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CARES Act Forbearance and Reporting Requirements

Acting with uncharacteristic speed, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) in March to address the effects of the nationwide coronavirus (“COVID-19”) pandemic and national emergency on individuals and businesses.¹ In addition to creating the much publicized Paycheck Protection Program, the legislation also provides ongoing relief to borrowers who are experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency. Just two sections of the CARES Act, 4021 and 4022, mandate significant borrower assistance, including a foreclosure moratorium on all federally-backed mortgage loans,² a legislative right for consumers to obtain certain loan forbearance, and credit protection to borrowers who avail themselves of loan or account forbearance.

Section 4022 of the CARES Act requires forbearance of federally backed mortgage loans if requested by a borrower. Borrowers who are either current or in a delinquency status on a loan may request forbearance by submitting a request to the loan servicer and providing an affirmation that the borrower is experiencing a financial hardship during the COVID-19 emergency.³ Upon such request, forbearance is required to be granted for up to 180 days. The forbearance must be extended for an additional period of up to 180 days if requested by the borrower, and the initial or extended period of forbearance may also be shortened by the borrower. Thus, the law requires that servicers grant forbearance easily and that borrowers receive an automatic right to an extension of up to 360 total days of forbearance.

Additionally, upon receiving a forbearance request from a borrower, the servicer is prohibited from requesting any additional documentation beyond the borrower’s financial hardship attestation. The charging of any fees, penalties, or interest to the borrower in connection with the forbearance, other than those allowed for in the underlying mortgage contract, is prohibited. Finally, Section 4022 prevents a servicer from initiating a judicial or non-judicial foreclosure process, moving for a foreclosure judgment or order of sale, or executing a foreclosure-related eviction or foreclosure sale, except for vacant or abandoned property, for not less than the 60-day period beginning on March 18, 2020.⁴ The Federal Housing Finance Agency has announced that Fannie Mae and Freddie Mac will extend their single-family moratorium on foreclosures and evictions until at least August 31, 2020.

The CARES Act also ensures that borrowers will not suffer negative reports to their credit for availing themselves of their new forbearance right. Section 4021 of the CARES Act amends the Fair Credit Reporting Act to provide credit protection to borrowers as a result of the COVID-19 pandemic for the time period of January 31, 2020 until 120 days after the COVID-19 national emergency declaration is terminated. If a furnisher of information to a credit reporting agency makes an accommodation on a borrower’s credit obligation or account and the borrower complies with the accommodation, the furnisher must report the obligation or account as “current”. An “accommodation” includes an agreement to defer payment(s), make a partial payment, forbear any delinquent amounts, modify a loan or contract, or any other assistance or relief granted to a consumer who is affected by the COVID-19 pandemic during the covered period. If the borrower’s credit obligation or account was delinquent before the furnisher made the accommodation, the furnisher may maintain the delinquent status while the accommodation is in effect. If, however, the borrower brings the delinquent credit obligation or account current during the accommodation period, the furnisher must report the credit obligation or account as current. Thus, a borrower who is experiencing a COVID-19 related financial hardship will not have his or her credit negatively impacted by a forbearance as long as the borrower conforms to the terms of the forbearance. The reporting requirements do not apply to charged-off credit obligations or accounts.

Banks should take note of the aforementioned CARES Act borrower relief requirements and remember that these, as well as other CARES Act requirements, will extend beyond the end of the national COVID-19 emergency period. ●

For more information about this article or other legal banking issues, contact DeMarion Johnston, VBA General Counsel, at djohnston@vabankers.org or (804) 819-4714. This article has been prepared for informational purposes only and is not legal advice.

1. Pub. L. 116–136 was signed into law on March 27, 2020.
2. “Federally backed mortgage loan” includes any loan which 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 that is insured by the Federal Housing Administration; insured under section 255 of the National Housing Act; guaranteed under section 184 or 184A of the Housing and Community Development Act of 1992; guaranteed or insured by the Department of Veterans Affairs; guaranteed or insured by the Department of Agriculture; made by the Department of Agriculture; or purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.
3. Pub. L. 116–136, Section 4022.
4. Pub. L. 116–136, Section 4022.