

**EXTENDED FORBEARANCE ON LOANS
AFFECTED BY HURRICANES KATRINA AND RITA**

1. PURPOSE. Circular 26-05-9 requested continued forbearance for VA home loan borrowers affected by the enormity of Hurricanes Katrina and Rita, including an extension to February 28, 2006, of the moratorium on initiation of new foreclosures in areas designated by FEMA as eligible for individual assistance. This circular provides continuing guidance on VA policy with respect to the extension of forbearance in appropriate cases.

2. EXTENDED FORBEARANCE. The previously requested forbearance has successfully helped affected borrowers and their mortgagees work through extremely challenging circumstances to obtain available insurance recoveries and explore alternatives for repairing damaged homes and resolving mortgage defaults. However, due to the magnitude of the storm damage, mortgagees and borrowers may still need additional time to develop and finalize plans for home repair and resumption of mortgage payments in some cases. VA has also learned that some borrowers have still not received final hazard and flood insurance proceeds. Additionally, borrowers who wish to rebuild and retain homeownership but do not have sufficient insurance proceeds are continuing to explore financing alternatives including Small Business Administration loans and funding through State and local sources, including Community Development Block Grant funding that may soon be available. As a result, VA is extending the moratorium on the initiation of new foreclosures for an additional 120 days in those areas eligible for individual assistance, subject to the following restrictions:

a. Affected Areas. The extended moratorium will apply to those counties in the States of Alabama, Louisiana, Mississippi, and Texas declared by FEMA to be eligible for individual assistance as a result of Hurricanes Katrina or Rita. Information can be obtained on the Internet at http://www.fema.gov/press/2005/hurricane_season.shtm, or by calling the local FEMA office to determine the counties eligible for individual assistance.

b. Mortgagee Requirements. On or before March 31, 2006, mortgagees must:

- (1) Assess the status, condition, and habitability of the mortgaged property;
- (2) Establish contact with borrowers and evaluate their short term and long term plans for housing, employment, home repairs and repayment of the mortgage debt;
- (3) Complete a determination of the borrower(s) hazard and flood insurance coverage, property damage and available insurance recoveries; and,
- (4) Confirm in writing that the borrower intends to work with the mortgagee to develop and implement a plan to repair or rebuild the home and resolve the mortgage delinquency.

c. Automatic Moratorium Extension. If, by March 31, 2006, the borrower provides a written commitment to work with the mortgagee to develop and implement a plan to resolve the mortgage delinquency, the moratorium on the initiation of a new foreclosure will automatically be extended to June 30, 2006.

d. Type of Commitment. The written commitment may be an application or approval to utilize a formal loss mitigation option, such as a Special Forbearance, Repayment Plan, Mortgage Modification, Compromise (Short Sale) Claim, or Deed-In-Lieu of Foreclosure, or it may be a written communication from the borrower delivered by mail, fax or electronic media requesting additional time to work with the mortgagee to resolve the debt.

e. Commitment Unobtainable. The moratorium on the initiation of new foreclosures will terminate on March 31, 2006, for all loans where the borrower has not made a written request for additional time to resolve the default or has not made application for a loss mitigation option.

f. Reconsideration. Should a borrower fail to make a written request for additional time to resolve the default on or before the March 31, 2006, deadline, but subsequently notifies the mortgagee of his or her desire to retain homeownership, the mortgagee must fully evaluate the borrower's eligibility for all loss mitigation alternatives and implement the appropriate action.

g. Non-Applicability. As a reminder, **only** borrowers who are unable to maintain mortgage obligations due to hurricane related property damage, curtailment of income or increased living expenses are eligible for moratorium relief. Normal timeframes and loss mitigation options apply for borrowers in the individual assistance areas whose cause of default is unrelated to the hurricanes. In addition, the moratorium does not apply to cases where foreclosure was initiated prior to the date of disaster. Those cases should be processed as diligently as possible, unless delays are necessary due to property damage, pending insurance settlements, unavailability of local courts or recorders' offices, or if the borrowers' circumstances have changed following the disaster so that an alternative to foreclosure may be feasible.

h. Impact of Moratorium. VA is hopeful that the moratorium will enable veteran borrowers to retain their homes after resolving potentially lengthy issues with insurers, repair contractors, and employers. However, if loans must eventually be terminated, any delay attributable to a moratorium will be considered as VA-requested forbearance for purposes of determining whether the holder has the option to convey a property to VA following termination.

3. FORBEARANCE IN OTHER AREAS. There is no automatic extension of the moratorium on the initiation of new foreclosures for properties located outside the individual assistance areas. However, if a mortgagee has been unable to assess property condition or contact a mortgagor in any of the other counties designated as Presidentially-declared disaster areas, and they believe it is in the best interest of the government to delay foreclosure or initiation of foreclosure until a loss mitigation assessment can be completed, they should advise the VA Regional Loan Center (RLC) of jurisdiction of the facts and request that VA delay establishing an interest cutoff date on the case.

4. BANKRUPTCY CASES. Mortgagees or their servicers are encouraged to consult with their bankruptcy counsel to determine how to permissibly communicate with borrowers in bankruptcy regarding these issues.

5. CREDIT AND DEFAULT REPORTING. VA continues to encourage mortgagees and their servicers not to report delinquencies on loans in the Presidentially-declared disaster areas to credit reporting agencies until and unless a mortgage is referred for foreclosure. However, mortgagees

must continue to report delinquencies to VA in accordance with title 38, Code of Federal Regulations (CFR), section 36.4315(a), which is generally translated as no later than the 105th day of delinquency. Although that reporting is required, mortgagees should not submit Notices of Intention to Foreclose (NOIF) under 38 CFR 36.4317 on a routine basis. Filing a NOIF with VA on a case where forbearance has been granted will serve only to confuse the borrower, and should be avoided unless servicing actions have determined that a default is truly insoluble, and the only option is loan termination.

6. STATION RELEASES. RLCs will not be required to distribute copies of this circular, as it will be posted to the Loan Guaranty webpage under new circulars. RLCs should post links to that page with appropriate notices on their websites.

7. CONTACT. Any questions about this circular may be directed to Carl Wasson, telephone 202-273-7345.

8. RESCISSION. This circular is rescinded April 1, 2008.

By Direction of the Under Secretary for Benefits

Keith Pedigo, Director
Loan Guaranty Service

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