

## **CHAPTER 18: SERVICING NON-PERFORMING LOANS – ACCOUNTS WITH REPAYMENT PROBLEMS 7 CFR 3555.301**

### **18.1 INTRODUCTION**

The servicer is required to employ an experienced and knowledgeable staff, follow accepted industry servicing practices, and maintain a servicing platform that keeps records of all servicing actions. Servicers are fully responsible for complying with this chapter regardless of any sub-servicing arrangements. Appendix 8 of this Handbook outlines the servicer's responsibility to report to the Agency all delinquent loans and quarterly portfolio reports through EDI.

When a loan becomes past due, the servicer must take prompt and aggressive action to help the borrower bring the account current. The servicer should work closely with the borrower to resolve any delinquency as early as possible to prevent further collection activity. In cases where the borrower is unable or unwilling to repay the loan, the servicer must take prompt action to liquidate the loan, either by encouraging the borrower to liquidate voluntarily through foreclosure.

Section 1 of this Chapter states the minimum actions the servicer is required to take and bring past-due accounts current. Section 2 of this Chapter describes various alternatives to foreclosure that the servicer will pursue, including traditional and special loan servicing actions to follow. Section 3 of this Chapter describes the requirements within the foreclosure process. Section 4 provides servicers with requirements when a property is located in a county, parish or municipality that has been declared by the President of the United States to be a major disaster area where federal aid in the form of individual assistance is being made available.

### **SECTION 1: COLLECTION EFFORTS AND REQUIREMENTS [7 CFR 3555.301]**

### **18.2 OVERVIEW**

A goal of the Agency is to provide a borrower the maximum opportunity to remain a successful homeowner. Consequently, the servicer should approach loan servicing as a preventive as well as a curative action. Prompt counseling and follow-up with a borrower who is late with a monthly payment, especially the first payment, is key to enhancing the likelihood of success. The servicer should identify any servicing actions that could aid a borrower who is experiencing repayment problems.

### **18.3 MINIMUM REQUIREMENTS [7 CFR 3555.301]**

When a borrower's account becomes past due, the servicer must, at a minimum, take the collection efforts described below. Each delinquency should be treated individually using collection techniques that fit the individual circumstances. Additionally, the

Agency recommends making personal contact with a delinquent borrower until the delinquency is cured. Debt collection efforts may be suspended when applicable laws restrict creditor action to collect a debt or take action. An example that may be a violation of an applicable law is if the commencement of debtor's bankruptcy case occurs.

**A. Initial Contact**

The servicer must attempt to make verbal or written contact with the borrower on or before the day an account becomes 20 days past due. The servicer must send a letter to the borrower if unable to reach the borrower by telephone. This contact must solicit enough information to evaluate the borrower's ability to cure the default and to help determine the additional servicing actions to take. At a minimum, the servicer must attempt to establish and document the following:

- The borrower's current mailing address and telephone number;
- The reason for the default;
- Whether the reason is temporary or long-term;
- The borrower's attitude toward the debt;
- The borrower's present income and employment status;
- The borrower's current monthly expenses and debt obligations; and
- A realistic and satisfactory arrangement for curing the default.

**B. Notify Credit Repository**

The servicer must provide an accurate and complete file of the status of mortgages in its Agency-guaranteed loan portfolio to a minimum of three credit repositories each month with the goal of avoiding disputes that could arise from inaccurate or inconsistent reporting.

**C. Send Certified Letter to the Borrower**

Before an account becomes 60 days past due and the borrower has not made arrangements for payment, the servicer must send a certified letter to the borrower. The letter should emphasize the importance of meeting the debt obligation, negative impact of non-repayment on the borrower's credit history, and request an interview with the borrower for the purpose of resolving the past due account and avoiding foreclosure.

The information required at the initial contact should be requested in the certified letter if initial contact was not made.

#### **D. Inspect the Property**

Before a delinquent account becomes 60 days past due and before initiating a liquidation action, the servicer must take the following steps:

- **Occupancy-**Assess the physical condition of the property and determine the occupancy status of the dwelling and use reasonable judgement to determine if the property is vacant or abandoned. For all inspections, servicers shall be required to document the general condition of the property and identify any actions required to adequately protect and preserve the property.
- **Abandoned property-** In all cases, the servicer shall take all necessary actions to protect the property from waste, damage, and vandalism. The servicer should document the servicing file outlining the determination using indicators such as property condition, posted for sale signs, presence of personal property or vehicles, yard condition, last known mailing address, or absence of a power meter. If the loan is delinquent, expedite foreclosure by referring the loan for acceleration within 15 days of the date of the inspection report confirming the property was abandoned. Additional guidance regarding management methods and activities of custodial properties can be found at Paragraph 19.2.A of Chapter 19 of this Handbook.
- **Inspections-**The servicer should make an inspection of the mortgaged property at least monthly to verify occupancy and ensure the property is being adequately maintained. Generally, curbside inspections are inadequate for making these determinations and are acceptable to the Agency only if there is danger to the inspector or there are legal restrictions preventing access to the property. Inspection records must be retained in the mortgage file, and address at a minimum, the condition of the property, occupancy status and any necessary repairs to protect an abandoned property, the date of inspection, and who performed the inspection.

#### **E. Proceed with Liquidation**

When the account becomes 90 days past due and the borrower has been non-responsive or has declined all available foreclosure prevention options, the servicer must initiate liquidation proceedings by accelerating the loan and, if necessary, foreclose as long as any applicable notice and waiting period under state law is met.

### **18.4 DOCUMENTATION REQUIREMENTS AND PENALTIES [7 CFR 3555.301]**

#### **A. Collection Records**

The servicer must maintain records of all collection efforts and must make them available upon request by the Agency. These records may either be in the form of servicing logs and/or copies of letters sent to the borrower. The records must indicate the following:

- Reason for the default;
- Date(s) and content of written notification(s) to the borrower;
- Dates and results of personal contacts with the borrower to resolve the debt both by telephone and/or in-person;
- Dates and documentation of property inspections; and
- Date liquidation action was initiated.

## **B. Grace Period for Completing Collection Action**

The servicer is required to take all collection actions within the time frames described in Paragraph 18.3 of this Chapter. However, the Agency may allow a grace period of five business days for completing each required collection action. Thus, no penalty will be assessed if the servicer takes the required action before the end of the grace period.

## **C. Penalties for Failure to Fulfill Collection Obligations**

If the servicer fails to take the minimum collection efforts in Paragraph 18.3 and experiences a loss on the loan, the loss claim amount will be reduced. The Agency may apply the following penalties for a servicer's failure to take the required collection actions. These penalties are described in greater detail in Chapter 20 and Appendix 9 of this Handbook and include the grace period offered by the Agency as noted in Paragraph 18.4 B above.

- The claim will be denied if the servicer failed to attempt to make any contact with the borrower before the loan was 65 days past due;
- The claim will be denied if the servicer failed to notify the Agency, in accordance with Paragraph 17.3, when the account was in default;
- Accrued interest for the claim will be reduced by 50 percent if the servicer failed to attempt to make a first contact with the borrower within 25 days past the due date, but within 65 days past due;
- If the servicer failed to inspect the property before the loan became 65 days past due, the accrued interest will be reduced by 10 percent as long as no loss resulted for the servicer's failure to inspect the property timely; and
- The servicer is required to protect and preserve the property. The loss claim will be reduced by the dollar value of the loss attributable to the servicer's failure to inspect and secure an abandoned property as documented by an appraisal. Should the appraisal fail to address the damage attributable to the servicer's failure to secure the abandoned property, the claim will be denied.

## **SECTION 2: LOSS MITIGATION**

### **[7 CFR 3555.303 and 3555.305]**

#### **18.5 LOSS MITIGATION OPTIONS**

The servicer should make every possible effort to assist borrowers who are experiencing an involuntary inability to pay their mortgage and show cooperation to resolve default situations using appropriate loss mitigation tools. Loss mitigation options include informal repayment agreements, special forbearance agreements, or loan modifications. Special forbearance agreements and loan modifications should be used when information in the servicing file supports the borrower's ability and willingness to pay. Voluntary liquidation methods such as pre-foreclosure sales and deed-in-lieu of foreclosure may be used to protect the Government's interest once the servicer has examined other servicing options and determined the borrower cannot continue with the loan obligation. Traditional/standard loss mitigation options must be exhausted prior to use of Special Loan Servicing Options. Consideration must be given to all options prior to initiation of liquidation.

The servicer must attempt to obtain information on the borrower's financial condition and make an accurate determination of the borrower's ability to repay the arrearage and continue making mortgage payments as scheduled. Details on consideration and processing the below actions are located in the Attachment 18-A, *Loss Mitigation Guide*:

- Servicing Early Delinquent Loans;
- Informal Repayment Agreement;
- Loss mitigation overview;
- General policies, procedures and minimum actions that constitute effective loss mitigation techniques;
- Special Forbearance;
- Traditional Loan Modification;
- Special Loan Servicing Options;
- Pre-Foreclosure Sale;
- Deed-in-Lieu of Foreclosure;
- Servicing plan, checklists; disposition cost benefit analysis; and,
- Reporting – EDI and status of mortgage codes.

Electronic submission of loss mitigation information is available to all servicers and required as of August 1, 2016.

Loans dated prior to October 1, 1992, may be eligible for interest assistance to help resolve a borrower's payment problems. Interest assistance is offered to adjust the

monthly payment to an amount that the borrower can afford and should be used in conjunction with other loss mitigation alternatives to assist a delinquent borrower. Refer to Appendix 6 of this Handbook for additional information regarding interest assistance.

### **SECTION 3: ACCELERATION AND FORECLOSURE** **[7 CFR 3555.306]**

#### **18.6 ACCELERATION**

When a servicer determines that a borrower is unable or unwilling to meet loan obligations, and there is no reasonable prospect of resolving the delinquency through another method, the servicer should initiate liquidation proceedings by accelerating the loan and, if necessary, foreclose. A demand letter should be sent to the borrower within five days of when the borrower missed their third consecutive payment. The notice should include the following:

- Reason the notice is being sent (e.g. default or abandonment);
- The action required to cure the default;
- A date established to cure the default.

#### **18.7 THE FORECLOSURE PROCESS [7 CFR 3555.306]**

##### **A. Initiation of Foreclosure - Referral**

The servicer must refer the case to an attorney or trustee for foreclosure within 180 days of the due date of the last paid installment unless there are legal requirements that cause a delay in the foreclosure action. The servicer must exercise due diligence and manage the process by ensuring that all required actions are completed timely.

Attachment 18-B, *Acceptable State Foreclosure Time Frames*, lists the recommended method of foreclosure and the first public action required by law to initiate foreclosure. In states where more than one foreclosure method is available, but only one option is listed, the Agency selects the method that is most cost effective in reducing legal fees and accrued interest expense. The Agency does not intend to prohibit the payment of loss claims where the servicer obtains title through a method of foreclosure other than what is recommended. For example, if the recommended foreclosure method is non-judicial, but judicial foreclosures are required to preserve the servicer's right to a deficiency judgment, the servicer may demonstrate that recovery on a deficiency judgment is expected after considering the time and cost of litigation. In such case, the judicial foreclosure method should be considered acceptable.

##### **B. The Foreclosure Sale**

Servicers must exercise due diligence in completing the liquidation process. This due diligence should include an estimate of the total debt, whether the security value is sufficient to cover that debt, and the potential recovery of any deficiency.

- Total Debt-Includes unpaid principal, protective advances, interest accrual through the liquidation process, and other potential costs such as liquidation and real estate owned (REO) expenses.
- Security Value-will be based on the current market value of the property in “as is” condition with a 90-120 day marketing time frame. If the interior of the security property is not accessible, the valuation will be based on exterior inspection only. If a significant (20 percent or more) decline from the value established when the loan was made and the pre-foreclosure valuation is evident, the servicer is encouraged to review the value determination in accordance with established quality controls and be prepared to support the decline in value.
- Recovery Potential-should include the borrower’s other assets, ability to pay the deficiency, and other sources of recovery such as insurance claims or pending litigation.
- Foreclosure Bid-the servicer should consider state statutory requirements and the relationship of the outstanding debt and potential REO costs to the market value of the property. When the total debt, including the cost of acquiring, managing and disposing of REO property, is greater than the gross proceeds expected from a foreclosure sale at the market value of the security property and potential recovery from our sources, third-party bidding is encouraged by entering a foreclosure sale bid less than the value of the property. Servicer should use attachment 18-D, *USDA Individual State Based Bidding Chart*, with the goal of avoiding REO and its associated management and disposition costs. Servicers are not required to obtain Agency concurrence for foreclosure bids.
- Auction Services-the use of non-affiliated auction companies is permitted and encouraged for the foreclosure bidding process. When the property is sold to a third party, the Agency will reimburse servicers for auction service fees in an amount not exceeding five percent of the property net sales price. Properties must be marketed for a minimum of 15 days prior to the scheduled sale date and sold for an amount equal to or greater than the “Net Value Bid.”

### **C. Reinstatement of Account**

Unless required otherwise by state statute, the servicer may reinstate an accelerated account if the borrower meets the following conditions:

- Pays the total amount delinquent, including protective advances, accrued interest, and any foreclosure related costs and other expenses incurred by the servicer, in a lump sum;
- Has the documented ability to resume scheduled payments on the loan;
- Has not received an overpayment of interest assistance from the Agency based on false information as described in Appendix 6 of this Handbook.

## **18.8 MANAGING THE FORECLOSURE PROCESS [7 CFR 3555.306]**

The servicer must manage the foreclosure process so that the property is liquidated in a cost effective, expeditious, and efficient manner. If the attorney or trustee requests additional documentation, the servicer must provide it within five business days of receiving the request.

### **A. Acceptable Foreclosure Time Frames**

Foreclosure must be initiated within 90 days of the date the decision to liquidate is made unless the foreclosure has been delayed by law or an alternative to foreclosure is recommended to resolve the delinquency. Initiation of foreclosure begins with the first public action required by law, such as filing a Complaint or Petition, recording a Notice of Default, or publication of a Notice of Sale. The Agency adheres to HUD's foreclosure time frames available on the HUD website. These time frames are measured from the first legal action to the foreclosure sale date, which is when the REO marketing period begins. The Agency foreclosure time frames start with the date of the first legal action required by law, ends with the foreclosure sale date, and does not include post-sale redemption periods or sale confirmations.

- **Redemption Period**-since redemption periods may be adjusted under some state laws based on the circumstances surrounding a property, such as the amount of unpaid principal still owed, or the occupancy status of the property, reasonable time frames for redemption periods and sale confirmations should be established on a case-by case basis in accordance with state law. Reimbursement of accrued interest may be reduced in accordance with Chapter 20 of this Handbook for each day that the foreclosure continues past the prescribed time frame unless the servicer presents a valid reason that justifies the delay.
- **Processing Delays**-servicers must document any delays to the foreclosure timeline when submitting the loss claim package. Acceptable delays can include bankruptcy petitions filed after foreclosure initiation, contested foreclosures, and court scheduling delays or delays in obtaining service.
- **Chapter 7 Bankruptcy**- servicers may be authorized a 90-day extension to the allowable time frame for compliance with state law when a Chapter 7 bankruptcy delays the completion of foreclosure. To determine the impact of a bankruptcy filing on the foreclosure time frame, the total number of days from first action to foreclosure sale will be calculated. The total number of days between the bankruptcy filing date and the date of bankruptcy release or dismissal for each applicable bankruptcy case will then be subtracted from the total number of foreclosure days. The resulting number of days will be compared to the Agency foreclosure time frame plus an automatic 90-day extension to determine if the time frame was met.
- **Chapter 13 Bankruptcy**- Additional time allowed for a Chapter 13 bankruptcy delay shall not exceed 90 days from the date the payments under the bankruptcy plan became 60 days delinquent. The servicer must make prompt and accurate



notification to the bankruptcy court and closely monitor the payment required by the bankruptcy court. If the borrower becomes 60 days delinquent in payment under the Chapter 13 plan, the servicer will ensure prompt legal action is taken to resolve. Any delay beyond 90 days from the date the account became 60 days delinquent under the terms of the bankruptcy plan must be supported by documentation.

- Prompt Referral-servicers must exercise reasonable due diligence requirements by resolving a dismissal of the bankruptcy, termination of the automatic stay or trustee abandonment of all interest in the secured property. The servicer's claim review documentation must indicate the case was promptly referred to the foreclosure attorney after bankruptcy filing. Any delay beyond 90 days from the date of the bankruptcy filing must be supported by documentation supporting the delay. Submit documentation with the loss claim, as described in Chapter 20 of this Handbook. Failure to submit the documentation supporting the extended foreclosure time-frame will result in denial of additional accrued interest request.

## **B. Acceptable Liquidation Fees and Costs**

Agency regulations authorize the reimbursement of liquidation fees and costs that are actually paid by the servicer for liquidated loans that result in a loss to the servicer within the limits of the guarantee. Reasonable liquidation costs similar to those charged for like services in the area will be allowed. It is not the Agency's intent to regulate the amounts that servicers pay for services performed, but to limit the extent to which the Agency reimburses the servicer for attorney fees incurred for loss claims filed in accordance with Chapter 20 of this Handbook. The Schedule of Standard Attorney/Trustee's Fees published by HUD for foreclosure, deed-in-lieu of foreclosure and bankruptcy will be utilized as the basis for determining reasonable and customary attorney fees. Attachment 18-C of this Chapter provides the most current Schedule of Standard Attorney/Trustee's Fees. The current schedule published by HUD will be utilized by Agency. Fees higher than the published amounts may be appropriate, in cases such as contested foreclosures, required probate procedures, etc., and are subject to approval by the Agency on a case-by-case basis. Justification for higher fees must be documented in the file.

It is important to make the distinction between attorney/trustee fees and attorney/trustee costs. Typically, the fee for the service performed by the attorney is listed separately on the attorney invoice from the actual costs involved in the liquidation proceedings. A complete list of allowable liquidation costs would not be practical since procedural requirements vary by jurisdiction. Generally, the Agency will reimburse a servicer for costs, which must be paid to public officials such as sheriffs, clerks of court or recorders of deeds, as well as costs, which are required by law (i.e., private service of process and required publications).

In-house expenses of the servicer will not be allowed during the liquidation process. Employee salaries, staff attorneys and overhead charges are considered examples of in-house expenses. Overhead expenses include, but are not limited to, items such as telephone calls, photocopying charges, overnight mail fees and postage (not including certified or registered mailings required by law). Typical overhead costs are inherent to the foreclosure process and payment of these expenses is not reimbursable.

Outsourcing of services, such as document preparation services, are customary in the industry and are also considered as attorney overhead. These fees are allowed as a separate expense *only* if the attorney fee is reduced in a proportionate amount to the document preparation fee that is charged.

Example:

- State = Tennessee
- Acceptable Foreclosure Attorney Fee = \$600  
    \$425 Attorney fee invoiced  
    \$125 Outsourced Document Preparation Fee  
    \$600 Total of fees charged

In the above example, the foreclosure attorney has chosen to outsource a portion of his service to a contractor. The total fee charged to the servicer is the same as if the attorney firm had performed this function. This is considered an acceptable fee that is eligible for reimbursement.

If a foreclosure proceeding is interrupted due to a bankruptcy filed by the borrower, or if a deed-in-lieu of foreclosure or pre-foreclosure sale is accepted prior to the completion of the foreclosure, a maximum of 75% of the allowable attorney fee and all actual foreclosure costs incurred will be reimbursed. If state statute requires that the foreclosure be restarted from the beginning after a bankruptcy is dismissed or relief from stay is granted, the servicer will be reimbursed for 100% of allowable foreclosure attorney fees and costs incurred after the bankruptcy stay is lifted. If state statute does not require that the foreclosure be restarted from the beginning, reimbursement of all foreclosure attorney fees incurred both before and after the bankruptcy is limited to the amount listed on the Attachment 18-C, Schedule of Standard Attorney/Trustee's Fees.

The Agency will not reimburse any attorney fees or costs incurred for a prior liquidation action that has been reinstated by the borrower or for which the foreclosed property is redeemed. Attorney fees and costs should be included in the amount collected from the borrower with the reinstatement or foreclosure redemption.

The foreclosure fees in Attachment 18-B list the attorney or trustee fee limits allowed for each Agency recommended method of foreclosure. In states where more than one foreclosure method is available, the limits listed are based on the method that is most cost effective in reducing legal fees and interest expense. The Agency does not intend to prohibit the payment of attorney fees and costs where the servicer obtains title through a

method of foreclosure other than what is recommended. However, the Agency must determine whether the foreclosure method chosen by the servicer was in the best interest of the government. For example, the recommended foreclosure method in some states is non-judicial; however, judicial foreclosures are required to preserve the rights of a deficiency judgment. If the servicer can demonstrate that the recovery of a deficiency judgment is expected, the foreclosure method should be considered acceptable and reasonable attorney fees and costs reimbursed within the limits of the guarantee.

## **18.9 REPORTING REQUIREMENTS**

In accordance with Appendix 8 of this Handbook, servicers are required to report to the Agency all delinquent accounts monthly through EDI. When the servicer initiates foreclosure, the first report following the month foreclosure is initiated, the servicer will report all accounts in foreclosure. The account must be reported until:

- Loss mitigation efforts are completed;
- The mortgage is reinstated or paid in full;
- The property is sold to a third party purchaser at foreclosure sale and no loss claim will be filed; and
- Servicer submits loss claim package for an REO sold/unsold.

**ADDITIONAL GUIDANCE REGARDING EDI REPORTING MAY BE FOUND IN APPENDIX 8 AND ONLINE AT:**

<https://usdalinc.sc.egov.usda.gov/docs/rd/sfh/edi/edi%20implementation%20guide.pdf>

## **SECTION 4: ASSISTANCE IN NATURAL DISASTERS [7 CFR 3555.307]**

The following provides guidance for servicing accounts when a county, parish or municipality has been identified as a Presidentially Declared Disaster (PDD) areas where federal aid in the form of individual assistance is being made available.

### **18.10 PROPERTY PROTECTION [7 CFR 3555.307(b)]**

When a servicer becomes aware that they have properties secured by an Agency guarantee in a PDD they immediately take the following actions:

- Ascertain the number of affected properties;
- Secure abandoned properties;
- Determine the extent and nature of the damage and the effect on the borrower's ability to continue making mortgage payments;
- Determine if the property is adequately insured against the damage;

- Provide assistance to the borrower regarding the availability of appropriate relief provisions from local, state or federal disaster assistance;
- Consider waiving any late payment charges if the borrower's payments are late because of added expenses or loss of income due to the disaster;
- Monitor and coordinate hazard insurance claims; and
- Monitor and coordinate the progression of repairs when a deposit of insurance proceeds occurs in lieu of borrowers receiving insurance proceeds for properties.

## **18.11 SPECIAL RELIEF MEASURES [7 CFR 3555.307(c)]**

The servicer must suspend any and all foreclosure actions for affected borrowers in PDD areas effective for 90 days from the date of declaration, unless extended by the Agency. This applies to both 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 PDD. During the suspension, servicers should consider the following factors in order to determine the appropriate course of action:

- Evaluate the effects of the disaster;
- Instruct the borrower to file insurance claims and apply for disaster assistance that may be available through FEMA, state and local governments;
- Offer appropriate repayment plans as outlined in Section 2 of this Chapter; and
- Determine if foreclosure is the only option.

The borrower's income or ability to pay his/her mortgage, any increase in living expenses, the extent of damage, the delinquency status of the mortgage, and the availability of alternative housing are additional factors to consider. The goal should be a formal relief provision that will cure the delinquency as soon as possible without imposing an undue hardship on the borrower. A relief measure that is very appropriate in disasters is forbearance. Under forbearance, the servicer can agree to reduce or suspend the borrower's monthly payments for up to 12 months. After which, the borrower must agree to resume his or her regular monthly payments and to pay additional money at scheduled intervals toward repayment of the amount reduced or suspended.

Regular follow-up during a suspension and reassessment of the individual borrower's circumstances, based upon property inspections, borrower financial information at the end of the suspension period should be conducted. If the servicer is not actively engaged in workout options with the borrower(s) and believes suspension beyond the 90 day period is warranted, the servicer must document the reason to extend a hold on any and all foreclosure actions and retain the documentation in their collection systems. Failure to do so may impact any future loss claim payment.

Servicers may use existing loss mitigation workout options to reinstate a borrower ready to resume mortgage responsibilities. Late charges while the borrower is on a forbearance plan, or paying as agreed on a repayment plan, should not be assessed. A borrower for whom a forbearance or repayment plan is extended due to disaster-related circumstances must not be reported to credit repositories.

### **Special Relief Alternatives**

In addition to standard workout options, eligible borrowers may be offered the following special relief measures to assist borrowers without the standard financial evaluation required subject to the following conditions:

- The loan was current or less than thirty (30) days past due as of the date of the applicable PDD;
- The servicer receives verification the hardship (employment and/or property) has been resolved;
- Total modified mortgage principal and interest payment is less than or equal to the payment prior to modification.

Special Relief Measures shall be considered in the following order:

- Term Extension: If the servicer determines the borrower is capable of maintaining the current contractual payment including any escrow shortage created by advancements during the forbearance period (can be spread over 60 months), 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.
- Capitalization of Delinquency and Term Extension: If the servicer determines the borrower is capable of maintaining the current contractual payment, but cannot manage the additional escrow repayment amount, the servicer may offer a Cap and Extend Modification under the following terms:
  - Capitalize the accumulated arrearages and eligible unreimbursed servicer advances, fees and costs into the modified mortgage balance;
  - Extend term up to 360 months;
  - Reduce rate down 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;
  - The borrowers post modified PITI payment must be equal to or less than their payment prior to the disaster.

- Mortgage Recovery Advance: If the servicer is unable to offer the borrower either of the first two options the servicer may utilize a mortgage recovery advance to settle the borrower delinquency and return the borrower to a current 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 must meet all other requirements as explained in section 5.K of the Loss Mitigation Guide found in Attachment 18A of this Chapter.

## **18.12 PROPERTY DAMAGE AND INSURANCE CLAIMS [7 CFR 3555.307(d)]**

Servicers should ensure that hazard insurance claims are filed and settled as expeditiously as possible. Servicers are responsible for taking prompt action to protect the interests of the borrower and Agency when a hazard or flood occurs. This involves working closely with the insurance carrier, the borrower, and repair contractors. The servicer will complete a thorough analysis concerning the decision to repair the security property and document the decision. The decision should support the best level of return to the servicer and minimize loss to the Agency. Agency concurrence is required.

In damage cases, insurance proceeds will be issued jointly to the servicer and the borrower. If the decision is to use the proceeds to repair the property, the servicer must ensure a licensed contractor is used to complete the repairs. Unless the homeowner qualifies for direct payment of insurance proceeds in accordance with Paragraph 17.2 E of Chapter 17 of this Handbook, the servicer will release the proceeds in draws based on periodic inspections. The final draw will be paid after verification that all repairs were satisfactorily completed. The servicer is responsible for obtaining all lien waivers for work performed.

If the premises have been totally destroyed, the servicer should compare the unpaid principal balance with the insurance proceeds and any other circumstances affecting the case, 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.

## **18.13 DEBT SETTLEMENT REPORTING**

Servicers will be responsible for reporting to IRS and all national credit reporting repositories any discharge of indebtedness or any debt settled through liquidation in accordance with Internal Revenue Code.

ATTACHMENT 18-A  
LOSS MITIGATION GUIDE



# LOSS MITIGATION GUIDE

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## Single Family Housing Guaranteed Loan Program

**Effective:**

**5/1/2018**

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## **LOSS MITIGATION GUIDE**

### **SINGLE FAMILY HOUSING GUARANTEED LOAN PROGRAM**

#### **1      SERVICING EARLY DELINQUENCY LOANS (LESS THAN 90 DAYS PAST DUE)**

The purpose of all collection efforts is to bring a delinquent mortgage current in as short a time as possible. Single Family Housing Guaranteed Loan Program (SFHGLP) policy as stated in 7 CFR § describes minimum servicing requirements to accomplish this objective. The majority of one or two payment delinquencies will be addressed by either voluntary reinstatement by borrowers, or through traditional collection methods outlined in 7 CFR §, including informal forbearance plans and deeds-in-lieu of foreclosure (DIL). DIL should be used only in extreme hardship or involuntary inability to pay.

While a loss mitigation program is designed to address serious defaults, any reasonable servicer efforts to cure loans that are past due for 30 days or more contribute to the goal of helping residents in rural areas retain homeownership and reduce the Agency's losses. Thus, effective loss mitigation begins in the early stages of servicing defaulted loans and is the servicer's responsibility to validate and document the borrower's capacity under the terms of the loss mitigation workout recommendation.

##### **A.    EARLY INTERVENTION**

To facilitate a successful loss mitigation intervention, the servicer must attempt to make verbal or written contact with the borrower if the payment is not received by the 20th day after it is due.

Before an account becomes 60 days past due and if there is no contact or payment arrangement in place, the servicer must send a certified letter to the borrower requesting an interview in an effort to resolve the past due account.

The earlier the servicer makes contact with the delinquent borrower and identifies the cause of the default, the more likely it is that the default will be cured and the borrower will be able to keep the home. It is critical that the servicer make all decisions in a manner consistent with fair housing and lending principles.

##### **B.    CAUSE OF DEFAULT**

The servicer should identify the underlying cause of the delinquency at the earliest stage of borrower contact and determine if the problem is permanent or temporary. A borrower whose ability to support the mortgage debt has been

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permanently reduced through death, divorce, or permanent disability is unlikely to cure the default through a repayment plan. Such a borrower should be evaluated for either a loan modification, which may result in a reduction of the mortgage payment, or a pre-foreclosure sale, which allows a transition to more affordable housing. In some cases, a loan modification might result in higher mortgage payments because of capitalizing the arrearage. This option may be feasible if the borrower's financial situation will accommodate a higher payment.

A borrower who needs credit, legal, or employment assistance to resolve temporary financial problems should be referred to housing counseling, such as HUD housing counseling at 1-800-569-4287 or HUD's approved housing counseling web-site, [http://www.hud.gov/offices/hsg/sfh/hcc/hcc\\_home.cfm](http://www.hud.gov/offices/hsg/sfh/hcc/hcc_home.cfm) as soon as possible.

### **C. DEFAULT COUNSELING**

A borrower who receives early counseling is much more likely to bring the loan current. Servicers are strongly encouraged to recommend financial counseling to borrowers and establish working relationships with counseling agencies. The servicer should provide to the borrower, before the 45<sup>th</sup> day of delinquency, HUD publication 2008-5-FHA, *Save Your Home: Tips to Avoid Foreclosure*, rev January 2014. This may not be feasible, however, if the borrower has filed a bankruptcy petition and, in the opinion of the servicer's legal counsel, providing a copy of the pamphlet would be a violation of the bankruptcy stay. In such cases, the servicer should keep documentation of this fact in the servicing file.

### **D. INFORMAL REPAYMENT PLANS**

An informal repayment plan is a verbal agreement lasting for 3 months or less. Such a plan is the first and best means to ensure that a one or two month delinquency does not escalate beyond the borrower's ability to cure. In such a plan, the servicer should carefully review the borrower's financial situation and arrange payment terms that the borrower can realistically keep and the delinquency can be cured. Informal repayment plans should be documented, however, there is no requirement to report such plans to the agency.

### **E. BORROWERS ABILITY (CAPACITY) TO CURE**

The servicer should obtain as much information as possible regarding the borrower's capacity and willingness to cure the default. When it becomes apparent that an informal repayment plan will not be sufficient to resolve the delinquency, the servicer should evaluate whether one of the more formal loss mitigation strategies should occur (see General section).

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## **F. SALE OF THE PROPERTY**

A borrower who does not have the ability to cure the delinquent loan, but who has sufficient equity to sell the property and repay the arrearage from the sale proceeds, should be assisted in doing so. This assistance may include a written agreement that provides a short-term reduction or suspension of payments pending the closing of the property sale. The servicer has full responsibility in assisting the borrower in such a case.

## **2 LOSS MITIGATION OVERVIEW**

SFHGLP servicers have the authority and the responsibility to use effective actions and strategies to assist borrowers to retain their homes, and thus reduce losses to Agency and the servicer. Because of its ongoing relationship with the borrower, the servicer is in the best position to determine which, if any, loss mitigation strategies are appropriate in a given circumstance. A servicer may use any of the following loss mitigation options.

### **A. SERVICERS LOSS MITIGATION ACTIONS**

The servicer must:

- Report a complete and accurate loan-servicing plan to the agency that clearly outlines the approved action;
  - Consider all reasonable means to address the delinquency at the earliest possible time;
  - Use payment or credit scoring tools, if available, to identify high risk borrowers that may need more attention, rather than wait until standard contact dates;
  - Inform the borrower(s) of available loss mitigation options and the availability of housing counseling before the end of the second month (60th day) of delinquency. (Ensuring that the borrower receives the Homeowners Guide to Success <https://www.hud.gov/sites/dfiles/Housing/documents/RevUpdHmownSuc121518fml.pdf> concerning loss mitigation is acceptable, as well as documentation in the servicing and collection notes of conversations with the borrower concerning mitigation options);
  - Evaluate each delinquent loan once they become greater than 30 days past due but no later than the 90th day of delinquency to determine which loss mitigation option is appropriate;
  - Use loss mitigation whenever feasible to avoid foreclosure;
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- Reevaluate each delinquent loan monthly until delinquency is cured or the foreclosure action is complete;
- Report loss mitigation actions through monthly default status reporting using EDI status of mortgage code values;
- Initiate foreclosure within six months (180 days) of default unless a loss mitigation option is being pursued aggressively, and ensure that all actions taken are documented;
- Initiate foreclosure timely on vacant and abandoned properties;
- Retain a complete audit trail showing all loss mitigation actions.

### **3 GENERAL**

Both servicers and borrowers have responsibilities under loss mitigation. While each option involves specific actions, some policies apply to all of the options, and some servicer actions are performed whether or not any of the loss mitigation strategies are used. This section describes the general policies, recommended procedures, and minimum actions that constitute effective loss mitigation techniques.

#### **A. DEFAULT STATUS OF THE LOAN**

Loss mitigation options are intended to provide relief for a borrower who is delinquent or facing imminent default. For the purposes of this guide, a default is defined as any loan that has failed to perform under any covenant of the mortgage or deed of trust for 30 days or more, or is at risk of default.

If the borrower's circumstances warrant, the servicer may make servicing options such as a special forbearance agreement or a loan modification available to a borrower whose failure to perform is involuntary and likely to continue. If the delinquency is incurable, a disposition option such as a pre-foreclosure sale or a deed-in-lieu of foreclosure is recommended immediately because the borrower has no realistic opportunity to replace the lost income or reduce expenses sufficiently to meet the loan obligation through other options.

Any attempt to deliberately manufacture or misrepresent pertinent facts about a borrower's financial or other qualifying status may disqualify the borrower from participating in loss mitigation options and result in civil or criminal penalties. If perpetrated by a servicer, such actions may lead to administrative and/or judicial penalties against the servicer.

#### **B. OWNER OCCUPANCY**

Generally, the borrower's eligibility for any of the reinstatement, special forbearance, or loan modification options should be based on occupancy of the property as a principal residence. Loss mitigation disposition options may be

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considered if the property has been recently vacated due to one of the following, but not limited to, special circumstances:

- Employment transfer;
- Natural disaster; or
- Medical condition.

A servicer may make an exception for a non-occupant borrower who is seeking relief through a pre-foreclosure sale (PFS), or deed-in-lieu of foreclosure (DIL) when it is clear that the subject property was not purchased as a rental investment and the reason for vacancy was involuntary in nature. The servicer maintains the documents justifying such an exception in the servicing file.

#### **C. OTHER ELIGIBILITY FACTORS**

The following general eligibility restrictions apply in all cases:

- A borrower who has a pending/active bankruptcy may be considered for loss mitigation options; however, the servicer must fully document the borrowers pending plan with items such as, but not limited to, a copy of the proposed/confirmed trustee plan. In addition the servicer must obtain trustee approval prior to loss mitigation plan execution.
- If a servicing agreement, investor guidelines, or applicable law restricts or prohibits compliance with any steps outlined in this guide, the servicer must maintain evidence in the loan file documenting the nature of any deviation from the provided guidance.

#### **D. 90 DAY REVIEW**

The servicer evaluates each delinquent SFHGLP loan that it services when monthly installments are due and unpaid for 91 days, and considers all loss mitigation techniques to determine which, if any, are appropriate. To meet this evaluation requirement, the servicer's early involvement in the delinquency is demonstrated by contact with the borrower to gather sufficient information about the borrower's circumstances, intentions, and financial condition. This is especially important in light of the borrower's possible reluctance to discuss financial difficulties. While the servicer cannot be responsible if a borrower fails to respond to repeated contacts, the servicer must clearly document aggressive efforts to reach the borrower within 90 days of the default.

#### **E. CURABLE DEFAULT**

When the delinquency is curable and the borrower is committed to remaining in the home, the servicer should consider reinstatement options in this order:

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- Special forbearance;
- Loan modification;
- Special loan servicing modification.

**F. NON-CURABLE DEFAULT**

When the delinquency is not curable and the borrower is not committed to remaining in the home, the servicer should consider disposition options in this order:

- Pre-foreclosure sale;
- Deed-in-lieu of foreclosure.

**G. OPTION PRIORITY**

The following waterfall of loss mitigation workout alternatives must be adhered to:

1. Informal re Payment Plan
2. Special Forbearance
3. Loan Modification
4. Special Loan Servicing
5. Pre-Foreclosure Sale
6. Deed-In-Lieu

Whenever possible, the servicer should review the borrower for all loss mitigation options concurrently and if eligible, provide a decision based on the highest available option in the waterfall. In all cases, if a borrower is eligible for both a retention and a pre-foreclosure option, the retention option must be prioritized. If the borrowers accepts and then fails a retention option within the first 12 months, they can be offered a pre-foreclosure option based on this evaluation with no further need to document ability/ inability to pay.

In some cases, the waterfall of loss mitigation alternatives may warrant utilizing a disposition workout in-lieu of a retention workout based on the borrower's involuntary inability to pay.

**H. MONTHLY EVALUATION**

As long as the account remains delinquent, the servicer reevaluates the status of each loan each month following the 90-day review, and maintains documentation of the evaluations in its servicing or collection systems. The evaluation may be as simple as notes in the collection system that the borrower's payments under special forbearance are made as agreed. Reports generated by

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servicing systems that track repayment plans are adequate for documentation purposes.

## **I. EVALUATING THE BORROWERS FINANCIAL CONDITION**

For any loss mitigation option, the servicer must obtain detailed financial information from the borrower. The servicer may ask the borrower to give this information on a form of its choice that collects the data elements similar to those shown on the Request for Mortgage Assistance (RMA) Form:

[http://www.makinghomeaffordable.gov/get-started/request-Modification/Documents/RMA\\_english\\_03.30.2012\\_static.pdf](http://www.makinghomeaffordable.gov/get-started/request-Modification/Documents/RMA_english_03.30.2012_static.pdf).

If the borrower is cooperative, the information may be taken during a telephone interview if it is a complete picture of the borrower's financial information. Regardless of how the financial information is initially obtained, the servicer should request the borrower provide evidence to support the income with current paystubs and/or a profit and loss statement if the borrower is self-employed. In addition, the servicer should obtain a credit report to verify debts, and any other forms of verification the servicer deems appropriate.

Once a servicer has the borrower's complete financial information, it should analyze the borrower's current and future ability to meet the monthly mortgage obligation by estimating the borrower's assets and income as follows:

- Determine the borrower's current monthly net income making necessary adjustments for income fluctuations.
- Determine the borrower's normal monthly financial obligations including debt service on the mortgage and other credit obligations. Make adjustments for obligations due over the term of the proposed special forbearance agreement, or in the case of all other options, for a minimum of three months.
- Any child support or alimony obligations should be documented with a court order to determine the monthly obligation.
- Determine the borrowers current Housing to Income (HTI) percentage as well as their total Debt to Income (DTI).

All detailed financial information used to determine the borrower's financial capacity must be dated within 90 days from the date of receipt by the servicer. The servicer must communicate a decision to the borrower within 30 days of receiving a complete loss mitigation package.

The servicer must use good business judgment to ensure that the workout option selected reasonably reflects the borrower's ability to pay. A borrower with

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sufficient income or other assets should be asked to cure the debt through a retention option.

## **J. INCOME VERIFICATION**

Servicers shall document their process in determining each borrower's income scenario. When verifying income of a borrower, servicers should use good business judgment consistent with how they evaluate borrowers when modifying loans held in their own portfolio but at a minimum provide the following:

### **Wage or Salary income:**

Paystub(s) not more than 90 days old at time of submission to servicer, that covers at least 4 weeks of earned income.

Borrowers most recent W-2 or executed tax returns (can be waived if paystubs document at least 6 months YTD income).

### **Self-Employment Income:**

Most recent quarterly or YTD profit and loss statement along with a copy of the most recent executed Tax Return. Audited financial statements are not required.

### **Other/ Benefit Income:**

Bonus, commission, tips, overtime, etc. income must be documented with reliable third party evidence that such income is consistent and likely to continue.

Benefit income including but not limited to social security, disability, public assistance and Supplemental Nutrition Assistance Program (SNAP) benefits can be considered income for the purpose of loss mitigation. Benefit income must be documented through award letter, exhibits, or benefits statements from the provider or evidence of receipt to the borrower.

### **Non- Taxable Income:**

The servicer, at its discretion, may "gross up" income not subject to Federal Taxes. When grossing up any income, the servicer must document and support the amount of grossed up income and should use the same tax rate, but not exceeding 25 percent, for grossing up that the borrower used to calculate his/her tax from the previous year.

Excluding documentation from prior years, all financial information must be dated within 90 days from the date of receipt by the servicer.

## **K. NON BORROWER INCOME**

Income from a non-borrower who also occupies the property may be used to support payments under all loss mitigation options with the following restrictions:

- Occupancy must be fully verified;
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- Servicer should conduct a financial review of the entire household income and obligations to determine if there is sufficient income to pay back the arrearages;
- Servicers should consult their legal counsel to determine if the asset is eligible for loss mitigation since the non-borrower is not on the original mortgage;
- When a borrower uses a non-borrower household member's income in qualifying for a loss mitigation home retention option and that non-borrower household member will be included on the modified note, the non-borrower household member must sign all required loss mitigation documentation.

**L. DIVORCE / LEGAL SEPARATION**

In instances where borrowers are divorced or legally separated, a lender can exclude an obligated borrower when determining eligibility for all loss mitigation options, providing the court has deemed the borrower not responsible for the mortgage. The remaining obligated borrower must provide the fully executed legal document (ex. Divorce Decree) that shows the court's order, as well as an executed Quit Claim if necessary. If documented, the divorced/separated party does not need to sign any required documentation for the purposes of loss mitigation.

**M. INELIGIBLE BORROWER**

If the borrower is not eligible for any loss mitigation alternative based on information secured from the borrower in a telephone interview, the servicer should advise the borrower of the reason(s) and allow the borrower at least seven calendar days to submit additional information that might have an impact upon the servicer's evaluation. The servicer will retain the financial analysis and supporting documentation and make it available for compliance reviews. Collection actions may continue.

**N. COMBINED OPTION**

Loss mitigation options may be used alone or in combination to resolve an existing default. There are some limitations, however:

- Special forbearance may be combined with a loan modification. The combination of options is sequential, not simultaneous.
  - Pre-foreclosure sale may be combined with a deed-in-lieu provision in case the property does not sell within the time required.
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- A servicer may utilize a trial plan with a loan modification when there is any doubt about a borrower's long-term income stability. To reduce the risk of a workout failure, the borrower can demonstrate the ability to support the debt by making at least three monthly payments at the modified amount before executing a modification.

**O. FORECLOSURE**

The servicer must have considered all feasible loss mitigation options before initiating foreclosure. The servicer must document all of the options it considered and retain such information for Agency review. If the borrower has abandoned the property, loss mitigation home retention alternatives are not options before initiating the foreclosure.

**P. TIME TO INITIATE ACTION**

A servicer uses one of the loss mitigation options or initiates foreclosure within six months of the date of default. This requirement is considered satisfied if any of the following actions has occurred within the six-month period:

- The loan is brought current or paid off;
- The borrower executes a special forbearance agreement;
- The loan is modified;
- The borrower executes a pre-foreclosure sale agreement;
- The borrower executes a deed-in-lieu of foreclosure;
- The servicer initiates the first legal action to begin foreclosure.

**Q. SERVICER REPORTING**

The servicer reports these actions in the month they occur, or if after the monthly cut-off date, in the next reporting cycle using the appropriate EDI status code. See Appendices for a list of status codes.

**R. EXTENSION REQUESTS**

If the servicer initiated a special forbearance or loan modification, but is unable to complete it, the servicer may approve an extension to the timeframe to initiate foreclosure provided the loss mitigation option was begun prior to the timeframe that foreclosure was to be initiated. To qualify for the extension, the servicer must document evidence that it analyzed the borrower's complete financial situation and evaluated the appropriate loss mitigation options. In addition, the servicer reports the loss mitigation initiative using the appropriate EDI status code in the monthly default status report.

The servicer may approve an extension for completing a deed-in-lieu of foreclosure. If the servicer attempts a repayment plan (not special forbearance),

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the servicer may approve an extension before the timeframe to initiate foreclosure expires and explains why an extension is necessary.

**S. OPTION FAILURE**

If loss mitigation options fail, the servicer may either resume or initiate foreclosure or initiate another loss mitigation option. Failure occurs when:

- The borrower does not perform under the terms of a written special forbearance agreement for 60 days; or
- The borrower does not perform under the terms of a special forbearance (trial period) used as a condition of loan modification or special loan servicing approval for 30 days. Servicers must continue to perform outreach efforts to borrowers for other workout alternatives. Borrowers financial capacity will dictate whether a retention or disposition workout alternative is feasible.
- There is no signed contract of sale within 3 months of a pre-foreclosure sale agreement; or if there is a signed contract of sale, settlement has not occurred within 6 months of the agreement; or the borrower notifies the servicer of withdrawal from the agreement; or the servicer notifies the borrower in writing that it has terminated the agreement.

**T. DOCUMENTATION**

For each claim, the servicer must maintain evidence in its servicing notes and collection history systems of its compliance with loss mitigation guidelines as well as supporting documentation including all communications with any Agency office. The servicer's servicing notes and collection history systems also contain evidence of compliance with counseling and other actions on loans that do not result in a claim.

**U. SERVICING PLAN**

Under 7 C.F.R. §, the servicer must submit a servicing plan to the Agency when a loan is 90 days delinquent and a method other than foreclosure is approved to resolve the delinquency. The servicing plan must be submitted prior to implementing any action with the borrower. . For pre-foreclosure sales and deed-in-lieu of foreclosure alternatives, the servicer must submit the Disposition (PFS/DIL) Cost Benefit Analysis along with the servicing plan.

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## V. DELEGATED LOSS MITIGATION

**Effective August 1, 2016**, participating SFHGLP lenders begin processing formal loss mitigation servicing plans in accordance with [subject waiver](#), foregoing Agency concurrence granted by the authority under 7CFR 3555, Sec 3555.301(h). However, the Agency may revoke a lender's waiver at any time, upon notice and without appeal rights.

Under this delegation, servicers have the authority to review and decision all loss mitigation options provided for in this guide without the need for agency concurrence.

## W. OPTION CHECKLISTS

The checklists in Appendices 2-5 show the most important actions for each loss mitigation option. Their use is optional and need not be submitted with the servicing plan submitted to the Agency.

## 4 SPECIAL FORBEARANCE

A special forbearance agreement is a written plan that may temporarily reduce or suspend payments and/or gradually increase monthly payments in an amount sufficient to repay the arrearage for a short period. A special forbearance agreement may also involve payments for several months followed by a loan modification. The agreement provides the borrower with relief not typically afforded under an informal repayment agreement. Examples of provisions in a special forbearance agreement include a repayment term of four or more months; suspending or reducing payments for one or more months to allow the borrower to recover from the cause of default; or an agreement to allow the borrower to resume making full monthly payments while delaying repayment of the arrearage.

A special forbearance is a plan that involves one of the following:

- Full repayment: Monthly payments in an amount sufficient to repay the arrearage over time, typically less than or equal to six months
- Hardship or disaster forbearance: Reduced or suspended monthly payments while the borrower(s) resolves the hardship, such as unemployment, followed by an evaluation for other home preservation options if needed.

At no time should the maximum arrearage under a special forbearance plan exceed the equivalent of 12 months of principal, interest, taxes and insurance ("PITI").

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**A. LOAN ELIGIBILITY**

The loan is a minimum of 30 days delinquent but not more than 12 payments delinquent, and is not in foreclosure when a special forbearance agreement is executed. A loan that had previously been referred to foreclosure may be removed from foreclosure status after executing a special forbearance. The servicer suspends foreclosure, on advice of its legal counsel, subject to the borrower's performance under the terms of the special forbearance agreement, if the suspension is stated in writing in the agreement.

**B. PROPERTY ELIGIBILITY**

The servicer must conduct an inspection to verify that the property has no physical conditions that adversely affect either the borrower's continued use or ability to support the debt. Normally a simple curbside inspection is sufficient; however, a borrower will not be able to support payments under a special forbearance plan if the property is in such a deteriorated condition that repairs will drain the borrower's monthly resources. The servicer must use good business judgement to determine if an interior inspection should be utilized. The analysis of the borrower's income should consider obvious property maintenance expenses.

The use of good business judgment is imperative. If significant deferred maintenance is a contributing cause of the default, it may be appropriate to provide a period of mortgage forbearance during which specified repairs are completed at the borrower's expense. If the property is in extremely poor physical condition, a special forbearance plan that allows a reduction or suspension of payments without a requirement to repair the property may not offer a permanent solution.

**C. BORROWER ELIGIBILITY**

Special forbearance may be offered to a borrower who has recently experienced a verified loss of income or an increase in living expenses. Such a borrower should be the owner-occupant of the property securing the SFHGLP loan and committed to occupying the property as a primary residence during the term of the special forbearance agreement.

**D. FINANCIAL ANALYSIS**

The servicer's responsibility is to validate and document the borrower's capacity under the terms of the recommendation. The servicer determines that the borrower has the capacity to support the modified monthly payments and bring the loan current under the terms of a forbearance plan. The proposed repayment terms must be consistent with the borrower's ability to pay. The following

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documentation must be obtained in order to determine financial capacity of the borrower:

- SFHGLP Servicing Plan;
- Letter from borrower outlining involuntary inability to pay/hardship;
- Income Documentation as stated in the overview section;
- Credit Report;
- Detailed budget;
- Documentation of any other sources of income to be used in evaluation.

Excluding documentation from prior years, all financial information must be dated within 90 days from the date of receipt by the servicer. If the servicer's financial analysis determines that the borrower either does not, or will not, have the ability to resume full monthly payments in the near future, special forbearance should not be used. The servicer should then consider other loss mitigation options.

#### **E. UNEMPLOYMENT**

When it has been determined that the reason for default is unemployment and the borrower does not have any immediate opportunities for re-employment, SFHGLP extends additional latitude to servicers and holders to mitigate losses.

Servicers and holders now have the authority to enter into a forbearance agreement with a borrower who is unemployed or significantly underemployed and seeking re-employment at the time the borrower's financials are being analyzed by the servicer or holder. The term of this forbearance shall be the lesser of 12 months or a term that would not cause the dollar amount of the borrower's delinquency to exceed 12 months of the borrower's scheduled monthly mortgage payment (which includes taxes and insurance for those loans where such expenses are escrowed). The amount of the partial payment made, if any, by the borrower will be contingent upon the servicer's financial analysis of the borrower. As a condition of the forbearance agreement, the borrower must pursue employment during the term of the forbearance agreement. Additionally, the borrower must contact the servicer or holder if their employment status changes.

The servicer or holder is required to verify the borrower's employment status monthly and restructure the forbearance agreement or evaluate the borrower for another option, such as a loan modification, when the borrower's employment status changes. As with SFHGLP's standard forbearance agreement, all of the requirements apply to these Special Provisions.

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**F. COMBINING OPTIONS**

Special forbearance may either be used alone or be combined with a loan modification. For example, if a borrower is expected to recover from the cause of the default and resume making full monthly payments, but will not have adequate income to repay the arrearage, the servicer may establish a special forbearance agreement. Such an agreement allows the borrower to demonstrate recovery from the financial problem by making 3 payments (or 4 payments for imminent default) at the modified amount. Upon successful completion of the special forbearance payments, the delinquent amount is capitalized into the modified loan.

**G. DOCUMENTATION**

The borrower and servicer execute a written agreement that clearly defines the term, frequency of payments, and amounts due under the special forbearance plan. The agreement acknowledges previously missed mortgage payments and states that failure to comply with its terms can result in foreclosure. There is no maximum length for a special forbearance agreement and the servicer may allow as much time as is reasonable based on the borrower's repayment ability.

An acceptable agreement should:

- Provide the borrower with relief not available under an informal payment plan.
- Bring the loan current, unless it is combined with a mortgage loan modification.
- Not at any time allow the total arrearage amount to exceed the equivalent of 12 PITI payments.
- Not allow late fees to be charged while the borrower is performing under the terms of a special forbearance agreement.
- Permit allowable foreclosure costs and late fees accrued before the special forbearance agreement is executed to be included as part of the repayment schedule. However, such costs and late fees are collected only after payment of all principal, interest, and escrow advances. The loan is never considered delinquent only because the borrower has not paid late fees or other foreclosure costs.

**H. REVIEW AND RENEGOTIATION**

The servicer reviews the status of a special forbearance plan each month and takes appropriate action if the borrower is not complying with the terms of the plan. A plan may be renegotiated if the borrower's financial circumstances

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change; however, under a renegotiated plan, the loan should not be more than 12 months delinquent.

## 5 LOAN MODIFICATION

A loan modification is a permanent change in one or more of the terms of a loan that results in a payment the borrower can afford and allows the loan to be brought current. Loan modifications may include a change in the interest rate, even below the market rate if necessary and should focus on payment reduction as a primary goal. Loan modifications may include capitalization of all or a portion of the arrearage (PITI) and/or reamortization of the balance due. Capitalization may also include foreclosure fees and costs that are associated with the current foreclosure action, deficits in tax and insurance accounts, past due annual fees imposed by the servicer, but not late charges or servicers fees.

A modification may be appropriate for a borrower who has experienced a permanent or long-term reduction in income or an increase in expenses, or who has recovered from the cause of the default but does not have sufficient income to repay the arrearage through a repayment plan. To qualify for a modification, the borrower has a documented ability to support the monthly mortgage debt after the terms of the loan are modified.

### A. LOAN ELIGIBILITY

To modify a defaulted note under loss mitigation:

- The loan is not in foreclosure at the time the modification is executed; however, a loan removed from foreclosure status may be modified.
- The default is due to a verified loss of income or increase in expenses.

**Note: The servicer may, at its discretion, modify a loan that is not delinquent but is in imminent danger of default; i.e. will soon become delinquent due to known circumstances.**

### B. PROPERTY ELIGIBILITY

While the modification option does not have a loan-to-value restriction, and an appraisal is not required, the servicer must conduct an inspection to verify that the property has no physical conditions that adversely impact the borrower's continued use or ability to support the debt. Normally a simple curbside inspection is sufficient; however, a borrower will not be able to support payments under a loan modification plan if the property is in such a deteriorated condition that repairs will drain the borrower's monthly resources. The servicer must use good business judgement to determine if an interior inspection should be utilized, and if necessary, analysis of the borrower's finances should consider anticipated property maintenance expenses. If the property is in extremely poor physical

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condition, a modification may not offer a resolution of the default. Costs to complete needed repairs may not be capitalized as part of a modification agreement, and the borrower may not receive any cash as a result of the modification.

#### **C. BORROWER ELIGIBILITY**

The current borrower(s) on the existing Rural Development (RD) guaranteed single-family mortgage must be identical to the borrower(s) on the modified mortgage.

The borrower(s) must be facing imminent default or be in default. A borrower is in default if that borrower is 30 days or more past due on the mortgage obligation. A borrower is “facing imminent default” if that borrower is current or less than 30 days past due on the mortgage obligation and is experiencing a significant reduction in income or some other hardship that will prevent him or her from making the next required payment on the mortgage during the month in which it is due.

The Servicer should not require the borrower to contribute cash to pay down arrearages prior to a loan modification.

The borrower must be the owner-occupant who is committed to occupying the property as a primary residence. A modification must not be used to bring a loan current before a sale or assumption.

#### **D. FINANCIAL ANALYSIS**

To be considered for a loan modification, the borrower(s) must provide detailed financial information to the Servicer.

Servicers may collect financial information from borrowers either in writing or during a telephone interview. Regardless of how the borrower’s financial information was secured, the Servicer must independently verify the financial information.

The following documentation must be obtained in order to determine financial capacity of the borrower:

- Documentation from borrower outlining their involuntary inability to pay/hardship;
  - Income documentation as stated in the overview section;
  - Credit Report.
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The credit report should only be used to validate monthly installment debt, revolving debt, and secondary mortgage debt. A borrower's credit score obtained from any credit repository will not be considered in determining whether a borrower is eligible for loss mitigation.

Questions relating to documentation requirements should be directed to the Customer Service Center at (866) 550-5887.

**1. UNDERWRITING GROSS MONTHLY INCOME**

Gross monthly income includes the following, with respect to the borrower and any co-borrower(s):

- The gross amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services;
- For self-employed borrowers, the net income from operation of a farm, business, or profession;
- Interest, dividends, and other net income of any kind from real or personal property (for example, investment income and rental income);
- Benefit income, including the full amount of periodic payments received from Social Security (may be grossed up to a maximum of 125% of non-taxable income) (including Social Security received by adults on behalf of minors or by minors intended for their own support), annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts; and
- Alimony and/or child support may be used to qualify, however, it is voluntary and if the income renders the borrower ineligible the servicer is allowed to remove and re-evaluate the borrower;
- Income received by the borrower that is reasonably likely to continue.

**2. UNDERWRITING BACK END TOTAL DEBT TO INCOME**

The Back-End ratio (total debt to income ratio) is the ratio of the borrower's total recurring monthly debts (such as the borrower's monthly mortgage payment (PITI), payments on all installment debts, monthly payments on all junior liens, alimony, child support, car lease payments, aggregate negative net rental income from all investment properties owned, and monthly mortgage payments for second homes) to the borrower's gross monthly income.

The servicer must validate all monthly installment debt, revolving debt, and secondary mortgage debt. This can be accomplished by pulling a credit report for each borrower or a joint report for married co-borrowers. The servicer must also

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consider any information obtained from the borrower orally or in writing concerning monthly obligations not reported on the credit file and document such obligations accordingly.

**E. FORECLOSURE**

If the foreclosure process has already begun, the Servicer should not proceed with the foreclosure action until the borrower has been evaluated for all loss mitigation options and, if eligible, an offer to participate in the modification has been made.

**F. MODIFICATION PURPOSE**

Mortgages modified under this guidance are required to have a lower monthly payment (PITI) than the unmodified payment (PITI).

**G. LIEN PRIORITY**

The servicer must ensure the first-lien status of the modified mortgage in compliance with any applicable state or Federal laws and regulations.

**H. ESCROWS**

Servicers are required to escrow for borrowers' real estate taxes and mortgage-related insurance payments.

**I. TRADITIONAL MODIFICATION WATERFALL**

The following apply to loan modifications:

- The modification results in a fixed-rate fully amortizing loan;
- The modified interest rate may not exceed the original note rate;
- The modification brings the loan current.

The servicer shall calculate the target payment as 31% of the verified gross monthly income. Loan Modification options shall be used in the following order to bring the borrowers mortgage payment (PITI) to as close as possible to the target payment.

1. Capitalize all delinquency. Capitalization may include foreclosure fees and costs that are associated with a current foreclosure action, deficits in tax and insurance accounts, past due annual fees imposed by the servicer, but not late charges or servicers fees.

2. Reduce interest rate to a level at or below the maximum allowable rate as defined by The Agency. If the maximum allowable interest rate has not been established by the Agency, the servicer should use the most recent Freddie Mac Weekly Primary Mortgage Market Survey (PMMS) rate for 30 year fixed rate mortgages plus 50 basis points rounded to the nearest one-eighth of one percent (0.125%).
3. If the target payment is unable to be achieved with rate reduction alone, the servicer shall extend the term in one month increments, up to a maximum of 360 months until one of the following is achieved.
  - a. The mortgage payment is at or below the target and the payment has been reduced a minimum of ten percent; or
  - b. The mortgage payment is at or below the target and the term has been extended to the cap of 360 months.
4. If the servicer has completed all steps of the traditional modification and the target payment is unable to be achieved, they may continue with Special Servicing Options.

The modified principal balance may exceed the loan's original principal balance.

The modified principal balance may exceed 100% loan-to-value.

The use of a trial payment to support the borrower's willingness and ability to pay is encouraged for a traditional modification, however, it is not required. If the servicer should determine a trial payment is the best course of action they should follow the trial period guidance provided below.

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## **J. SPECIAL SERVICING OPTIONS**

The servicer must exhaust all traditional waterfall options before considering Special Loan Servicing (SLS). When evaluating borrowers for SLS the following additional criteria apply.

- The pre modified PITIA payment must be greater than 31%;
- The borrower post modified back end DTI must be less than or equal to 55%.

If all traditional options have been considered and the borrowers meet the additional criteria the servicer may continue with the following steps to the modification waterfall.

1. In order to meet the target payment of 31% the term may be extended up to the maximum allowable by the investor but not to exceed 480 months.
2. If the targeted monthly mortgage payment still cannot be achieved, the servicer may consider a mortgage recovery advance (as outlined below) in addition to the term extension to achieve the monthly target payment.
3. If the servicer exhausted all steps of the waterfall and the target payment is not achieved, however, the borrowers payment (PITI) has been reduced by a minimum of ten percent, the servicer should offer the modification to the borrower(s).

If a borrower is found eligible using Special Servicing Options, a three month trial (four if imminent default) is required to be completed prior to executing a final modification.

In all cases, the servicer should adhere to specific investor loan modification requirements when it comes to rate reduction or term extension.

## **K. MORTGAGE RECOVERY ADVANCE**

The maximum amount of a Mortgage Recovery Advance is 30 percent of the unpaid principal balance at the time of default, which shall include any principal reduction needed to achieve the target monthly mortgage payment.

To file a claim for reimbursement of a mortgage recovery advance, the servicer must submit a claim to RD within 60 days of the advance being executed by the borrower through his or her signature on the promissory note. When filing the claim for reimbursement with RD, the servicer must submit the original promissory note and a copy of the filed mortgage or deed-of-trust. The servicer must also submit a summary of the amount of the funds advanced, including the monthly PITI and principal deferment (if applicable), and other

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account information indicating the borrower's arrearage before the advance. In addition, the servicer should supply the present status of the account as of the date of the advance; the name, address, and tax ID number for the servicer; and the name, address, and phone number of a contact person for the servicer who can answer questions about the reimbursement request.

The complete claim, including all supporting documents referred to above, must be submitted within 60 days of the execution of the mortgage recovery advance.

All required documentation must be submitted to the Customer Servicing Center for reimbursement. Please refer to the Documentation Requirements section of this guidance for address and contact information.

The servicer may file a claim for reimbursement of up to \$250 for a title search and/or recording fees in connection with the promissory note and mortgage or deed-of-trust. These claims are not part of the mortgage recovery advance and must be submitted in accordance with 7 CFR § 3555.354.

#### **I. MRA GUIDELINES**

No interest will accrue on the Mortgage Recovery Advance. The payment of the Mortgage Recovery Advance is not due until the earliest of (i) the maturity of the modified mortgage, (ii) the borrower transfers title to the property (by sale or by other voluntary or involuntary means), or (iii) a pay-off of the mortgage. Servicers may use HUD's Partial Claim documents for the Mortgage Recovery Advance promissory note and mortgage or deed of trust.

The promissory Note and mortgage or deed of trust should be made payable to the:

United States of America, acting through the Rural Housing Service (and its successors). The borrower must send payment directly to RD at:

USDA, Rural Development Guaranteed Loan  
Branch – FC 350  
P.O. Box 200011  
St. Louis, MO 63120-0011

Any notice given to RD should be sent to the attention of the Loss Claims Department at the Customer Servicing Center. Please refer to the Documentation Requirements section.

#### **L. TRIAL PAYMENT REQUIREMENTS**

Prior to modifying a loan using RD Special Loan Servicing, the servicer must have the borrower complete a trial period during which the borrower makes the monthly mortgage payment they would make under the modified mortgage.

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For borrowers who are in default when special loan servicing is initiated, the trial period must be three months in length. The servicer cannot modify the loan using special loan servicing unless the borrower makes all three reduced trial payments on time.

For borrowers facing imminent default when special loan servicing is initiated, the trial period must be four months in length. The servicer cannot modify the loan using special loan servicing unless the borrower makes all four reduced trial payments on time.

All trial payments must be made in the month in which they are due.

**M. DOCUMENTATION**

The servicer ensures that the modification documentation preserves the first lien status of the SFHGLP-guaranteed loan. The servicer will make a determination in accordance with state law as to whether it is necessary to record the modification agreement in order to maintain the first lien. Copies of executed, not recorded, modification agreements must be forwarded to the Agency.

**N. DISCLOSURES**

The servicer complies with any disclosure or notice requirements applicable under state or federal law.

**O. FAILURE**

If the loan becomes delinquent following modification, it shall be treated as a new default and serviced accordingly. Since the servicer maintains the first lien status of the loan subsequent to modification, any amount that is not in the first lien position is not guaranteed by SFHGLP and is not subject to a claim. If the servicer submits a claim, the Agency reserves the right to request documentation (legal or otherwise) establishing the loan's first lien status.

**P. SUBSEQUENT USE**

If a loan has been modified within the previous two years, re-default risk is presumed to increase following a subsequent modification. Before granting a modification in this circumstance, the servicer must validate the borrower has experienced a change in circumstances that led to a separate default or imminent default unrelated to the first. Any such decision must be documented and placed in the servicing file. A subsequent modification should be an unusual occurrence, and the cause of the second default should not be related to the original reason for default. In all cases, a borrower is only allowed one Special Loan Servicing modification during the life of the loan.

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**Q. LOAN NOTE GUARANTEE**

The terms of the SFHGLP Loan Note Guarantee (LNG) may change. The LNG may be extended to coincide with the terms of a loan modification that meets the eligibility criteria as noted in § 3555.303. Any loss on the modified loan is limited to the lesser of either 90 percent of the original loan amount, or the sum of the first 35 percent of the loss and 85 percent of the balance of the loss.

**R. SERVICER EDI REPORTING**

The servicer reports these actions in the month they occur, or if after the monthly cut-off date, in the next reporting cycle using the appropriate EDI status code. In addition, the servicer sends a copy of the executed loan modification to the appropriate Agency staff within 30 days of execution and no later than 60 days. The agreement should contain the following key data elements:

- Borrower and co-borrower name(s) and ID number(s);
- Effective reamortization date;
- Unpaid principal reamortized;
- Eligible interest and costs capitalized;
- Sum of reamortized principal and capitalized interest and costs;
- Interest rate;
- Maturity date.

**S. AGENCY ACTION**

The Agency staff processes the loan modification by means of the Guaranteed Loan System.

**7 PRE-FORECLOSURE SALE**

The pre-foreclosure sale (“PFS”) option allows a borrower in default to sell his or her home and use the sale proceeds to satisfy the mortgage debt even if the proceeds are less than the amount owed. This option is appropriate for a borrower whose financial situation requires the sale of the home, but who is unable to do so because the value of the property has declined to less than the amount owed on the mortgage.

The borrower makes a commitment to actively market the property for a period of at least three months, during which time the servicer delays foreclosure action. If the property does not sell, the borrower is encouraged to convey the property to the servicer through a deed-in-lieu of foreclosure.

A borrower wishing to use the PFS option submits a request to the servicer along with any financial information the servicer requires. The servicer obtains a

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recent market value appraisal and preliminary title report to determine the feasibility of the PFS. The servicer notifies the borrower whether or not the request is approved.

**A. LOAN ELIGIBILITY**

The loan is in default (delinquent more than 30 days) at the time the pre-foreclosure sale is closed. A servicer may exercise discretion to accept an application from a borrower who is facing imminent default, and if the loan will be in default by the time the pre-foreclosure sale is completed. The servicer documents this decision in the servicing file. Under no circumstances shall PFS be available to borrowers who have abandoned their mortgage obligation despite their continued ability to pay.

**B. BORROWER ELIGIBILITY**

The PFS option may be extended to a borrower who:

- is in default or facing imminent default due to a verified increase in living expenses or decrease in income;
- occupies the property as a primary residence (servicer must document occupancy status);
- Is not eligible for any available retention options.

In addition, borrowers who have failed to perform on an accepted loan modification using USDA guidance may be evaluated for a PFS option.

A non-occupant borrower may be reviewed for a PFS option if it is determined the vacancy was involuntary in nature, such as job loss, mandatory transfer, divorce, death, etc..

**C. BORROWERS APPLICATION**

A defaulted borrower or a borrower facing imminent default who expresses interest in a pre-foreclosure sale should be sent a copy of the servicer's PFS criteria. Additionally, the servicer is encouraged to proactively solicit participation by a borrower who is in default or facing imminent default on an SFHGLP first mortgage and who is unable to cure the default.

By signing and returning the application with the required financial information, the borrower should acknowledge receipt of housing counseling, and agree to:

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- List the property with a licensed real estate broker unrelated to the borrower (The listing agreement should include a specific cancellation clause in the event the terms of a sale are not acceptable.);
- Make a good faith effort to aggressively market the property;
- Perform all normal property maintenance and repairs until closing of the pre-foreclosure sale.

**D. PROPERTY VALUE**

The servicer obtains a standard market value appraisal from an appraiser who does not share any interest with the borrower or borrower's agent. The appraisal contains both "As Is" and "As Repaired" values for the property, and should be valid for six months. A copy of the appraisal is shared with the homeowner or sales agent, if requested. Appraisals or opinions of value provided by the borrower, or borrower's real estate agent are not acceptable. The servicer reviews the appraisal and satisfies itself that the opinion represents the fair market value of the subject property. The original list price of the property must reflect its fair market value. The cost of the appraisal is reimbursable in the loss claim.

**E. PROPERTY CONDITION**

Properties that have sustained serious damage (from fire, flood, earthquake, tornado, etc.) should not be considered for PFS if the cost of repair exceeds ten percent of the "As Repaired" appraised value until all insurance claims have been resolved. The servicer may exercise discretion to accept or reject a damaged property when the repair costs are less than the ten percent threshold, but should document the decision in the servicing file.

Prior to servicing plan submission, servicers must ensure that hazard insurance claims involving property damage are filed and settled expeditiously. All repairs and replacements using the insurance proceeds must be planned, performed and inspected in accordance with Agency construction requirements and procedures.

**F. CONDITION OF TITLE**

The property has marketable title. The servicer obtains a title search or preliminary title report to verify that the title is not impaired either with unresolvable title problems or with junior liens that cannot be discharged. If the servicer determines that junior liens and other title issues can be resolved, the borrower's PFS application may be approved and resolution of the title issues can be pursued concurrent with the marketing effort.

**G. FINANCIAL / PROPERTY ANALYSIS**

The servicer determines the borrower's present and anticipated financial condition.

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The servicer projects the borrower's monthly income and uses good business judgment to determine that the borrower is unable to support the mortgage debt. The servicer may continue with Pre-Foreclosure options, even if the debt is affordable, provided the reason for default requires the borrower to relocate.

The following documentation must be obtained and/or completed in order to determine financial capacity of the borrower:

- SFHGLP Servicing Plan;
- Letter from borrower outlining involuntary inability to pay/hardship;
- Income documentation as stated in the overview section;
- Credit Report;
- Detailed budget.

If the borrower has been offered a loss mitigation solution based on full documentation in the last 12 months, the servicer can determine the borrower's ability/inability to support the debt based on the previous evaluation without obtaining new documentation.

The following documentation pertaining to the subject property must be obtained:

- Appraisal;
- Listing Agreement;
- Sales Contract (if applicable);
- HUD-1 Settlement;
- Title Report;
- All Pre-Foreclosure Sale workouts must be accompanied by the "Disposition (PFS/DIL) Cost Benefit Analysis" (Appendix #7). Appendix #7 is an example of the analysis that must be completed in order for a Pre-Foreclosure Sale workout can be considered. Servicers may generate their own version of Appendix 7 in-lieu of utilizing the example provided.

## **H. TIMING OF PFS ACTIONS**

The servicer decides to allow a PFS, commences foreclosure, or initiates another loss mitigation option within six months of the date of default, unless the default is cured earlier.

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If the PFS follows a failed special forbearance agreement, the PFS, foreclosure or other option should be initiated within 90 days of the failure.

**I. DURATION OF THE PFS PERIOD**

The pre-foreclosure sale period should be 90 days from the date of approval. The servicer should review the marketing efforts with the borrower each month. After 90 days have passed without a scheduled closing, the servicer should discuss the likelihood of a sale with the real estate broker and make a determination to either end the pre-foreclosure sale period, approve a deed-in-lieu or, if a sale is likely, extend it for an additional 30 days. Documentation of this decision is retained in the servicing notes.

If the property is under contract at the end of the marketing period, the servicer may extend the PFS period for 60 days, not to exceed a total of 6 months.

The pre-foreclosure option may also be extended to a borrower that has not received prior approval to participate in the PFS program. A sales contract offer must be validated by an appraisal that is conducted by an appraiser not party to the transaction. The appraisal must support the “as is” property value independent of the current offer.

**J. OTHER SERVICER ACTIONS**

The servicer is responsible for inspection, protection, and preservation of the property between the 45th day of default and the date it approves the borrower’s PFS request. Funds spent for preservation and protection may be reimbursed.

The servicer must provide any other documents deemed pertinent to describe all servicing actions taken.

**K. EARLY TERMINATION**

The borrower’s participation in the PFS option may be terminated at the servicer’s discretion, for any of the following reasons:

- Unresolvable title problems;
- Determination that the borrower is not acting in good faith to market the property;
- Voluntary withdrawal by the borrower.

**L. FAILURE**

If a closing of an approved PFS has not occurred within 90 days of the expiration of the pre-foreclosure sale period (or 6 months of the date of default, whichever is later), the servicer should automatically evaluate the borrower for a deed-in-lieu, and if not eligible, commence foreclosure. If the borrower’s financial condition has improved significantly to the point that a cure of the

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delinquency is a viable option, the servicer may undertake a special forbearance agreement or a loan modification. However, the servicer should fully justify this decision in the claim review file, and approve the action within the 90-day period.



**M. BORROWER CONSIDERATION**

A borrower who successfully sells the property securing the loan using the PFS option is relieved of the mortgage obligation. The borrower shall not be pursued for deficiency judgments by either the servicer or the Agency.

**N. NET SALES PROCEEDS**

The servicer may approve a sales contract or listing price in which the net sales proceeds are at least 84 percent of the home's "As-Is" appraised value. "Net Sales Proceeds" is defined as the contract/ listing price less:

- sales commission (usually 6% or less);
- Local/state transfer tax stamps and other customary closing costs including the seller's costs for a title search and title insurance;
- Up to \$2,500 may be used from sales proceeds for discharge of liens or encumbrances;
- Allowable seller concessions must not exceed 3% of the sales price. In cases where Rural Development is guaranteeing a new loan, the seller concessions will be limited to 1% of the purchaser's new mortgage loan amount.

Examples of settlement costs which may not be included in the net sales proceeds calculation are:

- Tax service fees and other property transfer costs normally paid by the buyer;
- Home warranty fees;
- Repairs not stipulated in the appraisal;
- Survey costs;
- Lawyer's fees for representing the seller (apart from conducting the settlement or review of documents);
- Purchaser's down payment, escrow impounds and interim interest;
- Purchaser's upfront/monthly mortgage insurance premiums;
- Servicer's Title Insurance fee.

There can be no hidden terms or special understandings between any of the parties involved in the transaction; i.e., the buyer, seller, appraiser, sales agent, closing agent, and servicer.

Because time is of the essence when the PFS option is exercised, the servicer should review the signed Contract for Sale (if available) within 5 business days. If no contract is available, the servicer should approve the listing price of the

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property with the understanding that if an offer is made that meets the terms listed above, the transaction shall be pre-approved with little additional review required. The transaction is an outright sale of the premises. No sale by assumption may be considered, regardless of provisions for release of liability.

**O. CLOSING AND POST RESPONSIBILITIES**

Before the transaction closes, the servicer will provide the closing agent with a list of all amounts payable out of the sale proceeds. Before giving final approval for a closing, the servicer reviews the HUD-1 to ensure that it complies with earlier closing cost estimates.

A pre-foreclosure sale is reported to national credit bureaus as a “short sale.” The servicer is responsible for filing any applicable forms with the IRS and reporting any discharge of indebtedness, in accordance with the Internal Revenue Code.

**P. FILING A CLAIM**

The loss claim under the loan note guarantee is submitted to the Agency within 45 days after the date of the PFS closing. The Agency will reimburse the servicer for reasonable and customary costs of the appraisal, title search (if not included in the settlement statement), the allowable percentage of legal fees for a foreclosure postponed pending completion of PFS, if applicable, and reasonable costs of preservation and protection. Disbursements for taxes, assessments, hazard insurance, and other allowable items payable before the date of the PFS closing are also reimbursable. The Agency will not pay costs related to the property incurred after the closing date.

In order for the servicer to receive a loss mitigation incentive of \$1,000 for successfully closing a pre-foreclosure sale, the documentation requirements outlined above must be met.

**8 DEED-IN-LIEU OF FORECLOSURE (DIL)**

Deed-in-lieu of foreclosure (DIL) is a disposition option in which a borrower voluntarily deeds the collateral property to the servicer in exchange for a release from all obligations under the mortgage. Although the borrower loses the property, a DIL is usually preferable to foreclosure because the costs and emotional trauma of foreclosure are reduced. In addition, a DIL is generally less damaging than foreclosure to a borrower’s ability to obtain credit in the future. SFHGLP prefers a DIL because it avoids the time and expense of a legal foreclosure action, and the property is generally in better physical condition at acquisition due to the cooperative nature of the transaction.

Unlike a legal foreclosure however, the servicer’s acquisition of the property by a DIL does not extinguish junior liens or terminate tenancies. Therefore, the

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servicer has a responsibility to determine that the condition of the property and the title meets minimum standards. The most significant is that the servicer enters into a written agreement with the borrower, stating the specific actions the borrower will perform in order to take advantage of this option.

**A. LOAN DEFAULT**

Before accepting the deed conveying the property, the servicer should document that the loan is in default (delinquent more than 30 days), and the cause of the default is incurable. A servicer must request Agency prior approval to enter into a DIL agreement with a borrower whose loan is current but who is facing imminent default, and should document the decision in the servicing file. In such a case, the loan is in default at the time that the DIL is recorded.

A qualified property should first be offered for sale through the PFS program. A servicer who elects to accept a DIL without attempting a PFS must receive prior Agency approval.

Under no circumstances shall a DIL be available to a borrower who has abandoned the mortgage obligation despite the continued ability to pay.

**B. BORROWER QUALIFICATIONS**

The DIL option may be extended to a borrower who is unable to continue to support the mortgage debt and who occupies the property as a primary residence.

A non-occupant borrower may be reviewed for a DIL option if it is determined the vacancy was involuntary in nature, such as job loss, mandatory transfer, divorce, death, etc..

A DIL may not be considered if a deficiency judgment will be pursued against the borrower.

**C. FINANCIAL AND PROPERTY ANALYSIS**

The servicer determines the borrower's financial condition. The servicer projects the borrower's monthly income for a minimum of three months and uses good business judgment to determine if the borrower has the capacity to support the mortgage debt.

The following documentation must be obtained and/or completed in order to determine financial capacity of the borrower:

- SFHGLP Servicing Plan;
  - Letter from borrower outlining involuntary inability to pay/hardship;
  - Pay-Stub covering a minimum of thirty days or four weeks of earnings;
  - Credit Report;
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- Detailed budget;
- Title Report.

For self-employed borrowers the following documentation is required:

- Year to date profit and loss statement;
- Prior year signed tax return.

If the borrower has been offered a loss mitigation solution based on full documentation in the last 12 months, the servicer can determine the borrower's ability/inability to support the debt based on the previous evaluation without obtaining new documentation.

The following documentation must be obtained pertaining to the subject property:

- Appraisal

#### **D. CONDITION OF THE PROPERTY AND TITLE**

Properties that have sustained serious damage (from fire, flood, earthquake, tornado, or other man made or natural disasters.) should not be considered for DIL if the cost of repair exceeds 10 percent of the "As Repaired" appraised value or poses an environmental or health risk. If the cost to repair the subject property exceeds 10%, Agency concurrence is required.

The servicer may exercise discretion to accept or reject a damaged property when the repair costs are less than the 10 percent threshold, but should document the decision in the servicing file.

Prior to servicing plan submission servicers must ensure that hazard insurance claims involving property damage are filed and settled expeditiously. All repairs and replacements using the insurance proceeds must be planned, performed and inspected in accordance with Agency construction requirements and procedures.

The servicer must obtain a complete title search and be able to obtain good and marketable title to the property. The servicer obtains a title search or preliminary title report to verify that the title is not impaired either with unresolvable title problems or with junior liens that cannot be discharged. In all cases, all junior liens or issues with title must be resolved PRIOR to sending the DIL application for approval.

#### **E. DOCUMENTATION**

A written DIL agreement is executed by the borrower and servicer and contains all of the conditions under which the deed will be accepted, such as:

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- Certification that the borrower does not own any other property subject to a mortgage;
- Specific transfer date;
- Notification that there may be income tax consequences as a result of the DIL;
- Acknowledgment that borrowers who comply with all of the requirements of the agreement shall not be pursued for deficiency judgments;
- A statement describing the general physical condition in which the property will be conveyed demonstrating clean and marketable condition;
- Agreement that the borrower will convey the property vacant and free of personal property unless the servicer has approved occupied conveyance;
- Itemization of the keys, built-in fixtures and equipment to be delivered to the servicer on or before the transfer date;
- Borrower's agreement to provide evidence that certain utilities, assessments and homeowner's association dues are paid in full to the transfer date unless otherwise agreed to by the parties;
- All Deed-In-Lieu of foreclosure workouts must be accompanied by the "Disposition (PFS/DIL) Cost Benefit Analysis" (Appendix #7). Appendix #7 is an example of the analysis that must be completed in order for a Deed-In-Lieu workout to be considered. Servicers may generate their own version of Appendix 7 in-lieu of utilizing the example provided.

The servicer is responsible for ensuring that the DIL documentation is in compliance with all applicable laws and regulations.

#### **F. CONVEYANCE**

A special warranty deed is used to convey the property. The original credit instrument is canceled and surrendered to the borrower, indicating that the debt has been satisfied. The servicer records the satisfaction of lien and the deed in a timely and prudent manner.

#### **G. TIMING**

A DIL is completed or foreclosure initiated within 6 months of the date of default unless the servicer obtained an extension by first trying another loss mitigation option or has received an extension approved by the Agency before the 6-month period expires.

If the DIL follows a failed special forbearance agreement or pre-foreclosure sale, the DIL should be completed or foreclosure initiated within 90 days of the failure. If the DIL follows any other option, it is completed or foreclosure initiated within 9 months of the date of default.

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**H.           SERVICER REPORTING**

The DIL is reported to credit bureaus. The servicer is responsible for filing any applicable forms with the IRS and reporting any discharge of indebtedness, in accordance with the Internal Revenue Code.

**I.           BORROWER CONSIDERATION**

A borrower who successfully conveys the property securing the loan with a deed-in-lieu of foreclosure is relieved of his debt. The borrower shall not be pursued for deficiency judgments by either the servicer or the Agency.

**J.           FILING THE CLAIM**

As with other loss claims, the servicer is expected to follow established claim instructions. The Agency will reimburse the servicer for reasonable and customary costs of the appraisal, title search, allowable legal fees, and reasonable costs of preservation and protection. Disbursements for taxes, assessments, hazard insurance, and other allowable items payable before the REO settlement date are also reimbursable. The Agency will not pay costs related to the property that are incurred after the REO settlement date.

In order for the servicer to receive a loss mitigation incentive of \$250 for successfully closing a deed-in-lieu of foreclosure, the documentation requirements outlined above must be met.

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<b>Part A. Servicer Information</b>			
Servicer/ Holder:		Preparer:	Date:
Address:		Phone No.:	Fax No.:
City:		State:	Zip Code:
<b>Part B. Loan Information</b>			
Borrower:		Co-Borrower:	Servicer Loan No.:
Borrower SSN:		Co-Borrower SSN:	Loan Origination Date:
DDLPI:	UPB: \$	Mo. Payment: \$	Total PITI Arrearage \$
<b>Part C. Property Information</b>			
Street Address:			
City:		State:	Zip Code:
Property Condition:	<input type="checkbox"/> Good	<input type="checkbox"/> Fair	<input type="checkbox"/> Poor
Occupancy Status:	<input type="checkbox"/> Owner Occupied	<input type="checkbox"/> Tenant Occupied	<input type="checkbox"/> Vacant
Is the Property Listed for Sale?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
List Price: \$	Days on Market:	Real Estate Agent:	Agent's Phone No.:
<b>Part D. Financial Information</b>			
Reason for Default:			
Monthly Net Income: \$	Monthly Expenses: \$	Mo. Surplus Income: \$	Liquid Assets: \$
Comments:			
(Continue on reverse if necessary)			
<b>Part E. Property Valuation</b>			
Valuation Date:	<input type="checkbox"/> Inspection	<input type="checkbox"/> Appraisal	<input type="checkbox"/> BPO
As Is Value: \$	As Repaired Value: \$	Estimated Cost of Repairs: \$	
<b>Part F. Workout Recommendation</b>			
<input type="checkbox"/> Special <input type="checkbox"/> Forbearance	<input type="checkbox"/> Modification	<input type="checkbox"/> Pre-Foreclosure Sale	<input type="checkbox"/> Deed-In-Lieu
Outstanding Fees: \$	Capitalized Amount : \$	List Price : \$	Foreclosure Initiation Date:
Total Arrearage Amt: \$	New Mo Payment:: \$	List Date:	Est. Foreclosure Sale Date:
Agreement Term (mos.):	Old Interest Rate: New Interest Rate:	Marketing Period (days):	Fees & Costs to Date: \$
Mo. Pmt Amount: \$	Maturity Date:	Commission %:	
	Junior Lien Amount: \$	MLS Listing (Y/N)?:	
	Foreclosure Status:	Borrower Contribution: \$	
	Income/Expense Ratio:		

<b>Special Loan Servicing</b>				
<b>Part A. Servicer Information</b>				
Servicer/Holder:			Date:	
Preparer:		E-Mail Address:		
Address:		Phone No:	Fax No.:	
City:		State:	Zip Code:	
<b>Part B. Loan Information</b>				
Borrower:		Co-Borrower:	Servicer Loan No.:	
Borrower SSN:		Borrower ID: (Unique USDA ID -Not SSN)	Loan Origination Date:	
DDLPI:	UPB:	Current Monthly Payment:	Foreclosure Fees And Costs:	
	\$	\$	\$	
Total Principal/ Interest Arrearage: \$	Total Tax Arrearage: \$	Total Insurance Arrearage: \$	Total PITI Arrearage: \$	
<b>Part C. Property Information</b>				
Street Address:				
City:		State:	Zip Code:	
Property Condition: Select		Occupancy Status: Select	Is the Property Listed for Sale? Select	
List Price: \$	Days on Market:	Real Estate Agent:	Agent's Phone No.:	
<b>Part D. Financial Information</b>				
Reason for Default:				
Borrower Monthly Gross Income: \$	Co-Borrower Monthly Gross Income: \$	Recurring Monthly Expenses: \$	Mo. Surplus Income: \$	Liquid Assets: \$
<b>Part E. Workout Recommendation</b>				
Proposed Monthly Payment: \$		1. Maximum Recovery Advance (MRA): 30% of Unpaid Principal Bal At Default: \$		
Old Interest Rate:		2. Total PITI Arrearage ( =/< 12 months PITI): \$		
New Interest Rate:		3. Foreclosure Fees And Costs: \$		
New Maturity Date:		4. Maximum Principal Deferment (line 1, less lines 2 and 3): \$		
Junior Lien Amount: \$		5. Proposed Principal Deferment ( =/< Line 4): \$		
Foreclosure Status: Select		6. Proposed MRA (sum of Lines 2,3 & 5) \$		
Capitalized Amount: \$		Does The Borrower Qualify For Traditional Servicing: Select		
Housing Ratio %:		Was An Escrow Analysis Performed? Select		

Total Debt Ratio %:	Has Borrower Met With A HUD Counselor? Select
Comments: (Continue on separate page if necessary)	

## SPECIAL FORBEARANCE CHECKLIST

Loan Number:	Borrower:	Date:
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• Issue	Verification (Date, Amount, Source of Information etc.)
Has the borrower experienced a verified loss of income or increase in living expenses?	
Is the borrower an owner-occupant?	
Did the borrower receive the <u>How To Avoid Foreclosure</u> brochure?	
Will the loan be more than 90 and less than 365 days delinquent on the effective date of the agreement? (Show number of days)	
Did the income analysis to determine the borrower's ability to repay the debt include:	
a financial statement provided by the borrower?	
a credit report?	
income/expense verifications?	
evidence the borrower can support the payment schedule?	
Show the borrower's income percentage.	
Has an inspection determined that the property has no adverse conditions affecting continued occupancy?	
Does the written agreement executed by the borrower:	
clearly define the terms and frequency of repayment?	
offer relief not available through a normal repayment plan?	
state that failure to comply may result in foreclosure?	
limit the total default to 12 months or less?	
If the special forbearance agreement culminates in a modification, show the proposed date of that action.	

## LOAN MODIFICATION CHECKLIST

Loan Number:	Borrower:	Date:
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<b>Issue</b>	<b>Verification</b> (Date, Amount, Source of Information etc.)
Has the borrower experienced a verified loss of income or increase in living expenses?	
Does the borrower have a commitment to continue to occupy the property as his or her primary residence?	
Did the borrower receive the How To Avoid Foreclosure brochure?	
Will the loan be more than 90 days delinquent on the date of execution and funding? (Show number of days.)	
If this loan had a prior modification within the past two years, justify the decision to modify now.	
Did the surplus income analysis to determine the borrower's ability to repay the debt include:	
a financial statement provided by the borrower?	
a credit report?	
income/expense verifications?	
evidence of the borrower's ability to pay for at least 3 months?	
What is the borrower's surplus income percentage?	
Reason why the default cannot be cured through special forbearance?	
Has a title search established first lien status of the modified loan?	
Will release of junior liens be required?	
Will title endorsement be required?	
Has an inspection determined that the property has no adverse conditions affecting continued occupancy?	
Does the written modification agreement executed by the borrower:	
include all advances necessary to cure the delinquency of the principal, interest, taxes, insurance and foreclosure fees and costs?	
exclude administrative costs?	

## PRE-FORECLOSURE SALE CHECKLIST

Loan Number:	Borrower:	Date:
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<b>Issue</b>	<b>Verification</b> (Date, Amount, Source of Information etc.)
Has the borrower experienced an involuntary reduction in income or increase in living expenses?	
Does the borrower occupy the property as his or her primary residence? If not, explain.	
Will the loan be at least 30 days delinquent when the PFS closes? (Show number of days.)	
Does an appraisal completed within the past 6 months show that:	
the AS-IS value is less than the loan amount ? (show Value)	
sale proceeds will result in a loss of more than \$1,000?	
the property is not seriously damaged?	
Has a title search been obtained indicating marketable title?	
Did the surplus income analysis to determine the borrower's inability to repay the debt include:	
a financial statement provided by the borrower?	
a credit report?	
income/expense verifications?	
the borrower's surplus income percentage? (Show percentage.)	
The PFS agreement, executed by the borrower shows:	
the end date for marketing is?	
minimum acceptable net proceeds are?	
Do Net Sale Proceeds equal or exceed 84 percent of As-Is Value? (Show percentage)	



## DEED-IN-LIEU OF FORECLOSURE CHECKLIST

Loan Number:	Borrower:	Date:
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<b>Issue</b>	<b>Verification</b> (Date, Amount, Source of Information etc.)
Has the borrower experienced a verified loss of income or an unusually large and unforeseen increase in living expenses?	
Does the borrower occupy the property as his or her primary residence? If not, explain.	
Will the loan be at least 30 days delinquent when the special warranty deed is accepted?	
Did the borrower receive the HUD brochure, <u>How To Avoid Foreclosure?</u>	
A recent appraisal indicating the AS IS property value as?	
If any portion of the property is rented has there been an approved occupied conveyance?	
Has a title search been obtained showing good and marketable title?	
Does the surplus income analysis used to determine the borrower's inability to repay the debt include:	
a financial statement provided by the borrower?	
credit report?	
income/expense verifications?	
the borrower's surplus income? (show dollars and percentage)	Surplus \$ _____ %
Does a written DIL agreement, executed by the borrower:	
require the property to be vacant and free of personal property at conveyance?	
convey clear title free of junior liens?	
require the borrower to pay utility bills to the date of conveyance?	
require the borrower to pay Homeowner's Association dues or other assessments?	
advise the borrower to obtain the advice of a tax consultant?	

## Disposition (PFS/DIL) Cost Benefit Analysis (Example)

This worksheet is being provided to demonstrate cost savings to the Government, as described under 7 CFR 3555.305. Voluntary liquidation methods must demonstrate the expected cost to the Government to be the same as or less than the cost of foreclosure. Other methods of liquidation must demonstrate how the proposal will result in savings to the Government. These options are appropriate for borrowers who have experienced a verified, involuntary inability to meet their mortgage obligation. Borrowers that have abandoned their mortgage obligation or strategically defaulted may not be eligible. For further eligibility clarification, please refer to the "Loss Mitigation Guide." Failure to comply with Agency Regulation, Policies and Guidance may result in a reduction or denial of any future Loss Claim. If you need further assistance, please contact the Centralized Servicing Center at 1-866-550-5887.

Voluntary/Other Liquidation Method		Foreclosure Method	
Current Market Value	\$180,000.00	Current Market Value	\$180,000.00
<sup>1</sup> Gross Sales Price	\$172,500.00	<sup>1</sup> Estimated Liquidation Value	\$151,200.00
<sup>2</sup> Net Sales Proceeds	\$157,482.63		
<sup>3</sup> Actual Net Sales Price %	91.294%		
Unpaid Principal Balance	\$203,325.62	Unpaid Principal Balance	\$203,325.62
Interest to Settlement Date	\$5,622.79	Interest to FC Sale Date	\$6,401.16
Escrow Shortage	\$900.00	Escrow Shortage	\$1,100.00
FC Cost	\$1,513.25	FC Cost	\$2,731.55
Other Cost	\$129.13	Other Cost	\$129.13
<b>Total Debt</b>	<b>\$211,490.79</b>	<sup>2</sup> Estimated REO Marketing Cost	\$22,604.40
Less Net Sales Proceeds	\$157,482.63	<b>Total Debt</b>	<b>\$236,291.86</b>
<b>Total Estimated Loss Claim</b>	<b>\$54,008.16</b>	Less Estimated Liquidation Value	\$151,200.00
		<b>Total Estimated Loss Claim</b>	<b>\$85,091.86</b>
<sup>1</sup> If no offer is available enter Market Value in lieu of Gross Sales Price.		<sup>1</sup> Equal to 84% of the Current Market Value	
<sup>2</sup> If no offer is available reduce Market Value by Management Acquisition Factor (14.95%) and enter in lieu of Net Sales Proceeds.			
<sup>3</sup> The result of the Net Sale Price divided by the Current Market Value			
		<sup>2</sup> Multiply Estimated Liquidation Value by Management Acquisition Factor (14.95%)	
<b>Cost Savings to the Government:</b>		<b>\$31,083.70</b>	

**STATUS OF MORTGAGE CODES**

Value Name	EDI Code Value
<b>Account Delinquent</b>	<b>42</b>
<b>Forbearance</b>	<b>9 &amp; 12</b>
<b>Modification Pending</b>	<b>28</b>
Voluntary Liquidation Pending	
<b>Deed-in-Lieu Pending</b>	<b>44</b>
<b>Forced Liquidation Pending</b>	<b>43</b>
Liquidation Complete	30
<b>Bankruptcy Filed</b>	<b>59, 65, 66, 67</b>
Bankruptcy Reorganization in Effect	
Account Reinstated and Current	
1980-81 Brought Current (For display of history only on MA50; cannot be entered)	
Real Estate Owned	45 & 47
<b>Account Reported Delinquent on 203 Quarterly Status Report (For display only on MA50)</b>	
Account brought current with 203 Quarterly Status Report (For display only on MA50)	
Account brought current with automatic Bring Loans Current process (For display only on MA50)	
Loss Claim Submitted	11

- *Codes in Bold are considered delinquent. Codes 26, 31, & 35 are post liquidation of the account by the servicer and are not counted as delinquent loans.*



**ATTACHMENT 18-B  
ACCEPTABLE STATE FORECLOSURE TIME FRAMES**

State	Typical Security Document	Foreclosure Method Reasonable Diligence Time Frames In Months (Days) <sup>1</sup> – Effective 01/01/2016		First Legal Action to Commence (Initiation) of Foreclosure
		Non-judicial	Judicial	
Alabama	Mortgage	6 (180)		Publication
Alaska	Deed of Trust	10 (2300)		Recording of Notice of Default
Arizona	Deed of Trust	6 (180)		Recording of Notice of Sale
Arkansas	Deed of Trust	11 (330)		Recording of Notice of Default
California	Deed of Trust	12 (365)		Recording of Notice of Default
Colorado	Deed of Trust	8(240)		Filing of Foreclosure Docs with Public Trustee
Connecticut	Mortgage		21 (630)	Delivery of Complaint to Sheriff
Delaware	Mortgage		26 (780)	Complaint Filed
Florida	Mortgage		25 (750)	Complaint Filed
Georgia	Security Deed	6 (180)		Publication
Guam	Mortgage	11 (330)		Posting and Publishing of Notice of Sale
Hawaii	Mortgage	6(180)		Publication of Notice of Intent to Foreclose
	Mortgage		30(900)	Publication of Notice of Intent to Foreclose
Idaho	Deed of Trust	13 (365)		Recording of Notice of Default
Illinois	Mortgage		17 (510)	Complaint Filed
Indiana	Mortgage		13 (390)	Complaint Filed
Iowa	Mortgage		17 (510)	Petition Filed
	Deed of Trust	9 (270)		Delivering Notice to Clerk
Kansas	Mortgage		10 (300)	Complaint Filed
Kentucky	Mortgage		14 (420)	Complaint Filed
Louisiana	Mortgage		12 (365)	Petition for Executory Process
Maine	Mortgage		27 (810)	Complaint Filed
Maryland	Deed of Trust	18 (540)		Filing an Order to Docket
	Mortgage		18 (540)	Petition in Equity
Massachusetts <sup>2</sup>	Mortgage	9 (270)		Filing Complaint
Michigan	Mortgage	9 (270)		Publication
Minnesota	Mortgage Deed	10 (300)		Publication
Mississippi	Deed of Trust	9 (270)		Publication

<sup>1</sup> State foreclosure time frames are displayed in months and converted to reasonable days expected.

<sup>2</sup> The servicer must first obtain a Judgment from the Land Court certifying that the owners of the property being foreclosed are not entitled to relief under the Servicemembers Civil Relief Act (SCRA).



State	Typical Security Document	Foreclosure Method Reasonable Diligence Time Frames In Months (Days) <sup>3</sup> – Effective 01/01/2016		First Legal Action to Commence (Initiation) of Foreclosure
		Non-judicial	Judicial	
Missouri	Deed of Trust	5 (150)		Publication
Montana	Trust Indenture	9 (270)		Recording of Notice of Sale
Nebraska	Deed of Trust	8 (240)		Publication of Notice of Sale
	Mortgage		8 (240)	Petition
Nevada	Deed of Trust	24 (730)		Recording of Notice of Default
New Hampshire	Mortgage	11 (330)		Publication
New Jersey	Mortgage		19 (570)	Complaint Filed
New Mexico	Mortgage		25 (760)	Complaint Filed
New York	Mortgage		21 (630)	Complaint Filed
North Carolina	Deed of Trust	9 (270)		Notice of Hearing
North Dakota	Mortgage		15 (450)	Complaint Filed
Ohio	Mortgage Deed		13 (390)	Complaint Filed
Oklahoma	Mortgage		14 (420)	Petition Filed
Oregon	Deed of Trust	30 (900)		Recording of Notice of Default
Pennsylvania	Mortgage		21 (630)	Complaint Filed
Puerto Rico	Mortgage		21 (630)	Complaint Filed
Rhode Island	Mortgage	22 (660)		Publication
South Carolina	Mortgage		14 (420)	Complaint Filed
South Dakota	Mortgage		14 (420)	Complaint Filed
	Deed of Trust	9 (270)		Publication of Notice of Sale
Tennessee	Deed of Trust	6 (180)		Publication
Texas	Deed of Trust	8 (240)		Posting and Filing of Notice of Sale
Utah	Deed of Trust	12 (365)		Recording of Notice of Sale
	Mortgage		12 (365)	Complaint Filed
Vermont	Mortgage	4(120)	24 (720)	Complaint Filed
Virgin Islands	Mortgage		15 (450)	Complaint Filed
Virginia	Deed of Trust	7 (210)		Publication
Washington	Deed of Trust	18 (540)		Recording of Notice of Sale
West Virginia	Deed of Trust	7 (210)		Publication
Wisconsin	Mortgage		12 (365)	Complaint Filed
Wyoming	Mortgage	7 (210)		Publication

<sup>3</sup> State foreclosure time frames are displayed in months and converted to reasonable days expected.

**ATTACHMENT 18-C**  
**ACCEPTABLE STATE LIQUIDATION COSTS AND FEES**  
**Schedule of Standard Attorney/Trustee Fees**

STATE	NON-JUDICIAL FORECLOSURE	JUDICIAL FORECLOSURE	BANKRUPTCY CLEARANCE	POSSESSORY ACTION	DEED-IN- LIEU
AK	\$1,625		Varies <sup>13</sup>	\$500	\$400
AL	\$1,325 <sup>1</sup>		Varies <sup>13</sup>	\$500	\$400
AR	\$1,475		Varies <sup>13</sup>	\$500	\$400
AZ	\$1,350		Varies <sup>13</sup>	\$400	\$400
CA	\$1,425 <sup>2</sup>		Varies <sup>13</sup>	\$550	\$400
CO	\$1,650		Varies <sup>13</sup>	\$450	\$400
CT		\$2,450 <sup>3,4</sup>	Varies <sup>13</sup>	\$400	\$400
DC	\$1,250 <sup>1</sup>	\$2,250	Varies <sup>13</sup>	\$400	\$400
DE		\$1,900	Varies <sup>13</sup>	\$450	\$400
FL		\$2,800 <sup>11</sup>	Varies <sup>13</sup>	\$400	\$400
GA	\$1,325		Varies <sup>13</sup>	\$450	\$400
GU	\$1,625		Varies <sup>13</sup>	\$350	\$400
HI		\$2,950 <sup>7</sup>	Varies <sup>13</sup>	\$525	\$400
IA	\$1,275	\$1,850	Varies <sup>13</sup>	\$350	\$400
ID	\$1,250		Varies <sup>13</sup>	\$400	\$400
IL		\$2,300	Varies <sup>13</sup>	\$400	\$400
IN		\$2,050	Varies <sup>13</sup>	\$450	\$400
KS		\$1,800	Varies <sup>13</sup>	\$400	\$400
KY		\$2,250	Varies <sup>13</sup>	\$400	\$400
LA		\$1,900	Varies <sup>13</sup>	\$500	\$400
MA	\$2,550	\$2,550 <sup>3</sup>	Varies <sup>13</sup>	\$625	\$400
MD	\$2,500 <sup>5</sup>		Varies <sup>13</sup>	\$500	\$400
ME		\$2,300	Varies <sup>13</sup>	\$525	\$400
MI	\$1,425		Varies <sup>13</sup>	\$425	\$400
MN	\$1,450	\$1,800	Varies <sup>13</sup>	\$400	\$400
MO	\$1,350		Varies <sup>13</sup>	\$450	\$400
MS	\$1,300 <sup>1</sup>		Varies <sup>13</sup>	\$400	\$400
MT	\$1,250		Varies <sup>13</sup>	\$400	\$400
NC	\$1,575		Varies <sup>13</sup>	\$400	\$400
ND		\$1,800	Varies <sup>13</sup>	\$350	\$400
NE	\$1,250	\$1,950	Varies <sup>13</sup>	\$350	\$400
NH	\$1,450		Varies <sup>13</sup>	\$425	\$400
NJ		\$2,975	Varies <sup>13</sup>	\$500	\$400
NM		\$2,050	Varies <sup>13</sup>	\$400	\$400
NV	\$1,525		Varies <sup>13</sup>	\$650	\$400
NY	\$1,225 <sup>9</sup>	\$2,900 <sup>3,9</sup>	Varies <sup>13</sup>	\$725	\$400
OH		\$2,250	Varies <sup>13</sup>	\$600	\$400
OK		\$2,000	Varies <sup>13</sup>	\$350	\$400
OR	\$1,425	\$2,600	Varies <sup>13</sup>	\$400	\$400
PA		\$2,300	Varies <sup>13</sup>	\$450	\$400
PR		\$2,050 <sup>3,10</sup>	Varies <sup>13</sup>	\$300	\$400
RI	\$1,725		Varies <sup>13</sup>	\$525	\$400



STATE	NON-JUDICIAL FORECLOSURE	JUDICIAL FORECLOSURE	BANKRUPTCY CLEARANCE	DEED-IN-LIEU	
SC		\$2,200	Varies <sup>13</sup>	\$450	\$400
SD		\$1,800	Varies <sup>13</sup>	\$400	\$400
TN	\$1,300		Varies <sup>13</sup>	\$375	\$400
TX	\$1,325	\$1,800	Varies <sup>13</sup>	\$400	\$400
UT	\$1,325	\$925	Varies <sup>13</sup>	\$400	\$400
VA	\$1,350		Varies <sup>13</sup>	\$600	\$400
VI		\$1,800	Varies <sup>13</sup>	\$300	\$400
VT	\$1,600	\$2,250	Varies <sup>13</sup>	\$375	\$400
WA	\$1,500		Varies <sup>13</sup>	\$450	\$400
WI		\$2,050	Varies <sup>13</sup>	\$400	\$400
WV	\$1,250 <sup>1,6</sup>		Varies <sup>13</sup>	\$400	\$400
WY	\$1,250		Varies <sup>13</sup>	\$500	\$400

**Footnotes:**

- (1) The fee covers the combined attorney's and notary's fees.
- (2) This fee applies to completed foreclosures. If the mortgage loan is reinstated, the maximum fee is the amount allowed under applicable law, not to exceed \$725 for reinstatements after recording the Notice of Default but before mailing the Notice of Sale, or \$1075 for reinstatements after mailing the Notice of Sale but before the Trustee's sale.
- (3) An additional \$200 will be permitted when the property is sold to a third party and the attorney must perform additional work to complete the transfer of title to the successful bidder.
- (4) This fee applies to Strict Foreclosures. If the court orders a Foreclosure by Sale (or a Foreclosure by Market Sale on or after January 1, 2015), the fee will be \$2,700.
- (5) The fee includes the attorney's fee, the notary's fee and the trustee's commission (or statutory fee).
- (6) [Reserved]
- (7) A fee of \$3,950 will be permitted for judicial foreclosures in locations other than Honolulu County.
- (8) [Reserved]
- (9) In New York, the non-judicial foreclosure process is to be used only in connection with cooperative share loans. The fee includes all steps in the foreclosure process, including the transfer of the stock and the lease for an occupied cooperative unit. The allowable fee for judicial foreclosures in New York, where judgment is obtained as a result of an uncontested trial, is established at \$3,650. For judicial foreclosures in the City of New York and on Long Island (Nassau and Suffolk Counties), the allowable fee is \$3,500 (or \$4,250 if judgment is obtained via uncontested trial).
- (10) In addition to the allowable foreclosure fee, USDA will pay a notary fee up to the greater of \$250 or one percent (1%) of the bid amount on the mortgage being foreclosed.

- (11) The allowable fee for foreclosures in Florida, where judgment is obtained as a result of an uncontested trial, is established at \$3,350.
- (12) When a servicer requests reimbursement from USDA for a fee amount based on specified conditions contained in a footnote above, the servicer's reimbursement request must contain a description or sufficient supporting documentation to allow USDA to properly evaluate the request.
- (13) This fee assumes that all required procedural steps have been completed. The maximum attorney fee varies based on the chapter under which the bankruptcy action is filed.
- For Chapter 7 bankruptcies, the maximum allowable fee is \$1,175.
    1. Motion for Relief is \$750
    2. Proof of Claim Preparation (if required) is \$300
    3. Reaffirmation Agreement is \$125
  - For Chapter 11 bankruptcies, the maximum allowable fee is \$1,600.
    1. Proof of Claim Preparation & Plan Review is \$750
    2. Motion for Relief is \$850
  - For Chapter 12 bankruptcies, the maximum allowable fee is \$2,100.
    1. Proof of Claim Preparation & Plan Review is \$750.
    2. Objection to Plan is \$500
    3. Motion for Relief is \$850
  - For Chapter 13 bankruptcies, the maximum allowable fee is \$2,850
    1. Proof of Claim Preparation & Plan Review is \$650
    2. Objection to Plan is \$500
    3. Motion for Relief is \$850
    4. Payment Change Notification (if needed) is \$50
    5. Notice of Fees, Expenses, and Charges is \$100
    6. Post-Stipulation Default / Stay Termination is \$50 / \$200
    7. Response to Final Cure Payment Notice is \$50 (agreed) / \$500 (objection)

**ATTACHMENT 18-D**  
**USDA INDIVIDUAL STATE BASED BIDDING CHART**

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State	USDA Bid Percentage (Bid % of Value)
AK	80%
AL	71%
AR	73%
AZ	80%
CA	80%
CO	80%
CT	78%
DC	80%
DE	72%
FL	78%
GA	78%
GU	77%
HI	80%
IA	69%
ID	78%
IL	66%
IN	71%
KS	74%
KY	72%
LA	80%
MA	80%
MD	77%
ME	78%
MI	75%
MN	80%
MO	76%
MS	74%

State	USDA Bid Percentage (Bid % of Value)
MT	80%
NC	72%
ND	64%
NE	80%
NH	80%
NJ	69%
NM	80%
NV	72%
NY	80%
OH	76%
OK	80%
OR	80%
PA	72%
PR	77%
RI	80%
SC	68%
SD	80%
TN	78%
TX	80%
UT	80%
VA	79%
VT	51%
WA	80%
WI	78%
WV	78%
WY	78%