

**§ 3555.303**

performed and inspected in accordance with § 3555.202 and as further described by the Agency. The lender must obtain prior Agency concurrence or a waiver of concurrence as provided for in § 3555.301(h) before issuing protective advances under this paragraph only for protective advances of a significant amount as specified by the Agency.

**§ 3555.303 Traditional servicing options.**

(a) *Eligibility.* To be eligible for traditional servicing, all the following conditions must be met:

(1) The borrower presently occupies the property;

(2) The borrower is in default or facing imminent default for an involuntary reason. A borrower is “facing imminent default” if that borrower is current or less than 30 days past due on the mortgage obligation and is experiencing a significant reduction in income or some other hardship that will prevent him or her from making the next required payment on the mortgage during the month in which it is due. The borrower must be able to document the cause of the imminent default, which may include, but is not limited to, one or more of the following types of hardship:

(i) A reduction in or loss of income that was supporting the mortgage loan;

(ii) A change in household financial circumstances;

(3) The borrower demonstrates a reasonable ability to support repayment of the debt in the future;

(4) There are no adverse property conditions that inhibit the inhabitability or use of the property; and

(5) The borrower has not received assistance due to the submission of false information by the borrower.

(b) *Servicing options.* The lender must consider traditional servicing options in the following order to resolve the borrower’s default or imminent default:

(1) *Repayment agreement.* A repayment agreement is an informal plan lasting 3 months or less to cure short-term delinquencies.

(2) *Special forbearance agreement.* A special forbearance agreement is a longer-term formal plan to cure a delinquency not to exceed the equivalent

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of 12 months of PITI. The agreement may gradually increase monthly payments in an amount sufficient to repay the arrearage over a reasonable amount of time and/or temporarily reduce or suspend payments for a short period. If the borrower is at least 3 months delinquent, the special forbearance agreement may resume normal payments for several months followed by a loan modification.

(3) *Loan modification plan.* A loan modification is a permanent change in one or more of the terms of a loan that results in a payment the borrower can afford and allows the loan to be brought current.

(i) Loan modifications may include a reduction in the interest rate, even below the market rate if necessary.

(ii) Loan modifications may capitalize all or a portion of the arrearage (PITI) and/or reamortization of the balance due. Capitalization may also include foreclosure fees and costs, tax and insurance advances, past due annual fees imposed by the lender, but not late charges or lender fees.

(iii) If necessary to demonstrate repayment ability, the loan term after reamortization may be extended for up to 30 years from the date of the loan modification. However, the Rural Development guarantee is only effective 30 years from the origination date, and if the loan term is extended beyond the 30 year loan term from the date of origination, the guarantee will not apply beyond the original 30 year loan term.

(iv) The lender’s lien priority cannot be adversely affected by providing a loan modification.

(c) *Terms of loan note guarantee.* Use of traditional servicing options does not change the terms of the loan note guarantee.

**§ 3555.304 Special servicing options.**

(a) *General.* (1) Lenders must exhaust traditional servicing options outlined in this part or have determined that use of traditional servicing options would not resolve the delinquency, prior to special servicing options. Lenders must exhaust special servicing options prior to liquidation in accordance with §§ 3555.305 or 3555.306.

(2) Lenders must obtain Agency concurrence or a waiver as provided in § 3555.301(h) before implementing any special servicing options.

(3) Use of special loan servicing does not change the terms of the loan note guarantee.

(4) Special servicing options shall be used in the order established in this section to bring the borrower's mortgage payment to income ratio as close as possible to, but not less than, 31 percent.

(b) *Conditions for special servicing options.* In addition to the requirements in § 3555.303(a), the following conditions apply to all special loan servicing:

(1) The borrower's total debt to income ratio following the special loan servicing must not exceed 55 percent. Prior to servicing a borrower's account with special loan servicing, the lender must verify the borrower's income and total debt.

(2) The borrower must successfully complete a trial payment plan of sufficient duration, as determined by the Agency, to demonstrate that the borrower will be able to make regularly scheduled payments as modified by the special loan servicing.

(3) Expenses related to special loan servicing including, but not limited to, title search and recording fees shall not be charged to the borrower. However, if a foreclosure was initiated and canceled prior to special loan servicing, legal fees and costs for work performed in relation to the foreclosure costs before the cancellation date may be charged to the borrower.

(4) Capitalization of late charges and lender fees is not permitted in the special loan servicing option.

(c) *Extended-term loan modification.* The Lender may modify the loan by reducing the interest rate to a level at or below the maximum allowable interest rate and extending the repayment term up to a maximum of 40 years from the date of loan modification.

(1) The interest rate must be fixed.

(2) The Agency may establish the maximum allowable interest rate by publishing a notice of a change in interest rate will be published as authorized in Exhibit B of subpart A of part 1810 of this chapter (RD Instruction 440.1, available in any Rural Develop-

ment office) or online at: [http://www.rurdev.usda.gov/rd\\_instructions.html](http://www.rurdev.usda.gov/rd_instructions.html).

If the maximum allowable interest rate has not been so established, it shall be 50 basis points greater than the most recent Freddie Mac Weekly Primary Mortgage Market Survey (PMMS) rate for 30-year fixed-rate mortgages (U.S. average), rounded to the nearest one-eighth of one percent (0.125%), as of the date the loan modification is executed.

(3) The term shall be extended only as long as is necessary to achieve the targeted mortgage payment to income ratio after the interest rate has been fixed at a level at or below the maximum allowable rate.

(4) If the targeted mortgage payment to income ratio cannot be achieved using an extended-term loan modification alone, the lender may consider a mortgage recovery advance under this section in addition to the extended-term loan modification.

(d) *Mortgage recovery advance.* (1) The maximum amount of a mortgage recovery advance is the sum of arrearages not to exceed 12 months of PITI, annual fees, legal fees and foreclosure costs related to a cancelled foreclosure action, and principal reduction.

(2) The maximum amount of a mortgage recovery advance is 30 percent of the unpaid principal balance as of the date of default, minus any arrearages advanced to cure the default and any foreclosure costs incurred to that point. The Agency may change the maximum amount of mortgage recovery advance by publication in the FEDERAL REGISTER.

(3) The principal deferment amount for a specific case shall be limited to the amount that will bring the borrower's total monthly mortgage payment to 31 percent of gross monthly income.

(4) The lender may file a claim pursuant to Subpart H of this part for reimbursement of reasonable title search and/or recording fees in connection with the promissory note and mortgage or deed-of-trust, not to exceed a maximum amount specified by the Agency.

(5) Prior to making a mortgage recovery advance, the lender must perform an escrow analysis to ensure that

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the payment made on behalf of the borrower accurately reflects the escrow amount required for taxes and insurance.

(6) The following terms apply to the repayment of mortgage recovery advances:

(i) The mortgage recovery advance note and subordinate mortgage or deed-of-trust shall be interest-free.

(ii) Borrowers are not required to make any monthly or periodic payments on the mortgage recovery advance note; however, borrowers may voluntarily submit partial payments without incurring any prepayment penalty.

(iii) The due date for the mortgage recovery advance note shall be the due date of the guaranteed note held by the lender, as modified by the special loan servicing. Prior to the due date on the mortgage recovery advance note, payment in full under the note is due at the earlier of the following:

(A) When the first lien mortgage and the guaranteed note are paid off; or

(B) When the borrower transfers title to the property by voluntary or involuntary means.

(iv) Repayment of all or part of the mortgage recovery advance must be remitted directly to the Agency by the borrower.

(v) The Agency will collect this Federal debt from the borrower by any available means if the mortgage recovery advance is not repaid based on the terms outlined in the promissory note and mortgage or deed-of-trust.

(7) The lender may request reimbursement from the Agency for a mortgage recovery advance. A fully supported and documented claim for reimbursement must be submitted to the Agency within 60 days of the advance being executed by the borrower. The borrower must execute a promissory note payable to the Agency and a mortgage or deed-of-trust in recordable form perfecting a lien naming the Agency as the secured party for the amount of the mortgage recovery advance. The lender shall properly record the mortgage or deed-of-trust in the appropriate local real estate records and provide the original promissory note to the Agency.

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(8) A loss claim filed by a lender will be adjusted by any amount of mortgage recovery advance reimbursed to the lender by the Agency.

#### § 3555.305 Voluntary liquidation.

The lender must have exhausted the servicing options outlined in §§ 3555.302 through 3555.304 to cure the delinquency before considering voluntary liquidation. The methods of voluntary liquidation of the security property outlined in this section may be used to protect the interests of the Government. The lender must obtain prior Agency concurrence or a waiver as provided by § 3555.301(h).

(a) *Eligibility.* To be eligible for voluntary liquidation, the following conditions must be met:

(1) The loan must be at least 30 days delinquent;

(2) The default was caused by an involuntary reason; and

(3) The borrower must presently occupy the property except in situations where the borrower does not occupy the property due to the same involuntary reason that led to the default.

(b) *Pre-foreclosure or short sale.* The borrower may sell the security property for a price that represents its fair market value. The sale price, less any reasonable and customary sale or closing costs incurred by the borrower, must be applied to the borrower's account.

(c) *Deed in lieu of foreclosure.* The lender may accept a deed in lieu of foreclosure if it will result in a lesser loss claim than if foreclosure occurs.

(d) *Offer by junior lienholder.* If a junior lienholder makes an offer in the amount of at least the anticipated net recovery value, as calculated in accordance with § 3555.353, the lender may assign the note and mortgage to the junior lienholder.

(e) *Other methods of voluntary liquidation.* The lender may propose other methods of voluntary liquidation that are consistent with this section if the lender fully documents how the proposal will result in a savings to the Government.