


## Forbearance Options and CARES Act Requirements



John Rao, Steve Sharpe  
& Tara Twomey

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### NCLC's CARES Act Mortgage Webinar Series

<div style="background-color: #0056b3; color: white; padding: 10px; border: 1px solid white;"> <p>COVID-19 and Mortgage Relief for Homeowners: CARES Act Protections May 7, 2020</p> </div>	<div style="background-color: #c00000; color: white; padding: 10px; border: 1px solid white;"> <p>Forbearance Options and CARES Act Requirements May 14, 2020</p> </div>
<div style="background-color: #0056b3; color: white; padding: 10px; border: 1px solid white;"> <p>Reverse Mortgage Foreclosure Issues in the COVID-19 Pandemic May 21, 2020</p> </div>	<div style="background-color: #0056b3; color: white; padding: 10px; border: 1px solid white;"> <p>An Overview of Post-Forbearance Options May 28, 2020</p> </div>

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### NCLC's Mortgage Training Conference June 15-17, 2020



- Intro to TILA/RESPA Servicing Claims
- COVID-19 Mortgage Relief: Forbearance and Loan Mod Options for Federally Backed Mortgages
- Home Equity Theft and Foreclosure Rescue Scams 101
- Home Purchase Scams: Investigation, Funding Structure, Claims and Defenses
- FCRA Issues in Mortgage Cases
- Multi-Servicer Cases
- Strategic Advocacy on Home Scams: Working with Local Government, Effective Outreach

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# Forbearance Options and CARES Act Requirements

## H.R.748-210 SEC. 002. FORECLOSURE MORATORIUM AND CONSUMER RIGHT TO REQUEST FORBEARANCE.

(a) DEFINITIONS.—In this section:  
(1) COVID-19 EMERGENCY.—The term “COVID-19 emergency” means the national emergency concerning the novel coronavirus disease (COVID-19) outbreak declared by the President on March 11, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.).

(2) FEDERALLY BACKED MORTGAGE LOAN.—The term “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—  
(A) insured by the Federal Housing Administration under title II of the National Housing Act (12 U.S.C. 1707 et seq.);

(B) insured under section 255 of the National Housing Act (12 U.S.C. 1715b-20);  
(C) guaranteed under section 184 or 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715e-13a, 1715e-13b);

(D) guaranteed or insured by the Department of Veterans Affairs;

(E) guaranteed or insured by the Department of Agriculture;

(F) made by the Department of Agriculture; or  
(G) purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(b) FORBEARANCE.—  
(1) IN GENERAL.—During the covered period, a borrower with a federally backed mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency may request forbearance on the Federally backed mortgage loan, regardless of delinquency status, by—  
(A) submitting a request to the borrower’s servicer;

(B) affirming that the borrower is experiencing a financial hardship during the COVID-19 emergency; and  
(C) DURATION OF FORBEARANCE.—Upon a request by a borrower for forbearance under paragraph (1), such forbearance shall be granted for up to 180 days, and shall be extended for an additional period of up to 180 days at the request of the borrower, provided that, at the borrower’s request, either the initial or extended period of forbearance may be extended.

(2) ACCRUAL OF INTEREST ON PRIN.—During a period of forbearance described in this subsection, no fees, penalties, or interest beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract, shall accrue on the borrower’s account.

(3) REINSTATEMENT OF PAYMENTS.—  
(A) IN GENERAL.—Upon receiving a request for forbearance from a borrower under subsection (b), the servicer shall with no additional documentation required other than the borrower’s attestation to a financial hardship caused by the COVID-19

emergency and with no fees, penalties, or interest beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract) charged to the borrower in connection with the forbearance, provide the forbearance for up to 180 days, which may be extended for an additional period of up to 180 days at the request of the borrower, provided that, the borrower’s request for an extension is made during the covered period, and the borrower’s request, under the initial or extended period of forbearance, may be extended.

(B) FORFEITURE MORATORIUM.—Except with respect to a vacant or abandoned property, a servicer of a Federally backed mortgage loan may not initiate any judicial or non-judicial foreclosure process, upon a foreclosure judgment, or order of sale, or accept a foreclosure-related election or foreclosure sale for, and not less than the 60-day period beginning on March 15, 2020.

(c) FORBEARANCE OF RESIDENTIAL MORTGAGE LOAN PAYMENTS FOR MILITARILY PROTECTED WITH FINERALLY BACKED LOANS.  
(1) IN GENERAL.—During the covered period, a multifamily borrower with a Federally backed multifamily mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency may request a forbearance under the terms of this section.

(2) MULTIFAMILY BORROWER.—A multifamily borrower with a Federally backed multifamily mortgage loan that was current on its payments as of February 1, 2020, may submit an oral or written request for forbearance under subsection (a) to the borrower’s servicer affirming that the multifamily borrower is experiencing a financial hardship during the COVID-19 emergency.

(3) FORBEARANCE PERIOD.—  
(A) IN GENERAL.—Upon receipt of an oral or written request for forbearance from a multifamily borrower, a servicer shall—  
(B) document the financial hardship;

(C) provide the forbearance for up to 90 days, and  
(D) extend the forbearance for up to 90 additional 90 days upon the request of the borrower, provided that, the borrower’s request for an extension is made during the covered period, and, at least 15 days prior to the end of the forbearance period described under subparagraph (B).

(4) BORROWER’S OPTION.—A multifamily borrower shall have the option to discontinue the forbearance at any time.

(5) NOTICE PROHIBITION DURING FORBEARANCE PERIOD.—A multifamily borrower that receives a forbearance under this section may not, for the duration of the forbearance—  
(A) evict or institute the eviction of a tenant from a dwelling unit located in or on the applicable property solely for non-payment of rent or other charges;

(B) charge any late fee, penalty, or other charges to a tenant described in paragraph (A) for late payment of rent;

(C) evict or institute the eviction of a tenant from a dwelling unit located in or on the applicable property before the date that the borrower may request a tenant to vacate a dwelling unit located in or on the applicable property before the date that

## H.R.748-210 SEC. 002. FORECLOSURE MORATORIUM AND CONSUMER RIGHT TO REQUEST FORBEARANCE.

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(B) insured under section 255 of the National Housing Act (12 U.S.C. 1715b-20);  
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“Federally-Backed Mortgage Loans”

**“Federally-Backed”  
CARES  
v.  
“Federally-Related”  
RESPA**



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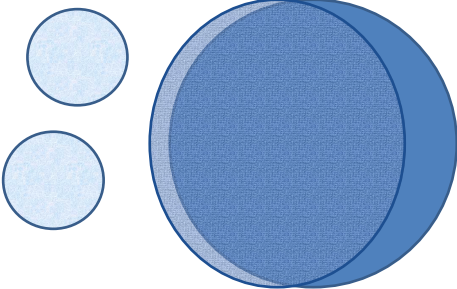

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**“Federally-backed” v. “Federally-related”**

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**“Federally-backed”**

First or subordinate  
lien on residential real  
property (including  
condo units and  
cooperatives)



 **Fannie Mae**  
 **Freddie Mac**  
 We make home possible®



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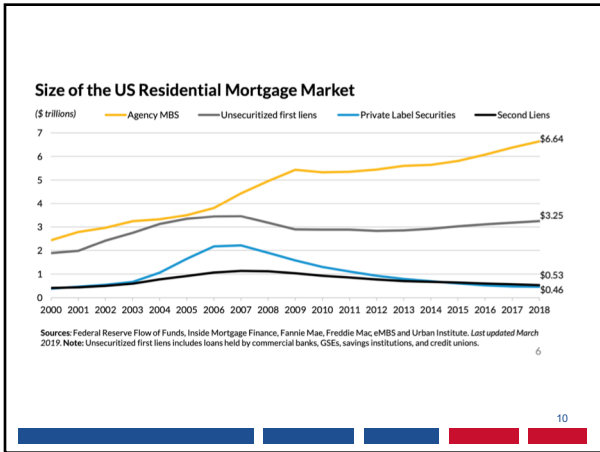
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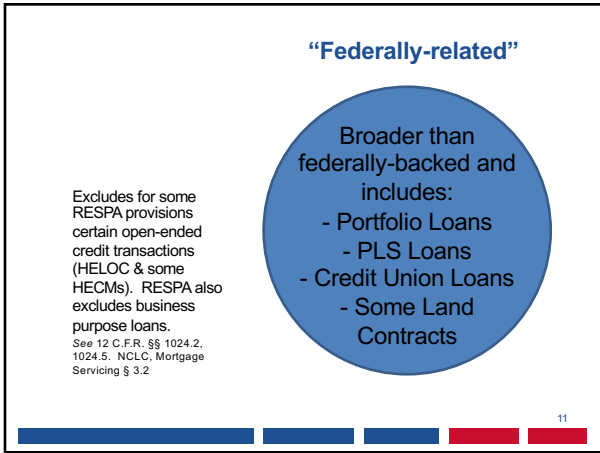
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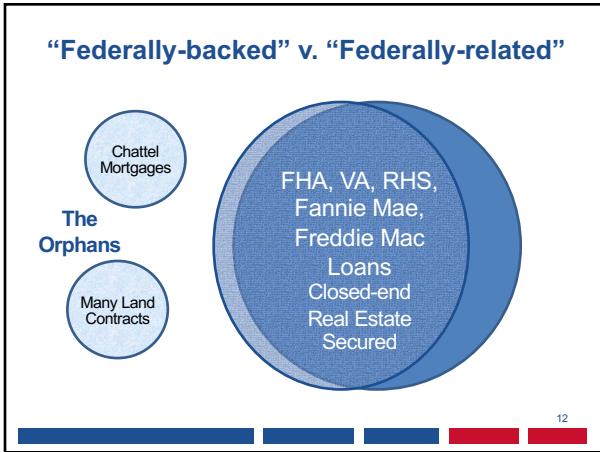
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## “Covered period”

- Changing guidances  
(see, e.g., Freddie Mac Bulletin 2020-04)
- How much lead time will we have before the President ends the emergency declaration?



- Are servicers going to provide relief even after the expiration of the covered period?

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H.R.748-210

SEC. 002. FORECLOSURE MORATORIUM AND CONSUMER RIGHT TO REQUEST FORFEITURE.

(a) DEFINITIONS.—In this section:

(1) COVID-19 EMERGENCY.—The term “COVID-19 emergency” means the national emergency concerning the novel coronavirus disease (COVID-19) outbreak declared by the President on March 13, 2020 under the National Emergency Act (50 U.S.C. 1601 et seq.).

(2) FEDERALLY BACKED MORTGAGE LOAN.—The term “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) designated principally for the occupancy of from 1- to 4- families that was—

(A) insured by the Federal Housing Administration under title II of the National Housing Act (42 U.S.C. 1707 et seq.);

(B) insured under section 255 of the National Housing Act (42 U.S.C. 1715a-25);

(C) guaranteed under section 184 or 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715a-18a, 1715a-18b);

(D) guaranteed or insured by the Department of Veterans Affairs;

(E) guaranteed or insured by the Department of Agriculture;

(F) made by the Department of Agriculture; or

(G) purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(b) FORFEITURE.—

(1) IN GENERAL.—During the covered period, a borrower with a federally backed mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency may request forfeiture on the federally backed mortgage loan, regardless of delinquency status, by—

(A) submitting a request to the borrower’s servicer; and

(B) affirming that the borrower is experiencing a financial hardship during the COVID-19 emergency.

(2) DURATION OF FORFEITURE.—Upon a request by a borrower for forfeiture under paragraph (1), such forfeiture shall be granted for up to 60 days, and shall be extended for an additional period of 30 days at the request of the borrower, provided that, at the borrower’s request, either the initial or extended period of forfeiture may be shortened.

(3) ACCRUAL OF INTEREST ON PEE.—During a period of forfeiture described in this subsection, no fees, penalties, or interest beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and on the borrower’s account.

(4) RECONSTRUCTION OF ACCOUNT.—

(5) IN GENERAL.—Upon receiving a request for forfeiture from a borrower under subsection (b), the servicer shall, with no additional documentation required other than the borrower’s attestation to a financial hardship caused by the COVID-19

## “Regardless of delinquency status”

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## “Regardless of delinquency status”

- What if loan:
  - Is in foreclosure?
  - Has been accelerated?
  - Is in bankruptcy or loan discharged?

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### “shall be granted”

- The CARES Act has language that is directly intended to help borrowers
- No similarly protective language in TARP
- The HAMP rules were contained in HAMP Handbook, which did not have the authority of a federal statute

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### “shall be granted”

- No case law on this yet, but look at NCLC Home Foreclosures book for discussion of defenses
- Start considering practical things for your own cases – do you want to put the request in writing even if not required?
- For legal aid programs, do you start taking cases where making sure borrowers get forbearance they need?

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H.R.748-210  
 SEC. 002. FORECLOSURE MORATORIUM AND CONSUMER RIGHT TO REQUEST FORBEARANCE.  
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 (1) COVID-19 emergency.—The term “COVID-19 emergency” means the national emergency concerning the novel coronavirus disease (COVID-19) outbreak declared by the President on March 11, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.).  
 (2) Federally backed mortgage loan.—The term “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—  
 (A) insured by the Federal Housing Administration under title II of the National Housing Act (12 U.S.C. 1707 et seq.);  
 (B) insured under section 205 of the National Housing Act (12 U.S.C. 1715a-205);  
 (C) guaranteed under section 184 or 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715c-18a, 1715c-18b);  
 (D) guaranteed or insured by the Department of Veterans Affairs;  
 (E) guaranteed or insured by the Department of Agriculture; or  
 (F) made by the Department of Agriculture, or purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.  
 (b) FORBEARANCE.—  
 (1) IN GENERAL.—During the covered period, a borrower with a Federally backed mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency may request forbearance on the Federally backed mortgage loan, regardless of delinquency status, by—  
 (A) submitting a request to the borrower’s servicer; and  
 (B) affirming that the borrower is experiencing a financial hardship during the COVID-19 emergency.  
 (2) DURATION OF FORBEARANCE.—Upon a request by a borrower for forbearance under paragraph (1), such forbearance shall be granted for up to 180 days, and shall be extended for an additional period of up to 180 days at the request of the borrower provided that, at the borrower’s request, either the interest portion of the scheduled payments, or the principal or interest or fees.—During a period of forbearance described in this subsection, no fees, penalties, or interest beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract, shall accrue on the borrower’s account.  
 (3) REQUISITE INFORMATION.—  
 (A) IN GENERAL.—Upon receiving a request for forbearance from a borrower under subsection (b), the servicer shall with an additional documentation required other than the borrower’s attestation to a financial hardship caused by the COVID-19

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“up to 180 days” plus “additional period of up to 180 days”

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**“up to 180 days”**

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**“up to 180 days”**

**Who decides length of forbearance?**



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**“up to 180 days”**

**What qualifies as “initial” or “extended” forbearance?**



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**“up to 180 days”**

**How many  
forbearance periods  
are allowed?**



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**“up to 180 days”**

- Important to start from the textual language, but then move on to relevant agency/investor interpretation.
- Things change fast
- Last week, FHA/VA/USDA issued a fact sheet that addresses who determines the length



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**“up to 180 days”**

Fannie Mae – “the servicer may provide an initial forbearance period, and any extended forbearance period, **in separate, shorter increments**. If the borrower’s COVID-19 related hardship has not been resolved during an incremental forbearance period, the servicer **must** extend the borrower’s forbearance period, not to exceed 12 months total.”



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### “up to 180 days”

Freddie Mac – “Affirming that an eligible Borrower may be given an initial forbearance plan for up to 180 days, and thereafter **one or more** forbearance plan term extensions, provided the total forbearance terms do not exceed 12 months. . . . In the event the Servicer and Borrower cannot agree on an appropriate forbearance length, or further communication with the Borrower is not possible under the circumstances, **the Servicer must provide the term requested by the Borrower**, not to exceed 180 days.”

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### “up to 180 days”

Updated FHA/VA/USDA Fact Sheet – “Servicers **must** approve the forbearance for the amount and time that the borrower requests. Under the CARES Act, this is done at the borrowers’ request **and for as long as they request**, up to 360 days in total (initial up to 180 days and then up to another 180 days, if requested).”

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H.R.748-210  
SEC. 602. FORECLOSURE MORATORIUM AND CONSUMER RIGHT TO REQUEST FORBEARANCE.

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(A) insured by the Federal Housing Administration under title II of the National Housing Act (12 U.S.C. 1701 et seq.);

(B) insured under section 255 of the National Housing Act (12 U.S.C. 1715a-205);

(C) guaranteed under section 184 or 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715e-18a, 1715e-18b);

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(B) affirming that the borrower is experiencing a financial hardship during the COVID-19 emergency.

(2) DURATION OF FORBEARANCE.—Upon a request by a borrower for forbearance under paragraph (1), such forbearance shall be granted for up to 180 days, and shall be extended for an additional period of up to 180 days at the request of the borrower, provided that, at the borrower’s request, either the initial or extended period of forbearance may be shortened.

(3) ACCRUAL OF INTEREST OR FEES.—During a period of forbearance described in this subsection, no fees, penalties, or interest beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract, shall accrue on the borrower’s account.

(4) REQUEST FOR FORBEARANCE.—

(1) IN GENERAL.—Upon receiving a request for forbearance from a borrower under subsection (b), the servicer shall, with an additional documentation required other than the borrower’s attestation to a financial hardship caused by the COVID-19

“no fees, penalties, or interest...”

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**“No fees, penalties, or interest ...”**

- Borrower must not be charged:
  - Late fees
  - Property inspection fees
  - Foreclosure expenses and attorney fees (even after moratorium ends)

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**“During a period of forbearance...”**

- Ban on fees and expenses applies during entire forbearance period
- Ban on dual tracking under 1024.41(c)(2)(iii)
- Both should deter servicers from:
  - taking any steps in foreclosure process even after moratorium expires
  - continuing with foreclosure on pre-COVID delinquent loans

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**Escrow  
Issues**

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## Escrows During Forbearance

- **Insurance**  
Servicer must timely disburse (advance funds if needed) and cannot force place
- **Taxes and other escrow items**  
Reg. X exemption for loans more than 30 days overdue may apply
- **Annual statements**  
Reg. X exemption may apply (but not notice of shortage/deficiency)

See NCLC, Mortgage Servicing § 3.5

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## Escrows During Forbearance

- **Joint Agency Statement –**
  - No supervisory or enforcement action against servicers for delays in sending annual escrow statements
  - But servicers must continue to comply with 12 C.F.R. § 1024.17(k) and make timely disbursements

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## Other Notices

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## What about Reg. X notices?

- Forbearance is short-term loss mitigation option and request is incomplete application
- Acknowledgement notice under 41(b) and forbearance notice under 41(c)(2)(iii) must be sent within 5 days
- Joint Agency Statement – no supervisory or enforcement action against servicers for missing deadlines provided notice is sent before the end of forbearance period.

See NCLC, Mortgage Servicing § 3.8.2.10

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## Periodic Statements

- Should servicer disclose \$0 or amount due under loan contract?
  - Amount Due – may disclose either
    - Explanation of Amount Due - must disclose both
- Possible explanation to help avoid confusion

See NCLC, Mortgage Servicing § 4.2.5

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## Consumer Resources

The collage features four main items:
 

- NCLC Flyer:** Titled 'Coronavirus Emergency: What Consumers Need to Know About Mortgage Relief' (April 2020). It discusses federal and state government announcements regarding mortgage relief and provides links to resources from the Federal Housing Administration (FHA) and the U.S. Department of Agriculture (USDA).
- 'Surviving Debt' Booklet:** Published by the National Consumer Law Center (NCLC), it offers expert advice for getting out of financial trouble.
- CFpb Logo:** The Consumer Financial Protection Bureau logo.
- HUD Logo:** The U.S. Department of Housing and Urban Development logo.

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### NCLC's Mortgage Training Conference June 15-17, 2020



- Intro to TILA/RESPA Servicing Claims
- COVID-19 Mortgage Relief: Forbearance and Loan Mod Options for Federally Backed Mortgages
- Home Equity Theft and Foreclosure Rescue Scams 101
- Home Purchase Scams: Investigation, Funding Structure, Claims and Defenses
- FCRA Issues in Mortgage Cases
- Multi-Servicer Cases
- Strategic Advocacy on Home Scams: Working with Local Government, Effective Outreach

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Since 1969, the nonprofit **National Consumer Law Center® (NCLC®)** has worked for consumer justice and economic security for low-income and other disadvantaged people in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. [www.nclc.org](http://www.nclc.org)

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