**Policy 7362: Temporary Policy for Loan Modifications
and Reporting due to COVID-19**

**Model Policy Revised Date: 12/30/2021**

**General Policy Statement**

In response to interagency guidance, resulting from the presidentially declared emergency on March 13, 2020, the Credit Union will work with members affected by the COVID-19 to the best of its ability, including compliance with the provisions of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

Since the Credit Union has also been impacted by the COVID-19, this policy also outlines relief from regulatory agencies on specific timing requirements, certain notice and information delivery to borrowers and accounting treatment for loans.

The Credit Union will also continue to comply with applicable, existing internal policies addressing these operational areas.

**Guidelines**

1. **Federally-Backed Mortgage Loans. [REQUIRED]** The Credit Union servicing federally-backed mortgage loans will comply with the following provisions under the CARES Act (provisions extended through July 31, 2021):

	1. Borrowers can request forbearance regardless of their delinquency status.  If the borrower is not delinquent, the early intervention requirements do not apply.  If the borrower is delinquent, the Credit Union will comply with the early intervention requirements outlined in the mortgage servicing rules, with certain concessions as outlined in this policy.
	2. Borrowers experiencing financial hardship directly or indirectly related to the COVID-19 emergency, may request a forbearance by submitting a request to the Credit Union and affirming their experience of hardship during the COVID-19 emergency.  No other documentation is needed or can be obtained.

		1. For purposes of RESPA and the mortgage servicing rules, this is considered a “short-term repayment forbearance program,” which allows the Credit Union to provide forbearances quickly under the rules without waiting for a complete loss mitigation application.
		2. For purposes of the mortgage servicing rules, the above financial hardship request and affirmation from the borrower constitutes an “incomplete loss mitigation application” and the Credit Union must comply with applicable mortgage servicing rules.
	3. The Credit Union must provide a forbearance that allows the borrowers to defer their mortgage payments for up to 180 days (and possibly longer).
	4. The Credit Union must also provide forbearance for an additional 180 days and again for another 90 days, if requested by the borrower.
	5. Borrowers who have a federally-backed mortgage loan, will have an additional repayment option at the end of their forbearance period (which as indicated above could be up to 15 months).  This new option would allow the borrower to take the missed payments and put them into a payment due at the sale or refinancing of the home, or the end of the loan.  All of the options available for federally-related mortgage loans include:

		1. Full repayment where the borrower repays back the missed payment all at once.
		2. Repayment plan, which allows the borrower to catch up gradually in addition to paying regular monthly payments.
		3. Payment deferral or modification of the loan, which keeps the monthly mortgage payments consistent and adds the borrower’s missed payments to the end of the mortgage.
		4. Modification of the loan to reduce the borrower’s original monthly payment amount.
	6. COVID-19 Recovery Waterfall options are also available for borrowers with federally-backed mortgage loans.  These options are intended for properties that are occupied as homeowner’s primary residence:

		1. Standalone Partial Claim – for homeowners who can resume making current mortgage payments, allows mortgage payment arrearages to be placed in a 0% interest subordinate lien against the property that is repaid when the mortgage terminates, usually when the homeowner refinances or sells the home.
		2. Recovery Modification – for homeowners who cannot resume making current monthly mortgage payments, extends the term of the mortgage to 360 months at a fixed rate and targets reducing the borrower’s monthly principal and interest portion of their monthly mortgage payment.  This modification must include a Partial Claim if the homeowner has Partial Claim funds available.
	7. COVID-19 Recovery Non-Occupant Loan Modification options must be offered by mortgage servicers for properties that are not occupied by the owner, which extends the term of the mortgage to 360 months, or less if requested by the homeowner, at a fixed interest rate.
2. **Loan Modification Accounting**
	1. The Credit Union may account for an eligible loan modification either under section 4013 of the CARES Act, Temporary Relief from Troubled Debt Restructurings (4013) or in accordance with Accounting Standards Codification (ASC) Subtopic 310-40.  If a loan modification is not eligible under section 4013, or the Credit Union elects not to account for the loan modification under section 4013, the Credit Union should evaluate whether the modified loan is a Troubled Debt Restructuring (TDR).
	2. **For loans eligible under section 4013**, a loan modification must be:

		1. On a loan in existence before December 31, 2019;
		2. Related to COVID-19;
		3. Executed on a loan that was not more than 30 days past due as of December 31, 2019; and
		4. Executed between March 1, 2020 and the earlier of January 1, 2022 or the date that is 60 days after the termination of the COVID-19 National Emergency (applicable period).
	3. Loans eligible under section 4013 are not required to apply ASC Subtopic 310-40 to the section 4013 loans for the term of the loan modification.
	4. Credit Unions will not report section 4013 loans as TDRs in regulatory reports.
	5. The Credit union does not need to determine impairment associated with certain loan concessions that would have been required for TDRs (e.g., interest rate concessions, payment deferrals, or loan extensions).
	6. **For loans not eligible under section 4013**, short-term modifications made on a good faith basis in response to COVID-19 to borrowers who where current prior to any relief, are not considered TDRs under ASC Subtopic 310-40.

		1. This includes short-term (e.g., six months) modifications such as payment deferrals, fee waivers, extensions of repayment terms, or other delays in payment that are insignificant.
		2. Borrowers that are less than 30 days past due on their contractual payments at the time a modification program is implemented are considered “current.”
	7. For modification programs designed to provide temporary relief for current borrowers affected by COVID-19, the Credit Union may presume that borrowers that are current on payments are not experiencing financial difficulties at the time of the modification for purpose of determining TDR status and thus no further TDR analysis is required for loan modifications in the program if:

		1. The modification is in response to the National Emergency;
		2. The borrower was current on payments at the time the modification program is implemented; and
		3. The modification is short-term (e.g., six months).
		4. *Government-mandated modification or deferral programs related to COVID-19 would not be in the scope of ASC Subtopic 310-40, for example a state program that requires institutions to suspend mortgage payments within that state for a specified period.  Those programs, if implemented and applicable, will be analyzed by the Credit Union separately.*
	8. If the Credit Union agrees to a payment deferral due to COVID-19, this may result in no contractual payments being made, however these loans are not considered past due during the period of deferral and the Credit Union is not expected to designate these loans as past due because of the referral.
	9. The Credit Union should refer to the applicable regulatory reporting requirements, as well as internal accounting policies, to determine if loans to stressed borrowers should be reported as nonaccrual assets in regulatory reports.  However, for short-term arrangements (as outlined this policy), these loans generally should not be reported as nonaccrual.  As more information becomes available indicating a specific loan will not be repaid, the Credit Union should refer to the charge-off guidance in the instructions for Consolidated Reports of Condition and Income.
3. **Fair Credit Reporting Act (Expires April 1, 2021)**
	1. Credit Unions making**payment accommodations** to borrowers impacted COVID-19 through multiple forms, such as payment flexibility (skip payments or deferrals) will not report those deferred payments as delinquent to credit reporting agencies.

		1. The CFPB rescinded this statement, effective on April 1, 2021.
4. **Right of Recession (Expires April 1, 2021)**
	1. If the borrower determines that his or her need to obtain funds due to the COVID-19 pandemic necessitates consummating the transaction before the end of the TRID Rule waiting periods or must be met before the end of the Regulation Z Rescission Rules waiting period, then the borrower has a bona fide personal financial emergency that would permit the utilization of the modification and waiver provisions under the Regulation Z.
	2. For waiting periods to be modified or waived, the Credit Union must have a dated written statement by the borrower that:

		1. Describes the emergency;
		2. Specifically modifies or waives the waiting period; and
		3. Bears the signature of all borrowers who are primarily liable on the legal obligation or who are entitled to rescind.
	3. The Credit Union may voluntarily inform borrowers during the COVID-19 pandemic of their ability to utilize the modification and waiver provisions for bona fide personal financial emergencies if the borrower has a need to obtain funds due to the COVID-19 pandemic prior to the end of an applicable waiting period.
5. **Changed Circumstance (Expires April 1, 2021)**
	1. The COVID-19 pandemic is considered a “changed circumstance” for purposes of certain TILA-RESPA Integrated Disclosures (TRID) rule provisions, allowing the Credit Union to use revised estimates reflecting changes in settlement charges for purposes of determining good faith.
6. **Mortgage Servicing – Loan Modification (Expires January 1, 2022)**
	1. Servicers can offer certain streamlined loan modifications to borrowers with COVID-19 hardships based on the evaluation of an incomplete loss mitigation application provided the following criteria is met:

		1. The loan modification may not cause the borrower’s monthly required principal and interest payment to increase and may not extend the term of the loan by more than 480 months from the date the loan modification is effective.
		2. If the loan modification permits the borrower to delay paying certain amounts until the mortgage loan is refinanced, the mortgage property is sold, the loan modification matures, or, for FHA insured loan – the mortgage insurance terminates, those amounts must not accrue interest.
		3. The loan modification must be made available to borrowers experiencing a COVID-19 related hardship.
		4. The borrower’s acceptance of an offer of the loan modification must end any preexisting delinquency on the mortgage loan or the loan modification must be designed to end any preexisting delinquency on the mortgage loan upon the borrower satisfying the servicer’s requirements for completing a trial loan modification plan and accepting a permanent loan modification.
		5. The servicer may not charge a fee in connection with the loan modification and must waive all existing late charges, penalties, stop payment fees or similar charges that were incurred on or after March 1, 2020, promptly upon the borrower’s acceptance of the loan modification.
	2. Once the borrower accepts the above offer, the servicer is not required to comply with the previous complete loss mitigation application the borrower submitted.
	3. If the borrower fails to perform under the above loan modification plan or requests further assistance, the servicer must immediately resume reasonable diligence efforts with regards to any loss mitigation application the borrower submitted prior to the servicer’s offer of the loan modification plan above and must provide the borrower with the required notices under the mortgage servicing rules.
7. **Mortgage Servicing – Early Intervention – Live Contact (Expires October 1, 2022)**
	1. If the borrower is NOT in a forbearance program (at the time of live contact) and the owner or assignee of the mortgage makes a forbearance program available to borrowers experiencing a COVID-19 related hardship, the servicer will inform the borrower of the following information:
		1. Forbearance programs are available for borrower’s experiencing a COVID-19-related hardship and, unless the borrower states that they are not interested in receiving information about such programs, the servicer will list and briefly describe to the borrower any such forbearance programs made available at the time and the actions the borrower must take to be evaluated for such forbearance programs.
		2. At least one way that the borrower can find contact information for homeownership counseling services, such as referencing the borrower’s periodic statement.
	2. If the borrower is in a forbearance program (at the time of live contact) made available to borrowers experiencing a COVID-19 hardship, during the live contact that occurs at least 10 days and no more than 45 days before the scheduled end of the forbearance program, or if the scheduled end date of the forbearance program occurs between August 31, 2021 and September 10, 2021, during the first live contact after August 31, 2021, the servicer shall inform the borrower of the following information:
		1. The date the borrower’s current forbearance program is scheduled to end;
		2. A list of the brief description of each of the types of forbearance extension, repayment options, and other loss mitigation options made available to the borrower by the owner or assignee of the borrower’s mortgage loan at the time of the live contact, and the actions the borrower must take to be evaluated for such loss mitigation options; and
		3. At least one way that the borrower can find contact information for homeownership counseling services, such as referencing the borrower’s periodic statement.
8. **Mortgage Servicing – Foreclosure Procedural Safeguards – COVID-19**
	1. In order to provide the borrower with a meaningful opportunity to pursue loss mitigation options, a servicer must ensure that **one** of the safeguards listed below has been met before making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process because of delinquency if:
		1. The borrower’s mortgage loan obligation became delinquent more than 120 days delinquent on or after March 1, 2020; and
		2. The statute of limitations applicable to the foreclosure action being taken in the laws of the State where the property securing the mortgage loan is located expires on or after January 1, 2022.
	2. A procedural safeguard is met if:
		1. The borrower submitted a complete loss mitigation application, remained delinquent at all times since submitting the application, and complies with the other mortgage servicing rules related to foreclosure which permitted the servicer to make the first notice or filing required for foreclosure:
		2. The property securing the mortgage loan is abandoned according to the laws of the State or municipality where the property is located when the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process; or
		3. The servicer did not receive any communications from the borrower for at least 90 days before the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process and all of the following conditions are met:
			1. The servicer made good faither efforts to establish live contact after each payment due date in accordance with the mortgage servicing rules, during the 90-day period before the servicer makes the first notice or filing for any judicial or non-judicial foreclosure process;
			2. The servicer sent the written notice required by the mortgage servicing rules at least 10 days and no more than 45 days before the servicer makes the first notice or filing for any judicial or non-judicial foreclosure process;
			3. The servicer sent all required notices, as applicable, during the 90-day period before ethe servicer makes the first notice or filing for any judicial or non-judicial foreclose process; and
			4. The borrower’s forbearance program, if applicable, ended at least 30 days before the servicer makes the first notice or filing for any judicial or non-judicial foreclosure process.
	3. This section does not apply if a servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process on or after January 1, 2022.
9. **Loan Participation Limit**
	1. The maximum aggregate amount of loan participations that the Credit Union may purchase from a single originating lender is increased to the greater of $5,000,000 or 200% of the Credit Union’s net worth, until December 31, 2022.
10. **Eligible Obligations [For Federal Credit Unions with CAMEL composite ratings of 1, 2, or 3]**
	1. The Credit Union is permitted to purchase eligible obligations (loan or group of loans as defined under NCUA Rules 701.23) of credit unions and liquidating credit unions, without regard to whether they are loans the credit union is empowered to grant or refinancing to ensure the obligations are ones the Credit Union is empowered to grant.  The Credit Union may continue to hold obligations purchased pursuant to this rule until December 31, 2022.
11. **Occupancy and Disposal of Acquired Premises [For Federal Credit Unions]**
	1. The Federal Credit Union Act allows the Credit Union to purchase, hold and dispose of property necessary or incidental to its operations.  There are limits on investments in fixed assets, along with occupancy, planning and disposal requirements for acquired and abandoned premises.  Any days that fall within April 21, 2020 and concluding at the close of December 31, 2022 will not be counted for purposes of determining the Credit Union’s compliance with these regulatory time periods.
		1. If the Credit Union acquires premises, including unimproved land or unimproved real property, it must partially occupy them no later than six years after the date of acquisition (unless a waiver is granted by the NCUA).
		2. The Credit Union must make diligent efforts to dispose of abandoned premises and any other real property it does not intend to use in transacting business.
		3. The Credit Union must advertise for sale premises that have been abandoned for 4 years.
12. **Asset Threshold for Capital Planning and Stress Testing.**
	1. If applicable (covered Credit Union over $10 billion or more in assets), the measurement date for asset-based thresholds for capital planning and stress testing requirements has been changed to March 31, 2020 instead of March 31, 2021 for calendar year 2022. The Credit Union will not trigger any new regulatory requirements under Part 702 until January 1, 2023, at the earliest.
13. **Risk Management Considerations.**
	1. The Credit Union will closely monitor the credit risks of loans that receive accommodations.
	2. The Credit Union will apply appropriate loan risk ratings and make appropriate accrual status decisions on loans affected by COVID.
		1. A reasonable accommodation may not necessarily result in an adverse risk rating solely because of a decline in the value of underlying collateral, provided that the borrower has the ability to perform according to the modified terms.
	3. The Credit Union will report to Management, the scope of loans that receive an accommodation, they types of initial and any additional accommodations provided, then the accommodation period ends and the credit risk of potential higher-risk segments of the portfolio.
		1. This may include product types, post-relief payment characteristics (balloon payments, payment changes, or maturity extensions), or borrower characteristics (unemployed or underemployed borrowers, credit score bands, industry, businesses in full or partial operation, or credit risk rating).
	4. When considering additional accommodations, the Credit Union will continue to evaluate the borrower’s financial condition and repayment capacity and assess whether current conditions have affected collateral values or the strength of guarantees (if applicable).
		1. For commercial lending this would also include the Credit Union evaluating both actual and projected cash flows of a borrower’s business.
	5. The Credit Union will consider the following approaches to risk management generally:
		1. Provide additional accommodation options to borrowers that are affordable and sustainable;
		2. Provide clear, conspicuous, and accurate communications and disclosures to inform the borrowers of available options;
		3. Provide communications and disclosures in a timely manner, before the end of the accommodation period to allow adequate time for the borrower and Credit Union to consider next steps, which may include payment deferral, loan modification, or loan extension, among other options;
		4. Base eligibility and payment terms on consistent analyses of borrowers’ (or guarantors’) financial condition and reasonable capacity to repay;
		5. Ensure policies and procedures reflect accommodation options offered by the Credit Union and promote consistency with applicable laws and regulations, including fair lending laws;
		6. Provide appropriate training to employees and other persons responsible for compliance and operational procedures related to any additional accommodation options, including customer service personnel;
		7. Ensure that risk monitoring, audit, and consumer complaint systems are adequate to evaluate compliance with applicable laws, regulations, policies, and procedures; and
		8. Provide complete and accurate information to borrowers and subsequent servicers during loan transfers and ensuring post-transfer servicing is consistent with the agreement with the borrower and borrower’s status at the time of transfer.
	6. The Credit Union will continue to follow applicable accounting and regulatory reporting requirements for loan modifications, including additional modifications made to borrowers who continue to experience financial hardship at the end of the initial accommodation period.  This includes maintenance of the appropriate allowances for loan and lease losses (ALLL).
		1. If the Credit Union elects to account for a loan modification under section 4013 of the CARES Act, an additional loan modification could also be eligible under section 4013.
		2. If the Credit Union does not elect to account for a loan modification under section 4013 or it is not eligible, additional modifications should be viewed cumulatively in determining whether the additional modification is a TDR.
		3. For other loan modifications, the credit union can appropriately evaluate the subsequent modifications based on internal accounting policies and applicable regulatory reporting instructions
	7. Internal control functions will include appropriate targeted testing of the process for managing each stage of the loan accommodation.  These functions will generally confirm the following:
		1. Accommodating terms are extended with appropriate approval;
		2. Additional accommodations offered to borrowers are presented and processed fairly and consistently to comply with applicable laws and regulations;
		3. Servicing systems accurately consolidate balances, calculate required payments, and process billing statements for the full range of potential repayment terms that exist once the accommodation period ends;
		4. Staff (loan and collections personnel) are qualified and can efficiently handle expected workloads;
		5. Borrower (and guarantor) communications, and legal documentation, is clear, accurate, and timely, and in accordance with contractual terms, policy guidelines, and federal and state laws and regulatory requirements; and
		6. Risk rating assessments are timely and appropriately supported.
14. **Prompt Corrective Action (PCA) Relief (April 19, 2021 – March 31, 2022)**
	1. For “adequately capitalized” credit unions under PCA rules from the effective dates above, the earnings-retention requirement is waived by the NCUA.
	2. Credit unions that are less than “adequately capitalized” and required to submit a Net Worth Restoration Plan (NWRP), may process a streamlined NWRP if they attest that they became undercapitalized predominately as a result of share growth and that the share growth is a temporary condition due to the COVID-19 pandemic.