

APPENDIX D: FORBEARANCE ON VA HOME LOANS DURING SPECIAL MILITARY ACTIONS AND SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940, AS AMENDED (02/94)

(EXTRACT OF CIRCULAR 26-90-32, DATED AUGUST 23, 1992)

1. When members of the United States Armed Forces are required to make immediate departures for distant lands to protect our nation's interests, many military members are routinely prepared for family separations and related financial rearrangements. However, some orders may come with such limited advance warning that difficulties may arise for spouses who must remain and manage households.
2. It has been the long-standing policy of the Department of Veterans Affairs to encourage loan holders to extend all reasonable forbearance in the event a borrower becomes unable to meet the terms of a VA loan. This policy is especially appropriate when delinquencies may be the direct result of family disruptions due to special military actions.
3. Financial difficulties may be even more severe in such situations for members of the Reserves or National Guard who may be unforeseeably called to active duty for extended periods of time. If it appears that more than simple forbearance is warranted, VA regulations allow holders considerable latitude in modifying the terms of a loan to prevent foreclosure and help the borrower to retain and pay for his or her home. Such modifications may include loan extension, reamortization and interest rate reduction refinancing to prevent and/or cure a default.
4. Members of the Reserves or National Guard who have home loans and are called to active military service are also entitled to protection under the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 USC App. sections 501-590). While the Act does not generally apply to obligations incurred during a current period of active military service, provisions may cover veteran-borrowers on active duty with respect to obligations they have incurred prior to their current period of service. In order for a veteran to qualify for the protections available under the Act, his or her obligation has to have originated prior to the current period of active military service (i.e., during a period of break in service between active duty tours or during a period of active military service which was followed by a break in service) and, in the case of a secured loan obligation, the property must still be owned by him or her during the current period of active service. Benefits under the Act may also extend to co-obligors on a loan.
5. The purpose of the Act is to promote and strengthen the national defense by suspending enforcement of certain civil liabilities of certain persons serving in the armed forces. Therefore, when a veteran-borrower's ability to meet his or her obligations has been impaired due to military service, certain relief is afforded against the penalties that would otherwise be imposed for nonpayment of such obligations. In addition, the relief provisions [Page : D-2] include the right, in some cases, to make reduced payments on obligations and protections through the courts against foreclosure.
6. VA is not charged with enforcement of the Act, but will perform its mission of serving veterans by making every effort to ensure that they receive the protections to which they are entitled. Moreover, it is not VA's responsibility to provide legal advice to veterans or loan holders with respect to requirements of the Act. We do, however, consider certain provisions of the Act

to be important to program participants and the following, while not intended to be substituted for the advice of counsel, is designed to inform program participants in a general way about provisions of the law.

a. **Six Percent Interest Rate Limitation.** When the Act applies (as described in paragraph 4), any obligation or liability, such as a home loan, bearing interest at a rate in excess of 6 percent per annum is, during the veteran's period of active duty, reduced to a rate of no more than 6 percent (50 USC App. 526). The rate cap of 6 percent is calculated to include any fees or other charges otherwise payable on the loan (e.g., late charges).

(1) The Act is silent as to any actions which the veteran must take to begin payments at the lower rate. Absent a specific requirement, veterans (or their spouses, other co-obligors or legal representatives) should, however, be encouraged to notify their loan holder before beginning payments at the reduced rate. Veterans should also be encouraged to cooperate with their loan holders by providing information which will help demonstrate their eligibility for benefits available under the Act. Loan holders are cautioned to review their payment processing procedures in order to ensure that payments in the amount allowable under the Act are not inappropriately returned to borrowers as insufficient, even though no prior notice may have been received. Loan holders should also be prepared to respond to inquiries from veterans as to the amount of the monthly installment payment which would be required at a 6 percent interest rate and to provide revised payment cards or coupon books when appropriate.

(2) To restore application of the original interest rate on the note during an obligor's period of military service, the holder must apply to a court and show that the veteran's ability to repay the obligation has not been materially affected by military service. The court "may take such order as in its opinion may be just" with respect to the rate of interest due and payable.

(3) At the time the Act became law, an interest rate of 4 percent or less was typical for home loans. The fact that interest rates are currently substantially higher does not, however, affect the applicability of the Act.

(4) The Office of the General Counsel has determined that, for purposes of accounting between VA and a loan holder when a claim is filed under Loan Guaranty, VA's liability will not exceed the liability of the veteran. Since the veteran is not obligated to pay interest at a rate in excess of 6 percent, VA as guarantor is not obligated to include interest on the obligation in excess of 6 percent for the period of time that the veteran was eligible under the provisions of the Act. However, if the holder obtained permission from a court of competent [Page : D-3] jurisdiction to obligate the veteran under the terms of the original obligation or to modify those terms, VA would be bound to honor the court's decision.

b. **Stay in Enforcement.** In addition to an interest rate reduction, the Act provides for a separate form of forbearance which a veteran can obtain through order of a court if he or she applies for it during his or her period of military service or within 6 months after separation (50 USC App. 590). If the court finds that the ability of the veteran to maintain the obligation has been materially affected by entry into military service, it can issue a stay in the enforcement of the obligation. The maximum period of the complete stay on payments would coincide with the veteran's period of military service. The court could then require that the creditor accept repayment of the delinquent principal and interest (computed at the note rate) as of the date of

separation or the date the veteran applied to the court, whichever is later, in equal installments over a period of time equal to the remaining term of the loan plus the period of military service. A lesser repayment period could also be established if the court were to find such terms to be just; similarly, the court is not obligated to order a complete suspension of payments during the period of military service and could require the veteran to make regular partial payments prior to separation.

(1) The Act does not specifically relate relief under this provision to the interest rate reduction to which the veteran may be entitled. It is therefore unclear whether these provisions are mutually exclusive or may be combined.

(2) In view of the broad powers granted to courts to provide payment relief to military personnel, loan holders are encouraged to negotiate reasonable partial payment and repayment schedules with borrowers in order to minimize the need for costly and time-consuming litigation.

c. Foreclosure. Court permission is necessary to foreclose a loan that falls under the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended. Foreclosure sales (or manufactured housing repossessions) during the veteran's period of military service or within 3 months thereafter will be invalid unless they take place pursuant to a written agreement between the parties involved or they are initiated "upon an order previously granted [the holder] by the court and a return thereto [is] made and approved by the court"; i.e., approval before proceeding with a power of sale foreclosure and subsequent court confirmation of sale may be necessary (50 USC App. 532).

(1) Many foreclosure actions require affidavits concerning the active duty military status of the obligors, and the accuracy of such items is very important in order to avoid title defects and possible penalties of imprisonment and/or fines for violations of the provision of the Act, or for attempts to violate its provisions.

(2) Loan holders are encouraged to become familiar with the Act in order to avoid losses associated with foreclosures which might actually be prevented through the exercise of forbearance, and to ensure compliance with any restrictions on foreclosures which may apply in their particular areas of operation. [Page : D-4]

d. Additional Stays. A veteran-borrower can petition a court of competent jurisdiction during the period of military service or within 60 days thereafter to request any action or proceeding be stayed (50 USC App. 521). Furthermore, the veteran-borrower can petition a court for a complete stay against enforcement of the loan obligation (50 USC App. 590). Court determinations for any of these actions will weigh heavily upon whether or not the veteran-borrower's ability to discharge the obligation is materially affected by reason of his or her military service. However, nothing in the Act prevents modification or termination of loan agreements pursuant to a written agreement between the parties involved executed during or after the period of military service of the person concerned (50 USC App. 517).

e. Rights of Redemption. The Act places a different restriction on redemption periods than on foreclosure sales; namely, any statutory redemption period stops running during the veteran's current tour of military service and resumes after separation (50 USC App. 525). This restriction applies with respect to any redemption period which would otherwise run as a result of a

foreclosure action against a person in military service, regardless of whether or not the mortgage was executed prior to the current period of service. The extension of a redemption period will clearly affect VA's ability to market property acquired subject to redemption; it will not, however, be considered a title defect which would make a conveyance unacceptable.

7. In general, the Act provides broad potential relief from obligations to persons in military service. With respect to an obligor who has entered military service and is subject to the Act, creditors must obtain either written agreement from the obligor or approval from a court in order to enforce their rights under a loan agreement. (Any written agreement obtained prior to the obligor's entry into military service may not provide a legal basis for enforcement of the creditor's rights.) In reaching a decision, the court will primarily be guided by consideration as to whether military service has affected the obligor's ability to maintain the obligation or answer a legal proceeding, such as foreclosure, brought by the creditor.

8. VA's advice to veterans and their families will encourage them to seek cooperation from their loan holders and to discuss other possibilities with private counsel and military attorneys, as necessary. VA is not in a position to offer legal advice to veterans or loan holders concerning requirements of the Act or possible interpretations by local courts. One source of such advice for veterans is Department of the Army Pamphlet 27-166, Soldiers' and Sailors' Civil Relief Act (August, 1981).

9. Holders should obtain opinions from their own counsel to ensure compliance with all provisions of the Act, as well as other local statutes requiring the extension of forbearance, so as not to invalidate a foreclosure. In some States, specific statutes have been enacted which have provisions which may be similar or identical to those found in the Act and, in some states, local statutes may afford obligors greater rights and protections than those provided by the Act. Differences in interpretation on individual cases should be brought to the attention of the Office of the District Counsel and every effort should be made to reconcile such differences fairly and without disruption in program operations. [Page : E-1]