- 30 days to respond
- A sample RFI borrowers may use to ask about available loss mitigation options can be found [here \(PDF version\)](#) ([MS Word](#)). A sample RFI that advocates may use for information about a loss mitigation application can be found at of [NCLC's Mortgage Servicing and Loan Modifications Appx. E.2.7.](#)

Post-Forbearance Options

Poll 4: What are you hearing?

- What are homeowners being told about post-forbearance options? (Check all you've heard)
 - A. The full lump sum will be due; no mention of other options
 - B. Might be options, no details given
 - C. We can put the arrearage at the end of the loan
 - D. If lump sum not affordable, reach out to us
 - E. Other / I'm not hearing much yet

What Happens When Forbearance Ends?

- CARES Act does not address servicer action at end of forbearance
- Will depend on insurer/investor guidelines
- Federally-backed loans have published guidelines for end-of-forbearance
- Private label loans - options unclear
 - E.g., does PSA allow term extension?

Non Federally-Backed: Find Out About Repayment Options

- Ask when apply for forbearance, and/or
- Send a Request for Information asking:
 - Any restrictions on loss mitigation options that apply to this loan
 - Copy of application form and any instructions to apply for and/or request a review for all loss mitigation options
 - RFI Template at <https://bit.ly/post-forbearance-options>

Federally-Backed Mortgages

- Most consumers should not be required to pay arrears in a lump sum
 - [Calabria says](#) no lump sum required for GSE loans (April 27, 2020 press release)
- Streamlined options if
 - (a) you were current before the emergency began and
 - (b) you can afford to resume your regular payment
- Option to apply for a loan mod if not eligible for streamlined options or if can't afford to resume your regular payment

Post-Forbearance: Fannie/Freddie

- Repayment plan
- Payment Deferral (non-interest bearing lien for accrued arrearage, similar to a partial claim)
- An “Extend Modification”
 - Extend loan term equal to forbearance term
 - Maintain pre-forbearance payment level
 - May have to repay an escrow shortage separately
- A “Cap and Extend Modification”
 - Can capitalize escrow shortage & extend term

Post-Forbearance: Fannie/Freddie

- A GSE “Flex Modification”
 - Can include principal forbearance (down to 100% LTV or sometimes as low as 80% LTV)
 - Set interest rate at Fannie/Freddie loan mod rate
 - Extend term to 480 months
 - Aimed at reducing the monthly payment (targeting 20% reduction in PI); can be approved so long as PI payment does not **increase**
 - Only mod option (currently) if default predated COVID-19 emergency

Post-Forbearance: FHA

- HUD Mortgagee Letter 2020-06 (4/1/2020) (proposed)
- Implements CARES Act for FHA loans
 - Servicer must offer forbearance upon request if borrower asserts Covid-19 hardship
- New Covid-19 Partial Claim
 - Non-interest bearing lien for unpaid arrears
 - But must have been less than 30 days in arrears as of 3/1/2020 *and*
 - Able to resume pre-forbearance payments

Post-Forbearance: FHA

- FHA HAMP
 - Target payment aimed at affordability
 - Can include principal forbearance through a partial claim combined with the loan mod
 - Reduce interest rate to PMMS plus .25% (rounded)
 - New 30-year term

FHA National Servicing Center

Oklahoma City Office

U.S. Department of HUD
301 NW 6th Street, Ste 200
Oklahoma City, OK 73102

Fax: (405) 609-8405 or
(405) 609-8421

www.hud.gov/offices/hsg/sfh/nsc/nschome.cfm

E-mail: hsg-lossmit@hud.gov

1-877-622-8525

See *also* HUD Neighborhood Watch: <https://entp.hud.gov/sfnw/public/> (data on FHA loss mitigation activity by state and by servicer)

RURAL HOUSING LOANS

- U.S.D.A.'s Rural Housing Service (“RHS,” formerly “FmHA”) manages two single-family home loan programs for borrowers in rural areas.
 - *Guaranteed Loan Program*: private lender, guarantees loan, not obvious from mortgage and note (see closing documents)
 - *Direct Loan Program*: The United States is the lender and this is obvious

RHS RESOURCES

Guaranteed Loans:

42 U.S.C. § 1472, *et seq.*

USDA Regulations: 7 C.F.R. § 3555.301, *et seq.*

RHS Handbook HB-1-3555 SFH Guaranteed Loan
Program Technical Handbook

<https://www.rd.usda.gov/resources/directives/handbooks>

Handbook Chapter 18 – Loss Mitigation

RHS Guaranteed Loan Program

- RHS Guaranteed Loans: Loss Mitigation obligation: 42 U.S.C. § 1472(h)(13)
- Options for RHS Guaranteed Loans
 - Special Forbearance
 - Loan Modification (“standard”)
 - Loan Modification (“special loan servicing”)
 - Pre-Foreclosure Sale
 - Deed-in-Lieu

Rural Housing Direct Loans

These are loans directly from the United States government (USDA) to the borrower for purchase or construction of residence

- “Section 502” loans under U.S. Housing Act
 - Regulations: 7 C.F.R. Part 3550
 - Handbook HB-2-3550 (Centralized Servicing Center):
<https://www.rd.usda.gov/resources/directives/handbooks>
<http://www.rurdev.usda.gov/regs/hblist.htm>
 - Chapter 5 “Special Servicing”

RHS Direct Loans

- Direct Loans Special Features:
- Interest credit/payment assistance reduces monthly payment toward interest based on household income
- Periodic payment adjustments and review
- Forborne interest is subject to “recapture”
- “Moratorium” relief, 42 U.S.C. § 1475
- Foreclosure defense: *U.S. v. Shields*, 733 S. Supp. 787 (D. Vt. 1989)

RHS Covid-19 Options

- USDA “Stakeholder Announcement” April 8, 2020
- https://www.rd.usda.gov/sites/default/files/USDA_RD_SA_COVID19_ProgramImmediateActions04082020.pdf
- RHS Direct Loans:
 - Refers to existing payment assistance and moratorium options
 - CARES Act impact on eligibility not clear
- RHS Guaranteed Loans:
 - Implements CARES Act forbearance
 - At end of forbearance loan term extension to be granted at borrower’s request, other standard RHS loss mitigation options available

VA Loans - Introduction

- VA guarantees loans by private lenders
- Available for eligible veterans
- Can be for purchase, construction, refinance
- Relatively low interest rate, no down payment

VA Loans Resources

- Regulations: 38 C.F.R. § 36.4800-4893 & 38 C.F.R. § 4316-19
- VA Handbook M26-4 (2017)
https://www.benefits.va.gov/WARMS/M26_4.asp
- Help from regional servicing centers
[https://www.benefits.va.gov/homeloans/contact_rlc_info.as
p](https://www.benefits.va.gov/homeloans/contact_rlc_info.asp)

What are the VA Options?

- Repayment Plan
- Special Forbearance
- Loan Modification – standard
- “VA Affordable Modification” (31% DTI target)
- Compromise (short) sale
- Deed-in-Lieu of foreclosure
- Refinance
- Assumption
- Refunding- VA takes over loan
- Foreclosure challenge: *Wilkins v. Wells Fargo*, 2016 WL 6775692 (E.D. Va. Nov. 15, 2016)

VA Loans and Covid-19

- VA loans are subject to CARES Act forbearance and moratorium terms
- VA Circular 26-10-12 (4/8/2020)
 - Must grant forbearances upon attestation of Covid 19 hardship
 - Borrower determines length (up to total 360 days)
 - End of forbearance: must consider “all possible” regular VA options, including “extend” modification
 - Demand for lump sum repayment prohibited

RESPA Issues & Credit Reporting

Short-term loss mitigation options for incomplete app

E.g., Forbearance or Repayment Plan

- Must provide a written notice:
 - payment terms and duration of plan
 - plan was based on incomplete app
 - that other loss mitigation options may be available, and
 - that the borrower has the option to submit a complete loss mitigation application to receive an evaluation for all loss mitigation options
- Cannot initiate FC if borrower performing under plan
- 12 CFR 1024.41(c)(2)

RESPA Issues

- When should the borrower submit a complete application?
- Remember the “one bite” at the apple rule, 1024.41(i)
 - Must comply with RESPA **unless the servicer** has **previously complied** with the requirements of this section **for a complete application** and the borrower **has been delinquent at all times since** the prior complete application
- Servicing transfer issues likely, 1024.41(k)

Credit Reporting

CARES Act:

- Limited protection for credit reports.
- For all credit accounts
- If you get a forbearance, payment deferral, or other accommodation AND
- you were **current** when you received the approval,
- *the creditor must continue to report you as current.*

Credit Reporting

- If you were **delinquent**, you'll continue to be reported as delinquent unless you can catch up during the accommodation period.
- You'll need to be persistent, because consumers have reported long hold times to reach creditors' customer service representatives. And you'll need to do this for each of your creditors that you'll have trouble paying (there are special rules for student loans)

File CFPB Complaints!

- Consumer complaint database remains public
- Pattern & practice evidence
- Information for enforcement team at CFPB
- Info sharing between CFPB and FHFA through recently announced [Borrower Protection Program](#)
- Populations being left out (LEP, other?)

Resources for Advocates

- Please share your experiences!

[Link](#) to NCLC/AFR survey

- Pubs article -

<https://library.nclc.org/mortgage-relief-homeowners-affected-covid-19>

- Chart -

https://library.nclc.org/sites/default/files/COVID19_Mortgage_Chart_0.pdf

Resources for Consumers

- *Two pager: [Coronavirus Emergency: What Consumers Need To Know About Mortgage Relief](#)*
- *Video: [video link here](#)*
- ***NCLC's Surviving Debt Chaps. 16-17 (free online)***
<https://library.nclc.org/sd/0102>
- Connect with a HUD-approved housing counselor: 800-569-4287 or www.hud.gov



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