

CARES Act Offers Relief to Multifamily (and Senior Housing?) Borrowers with Federally Backed Loans

By: Ken Shevlin & Ryan A. Hanson

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Under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or Act), certain borrowers of loans secured by mortgages held by Fannie Mae and Freddie Mac, or insured by HUD, may request a temporary forbearance from payment obligations under Section 4023 of the Act.

Qualifying Borrowers

To qualify for relief under Section 4023 of the Act, a borrower must:

1. Be a borrower of a ?Federally backed multifamily mortgage loan.? Generally, this means any loan (other than temporary financing such as a construction loan) secured by residential multifamily real property designed principally for the occupancy of five or more families that is made, insured, guaranteed or assisted by a federal government agency, such as Fannie Mae, Freddie Mac, or HUD;
2. Be current on its payments as of February 1, 2020; and
3. Affirm that it is experiencing a financial hardship as a result of the COVID-19 emergency (As of this writing, the CARES Act does not include a definition or parameters for the determination of ?financial hardship,? so companies should consult counsel in the event there is any question whether they qualify).

Forbearance Period

Upon receipt of a request from a qualified borrower, a loan servicer must provide an initial forbearance period of up to thirty (30) days. The initial forbearance period may be extended for up to two (2) additional 30-day periods at the borrower?s request, as long as the request is made before December 31, 2020 or, if sooner, the termination date of the COVID-19 national emergency as declared by the President ? and at least 15 days prior to the end of the initial forbearance period. The forbearance takes

effect on submittal of the request, and there is no need for lender or government approval. The borrower may discontinue the forbearance at any time.

Late fees, Penalties and Interest

Section 4023 of the CARES Act does not expressly prohibit the mortgage lender from accruing borrower late fees, penalties, and interest during the forbearance period. The payments are not forgiven, although they are effectively paused during the forbearance period.

Impact of Legislation on Landlord-Tenant Relationships

During the forbearance period, a borrower that receives the benefit of forbearance on its loan payments may not evict or initiate the eviction of a tenant on the applicable property solely for nonpayment of rent; charge any late fees; or issue a notice to vacate until after the forbearance period has lapsed. This restriction is in addition to those under Section 4024 of the CARES Act, which imposes, as of March 27, 2020, a 120-day moratorium on eviction actions and other remedies against tenants of particular properties, including those that are subject to a federally-backed mortgage loan or multifamily mortgage loan.

Impact of Legislation on Senior Housing Borrowers

Section 4023 begs the question whether senior housing borrowers may request a forbearance under Section 4023 of the CARES Act, given the ambiguity of the definition of "[f]ederally backed multifamily mortgage loan." While the term includes loans as to properties that are "designed principally for the occupancy of 5 or more families," which, on its face, would include skilled nursing and assisted living facilities, it remains unclear whether the forbearance applies in this context. Notably, the Office of Residential Care Facilities (ORCF), which administers HUD's Section 232 loan program, indicated in its *Questions and Answers for External Stakeholders* Coronavirus (COVID-19) Last Updated: April 10, 2020 (5:00 p.m., ET)* that HUD "does not presently have [the] statutory authority" to consider mortgage payment relief through a forbearance program. ORCF has indicated that it would take immediate steps to implement a forbearance agreement program if new authority is provided by the federal government. Fannie Mae and Freddie Mac have not issued similar guidance at this time.

Will Congress and Government Agencies Issue Interpretive Guidance?

In light of the COVID-19 emergency, the CARES Act was enacted quickly and is still being interpreted by all concerned parties. It may warrant further clarification from Congress or regulatory action by relevant government agencies. Williams Mullen will continue to monitor the actions taken by Congress and government agencies (particularly Fannie Mae, Freddie Mac and HUD) to provide temporary relief to borrowers during the COVID-19 pandemic. We will be prepared to share our analysis as soon as details become available. For further information, please contact any member of our team.

Please note: This alert contains general, condensed summaries of actual legal matters, statutes and opinions for information purposes. It is not meant to be and should not be construed as legal advice. Readers with particular needs on specific issues should retain the services of competent counsel.

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- Ryan A. Hanson ? 757.473.5442 ? rhanson@williamsmullen.com
- Ken Shevlin ? 434.951.5719 ? kshevlin@williamsmullen.com

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