



The federal [CARES Act](#) provided much-needed relief for certain borrowers who could not make their monthly mortgage payments. The Act allowed borrowers who were experiencing a financial hardship due to COVID-19 to pause mortgage payments for up to 12 months. These forbearance plans however only covered federally backed mortgages (Fannie Mae, Freddie Mac, FHA, USDA, VA) and many are scheduled to expire in the next few months. While some homeowners with private loans were offered help, the plans are often shorter and with fewer affordable repayment options.

With over three million homeowners now in forbearance, hundreds of thousands of American families could face foreclosure in 2021.

This wave will disproportionately affect communities of color where there have been significantly higher rates of illness and death from COVID, unemployment, mortgage defaults, and evictions.

To ensure comprehensive relief, states should implement emergency orders and legislation to protect borrowers who cannot make their mortgage payment due to COVID-19. These measures should provide the following protections:

A moratorium on foreclosure-related actions that should:

- Prohibit making the first notice, recording, or filing for any judicial or non-judicial foreclosure;
- Pause all foreclosure-related deadlines, including filing deadlines and redemption periods for judicial and non-judicial foreclosures;
- Prohibit the commencement or continuation of post-foreclosure eviction or ejectment proceedings including conducting a foreclosure sale; and
- Extend 180 days after the government declares an end to the emergency or 120 days from the end of the borrower's forbearance, whichever is longer for servicers to implement the reinstatement options appropriate for each borrower.

Mandatory disclosures of loss mitigation guidelines for each homeowner's loan

- The state should direct that loan servicers, as soon as the new law is passed, send each homeowner a **disclosure** of:
 - the identity of the entity that owns, insures, or guarantees the loan;
 - a summary of the forbearance and post-forbearance relief options that are available for the loan; and
 - detailed information on how to request the options.
- Notices should be in English and Spanish and any other languages prevalent in the community.
- Notices need not be individualized eligibility determinations, but rather, descriptions of the types of relief the servicer offers borrowers with the same type of loan.
- The servicer should also provide the disclosure 30 days before expiration of a forbearance period, 30 days before making the first notice or filing for any judicial or non-judicial foreclosure or conducting a foreclosure sale, and any time when a borrower requests help.
- The servicer should include a certification of service of these disclosures with the first notice or filing required by applicable laws for any judicial or non-judicial foreclosure.

Options available to homeowners with non-federally backed loans

- In cases involving **non-federally backed loans**, the servicer should offer, and its disclosure should describe, the same options for forbearance and post-forbearance relief available for loans owned or guaranteed by the Government-Sponsored Enterprises Fannie Mae and Freddie Mac (GSE options).
- Servicers and lenders may be exempted from compliance with these requirements upon a showing to the appropriate state authority that a contractual provision or applicable law prevents them from providing the GSE options and that they attempted to procure a waiver from such restrictions from the holder of the mortgage.
- If the servicer obtains an exemption, the servicer should incorporate the GSE options to the extent possible and describe in the disclosures all forbearance and post-forbearance options that are consistent with the servicer's contractual authority.
- Servicers that are only able to offer lump sum repayment or short-term repayment plans for reinstatement after forbearance should clearly and conspicuously disclose in all notices that these will be the borrowers' limited options.

Compliance should be a condition to foreclosure

- Servicers should be prohibited from making the first notice or filing required by applicable state law for any judicial or non-judicial foreclosure or conducting a foreclosure sale without:
 - providing the mandatory disclosures in accordance with the time frame described above and
 - evaluating borrowers who indicate they need relief for all available options, making an offer, if any, and waiting until the acceptance period has expired.
- Non-compliance with the law should be a violation the state's unfair and deceptive practices act and unfair debt collection statute as well as a defense to a foreclosure action.
- Non-compliance with the law will be a basis for enjoining a proposed foreclosure sale or invalidating a completed sale.
- In any proceeding in which the borrower challenges the servicer's compliance, the foreclosing party should bear the burden of proof to establish compliance. Borrowers prevailing in any proceeding to enforce the law should be entitled to compensatory and punitive damages as well as an award of attorney's fees and costs.
- States that do not mandate mediation for all foreclosure cases should implement a mediation program in response to the COVID-19 crisis.

Questions? Please contact National Consumer Law Center attorneys Geoff Walsh gwalsh@nclc.org or Andrea Bopp Stark astark@nclc.org

For more information, please visit [NCLC's COVID-19 & Consumer Protections online resources](#)