FORECLOSURE PROTECTION AND MORTGAGE PAYMENT RELIEF FOR HOMEOWNERS

Since March 18, 2020, Congress and federal agencies have taken a series of official actions relating to relief for mortgage borrowers. This informational sheet summarizes the most current information about these measures available as of the date listed above. Please note that this document only covers actions taken with regard to mortgages on single-family (1-4 unit) properties and does not cover actions taken with regard to mortgages on multifamily (i.e., more than 4-unit) properties or the details of any federal, state or local tenant protections.

First, it is important to know that **the federal actions taken so far *do not* apply to all mortgages on single-family properties**. Of all outstanding single-family mortgages, about 70% are owned or backed by a federal agency, and about 30% (roughly 14.5 million loans) are privately owned and not backed by any federal agency. The majority of federal actions taken so far only apply to federally-owned or -backed loans.[1] Some financial institutions and some states have announced different types of mortgage relief for homeowners that do apply to borrowers with privately-owned mortgages, but those measures are not necessarily consistent with federal measures.[2] **It is therefore very important to determine what type of a loan a borrower has in order to understand what protections and options are available.**[3]

Significantly, **none of the mortgage payment relief options currently available is automatic**. In all cases, **borrowers *must* contact their mortgage servicer in order to request assistance and find out what options are available**. Borrowers may encounter long hold times on servicers' telephone lines and/or delays in responses to email or online communications. When possible, using email or a trackable online interface may be faster and should also allow the borrower to have a record of the communications with the servicer. Borrowers communicating by telephone should keep detailed notes and logs of those communications.

Advocates should also be aware that the federal government has appropriated nearly $10 billion for a Homeowner Assistance Fund (HAF) to be administered by individual states, territories and tribes using grants from the U.S. Treasury Department. As of mid-July 2021, states are awaiting further guidance from Treasury regarding the design of their HAF programs. Some states have launched small pilot programs aimed at helping borrowers reinstate their mortgage loans and all are still in the process of finalizing program plans that will then be submitted to Treasury for approval.

---

[1] As discussed below, the Consumer Financial Protection Bureau recently issued a rule that applies to both federally-backed and non-federally-backed loans.

[2] Keep in mind that many of these state measures are either not mandatory or are limited in scope, so be sure to check the primary documents (*e.g.*, executive orders, loan servicer websites) rather than relying on general descriptions in press releases and news coverage. Some information about state-level action is available here (go to the section titled “State Limitations on Foreclosures and Evictions”.

[3] For privately owned loans, it is also important to know whether the loan is owned by investors as part of a securitized pool of loans or if it is owned by the mortgage servicer (*i.e.,* the company the borrower pays each month). This information can be obtained from the mortgage servicer by submitting a written request for information pursuant to 12 C.F.R. §1024.36(d)(2)(i)(A) and 15 U.S.C. § 1642(f)(2).

Tools for Determining What Type of Loan a Borrower Has

Fannie Mae/Freddie Mac - use loan look-up tools for Fannie Mae here or for Freddie Mac here.

Federal Housing Administration - check mortgage documents for an FHA case number or specific references to FHA; check mortgage statement for FHA mortgage insurance premium charge; check property records for a second deed of trust in favor of the HUD Secretary. Because some loans that were originally FHA-insured may have been sold out of that status, check with the servicer or with HUD's National Servicing Center (877/622-8525).

Veteran's Administration - if the borrower does not know already, check mortgage documents for specific references to the VA and closing documents for fees paid to the VA.

Dept. of Agriculture/Rural Housing Service - borrowers with direct loans from RHS will already know the type of loan they have, but for borrowers with loans guaranteed by RHS, check closing documents and contact the servicer.

KEY UPCOMING DATES

July 31, 2021: Last day of the foreclosure moratorium for federally-backed loans

Aug. 31, 2021: New Consumer Financial Protection Bureau rule goes into effect[4]

Sept. 30, 2021: Last day to initiate a new COVID forbearance plan for FHA/VA/USDA loans

FORECLOSURE PROTECTIONS

Partial Foreclosure Moratorium

On March 27, 2020, the President signed into law the CARES Act, which included a temporary foreclosure moratorium for certain loans on single-family properties that lasted until May 17, 2020. Right before the CARES Act moratorium was scheduled to expire, the relevant federal agencies all announced that they were extending the moratorium for their respective loans through June 30, 2020. The agencies subsequently announced several further extensions of the moratorium, with a current expiration date of July 31, 2021.[5]

What it does: Prevents mortgage servicers from initiating or moving forward with a judicial or non-judicial foreclosure, seeking a court order for a foreclosure judgment or order of sale,

[4] Note that for Fannie Mae and Freddie Mac loans, mortgage servicers are required to comply with the new CFPB rule starting on August 1, 2021.
[5] See the links at the end of this document under "Related Actions by Federal Agencies" for the relevant agency notices.

holding a foreclosure sale or executing a foreclosure-related eviction.

Who is protected: Borrowers with "federally backed mortgage loans" and tenants living in a property with such a loan.[6] A "federally backed mortgage loan" is a loan owned, insured or guaranteed by one of the following entities: the Department of Housing and Urban Development (HUD)[7]; the Department of Veterans Affairs, the Department of Agriculture, Fannie Mae or Freddie Mac (also known as the "GSEs").

Duration: March 18, 2020 – July 31, 2021. Although the CARES Act itself has not been amended to extend the original moratorium period, as of the date of this document, **all covered federal agencies have announced extensions through July 31, 2021.**

Other Federal Foreclosure Protections

The Consumer Financial Protection Bureau (CFPB) issued a rule on June 28, 2021, which is aimed at ensuring that a borrower who is behind on mortgage payments has a meaningful opportunity to bring the loans current before foreclosure begins. The rule is not a foreclosure moratorium. Instead, it puts in place a number of heightened procedural requirements that apply to any foreclosure initiated before January 1, 2022, and also provides servicers with flexibility to make streamlined modification offers without collecting a full loan modification application as long as the modification satisfies certain specified requirements. The rule goes into effect on August 31, 2021, but it was recently announced that servicers of GSE (Fannie or Freddie) loans must comply starting August 1, 2021.

MORTGAGE PAYMENT RELIEF

The federal CARES Act, referenced above, requires services of federally backed mortgage loans to offer borrowers forbearance plans (*i.e.,* temporary deferrals of monthly payments) under certain conditions.[8] Certain federal agencies have imposed deadlines for when a borrower can initiate a forbearance.[9]

What it does: Requires a mortgage servicer that receives a request for payment assistance from a borrower who affirms they are experiencing a financial hardship caused, directly or indirectly, by the COVID-19 emergency, to offer the borrower forbearance of up to 180 days, meaning that monthly payments can be reduced or deferred for up to six months.[10] The servicer must also

[6] Tenants in these properties are only protected from eviction by certain specified parties after a foreclosure has occurred.
[7] Through the Federal Housing Administration (FHA), the Home Equity Conversion Mortgage (reverse mortgage) program, the Indian Home Loan Guarantee Program or the Native Hawaiian Loan Guarantee Program.
[8] The HEROES Act (HR 6800) passed by the House of Representatives on May 15, 2020, included expanded forbearance relief (to cover non-federally backed loans) as well as requirements regarding what happens at the end of a CARES Act forbearance. As noted above, however, the Senate did not take up any of these provisions.
[9] See the links below under "Related Actions by Federal Agencies" for the relevant notices.
[10] Reports from the field indicate that at least some servicers of federally-backed loans were offering forbearances in increments of 90 days or less that are then renewable. While this practice may be acceptable under the CARES Act under certain conditions, we are monitoring whether eligible borrowers receive the full measure of relief available.

extend the forbearance for up to an additional 180 days upon request by a borrower during the COVID-19 emergency.

All of the federal agencies recently certain borrowers to request up to two additional 3-month extensions of a forbearance plan under specified circumstances. Note that not all borrowers in forbearance will qualify for the maximum forbearance extension period.[11]

The CARES Act prohibits servicers from requiring any proof or documentation of a borrower's hardship beyond an "attestation to a financial hardship caused by the COVID-19 emergency"[12] before granting a forbearance. Servicers are also prohibited from adding to a borrower's account any fees, penalties or interest charges beyond what the borrower already owed during the forbearance period.

It is very important for borrowers to understand that a forbearance **does not** mean that the deferred payments are being forgiven or waived. Once the forbearance ends, the borrower will still have to work with the mortgage servicer to bring the loan current through one of a number of methods, which may include reinstatement by lump sum, short-term repayment plan and/or loan modification. All of the covered federal agencies have announced that most borrowers who can resume making regular payments at the end of a CARES Act forbearance will not be required to make up the missed payments all at once.[13] Instead, borrowers will be evaluated for various repayment options that may include deferral of the missed payments to the end of the loan term. Because the different agencies' specific rules vary, and because agencies continue to make changes to their respective rules, it is important to consult the most current version of a particular agency's guidance to determine what the post-forbearance options are for a specific borrower.[14]

Who is protected: Borrowers with "federally backed mortgage loans" who have a financial hardship caused, directly or indirectly, by the COVID-19 emergency. A "federally backed mortgage loan" is a loan owned, insured or guaranteed by one of the following entities: the Department of Housing and Urban Development (HUD)[15]; the Department of Veterans Affairs, the Department of Agriculture, Fannie Mae or Freddie Mac. Note that **a borrower does not have to be current on payments to be eligible for a CARES Act forbearance**.[16]

Duration: Start date March 27, 2020. Due to what may have been a drafting oversight, the CARES Act does not specify an end date for when borrowers can request forbearance. Some

---

[11] For Fannie Mae and Freddie Mac loans, a borrower must have entered forbearance on or before February 28, 2021, to be eligible for the additional extensions. For FHA, VA and USDA loans, a borrower must have entered forbearance on or before June 30, 2020, to be eligible for the additional forbearance.
[12] *See* CARES Act, Sec. 4022(c)(1).
[13] *See* FHFA Press Release (April 27, 2020) and Joint FHA, VA, USDA Fact Sheet (May 6, 2020).
[14] For information about the relevant agencies' guidance on post-forbearance options, *see* the National Consumer Law Center's chart summarizing post-forbearance options for the relevant federal agencies. *See also* NCLC Mortgage Relief for Homeowners Affected by COVID-19. Note, however, that these resources may not have been updated to reflect the most recent changes to agency guidance.
[15] Through the Federal Housing Administration (FHA), the Indian Home Loan Guarantee Program or the Native Hawaiian Loan Guarantee Program.
[16] *See* CARES Act, Sec. 4022(b)(1) ("regardless of delinquency status").

agencies have nonetheless set (and then extended) their own end dates for requesting forbearance. The current deadlines for requesting an initial COVID-related forbearance is September 30, 2021, for FHA, VA and USDA loans. Fannie Mae and Freddie Mac have not announced any deadline for requesting an initial COVID-related forbearance.

* * *

- For more information about single-family mortgages, foreclosures and payment relief during the COVID-19 emergency, please contact Lisa Sitkin at lsitkin@nhlp.org.
- Americans for Financial Reform (AFR) and the National Consumer Law Center (NCLC) have created a survey/story bank for advocates and housing counselors to use to capture the experiences of borrowers facing hardship with their mortgages as a result of the COVID-19 emergency. Keeping track of what is and is not working as borrowers reach out to loan servicers for assistance helps advocates identify problems and advocate for necessary changes to policies and practices.
- NCLC is also collecting samples of the letters, texts, and email messages servicers are sending borrowers regarding COVID-19 forbearances and anything related. If you get one from your clients or even your own mortgage servicer, please email a (preferably redacted) copy, photo or screenshot to COVID19@nclc.org.

NOTICES OF RELATED ACTIONS BY FEDERAL AGENCIES

Foreclosure Moratorium[17]

FHA 7th Extension of Foreclosure Moratorium (June 25, 2021)
FHA 6th Extension of Foreclosure Moratorium (Feb. 16, 2021)
FHA 5th Extension of Foreclosure Moratorium (Jan. 21, 2021)
FHA 4th Extension of Foreclosure Moratorium (Dec. 17, 2020)
FHA 3rd Extension of Foreclosure Moratorium (Aug. 27, 2020)
FHA 2nd Extension of Foreclosure Moratorium (June 17, 2020)
FHA Extension of Foreclosure Moratorium (May 14, 2020)
FHA CARES Act Implementation (April 1, 2020)[18]
FHA Foreclosure and Eviction Moratorium (March 18, 2020)[19]
FHFA 8th Extension of Foreclosure Moratorium for Fannie and Freddie (June 25, 2021)
FHFA 7th Extension of Foreclosure Moratorium for Fannie and Freddie (Feb. 25, 2021)

[17] The date of the most recent relevant guidance for each agency is highlighted in yellow.
[18] This Mortgagee Letter from the FHA focuses primarily on loss mitigation options but also includes guidance that extends foreclosure timelines by up to 12 months for FHA-insured reverse mortgages. *See* p. 6.
[19] Contrary to the President's reference in a press conference that same day to HUD's temporary suspension of "all foreclosures and evictions", HUD's March 18 action only suspended foreclosures on single-family properties and only suspended evictions for tenants in such properties under certain conditions.

FHFA 6th Extension of Foreclosure Moratorium for Fannie and Freddie (Feb. 9, 2021)
FHFA 5th Extension of Foreclosure Moratorium for Fannie and Freddie (Jan. 19, 2021)
FHFA 4th Extension of Foreclosure Moratorium for Fannie and Freddie (Dec. 2, 2021)
FHFA 3rd Extension of Foreclosure Moratorium for Fannie and Freddie (Aug. 27, 2020)
FHFA 2nd Extension of Foreclosure Moratorium for Fannie and Freddie (June 17, 2020)
FHFA Extension of Foreclosure Moratorium for Fannie and Freddie (May 14, 2020)
Fannie Mae Further Extension of Foreclosure Moratorium (June 30, 2021)
Fannie Mae Extension of Foreclosure Moratorium (Feb. 10, 2021)
Fannie Mae Foreclosure Moratorium (March 18, 2020, updated March 25, May 14, June 24, Aug. 27, Dec. 9)
Freddie Mac 7th Extension of Foreclosure Moratorium (June 30, 2021)
Freddie Mac 6th Extension of Foreclosure Moratorium (Feb. 10, 2021)
Freddie Mac 5th Extension of Foreclosure Moratorium (Jan. 20, 2021)
Freddie Mac 4th Extension of Foreclosure Moratorium (Dec. 9, 2020)
Freddie Mac 3rd Extension of Foreclosure Moratorium (Aug. 27, 2020)
Freddie Mac 2nd Extension of Foreclosure Moratorium (June 24, 2020)
Freddie Mac Extension of Foreclosure Moratorium (May 14, 2020)
Freddie Mac Foreclosure Moratorium (March 18, 2020)
VA 7th Extension of Foreclosure Moratorium (June 25, 2021)
VA 6th Extension of Foreclosure Moratorium (Feb. 16, 2021)
VA 5th Extension of Foreclosure Moratorium (Jan. 29, 2021)
VA 4th Extension of Foreclosure Moratorium (Dec. 28, 2020)
VA 3rd Extension of Foreclosure Moratorium (Aug. 24, 2020)
VA 2nd Extension of Foreclosure Moratorium (June 17, 2020)
VA Extension of Foreclosure Moratorium (May 14, 2020)
VA Recommendation re. Foreclosure Moratorium (March 18, 2020)
USDA 7th Extension of Foreclosure Moratorium-Both (June 25, 2021)
USDA 6th Extension of Foreclosure Moratorium-Both (Feb. 17, 2021)
USDA 5th Extension of Foreclosure Moratorium-Both (Jan. 20, 2021)
USDA 4th Extension of Foreclosure Moratorium-Guaranteed (Dec. 21, 2021)
USDA 4th Extension of Foreclosure Moratorium-Direct (Dec. 21, 2021)
USDA 3rd Extension of Foreclosure Moratorium-Guaranteed (Aug. 28, 2020)
USDA 3rd Extension of Foreclosure Moratorium-Direct (Aug. 28, 2020)
USDA 2nd Extension of Foreclosure Moratorium-Guaranteed (June 19, 2020)
USDA 2nd Extension of Foreclosure Moratorium-Direct (June 23, 2020)
USDA Extension of Foreclosure Moratorium (May 14, 2020)
USDA Foreclosure Moratorium (March 25, 2020 - eff. as of March 19, 2020)

Mortgage Payment Relief (Forbearance)[20]

FHA 5th Extension of Forbearance Start Date Deadline (June 25, 2021)

[20] The guidance from these federal agencies aligns with the provisions in the CARES Act regarding the maximum duration of COVID-19-related forbearance plans, but each agency has its own rules about how forbearances are handled by servicers, so it is important to review the agency-level information as well. The date of the most recent relevant guidance for each agency is highlighted in yellow.

FHA 4th Notice re. Forbearance Start Date and Additional Extensions[21] (Feb. 16, 2021)
FHA 3rd Extension of Forbearance Start Date Deadline (Jan. 26, 2021)
FHA 2nd Extension of Forbearance Start Date Deadline (Dec. 17, 2020)
FHA COVID-19 Loss Mitigation Options (July 8, 2020)
FHA COVID-19 Loss Mitigation Guidance (April 1, 2020)
FHA Forbearance Guidance (March 18, 2020)
FHFA 2nd Notice re Forbearance Periods Extensions (Feb. 25, 2021)
FHFA Notice re Extending Forbearance Periods (Feb. 9, 2021)
FHFA FAQs re Fannie and Freddie Assistance Options (April 2020 (undated))
Fannie Mae Forbearance and Post-Forbearance Guidance (March 18, 2020, updated through Dec. 9, 2020)
Freddie Mac COVID-19 Servicing Update (Feb. 25, 2021)
Freddie Mac COVID-19 Servicing Update (Feb. 10, 2021)
Freddie Mac COVID-19 Servicing FAQs (Updated through April 8, 2021)
Freddie Mac Servicing Guidance Update (May 14, 2020)
Freddie Mac Updated Guidance (April 8, 2020)
Freddie Mac Forbearance Plans (March 18, 2020)
VA Notice re. Forbearance Start Date Extension (June 25, 2021)
VA Borrower COVID-19 Information (Updated through June 25, 2021)
VA Guidance re. Deferment Option (Sept. 14, 2020)
VA Recommendation re. Forbearances (March 16, 2020)
USDA Further Extension of Forbearance Start Date (June 25, 2021)
USDA Notice re. Forbearance Start Date and Additional Extensions (Feb. 17, 2021)
USDA 2nd Extension of Forbearance Start Date Deadline (Jan. 20, 2021)
USDA Extension of Forbearance Start Date Deadline (Dec. 21, 2020)
USDA Rural Development COVID-19 Resources (May 4, 2020)
USDA Guidance re. Immediate Relief (March 25, 2020, updated April 6)

[21] FHA also made changes allowing borrowers to utilize FHA's COVID-19 loss mitigation options regardless of delinquency status or participation on a COVID-19 forbearance; and removed the restriction on borrowers receiving more than one COVID-19 home retention option.