

Multifamily Capital

# Memorandum-GSE Forbearance

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To: Multifamily Capital Clients  
Subject: New GSE Forbearance Agreements  
Date: April 10, 2020

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In order to provide you with the most up-to-date information available with respect to the Fannie Mae and Freddie Mac Forbearance Programs, the following supplements the information contained in our earlier memo of April 2, 2020. In addition to greater definition provided by the agencies, since that time the CARES Act has been passed which contains certain requirements which possibly have an effect on multifamily property owners and borrowers of GSE loans including forbearance and obligations with respect to eviction of tenants.

**Please note that while the following information is what is available to date, circumstances are very fluid and changing almost daily. 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 Fargo is not in a position to represent or to advise you on those matters which specifically affect your properties and its operations.**

The GSE Forbearance Programs have been established for the purpose of assisting Borrowers in need of significant financial assistance specifically as a result of COVID-19. Requests for relief will be carefully reviewed and must be reasonable and fit the circumstances of the property and the Borrower. You are encouraged to fund cash shortfalls and request forbearance only if needed to continue business operations. Requests for forbearance in anticipation of difficulty cannot be accepted and conditional approvals are unavailable.

In order to qualify for the programs, (i) the loan must be in good standing which requires that all payments are current through the date on which forbearance will become effective and there must be no other default pursuant to the loan documents 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 which results from the effects of COVID-19.

## Requests for Forbearance

Upon meeting the qualifications noted above, the Borrower may make a request for forbearance by email to [mftransactions@wellsfargo.com](mailto:mftransactions@wellsfargo.com). Note that at this time, there will be no on-going discussions regarding your loan and the request submitted should be limited to the three-month forbearance programs only.

- a) You must keep in mind your timing of requests for forbearance. It is important that you evaluate your situation and at the time a request is submitted, cash flows must be inadequate to cover debt service for the first month for which you require forbearance.
- b) Requests must be submitted at least 10 days prior to the date on which forbearance commencement is requested. Upon receipt of a full package containing the foregoing requested documents, Wells Fargo Asset Management will evaluate the package as promptly as possible and you will be advised in writing of approval or denial. If denied, you will be provided with the reasons for such decision. Upon approval, our counsel will prepare for execution the necessary Forbearance Agreement. Note Forbearance Agreements are non-negotiable. The forms of Forbearance Agreements may be obtained directly from the applicable websites listed below.
- c) The 90 day forbearance period starts with the date which will be set forth in the Forbearance Agreement itself. For Fannie Mae, the commencement may be for any month between May and August and for Freddie Mac, any month between May and December. Please note that Freddie Mac requires that any Forbearance Agreement itself be executed on the earlier of the termination of the National Emergency declared by the President of the United States and December 21, 2020. At this time, Fannie Mae has not published such a deadline.
- d) Requests must initially include the following:
  - i. A letter of “hardship” providing notice of the period for which forbearance is requested. The letter should include a complete narrative of the impact of COVID-19 on the property and its operations. 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, status of pending eviction actions and any other information you feel is relevant for review;
  - ii. A delinquency and forbearance report demonstrating the effect on the property’s operation and performance;
  - iii. A 2019 year-end operating statement (if not already provided);
  - iv. A certified year to date operating statement and anticipated changes in financial position;
  - v. A current rent roll and certified month to date collection report;
  - vi. A description of what steps you will take during the forbearance period to protect and maintain the property;
  - vii. Name and contact information for counsel or other party to receive documents for execution; and
  - viii. Any other information which may support your request.

## Terms of Forbearance

The terms of forbearance are set forth in the Forbearance Agreements but below are the salient terms:

- a) The Borrower must repay the total unpaid obligations, without late charges, additional interest or prepayment premiums, over the ensuing 12-month period or a shorter period if the Borrower chooses. Such repayment is in addition to the regular monthly payments due.
- b) The Borrower must agree that during the forbearance period, it will not initiate eviction actions based solely on non-payment of rent by residential tenants occurring as a consequence of the COVID-19 emergency, whether caused by illness, job loss, reduced hours, temporary unpaid leave or similar circumstances and will not continue eviction actions for non-payment commenced prior to the commencement of the forbearance period. Freddie Mac and Fannie Mae currently have differing provisions regarding termination of this covenant. See below.
- c) All cash flow and revenues must be used for normal operating expenses with no distribution to the sponsor or principals of the Borrower. Fannie Mae has additional requirements with respect to excess cash flow. See below.
- d) All other terms and conditions contained in the Loan Documents will remain in full force and effect.

## Forbearance Terms Applicable To Specific GSE

There are certain terms set forth in one or the other Forbearance Agreements and the primary differences are set forth below. Borrowers and/or their legal counsel should review the documents thoroughly to understand the terms and requirements of each agency's program.

### Freddie Mac Only:

- a) Borrower must remain current with all tax, water, sewage or other such bills as they become due, unless the Borrower has obtained written forbearance relief from such authorities. [Note: while this covenant is not contained in the Fannie Mae Forbearance Agreement, it is required by the Loan Documents]
- b) Within three business days after any material change or impact to Property operations due to COVID-19, Borrower will provide written updates regarding the change and how this has affected Borrower's financial condition, tenants and/or occupancy of the Property. Each written update will include a statement that the information submitted by the Borrower is true, accurate and correct.
- c) Should the local taxing authorities offer real estate tax relief and Borrower elects such relief, Borrower must advise the Lender of the terms and conditions prior to accepting such relief.
- d) With respect to the suspension of any eviction of tenants for non-payment, such prohibition ends upon completion of the forbearance period (90 days).

**Fannie Mae Only:**

- a) Notwithstanding the 12 equal payment repayment schedule, Borrower shall bring the Loan current upon receipt of business income (business interruption/rent loss) insurance proceeds or upon receipt of any other financial relief or assistance available to Borrower from any other source, including, but not limited to, any local, state, or federal government assistance or relief program.
- b) With respect to the suspension of any eviction of tenants for non-payment, Fannie Mae's prohibition shall be effective for the longer of: (i) the eviction moratorium in Section 4024 of the CARES Act (120 days after the enactment of the CARES Act), (ii) the months of actual payment forbearance, or (iii) as otherwise required by applicable law.
- c) For each month through the end of the forbearance period, Borrower is required to remit to Lender, no less frequently than monthly, all net operating income from the Property. See the Fannie Mae forbearance agreement for additional detail.

As this situation continues to evolve, please note that the Forbearance Program requirements or procedures are subject to change. In addition to the updates that we will provide, you may also access the information on the GSE websites:

<https://mf.freddie.mac.com/COVID-19/>

<https://multifamily.fanniemae.com/multifamily-covid-19>

Please reach out to your Wells Fargo Multifamily asset management contact for any additional questions.