

**CHAPTER 18: SERVICING NON-PERFORMING  
LOANS – ACCOUNTS WITH REPAYMENT  
PROBLEMS  
7 CFR 3555.301**

**18.1 INTRODUCTION**

When a loan becomes past due, the lender must take prompt and aggressive action to help the borrower bring the account current. The lender must apply servicing techniques consistently and have experienced and knowledgeable staff readily available to assist the borrower with default resolution. The lender's servicing system must follow accepted industry standards and maintain a record of all servicing efforts. The lender should work closely with the borrower to resolve a delinquent or late payment as early as possible to prevent further collection activity. If it becomes clear that the borrower will be unable or unwilling to repay the loan, the lender must take equally prompt action to liquidate the loan, either by encouraging the borrower to liquidate voluntarily, or by foreclosing on the loan. The loan holder has full responsibility for ensuring that all required servicing activities are properly completed and documented, even if a sub-servicer performs most of the actions.

Appendix 8 of this Handbook outlines the lender's responsibility to report to the Agency all delinquent loans and quarterly portfolio reports through EDI.

Section 1 of this Chapter states the minimum actions the lender is required to take and bring past-due accounts current. Section 2 of this Chapter describes various alternatives to foreclosure that the lender will pursue, including traditional and special loan servicing actions to follow. Section 3 of this Chapter describes the Agency's requirements with respect to the foreclosure process. Section 4 provides servicers with requirements for servicing when a property is located 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.

**SECTION 1: COLLECTION EFFORTS AND REQUIREMENTS [7 CFR 3555.301]**

**18.2 OVERVIEW**

A goal of the SFHGLP is to provide a borrower the maximum opportunity to become a successful homeowner. Consequently, the lender 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 lender 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 lender must, at a minimum, take the collection efforts described below. Each delinquency should be treated individually by using the 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 may be suspended when applicable laws restrict creditor action to collect a debt or take action interferes. An example that may be a violation of an applicable law is if the commencement a debtor's bankruptcy case occurs.

#### A. Initial Contact

The lender must attempt to make verbal or written contact with the borrower on or before the day an account becomes 20 days past due. The lender must send a letter to the borrower if it is 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 take. At a minimum, the lender must 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 expenses and debt obligations; and
- A realistic and satisfactory arrangement for curing the default.

#### B. Notify Credit Repository

The lender must provide a complete file of the status of the mortgages in its Agency-guaranteed loan portfolio to a minimum of three credit repositories each month. Accurate reporting may reduce any disputes that could arise from inaccurate or inconsistent reporting.

#### C. Send Certified Letter to the Borrower

Before a delinquent account becomes 60 days past due and the borrower has not made arrangements for payment, the lender must send a certified letter to the borrower. The letter should request that the borrower participate in an interview for the purpose of resolving the past due account. The lender should emphasize the importance of meeting debt obligations and the impact that non-payment has on the borrower's credit history. The potential outcome of the interview is to help the borrower prevent foreclosure.

## D. Inspect the Property

Before two monthly payments are due and unpaid or before initiating a liquidation action, the lender must take the following steps.

- Assess the physical condition of the property and determine if the property is occupied or vacant. For all inspections, lenders shall be required to document the general condition of the property and identify any actions required to adequately protect and preserve the property.
- If the property has been abandoned, take all necessary actions to protect the property from waste, damage and vandalism. If the loan is delinquent, expedite foreclosure by referring the loan for acceleration within 15 days of the date of the inspection report confirming the property was vacant.
- Document the servicing file explaining how it determined that the property was abandoned and not temporarily vacant. Reasonable judgment should be exercised in considering all circumstances – property condition, for sale signs, date of last payment received, presence of personal property or vehicles, yard condition, owners mailing address, etc – when arriving at a conclusion as to whether a property is abandoned or temporarily vacant.
- If the property has been determined to be abandoned, the lender should make an inspection of the mortgaged property at least once each month. The lender must maintain accurate reports of property conditions and take necessary actions to protect the property from waste, damage and vandalism to prevent losses. Additional guidance regarding management methods and activities of custodial properties can be found at Paragraph 19.2.A of Chapter 19 of this Handbook.
- If the property is owner-occupied, because of the potential for abandonment of the property during the liquidation proceedings, regular inspections of at least monthly should be conducted.

Generally, curbside inspections are inadequate for making these determinations and are acceptable to the Agency only if there is danger to the inspector or there are legal restrictions preventing access to the property.

The record of inspection must be retained in the mortgage file and address at a minimum the condition of the property, occupancy status and any necessary repairs to protect an abandoned property, the date of inspection and who performed the inspection.

## E. Proceed with Liquidation

When the account is 90 days past due, or three monthly payments are due and unpaid and the borrower has been advised in writing of available foreclosure prevention options, and the borrower has failed to act upon those options or a written response from the borrower indicated a lack of interest in the preventive foreclosure options offered, the lender must initiate liquidation proceedings by accelerating the loan and begin liquidation proceedings if necessary, foreclose as long as any applicable notice and waiting period under state law is met unless servicing information indicates a reasonable prospect of resolving the delinquency.

## 18.4 DOCUMENTATION REQUIREMENTS AND PENALTIES [7 CFR 3555.301]

### A. Collection Records

The lender 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 both by telephone and/or in-person;
- Dates and documentation of property inspections; and
- Date liquidation action was initiated.

### B. Grace Period for Completing Collection Action

The lender 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 lender takes the required action before the end of the grace period.

### C. Penalties for Failure to Fulfill Collection Obligations

If the lender 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 following penalties for a lender's failure to take the required collection actions. These penalties are described in greater detail in Chapter 20 and Appendix 9 of this Handbook and include the grace period offered by the Agency as noted in Paragraph 18.4 B above.

- The claim will be denied if the lender failed to attempt to make any contact with the borrower before the loan was 65 days past due;
- The claim will be denied if the lender failed to notify the Agency, in accordance with Paragraph 17.3, when the account was in default;
- Accrued interest for the claim will be reduced by 50 percent if the lender failed to attempt to make a first contact with the borrower within 25 days past the due date, but within 65 days past due;
- If the lender failed to inspect the property before the loan became 65 days past due, the accrued interest will be reduced by 10 percent as long as no loss resulted for the lender's failure to inspect the property timely; and
- The lender is required to protect and preserve the property. The loss claim will be reduced by the dollar value of the loss attributable to the lender's failure to inspect

and secure an abandoned property as documented by an appraisal. Should the appraisal fail to address the damage attributable to the lender's failure to secure the abandoned property, the claim will be denied.

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## SECTION 2: LOSS MITIGATION [7 CFR 3555.303 and 3555.305]

### 18.5 LOSS MITIGATION OPTIONS

The lender should make every possible effort to assist borrowers who are experiencing ~~temporary~~ financial hardship and are willing to cooperate in resolving a default situation. Loss mitigation must be used, where appropriate, to reduce losses to the government and assist the borrower in retaining homeownership. Possible methods for bringing an account current include an informal payment agreement, special forbearance agreement or loan modification. Special forbearance agreements and loan modifications should be used when information in the servicing file supports the borrower's ability and willingness to pay. Voluntary liquidation methods such as pre-foreclosure sales and offering a deed-in-lieu of foreclosure may be used to protect the Government's interest once the lender has exhausted other servicing options.

The Agency's *Loss Mitigation Guide* was developed to assist lenders with the loss mitigation process and options available to borrowers. Lenders may view the guide online at: <https://usdalinc.sc.egov.usda.gov/RHShome.do>. The guide is located under the *Training and Resource Library* link.

A critical item in any of these options is knowledge of the borrower's financial condition and an accurate determination of the borrower's ability to repay any arrearage and to continue making mortgage payments timely. Refer to the *Loss Mitigation Guide* for guidance regarding the following:

- Servicing Early Delinquent Loans;
- Informal Repayment Agreement;
- Special Forbearance;
- Traditional Loan Modification;
- Special Loan Servicing Options;
- Pre-Foreclosure Sale; and
- Deed-in-Lieu of Foreclosure;

~~In addition to guidelines expanded upon in the Agency's Loss Mitigation Guide, a Pre-Foreclosure Sale contract may be approved if the net sales proceeds are at least 80 percent of the home's as-is appraised value.~~

Prior concurrence from the Agency is required for all loss mitigation options unless Rural Development provides a written waiver of the need for its concurrence. The preferred method of managing loss mitigation is delegation the authority to the lender.

An electronic method of processing Loss Mitigation is available to approved Lender/Serviceers. A *Loss Mitigation Servicer User Guide* is available online at: <https://usdalinc.sc.egov.usda.gov/RHShome.do>. The guide is located under the *Training and Resource Library* link.

Loans dated prior to October 1, 1992 may be eligible for interest assistance to help resolve a borrower's payment problems. When interest assistance is offered as part of a loan servicing strategy, its role is to adjust the monthly payment to an amount that the borrower can afford. Providing interest assistance alone will not bring the loan current. Interest assistance can only help a past-due borrower in conjunction with a forbearance agreement or loan modification. Refer to Appendix 6 of this Handbook for additional information regarding interest assistance.

### **SECTION 3: ACCELERATION AND FORECLOSURE** [7 CFR 3555.306]

#### **18.6 ACCELERATION**

When a lender determines that a borrower is unable or unwilling to meet loan obligations, and there is no reasonable prospect of resolving the delinquency through another method, the lender should initiate liquidation proceedings by accelerating the loan and, if necessary, foreclose. A demand letter should be sent to the borrower within five days of when the account is 90 days delinquent. The notice should 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;
- Potential date foreclosure will occur if the breach is not cured; and
- Possibility of a Treasury Offset if foreclosure is necessary.

Failure to comply with these time lines may result in a reduction of any potential loss claim or a denial of the claim if the action is not taken within 30 days of the time lines if there are no documented extenuating circumstances.

#### **18.7 THE FORECLOSURE PROCESS [7 CFR 3555.306]**

##### **A. Initiation of Foreclosure - Referral**

The lender 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. In such a situation, the case must be referred within 90 days of the date when a foreclosure referral is possible. The lender must exercise due diligence and manage the process by ensuring that all required actions are completed timely. The lender also should encourage the borrower to either liquidate voluntarily or pursue a reasonable loss mitigation action to preclude acquisition of the property.

Attachment 18-A to this Chapter lists the recommended method of foreclosure and the first public action required by law to initiate each foreclosure method. In states where more than one foreclosure method is available but only one option is listed, the Agency chose 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 lender obtains title through a method of foreclosure other than what is recommended. If a lender submits a loss claim in accordance with Chapter 20 of this Handbook, the Agency office processing the loss claim request must determine whether the foreclosure method chosen by the lender was in the best interest of the Federal Government. For example, if the recommended foreclosure method is non-judicial, but judicial foreclosures are required to preserve the lender's right to a deficiency judgment, the lender may demonstrate 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.

## **B. The Foreclosure Sale**

Lenders 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 whether there is any recovery potential for any deficiency. The estimate of the total debt includes the unpaid principal, protective advances, interest accrual through the liquidation process, and other potential costs, such as the expense of the liquidation action and, if applicable, the cost of Real Estate Owned (REO) management and disposition.

The determination of the security value should be based on the current market value of the property. The recovery potential should be based on the borrower's assets and/or ability to pay the deficiency, as well as other potential sources of recovery, such as proceeds of insurance claims or pending litigation that might result in collection of the deficiency.

The determination of the amount to bid at the foreclosure sale will have a significant effect on the net loss to the lender and to the Government. In determining the amount and the strategy of the foreclosure bid, the lender must consider State statutory requirements as well as the following considerations. If the bid at the sale covers the full amount of the debt, it is satisfied in the eyes of the law and the lender has no basis for further collection from the borrower. The lender's position of first mortgage is extinguished and therefore, there is no right to collect any proceeds from insurance or litigation. In addition, when the bid is equivalent to or exceeds the market value of the property, potential buyers are less interested in bidding and it is more likely the lender will acquire the property as well as the costs of managing and disposing of it.

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 our sources, it is in the mutual interest of the lender and the Government, as guarantor, to encourage third-party bidding at the sale by entering a foreclosure sale bid less than the value of the property. The intent is to avoid acquiring REO and its associated management and disposition costs.

Without prior concurrence of the Agency, a lender should enter a foreclosure sale bid at 80 percent of the market value of the security. The fair market value upon which the bid is calculated must be based on a current appraisal of the property, in “as is” condition, with a 90-120 day marketing time frame. If the interior of the security property is not accessible, the valuation will be based on exterior inspection only. The reductions intended to reflect potential REO costs, including accrued interest on the unpaid principal balance, which are typically a minimum of 15 percent of the fair market value of the property.

Lenders are responsible for ensuring that the value determination that forms the basis for the bid provides a sound estimate of the market value of the property at the time of the foreclosure sale. If a significant (20 percent or more) decline from the value established when the loan was made and the pre-foreclosure valuation is evident, the lender is encouraged to review the value determination in accordance with established quality controls and be prepared to support the validity of and value, if called upon by the Agency to do so.

### **C. Reinstatement of Account**

Unless required otherwise by State statute, the lender may reinstate an accelerated account if the borrower meets the following conditions:

- Pays the total amount delinquent, including protective advances, accrued interest, any foreclosure related costs and other expenses incurred by the lender, in a lump sum.
- Has the documented ability to resume scheduled payments on the loan.
- Has not received an overpayment of interest assistance from the Agency based on false information as described in Appendix 6 of this Handbook.

## **18.8 MANAGING THE FORECLOSURE PROCESS [7 CFR 3555.306]**

The lender must manage the foreclosure process so that the property is acquired in a cost effective, expeditious, and efficient manner. If the attorney or trustee requests additional documentation, the lender must provide it within five business days of receiving the request.

### **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.

Attachment 18-A of this Chapter provides time frames within which the Agency expects all foreclosure actions to be taken. These time frames are measured from the first legal action to the foreclosure sale date. The SFHGLP adheres to HUD’s foreclosure time frames. The current published scheduled by HUD will be utilized by SFHGLP. These

time frames are measured from the first legal action to the foreclosure sale date, which is when the REO marketing period begins. Basic time frames of foreclosure processes most commonly utilized by private attorneys in state courts compare favorably to the HUD time frames.

SFHGLP foreclosure time frames start with the date of the first legal action required by law, ends with the foreclosure sale date, and do not include post-sale redemption periods or sale confirmations. Since redemption periods may be adjusted under some 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 20 of this Handbook for each day that the foreclosure continues past the prescribed time frame unless the lender presents a valid reason that justifies the delay.

Lenders and the Agency must ensure that staff members are familiar with State guidelines related to foreclosures. Exceptions to the foreclosure time frame, which cause delays beyond the lender's control must be documented and submitted with the claim package. Examples of such circumstances include bankruptcy petitions filed after foreclosure initiation, contested foreclosures, and court scheduling delays or delays in obtaining service. Supporting documentation includes attorney correspondence or copies of court records. Lenders are responsible for including documentation to support the first public action and the foreclosure sale date in the claim package provided to the Agency office responsible for processing the claim.

The lender 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 SFHGLP foreclosure time frame plus an automatic 90-day extension to determine if the time frame was met.

The lender 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 lender's claim review documentation must indicate the case was promptly referred to the foreclosure attorney after bankruptcy filing. Any delay beyond 90 days from the date of the bankruptcy filing must be supported by documentation supporting the delay. Submit documentation with the loss claim, as described in Chapter 20 of this Handbook. Failure to submit the documentation supporting the extended foreclosure time-frame will result in denial of additional accrued interest request.

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 lender 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 lender 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.

## **B. Acceptable Liquidation Fees and Costs**

SFHGLP regulations authorize the reimbursement of liquidation fees and costs that are actually paid by the lender for liquidated loans that result in a loss to the lender within the limits of the guarantee. Reasonable liquidation costs similar to those charged for like services in the area will be allowed. It is not the Agency's intent to regulate the amounts that lenders pay for services performed, but to limit the extent to which the SFHGLP reimburses the lender for attorney fees incurred for loss claims filed in accordance with Chapter 20 of this Handbook. The Schedule of Standard Attorney/Trustee's Fees published by HUD for foreclosure, deed-in-lieu of foreclosure and bankruptcy will be utilized as the basis for determining reasonable and customary attorney fees. Attachment 18-B of this Chapter provides the most current Schedule of Standard Attorney/Trustee's Fees. The current schedule published by HUD will be utilized by SFHGLP. Fees higher than the published amounts may be appropriate, in cases such as contested foreclosures, required probate procedures, etc., and are subject to approval 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 lender 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 lender 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 lender is the same as if the attorney firm had performed this function. This is considered an acceptable fee that is eligible for reimbursement.

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, a maximum of 75% of the allowable attorney fee and all actual foreclosure costs incurred will be reimbursed. If state statute requires that the foreclosure be restarted from the beginning after a bankruptcy is dismissed or relief from stay is granted, the lender will be reimbursed for 100% of allowable foreclosure attorney fees and costs incurred after the bankruptcy stay is lifted. 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 Schedule of Standard Attorney/Trustee's Fees.

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 Attachment 18-B list the attorney or trustee fee limits allowed for each SFHGLP 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 lender obtains title through a method of foreclosure other than what is recommended. However, the Agency must determine whether the foreclosure method chosen by the lender 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 lender can demonstrate 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.

## 18.9 REPORTING REQUIREMENTS

In accordance with Appendix 8 of this Handbook, lenders are required to report to the Agency all delinquent accounts. Reporting occurs through an electronic transmission known as EDI. Quarterly, the lender will be required to submit a portfolio report of all SFHGLP loans.

When the lender initiates foreclosure, the first report following the month foreclosure is initiated; the lender will report all accounts in foreclosure. The account must be reported until:

- Loss mitigation efforts are completed;
- The mortgage is reinstated or paid in full;
- The property is sold to a third party purchaser at foreclosure sale and no loss claim will be filed; and
- Lender submits loss claim package for an REO sold/unsold.

Additional guidance regarding EDI reporting may be found in Appendix 8. An *EDI Implementation Guide* may be found online at: <http://www.rurdev.usda.gov/reg/>.

### SECTION 4: ASSISTANCE IN NATURAL DISASTERS [7 CFR 3555.307]

The following provides guidance for servicing accounts when a county, parish or municipality has been declared by the President of the United States to be a major disaster where federal aid in the form of individual assistance is being made available.

## 18.10 PROPERTY PROTECTION [7 CFR 3555.307(b)]

When a servicer becomes aware that a property secured by a SFHGLP guarantee has incurred damage as the result of a natural disaster:

- Ascertain the number of affected 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.
- Secure abandoned properties.
- Provide assistance to 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 ~~and~~ progression of repairs when a deposit of insurance proceeds occurs in lieu of borrowers receiving insurance proceeds for properties.

**18.11 SPECIAL RELIEF MEASURES [7 CFR 3555.307(c)]**

Collection, initiation of foreclosure, suspension of foreclosure and eviction proceedings may be suspended, at the servicer's discretion for national disaster areas identified by FEMA. A suspension would be effective as of the date the President declares a national disaster, and expires ninety (90) days from the date declared unless extended by the Agency.

To be eligible for a suspension of collection and foreclosure activities, the property must be directly affected by the disaster. Relevant factors to consider in determining whether to suspend collection, foreclosure or eviction activity:

- Evaluate the effects of the disaster.
- ~~Before considering relief, require~~ 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 his/her 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. A relief measure that is very appropriate in disasters is forbearance. Under forbearance, the servicer can agree to reduce or suspend the borrower's monthly payments for a specified period. After which, 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, borrower financial information at the end of the suspension period should be conducted. If the servicer believes suspension beyond the 90 day period is warranted, the servicer should make a recommendation to the Agency.

Servicers may use existing 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. A borrower for whom a forbearance or repayment plan is extended due to disaster-related circumstances must not be reported to credit repositories.

**18.12 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

lender 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 lender and minimize loss to the Agency. Agency concurrence is required.

In damage cases, insurance proceeds will be issued jointly to the lender and the borrower. If the decision is to use the proceeds to repair the property, the lender must ensure a licensed contractor is used to complete the repairs. Unless the homeowner qualifies for direct payment of insurance proceeds in accordance with Paragraph 17.2 E of Chapter 17 of this Handbook, the lender 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 lender is responsible for obtaining all lien waivers for work performed.

If the premises have been totally destroyed, the servicer should compare the unpaid principal balance with the ~~anticipated~~ 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.

### 18.13 DEBT SETTLEMENT REPORTING

Lenders 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  
ACCEPTABLE STATE FORECLOSURE TIME FRAMES**

State	Typical Security Document	Foreclosure Method Reasonable Diligence Time Frames In Months (Days) <sup>1</sup> – Effective 9/1/2014		First Legal Action to Commence (Initiation) of Foreclosure
		Non-judicial	Judicial	
Alabama	Mortgage	<del>54</del> (1520)		Publication
Alaska	Deed of Trust	<del>45</del> (1250)		Recording of Notice of Default
Arizona	Deed of Trust	5 (150)		Recording of Notice of Sale
Arkansas	Deed of Trust	<del>45</del> (1250)		Recording of Notice of Default
California	Deed of Trust	7 (210)		Recording of Notice of Default
Colorado	Deed of Trust	7(210)		Filing of Foreclosure Docs with Public Trustee
Connecticut	Mortgage		<del>910</del> (27300)	Delivery of Complaint to Sheriff
Delaware	Mortgage		<del>89</del> (2470)	Complaint Filed
Florida	Mortgage		<del>715</del> (21450)	Complaint Filed
Georgia	Security Deed	4 (120)		Publication
Guam	Mortgage	<del>101</del> (3030)		Posting and Publishing of Notice of Sale
Hawaii	Mortgage	<del>46</del> (1280)		Publication of Notice of Intent to Foreclose
	Mortgage		9 (270)	Publication of Notice of Intent to Foreclose
Idaho	Deed of Trust	<del>68</del> (18240)		Recording of Notice of Default
Illinois	Mortgage		12 (360)	Complaint Filed
Indiana	Mortgage		<del>101</del> (3030)	Complaint Filed
Iowa	Mortgage		17 (510)	Petition Filed
	Deed of Trust	9 (270)		Delivering Notice to Clerk
Kansas	Mortgage		9 (270)	Complaint Filed
Kentucky	Mortgage		<del>79</del> (210)	Complaint Filed
Louisiana	Mortgage		<del>78</del> (2140)	Petition for Executory Process
Maine	Mortgage		<del>124</del> (36420)	Complaint Filed
Maryland	Deed of Trust	6 (180)		Filing an Order to Docket
	Mortgage		6 (180)	Petition in Equity
Massachusetts <sup>2</sup>	Mortgage	8 (240)		Filing Complaint Relative to Servicemembers Civil Relief Act
Michigan	Mortgage	9 (270)		Publication
Minnesota	Mortgage Deed	10 (300)		Publication
Mississippi	Deed of Trust	<del>49</del> (12270)		Publication

<sup>1</sup> State foreclosure time frames are displayed in months and converted to reasonable days expected.

<sup>2</sup> The servicer must first obtain a Judgment from the Land Court certifying that the owners of the property being foreclosed are not entitled to relief under the Servicemembers Civil Relief Act (SCRA).

		<b>Non-judicial</b>	<b>Judicial</b>	
Missouri	Deed of Trust	<del>34</del> (9120)		Publication
Montana	Trust Indenture	7 (210)		Recording of Notice of Sale
Nebraska	Deed of Trust	5 (150)		Publication of Notice of Sale
	Mortgage		<del>56</del> (1580)	Petition
Nevada	Deed of Trust	<del>67</del> (18210)		Recording of Notice of Default
New Hampshire	Mortgage	4 (120)		Publication
New Jersey	Mortgage		<del>145</del> (4250)	Complaint Filed
New Mexico	Mortgage		<del>79</del> (21180)	Complaint Filed
New York	Mortgage		<del>139</del> (39570)	Complaint Filed
North Carolina	Deed of Trust	5 (150)		Notice of Hearing
North Dakota	Mortgage		8 (240)	Complaint Filed
Ohio	Mortgage Deed		12 (360)	Complaint Filed
Oklahoma	Mortgage		<del>79</del> (2170)	Petition Filed
Oregon	Deed of Trust	7 (210)		Recording of Notice of Default
Pennsylvania	Mortgage		<del>101</del> (3030)	Complaint Filed
Puerto Rico	Mortgage		14 (420)	Complaint Filed
Rhode Island	Mortgage	<del>36</del> (9180)		Publication
South Carolina	Mortgage		<del>79</del> (2170)	Complaint Filed
South Dakota	Mortgage		10 (300)	Complaint Filed
	Deed of Trust	9 (270)		Publication of Notice of Sale
Tennessee	Deed of Trust	4 (120)		Publication
Texas	Deed of Trust	3 (90)		Posting and Filing of Notice of Sale
Utah	Deed of Trust	<del>56</del> (1580)		Recording of Notice of Sale
	Mortgage		11 (330)	Complaint Filed
Vermont	Mortgage	4 (120)	14 (420)	Complaint Filed
Virgin Islands	Mortgage		15 (450)	Complaint Filed
Virginia	Deed of Trust	4 (120)		Publication
Washington	Deed of Trust	6 (180)		Recording of Notice of Sale
West Virginia	Deed of Trust	5 (150)		Publication
Wisconsin	Mortgage		12 (360)	Complaint Filed
Wyoming	Mortgage	6 (180)		Publication

**ATTACHMENT 18-B**  
**ACCEPTABLE STATE LIQUIDATION COSTS AND FEES**  
**Schedule of Standard Attorney/Trustee Fees**

STATE	NON-JUDICIAL FORECLOSURE	JUDICIAL FORECLOSURE	BANKRUPTCY CLEARANCE	POSSESSORY ACTION	DEED-IN-LIEU
AK	\$1,250		Varies <sup>13</sup>	\$375	\$400
AL	\$900 <sup>1</sup>		Varies <sup>13</sup>	\$375	\$400
AR	\$1,050		Varies <sup>13</sup>	\$275	\$400
AZ	\$925		Varies <sup>13</sup>	\$275	\$400
CA	\$1,000		Varies <sup>13</sup>	\$525	\$400
CO	\$1,225		Varies <sup>13</sup>	\$275	\$400
CT		\$1,700 <sup>2</sup>	Varies <sup>13</sup>	\$375	\$400
DC	\$650 <sup>1</sup>		Varies <sup>13</sup>	\$375	\$400
DE		\$1,350	Varies <sup>13</sup>	\$325	\$400
FL		\$2,250	Varies <sup>13</sup>	\$375	\$400
GA	\$900 <sup>1,3</sup>		Varies <sup>13</sup>	\$375	\$400
GU	\$1,250		Varies <sup>13</sup>	\$375	\$400
HI	\$1,250	\$2,400	Varies <sup>13</sup>	\$525	\$400
IA	\$850	\$1,350	Varies <sup>13</sup>	\$325	\$400
ID	\$1,050		Varies <sup>13</sup>	\$375	\$400
IL		\$1,750 <sup>5</sup>	Varies <sup>13</sup>	\$325	\$400
IN		\$1,500 <sup>6</sup>	Varies <sup>13</sup>	\$325	\$400
KS		\$1,250	Varies <sup>13</sup>	\$325	\$400
KY		\$1,700	Varies <sup>13</sup>	\$375	\$400
LA		\$1,350	Varies <sup>13</sup>	\$325	\$400
MA	\$2,000		Varies <sup>13</sup>	\$625	\$400
MD	\$2,100 <sup>1,3</sup>	\$1,600	Varies <sup>13</sup>	\$375	\$400
ME		\$1,750	Varies <sup>13</sup>	\$525	\$400
MI	\$1,000 <sup>7</sup>		Varies <sup>13</sup>	\$325	\$400
MN	\$1,025		Varies <sup>13</sup>	\$325	\$400
MO	\$950		Varies <sup>13</sup>	\$325	\$400
MS	\$900 <sup>1</sup>		Varies <sup>13</sup>	\$375	\$400
MT	\$1,000		Varies <sup>13</sup>	\$375	\$400
NC	\$1,150 <sup>8</sup>		Varies <sup>13</sup>	\$375	\$400
ND		\$1,250	Varies <sup>13</sup>	\$325	\$400
NE	\$900 <sup>9</sup>	\$900	Varies <sup>13</sup>	\$325	\$400
NH	\$1,150		Varies <sup>13</sup>	\$425	\$400
NJ		\$2,425	Varies <sup>13</sup>	\$375	\$400
NM		\$1,500	Varies <sup>13</sup>	\$275	\$400
NV	\$1,100		Varies <sup>13</sup>	\$375	\$400
NY		\$2,000 <sup>10</sup>	Varies <sup>13</sup>	\$725	\$400
OH		\$1,700	Varies <sup>13</sup>	\$325	\$400
OK		\$1,450 <sup>5</sup>	Varies <sup>13</sup>	\$275	\$400
OR	\$1,000	\$2,050	Varies <sup>13</sup>	\$375	\$400
PA		\$1,650 <sup>11</sup>	Varies <sup>13</sup>	\$425	\$400
PR		\$1,500 <sup>12</sup>	Varies <sup>13</sup>	\$300	\$400
RI	\$1,300		Varies <sup>13</sup>	\$525	\$400
SC		\$1,650	Varies <sup>13</sup>	\$375	\$400

STATE	NON-JUDICIAL FORECLOSURE	JUDICIAL FORECLOSURE	BANKRUPTCY CLEARANCE	POSSESSORY ACTION	DEED-IN-LIEU
SD	\$600	\$1,250	Varies <sup>13</sup>	\$325	\$400
TN	\$900 <sup>1</sup>		Varies <sup>13</sup>	\$375	\$400
TX	\$900		Varies <sup>13</sup>	\$325	\$400
UT	\$925	\$925	Varies <sup>13</sup>	\$275	\$400
VA	\$925 <sup>1,3</sup>		Varies <sup>13</sup>	\$375	\$400
VI		\$1,800	Varies <sup>13</sup>	\$300	\$400
VT		\$1,700	Varies <sup>13</sup>	\$375	\$400
WA	\$1,000		Varies <sup>13</sup>	\$375	\$400
WI		\$1,500	Varies <sup>13</sup>	\$325	\$400
WV	\$1,000 <sup>1,3</sup>		Varies <sup>13</sup>	\$375	\$400
WY	\$1,000		Varies <sup>13</sup>	\$375	\$400

**Footnotes:**

- (1) The fee covers the combined attorney's and notary's fees.
- (2) This fee applies to strict foreclosures. If the foreclosure orders a Foreclosure by Sale, the fee will be \$1,950.
- (3) The fee covers both the attorney's fee and the trustee's commission (or statutory fee).
- (4) The fee includes reimbursement of any fee for the attorney's certificate of title.
- (5) The fee increases by \$100 if foreclosure is achieved by summary judgment.
- (6) In addition to the allowable foreclosure fee, an auctioneer's fee of up to \$250 is allowed for the services of a state licensed auctioneer requested by the lender and approved by the court.
- (7) The fee increases to \$1,100 for a non-judicial foreclosure for a case in which the attorney provides services for "proceedings subsequent" that involve registered land.
- (8) The fee includes the notary's fee. An additional fee of \$250 is allowed for an attorney court appearance for a foreclosure hearing.
- (9) This fee relates to the exercise of the power of sale under a deed of trust.
- (10) This fee applies to foreclosures other than those conducted in New York City and Long Island. A fee of \$2,400 applies to foreclosures conducted in the five boroughs of New York City (Bronx, Brooklyn/Kings, Manhattan, Queens and Staten Island) and in Long Island (Nassau and Suffolk Counties).
- (11) The fee covers certain additional legal actions necessary to complete the foreclosure, including motions to postpone or relist a sale and motions to reassess damages.
- (12) In addition to the allowable foreclosure fee, \$150 is allowed for a notary fee for completed foreclosures. However, if a deed of judicial sale cannot be executed contemporaneously with the foreclosure sale, \$300 is allowed for the notary fee.
- (13) This fee assumes that all required procedural steps have been completed. The maximum attorney's fee varies based on the chapter under which the bankruptcy action is filed.
  - o For Chapter 7 bankruptcies, the maximum allowable fee is \$650.
  - o For Chapter 11, 12, and 13 bankruptcies, the maximum allowable fee is \$1,000