

**§ 3565.404**

**7 CFR Ch. XXXV (1-1-01 Edition)**

(c) *Claims processing.* In the event of a loss, the lender must submit claims under the guarantee in accordance with subpart J of this part. Prior to submitting a claim, the lender must exhaust all possibilities of collection on the loan.

(d) *Displacement prevention.* The actions of the lender must not harm the property's tenants through displacement.

**§ 3565.404 Transfer of mortgage servicing.**

Transfer of servicing is prohibited unless the Agency determines that circumstances warrant such action, the proposed lender is an eligible lender approved by the Agency, and the transfer of servicing is approved by the Agency in advance.

**§§ 3565.405-3565.449 [Reserved]**

**§ 3565.450 OMB control number.**

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0174.

**Subpart J—Assignment, Conveyance, and Claims**

**§ 3565.451 Preclaim requirements.**

(a) *Lender certifications.* After borrower default and before filing a claim or assignment of the loan to the Agency, the lender must make every reasonable and prudent effort to resolve the default. The lender must provide the Agency with an accounting of all proposed and actual actions taken to cure the default. The lender must certify that all reasonable efforts to cure the default have been exhausted. Where the lender fails to comply with the terms of the loan guarantee agreement and the corresponding regulations and guidance with regard to liquidating the property, the Agency, at its option, may take possession of the security collateral and dispose of the property.

(b) *Due diligence by lender.* For all loan servicing actions where a market, net recovery or liquidation value determination is required, guaranteed lend-

ers shall perform due diligence in conjunction with the appraisal and submit it to the Agency for review. The Phase I Environmental Site Assessment published by the American Society of Testing and Materials is considered an acceptable format for due diligence.

(c) *Environmental review.* The Agency is required to complete an environmental review under the National Environmental Policy Act, in accordance with 7 CFR part 1940, subpart G or a successor regulation, prior to disposition of inventory property, if title is held by the Agency, and prior to any authorization to the guaranteed lender to foreclose and dispose of property, and for any other servicing action requiring Agency approval or consent.

**§ 3565.452 Decision to liquidate.**

A decision to liquidate shall be made when it is determined that the default cannot be cured through actions contained in § 3565.403 of subpart I or it has been determined that it is in the best interest of the Agency and the lender to liquidate.

**§ 3565.453 Disposition of the property.**

(a) *Liquidation plan.* The lender will, within 30 days after a decision to liquidate, submit to the Agency in writing its proposed detailed plan of liquidation. Upon approval by the Agency of the liquidation plan, the lender will proceed to liquidate. At a minimum, this plan must contain the following information:

(1) Such proof as the Agency requires to establish the lender's ownership of the guaranteed loan promissory note and related security instruments and a copy of the payment ledger if available which reflects the current loan balance and accrued interest to date and the method of computing the interest.

(2) A full and complete list of all collateral including any personal and corporate guarantees.

(3) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended actions for:

- (i) Acquiring and disposing of all collateral;
- (ii) Collecting from guarantors;

**Rural Housing Service, USDA**

**§ 3565.456**

(iii) Obtaining an appraisal of the collateral;

(iv) Setting the proposed date of foreclosure; and

(v) Setting the proposed date of liquidation.

(4) Necessary steps for protection of the tenants and preservation of the collateral.

(5) Copies of the borrower's latest available financial statements.

(6) Copies of the guarantor's latest available financial statements.

(7) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense.

(8) A schedule to periodically report to the Agency on the progress of liquidation.

(9) Estimated protective advance amounts with justification.

(b) *Filing an estimated loss claim.* Upon Agency concurrence in the liquidation plan and when the lender owns any or all of the guaranteed portion of the loan, the Agency may, in accordance with program guidance, pay an estimated loss payment based on an Agency determined percentage of the approved estimate of the loss. The estimated loss payment will be based in the liquidation value of the collateral. If such payment is made, it will be applied to the outstanding principal balance owed on the guaranteed debt. The lender will discontinue interest accrual on the defaulted loan in accordance with Agency procedures.

(c) *Property disposition.* Once the liquidation plan has Agency approval, the lender must make every effort to liquidate the property in a manner that will yield the highest market value consistent with the protections afforded to tenants contained in 7 CFR part 1944, subpart L or successor regulation. This liquidation process must be completed within 9 months from the lender's decision to liquidate, unless otherwise approved by the Agency.

(d) *Transmitting payments and proceeds to the Agency.* When the Agency is the holder of a portion of the guaranteed loan, the lender will transmit to the Agency its pro rata share of any payments received from the borrower, liquidation, or other proceeds.

**§ 3565.454 [Reserved]**

**§ 3565.455 Alternative disposition methods.**

The Agency, in its sole discretion, may choose to obtain an assignment of the loan from the lender or conveyance of title obtained by the lender through foreclosure or a deed-in-lieu of foreclosure.

(a) *Assignment.* In the case of an assignment of the loan, the assignment of the security instruments or the security must be in written and recordable form. Completion of the assignment will occur once the following transactions are completed to the Agency's satisfaction.

(1) Conveyance to the Agency of all the lender's rights and interests arising under the loan.

(2) Assignment to the Agency of all claims against the borrower or others arising out of the loan transactions, including:

(i) All collateral agreements affecting financing, construction, use or operation of the property; and

(ii) All insurance or surety bonds, or other guarantees, and all claims under them.

(3) Certification that the collateral has been evaluated for the presence of contamination from the release of hazardous substances, petroleum products or other environmental hazards which may adversely impact the market value of the property and the results of that evaluation.

(b) *Conveyance of title.* In the case of a conveyance of title to the property, the lender must inform the Agency in advance of how it plans to acquire title and a timetable for doing so. The Agency will accept the conveyance upon receipt of an assignment to the Agency of all claims of the lender against the property and assignment of the lender's rights to any operating funds and any reserves or escrows established for the maintenance of the property or the payment of property taxes and insurance.

**§ 3565.456 Filing a claim.**

Once the lender has disposed of the property or the Agency has agreed to accept an assignment of the loan or conveyance of title to the property, the