

CHAPTER 17: REGULAR SERVICING - PERFORMING LOANS

7 CFR 3555.251

17.1 INTRODUCTION

Servicers are responsible for servicing SFHGLP loans and protecting security interests and servicing account in a reasonable and prudent manner. This chapter provides additional guidance about the ways in which servicers are expected to service loans that are either current, or less than 20 days past due. Servicing non-performing loans is described in Chapter 18 of this Handbook.

Section 1 defines the requirements associated with servicing current accounts, such as collecting payments, escrowing funds, processing interest assistance agreements, and loan reporting functions. Section 2 defines how the servicer should consider borrower requests for partial releases of security, and transfers and assumptions.

The holding lender is responsible for ensuring that the loan is properly serviced, even if servicing functions are contracted out to a sub-servicer. The phrase “the lender” applies to any organization associated with the origination and servicing of a loan. It is up to the holding lender and the servicer jointly to determine how each responsibility will be fulfilled.

A. Selling SFHGLP Loans – 7 CFR 3555.54

Lenders may sell SFHGLP loans to any USDA approved lender. While the guarantee is transferred with the loan, the originating lender will be held to the responsibilities in accordance with Section 4.9, Indemnification, of Chapter 4 regarding omissions, unresolved review findings stemming from problems at loan origination when a loss claim is requested. Requirements for loan sales are described in Chapter 4 of this Handbook.

B. Contracting for Servicing of SFHGLP Loans

The lender that holds the loan may choose to contract with a third party to service its loans. The lender remains responsible for the quality of the servicing and for monitoring the third party provider.

C. Notifying the Agency of Loans Sales or Servicing Transfers

Whenever lenders sell SFHGLP loans or contract servicing responsibilities to a third party, the transferring lender must inform the Agency within 15 days of the occurrence. The Lender must send *Form RD 3555-11* to the National Financial and Accounting Operations Center (NFAOC). See Appendix 4 for this mailing address.

SECTION 1: SERVICING PERFORMING LOANS

17.2 REQUIRED SERVICING ACTIONS

In addition to collecting regularly scheduled payments, servicers are also responsible for a wide variety of servicing activities including, but not limited to, the following actions.

A. Ensuring Payment of Loan

Servicers should have a system of record to record loans, monitor payment activity, and the history of borrower accounts. Lenders are responsible for monitoring activities completed by third party servicing providers.

B. Handling Late Payments and Fees

Servicers may assess late payment charges to a borrower's account when appropriate; however, these charges will not be covered by the loan guarantee. Late payment charges are subject to the following restrictions.

- The late payment charge must not exceed a rate that is reasonable and customary, as governed by state law, the percentage of the payment due as prescribed by HUD, or the percentage of payment as prescribed by Fannie Mae or Freddie Mac;
- For borrowers receiving interest assistance, payment will be made by the Agency directly to the servicer on or before the 15th day of each month regardless of the date a borrower's loan payment is due. Late fees are limited to the borrower's portion of the payment and never against the interest assistance owed by the Agency.

C. Ensuring Payment of Taxes and Insurance

Servicers must have adequate internal control processes to ensure that real estate taxes, assessments, and flood and hazard insurance premiums are paid as required for all property securing a guaranteed loan. Escrow funds may be used only for the purpose for which they were collected.

- **Servicers with escrow capacity.** Servicers that have the capacity to escrow funds for the payment of taxes, assessments, and insurance must do so. Escrow accounts for all guaranteed loans must be administered in accordance with all applicable regulations and must be insured by the FDIC or the NCUA insurance fund;
- **Servicers without escrow capacity.** Servicers that do not have the capacity to escrow funds must follow their Agency approved plan for confirming that such obligations are paid on time. Rural Development may revoke the acceptance of the servicer's plan if loan performance indicates that delinquency and loss rates are impacted by the servicer's inability to escrow for taxes, assessment, and insurance. Rural Development will not include any taxes or insurance amounts that accrued prior to due date of last paid installment in any potential loss claim;
- Third party servicers must have the capacity to escrow funds.

D. Nonpayment of Taxes and/or Insurance

If real estate taxes and hazard insurance premiums are not paid, servicers must perform the following functions:

- Servicers must notify the borrower upon discovery of nonpayment and request evidence of payment within 30 days of such notice;
- Servicers may advance funds and arrange with the borrower for repayment if the borrower does not provide proof of the payment within the specified time or indicates an inability to make payments. The servicer must then begin to collect funds for future tax assessments and hazard insurance premiums and hold them in escrow.

E. Maintaining Hazard Insurance and when applicable, Flood Insurance

Until the loan is paid in full, servicers must ensure that borrowers continuously maintain hazard and, if applicable, flood insurance in an amount sufficient to protect the property securing the guaranteed loan. Servicers should adopt accepted industry standards for hazard and flood insurance as noted in Chapter 16 of this Handbook.

- Servicers must administer hazard insurance claims involving property damage in an expeditious manner. All payments for insured losses must be applied to the restoration of the security or to the loan balance.
- Insurance claims for structural damage may be paid directly to the homeowner to advance funds to contractors, provided all of the following conditions are met:
 - The mortgage is current;
 - The borrower's payment history does not show delinquencies of two payments or more;
 - The property is occupied by the borrower(s);
 - The released funds may not exceed \$15,000.00; and
 - The borrower(s) must execute an affidavit in which the borrower(s) expressly agree to apply the released funds promptly to repair or reconstruct the residence.
- For insurance claims that do not meet the criteria required above, servicers must supervise the insurance funds if a loss to the insured property occurs. All repairs and replacements using the insurance proceeds must be planned, performed and inspected in accordance with Agency construction requirements and procedures. Chapter 12 of this Handbook describes policies for obtaining plans, specifications and completing construction inspections involving repairs. See Chapter 18 of this Handbook for additional information regarding insurance claims involving property damage.
- In the case where the borrower cannot demonstrate adequate hazard insurance, the servicer can place a policy with coverage in accordance with Chapter 16 of this Handbook with a deductible level of no greater than \$1,000 or 1 percent of the policy limit.

F. Assessing Eligibility for Interest Assistance

Servicers must annually review the income of borrowers who are receiving interest assistance to ensure that they are receiving the appropriate amount. Appendix 6 of this Handbook includes the Agency's policies for annual reviews of a household's income and for providing interest assistance during the course of the loan.

G. Addressing Unauthorized Assistance or Overpayment of Interest Assistance

The servicer is responsible for notifying the borrower of the Agency's determination of unauthorized assistance or overpayment of interest assistance. If the Agency determines that the borrower received unauthorized assistance or an overpayment, the servicer must surrender the guarantee, in the case of unauthorized assistance, or collect the excess assistance, in the case of an overpayment. Appendix 6 of this Handbook outlines the policies for Agency determinations of unauthorized assistance and the actions the servicer may be required to take.

H. Obtaining Final Payments and Recapture of Shared Equity

The servicer must not satisfy a borrower's account and release the security instruments until full payment of all amounts owed; including unpaid principal and interest, protective advances, overpayment of interest assistance, and shared equity has been received and verified. For those borrowers who have received interest assistance, even if the borrower repays the full outstanding account balance, the account is not considered paid in full until shared equity is paid, as described in Appendix 6 of this Handbook.

Upon full satisfaction of the borrower's account, the servicer will return the Loan Note Guarantee to the Agency approving office marked "cancelled." If the Loan Note Guarantee is not available, the servicer must advise the Agency in writing that the loan has been satisfied by payment in full.

I. Handling Borrowers in Bankruptcy

The servicer is responsible to take appropriate action during bankruptcy proceedings to protect the borrower and the government's interest. Upon receipt of a bankruptcy notice, the servicer must:

- Obtain a copy of the bankruptcy petition;

- Complete and file a proof of claim within the time set by the bankruptcy court;
- Maintain copies of all documents associated with the bankruptcy;
- Review the proposed repayment plan;
- Comply with all applicable laws and regulations;
- Monitor the bankruptcy proceedings;
- Monitor receipt of post- and pre-petition payments; and
- Determine that tax and insurance payments are current or determine if additional funds are necessary to maintain an escrow account.

The servicer must refer the account to an attorney when the account becomes 30 days or more delinquent. Refer to Chapter 18 for more detailed information on delinquent accounts in bankruptcy.

J. Complying with the Servicemembers Civil Relief Act (SCRA)

The Servicemembers Civil Relief Act requires that the interest rate charged a borrower who enters full-time active military duty after a loan is closed not exceed six percent if the borrower's military obligations are affecting their ability to pay. The borrower should supply the servicer with documentation of their active duty status. Active military duty does not include participation in a military reserve or the National Guard unless the borrower is called to active duty.

1. *Change of Active Military Status*

The servicer will cancel the six percent interest rate and resume the promissory note interest rate when notified by the borrower that he or she is no longer on active military duty. The servicer may process a new payment assistance agreement if the borrower is eligible according to Appendix 6 of this Handbook.

2. *Amount of Assistance*

If a borrower qualifies for payment assistance see Appendix 6 of this Handbook, after reduction of the interest rate to six percent, the amount of payment assistance received during the period of active military duty will be the difference between the amount due at the subsidized rate for principal and interest and the amount due at the six percent interest rate. The six percent interest rate will be effective with the first payment due after the servicer confirms active military status of the borrower.

The Agency will not include interest on a loss claim filed in excess of six percent for the period the veteran was eligible, nor for any period of time the servicer failed to establish the note rate after notification by the borrower of non-active military service.

K. Approving Borrower Actions

During the term of the guaranteed loan, the borrower may ask the servicer for permission to undertake actions that could affect the value of the security property. Section 2 of this chapter provides guidance to servicers regarding such actions as a partial release of security or a transfer and assumption of an outstanding guaranteed loan.

17.3 REPORTING REQUIREMENTS

Servicers must submit monthly default reports and quarterly portfolio status reports indicating the status of loans they are servicing via Electronic Data Interchange (EDI) to the National Financial and Accounting Operations Center (NFAOC). New servicers, as part of the lender approval process outlined in Chapter 3, will enter into an agreement to electronically report the status and default status of SFHGLP portfolio serviced.

Servicers' documentation can be found at:

<https://usdalinc.sc.egov.usda.gov/USDALincTrainingResourceLib.do>. Scroll to "Electronic Status Reporting."

If a lender is unable to sell a loan and/or retains the loan for servicing they must contact the NFAOC at rd.nfaoc.hsb@stl.usda.gov to initiate the process for default, quarterly status reporting, and annual fee payment. Failure to submit timely reporting or annual fees is a violation of a lender's participation agreement and could result in a reduced or denied loss claim payments.

A. Monthly Report

The servicer must transmit EDI Transaction Set 264 or web-based documentation by the sixth government workday of each month identifying each borrower with a loan that is 30 or more days past due. For example, a payment that is due on April 1 and remains unpaid on April 30 will be included on the default report submitted by the sixth working day in May. This report will be transmitted following the EDI or web-based documentation in Appendix 8 of this Handbook. The servicer must continue to report on each loan that is past due until:

- The default is cured or the mortgage is paid-in-full; or

- The account is liquidated through foreclosure sale, pre-foreclosure sale, or a deed-in-lieu of foreclosure until the servicer is in receipt of the loss claim payment.

B. Quarterly Report

The servicer must transmit quarterly portfolio reports within six government workdays following the last day of the month of each quarter, which end March 31, June 30, September 30, and December 31. The servicer must transmit EDI Transaction set 203 or web-based documentation to the NFAOC reporting on the status of each guaranteed loan in the servicer's portfolio.

The servicer must continue to report on each loan until:

- The mortgage is paid-in-full; or
- The account is liquidated through foreclosure sale, pre-foreclosure sale, or a deed-in-lieu of foreclosure until the servicer is in receipt of the loss claim payment.

Appendix 8 provides electronic reporting documentation.

C. Non-Compliance

Failure by the lender to comply with the Agency's reporting requirements or other program guidelines, or failure to provide high quality origination, underwriting, or servicing can result in the following Agency actions: withdraw the lender's approval; transfer its portfolio of SFHGLP loans; require the lender to indemnify the Agency if a loss is paid; deny or reduce future loss claims; and/or withdraw the loan guarantee. The Agency will notify the lender in writing of non-compliance and provide appeal rights, if necessary, in accordance with Appendix 3. Failure to comply with the reporting requirements and other lender responsibilities outlined in Chapter 4 could indicate non-compliance.

17.4 PROTECTIVE ADVANCES [7 CFR 3555.302]

Servicers may advance funds to pay for emergency expenses necessary to protect the security property and charge the cost against the borrower's account. If the borrower is unable to repay the advance in a lump sum with the next scheduled payment, the servicer may schedule repayment consistent with the borrower's ability to pay if the borrower can demonstrate an ability to make regular payments and bring the mortgage account current within 18 months or less. In most cases, the servicer should be able to arrange with the borrower to bring the account current within 120 days.

A. Advances for Property Repairs

Servicers must ensure that borrowers immediately notify them of any loss or damage to insured property and collect the amount of the loss from the insurance company. Because protective advances are covered by the guarantee, servicers should advance funds only to pay for emergency repairs in order to protect the security value of the property. Protective advances for repairs should be considered only if the borrower informs the servicer that an additional loan or reimbursement from an insurer cannot be obtained in an appropriate timeframe, or if the borrower has abandoned the property.

Protective advances that are not reimbursed through insurance coverage are covered by the guarantee with proper documentation as to why the advance was not covered by insurance, if the advance was other than for taxes and insurance premiums.

Either the borrower or the servicer may identify the need for repairs of the security property. All repairs, replacements, and new construction must be planned, performed, and inspected in accordance with the standards specified in Chapter 12 of this Handbook. If the servicer is unsure whether the repairs would affect the security value of the property, the servicer should request that an inspector examine the property to assess whether repairs are necessary. Based on the value of the property, the servicer must determine whether the repairs are cost effective, and document this assessment in the servicer's file. Protective advances exceeding \$2,000.00 require Agency concurrence.

B. Advances for Taxes and Insurance

The servicer is responsible for maintaining escrow funds in a reasonable and prudent manner assuring real estate taxes, insurance and assessments are paid timely even if a shortage exists requiring the servicer to advance funds on behalf of the borrower. The Servicer will notify the borrower in writing of any escrow shortages and document the decision in the servicer's file. Servicers are encouraged to adopt accepted industry

standards for hazard and flood insurance as noted in Chapter 16, Paragraph 16.10 C of this Handbook.

17.5 INSURANCE PROCEEDS

When insurance funds remain after payments for all repairs, replacements, and other authorized disbursements have been made and the repairs have been inspected in accordance with Agency construction requirements noted in Chapter 12 of this Handbook, the funds must be applied in the following order:

- Prior liens (including past-due property taxes);
- Past-due amounts;
- Protective advances; and
- Released to the borrower if the servicer's debt is adequately secured.

Hazard insurance proceeds cannot be held to pay an existing arrearage without written consent of the borrower.

SECTION 2: BORROWER ACTIONS REQUIRING SERVICER OR AGENCY APPROVAL

17.6 OVERVIEW

A borrower must obtain approval from the servicer before taking actions that may affect the security value of a property. The servicer does not need to obtain Agency approval before consenting to a transaction involving a partial release of the security; however, servicers must obtain approval from the Agency before consenting to a transfer with an assumption of the outstanding debt. Specific guidelines for each type of action are provided below.

17.7 PARTIAL RELEASE OF SECURITY

If a servicer consents to a transaction affecting a security property, such as selling or exchanging security property, or granting a right-of-way across the security property, the servicer must ensure that certain conditions are met and that the mortgage file is carefully documented.

A. Conditions for Partial Release

1. *Adequate Compensation*

The borrower must receive adequate compensation.

- The sale of any part of the security property must result in a payment equal to the value of the security being released or rights granted;
- The exchange of security property must result in another parcel of property acquired that has value equal to or greater than that being released;
- The granting of an easement or right-of-way must result in benefits that are equal to or greater than the value of the security property being released.

2. *Net Proceeds*

The net cash proceeds must be used to reduce the principal balance of the outstanding debt or be used to improve the property. Unless the outstanding debt is paid in full the borrower should receive no cash from the transaction. All net proceeds should be applied in the following order:

- To pay customary and reasonable cost related to the transaction owed by the borrower;
- To be applied on a prior lien debt, if any;
- To be applied to the outstanding balance or used for improvements to the security property. If the funds are to be used for property improvements, the servicer should release the funds as the improvements are completed. The servicer must ensure that the proceeds are used as planned. Any funds remaining after the improvements are completed must be applied as a principal curtailment.

3. *Program Standards*

The security property, after the transaction is completed, must meet program standards.

4. *Ability to Repay the Loan*

The borrower's ability to repay the guaranteed debt must not be jeopardized. The guaranteed loan should be current and in good standing.

B. Servicer Delegation

USDA approval is not required for the voluntary or involuntary release of the security provided that all of the following conditions are met:

- The portion of the property being conveyed does not exceed **10%** of the area of the mortgaged property;
- There is no damage to existing structures or other improvements;
- There is no unrepaired damage to sewer, water, or paving;
- All of the payment received as compensation for the taking of the property is applied to reduce the unpaid principal balance of the mortgage, and;
- The conveyance occurs after the mortgage loan was guaranteed.

C. Processing a Partial Release - Servicer

To process a partial release under the delegation authority described above, the servicer must complete and/or document the following actions. If the servicer eventually files a loss claim, the claim must be accompanied by the servicer's certification that all requirements have been met.

- The borrower's reason for requesting the servicer to make the release, including information regarding the contemplated use of land to be released;
- The monetary consideration, if any, to be received by the borrower;
- Confirm the mortgage loan is in good standing, the amount of principal balance owed and the due date of unpaid installment. If delinquent, confirm the number of delinquent payments;
- Determine the value of the property if a release is processed, taking into consideration any improvements being completed. An appraisal of the security property will be conducted if the most current appraisal is more than 1 year old or if it does not reflect current market value. The appraisals must reflect the value of the property prior to the release of partial security and the value of the remaining property once the release of partial security occurs;

- Complete any forms required by state law;
- A list of unpaid special assessments, if any, and the total amount payable;
- Update the legal descriptions of the property, as necessary;
- Report any restrictions to be imposed on the land to be released;
- Provide a survey or sketch of the property showing dimensions of the portion to be released, the location of the existing and proposed improvements, and the relation of the property to surrounding properties;
- Plans and specifications, including cost estimates, of any alterations proposed for the remaining property after release;
- For an exchange of all or a portion of the security property, obtain title clearance for the new security before the release of the existing security. Security instruments must be obtained for the new property;
- For a sale of all or a portion of the security property, deliver the release when full payment is received; and
- Notify the Agency of any reduction in the outstanding principal balance through monthly default or quarterly status reporting.

D. Processing a Partial Release - Agency

If Agency approval is required and the servicer is nationally approved, the request will be sent to the National Office as listed in Appendix 4. State approved servicers will send requests to the state contact in which the property is located. In such cases the servicer should send evidence of all completed actions to the agency for review. National and state contact information may be found in Appendix 4 of this Handbook.

The approval official will analyze the servicer's request for partial release and consider the following

- Estimate of value prior to the proposed release;
- Estimate of value after the proposed release;

- Loss in value attributed to the proposed release;
- The use or purpose(s) to which the released property would be put to;
- The estimated cost of proposed improvements to the remaining property;
- The estimated value of the remaining property after any proposed improvements are completed;
- Consideration if the remaining mortgage security is less marketable as a result of the release.

A decision on a case-by-case basis will be made if a reduction to the principal mortgage balance is required as a condition to approval of the partial release request.

Notification of approval/denial will be communicated to the servicer. Any denial must state the reason(s) for denial in detail.

17.8 TRANSFER AND ASSUMPTION

Servicers must obtain written concurrence from the Agency before consenting to a transfer of a property securing a guaranteed loan with an assumption of the outstanding debt to a program eligible applicant. Transfers between family members do not require Agency concurrence since the transferee is not required to assume the debt.

If the borrower transfers the security property and the transferee does not assume the debt, the servicer need not seek Agency approval but must simply notify the Agency. In general, the Agency will withdraw the guarantee if a security property is transferred without assumption of the debt. In the following limited cases, which generally involve transfers of title between family members, the Agency will continue to honor the guarantee regardless of whether the transferee assumes the outstanding debt. The due-on-sale clause will not be triggered in the following cases as defined by the Garn-St. Germain Depository Institutions Act of 1982:

- A transfer from the borrower to a spouse or children not resulting from the death of the borrower;
- A transfer to a relative, joint tenant, or tenant by the entirety resulting from the death of the borrower;
- A transfer to a spouse or an ex-spouse resulting from a divorce decree, legal separation agreement, or property settlement agreement;

- A transfer to a person other than a deceased borrower's spouse who wishes to assume the loan for the benefit of persons who were dependent on the deceased borrower at the time of death, if the dwelling will be occupied by one or more persons who were dependent on the borrower at the time of death, and there is a reasonable prospect of repayment;
- A transfer into an inter vivos trust in which the borrower does not transfer rights of occupancy in the property;

When a transferee obtains a property with a guaranteed loan through a transfer of title as noted above, the following actions will occur:

- The servicer will notify Rural Development of the transfer;
- Rural Development will continue with the guarantee, whether or not the transferee assumes the guaranteed loan;
- The transferee may assume the guarantee loan on the rates and terms contained in the promissory note. If the account is past due at the time an assumption agreement is executed, the loan may be modified to bring the account current in accordance as described in Chapter 18, Attachment A, "Loss Mitigation Guide";
- The transferee may assume the guaranteed loan under new rates and terms if the transferee applies and is eligible. Any new rates and terms must not exceed the rates and terms allowed for new loans and the interest rate must not exceed the inter rate on the initial loan as described in Chapter 7 of this Handbook;
- Any subsequent transfer of title, except upon the death of the inheritor or between inheritors to consolidate title, will trigger the due-on-sale clause.

A. Unauthorized Sale or Transfer

For transfers falling under the Garn-St. Germain rule, the transferee is not required to assume the debt. In all other cases, the Agency will withdraw the guarantee if the security property is transferred without an assumption of the debt. If a servicer becomes aware that a borrower has transferred title to a property without the servicer's knowledge and the transfer does not fall under the Garn-St. Germain rule, the servicer must take one of the following actions:

- Obtain Agency approval for the transfer with assumption if the applicant is eligible to assume the loan;
- Liquidate the guaranteed loan and submit a claim for any loss; or
- Notify the Agency of the transfer, and continue with the loan without the guarantee.

B. Transfer with Agency Approval

In General, Servicers must obtain approval from the Agency before consenting to a transfer with an assumption of the outstanding debt. The Agency will review the application as it does any other request for a loan guarantee and will issue a conditional commitment if it approves the transfer. To request a transfer and assumption, the servicer must submit the following to the approving state office.

- A written request for a transfer and assumption, which will distinguish the package from an application for a new loan. The request must state the applicant's credit worthiness, income eligibility, and include an executed underwriter's analysis;
- A fully documented application for guaranteed loan assistance for the prospective purchaser, as described in Chapter 15 of this Handbook. The use of the Agency's automated underwriting system, GUS, is prohibited on a transfer with an assumption of an outstanding debt.

1. Requirements for an Assumption

The Agency may approve a transfer with an assumption of the outstanding debt if all of the following conditions are met.

- The transferee must:
 - Assume the entire outstanding debt and acquire all of the property securing the guaranteed loan balance;
 - Be an eligible applicant.
- The transferor must:
 - Remain liable for the debt;
 - Acknowledge continued liability for the debt in writing.

- The property must meet the site; dwelling and environmental requirements described in Chapter 12, or are brought to those standards. Guaranteed loans secured by properties located in areas that are no longer considered rural may still be transferred and assumed;
- The priority of the lender's existing lien securing the guaranteed loan must be maintained or improved;
- If the account is delinquent at the time of transfer, the servicer may review the transferee for loss mitigation and if eligible may execute a modification agreement concurrently with the assumption;
- Any new rates and terms must not exceed the rates and terms allowed for new loans under Chapter 7 of this Handbook, and the interest rate must not exceed the interest rate on the initial loan;
- The transferor must pay any recapture owed at the time of the transfer and assumption, if applicable;
- If additional financing is required to complete the transfer and assumption or to make needed repairs, the Agency may approve a supplemental guaranteed loan as long as the total outstanding principal balance does not exceed the market value of the property;
- The market value of the security being acquired by the transferee must be at least equal to the secured indebtedness against the property;
- A new guarantee fee must be paid to the Agency. The fee is calculated based on the remaining principal balance, plus any supplemental loan.

2. Closing a Transfer with an Assumption of the Outstanding Debt

Once the servicer obtains Agency approval, the servicer may proceed with closing the transaction as it would for any other guaranteed loan. Along with all other required loan closing documents, the servicer must provide the Agency with a conformed copy of the executed assumption agreement. The servicer must process the assumption on a form approved by Fannie Mae, Freddie Mac, HUD, VA or FCS (for FCS lenders only).

The existing *Form RD 3555-17, "Loan Note Guarantee"* will remain in effect. The servicer should note the date, amount assumed, and name(s) of the assuming party on the original *Form RD 3555-17* and provide a copy to the Agency's approving office.

When the Agency processes the guarantee fee, Agency staff must submit *Form RD 1980-7, "Notification of Transfer and Assumption of a Guaranteed Loan,"* to the Office of the Deputy Chief Financial Officer.

C. Modification to Promissory Note and Security Instruments

If the repayment schedule or interest rate changes as a result of the transfer and assumption, the transferor will remain liable for the debt and, therefore, must approve any changes. The rates and terms must not exceed the rates and terms allowed for new guaranteed loans and must not exceed the interest rate on the initial loan.

- The debt must not exceed the remaining amount due on the original loan;
- The term of the loan must not exceed thirty years from the date of the transfer and assumption.

The Servicer must request and obtain prior approval for the transfer, and the servicer must submit an explanation of the reasons for the proposed change in rates and terms.

D. Transfer Without Agency Approval

If the borrower transfers the property and the transferee does not assume the debt, the servicer need not seek Agency approval but must simply notify the Agency and the agency will withdraw the guarantee. The only exception is for the Garn-St. Germain transfers listed in section 17.8. In these cases the Agency will continue to honor the guarantee and will not require the transferee to assume the guaranteed loan.

Although not required, if the transferee wishes to assume the loan the servicer must seek agency approval except in the following limited situations:

- The property is transferred to a relative, joint tenant, or tenant by the entirety resulting from the death of the borrower and the transferee occupies the property as its primary residence;
- A transfer to a person other than a deceased borrower's relative who wishes to assume the loan for the benefit of persons who were dependent on the deceased borrower at the time of death, if the dwelling will be occupied by one or more persons who were dependent on the borrower at the time of death, and there is a reasonable prospect of repayment;

- A transfer into an inter vivos trust in which the borrower does not transfer rights of occupancy in the property and remains an obligor to the outstanding debt.

Transferees noted above need not be program-eligible in order to assume the loan. If the account is past due at the time of transfer, the servicer may review the transferee for loss mitigation and if found eligible, may execute a modification agreement concurrently with the assumption. Any subsequent transfer of title, except upon the death of the inheritor or between inheritors to consolidate title, will be treated as a sale.

17.9 MINERAL LEASES

Servicers must obtain approval from the Agency before consenting to the lease of mineral rights.

A servicer may consent to the lease of mineral rights and subordinate its lien to the lessee's rights and interests in the mineral activity provided the subordination of the guarantee loan to a mineral lease does not entitle the leaseholder to any proceeds from the sale of the security property and the following are met:

- The security property will remain suitable as a residence;
- The lender's security interest will not be adversely affected;
- Rural Development's environmental requirements are met.

If the proposed activity is likely to decrease the value of the security property, the servicer may consent to the lease under the following conditions:

- The borrower must assign 100 percent of the income from the lease to the servicer;
- Proceeds will be utilized to reduce the principal reduction of the loan.
- The total rent to be paid is at least equal to the estimated decrease in the market value of the security property.

If the proposed activity is not likely to decrease the value of the security property, the servicer may consent to the lease if:

- The borrower agrees to use any damage compensation received from the lessee to repair damage to the site or dwelling, or
- Assign the proceeds to the servicer – to be applied to reduce the principal balance.

The servicer remains responsible for documenting their approval and oversight of the above activity and borrower request.

17.10 UNAUTHORIZED ASSISTANCE

Refer to Chapter 1 of this Handbook for information regarding unauthorized assistance.