

CHAPTER 19: LOSS CLAIMS - COLLECTING ON THE GUARANTEE

7 CFR 3555.351

19.1 OVERVIEW

This chapter outlines collecting on the guarantee. It provides a description of allowable costs, the servicer process for submitting a loss claim, outlines the Agency review, describes penalties that could be assessed for failure to meet program requirements, and provides guidance on net recovery value.

19.2 LOSS CLAIM COVERAGE

A. Loan Guarantee Limits

The maximum that a servicer may collect from the Agency under the SFHGLP is the lesser of:

- Ninety percent of the original principal amount advanced to the borrower; or
- One hundred percent of any loss equal to or less than 35 percent of the original principal advanced, plus 85 percent of any remaining loss up to 65 percent of the principal advanced.

When calculating the maximum loss claim amount, any previously reimbursed Mortgage Recovery Advance provided for the loan should be included in the loss.

For example, if the original principal amount (OPA) guaranteed on a loan was \$100,000, the maximum loss payment would be \$90,000, or the lesser of:

1. Ninety percent of principal

- OPA is \$100,000.
- 90 percent of OPA is \$90,000.

2. One hundred percent of 35 percent and 85 percent of 65 percent

- OPA is \$100,000.
- 35 percent of OPA is \$35,000.
- 65 percent of OPA is \$65,000.

- 85 percent of 65 percent of OPA is \$55,250.
- Payment amount is 100 percent of 35 percent of OPA (\$35,000) plus 85 percent of 65 percent of OPA (\$55,250). This equals \$90,250.

The Agency's exposure would be limited to \$90,000, which is the lesser of the two loss payment amounts.

If the Agency had previously reimbursed the servicer for a Mortgage Recovery Advance in the amount of \$30,000, The maximum exposure on the final loss claim would be \$60,000 which is the lesser amount minus the MRA already paid.

B. Losses Covered by the Guarantee

Losses that are covered by the loan guarantee include the following:

- Principal and interest owed on the loan;
- Additional interest accrued up to 60 days from the settlement date through the date the loss claim is paid;
- Principal and interest indebtedness on protective advances provided by the servicer to protect the security property; and
- Liquidation and disposition costs as outlined in Chapter 18 and 19 of this Handbook.

C. Reasonable and Customary

Liquidation and disposition costs should be similar to costs the servicer incurs when servicing non-guaranteed loans. Refer to Chapters 18 for further guidance on customary costs related to the management and liquidation of acquired properties. Allowable costs could include:

- Appraisal-related costs;
- Securing the property; or
- Payment of real estate commissions to sell the property at a maximum of six percent of the sales price unless incentives can be justified or a minimum of \$2,000 commission for low value sales. Incentives require Agency concurrence and allowable acquisition and management costs associated with property liquidation.

Costs associated with servicer in-house expenses (e.g. employee salaries, in-house legal fees, travel, REO management fees and other company expenses) are not allowed.

Allowable liquidation and disposition costs differ for properties sold to a third party from those that remain in the servicer's inventory at payment of the loss claim.

1. *Sold to a Third Party.*

If the property is sold to a third-party at the foreclosure sale or by a pre-foreclosure sale (short sale), the loss claim will be calculated on the actual sales price. The Agency will reimburse the servicer for actual liquidation expenses plus additional interest for up to 45 days from the pre-foreclosure sale (short sale) closing date, foreclosure sale date or the date the proceeds were received, whichever is later. The servicer should file the loss claim within 45 days of funds receipt or in the case of a short sale, the settlement date, otherwise the claim may be rejected or reduced. Documentation of expenses associated with a loss claim request must be retained in the servicer's permanent file.

2. *Acquired by the Servicer at a Foreclosure Sale or by Deed-in-Lieu.*

For property acquired by the servicer at the foreclosure sale or by deed-in-lieu, the servicer will order a market value appraisal, compliant with USPAP standards. If the servicer utilized a qualified appraisal during liquidation and it is dated within 6 months of the claim date, the servicer may reuse the existing appraisal. In order to estimate holding and disposition costs, a standard acquisition and management resale factor of 15.95 percent (aka VA Net Value Factor) as established by the Department of Veteran Affairs (VA) of the estimated sales price is used. Loss claims for acquired property should be filed by the servicer within 60 days of the foreclosure sale date, acquisition date, or possession of the security property; loss claims filed beyond this period may be reduced or denied by the Agency.

The servicer can negotiate a "cash for keys" option with the former borrower for a maximum of up to \$2,500. The property must be left in broom swept condition with all personal property removed before the borrower can be eligible to receive "cash for keys." Written agreement must be signed by borrower and retained in servicing file.

19.3 FILING A LOSS CLAIM

The servicer can submit a loss claim as a result of a loss from a pre-foreclosure sale (short sale), a third-party purchase at a foreclosure sale, acquisition through deed-in-lieu, or as a result of a purchase by the servicer at a foreclosure sale. Servicers submit loss claim requests to the NFAOC located in St. Louis, Missouri. Guaranteed servicing contact information can be found at the following website:

<https://www.rd.usda.gov/programs-services/lenders/usda-linc-training-resource-library>

All requests for loss claim payments will be made through an electronic web submission electronically through GLS. All information entered in GLS must be supported by documentation in the claim file. The servicer is responsible for the completeness and accuracy of the loss claim submission.

In order to properly submit loss claims through GLS, servicers are required to establish a System Administrator, sign a Trading Partner Agreement - Addendum E and provide Level II Access eAuthentication for all appropriate staff. For additional guidance, servicers may access RD's SFHGLP Training and Resource Library to review Regulations, Guidelines, Policies, Training Material and System Requirements.

Information on submitting a loss claim and uploading loss claim documentation can be found at the following website under the Training and Resource Library link:

<https://www.rd.usda.gov/programs-services/lenders/usda-linc-training-resource-library>

A. Sold to a Third Party

For property that is sold through pre-foreclosure sale (short sale) or to a third party at the foreclosure sale, the loss claim must be submitted within 45 days from the pre-foreclosure sale (short sale) closing date, foreclosure sale date or the date the proceeds were received, whichever is later.

B. Acquired by the Servicer at Foreclosure or Deed-in-Lieu

For properties that are acquired by the servicer, the servicer must order an appraisal within 15 days of the foreclosure sale date, acquisition date, or possession of the security property and file the loss claim within 60 days of the foreclosure sale date, acquisition date, or possession of the security property. In cases where a separate legal action is necessary to gain possession following a foreclosure, proceeding should be initiated within 30 calendar days of the foreclosure sale, redemption period or other prevailing State law affecting acquisition of title. The Agency will determine the value of the property for the basis of the loss claim by utilizing the market value of the security property through the Property Sale Value Calculator (PSVC). The Agency will apply an acquisition and management resale factor to estimate holding and disposition costs based on the most current VA Net Value Factor found at:

https://www.benefits.va.gov/HOMELOANS/servicers_valeri.asp.

C. Market Value Appraisal

The servicer will order an appraisal prepared by a licensed or certified appraiser. The appraisal must comply with USPAP with the following requirements:

- USDA to be named as either the client and/or intended user;
- The intended use is market value for loss mitigation or asset valuation; and
- State the highest and best use analysis for the subject property.

The appraiser will use one of the following forms:

- Uniform Residential Appraisal Report (URAR/Fannie Mae Form 1004 or Freddie Mac form 70);
- Manufactured Home Appraisal Report (Fannie Mae Form 1004C or Freddie Mac Form 70-B); or
- Individual Condominium Unit Appraisal Report (Fannie Mae Form 1073 or Freddie Mac Form 465).

Along with the above mentioned appraisal forms, the following should be included:

- Photos documenting the interior inspection are part of the appraisal inspection. The following color photos must be included:
 - All living spaces in the property (i.e. living room, family room, bonus room, dining room/area, etc.)
 - All bedrooms
 - Kitchen
 - Bathrooms
 - Basement/crawlspace
 - Laundry room
 - Mechanicals (furnace/air conditioner unit/water heater/electrical panel)
 - Attic
 - Garage/sheds
 - Any/all deferred maintenance items

Appraisals will be in PDF format with color photos upon submission to USDA LINC .

D. The Property Sale Value Calculator

The Agency has developed a Property Sale Value Calculator (PSVC) to determine the estimated sales price for REO loss claims. The model coefficients use data on approximately

94,000 historical loss claims from the program. The Agency updates the model coefficients on a regular basis using actual property sale values acquired through a third-party data provider. The Agency adds historical data to the model every year and re-generates coefficients to ensure historical relationships between variables represent the most recent data available and that the model produces accurate property value estimates.

19.4 CALCULATING NET RECOVERY VALUE

As a part of the loss claim, the Agency will reimburse the servicer for the difference between the loss incurred by the servicer and the net recovery value of the property, within the limits of the guarantee. Net recovery value is the amount the servicer recovers from the sale of a property after accounting for all costs. Net recovery value is calculated differently for properties that have been sold than for properties that are in the servicer's inventory at the time the loss claim is filed. For property that has already been sold, the actual net recovery value is used. For property that remains in the servicer's inventory, the estimated net recovery value is used.

A. Properties Sold at Foreclosure

When the servicer disposed of the property at the time of a loss claim submission, the actual net recovery value is calculated as the difference between:

- The proceeds from the sale and any other amounts recovered, such as recovered escrow funds; and
- Allowable liquidation and disposition costs.

B. Acquired Properties

The Agency estimates the net recovery value on unsold REO as the difference between:

- The estimated value of the property based on the Property Sale Value Calculator;
- Allowable acquisition and management costs associated with liquidation; and
- Net Value Factor.

19.5 AGENCY REVIEW

The Agency will review the loss claim package from the servicer. Loss claim checks or electronic funds transfer (EFT) payments will be issued to the servicer by the Agency within 60 days of the servicer's properly filed loss claim. Agency staff will notify the servicer of any additional documentation required and will note it in the loss claim file.

Once all required information is submitted, the Agency must take the following actions:

- Determine whether the servicer has fulfilled all SFHGLP obligations and if not, whether reduction or denial of the loss claim is warranted;
- Review and approve the loss claim with an Agency designee with appropriate approval authority;

- Notify the servicer of the results of the loss claim calculation in writing by providing a copy of the Advice of Payment;
- Advise the servicer of the estimated sale price (appraised value) used to calculate the claim.
- Provide appropriate appeal rights for any adjustments, reductions, or denials with specific reasons and clear explanation for the decision in accordance with Appendix 3 of this handbook; and
- Issue payment.

Payment of the loss claim simultaneously fulfills and terminates the loan note guarantee. A termination notice will be mailed to the servicing servicer at the time of payment.

A. Reduction or Denial of a Loss Claim

The Agency will review each loss claim for adherence to program regulation and make any reductions and/or denial of loss claim as noted below. The Agency staff will use information provided by the servicer to determine if the loss claim should be adjusted or denied. The Agency must show that any reduction in the servicer's claim is commensurate with the servicer's action or failure to act. This section provides guidance regarding reduction or denial of a claim, and when applicable, the specific penalties attached to those factors. Additional information regarding penalties may be found in Appendix 8 of this Handbook.

B. Calculation and Approval of Loss Payment

Agency staff will review the loss claim and supportive documentation submitted by the servicer. Agency staff will utilize the *Add/Update Loss Claim* transaction in the *Loss Claim Administration* menu of GLS to document and create a loss claim payment to the servicer. The Agency's reviewer should contact the servicer if there are questions about the information submitted by the servicer.

C. Loss Claim Payment Process

The Agency will use the following procedures for loss claim processing and disbursement of any loss claim checks.

1. Notification of Loss Payment Amount

The Agency should notify the servicer in writing of the amount to be paid within 60 days of receipt of a properly completed loss claim package. If the claim has been reduced or denied, the Agency will provide a clear explanation of its decision, including an analysis of how the amount of any reduction was determined and provide notification of appeal rights in accordance with Appendix 3 of this handbook.

2. Payment and Post Payment Activities

Payments for approved loss claims should be distributed within 60 days of receipt of a properly completed loss claim package. Servicers who participate in electronic funds transfer (EFT) should receive payment within 3 working days of loss claim processing. For all other servicers, a check should be generated and distributed within 3 working days of receipt of a properly completed and submitted loss claim.

3. Review and Appeal Rights.

If a claim is reduced or denied, the Agency will notify the servicer of review and appeal rights as described in Appendix 3 of this handbook. If the servicer seeks to request a review or appeal a loss claim decision, the Agency will pay the approved portion of the loss claim within the time frames described above. Interest will not accrue on any disputed loss amount during the review or appeals process regardless of the outcome of the review or appeal.

4. Supplemental Loss Claims

The Agency may allow the servicer to submit one supplemental loss claim in addition to the original claim submitted. The supplemental claim must be received by the Agency within six months from payment date of the initial claim. The Agency reserves the right to limit the payment of additional interest and expenses. The six-month expiration period may be exceeded if unusual circumstances exist such as a domestic incident as defined by the Department of Homeland Security or when a geographic location in which the property is located has a Presidential Disaster Declaration.