

Federal Agencies Extend Moratoriums Through the End of 2020

August 31, 2020

Two federal enterprises who purchase and securitize mortgages, Fannie Mae and Freddie Mac, along with 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 United States Department of Agriculture's Rural Development Department (USDA) (collectively "Agencies"), extended their moratoriums on foreclosures and foreclosure-related evictions through December 31, 2020. 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 client alerts](#) provided details on the creation and extension of the moratoriums through August 31, 2020.

The Breadth and Scope of the Agencies' Foreclosure Moratorium

On August 27, 2020, the Federal Housing Finance Agency (FHFA) issued a [news release](#) stating that Fannie Mae and Freddie Mac "will extend the moratoriums on single-family foreclosures and real estate owned (REO) evictions until at least December 31, 2020. The REO eviction moratorium applies to properties that have been acquired by an Enterprise through foreclosure or deed-in-lieu of foreclosure transactions." The news release quoted Director Mark Calabria. "To help keep borrowers in their homes during the pandemic, FHFA is extending the Enterprises' foreclosure and eviction moratoriums through the end of 2020. ... This protects more than 28 million homeowners with an Enterprise-backed mortgage." The FHFA estimates that the moratorium will increase the expenses of Fannie Mae and Freddie Mac by \$1.1 to \$1.7 billion dollars.

Fannie Mae updated [Lender Letter LL-2020-02](#) on August 27, 2020, "further extending the suspension of foreclosure-related activities through December 31, 2020." "During the period of the extension, 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 further extends the servicer's obligations to meet bankruptcy milestones.

Freddie Mac issued [Bulletin 2020-34](#) on August 27, 2020, extending its moratorium, which stated "servicers must suspend all foreclosure actions, including foreclosure sales, through December 31, 2020. This includes

initiation of any judicial or non-judicial foreclosure process, move 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.” A careful reading of the Bulletin suggests that **Freddie Mac’s moratorium is potentially broader than Fannie Mae’s**, because it suspends *all* foreclosure actions, and *includes* specific acts, while Fannie Mae’s moratorium *appears to prohibit* specific acts. In addition, while 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.

On August 27, 2020, HUD issued [Mortgagee Letter 2020-27](#), further 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 December 31, 2020. This moratorium appears to apply broadly to **all aspects of foreclosures in process**, and not merely to specific milestones. In addition, “Separate from any eviction moratorium that was applicable to lessors under the CARES Act, evictions of persons from properties securing FHA-insured Single Family mortgages, excluding actions to evict occupants of legally vacant or abandoned properties, are also suspended through December 31, 2020.

On August 24, 2020, the VA issued [Circular 26-20-30](#), extending its foreclosure moratorium through December 31, 2020. Citing to the CARES Act and the President’s [Executive Order 13945](#), the VA stated “properties secured by VA-guaranteed loans are subject to a moratorium on foreclosure through December 31, 2020. The moratorium applies to the initiation of foreclosures, and to the completion of foreclosures in process.” It does not appear to apply to the intermediate phases of the foreclosure process, as long as the servicer does not initiate or complete the foreclosure.

The VA simultaneously issued [Circular 26-20-29](#), extending the prohibition on filing an eviction action following the passage of the CARES Act and the President’s Executive Order. Servicers may not file a lawsuit “with the court of jurisdiction to initiate a legal action to recover possession of the dwelling” on “properties secured by VA-guaranteed loans, including those loans currently in VA’s Real Estate Owned (REO) portfolio” through December 31, 2020.

Finally, on August 28, 2020, the USDA issued a [stakeholder announcement](#) extending its previously-announced foreclosure and eviction moratorium through December 31, 2020. Effective immediately: “with the exception of vacant or abandoned dwellings, foreclosures and related evictions for borrowers with USDA single-family housing Direct and Guaranteed loans are suspended through December 31, 2020.”

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.

Servicers of non-federally backed mortgage loans may not be able to proceed with their foreclosures or evictions due to state and local orders, regulations, and moratoriums. Many states and localities have moratoriums in effect, and courts at all levels are barring the prosecution of judicial foreclosure actions. Furthermore, state legislatures are active in this space as many bills are pending imposing moratoriums on foreclosures and evictions.

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.

Finally, we note that the moratoriums expire at the end of the year, on New Year's Eve. Servicers should expect that the agencies will extend their moratorium at least one more time.

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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