

with accrued interest to date of repurchase, less the lender's servicing fee, within 30 calendar days after written demand to the Agency from the Holder. The guarantee will not cover the note interest to the Holder on the guaranteed loan accruing after 90 calendar days from the date of the original demand letter of the Holder to the lender requesting the repurchase.

Holders of Loan Note Guarantees that have been issued prior to the effective date of this final rule may opt to adhere to the terms and conditions of the Loan Note Guarantee then in effect. In case of loan default, the Holder of a Loan Note Guarantee issued prior to the effective date of this final rule will stipulate, in a written demand for repurchase, its preference for repurchase in accordance with the Loan Note Guarantee issued prior to the effective date of this final rule. If the demand for repurchase does not stipulate a preference for repurchase in accordance with the Loan Note Guarantee issued prior to the effective date of this final rule, the Agency will process the demand for repurchase as stated in this final rule. The Holder must stipulate a preference for repurchase in accordance with the Loan Note Guarantee issued prior to the effective date of this final rule in the first demand for repurchase. The Holder of the Loan Note Guarantee issued prior to the effective date of this final rule cannot make a subsequent demand for repurchase changing the preference stipulated in the original demand for repurchase.

(2) The Holder's demand to the Agency must include a copy of the written demand made to the lender. The Holder must also include evidence of its right to require payment from the Agency. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to the Agency or the original of an Agency approved assignment guarantee agreement, properly assigned to the Agency without recourse including all rights, title, and interest in the loan. The Holder must include in its demand the amount due including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date. The

Agency will be subrogated to all rights of the Holder.

(3) The Agency will notify the lender of its receipt of the Holder's demand for payment. The lender must provide the Agency with the information necessary for the Agency to determine the appropriate amount due the Holder within 10 business days from the date of the written demand letter to the lender from the Holder requesting repurchase of the guaranteed portion. The lender will furnish a current statement certified by an appropriate authorized officer of the lender stating the unpaid principal and interest then owed by the borrower on the loan and the amount then owed to any Holder. Any discrepancy between the amount claimed by the Holder and the information submitted by the lender must be resolved between the lender and the Holder before payment will be approved. The Agency will coordinate the resolution of the discrepancy. Such conflict will suspend the running of the 30 calendar day payment requirement.

(4) Purchase by the Agency does not change, alter, or modify any of the lender's obligations to the Agency arising from the loan or guarantee nor does it waive any of the Agency's rights against the lender. As Holder, the Agency will have the right to set-off any payments the Agency owes the lender.

[70 FR 2931, Jan. 19, 2005]

§§ 3565.406–3565.449 [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 lenders 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) A decision to liquidate shall be made when it is determined that the default cannot be cured through actions contained in § 3565.403 or it has been determined that it is in the best interest of the Agency and the lender to liquidate. For interest accrual purposes, interest will accrue for 90 calendar days after the date the liquidation plan is approved by the Agency. If within 20 calendar days of the Agency's receipt of the liquidation plan, the Agency fails to respond to the lender's proposal or advise the lender to make revisions to the plan that was submitted, the liquidation plan will be approved by default, and the 90 calendar day period for interest accrual will commence.

(b) In the event of a default involving a loan to an Indian tribe or tribal cor-

poration made under this section which is secured by an interest in land within such tribe's reservation (as determined by the Secretary of the Interior), including a community in Alaska incorporated by the Secretary of the Interior pursuant to the Indian Reorganization Act (25 U.S.C. 461 *et seq.*), the lender shall only pursue liquidation after offering to transfer the account to an eligible tribal member, the tribe, or the Indian housing authority serving the tribe. If the lender subsequently proceeds to liquidate the account, the lender shall not sell, transfer, or otherwise dispose of or alienate the property except to one of the entities described in the preceding sentence.

[67 FR 16971, April 9, 2002, as amended at 70 FR 2932, Jan. 19, 2005]

§ 3565.453 Disposition of the property.

(a) Submission of the liquidation plan. The lender will, within 30 calendar days after a decision to liquidate, submit to the Agency in writing, its proposed detailed plan of liquidation. The Agency will inform the lender, in writing, whether the Agency concurs in the lender's liquidation plan. Should the Agency and the lender not agree on the liquidation plan, negotiations will take place between the Agency and the lender to resolve the disagreement. When the liquidation plan is approved by the Agency, the lender will proceed expeditiously with liquidation. The liquidation plan submitted to the Agency by the lender shall include:

(1) Satisfactory proof of the lender's ownership of the guaranteed loan promissory note and related security instruments.

(2) A copy of the payment ledger or equivalent which reflects the current loan balance and accrued interest to date and the method of computing the interest.

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

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

(i) Obtaining an appraisal of the collateral;