APPENDIX 9

PENALTIES

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1. Claim for Unallowable Expenses

The lender's loss claim request should reflect only allowable expenses. If the Agency's review of the lender'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 90 days of acquisition;
- Interest accrued after allowable foreclosure time frame;
- Late fees;
- In-house lender 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-B of Chapter 18.

2. Failure to Adhere to Required Collection Procedures

The lender 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 lender's claim if the lender 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 in Paragraph 18.4C of Chapter 18 of this Handbook.

- If the lender fails to attempt to make any contact with the borrower within 65 days past due, the claim will be denied.
- If the lender fails to notify the Agency when the account is in default, the claim will be denied.

- If the lender fails to attempt to make first contact with the borrower within 25 days past due but makes contact within 65 days past due, accrued interest will be reduced by 50 percent.

- If the lender fails to inspect the property within 65 days past due, but no loss results, the accrued interest will be reduced by 10 percent.

- If the lender 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 lender's failure to secure property, as documented in an appraisal. If a loss has not been documented by an appraisal, the claim will be denied.

3. Failure to Adhere to Required Foreclosure Time Frames

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

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

The lender is responsible for ensuring that the property meets a variety of property standards when the loan guarantee is issued. 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. If the problem is due to the failure of the property to initially meet property standards, the penalty imposed on the lender will depend upon several factors, including whether the lender made a good faith effort to ensure that the property met all required standards, but was provided incorrect information by another party, and whether the property problem actually resulted in any loss of value.

If there is a negative impact on the property's value, and the lender can document that it acted in good faith to ensure that standards were met, the claim must be reduced by the reduction in property value.

If the lender cannot document that it acted in good faith to ensure that property standards were met, the claim must be denied.

5. Failure to Maintain the Property

Lenders are responsible for ensuring that properties securing guaranteed loans are adequately maintained throughout the life of the loan. In particular, lenders are responsible for making protective advances to protect the security property at any point necessary during the life of the loan and if the lender is unable to contact a past-due borrower, determining whether the property may have been abandoned and if so, 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 lender's failure to act and deduct that amount from the loss claim.

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

The lender is responsible for ensuring that when property is liquidated, either voluntarily or through foreclosure, it is sold for an amount that is supported by an appraisal and is acceptable to the Agency. Chapter 19 outlines the minimum requirements for meeting the Agency's price expectations in various disposition scenarios. If the lender fails to dispose of a property at an appropriate price, the Agency will reduce the loss claim by the difference between the sale price and the price that should have been obtained.

7. Failure to Obtain Required Security

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

8. Failure to Maintain the Required Security

If the lender fails to make a needed protective advance, the claim will be reduced by the cost of repairing damage caused by failure to act.

If the lender 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 lender's failure can be documented, the claim must be reduced by 10 percent.

If damage attributable to the lender'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.

9. 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 lender'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.

10. Violation of Interest Rate Restrictions

The lender is responsible for ensuring that any interest rate negotiated with a borrower for a SFHGLP loan falls within the program's guidelines as described in Chapter 7 of this Handbook. If evidence exists the lender violates the program's interest rate restrictions, the Agency will deny the loss claim.

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

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

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

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

13. Sale of Loan to Non-Approved Lender or Other Party

If the lender sells the loan to a party not approved to participate in the GRH program, the Agency will terminate the loan note guarantee.

14. 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.

15. 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.

16. 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.

17. 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.

18. Property with Environmental Issues at Time of Liquidation

If the property's value at the time of liquidation is affected by environmental issues, the lender must document how the hazard developed and became known. If the lender 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.