NCLC® NATIONAL CONSUMER LAW CENTER®

Obtaining Mortgage Relief for Survivors of Disasters

A Practice Guide for Advocates

APPENDIX B

SHORT SUMMARIES OF LOSS MITIGATION RULES FOR GOVERNMENT-BACKED LOANS

Foreclosure Sale Moratorium	
Freddie Mac	Hurricane Harvey: Moratorium until December 31, 2017. Hurricanes Irma and Maria in Puerto Rico and the U.S. Virgin Islands: Moratorium until May 31, 2018. See § 3.1.1 for more detail.
Fannie Mae	Hurricane Harvey: Moratorium until December 31, 2017. Hurricanes Irma and Maria in Puerto Rico and the U.S. Virgin Islands: Moratorium until May 31, 2018. See § 3.2.1 for more detail.
FHA	Hurricane Harvey: Moratorium until February 21, 2018 Hurricane Irma: Moratorium until March 9, 2018 Hurricane Maria in Puerto Rico and the U.S. Virgin Islands: Moratorium until September 16, 2018 for forward mortgages and September 15, 2018 for reverse mortgages. See § 3.3.1 for more detail.
VA	The VA has requested that loan holders extend moratoria for loans affected by Hurricanes Harvey, Irma and Maria until 270 days from the dates the respective disasters occurred. See § 3.4.2 for more detail.
USDA	For RD Single Family Housing Direct Loans: The website states: "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." A homeowner who has excessive, non-reimbursed repair expenses or who has lost a job as a result of a hurricane can request a "moratorium package." See § 3.5.1 for more detail.

	For RD Guaranteed Mortgage Loans: The Hurricane Harvey moratorium lasted until February 21, 2018. The Hurricane Irma moratorium lasted until March 9, 2018. The Hurricane Maria moratorium is in effect until September 17, 2018. See § 3.5.2 for more detail.
Foreclosure Eviction Suspension	
Freddie Mac	Evictions suspended "until further notice." See § 3.1.1 for more detail.
Fannie Mae	Evictions suspended until January 2, 2018. Where the servicer "has any doubt about the effect of the 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." See § 3.2.1 for more detail.
FHA	No specific policies identified,
VA	No specific policies identified.
USDA	No specific policies identified.
Credit Reporting Suspension	
Freddie Mac	A servicer must not report a borrower who is participating in a disaster-related forbearance plan, repayment plan or Trial Period Plan to credit repositories. See § 3.1.1 for more detail.
Fannie Mae	A servicer must temporarily suspend credit reporting of delinquencies to credit bureaus "if it is aware that the delinquency is attributable to a hardship as a result of the disaster." See § 3.2.1 for more detail.
FHA	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. See § 3.3.1 for more detail.
VA	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." See § 3.4.3 for more detail.
USDA	For RD Guaranteed Mortgage Loans: A borrower on a disaster-related forbearance plan should not be reported to the credit reporting agencies. See § 3.5.2 for more detail.
Late Charge Suspension	
Freddie Mac	A servicer must not assess late charges if the borrower is on a forbearance plan or paying as agreed on a repayment plan or Trial Period Plan. See § 3.1.1 for more detail.
Fannie Mae	**Effective until December 1, 2018**: A servicer must waive late charges if the payment is late because the borrower "incurred additional expenses or loss of income due to the disaster, or needs additional time to receive a pending insurance settlement." **Effective December 1, 2018**: A servicer "must not accrue or collect late charges from the borrower during the forbearance plan. If the borrower defaults on the terms of the

	forbearance plan, the servicer is authorized to accrue late charges from the date the borrower defaulted on the plan." See § 3.2.1 for more detail.
FHA	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. See § 3.3.1 for more detail.
VA	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. See § 3.4.4 for more detail.
USDA	For RD Guaranteed Mortgage Loans: Late fees will not be assessed while the borrower is on a forbearance plan or paying as agreed on a repayment plan. See § 3.5.2 for more detail.
	Forbearance
Freddie Mac	**Effective until December 1, 2018:** **Where quality right party contact (QRPC) has been obtained**: The servicer has the discretion to place the borrower in a forbearance plan for up to 12 months based on the circumstances. If the servicer believes that forbearance beyond a period of 12 months is warranted, it should present that recommendation to Freddie Mac for consideration. **Where QRPC has not been obtained** with a borrower who is or becomes 31 or more days delinquent: the servicer may place the borrower in a short-term forbearance plan. See § 3.1.2 for more detail. **Effective December 1, 2018:** On June 13, 2018, Fannie Mae and Freddie Mac, as part of a consolidation of forbearance programs, announced a single forbearance plan option to help borrowers experiencing a short-term hardship, and they removed the requirement for servicers to grant separate relief during the 90-day period while they are attempting to contact a borrower impacted by a disaster. Servicers are required to implement the updated forbearance options by December 1, 2018. The Bulletin also states: "Borrowers impacted by Eligible Disasters continue to be subject to special forbearance plan requirements described in Guide Chapter 8404 and Bulletins 2017-14, 2017-19, 2017-21, 2017-25 and 2017-29. (These Bulletins contain temporary servicing requirements relating to the hurricanes, as well as notices regarding applicable extensions of time.) The June 13, 2018 Bulletin provides that, under the new requirements effective December 1, 2018, a servicer "may approve forbearance plans that last for up to six months and may offer consecutive forbearance plans of up to 12 total months without requiring a Borrower Response Package." See § 3.1.2.3 for more detail regarding eligibility and terms.
Fannie Mae	**Effective until December 1, 2018:** **Where QRPC has been obtained and the loan is current, fewer than, or equal to 90 days delinquent, or under a Trial Period Plan**: The servicer is authorized to offer a forbearance plan of up to six months. Note that 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 12 months) without obtaining a complete Borrower Response Package. Fannie Mae, Single-Family Servicing Guide (as published Apr. 11, 2018) section D1-3-02, Providing Relief to a Borrower Who is Affected by a Disaster. **Where QRPC has been obtained and the loan is more than 90 days delinquent**: The servicer is authorized to offer a forbearance plan of up to six months. **Where QRPC has not been obtained and the loan is current, fewer than, or equal to 90 days delinquent, or under a Trial Period Plan**: The servicer is authorized to offer a forbearance plan of up to three months. **Where QRPC has not been obtained and the loan is more than 90 days delinquent**: The servicer is authorized to offer a forbearance plan of up to three months. See § 3.2.2 for more detail. **Effective December 1, 2018:** On June 13, 2018, Fannie Mae and Freddie Mac announced a single forbearance plan option to help borrowers experiencing a short-term hardship, and they removed the requirement for servicers to grant separate relief during the 90-day period while they are attempting to contact a borrower impacted by a disaster. The June 13 Servicing Guide Announcement includes this note: "Forbearance plans that were entered into prior to the servicer's implementation would adhere to existing policy until the expiration of such forbearance plan." See § 3.2.2.5 for more detail regarding eligibility and terms.
FHA	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." 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." 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. See § 3.3.2 for more detail.
VA	The VA encourages holders of guaranteed loans in disaster areas to extend every possible forbearance to borrowers in distress through no fault of their own. The VA encouraged "holders of guaranteed loans to extend forbearance to borrowers in distress as a result of Hurricane Harvey." Servicers were 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." See § 3.4.5 for more detail.

USDA	For RD Single Family Housing Direct Loans: The website states "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." See § 3.5.1 for more detail. For RD Guaranteed Mortgage Loans: 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. Servicers may use existing workout options to reinstate a borrower ready to resume mortgage responsibilities. See § 3.5.2 for more detail.
Transition Following Forbearance/Loss Mitigation	
Freddie Mac	**Where QRPC has been obtained**, and the borrower cannot resolve the delinquency through reinstatement or a repayment 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. See § 3.1.3.1 for more detail. For information about the Extend Modification, a new, temporary offering that was introduced on November 2, 2017 for disaster-impacted borrowers who were current or fewer than 31 days delinquent when the disaster occurred, see § 3.1.3.4. **Where QRPC has not been obtained**: the servicer must evaluate the borrower to determine if he or she is eligible for a Streamlined Modification, provided the borrower is 90 or more days delinquent. See § 3.1.3.2 for more detail. **Where the borrower was on a TPP at the time of the disaster**, see § 3.1.3.3 for more detail. **New, Temporary 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. See § 3.1.3.4 for more detail.
Fannie Mae	**Where QRPC has been obtained**, and the servicer determines that the borrower is capable of maintaining the current contractual monthly payment for principal, interest, taxes and insurance (PITI), including any escrow amounts disbursed by the servicer as a result of the disaster and escrow shortage needed to pay future escrow that is required to be repaid by the borrower over the 60-month escrow repayment period, the servicer must consider the borrower for an Extend Modification. For information about the Extend Modification, a new, temporary offering that was introduced on November 2, 2017 for disaster-impacted borrowers who were current or fewer than 31 days delinquent when the disaster occurred, see § 3.2.3.4.

	Where QRPC has not been obtained, and the mortgage is 90 or more days delinquent, the servicer must evaluate the borrower for a Fannie Mae Flex Modification based on the Unique Requirements for a Property Impacted by an Eligible Disaster. See § 3.2.3.2 for more detail. **If the borrower converts from an active TPP to a forbearance plan**, see § 3.2.3.3 for more detail. **New, Temporary Extend Modification for Disaster Relief.** A November 2, 2017 Lender Letter introduced the new, temporary Extend Modification for Disaster Relief. See § 3.2.3.4 for more detail.
FHA	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 certain conditions are met. See § 3.3.3.1 for more detail. For information on eligibility for and terms of a loan modification without a financial evaluation, see § 3.3.3.2. (Note that the Loan Modification without a Financial Evaluation" is the same modification as the "Disaster Rate and Term Loan Modification" and "Disaster Rate Modification" discussed in this guide. The FHA has clarified that these terms are used interchangeably to refer to the same modification, although the term "Disaster Loan Modification" will be the preferred term going forward. This is the term that will be incorporated into the Single Family Housing Policy Handbook 4000.1, at section III.A.3.c.iv.) For information on eligibility for other loss mitigation options for borrowers who are not eligible for the "Loan Modification without a Financial Evaluation" option, but are eligible for "Loan Modification without a Financial Evaluation" and experiencing a continuation of lower income or higher living expenses following the disaster, or eligible for "Loan Modification without a Financial Evaluation" but have not successfully completed the required TPP, see § 3.3.3.3. 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. On August 15, 2018, the FHA revised certain elements of this option for borrowers in Puerto Rico and the U.S. Virgin Islands whose property was affected by Hurricane Maria. For information on this "Disaster Standalone Partial Claim," see § 3.3.3.4.
VA	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. See § 3.4.6 for more detail.

USDA	After the forbearance period ends, borrowers who were current (or fewer than 30 days past due) as of the date of the disaster may be offered rate and term modifications without the standard financial evaluation required subject to certain requirements. Eligible borrowers may be offered certain special relief measures in addition to standard workout options. These measures may be offered without the required standard financial evaluation as long as certain conditions are met. There is a hierarchy for consideration of special relief measures. First in order is Term Extension. Second in order is Capitalization of Delinquency and Term Extension. 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. See § 3.5.2 for more detail.
Distribution of Insurance Proceeds	
Freddie Mac	In the wake of the 2017 hurricanes, Freddie Mac has temporarily revised certain requirements so as to assist borrowers who need upfront insurance proceeds to repair or rebuild their homes. There are different rules for borrowers who were fewer than 31 days delinquent at the times of the disaster and for borrowers who were 31 or more days delinquent at the times of the disaster. See § 3.1.4 for more detail.
Fannie Mae	In the wake of the 2017 hurricanes, Fannie Mae has temporarily revised certain requirements so as to assist borrowers who need upfront insurance proceeds to repair or rebuild their homes. There are different rules for borrowers who were fewer than 31 days delinquent at the times of the disaster and the insurance proceeds are less than or equal to $40,000, and borrowers who were fewer than 31 days delinquent at the times of the disaster and the insurance proceeds are equal to or greater than $40,000. There is another set of rules for borrowers who were 31 or more days delinquent at the times of the disaster. See § 3.2.4 for more detail.
FHA	For borrowers who have hazard or flood insurance, the rules regarding the disbursement of proceeds may be found in the HUD Handbook, which states that the servicer must "ensure that hazard or flood insurance claims are filed and settled as expeditiously as possible." In addition, FHA has two resources that can assist borrowers in rebuilding or buying a new home. The first is the 203(h) Mortgage Insurance for Disaster Victims program, and the second is the FHA's 203(k) Rehabilitation Mortgage Insurance program. See § 3.3.4 for more detail.
VA	The VA's Guidance on Natural Disasters states: "VA regulations (38 CFR 36.4329) require that lenders and holders ensure that homes financed with VA-guaranteed loans be sufficiently insured against hazards. Insurance proceeds are to be applied to the restoration of the security or the loan balance." See § 3.4.7 for more detail.

USDA	"Prior to release of hazard insurance proceeds because of damage caused by a natural disaster, servicers must complete a cost and benefit analysis on a case-by-case basis to determine if the property can be repaired or rebuilt. The servicer's actions must be based on the status of the mortgage, the amount of insurance proceeds, and the length of time required repairing or reconstructing the property, and the market conditions in the area. If the property will not be repaired or rebuilt, the insurance proceeds must be applied to the unpaid principal loan balance." 7 C.F.R. § 3555.307(d). The details regarding disbursement proceeds differ depending upon whether the property is damaged or has been completely destroyed. See § 3.5.4 for more detail.