

APPENDIX 8

PENALTIES

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1. Claim for Unallowable Expenses

The servicer's loss claim request should reflect only allowable expenses. If the Agency's review of the servicer's claim shows that unallowable expenses have been claimed, the loss claim amount will be reduced by the amount of unallowable expenses to reflect only allowable costs. The Agency will document any costs it disallows and the reasons for its determination. The following are some of the costs the Agency will disallow:

- Additional interest accrued beyond 60 days of acquisition;
- Interest accrued after allowable foreclosure time frame;
- Late fees;
- In-house servicer expenses such as employee salaries, in-house legal fees, travel, or REO management fees; and
- Liquidation or disposition costs that is not reasonable and customary for the area or fees that exceed fees as noted in Attachment 18-C of Chapter 18.

2. Failure to Adhere to Required Collection Procedures

The servicer is responsible for ensuring that all required collection actions are taken within the prescribed time frames and carefully documented. The Agency will reduce or deny a servicer's claim if the servicer fails to document that all required collection actions were taken at the appropriate times as noted in Chapter 18. The following are the penalties for failure to fulfill required collection obligations. Penalties take into consideration grace periods offered by the Agency outlined Chapter 18 of this Handbook.

- If the servicer fails to attempt to make any contact with the borrower within 65 days past due, the claim may be denied.
- If the servicer fails to provide timely and accurate Electronic Status Reporting (ESR) including when the account is in default, the claim may be reduced or denied.

- If the servicer does not initiate contact with the borrower within 25 days past due but makes contact within 65 days past due, accrued interest may be reduced by 50 percent.
- If the servicer fails to inspect the property within 65 days past due, but no loss results, the accrued interest may be reduced by 10 percent.
- If the servicer fails to inspect and secure an abandoned property, the loss claim will be reduced by 10 percent and the dollar value of the loss attributable to the servicer's failure to secure property, as documented in an appraisal. If a loss has not been documented by an appraisal, the claim may be denied.

3. Failure to Adhere to Required Foreclosure Time Frames

The servicer is responsible for foreclosing on the property within the time frames detailed in Attachment 18-B of Chapter 18. If the servicer fails to do so, the Agency may reduce the claim by the amount of any interest accrued beyond the allowable foreclosure time line.

4. Failure to Adhere to Servicing Guidelines

Although the Agency does not service loans, there are servicing requirements that lenders must follow. If the Agency determines that the loan was not serviced in accordance with Agency requirements, the Agency may take any action up to and including reduction or denial of claim, terminating the loan note guarantee, or the requiring the servicing lender to indemnify the Agency if a loss claim is paid.

5. Failure to File a Loss Claim Accurately and Within Required Timelines

The servicer is responsible for filing a timely and accurate loss claim. If the servicer fails to meet agency required timelines when filing claims, the Agency may reduce any additional interest paid from the allowable days to zero.

6. Failure to Ensure That All Applicable Property Standards Were Met

If a loss claim is filed that indicates that some or all of the loss may be attributable to problems with the property itself, the Agency will investigate the cause of the problem and determine if the originating lender is subject to indemnification in accordance with 7 CFR §3555.108(d).

7. Failure to Maintain the Property

Servicers are responsible for ensuring that properties securing guaranteed loans are adequately maintained throughout the life of the loan. Servicers are responsible for making protective advances to protect the security property at any point necessary during the life of the loan determining occupancy status, and securing the property. If the Agency determines that failure to maintain the property has resulted in a loss, the Agency will determine the dollar value of the loss attributable to the servicer's failure to act and may deduct that amount from the loss claim.

8. Failure to Dispose of the Property for an Appropriate Amount

The servicer is responsible for ensuring that when property is liquidated, either voluntarily or through foreclosure, it is sold for an amount supported by an appraisal and is acceptable to the Agency. Chapter 18 outlines the minimum requirements for meeting the Agency's price expectations in various disposition scenarios. If the servicer fails to dispose of a property at an appropriate price, the Agency may reduce the loss claim by the difference between the sale price and the price that should have been obtained.

9. Failure to Obtain Required Security

The servicer is responsible for obtaining the needed security for the loan. If the borrower becomes delinquent on the loan and it is shown that the servicer failed to obtain all required security, the loss claim will be denied in accordance with 7 CFR §3555.108(c).

10. Failure to Maintain the Required Security

If the servicer fails to make a needed protective advance in accordance with 7 CFR §3555.302(b), the claim will be reduced by the cost of repairing damage caused by failure to act.

If the servicer fails to contact the borrower within 65 days past due to determine whether the property has been abandoned and/or fails to secure an abandoned property by 95 days past due and no damage attributable to the servicer's failure can be documented, the claim must be reduced by 10 percent.

If damage attributable to the servicer's failure can be documented, the claim must be reduced by 10 percent plus the cost of repairing damage caused by the failure to act.

11. Provision of Unauthorized Assistance

The Agency cannot make a loss claim payment in the case of unauthorized assistance. If, at the time the loan note guarantee was approved, a borrower did not qualify for the SFHGLP or evidence is present that the property did not meet all property requirements, the Agency must deny the loss claim.

In very unusual circumstances, it is possible that a borrower might use some portion of the loan funds for an unauthorized purpose without the servicer's knowledge (i.e. – cash returned at closing that did not represent cash from personal funds contributed by or on behalf (gift funds) of the borrower) or purchase of furniture. In such a case, the Agency would honor the loss claim, but reduce the loss claim payment by the amount of the funds that were used for the unauthorized purpose.

12. Commission of, or Failure to, Report Knowledge of Fraud

If a lender or servicer commits fraud or fails to report fraud about which the lender or servicer knew, or should have known, the Agency will deny the loss claim.

13. Failure to Carry Out Established Monitoring Guidelines for Real Estate tax and Hazard Insurance Premium

If the servicer fails to carry out established monitoring guidelines for real estate tax and hazard insurance premium, the Agency may revoke servicer approval.

14. Sale of Loan to Non-Approved Servicer or Other Party

If the loan is sold to a party not approved to participate in the SFHGLP, the loan note guarantee will be considered invalid for the non-approved lender.

15. Failure to Adhere to Underwriting Guidelines

Although the Agency does not underwrite loans, there are underwriting requirements that lenders must follow. If the Agency determines that the loan was not underwritten in accordance with Agency requirements, the Agency may terminate the loan note guarantee, or the originating lender may be required to indemnify the Agency if a loss claim is paid.

16. Incomplete Closing Documentation

If the Agency determines that closing documentation is incomplete, or that there were minor, correctable errors in the documents, the lender may be granted up to 30 days to correct the situation. If the complete package is not resubmitted within 30 days, and the account is in default, the Conditional Commitment will not be honored.

17. Unauthorized Sale or Transfer

The Agency will withdraw the guarantee if the security property is transferred without an assumption of the debt, unless transferred under the Garn-St. Germaine rule.

18. Failure to Adhere to Agency Standards for Handling Bankruptcy

The Agency may reduce or deny any loss claim by 10 percent resulting from an account in bankruptcy that is subsequently foreclosed when accurate and timely actions were not initiated.

19. Property with Environmental Issues at Time of Liquidation

If the property's value at the time of liquidation is affected by environmental issues, the servicer must document how the hazard developed and became known. If the servicer failed to conduct appropriate due diligence at loan origination, the loss claim will be denied or reduced by the decrease in market value attributable to the environmental hazard.