

Yale University

EliScholar – A Digital Platform for Scholarly Publishing at Yale

YPFS Documents (Series 1)

[Browse by Media Type](#)

7-1-2020

Notice H 20-07

United States: Department of Housing and Urban Development (HUD)

Follow this and additional works at: <https://elischolar.library.yale.edu/ypfs-documents>

Recommended Citation

United States: Department of Housing and Urban Development (HUD), "Notice H 20-07" (2020). *YPFS Documents (Series 1)*. 8571.

<https://elischolar.library.yale.edu/ypfs-documents/8571>

This Document is brought to you for free and open access by the Browse by Media Type at EliScholar – A Digital Platform for Scholarly Publishing at Yale. It has been accepted for inclusion in YPFS Documents (Series 1) by an authorized administrator of EliScholar – A Digital Platform for Scholarly Publishing at Yale. For more information, please contact elischolar@yale.edu.



OFFICE OF HOUSING

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

Special Attention of:
All Regional Directors
All Multifamily Hub Directors
All Program Center Directors
All Owners and Management Agents of
Multifamily Insured, 202/811, and Section 8 Subsidized
Properties
All Contract Administrators

NOTICE H 20-07

Issued: July 1, 2020

Expires:

Subject: Coronavirus Aid, Relief, and Economic Security (CARES) Act Eviction Moratorium

I. Purpose:

This Notice provides background and up-to-date guidance on HUD's policies and procedures regarding the eviction relief provided to tenants of certain multifamily properties under the Coronavirus Aid, Relief, and Economic Security (CARES) Act signed into law on March 27, 2020. Specifically, this Notice extends the moratorium on evictions for all HUD-insured or HUD-held mortgages while under forbearance and also provides guidance on tenant protections for multifamily properties not subject to forbearance and those with HUD-assisted units. Until rescinded or amended this will be Multifamily Housing's procedures for the duration of the national emergency declared by the President on March 13, 2020 ("COVID-19 emergency").

II. Background:

This Notice is being issued to provide guidance to HUD Field Offices, owners, agents, residents and contract administrators on assisting residents of HUD Multifamily Housing impacted by the COVID-19 emergency or experiencing a loss of income as a result of the COVID-19 emergency. HUD is particularly concerned about the impact of the expiration of the tenant protections provided by the CARES Act, and encourages owners, agents and contract administrators to work with those residents who have been impacted by the COVID-19 emergency to the extent practicable.

Section 4024 of the CARES Act states that during the 120-day period beginning on the date of enactment of the CARES Act, the lessor of certain multifamily properties under Section 4024 of the CARES Act 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 nonpayment of rent.

In addition, 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).

An owner or agent of a multifamily property covered by the CARES Act may only charge fees and penalties during the eviction moratorium if the charge is wholly unrelated to a tenant's nonpayment of rent. Moreover, the CARES Act prohibits an owner or agent during the eviction moratorium from filing for possession of a unit solely for nonpayment of any rent, fee or charge. This restriction holds true regardless of the date the fee or charge was initially assessed. While the CARES Act is silent on what an owner or agent can charge after the eviction moratorium ends, HUD interprets this provision to mean that unpaid rents will accrue during the eviction moratorium and may be collected from tenants after it concludes, along with any fees and charges that were lawfully assessed and left unpaid prior to the moratorium's commencement on March 27, 2020. Conversely, fees and charges the CARES Act prohibits from assessment during the moratorium may not be imposed after the moratorium ends on an accrued and delayed basis.

The 120-day period will end on July 24, 2020 and, to assist tenants that experience job loss or income reduction as a result of the COVID-19 emergency, the Office of Multifamily Housing is taking the actions described in this Notice

III. Tenant Protections During Multifamily Forbearance

A multifamily borrower/owner that receives a forbearance, pursuant to Section 4023 of the CARES Act 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 (1) for late payment of rent.

In addition, a multifamily borrower/owner that receives a forbearance pursuant to Section 4023 of the CARES Act may not:

- (1) 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) issue a notice to vacate under paragraph (1) until after the expiration of the forbearance.

Borrowers that requested to receive forbearance immediately upon the enactment of the CARES Act are approaching the end of the above described 90-day term. These owner/borrowers must continue to comply with the 120-day eviction moratorium and other renter protections required under Section 4024. Owner/borrowers that received, or will receive, forbearance under the CARES Act at a later date remain subject to the eviction moratorium and renter protections provisions under either Section 4023(d) or Section 4024, as applicable, until both the moratorium and the borrower's forbearance periods have expired. During the borrower's forbearance period, the borrower must inform all residents of the prohibition against eviction solely for non-payment of rent. For more information on HUD's implementation of Section 4023 of the CARES Act and its policies on forbearance (including renter protections), see ML 2020-09 at <https://www.hud.gov/sites/dfiles/OCHCO/documents/2020-09hsngml.pdf>

Many borrowers and lenders will negotiate additional forbearance relief beyond the 90-day period provided in the CARES Act. HUD prior approval is required for such additional forbearance. HUD is concerned the tenant eviction protections afforded by the CARES Act may not carry beyond the 120-day period and terminate with the forbearance agreement extensions. This Notice extends the eviction moratorium and renter protections for all HUD-insured or HUD-held mortgages while under forbearance. As a matter of policy, HUD will condition approval on the borrower's agreement to similarly extend the Section 4023(d) renter protections. Consistent with the tenant protections in the CARES Act and ML 2020-09, no borrower will be permitted to initiate eviction proceedings based solely on a tenant's failure to pay rent, fees, or other charges while enjoying forbearance relief, whether initiated under the CARES Act or by lender agreement, or for the full duration of the 120-day moratorium. Further, borrower/owners of such properties, while under forbearance (meaning debt service payments are currently not being collected by the lender), cannot (1) 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 owner/borrower provides the tenant with a notice to vacate solely for nonpayment of rent or other fees or charges or charge any late fees, penalties, or other charges to a tenant for late payment of rent and (2) issue a notice to vacate under paragraph (1) until after the expiration of the forbearance.

In addition, HUD is requiring the following requirements as conditions of any new, extended, or amended forbearance arrangements due to the COVID-19 emergency for a multifamily property. Note such extended or amended forbearance request must be submitted to the field Multifamily Account Executive or Resolution Specialist for approval.

1. The owner/borrower must not evict a tenant during the borrower's forbearance period if the eviction is due solely to non-payment of rent.

2. The owner/borrower must allow a tenant that missed rent payments during the borrower's forbearance period to make up such missed rent payments over a reasonable time as determined in the sole discretion of the borrower. The owner/borrower may not require missed rent payments be repaid in one lump sum at the end of the forbearance period.
3. During the owner/borrower's forbearance period, during the borrower's repayment period following the forbearance and until the borrower has repaid all forborne amounts, the borrower must not charge tenants late fees or penalties due to late or missed rent payments.
4. During the owner/borrower's forbearance period, during the borrower's repayment period following the forbearance, and until the borrower is current on its loan obligations, the borrower must provide at least 30 days' notice to vacate to any tenant that is being evicted due solely to non-payment of rent. This notice to vacate must be given before the borrower repossesses the unit from the tenant but cannot be given prior to the expiration of the borrower's forbearance period.
5. During the owner/borrower's forbearance period, the borrower must inform all residents of the prohibition against eviction solely for non-payment of rent.

IV. Tenant Protections for Mortgaged Properties Not Subject to Forbearance

HUD is concerned about the termination of the eviction moratorium in Section 4024 of the CARES Act. While the extension of the eviction protections provided to tenants residing in properties under forbearance will assist some renters, many tenants in properties with FHA-insured and HUD-held mortgages and Section 202 and Section 811 financing not under forbearance, who have experienced income loss, will not be similarly protected. HUD is encouraging all owners of properties with FHA insured and HUD held mortgages and Section 202/Section 811 financing to work with tenants to avoid evictions. Such measures could include rent repayment plans, delayed evictions, and/or other measures to avoid evictions during these difficult times. It should be noted that many state and local jurisdictions have local moratoria on evictions and owners and their counsel should check local requirements.

Owners are reminded that they should pursue available financial relief measures when necessary, including reserve for replacement and residual receipt account releases; suspension of reserve for replacement account deposits; owner advances; and/or loans or other resources from outside sources to lessen the impact of lost rental income during this time. ML 2020-09, under Continuing Program Obligations describes such measures in more detail.

V. Tenant Protections for Assisted Housing Units

The CARES Act provides funding to assist in supporting various needs of project-based Section 8, Section 202 and Section 811 programs. A portion of those funds have been designated for increased rental subsidy to cover tenant loss of income during the COVID-19 emergency. Tenants in those program types have the option to request an interim recertification (IR) to reflect the loss of income, thus minimizing the impact of a loss caused by the COVID-19 emergency. The purpose of the allocated CARES Act funds is to cover the difference in reduced tenant rental payments to the property. HUD encourages tenants that receive housing assistance to inform their landlord of losses of income and request an IR, and owners to inform tenants of their ability to request an IR in the event of reduced or lost income. Guidance regarding IR requirements can be found in HUD Handbook 4350.3, Section 2 of Chapter 7 found at https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsg/4350.3

Tenants receiving housing assistance that experienced extenuating circumstances that prevented a timely recertification that resulted in an increase in tenant payment (when permitted by state/local laws) may owe the landlord/owner rent for months that have passed. HUD encourages owners to work with tenants on a repayment agreement for past due rental payments.

Tenants and landlords will find helpful information, including contact information for assistance for subsidized tenants, in the following brochure, Addressing Tenant Concerns During the COVID-19 National Emergency, https://www.hud.gov/sites/dfiles/Housing/documents/MF_Tenant_Concerns_COVID-19_Brochure.pdf

VI. Paperwork Reduction Act

Paperwork reduction information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB Control Number.

Questions:

Questions about this Notice should be addressed to the Office of Asset Management and Portfolio Oversight.

Acting Assistant Secretary for Housing-
Federal Housing Commissioner

Distribution: W-3-1,