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Obtaining Mortgage Relief for Victims of Disasters

FEBRUARY 2018

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National Consumer Law Center®

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ACKNOWLEDGEMENTS

The authors thank Emily Green Caplan for research assistance and analysis and NCLC colleagues Cleef Milien, Jan Kruse, and Svetlana Ladan.

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ABOUT THE NATIONAL CONSUMER LAW CENTER

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

Essential Web Resources

Is your home located in a disaster area? https://www.disasterassistance.gov/

National Legal Aid & Defender Association (NLADA) disaster legal aidhttps://www.disasterlegalaid.org/

FEMA individual disaster aid
https://www.fema.gov/individual-disaster-assistance

Freddie Mac
http://www.freddiemac.com/singlefamily/service/natural_disasters.html

Fannie Mae http://www.fanniemae.com/portal/about-fm/hurricane-relief.html
and https://www.fanniemae.com/singlefamily/disaster-assistance

FHA https://www.hud.gov/program_offices/housing/sfh/nsc/qaho0121

VA
https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_17_23.pdf
and
https://www.benefits.va.gov/homeloans/documents/docs/va_policy_regarding_natural_disasters.pdf

USDA https://www.rd.usda.gov/programs-services/services/rural-development-disaster-assistance

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1. Introduction

1.1 Overview

When homeowners are struggling to make their mortgage payments after a major disaster, it is critical for their advocates to understand the different programs and protections enacted for their support.

The majority of mortgage loans (three out of five) made in the United States are government-sponsored or government-insured,[1] and as a result, the rules governing how homeowners with these mortgages will be treated after disasters are somewhat uniform:

- Fannie Mae and Freddie Mac, the guarantors of most mortgage loan, provide some protections after natural disasters: Both[2] authorize their servicers to permit a 90 day suspension of foreclosure proceedings immediately after a natural or other disaster. [3] Servicers are instructed to work closely with homeowners to develop workout or relief plans to cure the delinquency. Unfortunately, it appears that there is no absolute right to the forbearance. Typically, however, a homeowner will be offered a forbearance plan that temporarily reduces or suspends the monthly mortgage payment for at least 90 days. Sections 3.2 and 3.1 respectively, provide more specifics on the protections provided by each of these mortgage owners.

- Government-insured mortgage agencies, such as FHA, VA and RHS, also provide protections against default and foreclosure for victims of disasters, although these protections may not be as clearly delineated as those provided by Fannie Mae and Freddie Mac. Sections 3.3, 3.4 and 3.5 cover the rules for these mortgages.

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[1] https://www.valuewalk.com/2016/03/fannie-mae-who-owns-the-u-s-mortgage-markets/.

[2] https://www.pennymacusa.com/blog/understanding-the-roles-of-fannie-mae-and-freddie-mac.

[3] *See generally* Fannie Mae 2015 Single Family Servicing Guide at D1-3-02, Providing Relief to Borrowers Who are Affected by a Disaster (effective Nov. 12, 2014); Freddie Mac 2016 Single-Family Seller/Servicer Guide at 8404.4, Delinquency management activities following a disaster (effective Mar. 2, 2016).

The remaining third of mortgage loans made in the United States are not provided by these government-related entities. Relief from foreclosure after non-payment resulting from a disaster for homeowners with these mortgages will be left to the discretion of the owners and servicers of these mortgages, subject to the rules for mortgage modifications issued by the Consumer Financial Protection Bureau (CFPB) (see section 2.2, below). However, federal, state and local relief for all affected homeowners in a disaster area (see section 2.3, below) may be helpful.

It is also necessary to determine homeowners' rights to use payments from their insurance companies for repairs or replacement of their homes. Different mortgage owners have varying rules for the distribution of insurance proceeds, often based on the default status of the mortgage before the disaster had occurred. Section 2.4 below includes general rules for distribution of insurance proceeds. Additionally, separate subsections on insurance are included within the discussion of each mortgage owner's disaster relief rules.

1.2 First questions

In order to determine the relief to which a homeowner may be entitled after a natural disaster, one must first address several questions:

- **Is the home located in a disaster area?** FEMA has a website that provides information about whether a particular address is included: https://www.disasterassistance.gov/.

- **Who owns the mortgage?** This website (among others), http://www.fhmtg.com/virginia-mortgage-refinance/freddiemac-fanniemae-loanlookup-tools.htm, provides instruction on how to determine whether Fannie Mae or Freddie Mac owns the mortgage. If the loan does not appear there, and the mortgage documents do not indicate that the loan was government-insured or -guaranteed by the FHA, VA, or the Rural Housing Service, then the loan is likely to be a private label mortgage.

1.3 Resources for lawyers helping disaster victims

The National Disaster Legal Aid Resource Center[4] is a collaboration of Pro Bono Net, the American Bar Association, the Legal Services Corporation and National Legal Aid & Defender Association (NLADA). This online resource provides readily available legal information about disaster recovery on housing, insurance claims, employment and other vital issues. The site incorporates lessons learned from past experiences and continually improves on procedures during natural disasters and responses to future emergencies, and it seeks to ensure that the inevitable longer-term needs are met.

The site provides access to FEMA information, explanation of which counties are considered covered counties, online resources for additional assistance, and much more.

2. Disaster assistance applicable to all mortgages

2.1 FEMA assistance to homeowners

FEMA provides housing assistance to individuals and families who have lost their homes as a result of a presidentially-declared disaster. Renters and homeowners both may qualify for assistance. By law, FEMA assistance cannot duplicate the assistance received from insurance coverage, but homeowners and renters may receive assistance for items not covered by insurance.[5]

After an application for assistance from FEMA has been received,[6] FEMA generally sends out an inspector within 10 days, although in catastrophic disasters, it may take longer.[7]

Some housing assistance funds are available through FEMA's Individuals and Households Program. Most disaster assistance from the federal government is in

[4] https://www.disasterlegalaid.org/.

[5] https://www.fema.gov/individual-disaster-assistance.

[6] Applications for FEMA assistance are made here: https://www.disasterassistance.gov.

[7] https://www.fema.gov/individual-disaster-assistance.

the form of low interest disaster loans administered by the Small Business Administration.[8]

FEMA housing related assistance includes:

1. **Temporary Housing** (a place to live for a limited period of time): Financial assistance may be available to homeowners or renters to rent a temporary place to live.
2. **Lodging Expenses Reimbursement:** Reimbursement of hotel expenses for homeowners or renters may be available for short periods of time due to inaccessibility or utility outage if not covered by insurance or any other program.
3. **Repair**: Financial assistance may be available to homeowners to repair disaster-caused damage to their primary residence that is not covered by insurance. The goal is to make the damaged home safe, sanitary, or fit to occupy.
4. **Replacement:** Financial assistance may be available to homeowners to replace their home destroyed in the disaster that is not covered by insurance. The goal is to help the homeowner with the cost of replacing their destroyed home.
5. **Permanent or Semi-Permanent Housing Construction**: Direct assistance or money for the construction of a home. This type of help occurs only in insular areas or other locations specified by FEMA, where no other type of housing assistance is possible.[9]

2.2 Minimum rules applicable to all homeowners in disaster areas

The rules implemented by the CFPB are applicable to all mortgages. Regulation X (implementing the Real Estate Settlement Procedures Act) provides the most relevant regulations.

Regulation X does allow a servicer to offer loss mitigation (also known as "workout") options to a borrower who has not submitted an application. A servicer also may offer loss mitigation options to a borrower when the offer is not based on any evaluation of information submitted by the borrower in connection with a loss mitigation application.[10]

[8] https://www.fema.gov/individual-disaster-assistance.
[9] https://www.fema.gov/individual-disaster-assistance.
[10] *See* Reg. X, 12 C.F.R. § 1024.41, cmt. 41(c)(2)(i)-1.

The CFPB has said that "[t]his regulatory flexibility permits servicers to offer relief to borrowers affected by a major disaster or emergency without first having to collect a complete application. These borrowers in particular may have difficulty timely obtaining and submitting application documents and information."[11]

In contrast, the general rule is that servicers obtain a complete loss mitigation application before evaluating a mortgage borrower for a loss mitigation option, such as a loan modification or short sale. Servicers generally may not offer a loss mitigation option based upon an evaluation of any information provided in connection with an incomplete application.[12] However, Regulation X permits servicers to offer certain short-term options based upon an evaluation of an incomplete application.[13]

2.3 State assistance for homeowners in natural disaster areas

After past disasters, states have used HUD funds to develop new programs to aid victims. Immediately after Hurricanes Harvey and Irma, HUD announced that it had redirected resources to the impacted regions.[14] It is likely that affected states will develop specific grant and aid programs targeted at this population.[15]

After Hurricanes Katrina and Rita in 2005, the state of Louisiana used federal Community Development Block Grant (CDBG) disaster funds to assist affected homeowners. Under the state's plan, eligible homeowners received a one-time grant payment of up to $150,000 for damage to the home not covered by

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[11] *See* Consumer Fin. Prot. Bureau, Statement on supervisory practices regarding financial institutions and consumers affected by Hurricanes Harvey and Irma, Sept. 8, 2017, *available at* www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/statement-supervisory-practices-affected-hurricane-harvey.

[12] Reg. X, 12 C.F.R. § 1024.41(c)(2)(i).

[13] Reg. X, 12 C.F.R. § 1024.41(c)(2)(iii).

[14] *See* HUD Exchange, OHC Resources for Housing Counseling Agencies Dealing with the Impact of Hurricane Irma, Sept. 12, 2017, *available at* https://www.hudexchange.info/news/ohc-resources-for-housing-counseling-agencies-dealing-with-the-impact-of-hurricane-irma/; Press Release, U.S. Dep't of Hous. & Urban Dev., HUD Announces Disaster Assistance for Victims of Hurricane Harvey, HUD No. 17-068 (Aug. 28, 2017), *available at* https://www.hud.gov/press/press_releases_media_advisories/2017/HUDNo_17-068.

[15] HUD provides states with CBDG Disaster Recovery Assistance grants to help states supplement recovery assistance provided by other federal programs like FEMA. States may use these funds to provide relief to homeowners.

property insurance, FEMA grants, or other federal, state, or local government programs. In exchange, homeowners were required to agree to covenants and restrictions running with and encumbering the property. The covenants include requirements that the property be rebuilt and repaired according to housing codes and ordinances, as well as requirements regarding the elevation of the building in compliance with FEMA standards and homeowner occupation of the property for three years.[16]

Mississippi had a similar program. The state used CDBG funds to assist homeowners whose primary residence suffered flood damage as a result of Hurricane Katrina. The Mississippi Development Authority permitted lenders to reduce the amount homeowners receive by any past-due installments on the mortgage or taxes owed.[17]

2.4 Distribution of insurance proceeds[18]

Almost all mortgage loans require borrowers to maintain hazard insurance to protect the lender's interest in the property. The typical security instrument language gives the lender[19] broad discretion to determine what types of insurance are required (fire, flood, earthquake, wind, etc.) and the amount of coverage.[20]

After a covered loss occurs, the insurance company issues a claim check identifying both the borrower and the mortgage lender or servicer as payee.[21] Because the lender or servicer is also a payee, it effectively controls the disbursement of the proceeds to the borrower.

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[16] More information about the Road Home program is available at https://www.road2la.org/. The program is currently focused on compliance and monitoring of existing participants.

[17] Under the Mississippi program eligible homeowners whose homes were located outside a FEMA designated 100-year flood zone were eligible to receive a one-time grant payment of up to $150,000 for flood damage not covered by property insurance or FEMA grants. In exchange for the grant payment, homeowners were required to agree to covenants on their property that required compliance with building codes, elevation of the building, and flood insurance. More information about the program is available at https://archives.hud.gov/news/2006/pr06-036ms.pdf and http://sos.ms.gov/ACProposed/00014485b.pdf.

[18] For a more thorough discussion of the distribution of insurance proceeds after claims, see NCLC, Mortgage Servicing § 17.2.8 (1st ed. 2017).

[19] Though the standard security instrument refers to the "lender," the mortgage servicer is generally responsible for ensuring compliance with the security instrument, including the insurance provisions.

[20] *See* Single Family-Fannie Mae/Freddie Mac Uniform Instrument, ¶ 5 (01/01).

[21] For a description of variations in insurance policy mortgage clauses, see Costanzo v. Property & Casualty Insurance Company of Hartford, 2014 WL 1151717 (D.N.M. Oct. 1, 2014).

Fannie Mae and Freddie Mac, as well as the FHA, all have general rules governing distribution of insurance proceeds after claims have been made.[22] However, there are also special rules regarding insurance proceeds after disasters, discussed below.

The general rule is reflected in the Fannie Mae standard security instrument, which provides that insurance proceeds will be applied to the restoration of the property so long as the restoration and repair[23] are "economically feasible" and the lender's "security is not lessened." If the repairs do not satisfy both conditions, then the security instrument directs the lender to apply the insurance proceeds to the debt. The term "economically feasible" is not defined in the instrument, and there is no explanation of what it means to lessen the security. Most courts have interpreted it to mean whether the cost of repairs will exceed the insurance proceeds, and whether the value of the repaired home will at least exceed its value prior to loss.[24] Like many mortgage servicing issues, the question of who bears the burden of demonstrating economic infeasibility or reduced security may depend on the procedural posture of the case.[25]

If the proceeds are to be used for restoration and repair, the mortgage servicer may disburse proceeds in a single payment or in a series of progress payments as the work is completed. Typically disbursement schedules call for release of one third of the proceeds up front, the next one third at 50% completion (and after inspection), and the last one third at completion (and after inspection).[26]

Delays in distributions of funds can wreak havoc with rebuilding efforts, and may give rise to claims of breach of contract or breach of good faith and fair

[22] *See, e.g.,* Fannie Mae Single Family Servicing Guide B-5-01.

[23] Courts have construed the terms restoration and repair narrowly at times. *See* Green Tree Servicing, L.L.C., v. Mann, 2008 WL 793632 (W.D. Ky. Mar. 24, 2008) (replacement of mobile home did not constitute restoration or repair therefore lender did not need to disburse insurance proceeds for that purpose); Cox v. Wightman, 2007 WL 708611 (W.D. La. Mar. 5, 2007) (insurance proceeds not required to be used for mold testing as "testing" was not restoration and repair).

[24] *See* Vongohren v. Citimortgage, Inc., 2016 WL 739070 (D. Md. Feb. 25, 2016); Alvarez-Mejia v. Bellissimo Properties, L.L.C., 208 So. 3d 797 (Fla. Dist. Ct. App. 2016).

[25] *See* Music v. Bank of America, 2015 WL 8477614 (N.D. Cal. Dec. 9, 2015) (placing burden on borrower-plaintiff to show economic feasibility).

[26] For current loans with loss proceeds in excess of $40,000, Fannie Mae requires installment distributions up $40,000 or 10% of unpaid principal balance, whichever is greater. Fannie Mae Single Family Servicing Guide B-5-01: Insured Loss Events (Apr. 12, 2017).

dealing.[27] However, courts have held that once the borrower defaults, the lender is under no further obligation to disburse insurance proceeds.[28] Lenders generally may not keep insurance proceeds that exceed the outstanding loan balance, and should not keep any funds attributable to loss of personal property.[29] The lender is not required to pay interest on undisbursed funds unless "applicable law" so requires.[30]

Another issue arises as to when the servicer must apply the insurance proceeds if the repairs do not satisfy the stated conditions. Mortgage servicers have allowed insurance proceeds to languish for years in suspense accounts. Courts have implied a "reasonable time" to perform under this contract provision.[31]

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[27] Pressler v. American Home Mortg. Serv., Inc., 2013 WL 1320462 (N.D. Cal. Apr. 1, 2013) (denying breach of contract and breach of good faith and fair dealing for pre-default conduct).

[28] *See, e.g.*, Music v. Bank of America, 2015 WL 8477614 (N.D. Cal. Dec. 9, 2015); Everidge v. Wells Fargo Bank, 2015 WL 5786738 (M.D. Ga. Sept. 29, 2015) (suggesting that paying over proceeds and delaying foreclosure constituted sufficient impairment of security to justify applying proceeds to debt); Pressler v. American Home Mortg. Serv., Inc., 2013 WL 1320462 (N.D. Cal. Apr. 1, 2013). *But see* Fannie Mae, Servicing Guide: Fannie Mae Single Family B-5-01: Insured Loss Events (Apr. 12, 2017) (requiring release loss proceeds for repair and evaluate the borrower for workout options).

[29] *See, e.g.*, Fannie Mae, Servicing Guide: Fannie Mae Single Family B-5-01: Insured Loss Events (Apr. 12, 2017).

[30] State law may require payment of interest on insurance proceeds held by the servicer. *See, e.g.*, Cal. Civ. Code §2954.8; Md. Code, Com. Law § 12-109; Or. Rev. Stat. §§ 86.205.3, 86-245; Utah Code § 7-17-2; Vt. Stat. tit. 8, § 10404(b). Some banks have argued that payment of such interest is preempted; however, preemption principles should not apply to the bank's contractual obligation to pay interest.

[31] *See, e.g.*, Vongohren v. Citimortgage, Inc., 2016 WL 739070 (D. Md. Feb. 25, 2016).

3. Mortgage relief based on ownership of mortgage

3.1 Freddie Mac disaster relief

3.1.1 Mandates to servicers

Freddie Mac[32] authorizes its mortgage servicers, after a natural disaster, to take certain actions, but it only mandates the following specific borrower protections:

- Suspend all *foreclosure sales* beginning on the date that FEMA declared the area to be an Eligible Disaster Area and lasting through December 31, 2017, unless the property was identified as vacant or abandoned prior to the disaster,[33] and, for borrowers affected by Hurricanes Irma and Maria, extend the suspension of foreclosure sales in eligible disaster areas in Puerto Rico and the U.S. Virgin Islands through March 31, 2018.[34]
- Suspend post *foreclosure evictions* in areas impacted by Hurricane Harvey until further notice.[35]
- Suspend all *credit reports* about borrowers who are participating in a disaster-related forbearance plan, repayment plan or Trial Period Plan to the credit repositories. (Single-Family Seller/Servicer Guide section 8404.5(a)).
- Do not assess *late charges* if the borrower is on a forbearance plan or paying as agreed on a repayment plan. (Single-Family Seller/Servicer Guide section 8404.4(d)).

3.1.2. Mortgage forbearance

Freddie Mac has *authorized* its servicers to provide a forbearance period of up to twelve months for borrowers affected by Hurricanes Harvey, Irma and Maria,

[32] A primary resource for information is the Natural Disaster Relief page on the Freddie Mac website. This page, which describes disaster relief policies and Freddie Mac policies for major disaster declarations, references chapter 8404 of the Single-Family Seller/Servicer Guide ("the Guide"). *See* http://www.freddiemac.com/singlefamily/service/natural_disasters.html.

[33] http://www.freddiemac.com/singlefamily/service/pdf/Disaster_Relief_Bullet_Points.pdf.

[34] Freddie Mac Bulletin No. 2017029, Dec. 20, 2017, *available at* http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bll1729.pdf

[35] *Id.*

although it has not required servicers to do so. Details are discussed in § 3.1.3, *infra.*

3.1.2.1 Where servicer is in touch with the homeowner

If the servicer is in communication with the homeowner, the servicer has the discretion to place the borrower in a forbearance plan for up to twelve months based on the circumstances.[36]

3.1.2.2 Where servicer is *not* in touch with the homeowner

When a servicer is *not* in contact with a borrower who is or becomes 31 or more days' delinquent, it has the discretion to place the borrower in a short-term forbearance plan (as provided in sections 9203.12 through 9203.16 of the Single-Family Seller/Servicer Guide).[37]

3.1.3 Forbearance plan requirements

3.1.3.1 For borrowers who were current or fewer than 31 days' delinquent at the time of the Eligible Disaster and who can resume making the contractual monthly payments on the mortgage, the servicer must consider the Borrower for a Disaster Relief Modification if a reinstatement or repayment plan is not a viable option.[38]

The Disaster Relief Modification capitalizes arrearages and incrementally extends the mortgage term until the modified principal and interest (P&I) equals the pre-modified contractual principal and interest (P&I) payment amount (the actual post-modified P&I may be slightly less than the pre-modified P&I if the servicer is unable to attain an exact match based on the term extension).[39]

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[36] Freddie Mac, Single-Family Seller/Servicer Guide section 8404.4(b).

[37] A servicer should determine whether to provide short-term forbearance and the length of such forbearance by assessing: (1) the extent of the property damage, as derived through property inspections, and/or (2) the financial impact to the borrower as a result of the eligible disaster. Freddie Mac, Single-Family Seller/Servicer Guide section 8404.4(a).

[38] Freddie Mac, Single-Family Seller/Servicer Guide section 9206.4, Disaster Relief Modification.

[39] Freddie Mac, Single-Family Seller/Servicer Guide sections 8404.6(a) and 9206.4,Flex Modification.

3.1.3.2 For a borrower who is fewer than 90 days' delinquent, a complete Borrower Response Package (BRP) must be submitted to evaluate for a Flex Modification.[40]

3.1.3.3 For borrowers who are 90 days' delinquent or greater, but who were current or fewer than 31 days' delinquent at the time of the Eligible Disaster and who have—

- rejected all previous options, including a Disaster Relief Modification, or
- not been established contact with the servicer,

the servicer must evaluate for a streamlined offer for a Flex Modification using Freddie Mac's disaster related requirements.

Disaster requirements for the Flex Modification permit the servicer to waive most eligibility criteria. However there are exclusions from eligibility.[41]

When offering forbearance relief, a servicer must utilize the requirements set forth in chapter 9203 of the Single-Family Seller/Servicer Guide, which—importantly—includes the opportunity to resolve delinquencies through a simple reinstatement process.[42] Additionally, when the borrower is unable to send or receive documentation, the servicer may waive the requirement that the forbearance plan be in writing.[43]

3.1.3.4 Amounts due after forbearance

Servicers have a range of options to deal with the unpaid payments due to a forbearance, depending on factors including whether the servicer has been in touch with the borrower, the extent of the delinquency (how far behind the borrower will be at the end of the forbearance), and the affordability of the recalibrated payments. The evaluation hierarchy is set forth in section 9201.2 of the Single-Family Seller/Servicer Guide.

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[40] http://www.freddiemac.com/singlefamily/service/pdf/Disaster_Relief_Bullet_Points.pdf

[41] Details on the Flex Modification waterfall are in Freddie Mac, Single-Family Seller/Servicer Guide section 9206.10; complete requirements for the Flex Modification can be found in chapter 9206.

[42] Freddie Mac, Single-Family Seller/Servicer Guide section 9203.1: Reinstatements and relief options.

[43] Freddie Mac, Single-Family Seller/Servicer Guide section 8404.4(c).

3.1.3.4.1 Transition requirements when servicer is in touch with the borrower (quality right party contact is achieved)

If the servicer has achieved quality right party contact with the borrower at the end of the disaster-related forbearance period, the servicer must evaluate the borrower for the most appropriate relief or workout option to cure the delinquency in accordance with the evaluation hierarchy set forth in section 9201.2 of the Single-Family Seller/Servicer Guide.

Borrowers who were current or fewer than 31 days' delinquent at the time of the disaster and who are able to resume making the contractual monthly payments, the servicer must consider the borrower for a Capitalization and Extension Modification for Disaster Relief ("Disaster Relief Modification") if a reinstatement or repayment plan is not a viable option.[44]

If the borrower is not eligible for, or declines, a Disaster Relief Modification and the borrower has provided a Borrower Response Package, the servicer should evaluate the borrower in accordance with the evaluation hierarchy in section 9201.2 of the Guide.

If the borrower is not eligible for, or declines, a Disaster Relief Modification and the borrower has not provided a Borrower Response Package, the servicer must evaluate the borrower for a streamlined offer for a Flex Modification, provided the borrower is 90 or more days' delinquent.

Additionally, if the servicer is unable to achieve quality right party contact at the end of the disaster-related forbearance period to determine financial status and eligibility for a Disaster Relief Modification, the servicer must evaluate the borrower to determine if he or she is eligible for a streamlined offer for a Flex Modification, provided the borrower is 90 or more days' delinquent.[45]

3.1.3.4.2 Transition requirements when servicer is not in touch with the borrower (quality right party contact is not achieved)

If the servicer determines that the borrower is eligible for a streamlined offer for a Flex Modification in accordance with section 9206.5 of the Single-Family Seller/Servicer Guide, the servicer must send the borrower a Streamlined

[44] See Freddie Mac, Single-Family Seller/Servicer Guide section 9206.4 for the requirements for a Disaster Relief Modification.
[45] Freddie Mac, Single-Family Seller/Servicer Guide section 8404.6(a).

Modification TPP Notice, after amending it, as necessary, to conform to the Flex Modification program terms, as provided in Exhibit 93, Evaluation Model Clauses.[46]

3.1.3.4.3 Transition requirements for borrowers who were on a TPP at the time of the disaster

Within 30 days prior to the end of the forbearance period, the servicer must determine whether the borrower's financial circumstances continue to be adversely impacted by the disaster based on verbal confirmation with the borrower about his/her current financial condition and the most recent property inspection.

If the borrower was on a HAMP TPP at the time of the disaster and the borrower's financial circumstances have not adversely changed (*e.g.*, the borrower's income is not less than it was at the time of the pre-forbearance TPP evaluation), then the servicer must offer the borrower a new HAMP TPP that includes the same TPP payment as the pre-forbearance TPP.

The servicer must not conduct a new NPV or Forbearance Limit analysis. For reporting purposes, the servicer should utilize the NPV determined for the pre-forbearance (or pre-disaster) TPP analysis and may report anticipated forbearance amounts in excess of the Forbearance Limit, but only to the extent necessary to achieve the Target Payment. All other HAMP eligibility rules continue to apply, including that the complete Borrower Response Package used for the evaluation was submitted on or before December 30, 2016, and that the HAMP Modification Effective Date is on or before December 1, 2017. Additionally, the servicer must not cancel the previous TPP but, rather, must keep the borrower's previous TPP in approved status in order to avoid re-underwriting the borrower. When preparing the modification agreement, the servicer must calculate the modification terms using updated delinquent interest and non-interest arrearage amounts that must be capitalized (*i.e.*, through the day prior to the modified interest rate change date), as applicable, and in this instance only the servicer may forbear principal beyond the Forbearance Limit, but only to the extent necessary to achieve the Target Payment.

If the borrower was on a HAMP TPP at the time of the disaster but the borrower's financial circumstances have adversely changed (*e.g.*, the borrower's

[46] Freddie Mac, Single-Family Seller/Servicer Guide section 8404.6(b).

income is less than it was at the time of the pre-forbearance TPP evaluation), the servicer must obtain an updated Borrower Response Package from the borrower and re-evaluate the borrower for HAMP in accordance with the requirements of chapter 9205 of the Single-Family Seller/Servicer Guide. If the borrower is no longer eligible for HAMP, then the servicer must evaluate the borrower for another foreclosure alternative in accordance with the evaluation hierarchy set forth in section 9201.2.

If the borrower was on a Freddie Mac Flex Modification at the time of the disaster, the servicer must make a new streamlined offer to the borrower for a Flex Modification TPP meeting the requirements of section 9206.5.

Regardless of the borrower's financial circumstances, the borrower must complete a new three-month TPP that begins immediately following the forbearance plan in order to be eligible for a permanent modification.[47]

Borrowers will be considered for a Capitalization and Extension Modification for Disaster Relief ("Disaster Relief Modification"), along with a Flex Modification, provided the borrower is 90 or more days' delinquent.

If the borrower was on a Freddie Mac Flex Modification at the time of the disaster, the servicer must make a new streamlined offer to the borrower for a Flex Modification TPP meeting the requirements of section 9206.5.

Regardless of the borrower's financial circumstances, the borrower must complete a new three-month TPP that begins immediately following the forbearance plan in order to be eligible for a permanent modification.[48]

3.1.3.4.4 Temporary Freddie Mac Extend Modification for Disaster Relief

In coordination with Fannie Mae, Freddie Mac, on November 2, 2017, introduced a temporary offering for disaster-impacted borrowers who were current or fewer than 31 days' delinquent when the disaster occurred. Servicers must consider eligible borrowers for the Extend Modification for Disaster Relief once the borrower's hardship is resolved and the borrower has the ability to resume making monthly payments, but reinstatement or a repayment plan is not an option. This Extend Modification is similar to the Capitalization and Extension

[47] Freddie Mac, Single-Family Seller/Servicer Guide section 8404.6(c).
[48] Freddie Mac, Single-Family Seller/Servicer Guide section 8404.6(c).

Modification for Disaster Relief, described above, with the primary difference being that the Disaster Relief Modification requires the capitalization of arrearages in accordance with section 9206.5, while the Extend Modification does not allow the servicer to capitalize arrearages. Instead, the Extend Modification extends the mortgage term by a number of months equal to the number of missed monthly payments. The Extend Modification is the first modification option available in Freddie Mac's evaluation hierarchy for borrowers impacted by an eligible disaster.

Servicers must begin evaluating borrowers for this new modification program no later than February 1, 2018, and must utilize the requirements – included in a November 2, 2017 Bulletin[49] -- until otherwise instructed by Freddie Mac.

Before the borrower's forbearance period ends, a servicer must try and contact the borrower. If quality right party contact is made with a borrower who was 31 days' or more delinquent prior to the disaster, the borrower is not eligible for the Extend Modification. If this contact is made, and the borrower cannot resolve the delinquency through reinstatement or a payment plan, the servicer must evaluate the borrower for loss mitigation options according to the following disaster evaluation hierarchy: (1) Extend Modification; (2) Disaster Relief Modification; (3) Flex Modification; (4) short sale; (5) deed-in-lieu of foreclosure. If contact is not made with a borrower at the end of forbearance, and the borrower is eligible for a streamlined offer for a Flex Modification, the servicer must send the borrower an offer for a Flex Modification.[50]

A borrower is eligible for an Extend Modification if: he or she was current or less than 31 days' delinquent at the time of the disaster and the hardship was caused by the disaster; the mortgage premises were located in an eligible disaster area on or after August 25, 2017; the borrower was at least 30 days' delinquent and fewer than 360 days' delinquent at the time of evaluation for the modification; and the borrower indicates that he or she can continue making payments (including projected monthly payments for delinquent taxes and insurance premiums).

The modified mortgage must be a fully amortized, fixed-rate mortgage. It must be a conventional first lien mortgage currently owned or guaranteed, in whole or in part, by Freddie Mac, and it may be secured by a primary residence, second

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[49] Freddie Mac Bulletin No. 2017-25, Nov. 2, 2017, *available at* http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bll1725.pdf.
[50] *Id.* at 2.

home, or investment property (including one that is vacant or condemned). A servicer does not have to obtain a property valuation in order to offer an Extend Modification.

A borrower is ineligible for an Extend Modification if he or she was more than 31 days' delinquent at the time of the disaster, or if he or she is currently performing under another TPP, forbearance plan or repayment plan. Ineligible mortgages include: FHA, VA and Guaranteed Rural Housing mortgages; mortgages subject to recourse; and mortgages subject to an approved short sale or deed-in-lieu foreclosure transaction.[51]

3.1.4 Distribution of insurance proceeds after disaster

Freddie Mac has clear rules for the distribution of insurance proceeds after a disaster:

- For borrowers who were fewer than 31 days' delinquent at the time of the Eligible Disaster, servicers are required to release up to the greater of $40,000, 33% of the insurance proceeds, or the amount by which the release funds exceed the sum of the unpaid principal balance (UPB), accrued interest and advances on the loan. Remaining funds may be distributed based on the repair plan reviewed and approved by the servicer. A final inspection is required to ensure that all repairs are completed, but inspection and a repair plan are not required if the total insurance proceeds are less than or equal to $20,000.[52]
- For borrowers who were 31 or more days' delinquent at the time of the Eligible Disaster, the servicer may make an initial disbursement of 25% of the insurance proceeds up to the greater of $10,000 or the amount by which the release funds exceed the sum of the UPB, accrued interest and advance on the loan.[53]
- Insurance loss settlements that are intended for contents losses or off-residence living expenses must be released to the borrower without delay.[54]

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[51] *Id.* at 3.
[52] *Id.* at 8. Note that these requirements reflect temporary changes made to the Freddie Mac Single-Family Seller/Servicer Guide.
[53] *Id.*
[54] http://www.freddiemac.com/singlefamily/service/natural_disasters.html.

3.2 Fannie Mae disaster relief[55]

3.2.1 Mandates to servicers

Like Freddie Mac, Fannie Mae requires that servicers –

- Waive late charges.[56]
- Suspend credit reporting of delinquencies "if it is aware that the delinquency is attributable to a hardship as a result of the disaster;"[57]
- Suspend all foreclosure sales and evictions for 90 days for borrowers with homes located in disaster-declared areas,[58] and, for the victims of Hurricanes Irma and Maria, suspend any foreclosure sale on a property located within a FEMA-declared disaster area in Puerto Rico and the U.S. Virgin Islands until March 31, 2018.[59]
- Suspend eviction lock-outs on REO properties until January 2, 2018.[60]
- Suspend any legal proceedings already in process (if the servicer has any reason to believe that a disaster may have affected the condition of a property or the homeowner's employment or income status), the servicer must until it can determine the accurate status, and make its final decision on the appropriate course of action based upon its findings.[61]

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[55] *See* http://www.fanniemae.com/portal/about-fm/hurricane-relief.html; *See also* Fannie Mae Single Family Servicing Guide, *available at* https://www.fanniemae.com/content/guide/svc091317.pdf.

[56] Fannie Mae, Single Family Servicing Guide D1-3-02.

[57] Fannie Mae, Single Family Servicing Guide D1-3-02.

[58] Fannie Mae, Lender Letter LL-2017-06, Sept. 13, 2017, *available at* https://www.fanniemae.com/content/announcement/ll1706.pdf; Fannie Mae, Lender Letter LL-2017-03, Aug. 29, 2017, *available at* https://www.fanniemae.com/content/announcement/ll1703.pdf. However, if the premises were vacant or abandoned prior to either hurricane, and the servicer has completed its property inspection and confirmed that there is no damage to the property or damage that is not covered by insurance (or eligible to receive state or federal disaster assistance) or ability to receive FEMA funds, the servicer may proceed with the sale prior to December 31, 2017. When applicable, servicers must receive pre-approval by the mortgage insurer or guarantor to suspend the foreclosure sale to avoid jeopardizing benefits of any applicable insurance or guaranty. Fannie Mae, Lender Letter LL-2017-06, Sept. 13, 2017, *available at* https://www.fanniemae.com/content/announcement/ll1706.pdf.

[59] Fannie Mae Lender Letter LL-2017-11, Dec. 20, 2017, *available at* https://www.fanniemae.com/content/announcement/ll1711.pdf. Note that this Lender Letter states that the "temporary suspension does not apply to properties in any other jurisdiction similarly designated as a result of the 2017 hurricanes."

[60] Fannie Mae, Lender Letter LL-2017-06, Sept. 13, 2017, *available at* https://www.fanniemae.com/content/announcement/ll1706.pdf.

[61] Fannie Mae, Hurricane Relief Frequently Asked Questions (FAQs), Q16, *available at* http://www.fanniemae.com/resources/file/aboutus/pdf/hurricane-relief-faqs-sf-business-partners.pdf. *See also* Fannie Mae, Single Family Servicing Guide D1-3-02 ("If the servicer has any doubt about the effect of the

Unlike Freddie Mac, which seems less protective of homeowners suffering a disaster, Fannie Mae mandates that a servicer must grant disaster relief when –

- the servicer is unable to contact a borrower who may have been impacted by a catastrophe that was caused by nature or a person other than the borrower; and
- the servicer has determined that such an event may adversely affect either the value or habitability of a property securing a mortgage loan, or the borrower's ability to make further payments or payment in full on a mortgage loan.

The servicer must receive Fannie Mae's approval before granting disaster relief that exceeds 90 days.[62] However, the issue of whether to grant a forbearance is still in the discretion of the servicer.

3.2.2 Mortgage forbearance

Fannie Mae has authorized a forbearance period of up to twelve months for borrowers affected by Hurricanes Harvey, Irma and Maria.[63] The servicer "must use its discretion to determine the appropriate duration of the forbearance plan based on the extent of damage to the property and/or the financial impact to the borrower" and must receive Fannie Mae's approval before granting disaster relief that exceeds 90 days.[64]

disaster on the condition of a property or the borrower's employment or income status, it must suspend any legal proceedings already in process until it can determine the accurate status, and make its final decision on the appropriate course of action based upon its findings. The servicer must receive Fannie Mae's approval before granting disaster relief that exceeds 90 days. The servicer must not initiate or complete foreclosure proceedings related to a property that has been destroyed until it evaluates the economic feasibility of pursuing the foreclosure.").

[62] Fannie Mae Single Family Servicing Guide D1-3.

[63] Press Release, Fannie Mae, Fannie Mae Offers Relief Options for Homeowners and Servicers in Areas Impacted by Hurricanes Harvey and Irma (Sept. 14, 2017); Press Release, Fannie Mae, Fannie Mae Reminds Homeowners and Servicers of Mortgage Assistance Options for Gulf Coast Area Impacted by Hurricane Harvey (Aug. 25, 2017), *available at* http://www.fanniemae.com/portal/media/corporate-news/2017/hurricane-forbearance-relief-6593.html; Fannie Mae, For Homeowners Affected by Hurricanes Harvey, Irma, or Maria (affected consumers are eligible to stop making monthly mortgage payment for three-month intervals (up to twelve months); at end of temporary payment break, consumer will have no late fees, will not have delinquencies reported to credit bureaus, and will not have to catch up on all payments at once), *available at* http://www.fanniemae.com/resources/file/aboutus/pdf/hurricane-relief-consumer-gses.pdf.

[64] Fannie Mae, Single Family Servicing Guide D1-3-02.

3.2.2.1 Loans current, fewer than, or equal to 90 days' delinquent, or under a Trial Period Plan

When the borrower's employment or income is seriously affected by a disaster event, the servicer is authorized to offer a forbearance plan under the following circumstances:

1. Where the Servicer is in Touch with the Borrower. If the servicer is in touch with the borrower, (known as achieving "quality right party contact") during the disaster relief period, the servicer is authorized to offer a forbearance plan term of up to six months. If the borrower is unable to provide a complete Borrower Response Package at the end of the initial six months of forbearance, the servicer may offer a successive forbearance up to six months in length, but not to exceed twelve months without obtaining a complete Borrower Response Package.[65]
2. Where the Servicer is Not in Touch with the Borrower. If the servicer does not achieve quality right party contact during the disaster relief period, the servicer is authorized to offer a forbearance plan term of up to three months.

3.2.2.2 Loans more than 90 days' delinquent

1. Where Quality Right Party Contact Has Been Achieved. If the loan is more than 90 days' delinquent, and quality right party contact has been achieved during the disaster relief period, the servicer is authorized to offer a forbearance plan term of up to six months.[66]
2. Where Quality Right Contact Has Not Been Achieved. If the loan is more than 90 days' delinquent, and quality right party contact has not been achieved during the disaster relief period, the servicer is authorized to offer a forbearance plan term of up to three months.[67]

3.2.3 New Extend Modification for Disaster Relief

A November 2, 2017 Lender Letter introduced the new Extend Modification for Disaster Relief. This option results in a fixed-rate modification extending the loan term in monthly increments to match the number of delinquent payments (not

[65] Fannie Mae, Single Family Servicing Guide D1-3-02.

[66] Fannie Mae, Single Family Servicing Guide D1-3-02.

[67] Fannie Mae, Single Family Servicing Guide D1-3-02.

exceeding twelve months). This modification is for borrowers who were current or fewer than 31 days' delinquent at the time of the disaster and meet the eligibility requirements that are described in the Lender Letter. Servicers must begin evaluating borrowers for this new modification program no later than February 1, 2018.[68]

If the servicer is able to establish quality right party contact with the borrower during the disaster-related forbearance period and determines that the borrower can maintain the monthly payments, including any escrow shortage needed to pay future escrow that is required to be repaid by the borrower over the 60-month escrow repayment period, then the servicer must evaluate the borrower for an Extend Modification. The servicer must disclose how the escrow analysis was made, and that disbursed escrow amounts will not be capitalized but, instead, added to the escrow shortage needed to pay future escrow amounts resulting in an increase of the borrower's current monthly payment over the 60-month escrow repayment period.[69]

A borrower is eligible for a Fannie Mae Extend Modification if: the loan is a first-lien mortgage loan; the loan was current or fewer than 31 days' delinquent when the disaster occurred and is 31 or more days' delinquent but fewer than 360 days' delinquent when the disaster-related forbearance plan is completed; the loan cannot have been previously modified with an Extend Modification as a result of the same disaster and then become delinquent; the loan is not a VA, FHA or Rural Development loan; the loan is not subject to a recourse or indemnification arrangement under which Fannie Mae purchased or securitized the loan or that was imposed by Fannie Mae after the loan was purchased or securitized; the loan is not subject to a current offer for another workout option (except for a Streamlined Modification Post Disaster Forbearance); the loan must not be subject to an approved liquidation workout option; and the loan must not be subject to an active repayment plan or other non-disaster-related forbearance plan.[70]

The Extend Modification TPP must be three months in duration. The servicer may not charge administrative fees for the Extend Modification, but may assess late charges during the TPP.[71]

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[68] Fannie Mae Lender Letter LL-2017-09, Nov. 2, 2017, *available at* https://www.fanniemae.com/content/announcement/ll1709.pdf.
[69] *Id.* at 2.
[70] *Id.* at 3.
[71] *Id.* at 8.

3.2.4 After a forbearance plan is granted

The servicer must continue to work with the borrower to determine what additional steps can be taken (*e.g.*, application of insurance claim settlements to repair the property), and must evaluate the loan for a workout option before the forbearance plan expires.

3.2.5 Amounts due after forbearance

Servicers have a range of options to deal with the unpaid payments during a forbearance, depending on factors including whether the servicer has been in touch with the borrower, the extent of the delinquency (how far behind the borrower will be at the end of the forbearance), and the affordability of the recalibrated payments. [72]

3.2.6 Insurance proceeds

3.2.6.1 Mortgage loans current or fewer than 31 days' delinquent

If the insurance proceeds are less than or equal to $40,000 the servicer must determine if, based on the type of repairs (*e.g*., damage affecting the safety, soundness, or structural integrity of the property), a licensed contractor is required to restore or repair the property **and** the servicer is authorized to release the insurance loss proceeds payable only to the borrower.

If the insurance proceeds are less than or equal to $20,000, a final inspection is not required. If cosmetic/non-structural work items totaling less than $5,000 are outstanding at the time of the final inspection, the inspection can be considered final and the inspector must note any unfinished items with estimated completion dates.

If the proceeds are greater than $20,000, but less than $40,000, the servicer must release the proceeds payable to both the borrower and the contractor - whether the contractor is licensed or not.

[72] Fannie Mae, Single Family Servicing Guide D2-3.2-10.

If the proceeds are equal to or greater than $40,000, the servicer must ensure that a licensed contractor is used to restore or repair the property and must release an initial disbursement of insurance loss proceeds up to the greater of $40,000, 33% of the insurance loss proceeds, or the amount by which the release funds exceed the sum of the UPB, and disburse any remaining funds *based on periodic inspections of the progress* of the repair work, and release all proceeds payable to both the borrower and the licensed contractor.[73]

The servicer must conduct a final inspection to ensure that all repairs are completed.

3.2.6.2 Mortgage loans 31 days' or more delinquent

Without regard to the amount of the loss proceeds, the servicer must ensure that a licensed contractor is used to restore or repair the property. Insurance loss proceeds must only be released payable to the borrower and the licensed contractor.

If the proceeds are less than or equal to $5,000, the servicer is authorized to make the disbursement in one payment. If the proceeds are greater than $5,000, the servicer must release an initial disbursement of insurance loss proceeds of 25% of the total insurance loss proceeds, but no more than $10,000, or the amount by which the release funds exceed the sum of the UPB, accrued interest and advances on the loan, and must disburse the remaining funds in increments not to exceed 25% of the insurance loss proceeds following inspection of the repairs.[74]

3.3 FHA disaster assistance

3.3.1 Overview

The HUD website page entitled Disaster Relief Options for FHA Homeowners states that a homeowner whose home was damaged in the disaster or who will

[73] Fannie Mae Lender Letter LL-2017-09, Nov. 2, 2017, *available at* https://www.fanniemae.com/content/announcement/ll1709.pdf. Note that these requirements reflect temporary changes made to the loss proceeds disbursement policies contained in the Fannie Mae, Single Family Servicing Guide at B-5-01, Insured Loss Events.

[74] *Id.* at 11. Note that these requirements reflect temporary changes made to the loss proceeds disbursement policies contained in the Fannie Mae, Single Family Servicing Guide at B-5-01, Insured Loss Events.

not be able to make the monthly loan payment(s) because of adversely affected finances should contact the lender immediately to request assistance.

> Borrowers who were injured or whose income relied on individuals who were injured or died in the disaster will be asked for documentation such as medical records or death certificates, if available. The lender will ask for financial information to help evaluate what assistance can be provided to reinstate the loan.[75]

3.3.2 Mortgage forbearance

In a letter to Texas residents in the wake of Hurricane Harvey, the HUD Secretary stated: "HUD has already granted a 90-day moratorium on foreclosures for FHA-insured properties in disaster-affected areas. In addition, we offer loan forbearance and loan modifications for borrowers struggling to make payments in disaster-affected areas."[76] The Disaster Relief Options for FHA Homeowners page on HUD's website states: "Your lender may enter into a forbearance plan, or execute a loan modification or a partial claim, if these actions will help retain and pay for your home."[77]

The HUD Handbook states: "Should Presidentially-Declared Major Disasters adversely impact a Borrower's ability to make on-time Mortgage Payments, the Mortgagee must provide the Borrower with forbearance and HUD loss mitigation assistance, where appropriate, as provided in applicable FHA policy guidance."[78]

The Handbook states further that before considering an affected borrower for a permanent solution utilizing one of FHA's Loss Mitigation Home Retention Options, the mortgagee must first evaluate the borrower for a forbearance, allowing for one or more periods of reduced or suspended payments without specific terms of repayment. The mortgagee may offer forbearance relief to a

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[75]U.S. Dep't of Hous. & Urban Dev., Disaster Relief Options for FHA Homeowners, *available at* https://www.hud.gov/program_offices/housing/sfh/nsc/qaho0121.

[76] U.S. Dep't of Hous. & Urban Dev., Letter From HUD Secretary Ben Carson to the People of Texas on Harvey Relief, *available at* https://www.hud.gov/press/speeches_remarks_statements/2017/letter_100417.

[77] [77]U.S. Dep't of Hous. & Urban Dev., Disaster Relief Options for FHA Homeowners, *available at* https://www.hud.gov/program_offices/housing/sfh/nsc/qaho0121.

[78] U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c.iv.

borrower with a mortgaged Property or place of employment located within a PDMDA.[79]

The HUD Handbook makes reference to both informal and formal forbearance. A mortgagee "may consider Borrowers in PDMDAs for an Informal Forbearance and may offer additional Informal Forbearance periods if the foreclosure moratorium is extended."[80] A mortgagee "may consider Formal Forbearance for Borrowers in PDMD while homeowners are pursuing home repairs and/or resolving verifiable difficulties related to the disaster" as long as: (1) the forbearance period does not exceed the estimated time needed to complete home repairs as supported by a contract or repair estimate; and (2) the total accumulated mortgage arrearages during the forbearance period does not exceed the equivalent of twelve months of (payment for principal, interest, taxes and insurance) PITI."[81]

Servicers may waive late fees for borrowers who may become delinquent on their loans as a result of the disaster, but apparently are not required to do so. HUD states on its website: "HUD is confident that your mortgage lender will make every attempt possible to assist you. If you are not satisfied after discussing possible relief actions with your lender, please call a HUD-approved counseling agency toll free at (800) 569-4287 or contact HUD's National Servicing Center."[82]

3.3.3 Foreclosure moratorium

HUD granted a 90-day moratorium on foreclosures after the September 2017 hurricanes.[83] The moratorium was effective as of the date of the disaster declaration for a particular area. This moratorium applies both to the initiation of

[79] U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c.iv.B.

[80] U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c.iv.B(1).

[81] U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c.iv(B).

[82] U.S. Dep't of Hous. & Urban Dev., Disaster Relief Options for FHA Homeowners, *available at* https://www.hud.gov/program_offices/housing/sfh/nsc/qaho0121.

[83] Press Release, U.S. Dep't of Hous. & Urban Dev., HUD Announces Disaster Assistance for Victims of Hurricane Harvey, HUD No. 17-068 (Aug. 28, 2017), *available at* https://www.hud.gov/press/press_releases_media_advisories/2017/HUDNo_17-068.

foreclosures and foreclosures already in progress.[84] On October 23, 2017, HUD announced that it was extending the initial 90-day moratorium for FHA-insured homeowners impacted by the hurricanes for an additional 90 days as follows: for Hurricane Harvey, until February 21, 2018; for Hurricane Irma, until March 9, 2018; and for Hurricane Maria, until March 19, 2018. This extension applies both to foreclosures already initiated and to new foreclosures.[85]

The HUD Handbook also requires that a mortgagee "must take no action to initiate or complete foreclosure proceedings, after expiration of a disaster-related foreclosure moratorium, if such action will jeopardize the full recovery of a hazard or flood insurance settlement."[86]

3.3.4 Loss mitigation and loan modification

Although loss mitigation for FHA home loans usually requires occupancy in the home, in cases of loss mitigation in Presidentially Declared Major Disaster Areas (PDMDA) the rules can be different, since homes may not be immediately inhabitable in the wake of the disaster.[87] The HUD Handbook provides that a mortgagee must not deny a borrower any loss mitigation option solely for failure to occupy a mortgaged property if the following conditions are met:

1) the property is located within a disaster area;
2) the dwelling was the borrower's principal residence immediately prior to the disaster;
3) the borrower intends to reoccupy the property upon restoration of the home to habitable condition; and
4) the total accumulated mortgage arrearages have not exceeded the equivalent of twelve months of PITI.[88]

[84] U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c.ii(A).

[85] Press Release, U.S. Dep't of Hous. & Urban Dev., FHA Extends Foreclosure Relief for Homeowners Impacted by Recent Hurricanes, HUD No. 17-094 (Oct. 23, 2017), *available at* https://www.hud.gov/press/press_releases_media_advisories/2017/HUDNo_17-094.

[86] U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c.ii(C).

[87] Bruce Reichstein, FHA News and Views, FHA Loans and Natural Disasters: What You Should Know (Aug. 30, 2017), *available at* https://www.fhanewsblog.com/2017/08/fha-loans-natural-disasters-know.

[88] U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.iv(A).

3.3.4.1 Loan modification without financial evaluation

Eligibility. A homeowner may be eligible to apply for certain kinds of loss mitigation that do not require a financial evaluation. The mortgagee must ensure that borrowers and their FHA-insured mortgages meet the following eligibility requirements for a loan modification without a financial evaluation:

1) the mortgage was current or fewer than 30 days past due as of the date of the disaster declaration;
2) the mortgagee obtains a Verification of Employment (VOE) confirming that the borrower's employment status is the same as prior to the disaster;
3) home damages have been repaired; and
4) the dwelling is owner-occupied.[89]

Terms. The mortgagee must modify the mortgage as follows:

1) the total PITI on the modified mortgage must be less than or equal to the existing payment on the FHA-insured mortgage;
2) the borrower must successfully complete a three-month Trial Payment Plan (TPP);
3) the mortgagee must capitalize into a modified mortgage balance (the accumulated arrearages for unpaid accrued interest; and eligible unreimbursed mortgagee advances and related fees and costs chargeable to the mortgage);
4) the mortgagee waives late fees if the borrower satisfies all conditions of the TPP;
5) the mortgagee extends the term of the mortgage to 360 months from the modification effective date;
6) the mortgagee sets the interest rate at the market rate as defined by HUD[90]; and
7) the mortgagee must ensure that the borrower repairs the home damages and occupies the dwelling as an owner-occupant before completing the loan modification.[91]

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[89] U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c. iv(C).

[90] U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c. iv(C).

[91] U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c. iv(D).

3.3.4.2 Requirements for loss mitigation options

Eligibility. The mortgagee must evaluate other loss mitigation home retention options for borrowers who meet one of the following criteria:

- they are not eligible for the "Loan Modification without a Financial Evaluation" option;
- they are eligible for "Loan Modification without a Financial Evaluation" and experiencing a continuation of lower income or higher living expenses following the disaster; or
- they are eligible for "Loan Modification without a Financial Evaluation" but have not successfully completed the required TPP.

Borrowers who do not have an increase in living expenses but are delinquent due to a forbearance received following a disaster declaration are deemed to satisfy the eligibility conditions for FHA loss mitigation options.[92]

The servicer must ensure that the borrower repairs the home damage and occupies the dwelling as an owner-occupant before completing the loan modification.

3.3.4.3 No reporting to consumer reporting agencies

The mortgagee must suspend reporting of delinquencies to consumer reporting agencies for a borrower who is granted disaster-related mortgage payment relief and is otherwise performing as agreed, unless such reporting is required for a loan modification.[93]

3.3.4.4 Waiver of late charges

The mortgagee must waive late charges as long as the borrower is on a forbearance plan or paying as agreed on a loss mitigation option.[94]

[92] U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c.iv(D).

[93] U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c.iv(F).

[94] U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c.iv(G).

3.3.4.5 New "Disaster Standalone Partial Claim" option

On February 22, 2018, the FHA announced a new option for FHA-insured homeowners who live or work in areas impacted by Hurricanes Harvey, Irma and Maria, as well as the California wildfires and subsequent flooding and mudslides.[95] This option, entitled "Disaster Standalone Partial Claim," is intended to help struggling borrowers resume pre-disaster mortgage payments. It covers up to 12 months of missed payments through an interest-free second loan that is payable only when the borrower sells the property or refinances the mortgage. The servicer waives the borrower's accumulated late fees.

The servicer must evaluate a borrower for a Disaster Standalone Partial Claim at the end of the forbearance period if the borrower does not qualify for a Disaster Rate and Term Loan Modification.[96] A TPP is not required before completion of a Disaster Standalone Partial Claim for borrowers who were current or fewer than 30 days' delinquent as of the date of the disaster.[97]

Eligibility for the Disaster Standalone Partial Claim option is limited to borrowers who became delinquent on their mortgage due to the disaster and whose initial mortgage forbearance periods are ending. In addition, the following requirements must be met: (1) the borrower must have been current on payments at the date of the disaster; (2) the borrower's income must be equal to or more than his or her pre-disaster income; (3) the borrower must demonstrate the ability to resume total PITI payments; (4) the property must be owner-occupied; (5) a Disaster Rate and Term Loan Modification over a 30-year period at the Market Rate would provide a monthly payment (*i.e.*, including PITI) that is greater than the pre-disaster payment; (6) the existing rate on the mortgage is lower than the Market Rate; and (7) the total amount of the Disaster Standalone Partial Claim does not exceed the equivalent of 12 total monthly payments (i.e.,

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[95] Press Release, U.S. Dep't of Hous & Urban Dev., FHA Expands Foreclosure Relief for Victims of 2017 Disasters (Feb. 22, 2018), *available at* https://www.hud.gov/press/press_releases_media_advisories/HUD_No_18_016. *See also* Dep't of Hous. & Urban Dev. Mortgagee Letter 2018-01 (Feb. 22, 2018). The Mortgagee Letter states that the guidance applies to "all FHA Title II forward mortgages of borrowers whose property or employment is located in the Presidentially-Declared Major Disaster Areas of Louisiana Hurricane Harvey DR-4345, Texas Hurricane Harvey DR-4332, Florida Hurricane Irma DR-4337, Georgia Hurricane Irma DR-4338, Puerto Rico Hurricane Irma DR-4336, South Carolina Hurricane Irma DR-4346, Virgin Islands Hurricane Irma DR-4335, Puerto Rico Hurricane Maria DR-4339, Virgin Islands Hurricane Maria DR-4340, California Wildfires DR-4344 or California Wildfires, Flooding, Mudflows, and Debris Flows FEMA-DR-4353." Mortgagee Letter 2018-01 at 2.

[96] Mortgagee Letter 2018-01 at 4. The "Disaster Rate and Term Loan Modification" referred to in the Mortgagee Letter appears to be the modification described above, in section 3.3.4.1.

[97] Mortgagee Letter 2018-01 at 3.

including PITI).[98] Note that the Disaster Standalone Partial Claim option is *not* available for borrowers experiencing a loss of income or long-term delinquency (*i.e.*, 12 months of missed payments).[99] Borrowers who do not meet the Disaster Standalone Partial Claim option may yet be eligible for a loan modification under the FHA-HAMP option.[100]

The Disaster Standalone Partial Claim option also streamlines income documentation and other requirements in order to expedite loss mitigation relief. A VOE is not required to confirm that a borrower's employment status and income is the same as it was before the disaster. Instead, a servicer may confirm this information using either the borrower's most recent pay stub showing year-to-date earnings, the borrower's most recent bank statement showing deposits of income from applicable sources, or other documentation (such as Social Security monthly income benefits or a monthly pension statement).[101]

3.4 VA hurricane-related materials

3.4.1 Overview

On August 29, 2017, the Department of Veterans Affairs distributed Circular 26-17-23 in the wake of Hurricane Harvey in order to describe measure that mortgagees may take to provide relief to affected borrowers.[102] The Circular directs servicers and borrowers to review the VA Guidance on Natural Disasters.[103] The Circular is effective until July 1, 2018, when it will be rescinded.

On September 18, 2017, the Department of Veterans Affairs distributed Circular 26-17-27 regarding Hurricane Irma. It contains substantially the same material as Circular 26-17-23, except that its rescission date is October 1, 2018.

References to "the Circular," below, are to Circular 26-17-23, but since the information is the same as that in Circular 26-17-27, it essentially applies to both Hurricanes Harvey and Irma.

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[98] *Id.* at 4.
[99] *Id.* at 2-3.
[100] *Id.* at 5. *See* U.S. Dep't of Hous & Urban Dev., FHA-Home Affordable Modification Program (FHA-HAMP), *available at* https://www.hud.gov/hudprograms/fhahamp.
[101] Mortgagee Letter 2018-01 at 3.
[102] U.S. Dep't of Veterans Affairs, Special Relief Following Hurricane Harvey, Circular 26-17-23 (Aug. 29, 2017), *available at* https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_17_23.pdf.

[103] U.S. Dep't of Veterans Affairs, VA Guidance on Natural Disasters, *available at* https://www.benefits.va.gov/homeloans/documents/docs/va_policy_regarding_natural_disasters.pdf.

3.4.2 Mortgage forbearance

The VA "encourages holders of guaranteed loans to extend forbearance to borrowers in distress as a result of Hurricane Harvey." Servicers are advised to reference 38 CFR § 36.4311, which allows the reapplication of prepayments to cure or prevent a default, and 38 CFR § 36.4315 which allows the terms of any guaranteed loan to be modified without the prior approval of VA, provided conditions in the regulation are satisfied."[104]

When members of the National Guard are called to active duty as part of recovery efforts, the VA "encourages servicers to extend special forbearance to National Guard members who experience financial difficulties as a result of their service."[105]

Helpful references include VA regulations on:

- Prepayments (38 CFR § 36.4311);
- Advances (38 CFR § 36.4314);
- Loan Modifications (38 CFR § 36.4315); and
- Supplemental Loans (38 CFR § 36.4359)(may be of assistance in appropriate cases).[106]

3.4.3 Foreclosure moratorium

The VA Circular has requested[107] that loan holders establish a 90-day moratorium (from the date of the disaster) on initiating new foreclosures, citing "VA regulation 38 CFR 36.4324(a)(3)(ii) which allows additional interest on a guaranty claim when eventual termination has been delayed due to circumstances beyond the control of the holder, such as VA-requested forbearance. Because of the widespread impact of Hurricane Harvey, holders should review all foreclosure referrals to ensure that borrowers have not been

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[104] U.S. Dep't of Veterans Affairs, Special Relief Following Hurricane Harvey, Circular 26-17-23 (Aug. 29, 2017), *available at* https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_17_23.pdf.

[105] *Id.*

[106] U.S. Dep't of Veterans Affairs, VA Guidance on Natural Disasters, *available at* https://www.benefits.va.gov/homeloans/documents/docs/va_policy_regarding_natural_disasters.pdf.

[107] U.S. Dep't of Veterans Affairs, VA Home Loans (containing a link to VA Guidance on Natural Disasters), *available at* https://www.benefits.va.gov/homeloans/

affected significantly enough to justify delay in referral. Any questions about impact should be discussed with the VA Regional Loan Center (RLC) of jurisdiction."[108]

The VA Guidance on Natural Disasters states: "Although the loan holder is ultimately responsible for determining when to initiate foreclosure and complete termination action, VA encourages holders to establish a 90 day moratorium on initiating new foreclosures in the disaster area." [109]

In October 2017, the VA extended its initial 90-day moratorium for loans affected by Hurricanes Harvey, Irma and Maria to 180 days from the dates the respective disasters occurred.[110]

3.4.4 Waiver of late charges

The VA "believes that many servicers plan to waive late charges on affected loans, and encourages all servicers to adopt a policy" for affected loans.[111]

3.4.5 Credit and VA reporting

The VA encourages servicers to suspend credit reporting on affected loans, promising that the VA "will not penalize affected servicers for any late default reporting to VA as a result."[112]

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[108] U.S. Dep't of Veterans Affairs, Special Relief Following Hurricane Harvey, Circular 26-17-23 (Aug. 29, 2017), *available at* https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_17_23.pdf.

[109] U.S. Dep't of Veterans Affairs, VA Guidance on Natural Disasters, *available at* https://www.benefits.va.gov/homeloans/documents/docs/va_policy_regarding_natural_disasters.pdf.

[110] U.S. Dep't of Veterans Affairs, Special Relief Following Hurricane Harvey, Circular 26-17-23 (Oct. 23, 2017), *available at* https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_17_23_change1.pdf; U.S. Dep't of Veterans Affairs, Special Relief Following Hurricane Irma, Circular 26-17-27 (Oct. 23, 2017), *available at* https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_17_27_change1.pdf; U.S. Dep't of Veterans Affairs, Special Relief Following Hurricane Maria, Circular 26-17-28 (Oct. 23, 2017), *available at* https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_17_28_change1.pdf.

[111] U.S. Dep't of Veterans Affairs, Special Relief Following Hurricane Harvey, Circular 26-17-23 (Aug. 29, 2017), *available at* https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_17_23.pdf.

[112] *Id.*

3.4.6 New disaster loan modification option

The VA disaster loan modification in place prior to November 27, 2017 allows servicers to grant permanent payment relief to impacted delinquent borrowers who have not submitted complete loss mitigation applications. This modification carries with it the requirement of a three-month trial payment plan (TPP).

On November 27, 2017, the VA announced a new disaster loan modification option that gives servicers the choice to offer modifications to delinquent borrowers impacted by a disaster *without* the three-month TPP requirement. The Circular announcing this new option states: "A permanent modification must meet the following terms to be eligible for execution without the three-month TPP. The term of the loan is extended equal to the number of months the loan is delinquent. For example, if the loan is four-months delinquent, the loan term may only be extended by four months. The loan must have been current at the time of the disaster that caused the delinquency. The servicer waives the delinquent interest accrued on the loan as a result of the delinquency. The liability of the Secretary will not be increased when servicers waive the delinquent interest allowing for the modification to be completed without a TPP. The limit of the term extension is 12-months without prior approval from VA. The desired result is that Veteran borrowers are able to resume the same regular monthly installments without feeling as though they have been financially penalized due to a disaster. A three month TPP will still be required for all Disaster Loan Modifications that do not forgive the delinquent interest."[113]

3.5 USDA/Rural Development hurricane-related materials

The USDA's website has a page entitled Rural Development Disaster Assistance.[114] This page lists the various types of assistance available for loan borrowers who are impacted by a disaster and have a RD Single Family Housing Direct loan. This page advises guaranteed loan borrowers in Rural Development areas to contact their lenders immediately ("Your lender will work closely with you on alleviating all matters regarding your situation."), file an insurance claim,

[113] U.S. Dep't of Veterans Affairs, Updated Disaster Modification Guidance, Circular 26-17-39 (Nov. 27, 2017), *available at* https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_17_39.pdf.
[114] https://www.rd.usda.gov/programs-services/services/rural-development-disaster-assistance.

and apply for disaster assistance available through FEMA, or state of local government.[115]

3.5.1 Moratorium (forbearance)

"If you have excessive, non-reimbursed expenses resulting from damage to your property, non-reimbursed medical expenses, or have lost your job as a result of the disaster, you may be eligible for a moratorium for up to 180 days where you are not required to make your house payment."[116]

On September 1, 2017, USDA Rural Development issued a letter that outlines how the agency can assist homeowners affected by Hurricane Harvey. It states: "If you have excessive, non-reimbursed repair expenses or have lost your job as a result of the storm, you can request a moratorium package. We will review the information you provide us to determine if you may be eligible for a moratorium on your payments. This moratorium is a suspension of your payment for a period of time and is subject to repayment at a later date. Contact us to request an application."[117] In October 2017, USDA Rural Development extended the initial moratorium on foreclosures in the disaster areas impacted by the hurricanes as follows: for Hurricane Harvey, until February 21, 2018; for Hurricane Irma, until March 9, 2018; and for Hurricane Maria, until March 19, 2018. These extensions apply both to foreclosures already initiated and to new foreclosures.[118]

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[115] U.S. Dep't of Agriculture, Rural Development Disaster Assistance, *available at* https://www.rd.usda.gov/programs-services/services/rural-development-disaster-assistance.

[116] *Id.*

[117] U.S. Dep't of Agriculture, Letter to USDA Homeowners Impacted by a Natural Disaster, *available at* https://www.rd.usda.gov/files/USDARDHARVEYLetter09-01-2017.pdf.

[118] U.S. Dep't of Agriculture, Rural Development, USDA Foreclosure Moratoriums Extended for Areas Impacted by Hurricanes Harvey, Irma and Maria, Oct. 24, 2017, *available at* https://www.rd.usda.gov/newsroom/news-release/usda-foreclosure-moratoriums-extended-areas-impacted-hurricanes-harvey-irma. This news release directs those with questions to contact the USDA Rural Development Customer Service Center at 866-550-5887 or the National Office at 202-720-1452.

3.5.2 Payment assistance

"If your income has been reduced by more than 10% and will be for the foreseeable future, you may be eligible for payment assistance or an increase in the assistance that you currently receive."[119]

3.5.3 RD Guaranteed Mortgage Loans

Rural Development requires servicers of RD's single-family guaranteed loans to suspend all foreclosure related actions for 90 days. This includes the initiation of new foreclosures as well as foreclosures already in process.[120] Servicers are encouraged, but not required, to consider a forbearance plan. To be eligible for forbearance the borrower's home or place of employment must be directly affected by the disaster. The forbearance plan should take into account a wide range of factors including the borrower's ability to find alternative housing, increase in living expenses as well as income going forward. Late fees will not be assessed while the borrower is on a repayment or forbearance plan, nor should a disaster-related plan be reported to the credit reporting agencies.

After the forbearance period ends, borrowers may be offered a modification. Only borrowers who were current (or fewer than 30 days past due) as of the date of the disaster are eligible, however.[121] Other requirements include that the home be repaired and the borrower must occupy the home at the time of application. It is unclear if the agency will authorize a significant extension of the forbearance period to allow the borrower to complete the repairs necessary to qualify for a modification. The total modified mortgage payment must be less than or equal to the payment prior to modification. The borrower must also complete a three-month trial period.

On February 20, 2018, USDA Rural Development issued an announcement entitled "Special Relief for Natural Disasters."[122] This announcement stated that

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[119] U.S. Dep't of Agriculture, Rural Development Disaster Assistance, *available at* https://www.rd.usda.gov/programs-services/services/rural-development-disaster-assistance. *See also* U.S. Dep't of Agriculture, Letter to USDA Homeowners Impacted by a Natural Disaster, *available at* https://www.rd.usda.gov/files/USDARDHARVEYLetter09-01-2017.pdf.

[120] Foreclosure can be suspended beyond 90 days with prior approval from Rural Development. See U.S. Dep't of Agriculture, Rural Development, Handbook HB-1-3555 SFH Guaranteed Loan Program Technical Handbook, chapter 18, *available at* https://www.rd.usda.gov/publications/regulations-guidelines/handbooks#hb13555.

[121] *Id.*

[122] U.S. Dep't of Agriculture, Rural Development, SFH Guaranteed Servicing, Special Relief for Natural Disasters, Feb. 20, 2018.

the agency, in response to recent natural disaster events, will amend the SFH Guaranteed Loan Technical Handbook (chapter 18, section 4), to add special relief measures. These additions, which will be published in the Handbook on May 1, 2018, are designed for servicers to respond immediately to borrowers who are near the end of their forbearance periods.

Eligible borrowers may now be offered certain special relief measures in addition to standard workout options. These special relief measures may be offered without the required standard financial evaluation as long as the following conditions are met: (1) the loan was current or fewer than 30 days' delinquent as of the date of the disaster; (2) the servicer receives verification that the hardship (employment and/or property) has been resolved; and (3) the total modified principal and interest payment is less than or equal to the payment prior to modification.

There is a hierarchy for consideration of special relief measures. First in order is Term Extension. This measure provides that if the servicer determines that the borrower is able to maintain the current contractual payment including any escrow shortage created by advancements during the forbearance period (can be spread over 60 months), then the loan term may be extended an equal number of months to the term of the forbearance provided. Any interest accrued during the forbearance period should be waived, and the servicer may re-amortize the loan if necessary to meet any investor restrictions. Second in order is Capitalization of Delinquency and Term Extension. This measure provides that if the servicer determines that the borrower is able to maintain the current contractual payment but cannot manage to pay the additional escrow repayment amount, then the servicer may offer a Cap and Extend Modification under the following terms. The servicer must: (1) capitalize the accumulated arrearages and eligible unreimbursed servicer advances, fees and costs into the modified mortgage balance; (2) extend the term up to 360 months; and (3) reduce the rate to no greater than 50 basis points greater than the most recent Freddie Mac Weekly Primary Mortgage Market Survey (PMMS) rate for 30-year, fixed-rate conforming mortgages (US Average), rounded to the nearest one eighth of one percentage (0.125%), as of the date a plan is offered to the borrower. Note that the post-modified PITI payment must be equal to or less than the pre-disaster payment.

If the servicer is unable to offer the borrower either the Term Extension or the Capitalization of Delinquency and Term Extension, the servicer may use a mortgage recovery advance to settle the delinquency and return the borrower to current status. The mortgage recovery advance is limited to an amount no greater than what is necessary to resolve any accumulated interest and unreimbursed servicer advances made during the forbearance, and it must meet all of the requirements included in paragraph 6.R. of the Loss Mitigation Guide found in Attachment 18-A of chapter 18.

3.5.4 Farm loan borrowers

On September 13, 2017, the Secretary of Agriculture announced that the USDA will provide "additional flexibility to assist farm loan borrowers."[123] "Financially stressed FSA farm loan borrowers affected by the hurricanes who have received primary loan servicing applications may be eligible for 60 day extensions."

A USDA Notice explains: "A borrower who has received a PLS (primary loan servicing) application, but has not returned it, or has submitted a partial but incomplete application, and was within the 60 day response timeframe as of August 23, 2017, in the case of Hurricane Harvey, or as of September 4, 2017, for Hurricane Irma, will receive an additional 60 days from the otherwise applicable due date to submit or complete the borrower's PLS application. All borrowers in affected counties who are notified of PLS availability after these dates, through December 31, 2017, will receive 120 days, rather than 60 days to respond to the notice."[124]

"A borrower who was sent a response to a PLS request (offer of restructuring, market value buy-out, etc.) and whose response timeframe was still open as of August 23, 2017, for Hurricane Harvey, or September 4, 2017, for Hurricane Irma will be provided an additional 60 days from the otherwise applicable due date to respond to the PLS offer."[125]

"A borrower with an open PLS offer will be contacted before closing to determine whether the hurricane affected the offer. For example, in the case of a restructuring offer, the disaster may have impacted the borrower's ability to follow the farm business plan supporting restructuring. If a borrower's PLS

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[123] Press Release, U.D. Dep't of Agriculture, Farmers and Ranchers Affected by Hurricanes Harvey, Irma Granted Extra Time, Procedures, to Document and Claim Disaster Losses (Sept. 13, 2017), *available at* https://www.usda.gov/media/press-releases/2017/09/13/farmers-and-ranchers-affected-hurricanes-harvey-irma-granted-extra.

[124] U.S. Dep't of Agriculture, Assisting Borrowers and Applicants Affected by Hurricanes Harvey and Irma, Notice FLP-769, Sept. 13, 2017, *available at* https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/Disaster-Assist/pdfs/flp_769.pdf.

[125] *Id.*

application is denied and is in an affected county, the borrower will be given an additional 60 days from the otherwise applicable due date to request reconsideration, mediation or appeal. All outstanding PLS applications that are contingent on security value (such as current market value buyout or debt writedown) will require FSA to reevaluate the security. If the security value has changed, FSA will make a new PLS determination based upon the updated security value."[126]

Disaster Set Aside "response deadlines that were open on August 23, 2017, for Hurricane Harvey, and September 4, 2017, for Hurricane Irma will be extended 60 calendar days from the otherwise applicable due date."[127]

[126] *Id.*

[127] *Id.*

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