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CHAPTER 19. DISASTERS

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# 19.01 DISASTERS

a. This chapter addresses the Department of Veterans Affairs (VA) guaranteed home loans affected by a Federal Emergency Management Agency (FEMA) declared disaster such as flooding, tornado, storms, etc. This includes ecological or other human-made disasters, and provides guidance on what actions should be taken to assist affected borrowers. Affected borrowers are considered those borrowers whose homes were damaged, or destroyed, the families of those killed, those who suffered considerable personal injury, those who provide assistance to impacted family members, and those whose work environments were destroyed, severely damaged, or compromised as a result of the disaster. Servicers must check with FEMA to obtain the specific counties included in the federally-declared disaster area and corresponding declaration dates, along with any amendments to the declaration, at [www.fema.gov/disasters](http://www.fema.gov/disasters). Any VA loan which closed prior to the date of the declared disaster is eligible for VA loss mitigation options. Please refer to Title 38, Code of Federal Regulations (C.F.R.), section 36.4329 (Hazard Insurance), regarding insurance coverage for properties which may have been damaged or destroyed by the disaster.

19.02 BORROWER ASSISTANCE

a. VA encourages servicers of guaranteed loans to extend all available options to borrowers in distress as a result of a disaster. Responsible counseling with borrowers should help servicers determine whether the delinquency is related to a disaster, or whether it stems from other sources that must be addressed. The proper use of authorities granted in VA regulations may be of assistance to servicers in appropriate cases. For example, 38 C.F.R. 36.4311 (Pre-payments), allows the reapplication of prepayments to cure or prevent a default. This means that if a borrower has made enough additional pre-payments, the pre-payments may be reversed, the principal balance increased up to the scheduled balance and then pre-payments may be re-applied as regular installments. Also, 38 C.F.R. 36.4315 (Loan modifications), allows the terms of any guaranteed loan to be modified without the prior approval of VA, provided certain conditions in the regulation are satisfied.

b. Members of the National Guard may be called to active duty to assist in recovery efforts. VA encourages servicers to extend special forbearance to National Guard members who experience financial difficulties as a result of their service.

19.03 MORATORIUM ON FORECLOSURE

a. Although the loan servicer is ultimately responsible for determining when to initiate foreclosure and completing a termination action, VA requests that servicers establish a 90-day moratorium from the date of a disaster on initiating new referrals to foreclosure on affected loans. VA regulation 38 C.F.R. 36.4324(a)(3)(ii) allows additional interest on a guaranty claim when termination has been delayed due to circumstances beyond the control of the servicer, such as VA-requested forbearance. If the servicer notifies the VA-assigned technician of forbearance due to a disaster, the VA-assigned technician must identify that loan in the VA Loan Electronic Reporting Interface (VALERI) to ensure case notes are documented properly and interest is adjusted accordingly. Any questions about impact should be discussed with the VA-assigned technician.

19.04 VA DISASTER LOAN MODIFICATION

a. The VA Disaster Loan Modification allows servicers to extend permanent payment relief to impacted delinquent borrowers when the borrower has not submitted a complete loss mitigation application. All impacted borrowers should have an opportunity to be considered for a VA Disaster Loan Modification as long as eligibility requirements are met.

b. Evaluation of Borrower - Servicer evaluation of the borrower’s financial information is not required. Pre-approval is automatically granted for 38 C.F.R. 36.4315(a)(3) requiring borrower’s creditworthiness to be evaluated under the criteria specified in 38 C.F.R. 36.4340.

c. If eligible for the VA Disaster Loan Modification program, borrowers must successfully complete a 3-month Trial Payment Plan (TPP) period and sign the VA Disaster Loan Modification Agreement in order to receive a permanent loan modification.

d. Servicers are encouraged to continue VA Disaster Loan Modification solicitation efforts throughout the delinquency and the foreclosure process, up to 12 months after the federally-declared disaster.

19.05 ELIGIBILITY FOR VA DISASTER LOAN MODIFICATION.

a. Following forbearance relief, servicers may offer a VA Disaster Loan Modification to delinquent borrowers impacted by a disaster, subject to the following conditions:

1. The mortgage loan is a VA-guaranteed first lien mortgage loan.

2. The borrower has been impacted by a federally-declared disaster.

3. The mortgage loan was no more than 30 days past due at the time of the disaster.

4. The mortgage loan is at least 60 days delinquent after the disaster forbearance period has ended. Servicers may offer a disaster modification to a borrower prior to the expiration of the forbearance period if clear evidence exists that the borrower is ready to resume monthly installments.

b. The servicer must follow 38 C.F.R. 36.4315 with respect to amounts included in the modified indebtedness, Interest Rate Adjustment, and Term extensions.

c. The borrower has not submitted a complete loss mitigation package or is not performing under a loss mitigation option at the time of consideration for a VA Disaster Loan Modification.

d. The borrower must complete a TPP.

e. The servicer may not offer a TPP in connection with the VA Disaster Loan Modification more than 12 months after the federally-declared disaster event.

f. Servicers have discretion to consider other eligibility exclusion criteria including but not limited to, loans in active bankruptcy, mediation or litigation, upon advice of the servicer’s counsel.

19.06 TRIAL PAYMENT PLAN (TPP)

a. A 3-month TPP period is required to demonstrate the ability to make the modified monthly mortgage payment. VA encourages the servicer to provide the written TPP offer within 15-calendar days of the date the servicer determines the borrower to be eligible. If the servicer sends the TPP on or before the 15th day of a calendar month, the servicer must use the first day of the following month as the first trial plan payment due date. If the servicer sends the TPP after the 15th day of a calendar month, the servicer must use the first day of the successive month following the next month as the first trial plan payment due date. To accept the offer, the borrower can notify the servicer verbally or make the first TPP. The servicer must provide the borrower foreclosure protection, by placing any foreclosure proceedings on hold, upon receipt of the first TPP. The borrower must make each of the three scheduled trial payments by the last day of the month in which the payment is due.

19.07 FINAL VA DISASTER LOAN MODIFICATION AGREEMENT

a. After successfully completing the TPP, the servicer will provide the borrower with the VA Disaster Loan Modification Agreement. The servicer must prepare the agreement early enough in the trial period to allow sufficient processing time so that the modification becomes effective on the first day of the month following the final trial period month.

b. In the event the borrower does not make the final trial period payment on or before the due date set forth in the TPP (but does make the final trial period payment before the end of the month in which it is due), the servicer may complete the VA Disaster Loan Modification Agreement making it effective on the first day of the second month following the final trial period month. In this scenario, the borrower will not be required to make an additional trial period payment during the (interim) month in between the final trial period month, and the month in which the modification becomes effective.

c. The borrower must sign and return the VA Disaster Loan Modification Agreement. The borrower must agree to set up an escrow account for taxes, hazard, and flood insurance prior to the beginning of the TPP, if one does not currently exist.

19.08 SERVICER INCENTIVES

a. Standard incentives for a completed loan modification will apply.

19.09 LATE CHARGE WAIVERS

a. VA believes that many servicers waive late charges on loans in a disaster area, and encourages all servicers to adopt such a policy for any loans that may have been affected due to the ripple effect of the disaster.

19.10 CREDIT AND VA REPORTING

a. VA urges servicers to consider suspension of credit reporting on Veteran borrowers who have been affected by a disaster to avoid damaging credit records.

b. VA will not penalize servicers for any late default reporting as a result of the disaster. This may include direct damage to servicer facilities located in the disaster area or their operations which have been impacted by business partners within the disaster areas.

19.11 EXCEPTIONS

a. The below conditions do not apply to the VA Disaster Loan Modification:

1. Fewer than 12 months of payments have been made since the mortgage loan was originated.

2. The mortgage loan was previously modified in the past 3 years; or the mortgage loan was previously modified 3 or more times, regardless of the modification program or dates of the prior modifications.

3. The borrower previously defaulted on a prior Streamline Loan Modification TPP or a Streamline Loan Modification.

b. The servicer may seek pre-approval from VA prior to completion of the VA Disaster Loan Modification for any issues that are outside of the policy guidance provided in this chapter.