COVID-19 National and State Relief Efforts Focus on Single Family Mortgage Loans

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The shuttered storefronts and grounded airplanes that by now have become an all too familiar image of the COVID-19 pandemic are quickly creating a ripple effect through the U.S. economy. As unemployment rises and Americans struggle to pay their bills, federal and state governments and agencies are rushing to provide aid to those most impacted by the virus. A key focus of those efforts has been on mortgage related relief. This article canvasses the rapidly changing regulatory environment related to single family mortgage loans and provides an overview of the relief available to homeowners at both the national and state level.

CONGRESS PROVIDES FORBEARANCE RIGHT AND FORECLOSURE MORATORIUM FOR BORROWERS WITH FEDERALLY BACKED MORTGAGES

The most sweeping mortgage relief measure is in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which was signed into law by President Trump on March 27, 2020. Section 4022 of the CARES Act gives borrowers with federally backed mortgage loans the right to request a forbearance for up to 360 days at any time through June 30, 2020. Federally backed mortgage loans include loans that are insured or guaranteed by the Federal Housing Administration (FHA), the U.S. Department of Veterans Affairs, or the U.S. Department of Agriculture, or that are owned or securitized by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac). Loans backed by the FHA, Fannie Mae, and Freddie Mac account for the majority of new home loans in the United States.

Borrowers with a qualifying loan may request a forbearance even if they are delinquent on their loan payments. Moreover, a loan servicer must grant a forbearance request if the borrower affirms that he or she is experiencing financial hardship because of the COVID-19 outbreak. The servicer may not require any additional documentation from the borrower besides this affirmation. A borrower may request an initial forbearance of up to 180 days and an extension of up to 180 additional days, provided the extension request is made by June 30, 2020. During the forbearance period, the servicer may not impose fees, penalties, or interest beyond what would normally accrue if the required monthly payment were made. Section 4022 of the CARES Act also bars servicers from initiating foreclosure proceedings on federally backed mortgage loans through at least May 17, 2020. The CARES Act does not address adverse reporting to the credit bureaus related to COVID-19 relief measures, although other actions at the federal and state level, as discussed below, do.

FEDERAL HOUSING AGENCIES TAKE SIMILAR ACTIONS TO PROTECT AFFLICTED BORROWERS AND PROMOTE MORTGAGE MARKET LIQUIDITY

The mortgage forbearance and foreclosure moratorium provision of the CARES Act mirrors directives issued by the federal housing agencies over the past few weeks. On March 18, 2020, both the U.S. Department of Housing and Urban Development (HUD)—which includes the FHA—and the Federal Housing Finance Agency (FHFA)—which supervises and regulates Fannie Mae and Freddie Mac—announced 60-day moratoria, running through May 17, 2020, on foreclosure on FHA-insured mortgage loans and loans backed by Fannie Mae and Freddie Mac. HUD further encouraged servicers of FHA-insured mortgages to utilize foreclosure preventive tools when dealing with borrowers impacted by COVID-19, including short and long-term forbearance options and mortgage modifications.

In correspondence to lenders on March 18, 2020, Fannie Mae and Freddie Mac similarly directed lenders to evaluate borrowers who have experienced hardship relating to COVID-19 for a forbearance plan of up to 12 months. Fannie Mae and Freddie Mac indicated that a servicer is not required to obtain documentation of the borrower's hardship in order to offer a forbearance plan. Both Fannie Mae and Freddie Mac also relaxed their prior requirement that the property subject to mortgage loan forbearance be a primary residence; second homes and investment properties are now also included. Under the Fannie Mae and Freddie Mac guidance, lenders must reach out to a borrower at least 30 days before the expiration of his or her forbearance plan to evaluate the borrower for payment deferral or mortgage modification. Fannie Mae and Freddie Mac also have barred lenders from reporting delinquencies related to COVID-19 hardship to the credit bureaus.

Other steps taken by the federal housing agencies are intended to facilitate the continued making of mortgage loans despite restrictions related to COVID-19. The FHFA has directed Fannie Mae and Freddie Mac to allow borrowers flexibility in meeting appraisal and employment verification requirements for mortgage loans. Fannie Mae and Freddie Mac will utilize appraisal alternatives to reduce the need for an appraiser to enter a home to inspect it. Moreover, lenders who cannot obtain a verbal verification of employment before loan closing may obtain a verification through email, a recent pay stub, or a bank statement showing a recent payroll deposit.

U.S. BANKING REGULATORS ENCOURAGE USE OF CAPITAL AND LIQUIDITY BUFFERS TO RESPOND TO COVID-19

Following earlier guidance urging supervised institutions to work constructively with borrowers affected by COVID-19, the U.S. banking regulators—the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC)—issued a joint statement on March 17, 2020 encouraging banks to use their capital and liquidity buffers to do so. The agencies noted that U.S. banks have accrued capital and liquidity buffers well in excess of regulatory minimum requirements and indicated that they support banks using those buffers to support households and businesses. Just a few days later, the FRB, the FDIC, and the OCC issued an interim final rule designed to facilitate banks' usage of their capital buffers. The rule revises the definition of eligible retained income under the agencies' capital rules to provide for gradual implementation of limitations on dividends and other capital distributions if a bank's capital levels decline. The comment period on the interim final rule runs through May

4, 2020.

CALIFORNIA AND NEW YORK ANNOUNCE MORTGAGE FORECLOSURE MORATORIA AND RELATED MORTGAGE RELIEF MEASURES

Two of the states most crippled by COVID-19, California and New York, have taken similar steps to those on the national level in support of struggling homeowners. California governor Gavin Newsom secured commitments from a number of major national banks, as well as nearly 200 state-chartered banks, credit unions, and servicers, to offer mortgage payment forbearances of up to 90 days, pause foreclosure sales and evictions for 60 days, refrain from adverse reporting to the credit bureaus, and waive or refund mortgage-related late fees and other fees. On March 19, 2020, the New York State Department of Financial Services issued guidance to New York state regulated and exempt mortgage servicers encouraging them to offer similar 90-day mortgage payment forbearances, 90-day grace periods to complete trial loan modifications, and a 90-day foreclosure moratorium, hiatus on adverse reporting to the credit bureaus, and waiver of late and online payment fees.