Federal Agencies, Enterprises Extend Foreclosure Moratoriums Again

June 25, 2021

On the eve of the June 30, 2021 expiration date for all federal pandemic moratoriums, the Federal Government extended its foreclosure and eviction moratoriums, and encouraged delinquent borrowers to seek forbearance and other relief.

Three federal agencies who make, guarantee, and insure mortgage loans [the Department of Housing and Urban Development (**HUD**)'s Federal Housing Administration (FHA), the Department of Veterans Affairs (**VA**), and the Department of Agriculture (**USDA**)'s Rural Development Department] and two federal enterprises who purchase and securitize mortgages (**Fannie Mae** and **Freddie Mac**), collectively referred to as "Agencies" in this alert, extended their moratoriums on foreclosures and foreclosure-related evictions through July 31, 2021. In addition, the **CDC** extended its order temporarily halting residential evictions to prevent the further spread of COVID-19. Because the moratoriums vary in breadth and scope, servicers are cautioned to review the guidance before proceeding with any aspect of the foreclosure or eviction process.

Our earlier alerts (**here**, **here**, and **here**) provided details on the creation and extension of the moratoriums through June 30, 2021.

The **White House** issued a Fact Sheet on June 24, 2021, entitled "**Biden-Harris Administration Announces Initiatives to Promote Housing Stability By Supporting Vulnerable Tenants and Preventing Foreclosures**," announcing the extension of the moratorium and other federal actions to help borrowers and tenants. The White House announced:

> *"Three federal agencies that back mortgages – the Department of Housing and Urban Development (HUD), Department of Veterans Affairs (VA), and Department of Agriculture (USDA) – will extend their respective foreclosure moratorium for one, final month, until July 31, 2021. The Federal Housing Finance Agency (FHFA) will also announce that it has extended the foreclosure moratorium for mortgages backed by Fannie Mae and Freddie Mac until July 31, 2021. Once the moratoria end, HUD, VA, and USDA will take additional steps to prevent foreclosures on mortgages backed by those agencies until borrowers are reviewed for COVID-19 streamlined loss mitigation options that are affordable, while FHFA will continue to work with Fannie Mae and Freddie Mac to ensure that borrowers are evaluated for home retention solutions prior to any referral to foreclosure."*

Future alerts will describe the additional steps, once they are announced. HUD, the VA, and the USDA will encourage borrowers to seek forbearance through September 30, 2021, and Fannie Mae and Freddie Mac will continue to offer forbearance to their eligible borrowers. In July, the federal agencies will announce additional steps to help their borrowers explore payment reduction options that will enable more homeowners to stay in their homes. We will provide another alert as those programs are announced.

The White House reminded the country that the American Rescue Plan provided an additional $21.5 billion for Emergency Rental Assistance that can be used by renters to cover arrears and make landlords whole. The Administration urged state and local courts to participate in eviction diversion efforts, enforce the 30-day eviction notice requirement on federally-backed properties, enforce the fair housing act, and increase outreach to vulnerable tenants, and announced that it will convene a summit for immediate eviction prevention plans.

Breadth and Scope of the Agencies' Foreclosure Moratoriums

On June 24, the **Federal Housing Finance Agency (FHFA)** issued a **news release** stating that Fannie Mae and Freddie Mac are "extending the moratoriums on single-family foreclosures and real estate owned (REO) evictions until July 31, 2021. The foreclosure moratorium applies to Enterprise-backed, single-family mortgages only. The REO eviction moratorium applies to properties that have been acquired by an Enterprise through foreclosure or deed-in-lieu of foreclosure transactions. The current moratoriums were set to expire on June 30, 2021." The news release stated, "this action is just the latest step FHFA has taken to benefit homeowners and the mortgage market during the pandemic."

Fannie Mae updated its **Lender Letter LL-2020-02** on June 24, extending "the suspension of foreclosure-related activities through July 31, 2021. During the extended period, servicers may not, except with respect to a vacant or abandoned property, initiate any judicial or non-judicial foreclosure process, move for a foreclosure judgment or order of sale, or execute a foreclosure sale. This suspension does not apply to mortgage loans secured by properties that have been determined to be vacant or abandoned." The guidance extends the servicer's obligations to meet bankruptcy milestones.

Freddie Mac issued **Bulletin 2021-23** on June 24, extending its moratorium. Freddie Mac stated that, "we are extending the foreclosure moratorium last announced in Guide Bulletin 2021-8. Servicers must suspend all foreclosure actions, including foreclosure sales, through July 31, 2021. This *includes* initiation of any judicial or non-judicial foreclosure process, motion for foreclosure judgment or order of sale. This foreclosure suspension does not apply to Mortgages on properties that have been determined to be vacant or abandoned." (Emphasis added.) Because the guidance "includes" milestones, **it is potentially broader than Fannie Mae's**, because it is a foreclosure moratorium that suspends *all* foreclosure actions, and *includes* specific acts, while Fannie Mae's moratorium *appears to prohibit* specific acts. In addition, both Fannie Mae's and Freddie Mac's guidance are silent on post-foreclosure evictions. The FHFA's extension of the eviction moratorium applies to both Enterprises.

In its contemporaneously released servicing **frequently asked questions**, Freddie Mac identified some of the activities that it is taking to ensure homeowners can remain in their homes during this critical time:

- Providing mortgage forbearance for up to 12 months for any borrower with a COVID-19 related hardship.

- Providing mortgage forbearance extensions for up to six additional months (18 months total) for borrowers on active forbearance as of February 28, 2021.
- Waiving assessments of penalties and late fees.
- Suspending all foreclosure activities until July 31, 2021.
- Offering loss mitigation options that lower payments or reinstate the mortgage to "current" status while keeping payments the same after the forbearance period.

On June 25, **HUD** issued **Mortgage Letter 2021-15**, extending its moratorium on foreclosures for FHA Title II Single Family mortgage programs, except for mortgages secured by vacant or abandoned properties. Specifically, "[t]he moratorium applies to the initiation of foreclosures and to foreclosures in process" through July 31, 2021. This moratorium appears to apply broadly to **all aspects of foreclosures in process**, and not merely to specific milestones. In addition, "[s]eparate from any eviction moratorium applicable to lessors provided under the CARES Act, evictions of persons from properties securing FHA-insured Single Family mortgages . . . are also suspended through July 31, 2021." In addition, borrowers who are affected by the COVID-19 national emergency may apply for forbearance no later than September 30, 2021. Servicers must waive all late charges, fees, and penalties, if any, as long as the borrower is on a COVID-19 Forbearance. The term of the initial and any additional COVID-19 Forbearance period may be shortened at the borrower's request. No COVID-19 Forbearance period may extend beyond June 30, 2022.

On June 25, the **VA** issued **Circular 26-21-10** extending its foreclosure and eviction moratorium through July 31, 2021. "The moratoriums include a prohibition on initiation and/or completion of such actions. Properties that previously secured VA-guaranteed loans and are currently in VA's real estate owned inventory are also subject to the moratoriums. The moratoriums do not apply to vacant or abandoned properties." Before beginning any foreclosure, servicers are to evaluate borrowers for loss mitigation options, and allow borrowers to request a forbearance by September 30, 2021.

Finally, on June 24, the **USDA** issued **Press Release 0147.21** extending the foreclosure moratorium through July 31, 2021. The press release stated: "'The United States is recovering from a nationwide housing affordability crisis brought on by the COVID-19 pandemic. To support this recovery, USDA is taking this important action today to extend relief to the hundreds-of-thousands of individuals and families holding USDA Single-Family Housing loans,' USDA Deputy Under Secretary for Rural Development Justin Maxson said. 'Actions like the one we're announcing today are part of President Biden's strategy to get Americans vaccinated and the economy back on track. Together, these coordinated actions will enable more homeowners with federally-backed mortgages to remain in their homes and build equity for years to come as we transition back to a functional housing market.'"

In its **stakeholder announcement**, the USDA extended its previously-announced foreclosure and eviction moratorium through July 31, 2021. In addition, the USDA continues to offer up to 12 months of payment forbearance, and for borrowers who obtained forbearance by June 30, 2021, two additional three-month periods. Borrowers must request and receive forbearance by September 30, 2021. The foreclosure moratorium applies to "initiation of foreclosures or completion of foreclosures in process, excluding vacant and abandoned properties." (See this **USDA update**). The USDA added that "no new foreclosure filings should occur until homeowners are reviewed for new options to reduce their payments and stay in their homes. USDA will release new COVID-19 SFHGLP loss mitigation guidance prior to the July 31, 2021 expiration date." (See this **USDA update**).

On June 24, the **CDC** issued its **order** pursuant to Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 CFR 0.2, temporarily halting residential evictions to prevent the further spread of COVID-19. As before, the CDC's objectives are to mitigate the spread of COVID-19 within crowded, congregated or shared living settings, or through unsheltered homelessness; mitigate the further spread of COVID-19 from one state or territory into any other state or territory; mitigate the further spread of COVID-19 by temporarily suspending the eviction of covered persons from residential property for nonpayment of rent; and support response efforts to COVID-19 at the federal, state, local, territorial, and tribal levels. The CDC extended its eviction moratorium through July 31, 2021, at which time it is expected to expire.

Now What?

Servicers preparing or proceeding with foreclosure actions should carefully review the appropriate agency's guidance before advancing to the next milestone or completing the foreclosure process. While the guidance uniformly prevents initiation and completion of a foreclosure action, **some of the guidance prevents advancing the process while other guidance bars specific acts**. In light of the intent of the agencies' actions, servicers are cautioned against initiating, advancing, or completing non-judicial or judicial foreclosure actions on federally backed mortgage loans without further review of all relevant guidance. The moratoriums do not apply to vacant or abandoned property; however, the Agencies do not define when properties may be deemed vacant or abandoned.

The Agencies want eligible borrowers to obtain forbearance to give them time to get back on their feet, or otherwise seek foreclosure prevention alternatives or non-possessory solutions. Servicers should re-double their efforts before the imminent expiration of existing moratorium to avoid a tidal wave of foreclosures.

While the Agencies' moratoriums currently expire on July 31, 2021, it is unlikely that they will be extended further. However, the Consumer Financial Protection Bureau's expected rule should extend any foreclosure moratorium through the end of this year, before it too expires.

Servicers of non-federally backed mortgage loans may not be able to proceed with their foreclosures or evictions due to state and local orders, regulation, and moratorium. Many states and localities have moratoriums in effect, and courts at all levels are barring the prosecution of judicial foreclosure actions.

Servicers are encouraged to review federal, state, and local guidance and regulations issued by the executive, legislative, and judicial branches of government, as well as any regulations or guidance issued by any administrative agencies, bureaus, or departments before proceeding with the foreclosure process.

As always, if you need help understanding or interpreting these guidelines, or have other related questions, please contact McGlinchey's COVID-19 CFS Litigation Task Force.

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