Obtaining Mortgage Relief for Victims of Disasters

This report contains outdated information due to subsequent government policy changes. For current information on options for homeowners after a natural disaster, please see *Twelve Tips for Homeowners After Natural Disasters* and the *Homeowner Post-Disaster Road to Recovery Flow Chart*.

Obtaining Mortgage Relief for Victims of Disasters: A Practice Guide for Advocates

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NCLC National Consumer Law Center

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Essential Web Resources

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

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

Consumer Financial Protection Bureau (English and Spanish)
https://www.consumerfinance.gov/consumer-tools/disasters-and-emergencies/

FEMA individual disaster aid
https://www.fema.gov/individual-disaster-assistance
https://www.fema.gov/disaster/4393

Freddie Mac
http://www.freddiemac.com/singlefamily/service/natural_disasters.html
http://www.freddiemac.com/singlefamily/service/pdf/Disaster_Relief_Bullet_Points.pdf
https://freddiemac.gcs-web.com/news-releases/news-release-details/freddie-mac-confirms-disaster-relief-policies-hurricane-florence

Fannie Mae
http://www.fanniemae.com/portal/about-fm/hurricane-relief.html
https://www.fanniemae.com/singlefamily/disaster-assistance
https://www.knowyouroptions.com/relief
http://www.fanniemae.com/portal/media/corporate-news/2018/hurricane-florence-mortgage-assistance-6761.html

FHA
https://www.hud.gov/program_offices/housing/sfh/nsc/qaho0121
https://www.hud.gov/program_offices/housing/sfh/ins/203h-dft
https://www.hud.gov/sites/dfiles/Housing/documents/wb_Servicing%20FHA-Forward%20Mortgages_10-18-17.PDF

VA
https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_17_23.pdf
https://www.benefits.va.gov/HOMELOANS/resources_circulars_valeri.asp
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
https://www.usda.gov/media/press-releases/2018/09/12/usda-prepared-respond-hurricane-florence

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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:

- Freddie Mac and Fannie Mae, the guarantors of most mortgage loans, 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] This initial 90-day period may be extended, depending on the particular circumstances and effects of a given event.[4] 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 3.1 and 3.2, respectively, provide more specifics on the protections provided by each of these mortgage owners.

- Government-insured mortgage agencies, such as the Federal Housing Administration (FHA), Department of Veterans Affairs (VA) and Rural

[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* Freddie Mac Single-Family Seller/Servicer Guide section 8404.4, Delinquency management activities following a disaster (effective Mar. 2, 2016) [hereinafter Single-Family Seller/Servicer Guide]; 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 [hereinafter Single-Family Servicing Guide].

[4] See sections 3.1.1 and 3.2.1, *infra*, for information about extensions of the foreclosure sale moratorium date for Hurricanes Irma and Maria.

Housing Service (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 Freddie Mac and Fannie Mae. Sections 3.3, 3.4 and 3.5 cover the rules for these mortgages.

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). These rules are discussed in section 2.2. However, federal, state and local relief for all affected homeowners in a disaster area may be helpful. Such relief is discussed in section 2.3.

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 occurred. Section 2.4 describes the general rules for the 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. This website is: https://www.disasterassistance.gov/.

- **Who owns the mortgage?** The following websites provide instruction on how to determine whether Freddie Mac or Fannie Mae owns the mortgage: https://ww3.freddiemac.com/loanlookup and https://www.knowyouroptions.com/loanlookup. If the loan does not appear on either website, and the mortgage documents do not indicate that the loan was government-insured or -guaranteed by the FHA, VA or RHS, then the loan likely is a private-label mortgage.

- **What relief is available?** Relief may be available in various forms and from various sources. Appendix A -- a detailed flow chart entitled "Homeowner Post-Disaster Road to Recovery" -- walks advocates through the process of identifying avenues of relief relating to homeowner assistance after disaster strikes and asking the right questions relating to mortgage matters, insurance matters, and federal, state, and local matters.

1.3 Resources for lawyers helping disaster victims

The National Disaster Legal Aid Resource Center[5] is a collaboration of Lone Star Legal Aid, the American Bar Association, the Legal Services Corporation, the National Legal Aid and Defender Association NLADA), the Texas Legal Services Center and Pro Bono Net. This online resource provides readily available legal information about disaster recovery regarding 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. It also recommends that pro bono and legal services attorneys who are working on disaster-related cases and have questions tap into the expertise and experience of the National Disaster Legal Aid Advisory Group.[6]

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

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

[6] https://www.disasterlegalaid.org/advisorygroup/.

received from insurance coverage, but homeowners and renters may receive assistance for items not covered by insurance.[7]

Generally speaking, an applicant for assistance will receive a call from FEMA within 10 days of submitting the application in order to schedule an appointment for a home inspector visit,[8] although it may take longer in catastrophic disasters.[9] Some housing assistance funds are available through FEMA's Individuals and Households Program. Most disaster assistance from the federal government is in the form of low-interest disaster loans administered by the Small Business Administration.[10]

FEMA housing-related assistance includes:

> **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.
>
> **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.
>
> **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.
>
> **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.

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

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

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

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

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.[11]

2.2 Minimum rules applicable to all homeowners in disaster areas

The rules implemented by the CFPB are applicable to all mortgages. Regulation X, which implements the Real Estate Settlement Procedures Act (RESPA), provides the most relevant provisions.

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.[12]

The CFPB has stated 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."[13]

In contrast, the general rule is that servicers obtain a complete loss mitigation application before evaluating a 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.[14] However, Regulation X permits servicers to offer certain short-term options based upon an evaluation of an incomplete application.[15]

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

[12] Reg. X, 12 C.F.R. § 1024.41, cmt. 41(c)(2)(i)-1.

[13] *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. *See also* Consumer Fin. Prot. Bureau, Statement on supervisory practices regarding financial institutions and consumers affected by Hurricane Maria, Sept. 22, 2017, *available at* https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/statement-supervisory-practices-regarding-financial-institutions-and-consumers-affected-hurricane-maria/.

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

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

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.[16] It is likely that affected states will develop specific grant and aid programs targeted at this population.[17]

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 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.[18]

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.[19]

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[16] *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.

[17] 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. *See* U.S. Dep't of Hous. & Urban Dev., Community Development Block Grant Disaster Recovery: CDBG-DR Overview, Oct. 20, 2017, *available at* https://www.hudexchange.info/resources/documents/CDBG-Disaster-Recovery-Overview.pdf.

[18] 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.

[19] 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.

2.4 Distribution of insurance proceeds

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[20] broad discretion to determine what types of insurance are required (fire, flood, earthquake, wind, etc.) and the amount of coverage.[21]

After a covered loss occurs, the insurance company issues a claim check identifying both the borrower and the mortgage lender, or servicer, as payee.[22] Because the lender or servicer is also a payee, it effectively controls the disbursement of the proceeds to the borrower.

Freddie Mac and Fannie Mae, as well as the FHA, have general rules governing the distribution of insurance proceeds after claims have been made.[23] However, there are also special rules regarding the distribution of insurance proceeds after disasters, discussed below, respectively, in sections 3.1.4 and 3.2.4.

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 as long as the restoration and repair[24] 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 the term 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.[25]

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[20] 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.

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

[22] 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).

[23] *See, e.g.*, Fannie Mae, Single-Family Servicing Guide section B-5-01, Insured Loss Events.

[24] 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).

[25] *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).

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.[26]

If the proceeds are to be used for restoration and repair, the 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 the 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).[27]

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 dealing.[28] However, courts have held that once the borrower defaults, the lender is under no further obligation to disburse insurance proceeds.[29] 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.[30] The lender is not required to pay interest on undisbursed funds unless "applicable law" so requires.[31]

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

[27] For current loans with loss proceeds in excess of $40,000, Fannie Mae requires installment distributions up to $40,000 or 10% of the unpaid principal balance, whichever is greater. Fannie Mae, Single-Family Servicing Guide section B-5-01, Insured Loss Events (Apr. 12, 2017). Note that Fannie Mae, in its stated effort "to get insurance proceeds for insured loss events to the borrower as expeditiously as possible," has made temporary changes to its loss proceeds disbursement policies. These changes are described in section 3.2.4 of this report and in Fannie Mae Lender Letter LL-2017-09, Nov. 2, 2017, *available at* https://www.fanniemae.com/content/announcement/ll1709.pdf. Freddie Mac has made comparable temporary changes. See *infra* at section 3.1.4.

[28] 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).

[29] *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, Single- Family Servicing Guide section B-5-01, Insured Loss Events (Apr. 12, 2017) (requiring release of loss proceeds for repair and evaluation of the borrower for workout options).

[30] *See, e.g.*, Fannie Mae, Single-Family Servicing Guide section B-5-01, Insured Loss Events.

[31] 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.

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.[32]

3. Mortgage relief based on ownership of mortgage

Mortgage relief may include a moratorium on foreclosure sales, the suspension of foreclosure eviction, the suspension of credit reporting, the suspension of late charges, mortgage forbearance, loss mitigation options, and the distribution of insurance proceeds. The relief available will vary depending upon the ownership of the mortgage. In addition to the discussions in the following sections, which are organized by mortgage ownership, please see Appendices B and C, which respectively include short- and long-form tables outlining the various forms of mortgage relief described below.

3.1 Freddie Mac disaster relief[33]

3.1.1 Mandates to servicers

Freddie Mac authorizes its mortgage servicers, after a natural disaster, to take certain actions, but it only <u>mandates</u> the following specific borrower protections:

- <u>Foreclosure sale moratorium</u>: Initially, Freddie Mac stated that servicers were required to suspend all foreclosure sales for borrowers whose mortgaged premises were located in an Eligible Disaster Area and affected by Hurricane Harvey or Irma through December 31, 2017, unless the property was identified as vacant or abandoned prior to the disaster, or the servicer had completed its property inspection and confirmed that there

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

[33] 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. *See* http://www.freddiemac.com/singlefamily/service/natural_disasters.html. *See also* http://www.freddiemac.com/singlefamily/service/pdf/Disaster_Relief_Bullet_Points.pdf.

was no insurable damage or ability to receive FEMA funds.[34] On December 20, Freddie Mac extended the foreclosure sale suspension date until March 31, 2018 for mortgaged premises in Eligible Disaster Areas in Puerto Rico and the U.S. Virgin Islands as a result of Hurricane Irma or Maria.[35] On March 7, 2018, Freddie Mac again extended the suspension of all foreclosure sales for mortgaged premises located in Eligible Disaster Areas in Puerto Rico and the U.S. Virgin Islands as a result of Hurricane Irma or Maria, this time through May 31, 2018. However, the servicer may proceed with foreclosure if the premises have been identified as vacant or abandoned, or if the servicer has completed its property inspection and confirmed that there is no insurable damage or ability to receive FEMA funds.[36]

- <u>Foreclosure eviction suspension</u>: Initially, Freddie Mac required the suspension of foreclosure evictions on real estate owned properties in areas impacted by Hurricanes Harvey and Irma until further notice.[37] On September 25, 2017, this protection was expanded to areas impacted by Hurricane Maria.[38]

- <u>Credit reporting suspension</u>: Freddie Mac requires that 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.[39]

- <u>Late charge suspension</u>: Freddie Mac requires that 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.** Freddie Mac's June 13, 2018 Bulletin states that a servicer may "include in the forbearance agreement any accrued late charges due from the Borrower at the time the Servicer entered into the forbearance agreement with the Borrower," but

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34 *See* Freddie Mac Bulletin 2017-19, Sept. 13, 2017, *available at*. http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bll1719.pdf.

35 *See* Freddie Mac Bulletin No. 2017-29, Dec. 20, 2017, *available at* http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bll1729.pdf.

36 *See* Freddie Mac Bulletin No. 2018-4, Mar. 7 2018, *available at* http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bll1804.pdf.

37 *See* Freddie Mac Bulletin No. 2017-19, *supra* note 34, at 3.

38 *See* Freddie Mac Bulletin No. 2017-21, Sept. 25, 2017, *available at* http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bll1721.pdf.

39 Freddie Mac, Single-Family Seller/Servicer Guide section 8404.5(a), Disaster reporting requirements.

must not "accrue or collect late charges from the Borrower during the term of the forbearance plan or any subsequent repayment plan period if the Borrower is complying with the terms of such agreement." Should the borrower default on the forbearance agreement, "late charges may begin to accrue from the date the Borrower defaulted on the forbearance agreement."[40]

3.1.2. Mortgage forbearance

3.1.2.1 Mortgage forbearance according to the Freddie Mac Single-Family Seller/Servicer Guide published as of March 28, 2018 (effective until December 1, 2018)

Freddie Mac *authorized* its servicers to provide a forbearance period of up to 12 months for borrowers affected by Hurricanes Harvey, Irma and Maria, although it has not required servicers to do so. When the borrower is unable to send or receive documentation, the servicer may waive the requirement that the forbearance plan be in writing.[41]

The terms of the forbearance will depend upon whether or not the servicer has been in contact with the borrower, or obtained "quality right party contact" (QRPC).

3.1.2.1.1 Where QRPC has been obtained

Where the servicer is in contact with the borrower, the servicer has the discretion during this period to place the borrower in a forbearance plan for up to 12 months based on the circumstances.[42] The servicer may offer up to six months of forbearance without obtaining a complete Borrower Response Package, but must attempt to obtain a complete Borrower Response Package if forbearance exceeds six months. If the borrower is unable to produce financial documentation, the servicer may offer successive forbearance plans (not to exceed 12 months in total) without obtaining a complete Borrower Response Package. If the servicer believes that forbearance

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[40] Freddie Mac Bulletin No. 2018-9 (June 13, 2018), *available at* http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bll1809.pdf.

[41] Freddie Mac, Single-Family Seller/Servicer Guide section 8404.4(c), Delinquency management activities following a disaster.

[42] Freddie Mac, Single-Family Seller/Servicer Guide section 8404.4(b), Delinquency management activities following a disaster.

beyond a period of 12 months is warranted, it should present that recommendation to Freddie Mac for consideration.[43]

3.1.2.1.2 Where QRPC has not been obtained

Where the servicer is not in contact with a borrower who is or becomes 31 or more days delinquent during the specified period, 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.[44]

3.1.2.2 Mortgage forbearance according to the Freddie Mac Single-Family Seller/Servicer Guide published as of June 13, 2018 (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.[45] Freddie Mac's June 13, 2018 Guide Bulletin states that it is consolidating its short-term, long-term and unemployment forbearance offerings into a single streamlined policy. Because several forbearance plans are being consolidated into one set of requirements, section 9203 (Reinstatement and Relief Options) will be restructured and will remove references to short-term and long-term forbearance, and replaced with "forbearance plan," as applicable.[46]

The Bulletin also states: "Borrowers impacted by Eligible Disasters continue to be subject to special forbearance plan requirements described in Guide Chapter 8404

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[43] Freddie Mac, Single-Family Seller/Servicer Guide section 8404.4(a), (b), Delinquency management activities following a disaster.

[44] 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), Delinquency management activities following a disaster.

[45] *See* Fannie Mae Servicing Guide Announcement SVC-2018-04 (June 13, 2018), *available at* https://www.fanniemae.com/content/announcement/svc1804.pdf.

[46] *See* Freddie Mac Bulletin No. 2018-9 , *supra* note 40.

and Bulletins 2017-14, 2017-19, 2017-21, 2017-25 and 2017-29."[47] (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."[48]

3.1.2.2.1 Eligibility for a forbearance plan

The servicer is not required to collect a complete Borrower Response Package to evaluate the borrower for a forbearance plan or a forbearance plan extension. However, if the servicer does not collect a complete Borrower Response Package, then the servicer's evaluation must be based on information provided by the borrower resulting from quality right party contact established in accordance with the requirements in section 9102.3(b) of the Guide (Establishing Borrower contact during Delinquency).[49]

The borrower may be current or delinquent, but the forbearance plan must not result in an overall delinquency that exceeds 360 days (*i.e.*, to be in an active forbearance plan, the borrower must not have missed more than 12 contractual payments).[50]

The property securing the mortgage loan is still eligible even if it is vacant, but it may not be abandoned or condemned. Mortgages secured by second homes or investment properties are ineligible for forbearance.[51]

3.1.2.2.2 Forbearance plan terms

Based on the borrower's individual circumstances and ability to pay, the servicer must determine whether a reduced payment is required, or whether to allow the borrower to choose not to make monthly payments during the plan. If the

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[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] Freddie Mac Single-Family Seller-Servicer Guide (published as of June 13, 2018) section 9203.13(a), Borrower requirements for short-term forbearance.

[51] Freddie Mac Single-Family Seller-Servicer Guide (published as of June 13, 2018) section 9203.13(b), Borrower requirements for short-term forbearance.

forbearance plan will require a reduced payment, then the principal and interest amount due under the forbearance plan must be lower than the borrower's contractual principal and interest amount. The servicer must receive the payment on or before the last day of the month in which it is due. If the borrower fails to make timely forbearance payments, the forbearance plan must be canceled unless the servicer determines that there are mitigating circumstances that caused the payment to be late.[52]

Generally speaking, if the servicer achieves quality right party contact and the borrower meets the eligibility criteria for forbearance, the servicer must offer an initial forbearance term for a period of one to six months, and one or more forbearance term extensions of one to six months. However, the aggregate of the initial term and all forbearance term extensions may not exceed 12 months of uninterrupted forbearance.[53]

Servicers, at their discretion, may place a borrower who is or becomes 31 or more days delinquent in a short-term forbearance plan, as provided in sections 9203.12 through 9203.16 of the Guide. This short-term forbearance plan may not exceed 90 days without either achieving quality right party contact or receiving approval from Freddie Mac.[54]

For additional requirements regarding properties affected by a disaster, section 9203 of the Guide (Reinstatement and Relief Options) directs readers to refer to section 8404 (Servicing Mortgages Impacted by a Disaster).[55]

3.1.3 Transition following forbearance requirements

The servicer must contact a borrower on a periodic basis, and prior to the end of the forbearance period, in order to see if the hardship has been resolved or if further loss mitigation measures are appropriate to resolve the delinquency. The servicer must consider a number of factors, including the ability to achieve quality right party

[52]. Freddie Mac Single-Family Seller-Servicer Guide (published as of June 13, 2018) section 9203.13(d), Borrower requirements for short-term forbearance.

[53] Freddie Mac Single-Family Seller-Servicer Guide (published as of June 13, 2018) section 9203.12, What is forbearance?

[54] Freddie Mac Single-Family Seller-Servicer Guide (published as of June 13, 2018) section 8404.4(a), Delinquency management activities following a disaster.

[55]. Freddie Mac Single-Family Seller-Servicer Guide (published as of June 13, 2018) section 9203.12, What is forbearance?

contact, the borrower's current financial circumstances and ability to resume making monthly payments, and the status of the mortgage at the time of the disaster.[56] 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.[57] Transition requirements will depend upon whether or not the servicer has obtained QRPC with the borrower, and whether or not the borrower was on a Trial Period Plan (TPP) at the time of the disaster.

If QRPC is made, 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 (*see* section 3.1.3.4, below); (2) Disaster Relief Modification; (3) Flex Modification; (4) short sale; (5) deed-in-lieu of foreclosure.

3.1.3.1 Transition requirements where QRPC has been obtained

Where the servicer is in 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 Freddie Mac loss mitigation evaluation hierarchy set forth in section 9201.2 of the Single-Family Seller/Servicer Guide.

If the borrower was current or fewer than 31 days delinquent at the time of the disaster and is 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.[58]

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

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[56] Freddie Mac, Single-Family Seller/Servicer Guide section 8404.6, Transition following disaster-related forbearance.

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

[58] See Freddie Mac, Single-Family Seller/Servicer Guide section 9206.4 for the requirements for a Disaster Relief Modification.

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.[59]

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 Freddie Mac loss mitigation evaluation hierarchy in section 9201.2 of the Single-Family Seller/Servicer Guide (Freddie Mac loss mitigation evaluation hierarchy).[60]

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 that the borrower is 90 or more days delinquent.[61]

3.1.3.2 Transition requirements where QRPC has not been obtained

Where the servicer is not in contact with the borrower 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 Modification, provided the borrower is 90 or more days delinquent.[62]

Where the servicer is not in contact with the borrower at the end of the disaster-related forbearance period, and the servicer determines that the borrower is eligible for a Streamlined Modification in accordance with section 9206.3 of the Single-Family Seller/Servicer Guide (Freddie Mac Streamlined Modification), the servicer must send the borrower a Streamlined Modification TPP Notice, as provided in Exhibit 93, Evaluation Model Clauses. The TPP Notice should be amended as set forth in Exhibit 93 for post-disaster forbearance modification.[63]

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[59] Freddie Mac, Single-Family Seller/Servicer Guide sections 8404.6(a), Transition following disaster-related forbearance, and 9206.4, Capitalization and Extension Modification for Disaster Relief.

[60] Freddie Mac, Single-Family Seller/Servicer Guide section 8404.6(a), Transition following disaster-related forbearance.

[61] *Id.*

[62] *Id.*

[63] Freddie Mac, Single-Family Seller/Servicer Guide section 8404.6(b), Transition following disaster-related forbearance.

3.1.3.3 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 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 loss mitigation evaluation hierarchy set forth in section 9201.2 (Freddie Mac loss mitigation evaluation hierarchy).

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 (Eligibility requirements for a Freddie Mac Flex Modification).

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.[64]

Borrowers will be considered for a Disaster Relief Modification, along with a Flex Modification, provided the borrower is 90 or more days delinquent.

Note that disaster requirements for the Flex Modification permit the servicer to waive most eligibility criteria. However, there are exclusions from eligibility.[65]

3.1.3.4 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 Modification for Disaster Relief (Disaster Relief Modification), described above, with the primary difference being that the Disaster Relief Modification requires the capitalization of arrearages in accordance with section 9206.5 (Eligibility Requirements for a Freddie Mac Flex Modification), 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 whose mortgaged premises or places of employment are located in an Eligible Disaster Area.

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[64] Freddie Mac, Single-Family Seller/Servicer Guide section 8404.6(c), Transition following disaster-related forbearance.

[65] For details on the Flex Modification waterfall, see Freddie Mac, Single-Family Seller/Servicer Guide section 9206.10, and see Chapter 9206 for a review of complete requirements for the Flex Modification. *See also* Freddie Mac Flex Modification Reference Guide (Jan. 2018), *available at* http://www.freddiemac.com/learn/pdfs/service/flex_mod_ref_guide.pdf.

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[66] -- until otherwise instructed by Freddie Mac.

Before the borrower's forbearance period ends, a servicer must try and contact the borrower. If QRPC 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 QRPC 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.[67] The solicitation must include high-level information about the alternative disaster modification options that may be available. As noted in the November 2, 2017 Bulletin, the special Flex Modification requirements for borrowers impacted by disasters[68] continue to apply, but they have been updated to include the Extend Modification. The servicer must evaluate the borrower for a streamlined offer for a Flex Modification if the borrower is 90 days or more delinquent, or the borrower has a Step-Rate Mortgage and is at least 60 days delinquent within 12 months following the first payment due date resulting from an interest rate adjustment, provided a Borrower Response Package has not been submitted and one of the following conditions is met: (1) the borrower is not eligible for an Extend Modification or a Disaster Relief Modification; (2) the borrower declines the Extend Modification and the Disaster Relief Modification; or (3) the servicer is unable to obtain QRPC with the borrower at the end of the forbearance period to determine financial status and eligibility for an Extend Modification and a Disaster Relief Modification.

A borrower is eligible for an Extend Modification if: he or she was current or fewer 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).

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

[67] *Id.* at 2.

[68] *See* Freddie Mac, Single-Family Seller/Servicer Guide section 9206.5(e), Eligibility requirements for a Freddie Mac Flex Modification.

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 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.[69]

3.1.4 Distribution of insurance proceeds after disaster

Freddie Mac's rules for the distribution of insurance proceeds after a disaster are outlined in section 8202.11 of the Single-Family Seller/Servicer Guide (Insurance loss settlements). However, 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. These revisions are reflected in the following:

- 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. If cosmetic (non-structural) work items adding up to less than $5,000 are outstanding when the final inspection occurs, the inspection may be considered final and the inspector must estimate completion dates for any unfinished items.[70]

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[69] *See* Freddie Mac Bulletin No. 2017-25, *supra* note 66.

[70] *Id.* at 8. Note that these requirements reflect temporary changes made to the Freddie Mac Single-Family Seller/Servicer Guide.

- 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. Remaining funds may be distributed in increments not to exceed 25% of the proceeds. Final inspection is required[71]

- Insurance loss settlements that are intended for contents losses or off-residence living expenses must be released to the borrower without delay.[72]

3.2 Fannie Mae disaster relief[73]

3.2.1 Mandates to servicers

Like Freddie Mac, Fannie Mae requires certain borrower protections:

- Foreclosure sale moratorium: Initially, Fannie Mae stated that servicers were required to suspend all foreclosure sales for borrowers whose mortgaged premises were located in an Eligible Disaster Area and affected by Hurricane Harvey for a period of 90 days.[74] On September 13, 2017, a Fannie Mae Lender Letter stated that the suspension applied to properties affected by Hurricane Harvey or Irma and was to last until December 31, 2017, unless the property was identified as vacant or abandoned prior to the disaster, or the servicer had completed its property inspection and confirmed that there was no damage to the property or the damage was not covered by insurance or eligible to receive state or federal disaster assistance. The Lender Letter added that, when applicable, servicers must

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[71] *Id.*

[72] http://www.freddiemac.com/singlefamily/service/natural_disasters.html.

[73] A primary resource for information is the Disaster Relief page on the Fannie Mae website. *See* http://www.fanniemae.com/portal/about-fm/hurricane-relief.html; *See also* Fannie Mae, Single-Family Servicing Guide (as published June 13, 2018), *available at* https://www.fanniemae.com/content/guide/svc061318.pdf, and Fannie Mae, Single-Family Servicing Guide (as published Apr. 11, 2018), *available at* https://www.fanniemae.com/content/guide/svc041118.pdf

[74] *See* Fannie Mae, Lender Letter LL-2017-03, Aug. 29, 2017, *available at* https://www.fanniemae.com/content/announcement/ll1703.pdf.

receive pre-approval by the mortgage insurer or guarantor to suspend the foreclosure sale to avoid jeopardizing benefits of any applicable insurance or guaranty.[75] On December 20, 2017, Fannie Mae extended the suspension of all foreclosure sales for mortgaged premises located in an Eligible Disaster Area in Puerto Rico and the U.S. Virgin Islands as a result of Hurricane Irma or Maria until March 31, 2018. On March 7, 2018, Fannie Mae again extended the suspension of all foreclosure sales for mortgaged premises located in a FEMA-declared disaster area in Puerto Rico and the U.S. Virgin Islands as a result of Hurricane Irma or Maria, this time until May 31, 2018. However, the servicer may proceed with foreclosure if the premises have been identified as vacant or abandoned, provided that a property inspection has confirmed that there is not damage to the property or the damage to the property is not covered by insurance or eligible for state or federal disaster assistance.[76]

- Foreclosure eviction suspension: Initially, Fannie Mae required the suspension of foreclosure evictions for real estate owned properties in areas impacted by Hurricane Harvey for 90 days from the date the disaster occurred.[77] On September 13, 2017, a Lender Letter stated that the suspension applied to properties affected by Hurricanes Harvey and Irma and was to last until January 2, 2018.[78] The Fannie Mae Single-Family Servicing Guide states that 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."[79]

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

76 *See* Fannie Mae, Lender Letter LL-2018-01, Mar. 7, 2018, *available at* https://www.fanniemae.com/content/announcement/ll1801.pdf.

77 *See* Fannie Mae, Lender Letter LL-2017-03, *supra* note 74.

78 *See* Fannie Mae, Lender Letter LL-2017-06, *supra* note 75, at 3.

79 Fannie Mae, Single-Family Servicing Guide (as published June 13, 2018) section D1-3-01, Evaluating the Impact of a Disaster Event and Assisting a Borrower; 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.

- Credit reporting suspension: The version of the Single-Family Guide that was published on April 11, 2018 states that Fannie Mae requires that 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."[80] The version published on June 13, 2018 states that a servicer "must suspend reporting the status of a mortgage loan to credit bureaus even though payments are past due as long as the delinquency occurs during an active forbearance, repayment plan, or Trial Period Plan where the borrower is making the required payments as agreed and is directly attributable to" a disaster.[81]

- Late charge suspension: The version of the Single-Family Guide that was published on April 11, 2018 states that Fannie Mae requires that a servicer 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."[82] The version published on June 13, 2018 states that 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."[83]

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

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[80] *See* Fannie Mae, Lender Letter LL-2017-06, *supra* note 75

[81] Fannie Mae, Single-Family Servicing Guide (as published June 13, 2018) section C-4.1-02, Suspending Credit Bureau Reporting. Note that, with respect to the policy changes reflected in the June 13, 2018 version of the Guide, servicers "are encouraged to implement these policy changes immediately, but must implement them no later than December 1, 2018." Fannie Mae Servicing Guide Announcement SVC-2018-04, *supra* note 45.

[82] Fannie Mae, Single-Family Servicing Guide (as published Apr. 11, 2018) section D1-3-01, Evaluating the Impact of a Disaster Event and Assisting a Borrower.

[83] Fannie Mae, Single-Family Servicing Guide (as published June 13, 2018) section D2-3.2-01, Forbearance Plan. Note that, with respect to the policy changes reflected in the June 13, 2018 version of the Guide, servicers "are encouraged to implement these policy changes immediately, but must implement them no later than December 1, 2018." Forbearance plans entered into prior to the servicer's implementation "would adhere to existing policy until the expiration of such forbearance plan." Fannie Mae Servicing Guide Announcement SVC-2018-04 , *supra* note 45.

- 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.[84] However, the issue of whether to grant a forbearance is still in the discretion of the servicer.

3.2.2 Mortgage forbearance

3.2.2.1 Mortgage forbearance according to the Fannie Mae Single-Family Service Guide published as of April 11, 2018 (effective until December 1, 2018)

Fannie Mae has *authorized* a forbearance period of up to 12 months for borrowers affected by Hurricanes Harvey, Irma and Maria.[85] 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.[86]

When a borrower is affected by a disaster, the servicer must counsel the borrower "on the availability of appropriate workout options and federal disaster relief that might be available through FEMA" and the servicer must evaluate each loan that becomes delinquent due to the disaster on a case-by-case basis.[87]

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[84] Fannie Mae, Single-Family Servicing Guide (as published Apr. 11, 2018) section D1-3-01, Evaluating the Impact of a Disaster Event and Assisting a Borrower.

[85] 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 12 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.

[86] 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.

[87] *See id.*

"During the disaster relief period and/or any forbearance plan related to the disaster," the servicer must "waive any late charges if the borrower's payment is late because he or she incurred additional expenses or loss of income due to the disaster, or needs additional time to receive a pending insurance settlement."[88]

"During the disaster relief period and/or forbearance plan related to a disaster event," the servicer must "temporarily suspend the reporting of delinquencies to the credit bureaus if it is aware that the delinquency is attributable to a hardship as a result of a disaster event."[89]
The servicer must contact its Fannie Mae Servicer Representative "if it needs assistance in determining how a policy should be applied or if it has determined that a departure from Fannie Mae's policies is warranted."[90]

The terms of the forbearance depend upon whether or not the servicer has been in contact with the borrower, or obtained "quality right party contact" (QRPC).

3.2.2.1.1 Where QRPC has been obtained and the loan is current, fewer than, or equal to 90 days delinquent, or under a Trial Period Plan

Where the servicer is in contact with the borrower during the disaster relief period, and the loan is current, fewer than, or equal to 90 days delinquent, or under a TPP, 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.[91]

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[88] *See id.*

[89] *See id.*

[90] *See id.*

[91] *See id.*

3.2.2.1.2 Where QRPC has been obtained and the loan is more than 90 days delinquent

Where the servicer is in contact with the borrower during the disaster relief period, and the loan is more than 90 days delinquent, the servicer is authorized to offer a forbearance plan of up to six months.[92]

3.2.2.1.3 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

Where the servicer is not in contact with the borrower during the disaster relief period, and the loan is current, fewer than, or equal to 90 days delinquent, or under a TPP, the servicer is authorized to offer a forbearance plan of up to three months.[93]

3.2.2.1.4 Where QRPC has not been obtained and the loan is more than 90 days delinquent

Where the servicer is not in contact with the borrower during the disaster relief period, and the loan is more than 90 days delinquent, the servicer is authorized to offer a forbearance plan of up to three months.[94]

3.2.2.2 Mortgage forbearance according to the Fannie Mae Single-Family Servicing Guide published as of June 13, 2018 (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. Servicers are required to implement the updated forbearance options by December 1, 2018.[95] The June 13 Fannie Mae Servicing Guide Announcement states that this update will streamline the current workout options "into a single policy, including forbearance plans related to unemployment, unique hardships, military indulgence, and disaster events" and simplify the policy on disaster assistance.

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[92] *See id.*

[93] *See id.*

[94] *See id.*

[95] *See* Fannie Mae Servicing Guide Announcement SVC-2018-04, *supra* note 45.

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."[96]

Like the April 11, 2018 version previously described, the updated Guide provides that when a borrower is affected by a disaster, the servicer must counsel the borrower "on the availability of appropriate workout options and federal disaster relief that might be available through FEMA" and the servicer must evaluate each loan that becomes delinquent due to the disaster on a case-by-case basis.[97] It also states that a servicer must contact its Fannie Mae Servicing Representative "if it needs assistance in determining how a policy should be applied or if it has determined that a departure from Fannie Mae's policies is warranted."[98]

3.2.2.2.1 Eligibility for a forbearance plan

A servicer is authorized to evaluate a borrower for a forbearance plan without receiving a complete Borrower Response Package.[99]

The property securing the mortgage loan may be a principal residence, a second home, or an investment property. The property must not be condemned or abandoned, but it may be vacant.[100]

3.2.2.2.2 Forbearance plan terms

Generally speaking, where QRPC has been obtained, a servicer is authorized to offer an initial forbearance plan term of up to six months and grant an extension of the initial term of up to six additional months. Note that a servicer is authorized to offer the six-month terms in separate, shorter increments.[101]

Where a disaster event is involved, and the mortgage loan is 31 or more days delinquent, a servicer is authorized to offer an initial forbearance plan term of up to

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[96] *Id.*

[97] *See* Fannie Mae, Single-Family Servicing Guide (as published June 13, 2018) section D2-3.2-01, Forbearance Plan.

[98] *See id.*

[99] *See id.*

[100] *See id.*

[101] *See id.*

three months *without* obtaining QRPC if the servicer's review of the facts and circumstances (which may result from establishing contact with the borrower or from performing a property inspection) indicates that the property, the borrower's employment, or the borrower's income is seriously affected by the disaster. However, the servicer must continue attempting to obtain QRPC during the initial three-month term.[102]

The servicer must receive Fannie Mae's prior written approval for a forbearance plan to exceed a cumulative term of 12 months (measured from the start date of the initial forbearance plan) or result in the mortgage becoming more than 12 months delinquent. When the servicer initially offers an arrangement that includes a combination of both forbearance and a repayment plan, the combined period must not exceed 36 months. The borrower's monthly payment must be reduced or suspended during the forbearance plan term. In the case of reduced payments, the payment must be received on or before the last day of the month in which it is due, unless the servicer determines that acceptable mitigating circumstances caused the payment to be late.[103]

3.2.3 Transition following forbearance requirements

After a disaster-related forbearance plan is granted, the servicer must continue to work with the borrower to determine what additional steps can be taken (for example, application of insurance claim settlements to repair the property). The servicer must evaluate the loan for a workout option prior to the expiration of the forbearance plan.[104]

The servicer must attempt to establish QRPC with the borrower during the forbearance plan and must analyze each case carefully before determining which workout option is most appropriate.[105] This analysis should be conducted according to Fannie Mae's workout hierarchy. When offering forbearance relief, a servicer must utilize the requirements set forth in chapter F-2-11 of the Single-Family

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[102] *See id.*

[103] *See id.*

[104] 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.

[105] Fannie Mae, Single-Family Servicing Guide section D2-3.1-01, Determining the Appropriate Workout Option.

Seller/Servicer Guide, which—importantly—includes the opportunity to resolve delinquencies through a simple reinstatement process.[106] Transition requirements will depend upon whether or not the servicer has obtained QRPC with the borrower.

3.2.3.1 Transition requirements where QRPC has been obtained

Where the servicer is in contact with the borrower during the disaster-related forbearance period, 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, which is described in section 3.2.3.4, below. The servicer must disclose how the escrow analysis was determined, and that disbursed escrow amounts will not be capitalized but will be added to the escrow shortage needed to pay future escrow amounts resulting in an increase of the current PITI payment over the 60-month escrow repayment period.[107]

If the servicer determines that the borrower is capable of maintaining the PITI payment, but cannot manage the additional escrow payment obligation to cover amounts disbursed by the servicer as a result of the disaster, the servicer must evaluate the borrower for a Fannie Mae Cap and Extend Modification for Disaster Relief.[108]

If the servicer determines that the borrower is *not* capable of maintaining the PITI payment, 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.[109]

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[106] Fannie Mae, Single-Family Servicing Guide section F-2-11, Fannie Mae's Workout Hierarchy.

[107] *See* Fannie Mae Lender Letter LL-2017-09, Nov. 2, 2017, *available at* https://www.fanniemae.com/content/announcement/ll1709.pdf.

[108] *See id.* S*ee also* Fannie Mae, Single-Family Servicing Guide (as published Apr. 11, 2018) section D2-3.2-10, Fannie Mae Cap and Extend Modification for Disaster Relief.

[109] *See* Fannie Mae Lender Letter LL-2017-09, *supra* note 107, at 2. *See also* Fannie Mae, Single Family Servicing Guide section D2-3.2-09, Fannie Mae Streamlined Modification Post Disaster Forbearance.

3.2.3.2 Transition requirements where QRPC has not been obtained

Where the servicer is not in contact with the borrower during the disaster-related forbearance period 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.[110]

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

If the borrower converts from an active TPP to a forbearance plan, the borrower may subsequently be eligible for a Fannie Mae workout option upon completion of the forbearance plan. If the borrower is eligible for a loan modification, the servicer must commence a new TPP.[111]

3.2.3.4 New, temporary Extend Modification for Disaster Relief

A November 2, 2017 Lender Letter introduced the new, temporary 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 exceeding 12 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 were required to have begun evaluating borrowers for this new modification program no later than February 1, 2018.[112]

If the servicer is able to establish QRPC 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

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[110] *See* Fannie Mae Lender Letter LL-2017-09, *supra* note 107, at 2. *See also* Fannie Mae, Single Family Servicing Guide section D2-3.2-09, Fannie Mae Streamlined Modification Post Disaster Forbearance.

[111] 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.

[112] *See* Fannie Mae Lender Letter LL-2017-09, *supra* note 107.

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.[113]

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.[114]

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. The servicer must waive all late charges, penalties, stop payment fees, or similar charges upon the borrower's conversion to a permanent loan modification.[115]

3.2.4 Distribution of insurance proceeds after disaster

Fannie Mae's rules for the distribution of insurance proceeds after a disaster are outlined in section B-5-01 of the Servicing Guide. However, 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. These revisions are reflected in the following:

- For borrowers who were fewer than 31 days delinquent at the time of the Eligible Disaster, 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

[113] *Id.* at 2.

[114] *Id.* at 3.

[115] *Id.* at 8.

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.[116]

- For borrowers who were fewer than 31 days delinquent at the time of the Eligible Disaster, if the insurance 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 the servicer must 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 disbursed based on periodic inspections of the progress of the repair work. 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. If cosmetic (non-structural) work items adding up to less than $5,000 are outstanding when the final inspection occurs, the inspection may be considered final and the inspector must estimate completion dates for any unfinished items.[117]

- For borrowers who were 31 or more days delinquent at the time of the Eligible Disaster, 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.[118]

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[116] *Id.* at 10.

[117] *Id.*

[118] *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 section B-5-01, Insured Loss Events.

3.3 FHA disaster relief[119]

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 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.[120]

3.3.1 Mandates to servicers

Foreclosure sale moratorium: HUD initially granted a 90-day moratorium on foreclosures after the September 2017 hurricanes.[121] The moratorium was effective as of the date of the disaster declaration for a particular area. This moratorium applied both to the initiation of foreclosures and foreclosures already in progress.[122] 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.[123] On March 1, 2018, HUD extended its then-current 180-day foreclosure

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[119] Some primary resources for information about FHA disaster relief are available at https://www.hud.gov/program_offices/housing/sfh/nsc/qaho0121

and https://www.hud.gov/program_offices/housing/sfh/ins/203h-dft

and https://www.hud.gov/sites/dfiles/Housing/documents/wb_Servicing%20FHA-Forward%20Mortgages_10-18-17.PDF

[120] 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.

[121] *See* 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.

[122] U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c.ii(A), Presidentially-Declared Major Disaster Areas: Moratorium on Foreclosures.

[123] *See* 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.

moratorium for areas impacted by Hurricane Maria for an additional 60 days. This extension applies only to Individual Assistance Areas in Puerto Rico and the U.S. Virgin Islands. This extension will expire on May 18, 2018, and applies to the initiation of foreclosures and foreclosures already in progress.[124] On May 16, 2018, HUD extended the foreclosure timelines through August 16, 2018 for FHA-insured properties in Puerto Rico and the U.S. Virgin Islands. The extension applies to the initiation of foreclosures and foreclosures already in progress. This extension is applicable if the mortgage was no more than 60 days past due as of the date of the disaster, and the borrower has not already been approved for a forbearance or other loss mitigation option.[125] On August 15, 2018, HUD once again extended the foreclosure moratorium for forward mortgage properties affected by Hurricane Maria in Puerto Rico and the U.S. Virgin Islands, this time until September 16, 2018.[126] According to a Press Release, the FHA does not intend to extend the moratorium beyond this date.[127] To be eligible for the moratorium, the borrower must not have not defaulted after a forbearance or other loss mitigation option received after Hurricane Maria, the borrower must be either an owner-occupant of the mortgaged property or be developing and implementing a viable plan to repair or rebuild the property and occupy it, and the borrower must not currently be in a permanent loss mitigation option executed since Hurricane Maria. On May 16, 2018, HUD extended foreclosure timelines through August 16, 2018 for Home Equity Conversion Mortgages (HECM) on impacted properties in Puerto Rico and the U.S. Virgin Islands. This extension applies to HECMS that became due and payable for reasons other than the death of the last surviving borrower and eligible non-borrowing spouse.[128] On August 18, 2018, this moratorium for HECM properties was extended through September 15, 2018.[129] The HUD Handbook also requires that a

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[124] *See* Dep't of Hous. & Urban Dev. Mortgagee Letter 2018-02 (Mar. 1, 2018), *available at* https://www.hud.gov/sites/dfiles/OCHCO/documents/18-02ml.pdf.

[125] *See* Dep't of Hous. & Urban Dev. Mortgagee Letter 2018-03 (May 16, 2018), *available at* https://www.hud.gov/sites/dfiles/OCHCO/documents/18-03ml.pdf.

[126] *See* U.S. Dep't of Hous. & Urban Dev. Mortgagee Letter 2018-5 (Aug. 15, 2018), *available at* https://www.hud.gov/sites/dfiles/OCHCO/documents/18-05ml.pdf.

[127] Press Release, U.S. Dep't of Hous. & Urban Dev., FHA Announces Updated Policy to Assist Homeowners Affected By 2017 Natural Disasters in Puerto Rico and the U.S. Virgin Islands, HUD No. 18-083 (Aug. 16, 2018), *available at* https://www.hud.gov/press/press_releases_media_advisories/HUD_No_18_083 ((“HUD is instructing FHA-approved mortgage servicers to continue suspending all foreclosure actions against eligible FHA borrowers in the Presidentially Declared Major Disaster Areas until September 16, 2018. FHA does not intend to further extend the foreclosure moratoriums after this date, so FHA borrowers in the eligible areas needing assistance are strongly urged to contact their mortgage servicer immediately.”).

[128] *See* Dep't of Hous. & Urban Dev. FHA Info #18-21 (May 16, 2018), *available at* https://www.hud.gov/sites/dfiles/SFH/documents/SFH_FHA_INFO_18-21.pdf.

[129] *See* Dep't of Hous. & Urban Dev. FHA Info #18-35 (Aug. 17, 2018), *available at* https://www.hud.gov/sites/dfiles/SFH/documents/SFH_FHA_INFO_18-35.pdf.

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."[130]

- Credit reporting suspension: 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.[131]

- Late charge suspension: 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.[132]

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."[133] 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."[134]

The HUD Handbook states: "Should Presidentially-Declared Major Disasters adversely impact a Borrower's ability to make on-time Mortgage Payments, the

[130] U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c.ii(C), Presidentially-Declared Major Disaster Areas: Moratorium on Foreclosures.

[131] U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c.iv(G), Presidentially-Declared Major Disaster Areas: Loss Mitigation for Borrowers in PDMAs.

[132] U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c.iv(H), Presidentially-Declared Major Disaster Areas: Loss Mitigation for Borrowers in PDMAs.

[133] 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.

[134] 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.

Mortgagee must provide the Borrower with forbearance and HUD loss mitigation assistance, where appropriate, as provided in applicable FHA policy guidance."[135]

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 borrower with a mortgaged property or place of employment located within a Presidentially-Declared Major Disaster Area (PDMDA).[136]

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."[137] 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 12 months of (payment for principal, interest, taxes and insurance) PITI."[138]

The HUD website states: "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."[139]

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[135] U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c.iv, Presidentially-Declared Major Disaster Areas: Loss Mitigation for Borrowers in PDMAs.

[136] U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c.iv.B, Presidentially-Declared Major Disaster Areas: Loss Mitigation for Borrowers in PDMAs.

[137] U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c.iv.B(1), Presidentially-Declared Major Disaster Areas: Loss Mitigation for Borrowers in PDMAs.

[138] U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c.iv(B), Presidentially-Declared Major Disaster Areas: Loss Mitigation for Borrowers in PDMAs.

[139]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.

3.3.2.1 Loss mitigation owner occupant requirement

Although loss mitigation for FHA home loans usually requires occupancy in the home, in cases of loss mitigation in PDMDAs, this requirement is relaxed where homes may not be immediately inhabitable in the wake of the disaster.[140] 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:

- the property is located within a disaster area;
- the dwelling was the borrower's principal residence immediately prior to the disaster;
- the borrower intends to reoccupy the property upon restoration of the home to habitable condition; and
- the total accumulated mortgage arrearages have not exceeded the equivalent of 12 months of PITI.[141]

3.3.2.2 Disaster Loan Modification (formerly called Loan Modification without a Financial Evaluation)

Eligibility. A homeowner may be eligible to apply for a disaster loan modification. The mortgagee must ensure that borrowers and their FHA-insured mortgages meet the following eligibility requirements for this modification:

- the mortgage was current or fewer than 30 days past due as of the date of the disaster declaration;
- the mortgagee obtains a Verification of Employment (VOE) confirming that the borrower's employment status is the same as prior to the disaster[142];

[140] 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.

[141] U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.iv(A), Presidentially-Declared Major Disaster Areas: Loss Mitigation for Borrowers in PDMAs.

- as an alternative to providing income documentation, the borrower can complete a three-month Trial Payment Plan (TPP), which will confirm that income has returned to pre-disaster levels, and the TPP does not have to be signed by the borrower; and

- the dwelling is owner-occupied.[143]

Terms. The mortgagee must modify the mortgage as follows:

- the total P&I on the modified mortgage does not change;

- 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) [144];

- the mortgagee waives the borrower's accumulated late fees;

- the term for the modified loan is 360 months, provided that the term may be fewer than 360 months if (i) requested by the borrower and (ii) a term that is fewer than 360 months does not result in the modified P&I being greater than current P&I;

- the mortgagee sets the interest rate at no greater than the market rate as defined by HUD[145]; and

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[142] Mortgagee Letter 2019-14 provides for reduced income documentation for Disaster Loan Modifications. In lieu of the VOE, a mortgagee may confirm the borrower's employment and income using the borrower's recent pay stub, a W-2, a bank statement, or other documentation reflecting the amount of income. As an alternative to providing income documentation, the borrower can complete a three-month Trial Payment Plan (TPP) to confirm income has returned to pre-disaster levels. The TPP does not have to be signed by the borrower. *See* Dep't of Hous. & Urban Dev. Mortgagee Letter 2019-14 (Aug. 29, 2019), *available at* https://www.hud.gov/sites/dfiles/OCHCO/documents/19-14hsgml.pdf. Note that previously a TPP was required. *See* Dep't of Hous. & Urban Dev. Mortgagee Letter 2018-01 (Feb. 22, 2018), *available at* https://www.hud.gov/sites/dfiles/OCHCO/documents/18-01ml.pdf. However, Mortgagee Letter 2019-14 announced that the TPP requirement has been eliminated.

[143] U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c. iv(C), Presidentially-Declared Major Disaster Areas: Loss Mitigation for Borrowers in PDMAs.

[144] *See* Mortgagee Letter 2019-14, *supra* note 142, at 4.

[145] U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c. iv(C), Presidentially-Declared Major Disaster Areas: Loss Mitigation for Borrowers in PDMAs.

- the borrower can receive only one permanent loss mitigation home retention option for a PDMDA.[146]

3.3.2.3 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 "Disaster Modification Loan" option; or
- they are not eligible for a "Disaster Standalone Partial Claim."

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.[147]

3.3.2.4 "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.[148] 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

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[146] U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c. iv(C), Presidentially-Declared Major Disaster Areas: Loss Mitigation for Borrowers in PDMAs.

[147] U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c. iv(E), Presidentially-Declared Major Disaster Areas: Loss Mitigation for Borrowers in PDMAs.

[148] *See* 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* Mortgagee Letter 2018-01, *supra* note 142. 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, *supra* note 142, at 2.

the borrower's accumulated late fees. On August 29, 2019, the FHA announced updates to the Disaster Standalone Partial Claim option. A signed Trial Payment Plan is no longer required, and the borrower can make three consecutive monthly mortgage payments as an alternative to income and employment documentation. The FHA also announced that this option is now included in the FHA Single Family Housing Policy Handbook.[149]

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 Modification.[150] As a Trial Payment Plan is not required, the former requirement that the borrower demonstrate the ability to resume total monthly mortgage payments of P&I has been eliminated.[151]

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 or fewer than 30 days past due as of the date of the applicable disaster declaration; (2) the borrower's income must be equal to or more than his or her pre-disaster income, using a recent pay stub for income, W-2, bank statement, or other documentation reflecting the amount of income; (3) as an alternative to providing income documentation, the borrower can complete a three-month TPP, which will confirm that income has returned to pre-disaster levels, and the TPP does not have to be signed by the borrower; (4) the property must be owner-occupied; (5) the total P&I amount of a borrower's monthly mortgage payment does not change; (6) the mortgagee waives the borrower's accumulated late fees; (7) the Disaster Standalone Partial Claim is subject to the maximum statutory value of all Partial Claims for an FHA-insured mortgage; and (8) a borrower can receive only one permanent loss mitigation home retention option for a PDMDA.[152] Following evaluation for, and completion of, approved forbearances, the mortgagee must evaluate those borrowers who do not qualify for either the "Disaster Loan Modification" or "Disaster Standalone Partial Claim" options for

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[149] Dep't of Hous. & Urban Dev. Mortgagee Letter 2019-14 (Aug. 29, 2019), *available at* https://www.hud.gov/sites/dfiles/OCHCO/documents/19-14hsgml.pdf. *See also* U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c.iv(D), Presidentially-Declared Major Disaster Areas: Loss Mitigation for Borrowers in PDMAs.

[150]. U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c. iv(D), Presidentially-Declared Major Disaster Areas: Loss Mitigation for Borrowers in PDMAs.

[151] Mortgagee Letter 2019-14, *supra* note 142, at 2.

[152] U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c. iv(D), Presidentially-Declared Major Disaster Areas: Loss Mitigation for Borrowers in PDMAs.

other loss mitigation home retention options.[153] Borrowers who do not currently 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 home retention options.[154]

The Disaster Standalone Partial Claim option also streamlines income documentation and other requirements in order to expedite loss mitigation relief. A verification of employment (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 recent pay stub for income, a W-2, a bank statement, or other documentation reflecting the amount of income. As an alternative to providing income documentation, the borrower can complete a three-month TPP, which will confirm that their income has returned to pre-disaster levels.[155]

3.3.3. Options for HECM reverse mortgages

3.3.3.1 Overview of reverse mortgages

Reverse mortgages allow older homeowners to convert a portion of their home equity into cash without the immediate need to repay the loan. Reverse mortgage borrowers are not required to make monthly payments of principal or interest on the loan. Instead the loans become due and payable in full when the last surviving borrower dies, the home is sold or transferred, or the borrower fails to occupy the home for at least a year, pay property-related charges or comply with other terms of the mortgage.

Borrowers may receive the loan proceeds as a lump sum, in monthly payments, through a line of credit, or through a combination of these options. Reverse mortgage borrowers are required to pay property taxes, homeowner's insurance, homeowners' association dues and other property charges (collectively called "property charges") or the lender may foreclose.

Home Equity Conversion Mortgages (HECMs) are FHA-insured reverse mortgages. HUD oversees the HECM program and issues regulations, Mortgagee Letters and

[153] *See id.*

[154] *See id.*

[155] *See id.*

other guidance regarding the loans. Private lenders and mortgage servicers make and service the loans according to HUD guidelines.

3.3.3.2 Foreclosure moratorium and HECM loans

As discussed in section 3.3.1 the 90-day moratorium issued by HUD covers HECM loans. The initial moratorium will suspend the foreclosure of all HECM loans, but any extension of the moratorium may apply only to loans that become due and payable for reasons other than the death of the last surviving borrower or an eligible non-borrowing spouse.[156]

3.3.3.3 Right to Cure default

The most common reasons HECM loans are called due and payable after a disaster and end up in foreclosure are:

- failure to pay property charges or meet the other terms of the mortgage, and
- the death of the last surviving borrower.

The borrower has the right to cure the default and restore the HECM loan to current status even after foreclosure begins.[157] A HECM loan that enters due and payable status remains in that status until the default is cured (i.e. the borrower moves back into the property or advances for property charges are repaid) or foreclosure is initiated. Unless the borrower attempts to cure the default or there is an eligible non-borrowing spouse in the home, the foreclosure process will move quickly. Where the default is based on death of the last borrower, foreclosure will be initiated within 180 days (six months) of the loan becoming due and payable.[158]

[156] See FHA-INFO #1812, March 19, 2018 available at https://www.hud.gov/sites/dfiles/SFH/documents/SFH_FHA_INFO_18-12.pdf.

[157] 24 C.F.R. § 206.125(a)(3). The servicer will send the borrower a default notice with the opportunity to cure the default.

[158] Once foreclosure begins attorney fees and costs will be added will be added to the loan balance, and will remain on the account if the foreclosure process is suspended. Fees may also be incurred earlier for property inspection.

3.3.3.4 Occupancy

Generally, HECM loans require that older borrowers occupy the home as their principal residence. The loan will be called due and payable if the borrower is absent from the home for more than 12 consecutive months due to physical or mental illness.[159] Borrowers, and surviving spouses who qualify for a deferral, must annually certify that the home remains their principal residence.[160] The servicer may order an inspection of the property or take other steps to determine occupancy if it does not receive the annual certification. A fee will be charged for this inspection and added to the loan balance.

As discussed in 3.3.2.1 with respect to forward mortgages, HUD will relax the occupancy requirement for borrowers displaced by a disaster so long as the borrower intends to return to the home.[161] A borrower who temporarily moves out of the home cannot be denied a loss mitigation option simply based on failure to occupy the home.[162] Additionally, HECM borrowers can designate an alternative contact person, such as a friend or family member, whom the servicer can contact if unable to reach the borrower.

If the loan is called due and payable due to non-occupancy, the borrower may cure the default by moving back into the home, if feasible. The borrower can provide other documentation of occupancy (e.g., utility or other bills), and send a letter explaining that non-occupancy is due solely to displacement from a natural disaster. Disabled older borrowers who are being squeezed by certification requirements or strict deadlines may request a reasonable accommodation of their disability or may challenge servicer action based on federal or state civil-rights laws.[163]

3.3.3.5 Default on property charges

Homeowners with HECM loans are required to pay property-related charges, including property taxes and hazard insurance premiums, in a timely manner. When the homeowner falls behind on property charges, the servicers will pay the

[159] 24 C.F.R. § 206.27(c).

[160] Borrowers must sign and send back this certification indicating the home is still the principal residence of at least one borrower.

[161] See HUD Handbook 4000.1, § III.A.3.c.iv (rev. Dec. 2016) (discussing principal residence for loss mitigation purpose for forward mortgages).

[162] See id.

[163] See National Consumer Law Center, Foreclosure and Mortgage Servicing, Chapter 16 (5th ed. 2014).

outstanding property charges by withholding amounts from the monthly payment it sends to the homeowner or by charging the loan's line of credit. Money may also have been set aside at the beginning of the loan to pay property charges. If funds were not set aside from the loan's principal limit to pay property charges or if the loan funds run out and the borrower is unable to pay, the lender will advance funds to pay property charges. The borrower is responsible for reimbursing the lender for these advances.

For HECM borrowers, loss mitigation includes repayment plans, an "at-risk" extension of the foreclosure timeline for certain borrowers, lender-funded cures, and other relief.[164] Refinancing the loan into a new HECM loan, if feasible, and referral to local assistance programs may first be offered.

- A repayment plan of up to five years to repay advances for delinquent taxes or insurance premiums will be calculated based on borrowers' monthly surplus income, taking into account necessary living expenses. To qualify for a repayment plan a borrower will need to document permanent income, such as Social Security or VA benefits.[165] If the borrower suffers a new hardship or the current plan becomes unaffordable, the repayment plan can be revised. Borrowers on a repayment plan prior to the disaster can also seek a new plan that better reflects their current circumstances.[166]

- Servicers can elect to use its own funds to pay for a small property charge delinquency of $2,000 or less. This is likely to occur in a disaster related scenario where the servicer is unable to contact the borrower but has no

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[164] See Mortgagee Letters 2015-11 (April 23, 2015); 2016-07 (March 30, 2016). See generally, FHA Handbook 4330.1, Administration of Insured Homes, chapter 14; "Servicing FHA-Insured Mortgages in Presidentially Declared Disaster Areas" at https://www.hud.gov/sites/dfiles/Housing/documents/wb_Servicing%20FHA-Forward%20Mortgages_10-18-17.PDF.

[165] Borrowers should keep all receipts and other documentation of increased expenses due to the disaster, especially those items that document or support any special circumstances. This could include, for example, replacement of medical or assistive devices. Income from temporary sources such as government and private relief-aid organizations may be useful to report to the extent these funds offset or reimburse for increased disaster-related living expenses.

[166] See FHA/ FAQ Topic Number: KA-01370 available at https://www.hud.gov/fhaFAQ (if the disaster caused default on the repayment plan the borrower should be re-evaluated for a subsequent repayment plan in-keeping with Mortgage Letter 2015-11 and Mortgagee Letter 2016-07). Note that there are restrictions on entering repayment plans with arrears greater than $5,000 or where the loan will reach, prior to cure, 98% of the Maximum Claim Amount. Repayment plans are limited to repaying advances for delinquent taxes and insurance. Other property charges, including homeowners' association fees, and other special assessments must also be paid. If the servicer pays these charges, the servicer will call the loan due and payable unless the default is cured.

indication that the borrower has permanently vacated the property.[167] Alternatively, if the borrower has contacted the servicer and expressed a willingness to repay or is attempting to repay, the servicer may use its own funds to cure the default.

- If a repayment plan is not feasible and the youngest borrower is at least 80 years of age, the servicer may request an extension of the foreclosure timeline for "at-risk" borrowers. This option is granted to borrowers experiencing critical medical conditions such as a terminal illness, long-term physical disability, or serious illness of a family member receiving care at the home, or other unique need.[168] Borrowers must provide documentation of the critical condition to support the initial request and must annually certify the condition still exists to continue the deferral of foreclosure.

3.3.3.6 Deferral of foreclosure for eligible non-borrowing spouses

If the HECM borrower passes away, a surviving spouse who was not listed as a borrower on the loan, a so-called "non-borrowing" spouse, may qualify to remain in the home. The due and payable status of the loan will be deferred until the death of the non-borrowing spouse. During the deferral period the spouse is obligated to pay property charges, including taxes and insurance, maintain the property and meet other requirements of the mortgage.[169]

An eligible non-borrowing spouse may be designated as such at closing or for loans made before August 4, 2014, qualify under HUD guidelines. Generally, the spouse must have been married to the borrower at the origination of the loan, and be able to obtain marketable title to the property or a legal right to stay in the home within 90 days of the death of the borrower.[170] This option, called Mortgagee Optional Election (MOE) Assignment, gives servicers the option of transferring qualified loans to HUD. However, the agency has established strict deadlines for election of the MOE Assignment. If a spouse is newly widowed due to the natural disaster and may qualify as an eligible non-borrowing spouse, he or she should quickly contact the servicer and work with an advocate to meet the documentation requirements.

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[167] See Mortgagee Letter 2016-07 (March 30, 2016) (servicers may delay requesting that the loan be called due and payable).

[168] See Mortgagee Letters 2015-11 (April 23, 2015).

[169] Mortgagee Letters 2015-15 (June 12, 2015).

[170] Id.

An eligible non-borrowing spouse who falls behind on property charges during the deferral period is not eligible for a repayment plan.[171] The deferral period will end unless the default is cured within 30 days. Though the spouse is allowed to stay in the home, she will not receive any proceeds, such as monthly disbursements or access to funds in a line of credit, from the HECM.

3.3.3.7 Death of last surviving borrower

After the death of the last surviving HECM borrower, family members and other heirs must decide whether to keep or sell the home or turn the home over to the lender to satisfy the outstanding obligation on the reverse mortgage. In general, family members have six months after the death of the borrower to sell the home or otherwise pay off the loan, though they may obtain two additional three-month extensions.

The borrower's heirs (including a non-borrowing spouse) may sell the property for the lesser of the principal balance or 95% of the appraised value. Heirs may benefit from a reevaluation of the home's value if the value has decreased due to the disaster. Although this is not a priority for all surviving family members impacted by a disaster, those who occupy the home with the elder may need to purchase the home by refinancing the reverse mortgage. This may be an issue for spouses of borrowers who are not eligible for the MOE Assignment discussed previously but may want to retain the home.

3.3.3.8 Repair of damaged property and ongoing maintenance

HECM homeowners are required to maintain the home in good condition. If they repair damage to the home there is no deadline to complete the work, but if the home remains unrepaired for an extended time the servicer may request that the loan be called due and payable after issuing a notice and request to repair.[172]

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[171] Mortgagee Letters 2015-11 (April 23, 2015).

[172] See HUD Handbook 4330.1 Rev. 5, § 13-22. See also 24 C.F.R. § 206.141(generally property must be repaired before being transferred to HUD or sold by the lender). If repairs are required on the home after closing, as a condition of extending the loan, loan funds will be set-aside for the repairs. The Repair Rider, included in the loan documents, will describe the needed repairs and the deadline to complete the repairs. If the repairs are not completed on time, the servicer will stop monthly payments and use the proceeds to complete the repairs. See 24 C.F.R. §§ 206.26, 206.47. Non-borrowing spouses have access to funds set aside by the Repair Rider to repair the property. 24 C.F.R. §§ 206.61.

Some homeowners may wish to move away from the home permanently rather than invest the time and effort in rebuilding or repairing the property. If the borrower wants to satisfy the loan rather than repair damage to the home, the insurance proceeds the servicer and/or the borrower receives will be applied to the HECM loan balance. If the loan has been called due and payable, the borrower may sell the property for the lesser of the mortgage balance or 95% of the current "as is" appraised value of the property. Any excess insurance proceeds over an amount required to satisfy the outstanding loan balance should be returned to the borrower.[173] If the loan is in good standing, meaning it has not become due and payable based on death or default, the borrower may sell the property for the lesser of the mortgage balance or 100% of the current "as-is" appraised value of the property. Excess insurance proceeds over the amount needed to repay the loan should be returned to the borrower.[174]

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.[175] The Circular directs servicers and borrowers to review the VA Guidance on Natural Disasters.[176] 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 was 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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[173] FHA/FAQ Topic Number: KA-01549 available at https://www.hud.gov/fhaFAQ.

[174] FHA/FAQ Topic Number: KA-01542 available at https://www.hud.gov/fhaFAQ.

[175] 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.

[176] 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 Foreclosure moratorium requested

The VA Circular requested[177] 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 affected significantly enough to justify delay in referral. Any questions about impact should be discussed with the VA Regional Loan Center (RLC) of jurisdiction."[178]

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." [179]

In October 2017, the VA extended its requested initial 90-day moratorium for loans affected by Hurricanes Harvey, Irma and Maria to 180 days from the dates the respective disasters occurred.[180] In March 2018, the VA extended the established moratorium on foreclosures from 180 days to 270 days. It also indicated that the Circular announcing this change with respect to Hurricane Harvey will be rescinded on October 1, 2018, and the Circular announcing this change with respect to Hurricanes Irma and Maria will be rescinded on April 1, 2019.[181]

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[177] 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/.

[178] 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.

[179] 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.

[180] 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.

[181] U.S. Dep't of Veterans Affairs, Special Relief Following Hurricane Harvey, Circular 26-17-23, Mar. 5, 2018, *available at* https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_17_23_change2.pdf; U.S. Dep't of Veterans Affairs, Special Relief Following Hurricane Irma, Circular 26-17-27, Mar. 1, 2018, *available at* https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_17_27_change2.pdf; U.S. Dep't of Veterans Affairs, Special Relief Following Hurricane Maria, Circular 26-17-27, Mar. 1, 2018, *available at* https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_17_28_change2.pdf.

3.4.3 Credit reporting suspension encouraged

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."[182]

3.4.4 Waiver of late charges encouraged

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.[183]

3.4.5 Mortgage forbearance encouraged

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."[184]

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."[185]

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[182] 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.

[183] *Id.*

[184] *Id.*

[185] *Id.*

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).[186]

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."[187]

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[186] 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.

[187] 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.

3.5 USDA/Rural Development hurricane-related materials

The type of relief available depends upon the type of loan involved, *i.e.*, a Rural Development single family housing direct loan, a Rural Development guaranteed mortgage loan, or a farm loan.

3.5.1 RD Single Family Housing Direct Loans

The USDA's website has a page entitled Rural Development Disaster Assistance.[188] 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, and apply for disaster assistance available through FEMA, or state or local government.[189]

Foreclosure moratorium: 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."[190]

Payment assistance: 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."[191]

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

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

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

190 *Id.*

191 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.

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."[192] The agency issued similar letters after Hurricanes Irma and Maria.[193]

3.5.2 RD Guaranteed Mortgage Loans

Foreclosure moratorium: The Rural Development SFH Guaranteed Loan Program Technical Handbook (HB-1-3555) 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. To be eligible for a suspension of foreclosure activities, the property or the borrower's place of employment must be directly affected by the disaster.[194] 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.[195] In June 2018, the moratorium on areas affected by Hurricane Maria was extended until September 17, 2018. These extensions apply both to foreclosures already initiated and to new foreclosures.

Credit Reporting Suspension: A borrower on a disaster-related forbearance plan should not be reported to the credit reporting agencies.[196]

Late Charge Suspension: Late fees will not be assessed while the borrower is on a forbearance plan or paying as agreed on a repayment plan.[197]

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[192] *See* 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.

[193] *See* https://www.rd.usda.gov/files/HurricaneIrmaLtrEnglish508.pdf; https://www.rd.usda.gov/files/HurricaneMariaLtrEnglish508.PDF.

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

[195] *See* Press Release, 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.

[196] *See* U.S. Dep't of Agriculture, Rural Development, Handbook HB-1-3555 SFH Guaranteed Loan Program Technical Handbook section 18.11, Special Relief Measures.

[197] *See id.*

Mortgage forbearance: 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. Late fees will not be assessed while the borrower is on a forbearance plan or paying as agreed on a repayment plan, nor should a borrower on a disaster-related plan be reported to the credit reporting agencies.[198]

Loss mitigation after forbearance: 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 the following requirements: the servicer performs a Verification of Employment (VOE) to determine the borrower's employment status remains unchanged as of the disaster; home damages have been repaired and the borrower is occupying the subject property; total modified mortgage payment including taxes and insurance (PITI) is less than or equal to the payment prior to modification; and the borrower successfully completes a three month trial period.[199] Accumulated arrearages of delinquent interest and eligible unreimbursed servicer advances, fees and costs shall be capitalized into the modified mortgage balance, and the following steps should be completed to an extent that the target monthly modified payment is achieved: extend term up to 360 months; reduce rate down to no less 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 or one percentage (0.125%), as of the date a trial payment plan is offered to the borrower.[200]

On February 20, 2018, USDA Rural Development issued an announcement entitled "Special Relief for Natural Disasters."[201] This announcement stated that the agency, in response to recent natural disaster events, would amend the SFH Guaranteed Loan Technical Handbook (chapter 18, section 4), to add special relief measures.

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[198] *See* U.S. Dep't of Agriculture, Rural Development, Handbook HB-1-3555 SFH Guaranteed Loan Program Technical Handbook section 18.11, Special Relief Measures.

[199] *See id.*

[200] *See id.*

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

These additions, which were expected to be published in the Handbook on May 1, 2018,[202] 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

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[202] Details on these changes are provided in the advance copy of chapter 18, which was expected to be published on May 1, 2018, and is available at https://content.govdelivery.com/attachments/topic_files/USDARD/USDARD_429/2018/03/07/file_attachments/969613/3555-1%2BChapter18%2B5%2B1%2B2018%2BEffective__969613.pdf.

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.

3.5.3 Farm loans

On September 13, 2017, the Secretary of Agriculture announced that the USDA will provide "additional flexibility to assist farm loan borrowers."[203] "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."[204]

"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."[205]

"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 application is denied and

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[203] 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.

[204] 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.

[205] *Id.*

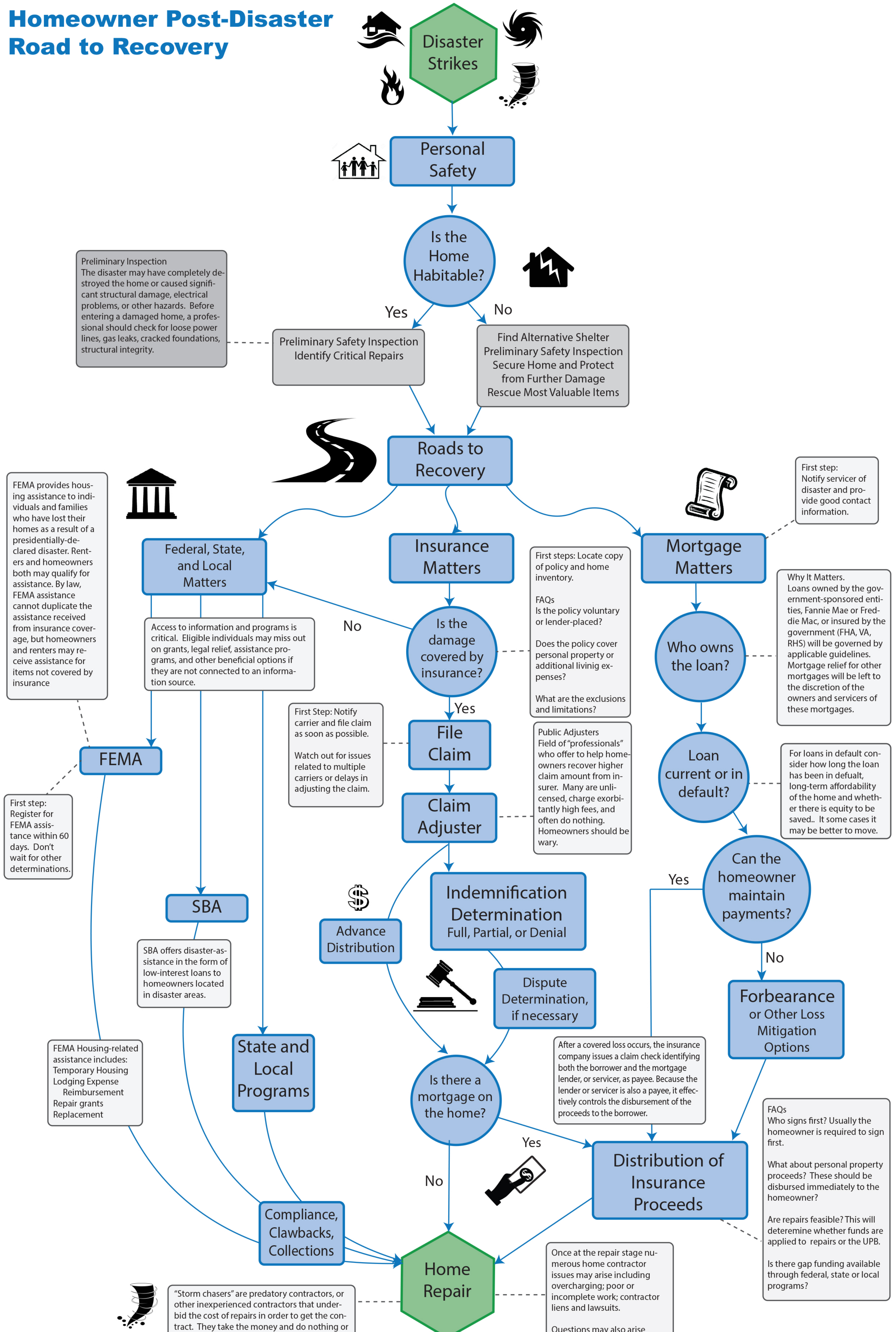
is in an affected county, the borrower will be given an additional 60 days from the otherwise applicable due date to request reconsideration, mediation or appeal. All outstanding PLS applications that are contingent on security value (such as current market value buyout or debt write-down) will require FSA to reevaluate the security. If the security value has changed, FSA will make a new PLS determination based upon the updated security value."[206]

"Disaster Set Aside "response deadlines that were open on August 23, 2017, for Hurricane Harvey, and September 4, 2017, for Hurricane Irma were extended 60 calendar days from the otherwise applicable due date.[207]

[206] *Id.*

[207] *Id.*

Homeowner Post-Disaster Road to Recovery



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 disaster loan modification **(formerly called loan modification without a financial evaluation)**, see § 3.3.2.2. For information on eligibility for other loss mitigation options for borrowers who are not eligible for the "Disaster Loan Modification" option or the "Disaster Standalone Partial

	Claim" option, see § 3.3.2.3. 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. On August 29, 2019, the FHA announced updates to this option. For information on this "Disaster Standalone Partial Claim," see § 3.3.2.4.
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.

APPENDIX C

LONG SUMMARIES OF LOSS MITIGATION RULES FOR GOVERNMENT-BACKED LOANS

Foreclosure Sale Moratorium	
Freddie Mac	Initially, Freddie Mac stated that servicers were required to suspend all foreclosure sales for borrowers whose mortgaged premises were affected by Hurricane Harvey or Irma through December 31, 2017. http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bll1719.pdf. On December 20, 2017, Freddie Mac extended the date until March 31, 2018 for premises affected by Hurricane Irma or Maria in Puerto Rico and the U.S. Virgin Islands. http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bll1729.pdf. On March 7, 2018, Freddie Mac again extended the date until May 31, 2018 for premises affected by Hurricane Irma or Maria in Puerto Rico and the U.S. Virgin Islands. However, the servicer may proceed with foreclosure if the premises have been identified as vacant or abandoned, or if the servicer has completed its property inspection and confirmed that there is no insurable damage or ability to receive FEMA funds. http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bll1804.pdf See § 3.1.1 for more detail.
Fannie Mae	Initially, Fannie Mae stated that servicers were required to suspend all foreclosure sales for borrowers whose mortgaged premises were located in an Eligible Disaster Area and affected by Hurricane Harvey for a period of 90 days. https://www.fanniemae.com/content/announcement/ll1703.pdf. On September 13, 2017, a Fannie Mae Lender Letter stated that the suspension applied to properties affected by Hurricane Harvey or Irma and was to last until December 31, 2017. https://www.fanniemae.com/content/announcement/ll1706.pdf. On December 20, 2017, Fannie Mae extended the suspension of all foreclosure sales for mortgaged premises in Puerto Rico and the U.S. Virgin Islands affected by Hurricane Irma or Maria until March 31, 2018. On March 7, 2018, Fannie Mae again extended the suspension of all foreclosure sales for mortgaged premises located in Puerto Rico and the U.S. Virgin Islands, this time until May 31, 2018. However, the servicer may proceed with foreclosure if the premises have been identified as vacant or abandoned, provided that a property inspection has confirmed that there is not damage to the property or the damage to the property is not covered by insurance or eligible for state or federal disaster assistance. https://www.fanniemae.com/content/announcement/ll1801.pdf. See § 3.2.1 for more detail.
FHA	HUD initially granted a 90-day moratorium on foreclosures after the September 2017 hurricanes. https://www.hud.gov/press/press_releases_media_advisories/2017/HUDNo_17-068. The moratorium was effective as of the date of the disaster declaration for a particular area. This moratorium applied both to the initiation of foreclosures and foreclosures already in progress. 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. On March 1, 2018, HUD extended its then-current 180-day moratorium for areas affected by Hurricane Maria

	for an additional 60 days to Individual Assistance Areas in Puerto Rico and the U.S. Virgin Islands. This extension will expire on May 18, 2018, and applies to the initiation of foreclosures and foreclosures already in progress. https://www.hud.gov/sites/dfiles/OCHCO/documents/18-02ml.pdf. On May 16, 2018, HUD extended the foreclosure timelines through August 16, 2018 for FHA-insured properties in Puerto Rico and the U.S. Virgin Islands. The extension applies to the initiation of foreclosures and foreclosures already in progress. This extension is applicable if the mortgage was no more than 60 days past due as of the date of the disaster, and the borrower has not already been approved for a forbearance or other loss mitigation option. https://www.hud.gov/sites/dfiles/OCHCO/documents/18-03ml.pdf. On August 15, 2018, HUD once again extended the foreclosure moratorium for forward mortgage properties affected by Hurricane Maria in Puerto Rico and the U.S. Virgin Islands, this time until September 16, 2018. https://www.hud.gov/sites/dfiles/OCHCO/documents/18-05ml.pdf. The FHA does not intend to extend the moratorium beyond this date. https://www.hud.gov/press/press_releases_media_advisories/HUD_No_18_083 ((“HUD is instructing FHA-approved mortgage servicers to continue suspending all foreclosure actions against eligible FHA borrowers in the Presidentially Declared Major Disaster Areas until September 16, 2018. FHA does not intend to further extend the foreclosure moratoriums after this date, so FHA borrowers in the eligible areas needing assistance are strongly urged to contact their mortgage servicer immediately.”). On May 16, 2018, HUD extended foreclosure timelines through August 16, 2018 for Home Equity Conversion Mortgages (HECM) on impacted properties in Puerto Rico and the U.S. Virgin Islands. This extension applies to HECMS that became due and payable for reasons other than the death of the last surviving borrower and eligible non-borrowing spouse. https://www.hud.gov/sites/dfiles/SFH/documents/SFH_FHA_INFO_18-21.pdf. On August 18, 2018, this moratorium for HECM properties was extended through September 15, 2018. https://www.hud.gov/sites/dfiles/SFH/documents/SFH_FHA_INFO_18-21.pdf. 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.” U.S. Dep’t of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c.ii(C), Presidentially-Declared Major Disaster Areas: Moratorium on Foreclosures.# See § 3.3.1 for more detail.
VA	The VA has requested “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 affected significantly enough to justify delay in referral. Any questions about impact should be discussed with the VA Regional Loan Center (RLC) of jurisdiction.” 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/. 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." 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. In October 2017, the VA extended its requested initial 90-day moratorium for loans affected by Hurricanes Harvey, Irma and Maria to 180 days from the dates the respective disasters occurred, and in March 2018, the VA extended the established moratorium on foreclosures from 180 days to 270 days. 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." U.S. Dep't of Agriculture, Rural Development Disaster Assistance, *available at* https://www.rd.usda.gov/programs-services/services/rural-development-disaster-assistance. 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." The agency issued similar letters after Hurricanes Irma and Maria. *See* 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.; https://www.rd.usda.gov/files/HurricaneIrmaLtrEnglish508.pdf; https://www.rd.usda.gov/files/HurricaneMariaLtrEnglish508.PDF. See § 3.5.1 for more detail. For RD Guaranteed Mortgage Loans: The Rural Development SFH Guaranteed Loan Program Technical Handbook (HB-1-3555) 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. To be eligible for a suspension of foreclosure activities, the property or the borrower's place of employment must be directly affected by the disaster. Foreclosure can be suspended beyond 90 days with prior approval from Rural Development. *See* U.S. Dep't of Agriculture, Rural Development, SFH Guaranteed Loan Program Technical Handbook HB-1-3555, chapter 18, *available at* https://www.rd.usda.gov/publications/regulations-guidelines/handbooks#hb13555. 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. *See* Press Release, 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. In June 2018, the moratorium on areas affected by Hurricane Maria was extended until September 17, 2018. These extensions apply both to foreclosures already initiated and to new foreclosures. See § 3.5.2 for more detail.

Foreclosure Eviction Suspension	
Freddie Mac	Initially, Freddie Mac required the suspension of foreclosure evictions on real estate owned properties in areas affected by Hurricanes Harvey and Irma until further notice. On September 25, 2017, this protection was expanded to areas impacted by Hurricane Maria. http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bll1721.pdf. See § 3.1.1 for more detail.
Fannie Mae	Initially, Fannie Mae required the suspension of foreclosure evictions for real estate owned properties in areas impacted by Hurricane Harvey for 90 days from the date the disaster occurred. On September 13, 2017, a Lender Letter stated that the suspension applied to properties affected by Hurricanes Harvey and Irma and was to last until January 2, 2018. https://www.fanniemae.com/content/announcement/ll1706.pdf. The Fannie Mae Single-Family Servicing Guide states that 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." Fannie Mae, Single-Family Servicing Guide section D1-3-0, Providing Relief to a Borrower Who is Affected by a Disaster.^ 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. Freddie Mac, Single-Family Seller/Servicer Guide section 8404.5(a), Disaster reporting requirements.* See § 3.1.1 for more detail.
Fannie Mae	The version of the Single-Family Guide that was published on April 11, 2018 and is effective until December 1, 2018 states that Fannie Mae requires that 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." The version published on June 13, 2018, which is effective December 1, 2018, states that a servicer "must suspend reporting the status of a mortgage loan to credit bureaus even though payments are past due as long as the delinquency occurs during an active forbearance, repayment plan, or Trial Period Plan where the borrower is making the required payments as agreed and is directly attributable to" a disaster. Fannie Mae, Single-Family Servicing Guide (as published June 13, 2018) section C-4.1-02, Suspending Credit Bureau Reporting. Note that, with respect to the policy changes reflected in the June 13, 2018 version of the Guide, servicers "are encouraged to implement these policy changes immediately, but must implement them no later than December 1, 2018." Fannie Mae Servicing Guide Announcement SVC-2018-04, Sept. 13, 2017, *available at* https://www.fanniemae.com/content/announcement/ll1706.pdf. 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. U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c.iv(G), Presidentially-Declared Major Disaster Areas: Loss Mitigation for Borrowers in PDMAs.# See § 3.3.1 for more detail.

<table>
<tr><td>VA</td><td>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." 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.
See § 3.4.3 for more detail.</td></tr>
<tr><td>USDA</td><td>For RD Guaranteed Mortgage Loans: A borrower on a disaster-related forbearance plan should not be reported to the credit reporting agencies. See U.S. Dep't of Agriculture, Rural Development, Handbook HB-1-3555 SFH Guaranteed Loan Program Technical Handbook section 18.11, Special Relief Measures. See § 3.5.2 for more detail.</td></tr>
<tr><td colspan="2">Late Charge Suspension</td></tr>
<tr><td>Freddie Mac</td><td>Effective until December 1, 2018: 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.

Effective December 1, 2018: A servicer may "include in the forbearance agreement any accrued late charges due from the Borrower at the time the Servicer entered into the forbearance agreement with the Borrower," but must not "accrue or collect late charges from the Borrower during the term of the forbearance plan or any subsequent repayment plan period if the Borrower is complying with the terms of such agreement." Should the borrower default on the forbearance agreement, "late charges may begin to accrue from the date the Borrower defaulted on the forbearance agreement." Freddie Mac Bulletin No. 2018-9 (June 13, 2018), available at http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bll1809.pdf.

See § 3.1.1 for more detail.</td></tr>
<tr><td>Fannie Mae</td><td>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." Fannie Mae, Single-Family Servicing Guide section D1-3-02, Evaluating the Impact of a Disaster Event and Assisting a Borrower.

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." Fannie Mae, Single-Family Servicing Guide (as published June 13, 2018) section D2-3.2-01, Forbearance Plan.^ Note that, with respect to the policy changes reflected in the June 13, 2018 version of the Guide, servicers "are encouraged to implement these policy changes immediately, but must implement them no later than December 1, 2018." Forbearance plans entered into prior to the servicer's implementation "would adhere to existing policy until the expiration of such forbearance plan." Fannie Mae Servicing Guide Announcement SVC-2018-04, (June 13, 2018), available at https://www.fanniemae.com/content/announcement/svc1804.pdf.

See § 3.2.1 for more detail.</td></tr>
<tr><td>FHA</td><td>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. U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c. iv(H), Presidentially-Declared Major Disaster Areas: Loss Mitigation for Borrowers in PDMAs.#

See § 3.3.1 for more detail.</td></tr>
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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. 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. 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* U.S. Dep't of Agriculture, Rural Development, Handbook HB-1-3555 SFH Guaranteed Loan Program Technical Handbook section 18.11, Special Relief Measures. 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. *See* Fannie Mae Servicing Guide Announcement SVC-2018-04 (June 13, 2018), *available at* https://www.fanniemae.com/content/announcement/svc1804.pdf. 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. **Eligibility.** The borrower may be current or delinquent, but the forbearance plan must not result in an overall delinquency that exceeds 360 days (*i.e.,* to be in an active forbearance plan, the borrower must not have missed more than 12 contractual payments). Freddie Mac Single-Family Seller-Servicer Guide (published as of June 13, 2018) section 9203.13(a), Borrower requirements for short-term forbearance.* The property securing the mortgage loan is still eligible even if it is vacant, but it

	may not be abandoned or condemned. Mortgages secured by second homes or investment properties are ineligible for forbearance. Freddie Mac Single-Family Seller-Servicer Guide (published as of June 13, 2018) section 9203.13(b), Borrower requirements for short-term forbearance.* See § 3.1.2.3.1 for more detail. **Terms.** Based on the borrower's individual circumstances and ability to pay, the servicer must determine whether a reduced payment is required, or whether to allow the borrower to choose not to make monthly payments during the plan. If the forbearance plan will require a reduced payment, then the principal and interest amount due under the forbearance plan must be lower than the borrower's contractual principal and interest amount. Freddie Mac Single-Family Seller-Servicer Guide (published as of June 13, 2018) section 9203.13(d), Borrower requirements for short-term forbearance.* Generally speaking, if the servicer achieves quality right party contact and the borrower meets the eligibility criteria for forbearance, the servicer must offer an initial forbearance term for a period of one to six months, and one or more forbearance term extensions of one to six months. However, the aggregate of the initial term and all forbearance term extensions may not exceed 12 months of uninterrupted forbearance. Freddie Mac Single-Family Seller-Servicer Guide (published as of June 13, 2018) section 9203.12, What is forbearance?* Servicers, at their discretion, may place a borrower who is or becomes 31 or more days delinquent in a short-term forbearance plan, as provided in sections 9203.12 through 9203.16 of the Guide. This short-term forbearance plan may not exceed 90 days without either achieving quality right party contact or receiving approval from Freddie Mac. Freddie Mac Single-Family Seller-Servicer Guide (published as of June 13, 2018) section 8404.4(a), Delinquency management activities following a disaster.* See § 3.1.2.3.2 for more detail.
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. Servicers are required to implement the updated forbearance options by December 1, 2018. *See* Fannie Mae Servicing Guide Announcement SVC-2018-04 (June 13, 2018), *available at* https://www.fanniemae.com/content/announcement/svc1804.pdf. The June 13 Fannie Mae Servicing Guide Announcement states that this update will streamline the current workout options "into a single policy, including forbearance plans related to unemployment, unique hardships, military indulgence, and disaster events" and simplify the policy on disaster assistance. 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. **Eligibility.** A servicer is authorized to evaluate a borrower for a forbearance plan without receiving a complete Borrower Response Package. The property securing the mortgage loan may be a principal residence, a second home, or an investment property. The property must not be condemned or abandoned, but it may be vacant. See § 3.2.2.5.1 for more detail. **Terms.** Generally speaking, where QRPC has been obtained, a servicer is authorized to offer an initial forbearance plan term of up to six months and grant an extension of the initial term of up to six additional months. Note that a servicer is authorized to offer the six-month terms in separate, shorter increments. Where the mortgage loan is 31 or more days delinquent, a servicer is authorized to offer an initial forbearance plan term of up to three months *without* obtaining QRPC if the servicer's review of the facts and circumstances (which may result from establishing contact with the borrower or from performing a property inspection) indicates that the property, the borrower's employment, or the borrower's income is seriously affected by the disaster. However, the servicer must continue attempting to obtain QRPC during the initial three-month term. The servicer must receive Fannie Mae's prior written approval for a forbearance plan to exceed a cumulative term of 12 months (measured from the start date of the initial forbearance plan) or result in the mortgage becoming more than 12 months delinquent. When the servicer initially offers an arrangement that includes a combination of both forbearance and a repayment plan, the combined period must not exceed 36 months. The borrower's monthly payment must be reduced or suspended during the forbearance plan term. In the case of reduced payments, the payment must be received on or before the last day of the month in which it is due, unless the servicer determines that acceptable mitigating circumstances caused the payment to be late. *See* Fannie Mae, Single-Family Servicing Guide (as published June 13, 2018) section D2-3.2-01, Forbearance Plan. See § 3.2.2.5.2 for more detail.
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." https://www.hud.gov/press/speeches_remarks_statements/2017/letter_100417. 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." U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c.iv, Presidentially-Declared Major Disaster Areas: Loss Mitigation for Borrowers in PDMAs.#

	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 borrower with a mortgaged property or place of employment located within a disaster area. U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c.iv.B, Presidentially-Declared Major Disaster Areas: Loss Mitigation for Borrowers in PDMAs.# The 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." 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 12 months of (payment for principal, interest, taxes and insurance) PITI." U.S. Dep't of House. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c.iv(B), Presidentially-Declared Major Disaster Areas: Loss Mitigation for Borrowers in PDMAs.# 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 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." 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. 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." 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. 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. Late fees will not be assessed while the borrower is on a forbearance plan or paying as agreed on a repayment plan, nor should a borrower on a disaster-related plan be reported to the credit reporting agencies. *See* U.S. Dep't of Agriculture, Rural Development, Handbook HB-1-3555 SFH Guaranteed Loan Program Technical Handbook section 18.11, Special Relief Measures. 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 and http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bll1725.pdf. **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**: 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. 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 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 loss mitigation 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. Borrowers will be considered for a Disaster Relief Modification, along with a Flex Modification, provided the borrower is 90 or more days delinquent. If the borrower was on a Flex Modification at the time of the disaster, the servicer must make a new streamlined offer for a Flex Modification TPP that meets the requirements of section 9206.5 (Eligibility requirements for a Freddie Mac Flex Modification). 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. 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 Modification for Disaster Relief (Disaster Relief Modification), described above, with the primary difference being that the Disaster Relief Modification requires the capitalization of arrearages in accordance with section 9206.5 (Eligibility Requirements for a Freddie Mac Flex Modification), 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 whose mortgaged premises or places of employment are located in an Eligible Disaster Area. See § 3.1.3.4 and http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bll1725.pdf 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 and https://www.fanniemae.com/content/announcement/ll1709.pdf. If the servicer determines that the borrower is capable of maintaining the PITI payment, but cannot manage the additional escrow payment obligation to cover amounts disbursed by the servicer as a result of the disaster, the servicer must evaluate the borrower for a Fannie Mae Cap and Extend Modification for Disaster Relief. If the servicer determines that the borrower is *not* capable of maintaining the PITI payment, 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 § 3.2.3.1 for more detail. **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**, the borrower may subsequently be eligible for a Fannie Mae workout option upon completion of the forbearance plan. If the borrower is eligible for a loan modification, the servicer must commence a new TPP. 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. This option results in a fixed-rate modification extending the loan term in monthly increments to match the number of delinquent payments (not exceeding 12 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 were required to have begun evaluating borrowers for this new modification program no later than February 1, 2018. *See* Fannie Mae Lender Letter LL-2017-09, Nov. 2, 2017, *available at* https://www.fanniemae.com/content/announcement/ll1709.pdf. If the servicer is able to establish QRPC 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. 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. The servicer must waive all late charges, penalties, stop payment fees, or

	similar charges upon the borrower's conversion to a permanent loan modification. See § 3.2.3.4 for more detail about eligibility for the Extend Modification.
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 the following conditions are met: the property is located within a disaster area; the dwelling was the borrower's principal residence immediately prior to the disaster; the borrower intends to reoccupy the property upon restoration of the home to habitable condition; and the total accumulated mortgage arrearages have not exceeded the equivalent of 12 months of PITI. U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.iv(A), Presidentially-Declared Major Disaster Areas: Loss Mitigation for Borrowers in PDMAs.# See § 3.3.3.1 for more detail. **Disaster Loan Modification (formerly called Loan Modification without a Financial Evaluation)** **Eligibility.** A homeowner may be eligible to apply for a disaster loan modification. The mortgagee must ensure that borrowers and their FHA-insured mortgages meet the following eligibility requirements this modification: the mortgage was current or fewer than 30 days past due as of the date of the disaster declaration; the mortgagee obtains a Verification of employment (VOE) confirming that the borrower's employment status is the same as prior to the disaster; as an alternative to providing income documentation, the borrower can complete a three-month Trial Payment Plan (TPP), which will confirm that their income has returned to pre-disaster levels, and the TPP does not have to be signed by the borrower; and the dwelling is owner-occupied. U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c.iv(C), Presidentially-Declared Major Disaster Areas: Loss Mitigation for Borrowers in PDMAs.# **Terms.** The mortgagee must modify the mortgage as follows: the total P&I on the modified mortgage does not change; 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); the mortgagee waives the borrower's accumulated late fees; the term for the modified loan is 360 months, provided that the term may be fewer than 360 months if (i) requested by the borrower and (ii) a term that is fewer than 360 months does not result in the modified P&I being greater than current P&I; the mortgagee sets the interest rate at no greater than the market rate as defined by HUD; and the borrower can receive only one permanent loss mitigation home retention option for a PDMDA. U.S. Dep't of Hous. & Urban Dev., FHA Single Family Housing Policy Handbook 4000.1, section III.A.3.c.iv(C), Presidentially-Declared Major Disaster Areas: Loss Mitigation for Borrowers in PDMAs.# See § 3.3.2.2 for more detail. **Requirements for loss mitigation options** **Eligibility.** The mortgagee must evaluate other loss mitigation home retention options for borrowers who are not eligible for either the "Disaster Loan Modification" option or the "Disaster Standalone Partial Claim" option. Borrowers who do not currently 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 home retention options. See § 3.3.2.3 for more detail.

	"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. 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. 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. Certain requirements must be met. The Disaster Standalone Partial Claim option also streamlines income documentation and other requirements in order to expedite loss mitigation relief. On August 15, 2018, in Mortgagee Letter 2018-05, 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. Notably, the Standalone Partial Claim moves to the beginning of the waterfall, above the Disaster Loan Modification, eligibility is expanded to include borrowers whose mortgages were current *or* fewer than 60 days past due as of the date of the disaster declaration, and the statutory maximum value of all partial claims (*i.e.*, combined) is 30% of the unpaid principal balance of each FHA-insured mortgage and any costs approved by the Secretary. On August 29, 2019, the FHA announced updates to the Disaster Standalone Partial Claim option. A signed TPP is no longer required, and the borrower can make three consecutive monthly mortgage payments as an alternative to income and employment documentation. As a TPP is not required, the former requirement that the borrower demonstrate the ability to resume total monthly mortgage payments of P&I has been eliminated. For more detail on this new option, see § 3.3.2.4 and https://www.hud.gov/press/press_releases_media_advisories/HUD_No_18_016; https://www.hud.gov/sites/dfiles/OCHCO/documents/18-05ml.pdf. https://www.hud.gov/sites/dfiles/OCHCO/documents/19-14hsgml.pdf.
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. 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." 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. 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 the following requirements: the servicer performs a Verification of Employment (VOE) to determine the borrower's employment status remains unchanged as of the disaster; home damages have been repaired and the borrower is occupying the subject property; total modified mortgage payment including taxes and insurance (PITI) is less than or equal to the payment prior to modification; and the borrower successfully completes a three-month trial period. Accumulated arrearages of delinquent interest and eligible unreimbursed servicer advances, fees and costs shall be capitalized into the modified mortgage balance, and the following steps should be completed to an extent that the target monthly modified payment is achieved: extend term up to 360 months; reduce rate down to no less 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 or one percentage (0.125%), as of the date a trial payment plan is offered to the borrower. *See* U.S. Dep't of Agriculture, Rural Development, Handbook HB-1-3555 SFH Guaranteed Loan Program Technical Handbook section 18.11, Special Relief Measures. On February 20, 2018, USDA RD issued an announcement entitled "Special Relief for Natural Disasters." U.S. Dep't of Agriculture, Rural Development, SFH Guaranteed Servicing, Special Relief for Natural Disasters, Feb. 20, 2018. This announcement stated that the agency, in response to natural disaster events, would amend the SFH Guaranteed Loan Technical Handbook (chapter 18, section 4), to add special relief measures. These additions, which were expected to 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 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 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. Such 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. 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. These revisions are reflected in the following: • For borrowers who were fewer than 31 days delinquent at the time of the Eligible Disaster and the total claim proceeds amount is less than $40,000, the servicer must have policies and procedures to determine when a licensed contractor is required to repair or reconstruct the residence. If the total claim proceeds amount is equal to or greater than $40,000, the servicer must use a licensed contractor. The servicer may release proceeds received that are less than or equal to $40,000 directly to the borrower, but must release proceeds greater than $40,000 payable jointly to the borrower and contractor. • **For borrowers who were fewer than 31 days delinquent at the time of the 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. If cosmetic (non-structural) work items adding up to less than $5,000 are outstanding when the final inspection occurs, the inspection may be considered final and the inspector must estimate completion dates for any unfinished items. •**For borrowers who were 31 or more days delinquent at the time of the 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. Remaining funds may be distributed in increments not to exceed 25% of the proceeds.

	Final inspection is required. *See* Freddie Mac Bulletin No. 2017-25, Nov. 2, 2017, *available at* http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bll1725.pdf. Insurance loss settlements that are intended for contents losses or off-residence living expenses must be released to the borrower without delay. http://www.freddiemac.com/singlefamily/service/natural_disasters.html 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. These revisions are reflected in the following: • **For borrowers who were fewer than 31 days delinquent at the time of the disaster**, 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. • **For borrowers who were fewer than 31 days delinquent at the time of the disaster**, if the insurance 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 the servicer must 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 disbursed based on periodic inspections of the progress of the repair work. 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. If cosmetic (non-structural) work items adding up to less than $5,000 are outstanding when the final inspection occurs, the inspection may be considered final and the inspector must estimate completion dates for any unfinished items. • **For borrowers who were 31 or more days delinquent at the time of the disaster**, 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. *See* Fannie Mae Lender Letter LL-2017-09, Nov. 2, 2017, *available at* https://www.fanniemae.com/content/announcement/ll1709.pdf. 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." After approving a "Viable Repair Plan," a servicer must expedite the release of insurance proceeds for required home repairs. The servicer may apply insurance proceeds payable for home damages to arrearages and or reduction of the unpaid principal balance if the amount of the proceeds exceeds the costs to repair the damage to the home *or* if the proceeds are insufficient to repair the damage based on a certified

	repair estimate and the borrower is unable to show that s/he has additional funds from other sources to complete the repairs. The FHA's 203(h) Mortgage Insurance for Disaster Victims allows the FHA to insure mortgages for disaster victims who have lost their homes and are in the process of rebuilding or buying another home. Anyone whose home has been destroyed or severely damaged in a disaster area is eligible to apply, but note that the borrower's application for this insurance must be submitted to the lender within one year of the president's disaster declaration. The FHA's 203(k) Rehabilitation Mortgage Insurance program allows homeowners to finance up to $35,000 into their mortgage to repair, improve, or upgrade their homes. The financing can include the cost of both structural and non-structural repairs. 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). In damage cases**:** Insurance proceeds will be issued jointly to the servicer and the borrower. When the proceeds are used to repair the property, the servicer must make sure that a licensed contractor is used to perform the repairs. The servicer will release the proceeds in draws based on periodic inspections unless the homeowner qualifies for direct payment of insurance proceeds in accordance with paragraph 17.2 E of the Handbook, which governs hazard and flood insurance. The final draw will be paid after it has been verified that all repairs were completed satisfactorily. The servicer is responsible for obtaining all lien waivers for the work performed. If the premises were completely destroyed: The servicer should compare the unpaid principal balance with the insurance proceeds and any other relevant circumstances, such as local laws barring reconstruction of the destroyed property. "Insurance loss payments, condemnation awards, or similar proceeds will be applied on debts in accordance with lien priorities, on which the guarantee was based, or to rebuild or otherwise acquire needed replacement collateral." See § 3.5.4 for more detail.

*http://www.freddiemac.com/singlefamily/pdf/guide.pdf

^ https://www.fanniemae.com/content/guide/svc061318.pdf

https://www.hud.gov/sites/documents/40001HSGH.PDF

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