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. Chapter 17 of this Handbook outlines the servicer's responsibility to report to the Agency all loans through Electronic Status Reporting (ESR).

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 or through foreclosure.

Section 1 of this Chapter states the minimum actions the servicer is required to take to bring past-due accounts current. Section 2 of this Chapter describes various alternatives to foreclosure that the servicer will pursue, including traditional and streamline servicing actions. Section 3 of this Chapter describes the policy on custodial property requirements. Section 4 describes the requirements within the foreclosure process. Section 5 provides servicers with requirements when a property is 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. Servicer's can locate all servicing related cost and fee schedules on the USDA Training and Resource Library in the Loan Servicing section under Loss Mitigation found at https://www.rd.usda.gov/resources/usda-linc-training-resource-library/loan-servicing.

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 and 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 and actions may be suspended when restricted by applicable laws.

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 be taken. 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 obligations.
- 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 if there is no payment arrangement in place, the lender must send a certified letter to the borrower requesting an interview for the purpose of resolving the past due account. The letter should emphasize the importance of meeting the debt obligation and explain the negative impact of non-repayment on the borrower's credit history.

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

D. Inspect the Property

On or before the day an account becomes 60 days past due and before initiating a liquidation action, the servicer must assess the physical condition of the property, determine occupancy, and take the necessary steps to preserve and protect the property. At minimum the servicer must document the following.:

- Physical Condition and Occupancy – Assess and document the physical condition of the property and determine the occupancy status of the dwelling. This will include identifying any actions essential to protect and preserve the property.
- Abandoned property – The servicer will document the servicing file outlining the abandonment determination using indicators such as property and yard condition, posted “for sale” signs, presence of personal property or vehicles, last known mailing address, or absence of a power meter. The servicer will refer 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 in Section 18.7.A of this Chapter.
- Inspections – The servicer should inspect the mortgaged property at least monthly to verify continued occupancy and ensure the property is being adequately maintained. Exterior inspections are sufficient to make these determinations. If the inspection shows the property is not being adequately maintained or is vacant or abandoned, an attempt to complete an interior inspection should be performed. Inspection records must be retained in the mortgage file and address at a minimum, the condition of the property, occupancy status, any necessary repairs to protect an abandoned property, the date of inspection, and who performed the inspection.

E. Proceed with Liquidation

Once 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 considering any applicable notice and waiting period under state law.

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 by telephone and/or in-person.
- Dates and documentation of property inspections.
- 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 penalties below for a servicer's failure to take the required collection actions. These penalties are described in greater detail in Chapter 19 and Appendix 8 of this Handbook and include the grace period offered by the Agency as noted in Paragraph 18.4B above.

- The claim may 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 may be denied if the servicer failed to notify the Agency, in accordance with Chapter 17 of this Handbook, when the account was in default.
- Accrued interest for the claim will be reduced by 50% 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 the due date.
- If the servicer fails to order an inspection of the property within 65 days past the due date, the accrued interest will be reduced by ten percent.
- 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.

SECTION 2: LOSS MITIGATION
[7 CFR 3555.301, 3555.303, 3555.304 and 3555.305]

18.5 LOSS MITIGATION OPTIONS

The servicer will 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. Mortgage Recovery Advance (MRA) can be used to satisfy a borrower's delinquency and bring the borrower current. A voluntary liquidation method such as a pre-foreclosure sale or a 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 loss mitigation options must be exhausted prior to use of Streamline 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 informed 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, *The 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
- Loan Modification
- Mortgage Recovery Advance (unrecorded)
- Pre-Foreclosure Sale
- Deed-in-Lieu of Foreclosure
- Servicing plan, checklists; disposition cost benefit analysis
- Reporting – ESR and status of mortgage codes.

All servicers must submit loss mitigation information through USDA LINC https://usdalinc.sc.egov.usda.gov/RHShome.do.

SECTION 3: CUSTODIAL PROPERTY
[7 CFR 3555.306]

18.6 INTRODUCTION

Custodial property is borrower-owned property that is vacant or abandoned and in the possession of the servicer for the purposes of property inspection, preservation, and protection. The Agency holds the servicer accountable for all servicing and property management responsibilities associated with custodial property. This section outlines the requirements for managing these types of properties.

18.7 PROPERTY MANAGEMENT METHODS AND ACTIVITIES [7 CFR 3555.306 (e)]

The servicer and Agency share a common interest to ensure that properties are managed and maintained. The Maximum Property Preservation Allowances outlines the maximum allowable costs for property preservation and maintenance and can be located on the USDA Training and Resource Library in the Loan Servicing section under Loss Mitigation found at https://www.rd.usda.gov/resources/usda-linc-training-resource-library/loan-servicing. Costs higher than the published amounts for maintenance and preservation may be appropriate in some extenuating circumstances such as very rural areas, extreme neglect, or large amounts of debris. Justification for the higher cost must be documented with color photos and detailed invoices and will be reviewed at the time of the loss claim.

A. Vacant or Abandoned Properties

The servicer may need to take custody of the security property when it has been determined the property is vacant or has been abandoned. The servicer must inspect the property within 30 days of this determination to confirm occupancy and document its condition. When the inspection reveals the property is vacant, the servicer should attempt to locate the borrower to determine the reason for the vacancy and take immediate action to protect the property from vandalism and the elements in accordance with local laws.

Preservation and protection requirements for custodial property are as follows:

- Perform monthly interior and exterior inspections to document the general condition of the property and any actions required to adequately protect and preserve the property. The servicer will maintain adequate documentation to support servicing decisions.

- Take necessary actions to prevent unauthorized entry unless otherwise prohibited by state law.

- Secure windows and doors. Boarding the property should be avoided unless it is necessary to avert vandalism to the property. The servicer may post a notice with

- contact information, however, should not post large signs or take other actions that might call attention to the vacant property.
- Determine if any emergency repairs are necessary to adequately preserve and protect the property. Emergency repairs will be completed by the servicer as quickly as possible to avoid property deterioration and does not require prior Agency approval. Servicers will retain documentation of all repairs, including photos of before and after work, for submission with any loss claim.
- File a claim under the borrower's insurance policy for insurable damage.
- Protect plumbing and other operating systems from freeze damage.
- Remove any interior or exterior debris that poses a health, environmental, fire, or safety hazard. Examples include, but are not limited to, highly flammable chemicals, decaying food, dead animals, broken glass or other sharp objects, and large quantities of paint or paint products.
- Mow lawns, maintain shrubs, and perform snow removal.
- Maintain receipts and invoices for all costs incurred for preservation and protection of custodial properties. Services associated with preservation and protection of properties must be typical and reasonable.
- Notify the insurance carrier regarding the vacancy to ensure appropriate coverage is maintained.

A mortgage may be current or delinquent when a servicer becomes aware a borrower may have abandoned the security property. If the borrower redeems a property, the redemption amount should include all advances including emergency repairs. When an inspection reveals that the property is vacant or abandoned on a delinquent loan and liquidation is not already in process, taking custodial possession should immediately initiate the foreclosure process.

18.8 ENVIRONMENTAL HAZARDS [7 CFR 3555.306(E)]

If environmental issues impact the property's value at the time of liquidation, the servicer must document when and how the hazard developed. If the environmental hazard was caused by activities that took place after the loan guarantee was issued, or by factors that could not reasonably have been detected with appropriate due diligence, the Agency will allow for costs from any resulting loss in the loss claim calculation.

If it appears that it would be cost effective to determine the lien valueless because of an environmental hazard, the servicer should submit documentation to support this request to the Agency for concurrence via email to guarantee.svc@usda.gov.

SECTION 4: ACCELERATION AND FORECLOSURE [7 CFR 3555.306]

18.9 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 the servicer should determine eligibility for streamline options as described below. If the borrower is ineligible for the streamline option or fails to complete the streamline option in any way, the servicer should initiate liquidation proceedings. In all cases, a demand letter should be sent to the borrower within five days of when the borrower missed their third consecutive payment and will 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.

A. Final Offer (Streamline Option)

If the loan meets all the following criteria, the servicer may send a final alternative to foreclosure offer with no documentation required from the borrower. The lender should continue to meet all foreclosure obligations and timelines during this solicitation. If the borrower responds with the initial trial payment, the servicer may place the foreclosure on hold.

- The loan is greater than 90 days past due.
- The loan has an unpaid principal balance of at least $5,000.
- The borrower has made at least 12 mortgage payments since origination.
- The borrower is not currently being reviewed for any loss mitigation.
- The terms below must result in a reduction of the borrower principal and interest payment by at least 10%.

The terms of the streamline option shall be as follows:

- The interest rate may be modified.
- The loan repayment period may be extended in one month increments to the maximum term allowable, not to exceed 480 months.
- The borrower must demonstrate a willingness and ability to pay by making three consecutive trial payments, all of which must be made in the month they are due.
- Once the trial is complete the borrower must execute a final modification agreement within 60 days of the last trial payment that includes a hardship affidavit attesting that they occupy the property as a principal residence and have suffered a financial hardship that created an involuntary inability to afford the current mortgage payment. This agreement can be sent after two trial payments are received.

Lastly, the borrower will not qualify for a streamline option if any of the following exclusions apply:

- The borrower has had two or more modifications.
- The borrower is in bankruptcy proceedings.
- The borrower is deceased.
- A foreclosure sale is completed or scheduled in the next 60 days.
- A deed-in-lieu/short sale has been completed.
- The borrower is involved in any litigation impacting the loan.
- There are indications of potential fraud.

Any streamline option made to the borrower shall have a 30-day expiration date. If the borrower fails to respond prior to the expiration of the solicitation, the servicer may, at its discretion, extend that offer an additional 30 days. If the borrower fails to respond with an initial trial payment or otherwise fails the trial, the borrower shall be ineligible for any future final offer under this section.

18.10 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.

The Acceptable State Foreclosure Time Frames lists the recommended method of foreclosure and the first public action required by law to initiate foreclosure and can be located on the USDA Training and Resource Library in the Loan Servicing section under Loss Mitigation found at https://www.rd.usda.gov/resources/usda-linc-training-resource-library/loan-servicing. 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 determine 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. Any such decision must be documented and placed in the servicing permanent file.

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, any advances due from the borrower including any unrecorded mortgage recovery advance, 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 security property is inaccessible, the valuation will be based on exterior inspection only. If a significant (20% or more) decline from the value established at loan origination 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 – consider 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 other sources, third-party bidding is encouraged by entering a foreclosure sale bid less than the value of the property. Servicer should use the USDA Individual State Based Bidding Chart, with the goal of avoiding REO and its associated management and disposition costs. This chart can be located on the USDA Training and Resource Library in the Loan Servicing section under Loss Mitigation found at https://www.rd.usda.gov/resources/usda-linc-training-resource-library/loan-servicing. The Agency does not need to concur on foreclosure bids.
- Auction Services – servicers are encouraged to use non-affiliated auction companies during the foreclosure process including marketing the property and bidding services. The Agency will reimburse servicers for auction service fees in an amount not exceeding five percent of the property net sales price when the property is sold to a third party. 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 all the following conditions:

- Pays the total amount delinquent, including protective advances, accrued interest, 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.

18.11 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. Servicers must respond to a request for documentation from an attorney or trustee within five business days.

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 Acceptable State Foreclosure Time Frames lists the acceptable timeframe to complete a foreclosure by state and can be located on the USDA Training and Resource Library in the Loan Servicing section under Loss Mitigation found at https://www.rd.usda.gov/resources/usda-linc-training-resource-library/loan-servicing. These time frames are measured from the first legal action to the foreclosure sale date. 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 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 19 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 loss claim documentation must demonstrate the case was promptly referred to the foreclosure attorney after bankruptcy filing. Any delay beyond 90 days from the date of the bankruptcy release must be supported by documentation. Failure to submit the documentation supporting the extended foreclosure timeframe as described in Chapter 19 of this Handbook will result in denial of additional accrued interest.

B. Acceptable Liquidation Fees and Costs

Agency regulations authorize the reimbursement of actual liquidation fees and costs that are paid by the servicer for liquidated loans that result in a loss to the servicer within the limits of the guarantee. The Acceptable State Liquidation Costs and Fees will be utilized in determining allowable reasonable and customary attorney fees for foreclosure, deed-in-lieu of foreclosure and bankruptcy. These costs and fees can be located on the USDA Training and Resource Library in the Loan Servicing section under Loss Mitigation found at https://www.rd.usda.gov/resources/usda-linc-training-resource-library/loan-servicing. Fees higher than the published amounts may be appropriate, in cases such as contested foreclosures, required probate procedures, etc. Any reimbursement of fees over the allowable costs are subject to review 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.

C. Interrupted Foreclosure Proceedings:

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:

- 75% of the allowable attorney fee and all actual foreclosure costs incurred will be reimbursed.
- In addition, 100% of allowable foreclosure attorney fees and costs incurred after the bankruptcy stay is lifted will be reimbursed if state statute requires that the foreclosure be restarted from the beginning.
- 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 Acceptable State Liquidation Costs and Fees and can be located on the USDA Training and Resource Library in the Loan Servicing section under Loss Mitigation found at https://www.rd.usda.gov/resources/usda-linc-training-resource-library/loan-servicing.

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 Acceptable State Liquidation Costs and Fees referenced above, lists 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 determines 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. Any such decision must be documented and placed in the servicing permanent file.

18.12 REPORTING REQUIREMENTS

In accordance with Chapter 17 of this Handbook, servicers are required to report to the Agency all accounts monthly through ESR.

Additional guidance regarding EDI reporting may be found online at https://www.rd.usda.gov/resources/usda-linc-training-resource-library/loan-servicing

SECTION 5: 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) area where federal aid in the form of individual assistance is being made available.

18.13 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.
- Aid 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.
- Monitor and coordinate the progression of repairs when a deposit of insurance proceeds occurs in lieu of borrowers receiving insurance proceeds for properties.

18.14 SPECIAL RELIEF MEASURES [7 CFR 3555.307(c)]

The servicer must suspend 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 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.
- Determine if foreclosure is the only option.

The borrower's income or ability to pay the 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. Forbearance is highly encouraged in disasters. Under forbearance, the servicer can agree to reduce or suspend the borrower's monthly payments for up to 12 months. At the conclusion of the forbearance 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, and 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 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. The servicer should take appropriate steps to mitigate the credit impact for a borrower for whom a forbearance or repayment plan is extended due to disaster-related circumstances.

18.15 SPECIAL RELIEF ALTERNATIVES FOR DISASTER ASSISTANCE

In addition to the standard workout options in Attachment 18-A, *The Loss Mitigation Guide*, servicers may offer the following special relief alternatives depending on the borrower's circumstances.

A. Special Relief Alternatives:

Borrowers must meet all the following eligibility criteria:

- The borrower occupies, as their primary residence, the property securing the guaranteed loan.
- The loan was current or less than thirty (30) days past due as of the date the applicable PDD was declared.
- The servicer receives verification from the borrower the hardship (employment and/or property) has been resolved.

- The total modified mortgage principal and interest payment is less than or equal to the payment prior to modification.

If the borrower meets the conditions above, the servicer may offer any one of the following options with no financial review:

- Payment Deferral: If the servicer determines the borrower can maintain the current contractual payment including any escrow shortage created by advances during the forbearance period, spread over 60 months, the missed payments may be deferred to the end of the loan term. USDA does not allow any type of balloon payment as part of the guaranteed UPB. Therefore, the term must be extended along with the deferral, thus allowing the borrower to make regular payments until the deferred balance is paid in full. Any interest accrued during the forbearance period should be included in the deferred balance.

- Capitalization of Delinquency and Term Extension: If the servicer determines the borrower can maintain 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 for a total of up to 360 months.

  - Modify the interest rate to no more 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 (U.S. Average), rounded to the nearest one-eighth of one percentage (0.125%), as of the date a plan is offered to the borrower.

- Mortgage Recovery Advance: The servicer may utilize a Mortgage Recovery Advance (MRA) to settle the borrower delinquency and bring the borrower current. The MRA is limited to an amount no greater than what is necessary to resolve any accumulated delinquency and unreimbursed servicer advances made during the forbearance and must meet all other requirements as explained in Section 5(J) of the Loss Mitigation Guide found in Attachment 18-A of this Chapter.

18.16 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.

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 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 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.

18.17 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
THE LOSS MITIGATION GUIDE

THE LOSS MITIGATION GUIDE

Single Family Housing Guaranteed Loan Program

Effective:

THE 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 the shortest time possible. Single Family Housing Guaranteed Loan Program (SFHGLP) policy as stated in 7 CFR § 3555 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 § 3555.

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. It 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 or an authorized representative 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 contacts 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. Servicers are strongly encouraged to recommend borrowers contact state and/or local agencies for financial assistance.

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 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.

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 website, https://apps.hud.gov/offices/hsg/sfh/hcc/hcs.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 HUD's publication 2008-5-FHA, *Save your Home: Tips to Avoid Foreclosure*, rev April 2012 to the borrower, before the account becomes 60 days past due. 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 and retained in the servicing permanent file. If it becomes apparent that an informal repayment plan will not be sufficient to resolve the delinquency, the servicer should refer to section 3, "General" of this guide, to evaluate whether one of the more formal loss mitigation strategies should occur.

E. SALE OF THE PROPERTY

A borrower who does not have the ability to cure the delinquent loan, but who has sufficient equity in the property to satisfy the outstanding debt from a sale proceeds, should be assisted in selling the property. This assistance may include a written agreement that provides a short-term reduction or suspension of payments pending the sale of the property. 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 the 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 each circumstance.

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 via USDA Lender Interactive Network Connection (USDA LINC).
- 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 HUD publication https://www.hud.gov/sites/dfiles/Housing/documents/RevUpdHmownSuc121518fnl.pdf titled Homeowners Guide to Success, 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.
- 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 ESR status of mortgage code values.
- Initiate foreclosure within six months (180 days) of default unless a loss mitigation option is being pursued 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

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. 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 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 the borrower from making the next required payment on the mortgage during the month in which it is due.

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

The borrower must occupy the property as their principal residence to be eligible for loss mitigation retention options. However, loss mitigation disposition options may be considered if the property has been recently vacated due to one of the following, but not limited to, special circumstances:

- Employment transfer
- Natural disaster
- Medical condition

A servicer may make an exception for a non-occupant borrower who is seeking relief through a pre-foreclosure sale (PFS) or DIL when 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 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. 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. 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 hardship no longer exists and the borrower is committed to remaining in the home, the servicer should consider reinstatement options in this order:

- Special forbearance
- Loan modification

F. NON-CURABLE DEFAULT

When the hardships continue to exist, 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 (PFS)
- Deed-in-lieu of foreclosure (DIL)

G. OPTION PRIORITY

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

1. Informal Repayment Plan
2. Special Forbearance
3. Loan Modification
4. Pre-Foreclosure Sale
5. 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 borrower 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 options may warrant utilizing a disposition workout in-lieu of a retention workout based on the borrower's involuntary inability to pay.

H. MONTHLY EVALUATION

Each month the account remains delinquent, the servicer must reevaluate the status of each loan following the 90-day review and maintains documentation of the evaluations in its servicing or collection system. 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 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 all the data elements required for loss mitigation.

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. 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, they should analyze the borrower's current and future ability to meet the monthly mortgage obligation by determining the borrower's repayment ability as follows:

- Determine the borrower's current monthly gross income making necessary adjustments for income fluctuations.
- Calculate the borrower's normal monthly financial obligations including debt service on the mortgage and other credit obligations. Adjust 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) ratio as well as their total debt (TD) ratio.

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 sufficient income 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 collect 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 effective tax rate, not to exceed 25%, for grossing up that the borrower used to calculate the borrower's federal income tax return 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:

- Servicers should consult their legal counsel to determine if non-borrower income can be utilized for loss mitigation home retention options since the non-borrower is not on the original mortgage.
- Occupancy of the non-borrower must be fully verified.
- 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.
- If the Servicer determines the non-borrower household member is required by state law to 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 excluded 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. Any borrower excluded from eligibility requirements is still obligated to the note and is not released from liability.

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. For example:

- Pre-foreclosure sale may be combined with a deed-in-lieu provision in case the property does not sell within the time required.
- 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 consider all feasible loss mitigation options before initiating foreclosure. The servicer must document all options considered and retain such information for Agency review. If the borrower abandons the property, loss mitigation home retention options need not be considered prior to initiating the foreclosure.

P. TIME TO INITIATE ACTION

A servicer must initiate a loss mitigation option or refer to foreclosure within six months of the date of default. This requirement is considered satisfied by any of the following actions.

- The loan is brought current or paid off.
- The borrower executes a special forbearance agreement.
- The loan modification is approved.
- The borrower executes a pre-foreclosure sale or deed in lieu agreement.
- 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 ESR status code.

R. EXTENSION REQUESTS

If the servicer initiates 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 began 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 ESR 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), 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 under any of the following circumstances:

- The borrower does not perform under the terms of a written special forbearance agreement for 60 days.
- The borrower does not perform under the terms of a trial period used as a condition of loan modification. 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 for non-compliance.

T. DOCUMENTATION

For each loss 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 the Agency. The servicing notes and collection history systems also must retain evidence of compliance with counseling and other actions on loans that do not result in a loss claim.

U. SERVICING PLAN

The servicer must add a servicing plan in the "Add Loss Mitigation" screen in USDA LINC when a method other than foreclosure is approved to resolve the borrower's 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 retain a "Disposition (PFS/DIL) Cost Benefit Analysis" along with the servicing plan.

If the servicer provides the borrower with an option that requires a trial payment, the servicer must enter the trial modification into USDA LINC at the time of approval. When the borrower completes the trial period and executes the final agreement, the servicer must enter the final modification terms into USDA LINC and finalize the modification. If the borrower fails to perform under the trial agreement, the servicer must cancel the trial modification in USDA LINC.

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; or
- 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.

The maximum arrearage under a special forbearance plan cannot exceed the equivalent of 12 months delinquency.

A. LOAN ELIGIBILITY

The loan is a minimum of 30 days delinquent, or at risk of imminent default, but not more than 12 payments delinquent and is not in foreclosure when a special forbearance agreement is executed. The servicer may suspend 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 exhaust 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 must contain a requirement to repair the property.

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. The borrower should be the owner-occupant of the property securing the SFHGLP loan and committed to occupying the property as a primary residence.

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

- Letter from borrower outlining their 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 to mitigate losses.

Servicers 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. The term of this forbearance shall be the lessor of 12 months or a term that would not cause the dollar amount of the borrower's delinquency to exceed 12 months of scheduled monthly mortgage payment reduction and, 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 if their employment status changes.

The servicer 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.

F. DOCUMENTATION

The servicer should provide the borrower a written agreement to be signed and returned with the first payment, 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. In the absence of a signed agreement, the servicer may accept the borrower's modified payment as acknowledgment of the terms of the forbearance. If the borrower fails to provide the servicer with the signed agreement prior to the end of the forbearance, the servicer should document their continued efforts to collect the agreement. 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.
- Not at any time allow the total arrearage amount to exceed the equivalent of 12 months delinquency.
- 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.

G. 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 change; however, under a renegotiated plan, the loan cannot accrue more than 12 months delinquency.

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 the primary goal. Loan modifications may include capitalization of the arrearage. 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 the loan under loss mitigation:

- The loan must be in default or at risk of imminent default.
- 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.

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 exhaust 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 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 from 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.

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 must provide detailed financial information to the Servicer.

Servicers may collect financial information from the borrower 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 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.
- The borrower's credit report.

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 Servicing Office via email to guarantee.svc@usda.gov.

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 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.

- 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 RATIO

The Back-End ratio (total debt 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 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

The purpose of a loan modification should be to provide payment relief to the borrower in the form of a reduced payment. When no other payment relief options are available, the Servicer may find it necessary to offer the borrower a modification for which the payment is increased. In cases where an increased payment is necessary, the borrower must demonstrate affordability by making at least 3 trial payments prior to execution of the modification.

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. MODIFICATION OPTIONS

The following apply to loan modifications:

- The modification results in a fixed-rate fully amortizing loan.
- The modified interest rate may be increased over the original note but may not exceed the current market interest rate at the time of approval.
- The modification brings the loan current.

The servicer shall calculate the target payment as close as possible to 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 and past due annual fees imposed by the servicer. Past due homeowner's association dues should be capitalized, if necessary, to protect the first lien position. Servicer late charges and fees cannot be capitalized.
2. Modify 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 modification alone, the servicer shall extend the term in one-month increments, up to a maximum of 480 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 480 months.
4. Rate and/or Term extension thresholds outline above should be considered maximum allowable modifications. The servicer may establish lower rate and/or term allowable costs based on contractual restrictions.

5. If the targeted monthly mortgage payment still cannot be achieved, the servicer may consider a Mortgage Recovery Advance (MRA) as outlined below in Section 5(J), to reduce the borrowers interest bearing principal, in addition to the rate/term

modification to achieve the monthly target payment.

6. If the servicer has exhausted all steps of the waterfall and the target payment is not achieved, however, the borrower's payment (PITI) has been reduced by a minimum of ten percent, the servicer should offer the modification to the borrower(s).

7. If it is determined the borrower cannot be provided with a payment reduction and no other options are available a modification can still be offered, including a limited increase in payment, if the following conditions are met:

    a. The borrowers post modified payment is no greater than 36% of their monthly income.

    b. The borrowers post modified payment has increased no more than 10%.

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

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

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

J. MORTGAGE RECOVERY ADVANCE

All new MRAs will not be secured with a note/mortgage in favor of the Agency. Prior MRAs will be referred to as "Legacy MRAs". The maximum amount of the MRA is 30% of the unpaid principal balance at the time of the initial default and shall include any principal reduction needed to achieve the target monthly mortgage payment. If the borrower has previously been provided an MRA of any type, they may be considered for an additional MRA providing that the combined amount of MRAs does not exceed the 30% maximum outlined above.

In order to set-up the MRA, the servicer should advance the funds to the borrower's account by creating a non-interest-bearing recoverable servicing advance as a receivable on the borrower's behalf. This amount should be stated on the monthly mortgage statement along with the principal balance.

To file a claim for reimbursement of a MRA, 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 MRA Agreement. When filing the claim for reimbursement with RD, the servicer must upload a copy of the MRA Agreement signed by the borrower(s) using the USDA LINC website. The servicer must also upload a summary of the amount of the funds advanced, including the monthly PITIA and principal curtailment (if applicable), and other 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 including evidence the loan has been reinstated; 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 uploaded via USDA LINC for reimbursement.

1. MRA GUIDELINES

No interest will accrue on the MRA. The payment of the MRA 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.

Borrowers are not required to make any monthly or periodic payments on the MRA. However, borrower(s) may voluntarily submit partial payments without incurring any prepayment penalties. Any repayment by the borrower of the MRA, whether partial or incomplete, must be remitted back to the agency from the servicer prior to release of the lien.

If the servicer releases the lien without collecting the advance from the borrower, the servicer must reimburse the Agency from their own funds except in cases where the guarantee is terminated due to a loss event such as a Short Sale, Deed in Lieu, or Foreclosure.

For legacy MRAs, the borrower must send payment directly to RD. The applicable payment mailing address information can be found on the Loan Servicing page of the LINC Training and Resource Library, located at https://www.rd.usda.gov/resources/usda-linc-training-resource-library.

K. STAND ALONE MRA

If the servicer determines the borrower is able to make their current contractual payment, the servicer can offer the borrower a stand-alone MRA to cure the delinquency if the following criteria are met:

- The hardship that caused the borrowers involuntary inability to pay has been cured.
- There is no reasonable ability for the borrower to cure the delinquency on their own within 12 months.

If the above conditions are met, the servicer may utilize a MRA to settle the borrower delinquency and return the borrower to a current status. The MRA is limited to an amount no greater than what is necessary to resolve any delinquency and unreimbursed servicer advances made during the delinquency and must meet all other requirements as explained in section 5.K above.

L. TRIAL PAYMENT REQUIREMENTS

Prior to modifying a loan using any type of MRA or a modification in which the borrower's payment increases, 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.

For borrowers who are in default when a trial payment is initiated, the trial period must be three months in length. The servicer cannot modify the loan unless the borrower makes all three modified trial payments in the month in which they are due.

For borrowers facing imminent default when a trial payment is initiated, the trial period must be four months in length. The servicer cannot modify the loan unless the borrower makes all four reduced trial payments in the month in which they are due.

M. STEPS TO ACHIEVE AFFORDABILITY IN ORDER OF PRIORITY

Order	Options	Trial Required
1	Modify Rate	
2	Extend Term	
3	MRA w/ Mod	Y
4	Affordability Check Payment Increase <=10% & HTI <=36%	Y
*	Stand Alone MRA (can be offered at any time if the servicer determines the borrower does not need, or is not eligible for payment reduction)	Y

N. DOCUMENTATION

The servicer ensures that the modification documentation preserves the first lien status of the SFHGLP-guaranteed loan. The servicer will decide in accordance with state law as to whether it is necessary to record the modification agreement in order to maintain the first lien.

O. DISCLOSURES

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

P. 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.

Q. 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.

R. 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 7 CFR § 3555.303. Any loss on the modified loan is limited to the lessor of either 90% of the original loan amount, or the sum of the first 35% of the loss and 85% of the balance of the loss.

S. SERVICER NOTIFICATION REQUIREMENTS (MODIFICATIONS)

The servicer will upload a copy of the executed loan modification to the borrower file within 30 days of execution and no later than 60 days via USDA LINC. Additionally, the servicer must upload notification that if the modification was not executed by the borrower via USDA LINC.

The agreement should contain the following key data elements:

- Borrower and co-borrower name(s) and ID number(s)
- Effective modification date
- Modified unpaid principal balance
- Eligible interest and costs capitalized
- Sum of modified principal and capitalized interest and costs
- Interest rate
- Maturity date

T. AGENCY ACTION

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

6. PRE-FORECLOSURE SALE/DEED-IN-LIEU

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.

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 recent market value appraisal and preliminary title report to determine the feasibility of the PFS. The servicer notifies the borrower whether the request is approved.

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 servicer is encouraged to work with the borrower to determine the eligibility for a deed-in-lieu of foreclosure.

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. A DIL is usually preferable to foreclosure 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.

The servicer may only review a borrower for a DIL prior to a PFS in cases of death, borrower incapacitation or other extreme circumstances. The servicer must use good business judgement when making this determination and retain all appropriate documentation in the servicing file.

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 voluntarily stopped paying their mortgage despite their continued ability to pay.

B. BORROWER ELIGIBILITY

The PFS option may be extended to a borrower who meets all of the following:

- 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/DOCUMENTATION

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:

- 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 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 and 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. (7 CFR 3555.252)

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. When reviewing for a DIL, all junior liens or issues with title must be resolved PRIOR to approval.

G. FINANCIAL / PROPERTY ANALYSIS

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

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:

- Letter from borrower outlining their involuntary inability to pay/hardship.
- Income documentation as stated in the overview section.
- Credit Report; and,
- 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.

All of the following documentation pertaining to the subject property must be obtained:

- Appraisal
- Listing Agreement
- Sales Contract (if applicable)
- Closing Disclosure
- Title Report; and
- All PFS workouts must be accompanied by the "Disposition (PFS/DIL) Cost Benefit Analysis" (Attachment 18-B). Attachment 18-B is an example of the analysis that must be completed for a PFS workout to be considered. Servicers

may generate their own version of Attachment 18-B in-lieu of utilizing the example provided.

H. TIMING OF PFS ACTIONS

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

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 PFS 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 decide if a 30-day extension to the PFS is appropriate. 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 six 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.

If a closing of an approved PFS has not occurred within 90 days of the expiration of the PFS period (or six 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 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.

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 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; or,
- Voluntary withdrawal by the borrower.

L. 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.

M. NET SALES PROCEEDS

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

- Sales commission of six percent 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; and,
- Allowable seller concessions must not exceed three percent of the sales price. In cases where Rural Development is guaranteeing a new loan, the seller concessions will be limited to one percent 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.

The servicer should review the signed Contract for Sale (if available) within five business days of receipt. If no contract is available, the servicer should approve the listing price of the 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.

N. CLOSING AND POST CLOSING 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 settlement statement to ensure that it complies with earlier closing cost estimates.

A PFS 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 after a PFS or DIL, in accordance with the Internal Revenue Code.

O. DEED-IN-LIEU

To be considered for a DIL the borrower must fully execute a written DIL agreement that contains all the conditions under which the deed will be accepted including:

- Specific transfer date
- Notification that there may be income tax consequences because of the DIL
- Acknowledgment that borrowers who comply with all 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 DIL of foreclosure workouts must be accompanied by the "Disposition (PFS/DIL) Cost Benefit Analysis" (Attachment 18-B). Attachment 18-B is an example of the analysis that must be completed in order for a DIL workout to be considered. Servicers may generate their own version of Attachment 18-B in-lieu of utilizing the example provided.

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 or DIL 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 or DIL, 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 or DIL closing are also reimbursable. The Agency will not pay costs related to the property incurred after the closing date.

The Agency will pay a loss mitigation incentive of $1000 for successfully closing a PFS or $250 for a DIL if all the documentation requirements outlined above are met.

Attachment 18-B
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 "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 Servicing Office via email at guarantee.svc@usda.gov.

Voluntary/Other Liquidation Method		**Foreclosure Method**	
Current Market Value	$180,000.00	Current Market Value	$180,000.00
[1] Gross Sales Price	$172,500.00	[1]Estimated Liquidation Value	$151,200.00
[2] Net Sales Proceeds	$157,482.63		
[3] 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
Total Debt	**$211,490.79**	[2]Estimated REO Marketing Cost	$24,116.00
Less Net Sales Proceeds	$157,482.63	**Total Debt**	**$236,291.86**
Total Estimated Loss Claim	**$54,008.16**	Less Estimated Liquidation Value	$151,200.00
		Total Estimated Loss Claim	**$85,091.86**
[1] If no offer is available enter Market Value in lieu of Gross Sales Price. [2] If no offer is available reduce Market Value by Management Acquisition Factor (14.95%) and enter in lieu of Net Sales Proceeds. [3] The result of the Net Sale Price divided by the Current Market Value		*[1]Equal to 84% of the Current Market Value* *[2]Multiply Estimated Liquidation Value by Management Acquisition Factor (15.95%)*	
Cost Savings to the Government:		**$31,083.70**	