



# TaxNewsFlash

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## Rev. Proc. 2020-26: Safe harbors, loan forbearance programs under CARES Act (COVID-19)

The IRS today released an advance version of Rev. Proc. 2020-26 that sets forth safe harbors under which modifications to certain mortgage loans in connection with a forbearance program related to the coronavirus (COVID-19) pandemic are not treated as replacing the unmodified obligation with a newly issued obligation, or as manifesting a power to vary for purposes of determining the federal income tax status of certain securitization vehicles—such as investment trusts and real estate mortgage investment conduits (REMICs)—that hold the loans.

Rev. Proc. 2020-26 also sets forth a safe harbor under which certain securitization vehicles are not treated as having improper knowledge of an anticipated default on the grounds that they acquired a mortgage loan with respect to which the borrower had participated in a forbearance program.

Read [Rev. Proc. 2020-26](#) [PDF 137 KB]

### Overview

The “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act) (Pub. L. No. 116-136) provides that during the covered period, borrowers with federally backed mortgage loans and multifamily borrowers with federally backed multifamily mortgage loans experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency may request and obtain forbearance on their loans.

Today’s revenue procedure reveals that the IRS and Treasury Department have received requests for guidance as to whether:

- The forbearance of federally backed mortgage loans, federally backed multifamily mortgage loans, and non-federally backed mortgage loans held by investment trusts and REMICs will jeopardize the federal tax qualifications of the securitization vehicles; and
- Federally backed mortgage loans, federally backed multifamily mortgage loans, and non-federally backed mortgage loans for which servicers have provided forbearances to borrowers that are experiencing financial hardship due to the COVID-19 emergency may be acquired by a REMIC without the acquiring REMIC being treated as having improper knowledge of an anticipated default for purposes of the rules governing REMIC foreclosure property.

Rev. Proc. 2020-26 provides that for mortgage loans held by REMICs, forbearances (and all related modifications) as described by today's revenue procedure:

- Are not treated as resulting in a newly issued mortgage loan for purposes of Reg. section 1.860G-2(b)(1)
- Are not prohibited transactions under section 860F(a)(2), and
- Do not result in a deemed reissuance of the REMIC regular interests

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