

RHS, RBS, RUS, FSA, USDA

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(2) *Annual report.* The Lender will submit an annual report indicating the status of each borrower account as of December 31 using the format prescribed by RHS.

(e) [Reserved]

§ 1980.371 Defaults by the borrower.

Default occurs when the borrower fails to perform under any covenant of the mortgage or Deed of Trust and the failure continues for 30 days. The Lender will negotiate in good faith in an attempt to resolve any problem. The borrower must be given a reasonable opportunity to bring the account current before any foreclosure proceedings are started.

(a) The Lender must make a reasonable attempt to contact the borrower if the payment is not received by the 20th day after it is due.

(b) The Lender must make a reasonable attempt to arrange and hold an interview with the borrower for the purpose of resolving the delinquent account before the loan becomes 60 days delinquent. Reasonable effort consists of not less than one letter sent to the borrower at the property address via certified mail or similar method which the borrower refuses to accept or fails to respond.

(c) If the Lender is unable to make contact with the borrower, the Lender must determine whether the property has been abandoned and the value of the security is in jeopardy before the account becomes two payments delinquent.

(d) When the loan becomes three payments delinquent, the Lender must report borrower delinquencies to credit repositories and make a decision with regard to liquidation of the account. The Lender may proceed with liquidation of the account unless there are extenuating circumstances.

§ 1980.372 Protective advances.

Protective advances must constitute an indebtedness of the borrower to the Lender and be secured by the security instrument. Protective advances are advances made for expenses of an emergency nature necessary to preserve or protect the physical security. Attorney fees are not a protective advance. The Lender will not make protective ad-

vances in lieu of an additional loan. In order to assure that a protective advance over \$500 will be included in the loss payment, Lenders are encouraged to obtain prior RHS approval.

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§ 1980.374 Liquidation.

If the Lender concludes the liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, the Lender will notify RHS of the decision to liquidate. 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. Foreclosure must be initiated within 90 days of the date the decision to liquidate is made unless the foreclosure has been delayed by law. When there is a legal delay (such as bankruptcy), foreclosure must be started within 60 days after it becomes possible to do so.

(a) *Expeditious liquidation.* Once the decision to liquidate has been made, the Lender must proceed in an expeditious manner. Lenders must exercise due diligence in completing the foreclosure process. Lenders are expected to complete foreclosure within the time frames that are reasonable for the state in which the property is located.

(b) *Maximum collection.* The Lender is expected to make the maximum collection possible on the indebtedness. The Lender will consider the possibility of recovery of any deficiency apart from the acquisition or sale of collateral. The Lender will submit a recommendation on such recovery considering the borrower's assets and ability to pay, prospects of future recovery, the costs of pursuing such recovery, recommendation for obtaining a judgment, and the collectability of a judgment in view of the borrower's assets.

(c) *Allowable liquidation costs.* Certain reasonable liquidation costs (costs similar to those charged for like services in the area) will be allowed during the liquidation process. No in-house expenses of the Lender will be allowed including, but not limited to, employee

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salaries, staff lawyers, travel, and overhead. Liquidation costs are deducted from the gross sales proceeds of the collateral when the Lender has conducted the liquidation.

(d) *Servicing plan.* The Lender must submit a servicing plan to RHS when the account is 90 days delinquent and a method other than foreclosure is recommended to resolve delinquency. RHS encourages Lenders and delinquent borrowers to explore an acceptable alternative to foreclosure to reduce loss and expenses of foreclosure. Although prior approval is not required in all cases, the Agency may reject a plan that does not protect the Government's interest.

(1) *Continuation with the borrower.* The Lender may continue with the borrower when a clear and realistic plan to eliminate the delinquency is presented. The Lender must fully document the borrower's prospects of success and make this information available to RHS upon request.

(2) *Voluntary liquidation.* RHS may accept the Lender's plan to use voluntary liquidation when the plan clearly addresses the responsibilities of the parties, the Lender maintains oversight of the progress of the sale, the property is listed for sale at a price in line with its market value (if there is not already a bona fide purchaser for the dwelling), and the expected cost to the Government is the same as or less than the cost of foreclosure.

(3) *Deed-in-lieu of foreclosure.* The Lender may take a deed-in-lieu of foreclosure from the borrower when it will not result in a cost to the Government in excess of that expected for foreclosure.

(4) *Other methods.* RHS may accept a proposal submitted by the Lender that is not specifically addressed in but is consistent with the provisions of this subpart if the Lender fully documents how the proposal will result in a savings to the Government.

(e) *Handling shared equity.* Interest assistance payments made under § 1980.390 of this subpart will not be subject to shared equity if the loan is liquidated in accordance with the Lender Agreement unless:

(1) The property is sold at or prior to foreclosure for an amount exceeding

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the Lender's unpaid balance and costs of foreclosure, or

(2) A junior lienholder takes over the Lender's loan.

§ 1980.375 Reinstatement of the borrower's account.

The Lender may reinstate an account when all delinquent payments and any funds that were advanced to pay authorized expenses are paid or as required under state law. When the Lender wishes to consider other offers by the borrower to bring the account current, the Lender must obtain RHS concurrence.

§ 1980.376 Loss payments.

Settlement of the guarantee will be processed in accordance with this section.

(a) *Loss payment.* Loss payments will be made within 60 days of the Lender's properly filed claim. The Lender must submit its loss claim within 30 calendar days of loan liquidation. The claim may include interest on the unpaid principal accrued to final loss settlement. RHS will pay interest within the limits of the guarantee to the date the claim is paid when the Lender promptly and properly files the claim.

(1) *Determination of loss payment.* To calculate the loss payment, first determine the unpaid debt by adding the unpaid principal and interest on the loan and the unpaid balance for principal and interest on authorized protective advances. The net proceeds from the property will be first applied to the unpaid debt. Any other proceeds recovered by the Lender from other sources shall also be applied to the total unpaid debt. Determination of net proceeds will be different depending on which of the following circumstances are involved.

(i) If, at liquidation, title to the property is conveyed to a bona fide third-party purchaser, then final loss payment will be based on the net sales proceeds received for the property.

(ii) If, at liquidation, title to the property is conveyed to the Lender, then the Lender must prepare and submit a property disposition plan to RHS for RHS concurrence. The plan will address the Lender's proposed method for sale of the property, the estimated