

Loan Deferment as a COVID-19 Home Retention Option

1. Purpose. The purpose of this Circular is to communicate that servicers may continue offering loan deferment as a COVID-19 home retention option, in accordance with VA's COVID-19 Home Retention Waterfall.¹

2. Loan Deferment as a Home Retention Option. Servicers assisting borrowers who are exiting a COVID-19 forbearance period may use loan deferment as a home retention option. Under this option, the servicer defers repayment of the arrearages (principal, interest, taxes, and insurance), to the loan maturity date or until the borrower refinances the loan, transfers the property, or otherwise pays off the loan (whichever occurs first) and with no added costs, fees, or interest to the borrower, and with no penalty for early payment of the deferred amount. Under section 6.b. of VA's COVID-19 Home Retention Waterfall², this option may be used in cases where the borrower indicates the borrower can resume normal monthly guaranteed loan payments but cannot repay the arrearages.

a. VA notes that, in general, loan deferment as a home retention option would not be permissible.³ However, in consideration of the COVID-19 national emergency, the CARES Act⁴, 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. This temporary waiver applies only in the case of a servicer that is assisting a borrower under VA's COVID-19 Home Retention Waterfall. 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.⁵ 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.

b. VA does not pay monetary incentives for the loan deferment option.

3. Rescission. This Circular is rescinded July 1, 2023.

By Direction of the Under Secretary for Benefits

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¹ See Circular 26-21-13, COVID-19 Home Retention Waterfall and COVID-19 Refund Modification, (July 23, 2021), https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_21_13.pdf.

² See id.

³ See 38 C.F.R. § 36.4310(a) ("the final installment on any loan shall not be in excess of two times the average of the preceding installments...").

⁴ See P.L. 116-136 § 4022 (March 27, 2020).

⁵ See 38 C.F.R. § 36.4338(a).