

WHAT PROVISIONS OF THE CARES ACT EVICTION MORATORIUM REMAIN IN EFFECT?

v. 8/28/20

The 120-day eviction moratorium in §4024(b) of the CARES Act expired on July 25, 2020. However, portions of the CARES Act still apply to evictions. Therefore it is still necessary to determine if a property is covered by the Act, and whether these provisions apply. In addition, HUD has extended a protection against eviction from FHA-insured single family properties.

A. CARES Act 30-day notice requirement and protection for tenants at multifamily properties with federally-backed mortgages in forbearance

The following provisions of the CARES Act still apply:

1. **30-day notice requirement:** §4024(c) requires "covered dwellings" (those at properties that participate in a federal subsidy program or have a federally-backed mortgage)* to provide a 30 day notice to vacate after expiration of the 120 day moratorium period prior to filing eviction.**

The 30 day notice requirement in §4024(c) does not have an end date in the statute (compare to other provisions of the CARES Act where Congress chose to include a sunset date). §4024(c) is in Title IV, Subtitle A of the CARES Act. §4029, the last section of Subtitle A, specifies that "the authority provided under this subtitle" terminates December 31, 2020, but only with regard to "new loans, loan guarantees, or other investments". No provision specifies the date when authority to require a 30 day notice per §4024(c) terminates.

Text from law: (available at <https://www.congress.gov/bill/116th-congress/house-bill/748/>)

SEC. 4024. TEMPORARY MORATORIUM ON EVICTION FILINGS.

(a) Definitions.--In this section:

(1) Covered dwelling.--The term "covered dwelling" means a dwelling that--

(A) is occupied by a tenant--

(i) pursuant to a residential lease; or

(ii) without a lease or with a lease terminable under State law; and

(B) is on or in a covered property.

(2) Covered property.--The term "covered property" means any property that--

(A) participates in--

(i) a covered housing program (as defined in section 41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12491(a))); or(ii) the rural housing voucher program under section 542 of the Housing Act of 1949 (42 U.S.C. 1490r); or

(B) has a--

(i) Federally backed mortgage loan; or

(ii) Federally backed multifamily mortgage loan.

...

(4) Federally backed mortgage loan.--The term "Federally backed mortgage loan" includes any loan (other than temporary financing such as a construction loan) that--

(A) is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from 1 to 4 families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

(B) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(5) Federally backed multifamily mortgage loan.--The term "Federally backed multifamily mortgage loan" includes any loan (other than temporary financing such as a construction loan) that--

(A) is secured by a first or subordinate lien on residential multifamily real property designed principally for the occupancy of 5 or more families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

(B) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(b) Moratorium.--During the 120-day period beginning on the date of enactment of this Act, the lessor of a covered dwelling may not--

(1) make, or cause to be made, any filing with the court of jurisdiction to initiate a legal action to recover possession of the covered dwelling from the tenant for nonpayment of rent or other fees or charges; or

(2) charge fees, penalties, or other charges to the tenant related to such nonpayment of rent.

(c) Notice.--The lessor of a covered dwelling unit--

(1) may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate; and

(2) may not issue a notice to vacate under paragraph (1) until after the expiration of the period described in subsection (b).

2. Protections for tenants at multifamily properties with federally backed mortgages in

forbearance: §4023(d) and (e) prohibits multifamily properties with federally backed mortgages **that are in forbearance** from evicting tenants for nonpayment of rent and charging late fees during the forbearance period, and requires 30 day notice to vacate after forbearance period. Borrowers can request forbearance and extensions during the "covered period," which is until December 31, 2020 or the end of the termination date of the national emergency,

whichever is sooner (assuming no extension by Congress). Therefore the actual forbearance period and associated eviction protections, depending on the type of loan, could last until June, 2021.

- The CARES Act provides for up to 3 months of forbearance, so when the protection expires depends on when property enters forbearance.
- FHFA (Fannie and Freddie) [announced in June](#) that their borrowers may now qualify for forbearance for up to 6 months. (Also FHFA [just announced](#) that borrowers are required to inform tenants of these protections).
- USDA [appears to offer](#) forbearance options for multifamily borrowers for up to 6 months.
- HUD [announced](#) that multifamily borrowers with HUD-held loans or FHA-insured loans are eligible for up to 3 months of forbearance in accordance with the CARES Act.

Text from law (available at <https://www.congress.gov/bill/116th-congress/house-bill/748/>)

SEC. 4023. FORBEARANCE OF RESIDENTIAL MORTGAGE LOAN PAYMENTS FOR MULTIFAMILY PROPERTIES WITH FEDERALLY BACKED LOANS.

(a) In General.--During the covered period, a multifamily borrower with a Federally backed multifamily mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency may request a forbearance under the terms set forth in this section.

(b) Request for Relief.--A multifamily borrower with a Federally backed multifamily mortgage loan that was current on its payments as of February 1, 2020, may submit an oral or written request for forbearance under subsection (a) to the borrower's servicer affirming that the multifamily borrower is experiencing a financial hardship during the COVID-19 emergency.

(c) Forbearance Period.--

(1) In general.--Upon receipt of an oral or written request for forbearance from a multifamily borrower, a servicer shall--

(A) document the financial hardship;

(B) provide the forbearance for up to 30 days; and

(C) extend the forbearance for up to 2 additional 30 day periods upon the request of the borrower provided that, the borrower's request for an extension is made during the covered period, and, at least 15 days prior to the end of the forbearance period described under subparagraph (B).

(2) Right to discontinue.--A multifamily borrower shall have the option to discontinue the forbearance at any time.

(d) Renter Protections During Forbearance Period.--A multifamily borrower that receives a forbearance under this section 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 paragraph (1) for late payment of rent.

(e) Notice.--A multifamily borrower that receives a forbearance under this section--

- (1) may not 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) may not issue a notice to vacate under paragraph (1) until after the expiration of the forbearance.**

(f) Definitions.--In this section:

(1) Applicable property.--The term "applicable property", with respect to a Federally backed multifamily mortgage loan, means the residential multifamily property against which the mortgage loan is secured by a lien.

(2) Federally backed multifamily mortgage loan.--The term "Federally backed multifamily mortgage loan" includes any loan (other than temporary financing such as a construction loan) that--

(A) is secured by a first or subordinate lien on residential multifamily real property designed principally for the occupancy of 5 or more families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

(B) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(3) Multifamily borrower.--the term "multifamily borrower" means a borrower of a residential mortgage loan that is secured by a lien against a property comprising 5 or more dwelling units.

(4) Covid-19 emergency.--The term "COVID-19 emergency" means the national emergency concerning the novel coronavirus disease (COVID-19) outbreak declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.).

(5) Covered period.--The term "covered period" means the period beginning on the date of enactment of this Act and ending on the sooner of--

(A) the termination date of the national emergency concerning the novel coronavirus disease (COVID-19) outbreak declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.); or

(B) December 31, 2020.

* Tenants, especially those at single-family properties (1-4 units) often do not have access to information about whether their dwelling is at a covered property. The following resources are available to assist in determining whether a property is covered. See Louisiana Supreme Court CARES Act bench card for additional resources and information.

- Anyone can access the following:
 - This information is only sometimes recorded in public land records, original mortgage, or closing documents. Often mortgages are transferred later and it is not reflected in these documents.
 - The National Low Income Housing Coalition's database of covered multifamily properties: <https://www.nlihc.org/federal-moratoriums>. (Note: This database does not cover single-family

- properties with 1-4 units and does not reflect *all* multifamily properties with Fannie Mae and Freddie Mac mortgages).
- Databases to determine whether a multifamily property has a Fannie Mae or Freddie Mac mortgage (Note: These tools do not cover single-family properties with 1-4 units).
 - Fannie Mae: <https://www.knowyouroptions.com/rentersresourcefinder>
 - Freddie Mac: <https://myhome.freddiemac.com/renting/lookup.html>
 - Database to determine whether a multifamily property has an FHA mortgage or other HUD assistance (Note: This tool does not cover single-family properties with 1-4 units): https://www.hud.gov/program_offices/housing/mfh/hsgrent/mfhpropertysearch
 - The National Housing Preservation Database of multifamily properties with certain federal subsidies: <https://preservationdatabase.org/>.
- Landlords can:
 - Check their mortgage documents (though a later assignment of the mortgage to Fannie Mae or Freddie Mac may not be recorded on the mortgage documents).
 - Call the FHA, VA, USDA, Fannie Mae or Freddie Mac escalation number to inquire as to the status of their mortgage: <https://www.hmpadmin.com/portal/resources/advisors/escalation.jsp>.
 - Call the Road Home program to find out if their property is subject to a Road Home mortgage: <https://www.road2la.org/HAP/Default.aspx>
 - Look up if Fannie Mae or Freddie Mac own their mortgage at:
 - <https://www.consumerfinance.gov/ask-cfpb/how-can-i-tell-who-owns-my-mortgage-en-214/>
 - Fannie Mae: <https://www.knowyouroptions.com/loanlookup>
 - Freddie Mac: <https://ww3.freddiemac.com/loanlookup/>

**CARES Act §4024(c) is silent as to whether 30 day notice requirement applies to evictions for cause other than non-payment of rent (compare to the moratorium on eviction filings §4024(b), which only applies to evictions for nonpayment).

B. HUD protection against eviction for tenants of single-family properties with FHA insured mortgages

HUD Mortgagee Letter 2020-27 from August 27, 2020 states:

"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.**"

This would apply primarily to tenants at owner-occupied 1-4 unit buildings, for example a homeowner renting the other side of a double.

Available at: <https://www.hud.gov/sites/dfiles/OCHCO/documents/2020-27hsgml.pdf>