



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-8000

OFFICE OF HOUSING

Date: April 10, 2020

MORTGAGEE LETTER 2020-09

TO: All FHA Approved Multifamily Mortgagees

SUBJECT: Implementation of the Coronavirus Aid, Relief, and Economic Security (CARES) Act Forbearance

PURPOSE

Given the extraordinary nature of the COVID-19 emergency, HUD is implementing a standard forbearance protocol to reduce paperwork and streamline processing for multifamily borrowers, servicers, and lenders. This protocol follows the provisions of Title IV, Subtitle A, §4023, of the Coronavirus Aid, Relief, and Economic Security (CARES) Act signed into law on March 27, 2020. These guidelines are in effect during the covered period of the CARES Act, which begins March 27, 2020 and continues until the earlier of the termination date of the national emergency declared by the President on March 13, 2020 or December 31, 2020. Multifamily borrowers, lenders, servicers, and HUD staff should consult these guidelines when considering mortgage relief options for properties that experience cash flow shortages as a result of decreased rental receipts caused by renter (both residential and commercial) failure to pay as a result of the COVID-19 emergency. Basic guidance is provided for all Multifamily HUD loans, followed by separate guidance for FHA insured, risk share, and HUD-held loans, including continuing program obligations.

During the covered period, a multifamily borrower with a FHA insured multifamily mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency may request a forbearance in accordance with the Request for Relief paragraph below. However, while not a prerequisite to forbearance, we recommend that the borrower consider exploring other relief measures to address cash flow shortages caused by the COVID-19 emergency prior to taking advantage of the forbearance relief. In this regard, the Department will review and quickly approve requests for suspension of Reserve for Replacement deposits, releases from the Reserve for Replacement or Residual Receipts account, or other measures to make debt service and tax and insurance payments. Lenders are encouraged to work with borrowers on using measures to make debt service payments. Lenders are also encouraged to request extensions of elections to assign if a default should occur. HUD staff will expeditiously approve extensions of elections to assign when accompanied with an explanation of lenders' efforts to avoid assignment, if required under the contract of mortgage insurance.

Requests for Relief

Under the CARES Act, effective immediately, a multifamily borrower with a FHA insured mortgage loan that was current on its payments as of February 1, 2020, may submit an oral or written request for forbearance to the borrower's servicer affirming that the multifamily borrower is experiencing a financial hardship during the COVID-19 emergency.

- (1) Upon receipt of an oral or written request for forbearance from a multifamily borrower, a servicer shall document the financial hardship and provide the forbearance for up to 30 days.
- (2) Forbearance may be extended for up to 2 additional 30-day periods upon the request of the borrower provided that the borrower's request for an extension is made during the covered period, and at least 15 days prior to the end of the forbearance period in effect at that time.
- (3) A multifamily borrower shall have the option to discontinue the forbearance at any time.

### **Renter Protections During Forbearance**

A multifamily borrower that receives a forbearance, pursuant to Section 4023 of the CARES Act may not, for the duration of the forbearance:

- (1) evict or initiate the eviction of a tenant from a dwelling unit located in or on the applicable property solely for nonpayment of rent or other fees or charges; or
- (2) charge any late fees, penalties, or other charges to a tenant described in (1) for late payment of rent.

In addition, a multifamily borrower that receives a forbearance pursuant to Section 4023 of the CARES Act may not:

- (3) require a tenant to vacate a dwelling unit located in or on the applicable property before the date that is 30 days after the date on which the borrower provides the tenant with a notice to vacate and,
- (4) issue a notice to vacate under paragraph (1) until after the expiration of the forbearance.

In addition, Section 4024 of the CARES Act states, that during the 120-day period beginning on the date of enactment of the CARES Act, the lessor of a covered dwelling may not:

- (1) make, or cause to be made, any filing with the court of jurisdiction to initiate a legal action to recover possession of the covered dwelling from the tenant for nonpayment of rent or other fees or charges; or
- (2) charge fees, penalties, or other charges to the tenant related to nonpayment of rent.

### **The CARES Act Forbearance Guidelines**

A borrower is entitled to forbearance if it meets the requirements under the Request for Relief paragraph above. The forbearance provided by the lender must be in compliance with the CARES Act, Section 4023(d)2.. It is important to note, that mortgage forbearance repayment is a negotiation

between borrowers and lenders. HUD will not participate in those negotiations. While the forbearance agreement is entered into between the borrower and lender, a copy of the forbearance agreement must be provided in connection with actions requiring HUD approval, if any are included in the agreement. The guidelines provided below are provided to assist in borrower/lender negotiations but are not required.

**Guidelines for FHA insured mortgages:**

Lender fees should be reasonable and related to the drafting of the agreement. HUD will not deem anything below \$750 unreasonable.

The forbearance amount should be tailored to address the borrower's stated financial hardship. Any additional interest charged is negotiated between the lender and borrower but should be at no more than the note interest rate.

Distributions may not be taken while a project is under forbearance agreement or during any repayment period.

**Guidelines for 542(b) and (c) risk share mortgages:**

Mortgage modification term as negotiated between the borrower and lender will be approved on a case by case basis. Waivers of mortgage terms or HUD regulations may be required, depending upon the terms (balloon payments for example), so lenders are advised to consult with HUD staff before negotiations.

**Guidelines for HUD-held loans:**

Chapters 10 and 11 of HUD Handbook 4530.1 cover how to service HUD-held loans that were assigned to HUD by a lender and Section 202 Direct Loans that are in default. In these, circumstances, HUD is the mortgagee and the borrower can deal directly with HUD. Forbearance by HUD will comply with the CARES Act.

Borrowers are encouraged to begin discussions with HUD field staff after exploring relief measures as described above and mortgage delinquency occurs. Borrowers and field staff are encouraged to explore repayment relief measures, including repayment of the forbearance amount over a period of time. In addition, mortgage modification tools are available to HUD, including adding the missed payments at the end of the mortgage as extended payments or a balloon payment; recasting the mortgage to cover the delinquency; or other reasonable measures. Field staff should consult with their HQ desk officer to discuss possible terms. Note, proposals that include forgiveness of principal or interest cannot be considered.

The Department's objective in these cases is to develop a workable plan to stabilize the financial and physical condition of the project while minimizing losses to the Department. These types of arrangements are called workout agreements. Chapter 11 covers how to determine whether a workout agreement is feasible and what the terms of a workout agreement should include.

## **Continuing Program Obligations**

During the Forbearance Period, all other material terms and conditions of the HUD Loan Documents and the FHA Regulatory Agreement remain in full force and effect, including but not limited to:

- A. Borrowers must remain current with all tax, water, sewage or other such bills as they become due, unless the borrower has obtained written forbearance relief from such authorities.
- B. Should the local taxing authorities offer real estate tax relief, borrowers must advise HUD of the terms and conditions prior to accepting such relief.
- C. Borrowers must use collected Rents and other receipts of the Project for no purpose other than for Reasonable Operating Expenses or making payments of amounts due to Lender under the terms of the HUD Loan Documents and the FHA Regulatory Agreement.
- D. The borrower shall not without the prior written approval of HUD accept any relief or assistance, including COVID-19 relief, that may encumber the Mortgaged Property; or enter into any contract, agreement or arrangement to borrow funds or finance any purchase or incur any liability, direct or contingent other than for Reasonable Operating Expenses as defined in the FHA Regulatory Agreement.

The forbearance agreement will not require mortgage modification. Any forbearance proposals that require mortgage modification will impact the Ginnie Mae security and must be reviewed and approved on an individual basis.

The period of forbearance shall not be used as a basis to circumvent any prepayment penalty due the Ginnie Mae security holder. A covenant default alone is not a sufficient reason to buy the loan out of the Ginnie Mae security.

Additional available measures to address cash flow shortages include owner advances of funds; loans from localities or other outside sources (all loans are subject to HUD secondary financing guidelines); residual receipts releases; advances from the reserve for replacement account; and suspension of reserve for replacement account deposits.

Owner advances should only be used with prior HUD approval and can only be repaid, with HUD approval when cash flow is sufficient to meet all property needs. See handbook 4370.2 Rev 1, Section 2-11.

Loans from outside sources may only be taken with HUD approval and must use a Surplus Cash Note or Residual Receipts Note, as applicable. Note that the financing must be secondary to the HUD first lien; may be repaid only from surplus cash; and cannot be called without prior HUD approval.

Properties with residual receipts accounts may request approval from the local field office for releases to address principal, interest, taxes and insurance.

Requests for releases from the reserve for replacement account to cover principal, interest, taxes and insurance, must be submitted to the local field office and will be processed in accordance with HB 4350.1 Chapter 4, providing a HUD Form 9250 and accompanying documentation. Owners must submit evidence of cash flow difficulties, such as monthly accounting report, rental delinquency report, rent roll, unaudited financial statement, and/or letter of explanation/certification. Field staff will review the reasons for the cash flow shortage; current balance in the account; anticipated immediate needs; owner compliance with business agreements. Field staff are encouraged to allow releases below Regional established floors.

Requests for suspension of reserve for replacement account deposits must be submitted to the local field office and will be processed in accordance with HB 4350.1. Field staff are encouraged to liberally approve such requests.

Reserve for replacement releases for debt service and suspension of reserve for replacement deposits will be required to be repaid when the property regains sufficient cash flow unless waived by the Multifamily Regional Director.

Entering into forbearance does not preclude borrowers from pursuing other measures such as interest rate reduction or refinance through HUD's mortgage insurance programs or other financing vehicles.

### **Post-Forbearance Period Guidance**

For FHA insured, risk share, and HUD-held loans, evictions will not be permitted during any forbearance period. However, the repayment period, as described above where a borrower makes increased payments over a period of time, are not considered part of the forbearance period, for this policy. Borrowers are encouraged to enter into payment plans with renters (residential and commercial) that experience an income reduction or temporary loss of household income but are able to make up the difference with increased monthly payments over time. HUD Multifamily does not need to approve such arrangements.

Borrowers are encouraged to explore the above measures to address loss of rental receipts so that they can continue to make principal, interest, taxes and insurance payments to the lender. Priority should be placed on monthly principal and interest payments; however absent relief from the locality or insurer, taxes and insurance payments should be made timely.

In the event of a default under the forbearance agreement, Lenders should use MDDR to record delinquencies and defaults. If a borrower defaults under a forbearance agreement, in which the total forbearance amount becomes immediately due and payable, and if the default remains outstanding for thirty (30) days, the borrower's default would be consider a Monetary Event of Default under the HUD Loan Documents. Lenders should continue to file extensions of elections to assign in MDDR. For multifamily mortgages for which HUD issued a firm commitment for mortgage insurance on or after September 1, 2011, and that were funded with the proceeds of state or local bonds, GNMA securities, participation certificates, or other bond obligations which specify a prepayment penalty or lock out, the lender must request a 90-day extension of the deadline for filing the notice of election to assign and cooperate with HUD in taking reasonable steps in accordance

with prudent business practices to avoid an insurance claim. (see 24 CFR §207.258(a)(2)). HUD's approval of an extension will not prejudice the lender's right to file its notice of its intention to file an insurance claim and of its election either to assign the mortgage to the Commissioner. HUD will provide separate guidance on MDDR reporting for after the forbearance period expires.

### **MBA Forbearance Agreement**

The MBA has drafted a sample forbearance agreement in April 2020. HUD has reviewed the draft forbearance agreement and does not object to its use in connection with FHA-Insured Multifamily Mortgages that have reached final endorsement. Forbearance agreements that follow this format, without change, will not need to be submitted to HUD for review and approval prior to execution and implementation by the lender and borrower. HUD will be developing a form for lenders/borrowers to use, but in the meantime the MBA form meets threshold requirements and can be used during the COVID-19 emergency,

A copy of the executed and implemented forbearance agreement must be submitted to the HUD Multifamily field office with property oversight at the respective mailbox below:

Atlanta	ATL.incoming@hud.gov
Baltimore	BAL.incoming@hud.gov
Boston	BOS.incoming@hud.gov
Chicago	CHI.incoming@hud.gov
Detroit	DET.incoming@hud.gov
Denver	DEN.incoming@hud.gov
Fort Worth	MFSouthwest@hud.gov
Jacksonville	JAX.incoming@hud.gov
Kansas City	MFSouthwest@hud.gov
Minneapolis	MN.incoming@hud.gov
New York	NY.incoming@hud.gov
San Francisco	SF.incoming@hud.gov

Please note that this reference to the MBA forbearance agreement is not an endorsement or Government sanction of the MBA, its services or products.

### **PAPERWORK REDUCTION ACT**

The information collection requirements in this Housing Notice are already approved under OMB Approval number 2502-0541, issued under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), for multifamily mortgage insurance application forms. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

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Federal Housing Commissioner