

RURAL DEVELOPMENT SINGLE FAMILY DIRECT LOAN SERVICING OPTIONS

The recently enacted CARES Act provides Rural Development (RD) direct loan borrowers the right to defer mortgage payments for up to 360 days if the borrower is affected by the COVID-19 emergency. It also precludes RD from initiating or completing a judicial or non-judicial foreclosure action or a related eviction for 60 days starting March 18, 2020 and ending May 17, 2020. While these provisions may help some borrowers overcome a temporary hardship, they may be less advantageous than other forms of assistance that RD can offer most direct home loan borrowers who are unable to make their mortgage payments when they have a significant loss of income or have unexpected and unreimbursed expenses. This memo briefly reviews the forms of assistance that RD can provide impacted borrowers and points out when existing authorities may be more helpful to borrowers than the CARES mortgage relief provisions.

RD has two direct single family home loan program:

- Section 502 direct home loan program,¹ which allows borrowers to construct new homes, purchase existing homes, or make major repairs to their existing home; and
- Section 504 direct home repair loan,² which allows existing homeowners to make modest repairs to their home, frequently to remove conditions that affect the health or safety of the homeowner.

Both loans are serviced directly by **RD's Customer Service Center**, located in St. Louis, Missouri, which can be reached at **1.800.414.1226** between 7 a.m. and 7 p.m. Central Time, Monday through Friday and 8 a.m. to 1 p.m. Central Time on Saturday. Please be aware that many borrowers may be trying to call the Service Center at this time and that response times may be very slow.

BORROWERS' OPTIONS WHEN THEY ARE UNABLE TO MAKE LOAN PAYMENTS DUE TO A LOSS OF INCOME OR UNANTICIPATED INCREASED EXPENSES.

A. CARES Act Relief

In response to the COVID-19 emergency, the CARES Act requires RD to offer relief to borrowers who are unable to make their mortgage payments because of a financial hardship brought on by the pandemic. To get relief, borrowers must contact the agency and inform it that they are facing financial hardship, directly or indirectly, as a result of the pandemic. Borrowers need only advise the agency that they are affected by the crisis to secure the CARES relief. They do not have to submit documentation to secure relief.³ In response, the agency is required to offer

¹ 42 U.S.C. § 1472.

² *Id.* § 1474.

³ See CARES Act, Sec. 4022(c)(1). See also Consumer Financial Protection Bureau video. (available at <https://www.youtube.com/watch?v=br5EPugsnLs&feature=youtu.be>).

borrowers relief on their mortgage payments for up to 180 days. The relief offered can be a reduced monthly payment or total forbearance. Late payment charges, additional interest, or other charges cannot be added to borrowers' accounts during the relief period. If the hardship continues, the agency must extend the relief for an additional 180 days.

It is very important to understand that **the CARES forbearance does not mean that regular interest stops accruing or the deferred payments are being forgiven or waived.** All the deferred payments and accrued interest become due when the forbearance ends and the borrower will have to work with the agency to develop a plan that will bring the loan current through a lump sum payment, repayment plan, or loan modification. RD has not announced what types of repayment plans it will offer borrowers who have exercised their right to forgo mortgage payments under CARES.

On April 23, RD announced that 10,396 of its direct loan borrowers have already applied for and received forbearance under the CARES forbearance program. While this appears heartening, it is disturbing that these borrowers have apparently not been advised of the fact that the RD moratorium program may offer some them more generous relief, namely, up to a 2 year deferment, forgiveness of interest that has accrued during the moratorium, and loan reamortization at the end of the moratorium period. This is exacerbated by the fact that if a borrower extends the initial forbearance period for an additional 180 days, it is very likely that they will not be able to extend the forbearance under the RD moratorium program because of the current RD moratorium requirement that the loss of income must have occurred within the last 12 months.⁴

It is, therefore, very important that advocates working with RD single family direct loan borrowers advise them that they should apply for an RD moratorium before 12 months have passed since they lost their income.

B. RD Regular Servicing Relief Options

RD has several ways in which it can assist impacted borrowers through its ordinary servicing tools. This includes additional payment assistance subsidy, a moratorium on payments, and advances for payment of taxes, insurance or emergency repairs. Each of these options have their own eligibility criteria and repayment options and borrowers need to consider them carefully when deciding whether to take relief under the CARES act or to seek one of RD's regular loan servicing tools. Borrowers who seek relief under these forms of relief have to provide RD with more information about their financial situation than they have to if they simply want a deferment of their mortgage payments under the CARES act. A brief description of each of the RD servicing follows.

⁴ See *infra*, B 2 moratorium relief.

1. Mortgage Payment Assistance

Most Section 502 borrowers receive an interest reduction subsidy called Payment Assistance or Interest Credit.⁵ Depending on household income and other factors, the subsidy lowers the borrower's effective interest rate to as low as 1%. Borrowers whose incomes have been reduced due to the COVID-19 pandemic may become eligible for payment assistance or have their payment assistance increased if they are not already receiving the maximum amount of subsidy. To find out whether the borrower is eligible for additional payment assistance, the borrower must contact the RD Consumer Servicing Center and ask for a Payment Assistance package.⁶ Generally, borrowers are unable to make this determination on their own and must contact RD to find out if they are eligible.

2. Moratorium Relief

The RD moratorium relief program is generally better than the CARES 180/360-day relief package. Moratoriums are offered for a term of 6 months and are renewable for up to 2 years.⁷ In addition, at the end of the moratorium, RD will work with the borrower to develop a repayment plan which is based on the borrower's post moratorium income and can include the reamortization of the borrower's loan and, in hardship cases, forgiveness of the interest that has accrued during the moratorium.⁸ Unfortunately, RD does not currently extend the term of the loan, so post-moratorium monthly mortgage payments will always be higher than the pre-moratorium mortgage payments.

To receive a moratorium, the borrower must have had a 20 percent loss of income in the past year or have unanticipated increased expenses that affect the borrower's standard of living.⁹ Note, that the loss of income must be that of the borrower or borrowers. In a two adult household where only one of the adults is a borrower, loss of income by the non-borrower alone will not qualify the borrower for a moratorium. In that case, the CARES 180-day moratorium is the only option for the borrower. The loss of income must have been 20 percent or more and it must have occurred in the 12 months prior to the borrower's application for the moratorium. Borrowers who have savings should not make payments from their savings if they expect the loss of income to last more than several months. They should apply for a moratorium immediately. Borrowers may also be eligible for a moratorium if they have to pay unexpected and unreimbursed expenses such a medical expenses or home repair expenses. There is no minimum amount of expenses that will qualify the borrower for a moratorium. However, borrowers will need to show that the household cannot meet these expenses without unduly impairing their standard of living.

⁵ 7 C.F.R. § 3550.68. Section 504 loans are all made at a 1% interest rate and borrowers do not receive a payment subsidy.

⁶ USDA Rural Development COVID-19 Resources (April 23, 2020) (available at https://www.rd.usda.gov/sites/default/files/USDA_RD_SA_COVID19_ProgramImmediateActions.pdf)

⁷ *Id.* § 3550.207.

⁸ *Id.* § 3550.207(c).

⁹ *Id.* § 3550.207(a).

RD regulations preclude the agency from extending a moratorium to borrowers if their loan has been accelerated.¹⁰ This is contrary to the provision in the moratorium statute that authorizes RD to extend a moratorium “during any time that such loan is outstanding.”¹¹ Thus, borrowers whose loans have been accelerated, or are even in the foreclosure sale process, may be able to stop a foreclosure and force RD to consider their moratorium application. It is likely, however, that they will need to go to court to do so.¹²

3. Advances for Taxes, Insurance and other chargers

RD can advance funds to the borrower for property taxes, insurance and other charges if the borrower is unable to pay for them and the borrower is not eligible for a subsequent loan.¹³ While advances incur interest and are due when the next scheduled payment is due, RD can also include the charges in the borrower’s loan and reamortize the loan.

4. Workout Agreements

Borrowers who are in arrears on their loan payments can enter into a delinquency workout agreement with RD.¹⁴ The regulations only authorized two ways to work out delinquencies: a lump-sum payment or additional payments over a period of 2-years. When entering into a two year workout agreement, the payment to set aside the delinquency must be made in addition to the regular escrow payments that are due.

5. Appeal of RD Decisions

RD borrowers have a right to appeal any RD decision that denies, or fails to respond to, a borrower’s request for relief.¹⁵ Appeal requests must be filed within 30 days of the adverse decision. Appeals are heard by a USDA National Appeals Division hearing officer.¹⁶

UPDATES

Rural Development is publishing periodic updates on actions it is taking to assist homeowners, renters, and multi-family owners under all of the Rural Housing Service housing programs. Advocates are urged to check those updates periodically. They can be viewed and downloaded at https://www.rd.usda.gov/sites/default/files/USDA_RD_SA_COVID19_ProgramImmediateActions.pdf. NHLP expects to update this memo when significant changes are made to RD’s servicing of single family direct loans.

¹⁰ *Id.* § 3550.207(a)(3).

¹¹ 42 U.S.C. § 1475(a).

¹² *United States v. Shields*, 733 F. Supp. 776 (D. Vt. 1989). *See, Wood v. USDA Rural Housing Service*, 2020 WL 1521801 (S.D. WV March 30, 2020) (Defendants’ motion to dismiss denied because plaintiff has made a sufficient claim that the agency rule rejecting moratorium relief after acceleration is contrary to law).

¹³ 7 C.F.R. § 3550.206.

¹⁴ *Id.* § 3550.205.

¹⁵ *Id.* § 11.6(b).

¹⁶ NAD appeals regulation are codified at 7 C.F.R. §§ 11.1-11.15.