



Special Attention of:

Multifamily Regional Directors
Multifamily Satellite Office Directors
Multifamily Asset Management Division
Directors
Multifamily Account Executives
All Contract Administrators
Multifamily Owners and Management Agents
Multifamily Residents

NOTICE H 2021- 03

Issued: July 30, 2021

This notice remains in effect until amended, superseded, or rescinded

Subject: Forbearance Relief and Associated Tenant Protections for FHA-Insured, Section 202, HUD-held, and Risk Share Multifamily Loans

I. Purpose

This Notice provides background and updated guidance on the Department of Housing and Urban Development's (HUD) policies and procedures regarding mortgage forbearance relief for HUD Multifamily borrowers under the following programs: Fair Housing Administration (FHA) mortgage insurance, 542(c) Risk Share, Section 202 loans, and HUD-held loans. In addition, this Notice provides guidance on eviction relief and protections to tenants of Multifamily properties subject to forbearance and guidance on tenant protections for Multifamily properties not subject to forbearance and those with HUD-assisted units. Previous guidance for mortgage forbearance and tenant protections during the term of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) can be found in [Mortgagee Letter 2020-09](#) and [Housing Notice 2020-07](#). This Notice updates and consolidates the guidance provided in ML 2020-09 and HN 2020-07. Specifically, this Notice provides guidance on post-CARES Act forbearance relief and required tenant protections during forbearance. This notice will constitute Multifamily Housing's policy and procedure on this issue until rescinded or amended.

II. Background

This Notice is being issued to provide guidance to lenders, owners, agents, residents, contract administrators, and HUD staff on assisting Multifamily Housing program participants impacted by or experiencing a loss of income as a result the national emergency declared by the President beginning March 13, 2020 (COVID-19 Emergency). , and encourages owners, agents, and contract administrators to work with residents impacted by the COVID-19 Emergency to the extent practicable. This guidance is applicable to all affected Multifamily properties both during and after the COVID-19 Emergency.

III. Mortgage Relief

Multifamily properties may experience cash flow shortages as a result of the COVID-19 Emergency and surrounding circumstances. For properties assisted through the Section 8 or 202

loan programs, CARES Act funds were made available and residents could request rent adjustment through recertification.

Additional measures for Multifamily Housing owners 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.

These options are subject to the following requirements:

- Owner advances require prior written local HUD field office approval and can only be repaid with HUD approval when cash flow is sufficient to meet all property needs. See [Handbook 4370.2](#), Section 2-11.
- Loans from outside sources require prior written local HUD field office 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. The use of HUD's secondary financing instruments will ensure adherence to these rules.
- Properties with residual receipts accounts may request written approval from the local HUD field office for releases to address principal, interest, taxes, and insurance in accordance with Handbook 4350.1 Chapter 25 .
- 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 [Handbook 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 account needs, and 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 Handbook 4350.1.
- 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.
- Interest Rate Reduction and refinance are also relief measures available to borrowers. Note that 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.

IV. Mortgage Forbearance

General Guidelines

Multifamily forbearance is a negotiation between the borrower and lender, and HUD does not participate in those negotiations. However, HUD's prior written approval is required. Consistent with applicable regulations, (24 C.F.R. 221.761) such approval will be subject to HUD review of the forbearance agreement for consistency with the policies below, and based on HUD's determination that the default was due to circumstances beyond borrower's control and that the mortgage probably will be restored to good standing within a reasonable period. These guidelines apply to mortgages receiving forbearance under the CARES Act or not. In addition, HUD staff should consider the following when reviewing forbearance agreements:

- The loan must be delinquent and in imminent risk of default, the circumstances causing the delinquency are beyond the borrower's control and there is a good probability that the forbearance or other relief measures will return the mortgage to good standing.
- Section 4023 of the CARES Act and this guidance allow eligible borrowers to receive forbearance of up to 90 days. HUD will consider extended forbearance based on individual property circumstances for borrowers and lenders who seek approval for extended forbearance. Borrowers and lenders may agree to an additional 90 days of forbearance, up to a total of 180 days (six monthly mortgage payments). Prior written local HUD field office approval is required for any forbearance (except that initially provided under Section 4023 of the CARES Act) and any extension thereof. Any forbearance beyond 180 days must be approved by the Office of Asset Management and Portfolio Oversight. If the loan is contained in or destined for a Ginnie Mae security, any extension of forbearance should be requested by lenders in a timely manner that is consistent with the Ginnie Mae Mortgage Backed Securities Guide and any applicable federal guidelines related to COVID-19 relief. As a reminder, lenders must continue to make timely payments to investors.
- Lender forbearance agreements during the term of the CARES Act typically required repayment within 12 months. While HUD considers 12 months a reasonable term of repayment for forbearance under both the CARES Act and this guidance, HUD will consider shorter or longer terms, up to 24 months, of repayment so long as the lender has performed and submits to HUD an analysis of the property cash flow and borrower ability to repay that justifies the Repayment Period length. Any repayment period beyond 24 months will require a market analysis in addition to the cash flow analysis and borrower ability to repay.
- Any additional interest charged should be no more than the note interest rate.

- Borrowers are not allowed to take distributions while the property is under forbearance or while repaying forborne amounts of principal and interest. This condition should be memorialized in the forbearance agreement.
- The forbearance agreement should not require mortgage modification. Any forbearance proposals that require mortgage modification of a mortgage backing a Ginnie Mae security will impact the Ginnie Mae security. Prior to completing a modification of the mortgage, the mortgagee must remove the mortgage from the Ginnie Mae security in accordance with Ginnie Mae guidelines. Only modifications that require removal from the GNMA pool are prohibited.
- Lender fees should be reasonable and related to the drafting of the agreement. HUD deems a fee up to \$750 reasonable for drafting and processing a forbearance agreement. HUD may approve higher fees in special circumstances.
- As previously stated, mortgages that received forbearance whether subject to Section 4023 of the CARES Act or this guidance may be eligible for extended forbearance, interest rate reductions, and refinance. Extended forbearance and mortgage modifications, including an interest rate reduction, require HUD approval. Generally, the delinquent and forborne amounts must be repaid as part of any interest rate reduction or refinance.

Lenders are encouraged to use an existing forbearance agreement that has already been reviewed and approved by HUD. Use of non-standard agreements will require additional review time.

Guidelines for 542(b) and (c) Risk Share mortgages:

Mortgage modification terms 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 (e.g., balloon payments), so lenders are advised to consult with HUD staff before beginning negotiations.

Guidelines for HUD-held and 202 Direct loans:

Chapters 10 and 11 of [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 shall deal directly with HUD. 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 forborne amount over a period of time. In addition, mortgage modification tools are available to HUD, including adding the missed payments to 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. Proposals that include forgiveness of principal or interest shall not 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 HUD. These types of arrangements are called workout agreements. Chapter 11 of Handbook 4530.1 covers how to determine whether a workout agreement is feasible and what should be included in the terms of a workout agreement.

Continuing Program Obligations:

During the Forbearance Period¹, 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:

- Borrowers must remain current with all tax, water, sewage, or other such bills, unless the borrower has obtained written forbearance relief from such authorities.
- Should the local taxing authorities offer real estate tax relief, borrowers must advise HUD of the terms and conditions prior to accepting such relief.
- Borrowers must use collected rents and other Project receipts for no purpose other than reasonable operating expenses or making payments of amounts due to the lender under the terms of the HUD loan documents and the FHA Regulatory Agreement.
- The borrower shall not, without prior written local HUD field office approval, 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, 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 Period 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. Any premature liquidation of the loan from the Ginnie Mae security must comply with the terms of the security and Ginnie Mae program requirements.

Multifamily Delinquency and Default Reporting (MDDR) System:

A loan subject to a new forbearance agreement, extended forbearance agreement, and/or repayment agreement extending beyond the expiration of the CARES Act forbearance period should be reported by lenders as delinquent or in default as required by MDDR reporting guidelines at the time of such delinquency/default. Lenders must inform HUD if the loan is subject to forbearance, extended forbearance and/or repayment agreement by entering such information into a comment in MDDR. Further, lenders should request an extension of the

¹ For the purposes of this notice, the Forbearance Period shall be the period of time during which the borrower is not making debt service payments on the loan. The Repayment Period, during which the borrower is repaying the forbore amount over time along with debt service payments, shall not be considered part of the Forbearance Period for the purposes of this notice and policy.

election to assign the loan to HUD to permit the borrower to perform under forbearance, extended forbearance and/or repayment agreements. Lenders must also notify HUD if the mortgagor fails to meet the requirements of a forbearance agreement or to cure the default under the mortgage at the expiration of the forbearance period, and such failure continues for a period of 30 days.

Notwithstanding the above, lenders should also use MDDR to record delinquencies and defaults if there is a default under the Loan Documents not related to nonpayment.

V. Tenant Protections during Multifamily forbearance

CARES Act Protections:

Many HUD Multifamily borrowers received forbearance relief under Section 4023 of the CARES Act. That provision expired on December 31, 2020, and those borrowers that received CARES Act forbearance prior to that date, including those whose term of forbearance extended beyond December 31, 2020, or received HUD-approved extended forbearance, are subject to the CARES Act tenant protections.

Specifically, a multifamily borrower/owner that received 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/owner that received a forbearance pursuant to Section 4023 of the CARES Act may not:

- 1) 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,
- 2) issue a notice to vacate under paragraph (1) until after the expiration of the forbearance.

Post-CARES Act Protections:

Many borrowers and lenders will negotiate additional forbearance relief beyond the 90-day period provided in the CARES Act. In addition, some borrowers and lenders may enter into initial forbearance agreements that take effect after the expiration of the CARES Act. Prior written local HUD field office approval is required for such additional forbearance. Any forbearance beyond 180 days must be approved by the Office of Asset Management and Portfolio Oversight. **This notice extends the eviction moratorium and associated renter protections for all HUD-insured or HUD-held mortgages while under forbearance.** HUD will condition approval of the forbearance agreement on the borrower's agreement to provide tenant eviction and notification protections.

Consistent with the tenant protections in the CARES Act a multifamily borrower/owner may not for the duration of the post-CARES Act 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.

Further, borrowers/owners of such properties cannot:

- 1) require a tenant to vacate before the date that is 30 days after the date on which the owner/borrower provides the tenant with a notice to vacate solely for nonpayment of rent or other fees/charges and,
- 2) issue a notice to vacate under paragraph (1) until after the conclusion of the Forbearance Period.

Additional Requirements for Properties in CARES Act and Post-CARES Act Forbearance:

HUD is requiring the following requirements as conditions of any new, extended, or amended forbearance arrangements due to the COVID-19 emergency for a Multifamily property. Note such extended or amended forbearance request must be submitted to the field Multifamily Account Executive or Resolution Specialist for approval:

- During the Forbearance Period, the borrower must inform all residents of the prohibition against eviction solely for non-payment of rent.
- The owner/borrower must allow a tenant that missed rent payments during the Forbearance Period to make up such missed rent payments over a reasonable time as determined in the sole discretion of the borrower. The owner/borrower may not require missed rent payments be repaid in one lump sum at the end of the Forbearance or Repayment Periods.
- The owner/borrower must not charge tenants late fees or penalties due to late or missed rent payments during the Forbearance Period, Repayment Period following the Forbearance Period, and/or until the borrower has repaid all forborne amounts.
- During the Forbearance Period, Repayment Period following the forbearance, and until current on its loan obligations, the borrower must provide at least 30 days' notice to vacate to any tenant that is being evicted due solely to non-payment of rent. This notice to vacate must be given before the borrower repossesses the unit from the tenant but cannot be given prior to the expiration of the Forbearance Period.

All Multifamily property owners are also reminded that the Centers for Disease Control and Prevention (CDC) issued an Order entitled [Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19 \(the Order\)](#). The Order has different rules and requirements for

eviction relief than the tenant eviction and notification protections in this Notice, which only applies to residents in properties under forbearance. Owners and agents should also review their state or local laws, as some may have different eviction moratoria, notification requirements, and requirements to provide the CDC Declaration to tenants.

Violations of the tenant protection provisions in this Notice and in the CARES Act may result in HUD informing the owner that they are in violation of applicable law and require steps to remediate that violation. If the owner fails to resolve the violation, HUD will review potential enforcement actions under HUD program authorities and may flag the owner in the Active Partners Participation System (APPS).

Please refer to the CDC guidance at <https://www.cdc.gov/coronavirus/2019-ncov/covid-eviction-declaration.html>.

Questions: Questions about this Notice should be addressed Robert Iber at robert.g.iber@hud.gov or to your local Account Executive in the Office of Asset Management and Portfolio Oversight.

/s/

Lopa P. Kolluri
Principal Deputy Assistant Secretary
for Housing