

Deferment as a COVID-19 Loss Mitigation Option for CARES Act Forbearance Cases

1. Purpose. The purpose of this Circular is to clarify whether, due to the impact of Coronavirus Disease 2019 (COVID-19), servicers may offer deferment as a COVID-19 loss mitigation option.

2. Background. On March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), [Public Law 116-136](#). Section 4022 of the CARES Act protects borrowers with Federally backed mortgage loans who are experiencing financial hardship due to the COVID-19 national emergency. In [VA Circular 26-20-12](#), *Extended Relief Under the CARES Act for those Affected by COVID-19*, VA noted that servicers should consider all loss mitigation options described by Chapter 5 of the VA Servicer Handbook M26-4 (including those related to disasters) in determining how to account for payments that were subject to a CARES Act forbearance. VA also outlined that servicers are not to require a borrower who receives a CARES Act forbearance to make a lump sum payment, equating to what would have been due if a forbearance was not in effect, after the forbearance period ends.

3. Deferment as a Loss Mitigation Option. VA understands that some servicers are considering whether they may offer borrowers exiting a CARES Act forbearance a deferment as a loss mitigation option, in which the servicer defers payment of the total amount of forborne payments (principal, interest, taxes, and insurance), to the loan maturity date or until a borrower refinances the loan, transfers the property, or otherwise pays off of the loan, whichever occurs first, and with no added cost, fees, or interest to the borrower, including no penalty for early payment of the deferred amount. The deferment as a COVID-19 loss mitigation alternative may be used in cases when the veteran is able to resume making the monthly payment as scheduled under the loan contract. For VA's purposes, the servicer does not need and should not enter into a modification agreement that alters the terms of the existing loan for the purpose of applying a deferment. To ensure compliance with servicing laws more generally, servicers should seek specific advice from their legal counsel. Deferment is not allowed in cases where the veteran will need a post-forbearance payment reduction. Instead, the servicer must assess the suitability of other loss mitigation options.

a. VA notes that, in general, deferment as a loss mitigation would not be permissible in light of the VA regulation found at 38 C.F.R. § 36.4310(a), which states, in relevant part, that the final installment on any loan shall not be in excess of two times the average of the preceding installments. However, in consideration of the COVID-19 national emergency, the CARES Act, Executive Order 13924, Regulatory Relief to Support Economic Recovery (85 FR 31353), and VA's regulatory authority under 38 C.F.R. § 36.4338(a) to relieve undue prejudice to a debtor, holder, or other person, VA is temporarily waiving the requirement that the final installment on any loan shall not be in excess of two times the average of the preceding installments.

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b. This temporary waiver applies only in the case of a servicer offering a deferment as a COVID-19 loss mitigation option to a borrower who requested a CARES Act forbearance, as described above. Furthermore, VA notes that the servicer must ensure that deferment will not adversely affect the Government's interests in the VA-guaranteed loan and/or impair the vested rights of any other person. See 38 C.F.R. § 36.4338(a). Similarly, any deferment that fails to comply with other servicing laws, such as the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA), would negatively affect the Government's interest and therefore not be covered by this temporary suspension.

c. A deferment described in this guidance is not a loss mitigation option for which VA has authorized an incentive payment under 38 C.F.R. § 36.4319.

4. Removing Barriers to Property Retention. From a borrower's perspective, a deferment may be desirable because it brings the loan current and enables the borrower to return to his or her regular mortgage payments without the added pressure of immediately repaying the forborne amount. The temporary suspension of this regulatory requirement, as applied to a particular loss mitigation option not generally available to borrowers with VA-guaranteed loans, will therefore assist in mitigating the negative economic effects of the COVID-19 national emergency. In temporarily lifting this regulatory burden, VA is enabling servicers to offer a loss mitigation option to borrowers that will minimize the financial burdens of exiting a CARES Act forbearance and promote home retention.

5. Executive Order 13891 Disclosure/Congressional Review Act: The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. Pursuant to the Congressional Review Act (5 U.S.C. § 801 et seq.), the Office of Information and Regulatory Affairs designated this circular as not a major rule, as defined by 5 U.S.C. § 804(2).

6. Rescission: This Circular is rescinded October 1, 2021.

By Direction of the Under Secretary for Benefits

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