



Navigating the Residential Mortgage Landscape During COVID-19

What Lenders and Servicers Should Know About the CARES Act

Overview of the CARES Act

- Signed into law on March 27, 2020, the CARES Act authorizes \$2.1 trillion in aid to various sectors of the economy to reduce the economic impact of COVID-19.
- The CARES Act includes, among other things, credit protection, mandatory forbearances, and eviction moratoriums for borrowers of federally-backed residential mortgage loans.
- The CARES Act does not include monetary relief, either for borrowers or for the mortgage industry.

Credit Protection—Section 4021

- The CARES Act modifies the Fair Credit Reporting Act (“FCRA”) by precluding furnishers of information (including lenders/servicers) from reporting any kind of accommodation provided under the CARES Act. Per this modification, furnishers must continue to report the consumer using the consumer’s account status (current or delinquent) at the time the accommodation began.
- In response to these changes, the Consumer Financial Protection Bureau (“CFPB”) issued a non-binding policy statement where it announced a “flexible” supervisory and enforcement approach for compliance with the FCRA and Regulation V.
- The CFPB stated it does not intend to cite in an examination or bring an enforcement against furnishers that exceed deadlines to investigate consumer disputes so long as they make good faith efforts to do so as quickly as possible.

Federally-Backed Residential Mortgage Loans

- The CARES Act’s provisions only apply to federally-backed residential mortgage loans.
- “Federally-backed” is defined in the CARES Act as one that is secured by a first or subordinate lien on residential real property, including individual units of condominiums and cooperatives, designed principally for the occupancy of between one and four families that meets one of the following six criteria:
 1. Insured by the Federal Housing Administration (FHA) under Title II of the National Housing Act

2. Insured under the National Housing Act section 255, which addresses home equity conversion (i.e., reverse) mortgage loans insured by the FHA
 3. Guaranteed under the Housing and Community Development Act of 1992 sections 184 or 184A, which address loans related to Native American families and housing authorities and loans related to Native Hawaiian families and authorities
 4. Guaranteed or insured by the US Department of Veterans Affairs (VA)
 5. Made, guaranteed or insured by the US Department of Agriculture (USDA)
 6. Purchased or securitized by the Federal Home Loan Mortgage Corporation (Freddie Mac) or Federal National Mortgage Association (Fannie Mae)
- Servicers have an obligation to determine whether a loan meets any of the above criteria. If it does, and the borrower requests mortgage relief, they “shall be entitled,” per the Act.

Single- to Four-Family Homes—Section 4022

- During the covered period, residential borrowers of federally-backed mortgage loans are entitled to temporarily postpone their mortgage payments for up to 180 days. Further, the forbearance may be extended by an additional 180 days, if requested by the borrower.
- The borrower must affirm that he or she is experiencing a financial hardship directly or indirectly due to the COVID-19 national emergency. No further documentation or proof can be required.
- During the forbearance period, a lender or servicer may not assess fees, penalties or interest, that would not have been charged to a borrower if he or she made timely payments under the terms of their mortgage contract.
- If a lender or servicer makes an accommodation under the CARES Act, it must, as a furnisher to a credit reporting agency, continue to report the account as current if the borrower fulfils the terms of the accommodation under the CARES Act Section 4021. The borrower can go through the entire forbearance period—that is, up to one year—and still must be reported as current. If the account was delinquent before the accommodation was made, the furnisher is permitted to continue reporting the account as delinquent unless the account is brought current.

- The reporting requirements under CARES Act Section 4021 apply to consumer accounts between January 31, 2020 through 120 days after the end of the COVID-19 national emergency.
- There is no definition of the term “covered period” provided in Section 4022.

Multi-Family Homes—Section 4023

- Section 4023 provides relief for “federally-backed multi-family borrowers” defined as “a borrower of residential mortgage loan that is secured by a lien against a property comprising five or more dwelling units”. This includes any first or second mortgage loan secured by a lien on the property comprised of five or more dwelling units and is made or insured, guaranteed, supplemented or assisted in any way by any officer or agency of the federal government or under or in connection with a housing or urban development program administered by HUD or any such agency. It also includes such mortgages that are purchased or securitized by Freddie Mac or Fannie Mae. It does not include loans for temporary financing such as a construction loan.
- Multi-family lenders are prevented from charging late fees or penalties or evicting any tenants for non-payment of rent during the forbearance period, and upon completion of the forbearance must provide all tenants with a 30-day notice prior to requiring a tenant to vacate.
- The same consumer credit reporting protections of Section 4021 apply.
- Multi-family borrowers are entitled to an initial 30-day forbearance on request made during the covered period.
- Financial hardship is not defined in Section 4023, nor is there a specific requirement to demonstrate a hardship.
- The forbearance may be extended for up to two additional 30-day periods, upon request made during the covered period.
- Section 4023 defines the term “covered period” to mean the date that the CARES Act became law (March 27, 2020) until the sooner of December 31, 2020 or the termination of the date of the COVID-19 national emergency.

Foreclosures and Evictions Moratorium—Section 4024

- Section 4024 of the CARES Act includes a foreclosure moratorium on one- to four-family federally-backed mortgage loans for 60 days beginning on March 18, 2020. The moratorium includes initiating a foreclosure, moving for judgment, and executing a foreclosure judgments.
- The CARES Act does NOT include a foreclosure moratorium for federally-backed multi-family mortgages (although it does include an eviction moratorium).
- Some States have issued emergency foreclosure moratoriums in response to declared COVID-19 emergencies (e.g., Iowa and New Hampshire through executive and judicial orders). There is also proposed legislation making its way through the enactment process in a number of states, including Massachusetts and Alaska. Such moratoriums and proposed moratoriums do not or would not require that the mortgages be government-backed.

- In order to determine how the eviction moratorium under Section 4024 may impact a specific property, there are three questions which must be considered:

1. Does the property fall under the moratorium provision?
2. What does the CARES Act prohibit?
3. What is the enforcement mechanism?

- According to Section 4024(a), the eviction moratorium applies to properties that either:

Participate in:

- A covered housing program as defined in the Violence Against Women Act (“VAWA”), or
- The rural housing voucher program

OR

Have:

- A federally-backed mortgage loan, or
- A federally-backed multi-family mortgage loan

- During the 120-day period beginning with the date of enactment, a lessor may not make, or cause to be made, any filing to initiate a legal action to recover possession of a dwelling from a tenant for nonpayment of rent or other fees or charges; or charge fees, penalties, or other charges to the tenant related to such nonpayment of rent.
- Upon expiration of the 120-day period, a lessor may not require a tenant to vacate sooner than 30 days after providing notice.
- The moratorium does not stay pending evictions, or affect eviction proceedings filed before the date of enactment.
- A number of states have issued broader eviction moratoriums, including Kentucky, Maine, New Hampshire, and Washington, DC.

Takeaways and Considerations

- The Act merely suspends the borrowers’ obligations to make their payments to their mortgage servicers during the forbearance period, while saying nothing about the concomitant obligations that the servicers may have to the investors of the mortgage loans and other interested constituencies.
- In the absence of additional bailout legislation, it is a reasonable assumption that a significant percentage of the borrowers who availed themselves of the forbearance relief will be unable or unwilling to immediately pay their arrearages that accrued during the forbearance period. At that point, they would be in default under their mortgage contracts, with up to a year of missed payments. Traditionally, mortgage defaults of long duration have been dealt with through voluntary modifications, or foreclosures, with or without government assistance. There is nothing traditional about COVID-19.
- This is a good time for lenders and servicers to review their documentation protocols, in light of the CARES Act’s requirements.

Questions & Answers

Q: Are lines of credit eligible for forbearance under the CARES Act?

A: A home equity conversion mortgage line of credit, generally known as a reverse mortgage equity line of credit, is eligible if it is federally-backed. A traditional home equity line of credit is not eligible, as those loans are not federally-backed.

Q: If a consumer whose mortgage payment is \$1,000 per month takes advantage of the full one-year forbearance period, will they owe \$12,000 upon the conclusion of the forbearance period or will they simply begin paying \$1,000 per month again at the conclusion, with their mortgage extended for an additional year?

A: The CARES Act provides mortgage payment relief in the form of a mandatory forbearance period of up to one year, while barring the lenders and servicer from charging the borrower of any “fees, penalties, or interest beyond the amounts scheduled as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract ...” The term “forbearance” is not defined in the CARES Act. Its customary definition in the lending context is the creditor’s refraining from exercising its legal right to enforce payment of the borrower’s debt. Under this scenario, at the end of the one-year period the borrower’s missed \$12,000 worth of payments will become immediately due and payable. The CARES Act does not contain any provision for what happens next. There will likely be additional legislative and other efforts by the federal government and amongst the States to provide relief to borrowers who obtained CARES Act forbearances; only time will tell.

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