

Department of Financial Services
New Banking Law Section 9-x (“Section 9-x”)
Frequently Asked Questions (FAQs)

General

Q: What regulated institutions must comply with Section 9-x?

A: New York regulated banking organizations and any New York regulated mortgage servicers must comply with Section 9-x.

A “banking organization” means any bank, trust company, private banker, savings bank, safe deposit company, savings and loan association, credit union, and investment company chartered by the Department. “Banking organization” does not include New York-regulated branches or agencies of foreign banks.

A “regulated mortgage servicer” means any entity that is registered with the Department to engage in mortgage servicing activities pursuant to Article 12-D of the Banking Law. Section 9-x also applies to mortgage bankers, brokers, and New York-regulated branches and agencies of foreign banks that engage in mortgage servicing activities that are exempt from the New York’s servicer registration requirement.

Section 9-x does not apply to banks and credit unions that are licensed by another state or a federal authority. However, the regulation does apply to a Credit Union Service Organization (CUSO) of a federal credit union where the mortgage servicing activities are under the responsibility of the CUSO.

Q: How does Section 9-x define "financial hardship as a result of COVID-19"?

A: Section 9-x does not establish specific criteria for demonstrating financial hardship as a result of the COVID-19 pandemic. It is up to each institution to establish such standards and apply them in light of its knowledge of the individual borrower. Standards may include, but are not limited to, the borrower’s financial resources, payment history and current circumstances, subject to the safety and soundness of the institution. Institutions are encouraged to take a reasonable approach in establishing such standards and criteria to help those who are facing financial resource constraints as a result of the COVID-19 pandemic.

Q: Does a “financial hardship as a result of COVID-19” apply to a borrower who has suffered some loss of income but who otherwise has the capacity to pay their mortgage and other living expenses?

A: The purpose of Section 9-x is to help homeowners who, as a result of COVID-19, have suffered a “financial hardship” that may make it difficult for them to pay their mortgage and other living expenses. In assessing whether a borrower is facing a financial hardship, regulated institutions should establish reasonable standards, which takes into consideration a borrower’s resources, income, expenses and the uncertain duration of the impact of the pandemic.

Q: How is Section 9-x affected by the CARES Act or by any relevant federal guidance?

A: Section 9-x requires New York State regulated institutions to offer forbearance on privately serviced loans relating to residential mortgages on properties located in New York to any individual who resides in New York and who demonstrates financial hardship as a result of the COVID-19 pandemic, subject to the safety and soundness requirements of the regulated institution. Section 9-x does not apply to federally backed mortgages. The Coronavirus Aid, Relief, and Economic Security Act of 2020, among other things, covers federally backed mortgages and provides borrowers of such loans with the right to request forbearance up to 12 months from their mortgage servicers. Many New York State regulated mortgage servicers also service federally backed mortgages and are subject to compliance with the federal requirements and guidance applicable to such loans.

Mortgage Forbearance

Q: What does the requirement to make applications “widely available” mean?

A: Regulated institutions must ensure that borrowers who, from March 7, 2020 to the end of the pandemic in their county of residence, are in arrears, or are in a trial period, or have applied for loss mitigation are informed of the available option to seek forbearance and are provided with a forbearance application. Institutions should establish recorded messages or maintain website pages instructing borrowers experiencing COVID-19 related hardship on how to obtain relief.

Q: To what types of mortgages does Section 9-x apply? Does it apply to vacation homes or investment properties?

A: Section 9-x only applies to residential mortgage loans (including home equity lines of credit) on 1-4 family properties, including cooperative units and condominiums, that is the primary residence of the borrower. Section 9-x does not apply to commercial or industrial loans. Regulated institutions are not prohibited from offering forbearance for vacation homes or investment properties if they chose to do so.

Q: Is forbearance relief under Section 9-x available to borrowers whose loans were accelerated or in foreclosure before March 7, 2020?

A: No, forbearance relief is not available under Section 9-x for loans that were accelerated or in foreclosure as of that date.

Q: Is forbearance relief limited to borrowers whose payments were current as of March 7, 2020?

A: No, relief under Section 9-x is not limited to those borrowers whose payments were current at the onset of the pandemic.

Q: Is forbearance relief under Section 9-x available to borrowers who had a forbearance agreement in place before Executive Order 202.9 of 2020 or Section 9-x went into effect?

A: Yes, if a borrower entered into a forbearance agreement before Executive Order 202.9 of 2020, or Section 9-x, went into effect and the borrower requests relief under Section 9-x due to a demonstrable hardship caused by COVID-19, such borrower would be entitled to relief under Section 9-x.

Q: If a borrower and regulated institution entered into a forbearance agreement before Executive Order 202.9 of 2020, or Section 9-x, went into effect, and the borrower subsequently requests a forbearance under Section 9-x, can an institution count the time that the pre-COVID-19 forbearance agreement was in place towards the 180-day forbearance period required by Section 9-x?

A: Yes, if the pre-COVID-19 forbearance agreement ended at any point during the covered period regulated institutions can only count the time during the covered period the loan was in forbearance. Regulated institutions may not count forbearance agreements that ended prior to the covered period as part of the relief required by Section 9-x.

Q: Can regulated institutions approve forbearance for an individual over the phone and then request the confirming paperwork to be sent to them?

A: Yes. New York regulated institutions are not required to request documents from borrowers in advance of granting the forbearance.

Q: Does Section 9-x apply to mortgages sold on the secondary market to Freddie, Fannie, SONYMA, etc.?

A: Section 9-x does not apply to any mortgages made, insured or securitized by U.S. government agencies, Government Sponsored Enterprises or a Federal Home Loan Bank, or the rights and obligations of any lender, issuer, servicer or trustee of such obligations, including servicers for the Government National Mortgage Association and for the State of New York Mortgage Agency. Forbearance for such mortgages are covered by guidelines issued by such programs.

Q. Are institutions required to forbear the escrow portion of the mortgage payment, or just the principal and interest?

A. Section 9-x requires the forbearance of “all monthly payments due with respect to the mortgage,” which includes all components of a mortgage payment that the borrower is obligated to pay to the lending institution. Therefore, if a borrower’s monthly payment includes escrow for the purposes of paying taxes and insurance, a regulated institution cannot require a borrower to remit such funds to the regulated institution or to make such payments to third parties.

Q: Is the forbearance required to last 180 days?

A: Section 9-x requires that a forbearance up to 180 days be granted by the institution to qualified borrowers, subject to the safety and soundness requirements of the regulated institution. If a qualified borrower prefers a shorter forbearance period, the institution may grant such shorter forbearance period.

Q: When does the 180-day forbearance period commence?

A: The forbearance period commences when the forbearance is granted to the borrower. If a borrower previously received a forbearance under Executive Order 202.9 of 2020 and wants to extend the period of the forbearance under Section 9-x, the forbearance period shall be deemed to have commenced on the date that the forbearance was granted pursuant to the requirements of the Executive Order.

Q: Can forbearance under Section 9-x be granted for up to 360 days in 90 day increments, subject to the borrower demonstrating their continued hardship?

A: Section 9-x(2)(b) provides that forbearance shall be granted for up to 180-days with an option to extend for up to an additional 180-days if the borrower demonstrates continued hardship. The language of Section 9-x allows regulated institutions and borrowers to agree to a forbearance that lasts less than 180-days to fit the circumstances of the specific borrower. It's plain reading, however, does not contemplate that regulated institutions provide forbearance relief in several 90-day increments up to 360 days.

Q: If the borrower previously received a forbearance pursuant to the requirements of Executive Order 202.9 of 2020, do regulated institutions automatically need to extend the initial forbearance to the full 180-days required by Section 9-x?

A: No, Section 9-x does not require that a previously granted forbearance automatically be extended to 180-days. If the borrower previously received a COVID-19-related forbearance pursuant to the Executive Order 202.9, the borrower may request to extend the forbearance period pursuant to Section 9-x. Also, when discussing the repayment options on the initial forbearance, the regulated institution should discuss with the borrower the option to extend the forbearance pursuant to Section 9-x. A regulated institution may require that, in connection with a request to extend a previously granted forbearance, the borrower demonstrate an ongoing COVID-19-related hardship to qualify for an extended forbearance.

Q: Does a borrower have to demonstrate an ongoing hardship to extend a forbearance agreement for an additional 180-days pursuant?

A: Yes, borrowers must demonstrate an ongoing COVID-19-related hardship to qualify for an extended forbearance.

Q: Are regulated institutions obligated to amend existing forbearance agreements provided pursuant to the requirements of Executive Order 202.9 of 2020 to comply with Section 9-x?

A: While Section 9-x does not require the amendment of existing COVID-19-related forbearance agreements, it does provide that any qualified mortgagor who received a forbearance agreement pursuant to that Section, or Executive Order 202.9 of 2020, are entitled to select one of the repayment options specified in Section 9-x(3). To the extent that a qualified mortgagor who previously received a COVID-19-related forbearance asks to repay a forbearance using one of the options listed in Section 9-x(3), regulated institutions are required to conform the forbearance agreement.

Q: May a regulated institution leave an existing 90-day forbearance agreement in place and add a second 90-day forbearance agreement to comply with the 180-day requirement of Section 9-x?

A: Yes, the requirements of Section 9-x may be satisfied by extending an existing forbearance agreement pursuant to Executive Order 202.9, or entering into a second forbearance agreement that complies with the requirements of Section 9-x. However such forbearance agreements cannot be treated differently for the purpose of section 9-x(3).

Q: If a regulated institution denies a forbearance application for any reason other than that specified in Section 9-x(6), does it need to advise the Department of the denial?

A: Yes. Also, if a regulated institution denies a borrower's request for relief pursuant to Section 9-x for any reason, it should advise the borrower that they have a right to file a complaint with the Department and may do so by visiting the Department's website at www.dfs.ny.gov.

Repayment Options

Q: What happens at the end of the forbearance period?

A: Section 9-x(3) allows a borrower to select one of three repayment options for a COVID-19 related forbearance. Below are the specific options detailed in Section 9-x(3)(a-d):

- (a) Extend the term of the loan for the number of months the loan was in forbearance;
- (b) Repay the arrears accumulated during the forbearance period on a monthly basis;
- (c) Negotiate a loan modification or any other options that addresses the borrowers changed circumstances
- (d) Only if the borrower and the lender cannot reasonably agree on a loan modification, the regulated institution must offer to defer the amount of the forbearance into a non-interest bearing balloon loan due at the maturity of the loan or at any time when the loan is satisfied through a refinance or sale.

Q: What does Section 9-x(3)(a) mean when it says that no "additional interest" may be charged on the forborne amount?

A. Section 9-x(3)(a) prohibits capitalizing the interest due as part of each monthly forbore payment and charging interest on such capitalized amount.

Q: How are borrowers who elect to extend the term of their loan for the length of the forbearance pursuant to Section 9-x(3)(a) supposed to repay the amount of the forbearance?

A: Section 9-x(3)(a) contemplates that the term of the loan will be extended for the length of the forbearance and the forbore payments repaid during the extension. Borrowers that select this option would resume payments under their existing amortization schedule once the forbearance period is over with the forbore payments to be paid in equal monthly installments during the extended term of the loan.

Q. Can interest continue to accrue on the forbore amount if the borrower elects to spread the amount of the forbearance over the remaining term of the loan pursuant to Section 9-x(3)(b)?

A. No. Although Section 9-x(3)(b) does not specifically prohibit charging additional interest, the clear intent of the legislation is to make repayment options available to borrowers that do not result in capitalizing interest into the existing principal balance or compounding interest.

Q: According to Section 9-x(3)(b), borrowers have the option of having the forbore amount payable on a monthly basis for the remaining term of the loan. For a loan with a remaining maturity of 29 years, is a servicer limited to calculating repayment of the arrears in a manner that result in 348 monthly payments?

A: Yes, Section 9-x(3)(b) provides that the amount of the forbearance will be spread out in even increments for the remaining term of the loan.

Q. Are there any limits on the terms of a modification that may be negotiated under Section 9-x(3)(c)?

A. Section 9-x(3)(c) is a catch-all section that enables regulated institutions and borrowers to negotiate a modification that is mutually acceptable to the regulated institution and borrower. Regulated institutions are reminded that Section 9-x(3)(c) is one of three repayment options that borrowers can select. Regulated institutions must inform borrowers who receive a COVID-19 related forbearance of such options. Furthermore, regulated institutions may not prioritize or encourage borrowers to select one repayment option over any other, or place borrowers into loan modifications that are not affordable or sustainable.

Q. What does the requirement in Section 9-x(3)(d) that the forbore amount be accumulated and paid as a non-interest bearing balloon loan at the maturity, refinance or sale of the real property mean?

A: Under Section 9-x(3)(d), the forbore principal and interest payments that were previously due and owing to the lender are lumped into a non-interest bearing loan. No additional interest beyond that which was forbore can be charged to the borrower.

Q: **May a regulated institution satisfy the requirements of Section 9-x(3)(d) by, at the end of each month, deferring repayment of the monthly forbore payment resulting in individual monthly deferrals?**

A: No, deferring each monthly payment would not satisfy the requirements of 9-x(3)(d), unless the deferral does not result in any additional interest or fees being charged and the borrower is not required to make an additional showing of hardship to qualify for such monthly deferral. Regulated institutions must inform borrowers who receive a COVID-19 related forbearance of all of the repayment options available in Section 9-x(3).

Q: **Are regulated institutions required to allow a borrower the option to repay the forbearance amount through a non-interest bearing balloon payment pursuant to Section 9-x(3)(d) even if the borrower can afford to pay the forbearance amount on a more accelerated schedule?**

A: Section 9-x(3)(d) requires a regulated institution to offer to defer arrears in situations where the borrower and the regulated institution are unable to “reasonably agree on a mutually acceptable loan modification.” The regulated institution must ensure that modifications are affordable and sustainable given the borrower’s changed circumstances. Furthermore, the regulated institution must evaluate the borrower’s reason for declining to accept the loan modification offered to determine whether there are circumstances the regulated institution did not consider in its loan modification determination.

Any regulated institution that determines that the borrower’s rejection of an offered loan modification is unreasonable shall, at the time that it advises the borrower of its determination, inform the borrower that they may file a complaint with the Department at www.dfs.ny.gov.

Q: **If a borrower who is offered a non-interest bearing balloon loan payable at maturity pursuant to Section 9-x(3)(d), subsequently defaults, resulting in an acceleration of the loan, may the regulated institution accelerate the amount of the balloon payment?**

A: Yes, in the event of default and acceleration of such loan, the Department interprets Section 9-x(3)(d) as allowing a regulated institution to accelerate the full amount of the loan, including the forbore payment. This interpretation is consistent with the section’s recognition that the balloon payment is due at maturity.