

**§ 3565.355**

management. See subpart A of this part.

**§ 3565.355 Changes in ownership.**

Any change in ownership, in whole or in part, must be approved by the lender and the Agency before such change takes effect.

**§§ 3565.356–3565.399 [Reserved]**

**§ 3565.400 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 I—Servicing Requirements**

**§ 3565.401 Servicing objectives.**

The participating lender is responsible for servicing the guaranteed loan throughout the term of the loan or guarantee, whichever is less. In all cases, the lender remains responsible for liquidation of the property in accordance with the Loan Note Agreement, unless otherwise determined by the Agency. A lender-servicing plan must be designed and implemented to achieve the following objectives.

- (a) To preserve the value of the loan and the real estate;
- (b) To avoid a loss to the lender or the Agency and to limit exposure to potential loss;
- (c) To protect the interests of the tenants; and
- (d) To further program objectives.

**§ 3565.402 Servicing responsibilities.**

The lender must service the loan in accordance with this subpart and perform the services contained in this section in a reasonable and prudent manner. The lender is responsible for the actions of its agents and representatives.

(a) *Funds management.* The lender must have a funds management system to receive and process borrower payments, including the following.

(1) All principal and interest (P&I) funds and guarantee fees collected and deposited into the appropriate custodial accounts.

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(2) Payments to custodial escrow accounts for taxes and insurance premiums, assessments that might impair the security (such as ground rent), and reserve accounts for repair and capital improvement of the property.

(b) *Asset management.* The lender must ensure that the property securing the guaranteed loan remains in good physical and financial condition, in accordance with project management requirements contained in subpart H of this part.

(c) *Management of delinquencies and defaults.* Each month the lender must report to the Agency any delinquencies and defaults in accordance with subpart H of this part.

**§ 3565.403 Special servicing.**

Special servicing must be initiated when regular servicing actions are insufficient to resolve borrower default or property deficiencies.

(a) *Repurchase from Holder.* For securitized loans, the Holder may require the lender or Government to repurchase the security in accordance with the provisions of § 3565.405.

(b) *Responsibility of lender.* It is the lender's responsibility during special servicing to make a special effort to ensure that maintenance of the property meets Agency requirements and the tenants' rights are protected, until such time that the property is liquidated by the lender, the loan is paid in full, or the loan is assigned to the Agency. The lender must update the Agency monthly until the default is cured or a claim is filed. The lender must maintain adequate records of any and all efforts to cure the default or to foreclose.

(c) *Initiating special servicing.* When special servicing is initiated, the lender must submit for Agency review a special servicing plan that includes proposed actions to cure the deficiencies and a timeframe for completion. The special servicing plan will specify the proposed terms of any workout agreement recommended by the lender. The lender must obtain Agency approval of the terms of any workout agreement with the borrower. The workout agreement may include a loan modification, transfer of physical assets, or partial payment of claim and

reamortization of the loan. Failure to comply with terms contained in the executed workout agreement will be considered a default of the guaranteed loan.

(1) *Loan modification.* The borrower and lender may agree to a loan modification when such action will improve the financial viability of the project and its operations, and when a circumstance exists that is beyond the borrower's control. The Agency must approve in advance any loan modification that extends the life of the loan or requires an increase in the amount of the guarantee. All changes must be within the requirements of section 538 of the Housing Act of 1949.

(2) *Change in ownership and transfer of physical assets.* A default or delinquency may be resolved by a change of the ownership entity in whole or in part. The Agency must approve all changes in ownership prior to the effective date of the transfer, and may require additional resources from the lender or borrower to resolve project deficiencies.

(3) *Partial payment of claims.* The lender may request a partial payment of claim as a result of a loss experienced by the lender as a means to work out a troubled loan. The Agency will accept such claim if it determines that it is in the best interest of the government. In applying the partial payment, the lender must assign the obligation covered by the partial payment to the Agency, and, if required by the Agency, reamortize the obligation using the amount of the remaining obligation over an agreed-upon term.

(d) *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.

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

[63 FR 39458, July 22, 1998, as amended at 67 FR 16971, April 9, 2002; 70 FR 2931, Jan. 19, 2005]

**§ 3565.404 Transfer of loans or 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 Repurchase of guaranteed loans.**

(a) *Repurchase by lender.* The Holder may make written demand on the lender to repurchase the unpaid guaranteed portion of the loan when the borrower is in default not less than 60 calendar days on principal or interest due on the loan; or the lender has failed to remit to the Holder its pro rata share of any payment made by the borrower within 30 calendar days of receipt by the lender. The Holder must concurrently send a copy of the demand letter to the Agency. The lender will notify the Holder and the Agency of its decision to repurchase within 10 business days from the date of the written demand letter by the Holder. The lender may agree to repurchase the unpaid portion of the entire loan from the Holder, even though the guarantee does not cover any unguaranteed portion of the loan held by the Holder. If the lender decides to repurchase, the lender has 30 calendar days from the date of the Holder's written demand letter to do so. The guarantee does not cover any unguaranteed portion of the loan or the note interest to the Holder on the guaranteed loan accruing after 90 calendar days from the date of the Holder's demand letter to the lender requesting the repurchase. The lender may deduct the lender's servicing fee from the repurchase amount. The lender will accept an assignment without recourse from the Holder upon repurchase. The lender is encouraged to repurchase the loan to facilitate the accounting of funds, resolve problems, and to prevent default where and when reasonable.

(b) *Repurchase by Agency.* (1) If the lender does not repurchase the loan as provided in paragraph (a) of this section, the Agency will purchase from the Holder the unpaid principal balance of the guaranteed portion together