Fast Facts: 2021 Mortgage Servicing COVID-19 Proposed Rule

Proposed Rule: Would amend Regulation X, 12 CFR 1024, and the existing Mortgage Servicing Rule provisions, to add additional borrower protections related to the COVID-19-emergency.

Proposed effective date: August 31, 2021

Comments due: May 10, 2021

Available at: www.consumerfinance.gov/rules-policy/rules-under-development/protections-for-borrowers-affected-by-the-covid-19-emergency-under-the-real-estate-settlement-procedures-act-regulation-x/

About this document: The proposal seeks public comment on the proposed amendments in the 2021 Mortgage Servicing COVID-19 Proposed Rule. The Bureau has issued a proposal to amend Regulation X to add or revise existing Mortgage Servicing Rule provisions and provide additional assistance for borrowers experiencing a COVID-19-related hardship. The proposed rule, if finalized, would not change coverage of the Mortgage Servicing Rule, and thus, small servicers, as defined in Regulation Z, 12 CFR 1026.41(e)(4), would not be subject to these requirements. Additionally, the provisions in the proposal, if finalized, would still only be applicable to a mortgage loan that is secured by a property that is a borrower's principal residence. 12 CFR 1024.30(c)(2).

This document generally provides a high-level overview of the topics covered in the proposal.

Proposed amendments

Current rule provision	Description of proposed amendment or addition	Location in proposed rule
Definitions	The proposed rule would add a definition for "COVID-19-related hardship" to generally mean a financial hardship related to the COVID-19 emergency, as defined in the CARES Act.	1024.31
Early Intervention: Live Contact	During live contacts established under the existing Mortgage Servicing Rule requirements, the proposed rule would require servicers to take additional actions with certain borrowers. For borrowers not yet in a forbearance plan at the time of live contact, if forbearance options are available to the borrower through the servicer, the servicer would be required to ask the borrower if they are experiencing a COVID-19-related hardship (as defined in the proposal). If the borrower indicates they are, the servicer would be required to list and describe forbearance programs made available to that borrower. The servicer would also be required to provide the actions the borrower must take to be evaluated for such forbearance programs. For borrowers in a forbearance plan at the time of live contact, the servicer would be required to identify the date the borrower's forbearance program ends and list and describe loss mitigation options made available to the borrower to resolve any delinquency the borrower will have at the end of the forbearance program. The servicer would also be required to provide the actions the borrower must take to be evaluated for such loss mitigation options, information the servicer has under existing continuity of contact requirements. The servicer would only need to provide this information in the last live contact required under the existing Rule that occurs prior to the end of the forbearance period. This proposed provision is temporary. If finalized, it would only apply until August 31, 2022, one year after the proposed effective date.	1024.39(e)
Loss Mitigation Procedures: Reasonable Diligence	Under the existing Rule's reasonable diligence obligations for servicers in obtaining a complete loss mitigation application, the proposed rule would clarify when the servicer must perform reasonable diligence requirements for borrowers in a short-term	1024.41(b); Comment 41(b)-4.iv

Current rule provision	Description of proposed amendment or addition	Location in proposed rule
	payment forbearance program made available to borrowers experiencing a COVID-19-related hardship. For those borrowers, if the short-term payment forbearance program was offered based on the evaluation of an incomplete application, then, no later than 30 days before the end of the short-term payment forbearance program, the servicer would be required to contact the borrower and determine if the borrower wants to complete their loss mitigation application and proceed with a full loss mitigation evaluation. If the borrower requests further assistance, the servicer would be required to exercise reasonable diligence to complete the application before the end of the forbearance program.	
Loss Mitigation Procedures: Evaluation of a Loss Mitigation Application	The proposed rule would add another exception to the existing Rule's prohibition on offering a loss mitigation option based on an evaluation of an incomplete loss mitigation application. A servicer would be allowed to offer certain loan modifications based on the evaluation of an incomplete application if certain criteria are met. Those criteria include: ▪ The loan modification would extend the term of the loan by no more than 480 months and would not result in an increase to the borrower's periodic principal and interest payment. ▪ If the loan modification allows a deferral of amounts until certain points, such when the loan is refinanced or the property is sold, the amounts would not accrue interest; the servicer would not charge a fee connected to the loan modification; and certain existing charges owed by the borrower, such as late fees and stop payment fees, would be waived by the servicer upon acceptance of the loan modification. ▪ The loan modification must be made available to borrowers experiencing a COVID-19-related hardship, as that term is defined in the proposal.	1024.41(c)(2)(vi)

Current rule provision	Description of proposed amendment or addition	Location in proposed rule
	▪ The borrower's preexisting delinquency would be resolved by acceptance of the loan modification (and potential completion of a trial loan modification first, if required by the servicer). If the borrower accepts a loan modification as described in the proposal, the acceptance would terminate the servicer's obligation to exercise reasonable diligence to complete any loss mitigation application the borrower submitted prior to the borrower's acceptance of an offer made under the proposed exception. It would also terminate the servicer's obligation to review such an application under the existing Rule requirements. The obligation to exercise reasonable diligence to complete any loss mitigation application the borrower submitted prior to the borrower's acceptance of an offer made under to the proposed exception would restart if the borrower fails to perform under any required trial loan modification or if the borrower requests further assistance.	
Loss Mitigation Procedures: Prohibition on Foreclosure Referral	The proposal would add a temporary COVID-19 pre-foreclosure review period where a servicer is not permitted to make the first notice or filing for foreclosure. In addition to the existing Rule that generally prohibits a servicer from making the first notice or filing unless the borrower is more than 120 days delinquent, the proposal would add a temporary blanket prohibition on making the first notice or filing for foreclosure because of a delinquency until after December 31, 2021.	1024.41(f)(1); 1024.41(f)(3)

Additional resources

Find more implementation information and sign up for updates about the mortgage servicing rule implementation at www.consumerfinance.gov/rules-policy/rules-under-development/protections-for-borrowers-affected-by-the-covid-19-emergency-under-the-real-estate-settlement-procedures-act-regulation-x/.

CARES Act Forbearance Fact Sheet for Borrowers with FHA, VA, or USDA Loans

A resource for borrowers with loans insured or guaranteed by the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA), or the Rural Housing Service (RHS)

Coronavirus Aid, Relief, and Economic Security Act (CARES Act) Mortgage Payment Forbearance

The CARES Act provides a mortgage payment forbearance option for all borrowers who, either directly or indirectly, suffer a financial hardship due to the novel coronavirus (COVID-19) national emergency.

No documentation is required to prove your hardship beyond your assertion that you are suffering from such a hardship. However, if you can still make your mortgage payments, you should continue to do so.

A forbearance is a temporary postponement or reduction of mortgage payments. ***It is not payment forgiveness.*** Under the CARES Act, borrowers are entitled to an initial forbearance period of up to 180 days, upon a borrower's request. Also, upon a borrower's request, the forbearance must be extended for up to an additional 180 days. A borrower can, at any time the borrower chooses, shorten the forbearance and resume repayment of the loan.

Mortgage Payment Forbearance Request

To request this forbearance, do the following:

- Contact your mortgage servicer to request forbearance. Contact information is found on your monthly mortgage statement.
- Utilize servicers' websites or email as a primary method of communication and be patient. Servicers are facing large volumes of requests.
- ***Remember, the missed payments must be repaid, although they may be paid back over time. Forbearance of payments doesn't mean forgiveness of payments.***

Mortgage Payment Forbearance

- Be sure to contact your servicer as soon as your hardship is over, or you can resume making your regular monthly mortgage payment to end the forbearance. Discuss what repayment options are available.
- If you were current on your mortgage when the CARES Act forbearance was granted, your mortgage servicer is required to report your account as current during the forbearance period to the Credit Reporting Agencies.
- If you were delinquent on your mortgage when the CARES Act forbearance was requested, your mortgage servicer is required to maintain the delinquent status reported to the Credit Reporting Agencies during the forbearance period. However, if you bring your mortgage current during the forbearance period, your mortgage servicer is required to report the status as current.

CARES Act Forbearance Fact Sheet for Borrowers with FHA, VA, or USDA Loans

Your repayment options will vary based on which type of loan you have:

Federal Housing Administration Mortgages

FHA does not require lump sum repayment at the end of the forbearance. FHA has developed the COVID-19 Standalone Partial Claim to assist with repayment. If you were current or less than 30 days delinquent as of March 1, 2020, you may be entitled to this option. A partial claim is a zero interest, no fee, junior lien on your property that will become payable when you sell your home, pay off your mortgage or your mortgage otherwise terminates. If you do not qualify for the COVID-19 Standalone Partial Claim, FHA offers other tools to help you repay the missed payments over time. For more information on Federal Housing Administration Mortgages: email answers@hud.gov, call 1-800-CALL-FHA (1-800-225-5342), or visit www.hud.gov.

Veterans Affairs Mortgages

Servicers of VA loans cannot require borrowers to make a lump sum payment immediately after a borrower exits a CARES Act forbearance. VA has a suite of loss mitigation options that can assist Veteran borrowers who must repay amounts that were subject to a forbearance. In addition, VA is continuing to evaluate other options to further assist borrowers affected by the novel coronavirus (COVID-19) national emergency. For additional information, please visit our website at https://www.benefits.va.gov/homeloans/index.asp, where you can find a list of frequently asked CARES Act questions. In addition, you may call (877) 827-3702 to contact a VA Regional Loan Center.

Rural Housing Service Guaranteed Loan Mortgages

RHS does not require a lump sum payment at the end of the forbearance. Lenders should work with the borrowers to determine if they can resume making regular payments and, if so, either offer an affordable repayment plan or term extension to defer any missed payments to the end of the loan. If the borrower is unable to resume making regular payments, the lender should evaluate the borrower for all available loss mitigation options outlined in Handbook-1-3555. For more information on servicing Rural Housing Guaranteed Loan Mortgages, email sfhglpservicing@usda.gov. For all other general inquiries on policy, email SFHGLD.Program@usda.gov or visit our website at www.rd.usda.gov/programs-services/single-family-housing-guaranteed-loan-program. Visit USDA Rural Development's coronavirus website for more information on forbearance for USDA guaranteed loans.

Other Resources

- All homeowners (including those with FHA, VA and USDA loans) can use Consumer Financial Protection Bureau's (CFPB) "Find a Counselor" tool to find counseling agencies approved by the Department of Housing and Urban Development (HUD) in your area. Online counseling is available.
- You can also call the HOPE™ Hotline, open 24 hours a day, seven days a week, at (888) 995-HOPE (4673).

For more finance-related information

Visit CFPB's coronavirus website for mortgage relief options, tips to keep up on your finances, and more.

What if I don't have a government-backed home loan?

- CFPB's website has information and links on mortgage relief options that can help you determine if other relief is available (for example, if your loan is owned by Fannie Mae or Freddie Mac).