



HUD issues mortgagee letters implementing new debt service reserve requirements and forbearance protocol during coronavirus (COVID-19)

By Alex Rosso, Susanna Mitchell, Richard M. Price, and Deborah VanAmerongen

On April 10, 2020, HUD issued [mortgagee letter 2020-11](#), introducing new debt service reserve requirements for Section 223(f) transactions, and [mortgagee letter 2020-09](#), implementing a standard forbearance protocol for multifamily borrowers, lenders, and servicers pursuant to the provisions of the CARES Act, signed into law on March 27, 2020. The two letters are summarized below.

Debt service reserve for Section 223(f) transactions to offset anticipated operating losses

Market-rate transactions

- For market-rate transactions that have yet to reach endorsement or projects that have been issued a commitment but have not yet rate locked, HUD will require a nine-month debt service reserve, which will be held until the latter of three consecutive months of debt service coverage or six months from the date of endorsement.
- For projects that have a commitment in place and have rate locked, HUD will accept a twelve-month stress test that assumes an economic vacancy based upon local market conditions and renter profile of the project, but in any event no less than 30%.

Affordable transactions

- For low-income housing tax credits transactions, HUD will review the investor lease-up and operating deficit reserve requirements for adequacy. If HUD determines that the reserve requirements are inadequate, HUD may increase the reserve amounts up to an additional six to nine months of debt service.
- For refinance projects with existing tax credits, HUD will require a twelve-month reserve as may be modified by the results of a stress test that assumes an economic vacancy based upon local market conditions and renter profile of the project, but in any event no less than 50% and a debt service coverage ratio of 1.15.

- Projects with greater than 90% Section 8 Project-Based Rental Assistance will not be required to post a debt service reserve escrow.

Cash-out refinance transactions

- Cash-out proceeds in excess of 250% of the non-critical repair escrow must be used to fund the debt service reserve account. The release of the escrow will be the latter of (i) completion of all non-critical repairs or (ii) achievement of three consecutive months of program debt service coverage or six months from the date of endorsement.

Forbearance protocol for multifamily borrowers, lenders, and servicers pursuant to the provisions of the CARES Act

Forbearance pursuant to the CARES Act

- A borrower current on its payments as of February 1, 2020, may submit an oral or written request for forbearance to the borrower's servicer, affirming that the project is experiencing financial hardship during the COVID-19 emergency.
- Forbearance will be granted for up to thirty days and may be extended for up to two additional thirty-day periods.
- During forbearance, an owner may not evict or initiate the eviction of a tenant for the nonpayment of rent or charge any late fees or penalties.
- Borrowers are encouraged to enter into payment plans with residential and commercial tenants that experience an income reduction or temporary loss of household income but are able to make up the difference with increased monthly payments over time, and HUD does not need to approve such arrangements.
- During forbearance, distributions may not be taken, and all material terms and conditions of the HUD loan documents and the FHA regulatory agreement remain in full force and effect.

Forbearance agreement

- HUD will be issuing a form of forbearance agreement, but in the meantime, the [sample forbearance agreement](#) issued by the Mortgage Bankers Association (MBA) can be used. Forbearance agreements that follow the MBA format without change will not need to be submitted to HUD for review and approval prior to execution and implementation.
- Any forbearance proposals that require mortgage modification will impact the Ginnie Mae security and must be reviewed and approved on a case-by-case basis.
- Lender fees should be reasonable and related to the drafting of the forbearance agreement. HUD will not deem anything below \$750 unreasonable.

Additional relief measures

- Additional measures to address cash flow shortages include owner advances, loans from localities or other outside sources (subject to HUD secondary financing guidelines), residual receipts releases, advances from the reserve for replacement account, and suspension of reserve for replacement account deposits, which field staff are encouraged to liberally approve.

HUD held loans

- Borrowers and field staff are encouraged to explore repayment relief measures, including repayment of the forbearance amount over a period of time and mortgage modification.
- Proposals that include forgiveness of principal or interest cannot be considered.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

- Alex Rosso, 617-345-1393, **arosso@nixonpeabody.com**
 - Susanna Mitchell, 202-585-8150, **smitchell@nixonpeabody.com**
 - Richard M. Price, 202-585-8716, **rprice@nixonpeabody.com**
 - Deborah VanAmerongen, Strategic Policy Advisor, 212-940-3054, **dvanamerongen@nixonpeabody.com**
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