

Practice Update

Mortgage Servicing: Joint Statement on the CARES Act and COVID-19

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On April 3, the Federal Reserve, OCC, FDIC, CFPB, NCUA, and the Conference of State Bank Supervisors (Agencies) issued a [joint statement](#) intended to provide flexibility to mortgage servicers who are working with consumers affected by COVID-19 and who may avail themselves of the temporary mortgage forbearance allowed by the CARES Act.

CARES Act Forbearance Provisions

[Section 4022](#) of the CARES Act permits borrowers with a federally backed mortgage loan (e.g., loans purchased, securitized, owned, insured, or guaranteed by Fannie Mae or Freddie Mac, or owned, insured, or guaranteed by FHA, VA, or USDA) who are experiencing a financial hardship due to COVID-19 to request forbearance from their servicers. Our alert providing more detail on the CARES Act is available [here](#).

The Joint Statement reiterates that the CARES Act sets forth straightforward requirements for borrowers seeking forbearance, stating “servicers must provide a CARES Act forbearance if the borrower makes this request and affirms that the borrower is experiencing a financial hardship during the COVID-19 emergency. Servicers may not require

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any additional information from the borrower before granting a CARES Act forbearance.”

The CARES Act allows the borrower to request another 180 days of forbearance. Upon such a request, “the servicer **must** extend the forbearance.” The Joint Statement notes that some states or municipalities may require servicers to offer other types of forbearance with different requirements.

Supervisory and Enforcement Flexibility

The Joint Statement explains the application of Regulation X’s loss mitigation rules to requests for forbearance under the CARES Act. The Agencies explain that a request for CARES Act forbearance “qualifies as a short-term payment forbearance program under Regulation X, so it is excluded from some of the otherwise applicable loss mitigation requirements.”

The Agencies also explain that a request for forbearance and affirmation of COVID-19-related hardship would be deemed an incomplete loss mitigation application. When a servicer receives an incomplete application, Regulation X generally requires an acknowledgement notice within five days, even if the borrower has been offered a short-term option. *See* 12 C.F.R. § 1024.41 comment 41(c)(2)(iii)-2. Servicers must provide such notices to any borrower requesting CARES Act forbearance.

The Agencies expect servicers to receive many requests for forbearance in the coming weeks and the Joint Statement provides some relief to servicers seeking to comply with their loss mitigation obligations. As of April 3 and until further notice, the Agencies do not intend to take supervisory or enforcement action against servicers for:

- delays in sending the loss mitigation-related notices and taking the actions described in Regulation X, 12 C.F.R. § 1024.41(b)-(d), (h)(4), and (k), which include the five-day acknowledgement

notice, the 30-day evaluation and notice, and the appeals notice, provided servicers are making good faith efforts to provide these notices and take the related actions within a reasonable time;

- delays in establishing or making good faith efforts to establish live contact with delinquent borrowers as required by Regulation X, 12 C.F.R. § 1024.39(a), provided that servicers are making good faith efforts to establish live contact within a reasonable time; and
- delays in sending the written early intervention notice to delinquent borrowers required by Regulation X, 12 C.F.R. § 1024.39(b), provided servicers are making good faith efforts to provide the 45-day letter within a reasonable time.

The Agencies are also providing flexibility for servicers who delay in providing annual escrow statements, if servicers make good faith efforts to provide the statements within a reasonable time.

CFPB FAQs on CARES Act Forbearance

Along with the release of the Joint Statement, the CFPB issued a series of Frequently Asked Questions regarding Regulation X's mortgage servicing rules, addressing issues raised by the CARES Act and the Agencies' Joint Statement. These FAQs expand upon the flexibility outlined above and provide guidance on a number of specific circumstances servicers may face in addressing forbearance. A summary of the FAQs is below:

Short-Term Loss Mitigation Options

- FAQs explaining how servicers can quickly offer CARES Act forbearance while complying with Regulation X's loss mitigation rules for short term payment forbearance programs.
- FAQs explaining how servicers can offer other types of short-term loss mitigation options based on evaluation of an incomplete loss mitigation application or no application at all.

- The CFPB reiterates that Regulation X's communication requirements still apply during the crisis, but that servicers have flexibility around the timing of sending loss mitigation acknowledgement notices.
- Servicers may suspend reasonable diligence efforts to complete a borrower's loss mitigation application while the borrower is performing under a short-term payment forbearance program until near the end of the program, unless the borrower requests additional assistance.

Early Intervention Requirements

- While live contact requirements for servicers under 12 C.F.R. § 1024.39(a) remain in place, the CFPB reiterates that the rule contains flexibility for servicers who make good faith efforts to establish live contact. 12 CFR § 1024.39(a)(1).
- Servicers have flexibility under the early intervention written notice requirements in 12 C.F.R. § 1024.39(b), and servicers may provide additional information the servicer deems helpful, such as language explaining short-term options due to concerns about the COVID-19 emergency to avoid borrower confusion.
- A servicer does not have to comply with the early intervention requirements for a borrower in a CARES Act forbearance if the borrower is not delinquent.
- The application of live contact and written notice early intervention requirements to delinquent borrowers in short-term payment forbearance programs, including an explanation of flexibility in the Joint Statement and under Regulation X.

Continuity of Contact Requirements

- Servicers do not need to maintain a "single point of contact" for each borrower but they must maintain policies and procedures reasonably designed to assign personnel to a delinquent

borrower that can assist the borrower with loss mitigation options.

Annual Escrow Statement

- While the Joint Statement provides flexibility with respect to any delays in sending the annual escrow statement, the FAQ explains what escrow requirements still apply and how servicers can remain in compliance.

Electronic Communications with Borrower

- The E-SIGN Act allows servicing notices to be provided electronically if the servicer complies with the consumer consent and other applicable provisions of the Act.

Payoff Statements

- If a servicer is not able to provide a payoff statement within seven business days due to the COVID-19 national emergency, the servicer must instead provide it within a reasonable time.

Exemptions for Small Servicers

- This FAQ reminds small servicers that the early intervention and continuity of contact requirements do not apply but the payoff statement requirements do apply.

In additional guidance issued on April 24 regarding mortgage servicing transfers, the CFPB stated it would “be sensitive to good-faith efforts” to transfer servicing during the pandemic when the transfer is requested or required by the government and the transfer does not have adverse impacts on consumers. The CFPB intends to focus its supervisory feedback for servicers on “identifying issues, correcting deficiencies, and ensuring appropriate remediation for consumers.”

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