

Multifamily Capital

# Memorandum regarding FHA forbearance

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To: Multifamily Capital Clients  
Subject: New FHA Insured Loan Forbearance Agreements  
Date: April 14, 2020

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The CARES Act was passed for the purpose of providing assistance to individuals, small and distressed businesses including tenants and owners of multifamily apartment buildings. The legislation establishes certain forbearance and eviction limitations upon owners/lenders of properties secured by government-backed loans. The U.S. Department of Housing and Urban Development (HUD) provided recent guidance to lenders regarding acceptable mortgage forbearance arrangements that may be offered to multifamily property owners upon compliance with certain conditions. Each HUD lender will likely have their own forbearance programs but they will be generally consistent. (Note that we are awaiting guidance from HUD as to the availability of similar forbearance for healthcare transactions financed under the Section 232 and 232/223(f) programs.)

**Please note that while the following information is what is available to date, circumstances may change. While Wells Fargo will endeavor to continuously update you, we encourage you to review with legal counsel this memorandum, the CARES Act and any other local and state law or other government restrictions which may be applicable to your circumstances. Wells is not in a position to represent or to advise you on those matters which specifically affect your properties and its operations.**

We recommend that the borrower consider exploring other relief measures to address cash flow shortages caused by the COVID-19 emergency prior to taking advantage of the forbearance relief. In this regard, HUD will review and quickly approve requests for suspension of Reserve for Replacement deposits, releases from the Reserve for Replacement or Residual Receipts account, or other measures to make debt service and tax and insurance payments. In addition, subject to HUD consent, a borrower may seek financing or real estate tax relief from the applicable jurisdiction.

In order to qualify for forbearance, (i) the loan must be in good standing and payments were current as of February 1, 2020, and (ii) the Borrower must clearly demonstrate that the property has suffered a substantial decline in operations as a result of financial hardship due to tenants' inability to pay rent. If the foregoing requirements are met, a Borrower may request forbearance and the following are the general terms:

- The Borrower must repay the total unpaid obligations in equal monthly payments, without additional interest or prepayment premiums, over no greater than 12 months following expiration of the forbearance period.
- The Borrower must agree that during the forbearance period, it will not evict a tenant based solely on non-payment of rent, whether caused by illness, job loss, reduced hours, temporary unpaid leave or similar circumstances, and will otherwise comply with the requirements of the CARES Act.

- Wells Fargo will require Borrower to execute a standard form of Forbearance Agreement approved by HUD. No modifications of its terms will be permitted.
- Borrower shall pay legal fees in connection with a Forbearance Agreement in the amount of \$750.
- Forbearance is not available for projects that have not yet achieved final endorsement.
- All income derived by the property must be used for operating expenses and Borrower may not distribute any surplus cash to the sponsor or principals until all amounts which have been deferred have been repaid.
- No release of escrows for working capital or operating deficits (other than for their intended purpose) that are being held by Wells Fargo will be considered until all amounts have been repaid.
- Owner advances should only be used with prior HUD approval and must be documented and repaid as required by HUD.
- A request from any Borrower for Forbearance must be verbally or in writing and the following documentation must be provided:
  - A hardship letter that makes a clear compelling case of hardship and provides verifiable quantitative conclusions. The letter should include a description of the specific reasons for the request, the tenant employment concentration and employment status, number of tenants who have advised of their inability to pay rent as a result of COVID-19, number of tenants who have indicated that they intend to stop rental payments, employment and retention status of property employees and status of pending eviction
  - A delinquency and forbearance report demonstrating the effect on the property's operation and performance;
  - A 2019 year-end operating statement (if not already provided);
  - A certified year to date operating statement and anticipated changes in financial position;
  - A certified current rent roll and certified month to date collection report which must contain the following certification: **I hereby certify under penalty of perjury that all of the information I have provided on this form and in any accompanying documentation is true and accurate. I acknowledge that if I knowingly have made any false, fictitious, or fraudulent statement, representation, or certification on this form or on any accompanying documents, I may be subject to criminal, civil, and/or administrative sanctions, including fines, penalties, and/or imprisonment under applicable federal law, including but not limited to 12 U.S.C. § 1833a; 18 U.S.C. §§1001, 1006, 1010, 1012, and 1014; 12 U.S.C. §1708 and 1735f-14; and 31 U.S.C. §§3729 and 3802.**
  - A description of what steps you will take during the forbearance period to protect and maintain the property;
  - Name and contact information for counsel or other party to receive documents for execution; and
  - Any other information which may support your request.

All requests from the Borrower must be emailed to [mftransactions@wellsfargo.com](mailto:mftransactions@wellsfargo.com). Upon receipt of a complete package, Wells Fargo asset management will review and advise the Borrower of its decision regarding whether the forbearance request is approved or denied and if denied, the reasons for that decision. Given the magnitude of the current emergency, we expect the volume of forbearance requests to be significant. Wells Fargo will make every effort to review and respond as quickly as possible.

As this situation continues to evolve, please note that the Forbearance Program requirements or procedures are subject to change. Please reach out to your Wells Fargo Multifamily asset management contact for any additional questions or you may access the website: [https://www.hud.gov/program\\_offices/housing/mfh](https://www.hud.gov/program_offices/housing/mfh)