

**§ 3565.352**

(3) *Reserve releases.* The lender is responsible for approving or disapproving all borrower requests for release of funds from the reserve and escrow accounts. Security deposit accounts will not be considered a reserve or escrow account.

(4) *Insurance requirements.* At loan closing, the borrower will provide the lender with documentary evidence that Agency insurance requirements have been met. The borrower must maintain insurance in accordance with Agency requirements until the loan is repaid and the lender must be named as the insurance policy's beneficiary. The lender must obtain insurance on the secured property if the borrower is unable or unwilling to do so and charge the cost as an advance.

(5) *Distribution of surplus cash.* Prior to the distribution of surplus cash to the owner, the lender must certify that the property is in good financial and physical condition and in compliance with the regulatory agreement. Such compliance includes payment of outstanding obligations, debt service, and required funding of reserve and escrow accounts.

(e) *Physical maintenance.* The lender must annually inspect the property to ensure that it is in compliance with state and local codes and program requirements. The lender must certify to the Agency that a property is in such compliance, or report to the Agency on any non-compliance items and proposed actions and timetable for resolution. Failure to provide responsive corrective action can result in reduction or cancellation of the guarantee by the Agency.

[63 FR 39458, July 22, 1998, as amended at 64 FR 32372, June 16, 1999; 69 FR 69176, Nov. 26, 2004]

**§ 3565.352 Preservation of affordable housing.**

(a) *Original purpose.* During the period of the guarantee, owners are prohibited from using the housing or related facilities for any purpose other than an approved program purpose.

(b) *Use restriction.* For the original term of the guaranteed loan, the housing must remain available for occupancy by low and moderate income households, in accordance with subpart

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E of this part. This requirement will be included in a deed restriction or other instrument acceptable to the Agency. The restriction will apply unless the housing is acquired by foreclosure or an instrument in lieu of foreclosure, or the Agency waives the applicability of this requirement after determining that each of the following three circumstances exist.

(1) There is no longer a need for low- and moderate-income housing in the market area in which the housing is located;

(2) Housing opportunities for low-income households and minorities will not be reduced as a result of the waiver; and

(3) Additional federal assistance will not be necessary as a result of the waiver.

**§ 3565.353 Affirmative fair housing marketing.**

As a condition of the guarantee, the lender must ensure that the lender and borrower are in compliance with the approved Affirmative Fair Housing Marketing Plan. This plan must be reviewed annually by the lender to ensure that the borrower remains in compliance and to recommend modifications, as necessary.

**§ 3565.354 Fair housing accommodations.**

The lender must ensure that the borrower is in compliance with the applicable fair housing laws in the development of the property, the selection of applicants for housing, and ongoing 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.

(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