

The Federal Agencies and Enterprises Extend Foreclosure Moratoriums Again

June 25, 2020

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 "Agencies"), extended their moratoriums on foreclosures and foreclosure-related evictions through August 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 alert](#) provided details on the creation and extension of the moratoriums through June 30, 2020.

The Breadth and Scope of the Agencies' Foreclosure Moratorium

On June 17, 2020, the Federal Housing Finance Agency (FHFA) issued a [news release](#) stating that Fannie Mae and Freddie Mac "will extend their single-family moratorium on foreclosures and evictions until at least August 31, 2020." The news release quoted Director Mark Calabria as stating: "To protect borrowers and renters during the pandemic we are extending the Enterprises' foreclosure and eviction moratorium. During this national health emergency no one should worry about losing their home."

Fannie Mae updated its [Lender Letter LL-2020-02](#) on June 24, 2020, extending "the suspension of foreclosure-related activities through August 31, 2020. 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 2020-25](#) also on June 24, extending its moratorium. Freddie Mac stated that "[s]ervicers must suspend all foreclosure actions, including foreclosure sales, through August 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 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.

On June 17, 2020, HUD issued [Mortgagee Letter 2020-19](#), 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 August 31, 2020. 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 August 31, 2020."

On June 17, 2020, the VA issued [Circular 26-20-22](#), extending its foreclosure moratorium through June 30, 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 also issued [Circular 26-20-23](#) on June 17, 2020, extending the CARES Act eviction moratorium. After acknowledging that the "CARES Act prohibited any filing with the court of jurisdiction to initiate a legal action to recover possession of the dwelling," the VA stated that to protect Veteran borrowers, "properties secured by VA-guaranteed loans, including those loans currently in VA's Real Estate Owned (REO) portfolio are subject to a moratorium on evictions through August 31, 2020."

Finally, on June 19, 2020, the USDA issued a [stakeholder announcement](#) extending its previously-announced foreclosure and eviction moratorium through August 31, 2020. The extended moratorium specifically "applies to: Initiation of foreclosures or completion of foreclosures in process, excluding vacant and abandoned properties [and] Evictions of persons from properties secured by USDA guaranteed loans."

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.

While the Agencies' moratoriums currently expire on August 31, 2020, they are likely to be extended for one more two-month period, which will bring them to the national election on November 3, 2020.

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.

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](#).

Related people

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