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### Foreclosure Protection and Mortgage Payment Relief For Homeowners

National Housing Law Project

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## FORECLOSURE PROTECTION AND MORTGAGE PAYMENT RELIEF FOR HOMEOWNERS

Since March 18, 2020, 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, roughly 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 federal actions so far only apply to federally-owned or -backed loans. 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.<sup>1</sup> **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.**

### **Tools for Determining What Type of Loan a Borrower Has**

Fannie Mae/Freddie Mac ("GSE") - use loan look-up tools for Fannie Mae [here](#) or for Freddie Mac [here](#).

Federal Housing Administration (FHA) - 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 (if available online) 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 (VA) - 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 (RHS) - 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.

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<sup>1</sup> 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](#).

Second, despite some news reporting to the contrary, **none of the mortgage payment relief options currently available is automatic.** In all cases, **borrowers *must* contact their mortgage servicer (i.e., the company they pay each month) 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 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.

#### FORECLOSURE PROTECTIONS:

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 14. Right before the moratorium was scheduled to expire, the relevant federal agencies all announced that they were extending the moratorium for their respective loans through June 30. In mid-June, the agencies announced a further extension of the moratorium to August 31, and they have now extended the moratorium again through December 31.<sup>2</sup> The House of Representatives has also passed a bill that would extend the foreclosure moratorium for several more months,<sup>3</sup> but that legislation has stalled in the Senate.

***Who is protected:*** Borrowers with "federally backed mortgage loans" and tenants living in a property with such a loan.<sup>4</sup> 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)<sup>5</sup>; the Department of Veterans Affairs, the Department of Agriculture, Fannie Mae or Freddie Mac.

***What it does:*** Prevents mortgage servicers from initiating a judicial or non-judicial foreclosure, seeking a court order for a foreclosure judgment or order of sale, holding a foreclosure sale or executing a foreclosure-related eviction.

***Duration:*** March 18 - May 17, 2020. Although the CARES Act has not been amended yet to extend this period, *all covered federal agencies have announced extensions through June 30.*

#### ***Related Actions by Federal Agencies:***

[FHA 3<sup>rd</sup> Extension of Foreclosure Moratorium](#) (August 27, 2020)

[FHA 2<sup>nd</sup> Extension of Foreclosure Moratorium](#) (June 17, 2020)

[FHA Extension of Foreclosure Moratorium](#) (May 14, 2020)

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<sup>2</sup> See the links below under "Related Actions by Federal Agencies" for these notices.

<sup>3</sup> See HEROES Act, HR 6800, Sec. 11203. A section-by-section summary is available [here](#).

<sup>4</sup> Tenants in these properties are only protected from eviction by certain parties after a foreclosure has occurred.

<sup>5</sup> 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.

[FHA CARES Act Implementation](#) (April 1, 2020)<sup>6</sup>  
[FHA Foreclosure and Eviction Moratorium](#) (March 18, 2020)<sup>7</sup>  
[FHFA 3<sup>rd</sup> Extension of Foreclosure Moratorium for Fannie and Freddie](#) (Aug. 27, 2020)  
[FHFA 2<sup>nd</sup> 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 Foreclosure Moratorium](#) (March 18, 2020, updated March 25, May 14, June 24, and Aug. 27)  
[Freddie Mac 3<sup>rd</sup> Extension of Foreclosure Moratorium](#) (Aug. 27, 2020)  
[Freddie Mac 2<sup>nd</sup> Extension of Foreclosure Moratorium](#) (June 24, 2020)  
[Freddie Mac Extension of Foreclosure Moratorium](#) (May 14, 2020)  
[Freddie Mac Foreclosure Moratorium](#) (March 18, 2020)  
[VA 3<sup>rd</sup> Extension of Foreclosure Moratorium](#) (Aug. 24, 2020)  
[VA 2<sup>nd</sup> Extension of Foreclosure Moratorium](#) (June 17, 2020)  
[VA Extension of Foreclosure Moratorium](#) (May 14, 2020)  
[VA Recommendation re. Foreclosure Moratorium](#) (March 18, 2020)  
[USDA 3<sup>rd</sup> Extension of Foreclosure Moratorium-Guaranteed](#) (Aug. 28, 2020)  
[USDA 3<sup>rd</sup> Extension of Foreclosure Moratorium-Direct](#) (Aug. 28, 2020)  
[USDA 2<sup>nd</sup> Extension of Foreclosure Moratorium-Guaranteed](#) (June 19, 2020)  
[USDA 2<sup>nd</sup> 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:

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. The HEROES Act (HR 6800) passed by the House of Representatives on May 15, 2020, includes expanded forbearance relief (to cover non-federally backed loans) and also includes requirements regarding what happens at the end of a CARES Act forbearance. As noted above, however, these provisions have stalled in the Senate.

***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)<sup>8</sup>; the Department of Veterans Affairs, the Department of Agriculture, Fannie Mae or Freddie

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<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> Through the Federal Housing Administration (FHA), the Indian Home Loan Guarantee Program or the Native Hawaiian Loan Guarantee Program.

Mac. Note that a **borrower does not have to be current on payments to be eligible for a CARES Act forbearance.**<sup>9</sup>

**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.<sup>10</sup> The servicer must also extend the forbearance for up to an additional 180 days upon request by a borrower during the COVID-19 emergency.

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"<sup>11</sup> 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.<sup>12</sup> 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, it is important to consult the particular agency's guidance to determine what the post-forbearance options are for a specific borrower.<sup>13</sup>

**Duration:** March 27, 2020 through either: the end of the COVID-19 emergency or December 31, 2020, whichever is earlier.

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<sup>9</sup> See CARES Act, Sec. 4022(b)(1) ("regardless of delinquency status").

<sup>10</sup> Reports from the field indicate that at least some servicers of federally-backed loans are 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.

<sup>11</sup> See CARES Act, Sec. 4022(c)(1).

<sup>12</sup> See [FHFA Press Release](#) (April 27, 2020) and [Joint FHA, VA, USDA Fact Sheet](#) (May 6, 2020).

<sup>13</sup> We will be posting a summary of the relevant agency's guidance on post-forbearance options soon. In the meantime, see the National Consumer Law Center's [chart summarizing post-forbearance options](#) for the relevant federal agencies. Note, however, that as of August 31, 2020, this chart had not been updated to include [additional guidance](#) issued by HUD on July 8, 2020, regarding loss mitigation options for FHA loans.

***Related Actions by Federal Agencies:***<sup>14</sup>

[FHFA FAQs re Fannie and Freddie Assistance Options](#) (April 2020 (undated))  
[Fannie Mae Forbearance and Post-Forbearance Guidance](#) (March 18, 2020, updated through Aug. 27)  
[Freddie Mac COVID-19 Servicing FAQs](#) (Updated through Aug. 27, 2020)  
[Freddie Mac Servicing Guidance Update](#) (May 14, 2020)  
[Freddie Mac Updated Guidance](#) (April 8, 2020)  
[Freddie Mac Forbearance Plans](#) (March 18, 2020)  
[FHA COVID-19 Loss Mitigation Options](#) (July 8, 2020)  
[FHA Homeowner Help FAQs](#) (Updated April 17, 2020)  
[FHA COVID-19 Loss Mitigation Guidance](#) (April 1, 2020)  
[FHA Forbearance Guidance](#) (March 18, 2020)  
[VA Recommendation re. Forbearances](#) (March 16, 2020)  
[USDA Rural Development COVID-19 Resources](#) (May 4, 2020)  
[USDA Guidance re. Immediate Relief](#) (March 25, 2020, updated April 6)

- For more information about single-family mortgages, foreclosures and payment relief during the COVID-19 emergency, please contact Lisa Sitkin at [lsitkin@nhlp.org](mailto: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](mailto:COVID19@nclc.org).

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<sup>14</sup> 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.