

§§ 3555.258–3555.299 [Reserved]

§ 3555.300 OMB control number.

The report and recordkeeping requirements contained in this subpart are currently with the Office of Management and Budget under review and awaiting approval.

Subpart G—Servicing Non-Performing Loans

§ 3555.301 General servicing techniques.

In accordance with industry standards and as provided by the Agency:

(a) *Prompt action.* Lenders shall take prompt action to collect overdue amounts from borrowers to bring a delinquent loan current in as short a time as possible to avoid foreclosure to the extent possible and minimize losses.

(b) *Evaluation of borrower.* Lenders must evaluate loans and take appropriate loss mitigation actions in an effort to resolve any repayment problems and provide borrowers with the maximum opportunity to become successful homeowners.

(c) *Prompt contact.* In the event of default, the lender shall promptly contact the borrower within a timeframe specified by the Agency.

(d) *Determine ability to cure.* The lender must make a reasonable effort to obtain from the borrower information regarding the reason for default, the borrower's current financial situation and any other necessary information to evaluate the borrower's ability to cure the default and determine a feasible plan for collection, and/or alternatives to foreclosure.

(e) *Communication.* Before an account becomes 60 days past due and if there is no payment arrangement in place, the lender must send a certified letter to the borrower requesting an interview for the purpose of resolving the past due account.

(f) *Prior to liquidation.* Before an account becomes 60 days past due or before initiating liquidation, the lender must assess the physical condition of the property, determine whether it is occupied, and take necessary steps to protect the property.

(g) *Maintain documentation.* The lender must maintain documentation demonstrating that requirements in this subpart have been met and what steps have been taken to save a mortgage prior to making a decision to foreclose.

(h) *Formal servicing plan.* The lender must report a formal servicing plan to the Agency utilizing a web-based automated system when a borrower's account is delinquent for 90 days or more and a method other than foreclosure is recommended to solve the delinquency.

[78 FR 73941, Dec. 9, 2013, as amended at 81 FR 6429, Feb. 8, 2016; 84 FR 70886, Dec. 26, 2019]

§ 3555.302 Protective advances.

Lenders may pay the following pre-liquidation expenses necessary to protect the security property and charge the cost against the borrower's account.

(a) *Advances for taxes and insurance.* Without prior Agency concurrence, lenders may advance funds to pay past due real estate taxes, hazard and flood insurance premiums, and other related costs.

(b) *Advances for costs other than taxes and insurance.* Protective advances for costs other than taxes and insurance, such as emergency repairs, can be made only if the borrower cannot, or will not, obtain an additional loan or reimbursement from an insurer or the borrower has abandoned the property. The lender must determine that any repairs funded by protective advances are cost effective. Repairs funded by protective advances must be planned, performed and inspected in accordance with § 3555.202 and as further described by the Agency. The lender must obtain prior Agency concurrence before issuing protective advances under this paragraph of a significant amount as specified by the Agency.

[78 FR 73941, Dec. 9, 2013, as amended at 81 FR 6430, Feb. 8, 2016; 84 FR 70886, Dec. 26, 2019]

§ 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 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. A loan modification must be a written agreement.

(i) Loan modifications must be a fixed interest rate and cannot exceed the market interest rate at the time of modification.

(ii) Loan modifications may capitalize all or a portion of the arrearage and/or reamortization of the balance due including foreclosure fees and costs, tax and insurance advances, and past due Agency annual fees imposed by the lender. Late charges and lender fees may not be capitalized.

(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.

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

(v) Lenders may require that borrowers complete a trial payment plan prior to making scheduled payments amended by the traditional loan servicing loan modification.

(c) *Terms of loan note guarantee.* Use of traditional servicing options does not change the terms of the loan note guarantee except when the traditional servicing option meets the requirements of §3555.303(b)(3)(iv). The loan guarantee will apply to loan terms extending beyond the 30 year loan term from the date of origination when a loan modification meets the criteria set forth in §3555.303(b)(3)(iv).

[78 FR 73941, Dec. 9, 2013, as amended at 81 FR 6430, Feb. 8, 2016; 84 FR 70886, Dec. 26, 2019]

EFFECTIVE DATE NOTE: At 89 FR 66193, Aug. 15, 2024, §3555.303 was revised and republished, effective Feb. 11, 2025. For the convenience of the user, the revised text is set forth as follows:

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(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 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. A loan modification must be a written agreement. (i) The lender's lien priority cannot be adversely affected by providing a loan modification.

(ii) Loan modifications must be a fixed interest rate and cannot exceed the market interest rate at the time of modification.

(iii) Loan modifications may capitalize all or a portion of the arrearage and/or reamortization of the balance due including foreclosure fees and costs associated with the delinquency, tax and insurance advances, and past due Agency annual fees imposed by the lender. Late charges and lender fees may not be capitalized.

(iv) If necessary to demonstrate repayment ability, the loan term after reamortization may be extended for up to 40 years from the date of the loan modification.

(v) Lenders may require that borrowers complete a trial payment plan prior to making scheduled payments amended by the traditional loan servicing loan modification.

(vi) Traditional servicing options shall be used in the order established in this section to reduce the borrower's mortgage payment to income ratio as close as possible to 31 percent of gross monthly income.

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

(4) *Mortgage recovery advance.* A mortgage recovery advance is funds advanced by the lender on behalf of a borrower to satisfy the borrower's arrearage and reduce principal.

(i) Borrowers may be eligible for multiple Mortgage Recovery Advances up to a cumulative amount that is less than or equal to 30 percent of the unpaid principal balance as of the date of the initial default.

(ii) If the borrower's total monthly mortgage payment is within a reasonable percent of the borrower's ability to repay prior to an extended term loan modification, the mortgage recovery advance can be used to cure the borrower's delinquency without changing the terms of the promissory note.

(iii) 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.

(iv) If the borrower is eligible for a mortgage recovery advance, the servicer will advance the funds to the borrower's account and create a non-interest-bearing recoverable servicing advance. The balance is to be provided on the mortgage statements along with the principal balance of the loan, but no payment arrangement will be required.

(v) Prior to making a mortgage recovery advance, the lender must perform an escrow analysis to ensure that the payment made on behalf of the borrower accurately reflects the escrow amount required for taxes and insurance.

(vi) The lender may request reimbursement from the Agency for a mortgage recovery advance. The lender shall repay any such reimbursement as provided in this section.

(vii) The following terms apply to the repayment of a mortgage recovery advance:

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

(B) The borrower is responsible for payment of the mortgage recovery advance to the lender in full at the earlier of the following:

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

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

(C) The lender shall remit to the agency the amount mortgage recovery advance reimbursed by the Agency for a mortgage recovery advance, as described in this part, at the earliest of the following:

(1) When the lender receives payment is received from the borrower; or

(2) When the mortgage lien is released; or

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

(i) The Agency will collect this Federal Debt from the lender. The Agency may use the debt collection and administrative offset process to collect money owed.

(ii) In the event of a loss claim, the mortgage recovery advance will be considered in calculating the claim paid by the Agency. The total amount paid cannot exceed the maximum loss payment described in § 3555.351(b).

(iii) 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.

(c) *Terms of loan note guarantee.* Use of traditional servicing options does not change the terms of the loan note guarantee except when the traditional servicing option meets the requirements of paragraph (b)(3)(iv) of this section. The loan guarantee will apply to loan terms extending beyond the 30-year loan term from the date of origination when a loan modification meets the criteria set forth in paragraph (b)(3)(iv).

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

(3) 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.

(4) If the borrower currently has a mortgage payment to income ratio of 31 percent or less, special servicing options can be utilized to cure the delinquency without modifying the note;

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otherwise, 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. The loan guarantee will apply to loan terms extending beyond the 30 year loan term from the date of origination when a loan modification meets the criteria set forth in this section.

(1) Loan modifications may capitalize all or a portion of the arrearage and/or reamortization of the balance due including foreclosure fees and costs, tax and insurance advances, and past due Agency annual fees imposed by the lender. Late charges and lender fees may not be capitalized.

(2) Loan modifications must be a fixed interest rate and cannot exceed