



Advice for Mortgage Loan Servicers: Navigating the Recent Joint Statement Guidance

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A Joint Statement^[1], “Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the COVID-19 Emergency and the CARES Act,” was released April 3, 2020. The Joint Statement should be considered alongside the Consumer Financial Bureau’s (CFPB) compliance guidance released the same day and titled, “The Bureau’s Mortgage Servicing Rules FAQs related to the COVID-19 emergency, or FAQs.”

The CARES Act directs mortgage servicers to allow forbearance to federally backed^[2] mortgage loans that are 1-4 family first or subordinate lien for a period not shorter than 120 days after the date of the CARES Act enactment or the date on which the national emergency concerning the COVID-19 outbreak terminates. Upon a request by the borrower, and an affirmation that the borrower is experiencing a financial hardship during the COVID-19 emergency, ^[3] the servicer is to grant a forbearance option for up to 180 days, and an additional 180 days if either the initial or subsequent forbearance may be shortened at the borrower’s request. In effect, the CARES Act defines the requirements of a forbearance application not regulatorily defined elsewhere.

The Joint Statement adds details to the CARES Act mandates. Mortgage servicers are reminded of their loss mitigation responsibilities under the Real Estate Settlement Procedures Act (RESPA)^[4]. RESPA requires mortgage servicers to exercise due diligence when gathering borrower information required to complete a “loss mitigation application” for federally related mortgage loans.^[5] In the event an incomplete application is received, RESPA permits servicers to offer the option to borrowers to forgo certain payments or portions of payments for a period of time. RESPA commentary allows servicers to offer the borrower — in the event of an incomplete application — a short-term forbearance program not to exceed six months, which is the same timeframe stated as 180 days in the CARES Act^[6].

The CARES Act contemplates a two-part forbearance process: The borrower must request relief and make an attestation of the hardship caused by the COVID-19 emergency. Those are the act's express requirements, and the servicer may not request any additional information as part of the forbearance process. The recent Joint Statement reminds servicers that the request for mortgage forbearance under the CARES Act, for purposes of RESPA, is an incomplete application and accordingly, falls under the short-term loss mitigation option, as found in 12 CFR 1024.41(c)((2)(iii).

The Joint Statement gives servicers flexibility and states that the concerned regulatory agencies will not adversely cite, in an examination or bring an enforcement action against, servicers for failing to provide the RESPA required loss mitigation notices, provided the servicer is making a good faith effort to provide the notices within a reasonable time. The flexibility afforded servicers discussed in the Joint Statement applies whether the borrower is requesting short-term repayment options due to the COVID-19 emergency or not.

RESPA authorizes the CFPB to prescribe rules and regulation and to grant reasonable exemptions for classes of transactions. Liability under RESPA should not be imposed in those instances of servicers who act in good faith with interpretations issued by the CFPB.^[7] However, the Joint Statement and the FAQs were not released through the Federal Register and technically fall short of the label of Public Guidance Documents^[8]. Consequently, this document will provide mortgage loan servicers specific regulatory relief, but it remains uncertain whether the Joint Statement will have the legal effect of shielding servicers from borrower-initiated claims for RESPA permitted damages arising from untimely loss mitigation notice communication.

Mortgage servicers are endeavoring to do the right thing and to best service their borrowers. Staying abreast of the changing rules in this time of the coronavirus will require constant attention. We will continue to update our advisories for mortgage loan servicers.

For more information, please contact [Nancy Presnell](#), [Bill Repasky](#) or any attorney in Frost Brown Todd's [Financial Services](#) Industry

Team.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#). Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

[1] The Joint Statement was issued by the Federal Deposit Insurance Corporation (FDIC), the Consumer Financial Protection Bureau (CFPB), the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), the National Credit Union Administration (NCUA) and the Conference of State Bank Supervisors (the agencies).

[2] Those mortgage loans insured by the Federal Housing Administration, insured under the National Housing Act, guaranteed under section 184 or 184A of the Housing and Community Development Act of 1992, guaranteed or insured by the Department of Veterans Affairs, guaranteed or insured by the Department of Agriculture, or purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association. 15 USCA 9001 §4022(a)(2)

[3] 15 USCA 9001 §4022(b)(1)

[4] Small servicers as defined by 12 CFR 1026.41(e)(4)(ii) are exempt from the RESPA early intervention and loss mitigation requirements.

[5] 12 CFR 1024.5(a)

[6] 15 USCA 9001 §4022(b)(2)

[7] 12 USC §2617(b)

[8] 12 CFR 1024(b)

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