



## Financial Services Perspectives

**Regulatory, compliance, and litigation developments in the financial services industry**

# CFPB Issues Interim Final Rule to Enable COVID-19 Payment Deferral Options

By [Jason R. Bushby](#), [Jonathan R. Kolodziej](#) and [Gregory B. Pipes](#) on June 23, 2020  
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On May 14, 2020, shortly after the Fannie Mae and Freddie Mac COVID-19 payment deferral options were announced, we warned mortgage servicers about the legal risks associated with offering payment deferral programs to borrowers impacted by COVID-19. A little over a month later, on June 23, 2020, the Consumer Financial Protection Bureau (CFPB) released an interim final rule that amends Regulation X and, among other things, removes many of the barriers that may have prevented mortgage servicers from being able to offer such programs.



As we [previously discussed](#), Regulation X's anti-evasion clause imposes significant restrictions on the types of loss mitigation options that can be offered when a borrower has submitted an incomplete loss mitigation application. In our prior blog post, we questioned whether the Fannie Mae and Freddie Mac options could be offered in the manner in which the Government Sponsored Entities (GSEs) contemplate without violating Regulation X's anti-evasion clause. The same risks also existed for servicers who were considering the use of a deferral program for non-GSE loans. Thankfully, the CFPB's new rule paves the way for mortgage servicers to offer those programs, a move

that will unquestionably benefit both borrowers and servicers as we all try to navigate the ongoing pandemic.

At a high level, the new rule eases the tension created by Regulation X's anti-evasion clause by creating a temporary exception for certain payment deferral options. To qualify for the new exception, the payment deferral option must meet certain conditions that generally align with the COVID-19 payment deferral programs announced by the GSEs. The rule further provides that if a borrower accepts an option pursuant to the new exception, the servicer is not required to continue reasonable diligence efforts to obtain a complete application or provide an incomplete acknowledgment notice.

This rulemaking is, without question, the product of a lot of hard work from many parties, including the Mortgage Bankers Association, the American Bankers Association, and the CFPB. Everyone we interacted with recognized and appreciated the risks that servicers were presented with and the urgency that necessitated quick action. Finally, we commend the CFPB for choosing to issue an interim final rule as opposed to more informal guidance. This approach provides much greater certainty and protections for the servicing industry.

Below is a more detailed description of the CFPB's interim final rule. With the effective date of the GSE COVID-19 payment deferral options quickly approaching, time is of the essence. For more detail on what is in the new interim final rule and what it means for the servicing industry, join us for our [webinar on Thursday, June 25 at 12:00 p.m. EDT](#).

### **COVID-19 Payment Deferral**

As mentioned above, the interim final rule will allow servicers to offer payment deferral options without fear of violating the anti-evasion clause. To do this, the CFPB is essentially categorizing a COVID-19 deferral as a short-term loss mitigation option that can be offered based on an evaluation of an incomplete loss mitigation application. However, certain criteria have to be satisfied for the option to be covered by the rule. Specifically, the option must meet the following conditions:

- The option must permit the borrower to delay paying "covered amounts" until the loan is refinanced, the mortgage property is sold, the term of the loan ends, or for mortgages insured by FHA, the mortgage insurance terminates. For purposes of the rule, "covered amounts" are generally defined as all principal and interest payments due and unpaid or forborne as a result of a COVID-19 hardship;
- The amounts that are delayed must not accrue interest, the servicer may not charge any fee in connection with the deferral option, and the servicer must waive all existing late charges, penalties, stop payment fees, or similar charges promptly upon the borrower's acceptance of the loss mitigation option; and
- The borrower's acceptance of the offer must end any preexisting delinquency.

Provided that all of the above-described criteria are satisfied, a servicer can offer the option based off of the information provided by the borrower in connection with a loss mitigation application, even if that application is incomplete. There certainly are aspects of these criteria that will need to be scrutinized and considered as servicers develop their approach to offering payment deferrals. For example, servicers may have to decide whether all fees and charges can and should be waived, including those that may have arisen prior to a COVID-19 related hardship.

As noted above, if a borrower accepts an option pursuant to the new exception, the servicer is not required to continue reasonable diligence efforts to obtain a complete application or provide an incomplete acknowledgment notice. In evaluating this requirement servicers should be mindful that the borrower must *accept* the deferral option in order to avoid reasonable diligence and acknowledgment letter requirements. This is likely to cause pain points that servicers will need to address, particularly if the servicer requires a signature for acceptance or in situations where the borrower rejects a deferral.

Another important thing to note about the interim final rule is that it is specific to COVID-19. Therefore, outside of relief granted in connection with COVID-19, servicers should continue to be mindful of the restrictions that apply when offering loss mitigation. Particularly in scenarios where relief or assistance is offered based on information provided verbally by the borrower, servicers should validate that the options being offered fit the established parameters for a short-term forbearance plan or short-term repayment plan. Otherwise, there is risk that the process violates the long-standing framework in Regulation X.

Finally, it is worth emphasizing that the CFPB's interim final rule relates to deferral options that are offered based off of an evaluation of an *incomplete* loss mitigation application. Servicers remain free to offer whatever options they want, regardless of whether they align with the newly established deferral criteria, based off of an evaluation of a *complete* loss mitigation application. Alternatively, servicers remain free to offer whatever they would like if the offer is made blindly, meaning that it is not based off of an evaluation of any information provided by the borrower.

The interim final rule is effective July 1, 2020.

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