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## **Subpart G– Servicing**

### **§ 1005.701 Definitions**

Servicer in this subpart shall mean lender or HUD approved non-lending servicer.

### **§ 1005.703 Loan servicing generally.**

This subpart identifies practices of servicers that HUD requires for loans guaranteed under the Section 184 program. Failure to comply with this subpart shall not be a basis for denial of benefits, but failure to comply will be cause for imposition of a civil money penalty, including a penalty under 24 CFR 30.40, or withdrawal of HUD's approval of a servicer. HUD requires servicers to comply with the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq) and the Truth in Lending Act (15 U.S.C. 1601 et seq) at 12 CFR 1024 and 12 CFR 1026, along with all applicable tribal, federal and state requirements.

### **§ 1005.705 Responsibility for servicing.**

(a) Servicing of guaranteed loans must be performed by a servicer approved under Subpart B. The servicer shall remain fully responsible to HUD for proper servicing, and the actions of a sub-servicer shall be considered to be the actions of the servicer.

(b) Whenever servicing of any loan is transferred from a servicer to another, notice of the transfer of service shall be completed in accordance with 12 CFR 1024.33. Such notice must include the partial payment requirements of the transferee servicer, as described in § 1005.719 of this part.

(c) To the Secretary. A copy of the notice of transfer shall be delivered to the Secretary within 15 days of the date of the transfer, in a format prescribed by the Secretary.

**§ 1005.707 Providing information to borrower and HUD.**

(a) Servicers shall provide loan information to borrowers and arrange for individual loan consultation on request. The servicer must establish written procedures and controls to assure prompt responses to inquiries. One or more of the following means of making information readily available to borrowers is required:

(1) An office staffed with personnel capable of providing timely responses to requests for information. Complete records need not be maintained in such an office if the staff is able to secure needed information and pass it on to the borrower.

(2) Toll-free telephone service at an office capable of providing needed information.

(b) All borrowers must be informed of the system available for obtaining answers to loan inquiries, the office from which needed information may be obtained, and reminded of the system at least annually.

(c) Within 30 days after the end of each calendar year, the servicer shall furnish to the borrower a statement of the interest paid, and of the taxes disbursed from the escrow account during the preceding year. At the borrower's request, the servicer shall furnish a statement of the escrow account sufficient to enable the borrower to reconcile the account.

(d) Each servicer of a loan shall deliver to the borrower a written notice of any assignment, sale, or transfer of the servicing of the loan. The notice must be sent in accordance with 12 CFR 1024.33(b)(3) and shall contain the information required by 12 CFR 1024.33(b)(4). Servicers must respond to borrower inquiries pertaining to the transfer of servicing in accordance with 24 CFR 1024.33.

(e) Within 7 days servicers must respond to HUD requests for information concerning individual accounts.

(f) Each servicer of a loan must submit to HUD a monthly report in accordance with § 1005.XXX.

**§ 1005.709 Assumption and release of personal liability.**

(a) *Assumption.* The guaranteed loans are fully assumable by an eligible borrower.

(b) The new borrower must be determined to be creditworthy under Subpart D. If the servicer is approved as a direct guarantee lender, the servicer performs a creditworthiness determination under § 1005.409. If the servicer is not an approved direct guarantee lender, then the servicer shall request a creditworthiness determination from HUD;

(c) *Tribal trust lands.* (1) The lease document may require tribal and BIA approval of the assignment of the lease to the new borrower. Servicers should not proceed to closing on the assumption until and unless the tribe has assigned the leasehold to the new borrower, and it has been approved by the BIA.

(2) The lease may contain other conveyance restrictions. Servicer must review for conveyance restrictions and ensure requirements are in compliance with § 1005.303(c).

(d) At closing, the servicer must release the existing borrower from any personal liability; the new borrower assumes personal liability of the loan; and the servicer provides the original borrower with a release of personal liability on a form approved by HUD.

**§ 1005.711 Free assumability; exceptions.**

(a) Policy of free assumability with no restrictions on conveyance. A servicer shall not impose, agree to or enforce legal restrictions on conveyance, as defined in 24 CFR 203.41(a)(3), or restrictions on assumption of the guaranteed loan, unless specifically permitted by this part.

(b) *Credit review.* If approval is required by the loan, the servicer shall not approve the sale or other transfer of all or part of the loan and property, or the sale or transfer of a beneficial interest in a trust owning all or part of the property, whether or not any person acquires personal liability under the loan in connection with the sale or other transfer, unless:

(1) At least one of the persons acquiring ownership is determined to be creditworthy under applicable standards prescribed by HUD;

(2) The selling borrower retains an ownership interest in the property; or

(3) The transfer is by devise or descent.

(c) *Due-on-sale clause.* Each loan shall contain a due-on-sale clause permitting acceleration, in a form prescribed by HUD. If a sale or other transfer occurs without servicer approval and a prohibition in paragraph (b) of this section applies, a servicer shall enforce this section by requesting approval from HUD to accelerate the loan, provided that acceleration is permitted by applicable law. The servicer shall accelerate if approval is granted.

**§ 1005.713 Administering escrow accounts.**

(a) The servicer shall not use escrow funds for any purpose other than that for which they were received. It shall segregate escrow commitment deposits, work completion deposits, and all periodic payments received under loans or insured loans on account of leasehold rents on tribal trust land, taxes, assessments, and insurance charges or premiums, and shall deposit such funds

with one or more financial institutions in a special account or accounts that are fully insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, except as otherwise provided in writing by HUD.

(b) It is the servicer's responsibility to make escrow disbursements before bills become delinquent. Servicers must establish controls to ensure that bills payable from the escrow fund or the information needed to pay such bills is obtained on a timely basis. Penalties for late payments for items payable from the escrow account must not be charged to the borrower unless it can be shown that the penalty was the direct result of the borrower's error or omission. The servicer shall use the procedures set forth in 12 CR 1024.17, implementing section 10 of the Real Estate Settlement Procedures Act (12 U.S.C. 2609), to compute the amount of the escrow, the methods of collection and accounting, and the payment of the bills for which the money has been escrowed.

(c) The servicer shall not institute foreclosure when the only default of the borrower occupant is a present inability to pay a substantial escrow shortage, resulting from an adjustment pursuant to this section, in a lump sum.

(d) When the Section 184 loan is terminated voluntarily or because of prepayment in full, amounts in the escrow account designated to pay any HUD required program fees shall be remitted to HUD with a form approved by HUD for reporting the voluntary termination of prepayment. When the Section 184 loan is prepaid in full amounts held in escrow for taxes and hazard insurance shall be promptly released to the borrower.

**§ 1005.715 Fees and charges after endorsement.**

(a) The servicer may collect reasonable and customary fees and charges from the borrower after endorsement only as provided below. The servicer may collect these fees or charges from the borrower only to the extent that the servicer is not reimbursed for such fees by HUD.

(1) Late charges, not to exceed four percent of the amount of each payment more than 15 days in arrears, to cover servicing and other costs attributable to the receipt of payments from borrowers after the date upon which payment is due.

(2) Charges for processing or reprocessing a check returned as uncollectible; (where bank policy permits, the servicer must deposit a check for collection a second time before assessing a bad check charge);

(3) Fees for processing a change of ownership of the mortgaged property;

(4) Fees and charges for arranging a substitution of liability under the loan in connection with the sale or transfer of the property;

(5) Charges for processing a request for credit approval of an assumption or substitute borrower;

(6) Charges for substitution of a hazard insurance policy at other than the expiration of term of the existing hazard insurance policy;

(7) Charges for modification of the loan involving a recorded agreement for extension of term or re-amortization;

(8) Fees and charges for processing a partial release of the mortgaged property;

(9) Attorney's and trustee's fees and expenses actually incurred (including the cost of appraisals pursuant and cost of advertising) when a case has been referred for foreclosure in



accordance with the provisions of this part after a firm decision to foreclose if foreclosure is not completed because of a reinstatement of the account. (No attorney's fee may be charged for the services of the servicer's or servicer's staff attorney or for the services of a collection attorney other than the attorney handling the foreclosure.)

(10) Escrow charges;

(11) A trustee's fee if the security instrument in deed-of-trust states provides for payment of such a fee for execution of a satisfactory, release, or trustee's deed when the deed of trust is paid in full;

(12) Where permitted by the security instrument, attorney's fees and expenses actually incurred in the defense of any suit or legal proceeding wherein the servicer shall be made a party thereto by reason of the loan; (No attorney's fee may be charged for the services of the servicer's staff attorney.)

(13) Property preservation expenses incurred;

(14) Fees permitted for providing a beneficiary notice under applicable tribal or state law, if such a fee is not otherwise prohibited by applicable law, under 12 CFR 1024.36; and

(15) Such other reasonable and customary charges as may be authorized by HUD.

(b) Reasonable and customary fees must be predicated upon the actual cost of the work performed including out-of-pocket expenses. HUD may establish maximum fees and charges which are reasonable and customary in different areas. Except as provided in this part, no fee or charge shall be based on a percentage of either the face amount of the loan or the unpaid principal balance due on the loan.

**§ 1005.717 Enforcement of late charges.**

(a) A servicer shall not commence foreclosure when the borrower's only default is his or her failure to pay a late charge or charges.

(b) A late charge attributable to a particular installment payment due under the loan shall not be deducted from that installment. However, if the servicer thereafter notifies the borrower of his obligation to pay a late charge, such a charge may be deducted from any subsequent payment or payments submitted by the borrower or on his behalf if this is not inconsistent with the terms of the loan. Partial payments shall be treated as provided in § 1005.719.

(c) A payment may be returned because of failure to include a late charge only if the servicer notifies the borrower before imposition of the charge of the amount of the monthly payment, the date when the late charge will be imposed and either the amount of the late charge or the total amount due when the late charge is included.

(d) During the 60-day period beginning on the effective date of transfer of the servicing of a loan, a late charge shall not be imposed on the borrower with respect to any payment on the loan. No payment shall be treated as late for any other purpose if the payment is received by the transferor servicer, rather than the transferee servicer that should receive the payment, before the due date (including any applicable grace period allowed under the loan documents) applicable to such payment.

(e) A servicer shall not impose a late fee or delinquency payment for failure to pay a late fee, as prohibited under 12 CFR 1026.36.

**§ 1005.719 Partial payments.**

(a) For the purpose of this section, a partial payment is a payment of any amount less than the full amount due under the terms of the loan at the time the payment is tendered.

(b) A servicer must have a written policy available to the public on how it handles partial payments.

(c) Upon receipt of a partial payment, a servicer must provide to the borrower a copy of the servicer's written partial payment policy and a letter explaining how it will handle the received partial payment. The servicer may either:

(1) Accept a partial payment and either apply it to the borrower's account or identify it with the borrower's account and hold it in a trust account pending disposition. When partial payments held for disposition aggregate a full monthly installment they shall be applied to the borrower's account, thus advancing the date of the oldest unpaid installment but not the date on which the account first became delinquent; or

(2) Return a partial payment to the borrower.

**§ 1005.721 Handling prepayments.**

Notwithstanding the terms of the loan, the servicer shall accept a prepayment at any time and in any amount. Monthly interest on the debt must be calculated on the actual unpaid principal balance of the loan as of the date the prepayment is received, and not as of the next installment due date.

**§ 1005.723 Substitute borrowers.**

(a) *Substitute borrower.* Where an original borrower requests the substitution of another original borrower on the guaranteed loan HUD may approve a substitute new borrower only if the substitute new borrower is eligible under this part.

(b) *Direct guarantee.* Servicers approved for participation in the Direct Guarantee program may, subject to limitations established by HUD, approve an appropriate substitute borrower that meets the requirements for the Section 184 loans which they own or service, and need not obtain further specific approval from HUD.

**SERVICING DEFAULT LOANS**

**§ 1005.725 Definition of default, date of default, and requirement of notice of default to HUD.**

(a) *Default.* If the borrower fails to make any payment or to perform any other obligation under the loan the loan shall be considered in default for the purposes of this subpart.

(b) *Date of default.* For the purposes of this subpart, the date of default shall be considered the day after the date of the obligation under the loan.

(c) *Reporting of default.* Once each month, on a day prescribed by HUD, the servicer shall report to HUD all loan guarantees that were in default on the last day of the month, or that remain in default from the previous month. The report shall be made in a manner prescribed by HUD.

(d) *Number of days in month.* For the purposes of this section, each month shall be considered to have 30 days.

**§ 1005.727 Loan collection action.**

Subject to the requirements of this subpart, servicers shall take prompt action to collect amounts due from borrowers to minimize the number of accounts in default status, and they must exhaust all reasonable possibilities of collection before seeking payment from HUD of a loan guaranteed under this subpart. Such collection techniques shall be based on a full financial assessment of the borrower at time of default and the collection technique(s) must take into account the circumstances particular to each borrower.

**§ 1005.729 Default notice to borrower.**

(a) *Live contact.* (1) The servicer shall establish or make good faith efforts to establish live contact with a defaulting borrower not later than the 36th day of the borrower's default and, promptly after establishing live contact, inform such borrower about the availability of loss mitigation options if appropriate.

(2) A good faith effort to establish live contact consist of reasonable steps under the circumstances to reach a borrower and include telephoning a borrower on more than one occasion or sending written or electronic communication encouraging a borrower to establish live contact with the servicer.

(b) *Written notice.* The servicer shall give notice to each borrower in default on a form supplied by HUD or, if the servicer wishes to use its own form, on a form approved by HUD, no later than the end of not later than the 45th day of a borrower's default the second month of any default in payments under the loan. If an account is reinstated and again goes into default, the default notice shall be sent to the borrower again, except that the servicer is not required to send

a second default notice to the same borrower more often than once during any 180-day period each six months. The servicer may issue additional or more frequent notices of default at its option.

(c) *Content of the written notice.* The notice required by paragraph (b) of this section shall include:

(1) A statement encouraging the borrower to contact the servicer;

(2) The telephone number to access servicer personnel and the servicer's mailing address;

(3) A statement providing a brief description of examples of loss mitigation options that may be available from the servicer and a statement on how to obtain more information about loss mitigation options;

(4) A loss mitigation application and submission instructions. The loss mitigation application shall advise borrower that delays in submission, including incomplete submissions, may reduce the availability of certain loss mitigation options to the borrower;

(5) The website to access the HUD list of homeownership counselors or counseling organizations, and the HUD toll-free telephone number to access homeownership counselors or counseling organizations;

(6) A statement informing the borrower that HUD will make information regarding the status and payment history of the borrower's loan available to local credit bureaus and prospective creditors; and

(7) The names and addresses of HUD officials to whom further communications may be addressed.

(e) *Conflicts with other law.* Nothing in this section shall require a servicer to communicate with a borrower in a manner otherwise prohibited by applicable law.

**§ 1005.731 Loss mitigation application, timelines and appeals.**

(a) *Servicer response to loss mitigation application.* Within five days receipt of borrower's loss mitigation application to servicer, servicer must in writing:

- (1) acknowledge receipt of the application;
- (2) determine if application is complete or incomplete;
- (3) if incomplete, notify the borrower which documentation is required and missing and to inform the borrower that s/he has fourteen days to provide missing documents to the servicer.

(b) *Servicer timeframe for evaluating complete loss mitigation application.* Within fourteen days of receipt of a completed application from borrower, the lender must evaluate the application.

(c) *Notification of servicer determination.* Servicer shall provide written notification:

- (1) of all available loss mitigation options.
- (2) encouraging borrower to review all available loss mitigation options and to contact servicer with any questions.
- (3) encouraging borrowers, when feasible, to consider opting for simultaneous loss mitigation options.
- (4) informing borrower that if no loss mitigation option is elected or if all elected loss mitigation options fail, the servicer shall proceed with filing of first legal at 120 days of default in accordance with §1005.737.

(5) informing borrower that at the filing of first legal the lender shall no longer consider a pre-foreclosure sale as an alternative to foreclosure.

(d) *Appeal.* If after receipt of servicer's loss mitigation options to borrower, borrower disagrees with servicer's determination borrower may appeal in writing to the servicer to re-evaluate the borrower's loss mitigation application. Borrower must submit appeal within seven days of receipt of the servicer's loss mitigation determination. Within seven days servicer shall re-evaluate the borrower's loss mitigation application but may not use the same staff that made the initial loss mitigation application determination and notify borrower of its appeal decision.

**§ 1005.733 Occupancy inspection.**

(a) An occupancy inspection is a visual inspection of a mortgaged property by the servicer to determine if the mortgaged property has become vacant or abandoned and to confirm the identity of any occupants.

(b) An occupancy follow-up is an attempt to communicate with the borrower via letter, telephone, or other method of communication, other than on-site inspection, to determine occupancy when the loan remains in default after the initial inspection and the servicer has not determined the borrower's occupancy status.

(c) *Initial occupancy inspection.* The servicer must perform the initial occupancy inspection by the 45th day of default but no later than the 60th day of the default when: (i) a payment has not been received within 45 days of the due date or for any other defaults under the loan; and (ii) efforts to reach the borrower or occupant have been unsuccessful.

(d) *Occupancy follow-ups and continued inspections.* If the servicer is unable to determine the borrower's occupancy status through the initial occupancy inspection, the servicer must perform occupancy follow-ups and, if necessary, occupancy inspections every 25-35 Days from the last inspection until the occupancy status is determined.



(e) *Occupancy inspections during bankruptcy.* When payments are not submitted as scheduled by a borrower in bankruptcy, the servicer must contact either the bankruptcy trustee or the borrower's bankruptcy attorney for information concerning the status of the borrower, to determine if an occupancy inspection is needed. If the Servicer determines that the property is vacant or abandoned during the period in which the servicer is prohibited from contacting the borrower, the servicer must note: the date it made its determination in the servicing file and that contact with the attorney or trustee has been made.

**§ 1005.735 Vacant property procedures.**

(a) Determination that the property is vacant or abandoned. If the servicer determines through an occupancy inspection or occupancy follow-up that the property is vacant or abandoned, the servicer must:

(1) Send a letter, via certified mail or other method providing delivery confirmation, to borrowers at the property address, or other known address of borrower, informing them of the servicer's determination that the property is vacant or abandoned. This letter must include the servicer's contact information.

(i) If the occupancy is verified through the delivery confirmation the servicer shall continue pursuing loss mitigation efforts until servicer can proceed to first legal.

(ii) If the servicer determines through the delivery confirmation process the property is vacant or abandoned; then the servicer shall:

(A) commence first-time vacant property inspection; and

(B) take appropriate property preservation and protection actions to secure and maintain the property.

(C) commence first legal action 120 days after date of default.

(b) The servicer must continue to perform vacant property inspections every 25-35 days until the default is cured, the property is disposed of, or the bankruptcy court has granted approval for the servicer to contact the Borrower or to take any required property preservation actions.

(1) The servicer must retain documentation in the servicing file identifying information as required by HUD.

### **SERVICING DEFAULT LOANS UNDER THE LOSS MITIGATION PROGRAM**

#### **§ 1005.737 Loss mitigation.**

(a) The purpose of loss mitigation is to attempt to cure the borrower's default and minimize any financial loss to HUD. Servicer must also comply with 12 CFR Part 1024 and any applicable tribal, federal and state requirements.

(b) The servicer must utilize a loss mitigation option or concurrent loss mitigation options within 120 days of the date of default. If loss mitigation fails, at the end of the 120 days the servicer must initiate first legal.

(c) Loss mitigation options include:

- (1) enter into a forbearance plan;
- (2) complete an assumption;
- (3) execute a trial payment plan agreement for a loan modification;
- (4) execute a pre-foreclosure sale approval to participate; or

(5) execute a deed-in-lieu agreement or lease-in-lieu.

(d) HUD may prescribe conditions and requirements for the appropriate use of these loss mitigation actions, concerning such matters as owner-occupancy, extent of previous defaults, prior use of loss mitigation, and evaluation of the borrower's income, credit and property.

(e) If the borrower fails to meet the loss mitigation requirements the servicer shall, within 5 days of the loss mitigation default, determine whether borrower should continue with the current loss mitigation option or reassess the borrower for another loss mitigation option for the time period remaining within the 120 days before first legal.

(f) *Documentation.* Documentation must be maintained for the initial and all subsequent evaluations and resulting loss mitigation actions. Should a claim for benefits later be filed, the servicer shall maintain this documentation for review.

(g) *Servicer failure to comply with loss mitigation requirements.* A servicer that is found to have failed to engage in and comply with loss mitigation as required this subpart will be subject to appropriate action by HUD, including, but not limited to, sanctions pursuant to § 1005.XXX.

**§ 1005.739 Notice to Tribe and BIA.**

(a) When two consecutive loan payments have been missed or two months have passed for other financial defaults under the guaranteed loan, the servicer shall provide notice of default to:

(1) the BIA for trust land transactions in accordance with applicable requirements under 25 CFR Part 162.

(2) Tribe, for fee simple and trust land transactions, in a form prescribed by HUD, when borrower has provided consent of notification.

(b) Servicer shall continue exploring loss mitigation options with the borrower during the notification process, if any.

**§ 1005.741 Relief for borrower in military service.**

(a) *Postponement of principal payments.* If the borrower is a person in “military service,” as such term is defined in the Servicemembers Civil Relief Act (50 U.S.C. App. §§501-597b), the servicer may, by written agreement with the borrower, postpone for the period of military service and three months thereafter any part of the monthly payment which represents amortization of principal. The agreement shall contain a provision for the resumption of monthly payments after such period in amounts which will completely amortize the loan debt within the maturity as provided in the original loan.

(b) *Postponement of foreclosure.* If at any time during default the borrower is a person in “military service,” as such term is defined in the Servicemembers Civil Relief Act, the period during which the borrower is in such service shall be excluded in computing the period within which the servicer shall commence foreclosure or acquire the property. No postponement or delay in the prosecution of foreclosure proceedings during the period the borrower is in such military service shall be construed as failure on the part of the servicer to exercise reasonable diligence in prosecuting such proceedings to completion as required by this subpart.

**§ 1005.743 Forbearance plans.**

(a) *General.* Forbearance Plans are arrangements between a servicer and borrower that may allow for a period of reduced or suspended payments and specific terms for the repayment plan.

(b) *Informal forbearance.* Informal Forbearance Plans are oral agreements between a servicer and borrower allowing for reduced or suspended payments and may provide specific terms for repayment.

(1) *Eligibility.* The servicer may offer plans to a borrower with a delinquent loan who does not have losses of income or increases in living expenses that can be verified.

(2) *Duration.* The period may be three months or less.

(c) *Formal forbearance.* Formal Forbearance Plans are written agreements executed by servicer and borrower, allowing for reduced or suspended payments and such plans may include specific terms for repayment.

(1) *Eligibility.* The servicer may offer a Formal Forbearance Plan when:

(i) the borrower does not have a loss of income or increase in living expenses that can be verified;

(ii) the servicer determines that 85 percent of the borrower's surplus income is sufficient to bring the loan current within six months; or

(iii) if the servicer determines that the borrower is otherwise ineligible for other loss mitigation options but has sufficient surplus income or other assets that could repay the indebtedness.

(2) *Duration.* The period shall be greater than three months but not to exceed six months, unless authorized by HUD.

(d) *Special forbearance – unemployment.* The Special Forbearance - Unemployment is when one or more of the borrowers has become unemployed and this loss of employment has negatively affected the borrower's ability to continue to make their monthly loan payment.

(1) *Eligibility.* (i) The loan must meet the following conditions at the time the Special Forbearance-Unemployment Agreement is executed:

(A) be at least three months past due (91 days of default), but not more than 12 months due and unpaid; and

(B) not be in foreclosure, or foreclosure action has been suspended or canceled, when the Special Forbearance- Unemployment Agreement is executed.

(ii) The servicer must ensure that the borrower meets all the following eligibility requirements:

(A) The borrower has recently experienced a verified loss of income or increase in living expenses due to loss of employment.

(B) The borrower must continue to occupy the property as a principal residence.

(C) The borrower has a verified unemployment status and no borrower is currently receiving continuous income; or an analysis of borrower financial information indicates that Special Forbearance-Unemployment is the best or only option available for the borrower.

(iii) *Duration.* The period shall not exceed twelve months. During this period where borrower is in compliance with the Special Forbearance Unemployment Agreement the servicer shall not proceed to filing of first legal until expiration or default of the Agreement.

(iv) *Required documents.* The servicer must obtain from the borrower such supporting third party documentation including receipts of unemployment benefits; or an affidavit signed by the borrower, stating the date that the borrower became unemployed and stating that the

borrower is actively seeking, and is available, for employment. The servicer must retain this documentation in the servicing file.

(v) *Property condition.* The servicer must conduct any review it deems necessary, including a property inspection, when the servicer has reason to believe that the physical conditions of the property adversely impacts the borrower's use or ability to support the debt as follows:

(A) financial information provided by the borrower shows large expenses for property maintenance;

(B) the servicer receives notice from local government or other third parties regarding property condition; or

(C) the property may be affected by a disaster event in the area.

(vi) If significant maintenance costs contributed to the default or are affecting the borrower's ability to make payments under the loan or Special Forbearance – Unemployment Agreement, the servicer may provide in the Special Forbearance -Unemployment Agreement a period of loan forbearance during which repairs specified in the agreement will be completed at the borrower's expense.

(e) *Special forbearance – servicemember.* The servicer may, by written agreement with the borrower, postpone any part of the monthly loan that represents amortization of principal, for the period permitted by HUD under this section.

(1) *Eligibility.* Servicemember must be in active duty military service and meet the criteria established in 50 U.S.C. App. § 511. Dependents of servicemembers are entitled to protections in limited situations per the Servicemembers Civil Relief Act, as amended.

(2) *Duration.* The period shall be for the period of military service and three months thereafter.

(3) *Required documents.* Borrower shall provide servicer with a copy of their deployment orders.

(4) *Agreement.* (i) Servicer shall execute a written agreement with borrower outlining the terms and conditions of the special forbearance. The servicer must include in the agreement a provision for the resumption of monthly payments after such period, in amounts which will completely amortize the loan debt within the maturity, as provided in the original loan. The servicer must retain in the servicing file a copy of the written agreement postponing principal payments.

(ii) Servicer shall comply with all applicable requirements under the Servicemembers Civil Relief Act.

(f) *Continue review and re-evaluation.* Servicer shall monitor the borrower for compliance under the agreement every 30 days, until the end of the agreement.

(g) *Reporting requirements.* Servicer shall comply with reporting requirements under §1005.XXX.

**§ 1005.745 Assumption.**

The servicer shall explore assumption as a loss mitigation option with the borrower in accordance with §1005.737.



**§ 1005.747 Loan modification.**

(a) *General.* A loan modification is a permanent change in one or more terms of a borrower's loan. A loan modification may include a change in one or more of the following: interest rate; capitalization of delinquent principal, interest or escrow items, extension of time available to repay the loan; and/or re-amortization of the balance due. A loan modification may not be used as a means to reinstate a loan prior to sale or assumption.

(b) *Eligibility.* The servicer must ensure that the borrower is able to support the monthly loan debt after the loan is modified.

(c) *Borrower qualifications.* The servicer must ensure that the borrower meets the following eligibility criteria:

- (1) At least 12 months elapsed since the closing (or origination) date of the original loan.
- (2) The borrower has not executed a permanent loan modification agreement in the past 24 months.
- (3) The borrower's default is due to a verified loss of income or increase in living expenses.
- (4) One or more borrowers receives continuous income sufficient to support the monthly payment under the modified rate and/or term, although not sufficient to sustain the original loan and repay the arrearage.
- (5) The borrower's surplus income is at least \$300 and is at least 15 percent of the borrower's net income.
- (6) Eighty-five percent of the borrower's surplus income is insufficient to cure arrears within six months.

(7) The borrower's monthly principal, interest, taxes and insurance payment can be reduced by the greater of 10 percent of the existing monthly loan payment amount and \$100, using the market rate and amortizing the new loan over 30 years.

(8) The borrower has successfully completed a three-month trial payment plan based on the loan modification monthly loan payment amount.

(c) *Property conditions.* The servicer must conduct any review it deems necessary, including a property inspection, when the servicer has reason to believe that the physical conditions of the property adversely impact the borrower's use or ability to support the debt as follows:

(1) financial information provided by the borrower shows large expenses for property maintenance;

(2) the servicer receives notice from local government or other third parties regarding property condition; or

(3) the property may be affected by a disaster event in the area.

(d) *Trial payment plans.* A trial payment plan is a written agreement executed by all parties on the original note and the loan guaranteed loan, for a minimum period of three months, during which the borrower must make the agreed-upon consecutive monthly payments prior to final execution of the loan modification.

(1) *Trial Payment Plan Terms.* The servicer must ensure that the following apply to interest rates and monthly payment amounts under trial payment plan:

(i) The interest rate for the trial payment plan and the permanent loan modification must not be greater than market rate.

(ii) The permanent market rate is established when the trial payment plan is offered to the borrower.

(iii) The established monthly permanent loan modification payment must be the same or less than the established monthly trial payment.

(2) *Start of Trial Payments.* The servicer must send the proposed trial payment plan agreement to the borrower at least 15 days before the date the first trial payment is due.

(3) *Trial Payment Plan Signatures.* (i) All parties on the original note and loan and all parties that will be subject to the modified loan must execute the trial payment plan agreement unless:

(A) a borrower or co-borrower is deceased; or

(B) a borrower and a co-borrower are divorced; or

(C) a borrower or co-borrower on the original note and loan has been released from liability as the result of an approved substitute borrower.

(ii) When a borrower uses a non-borrower household member's income to qualify for a loan modification, the non-borrower household member must be on the modified note and guaranteed loan and sign the trial payment plan agreement.

(4) *Application of Trial Payments.* The servicer must treat payments made under the trial payment plan as partial payments, held in a suspense account and applied in accordance with HUD's partial payments guidance and applicable federal regulations.

(5) *End of Trial Payment Plan Period.* The servicer must offer the borrower a permanent loan modification after the borrower's successful completion of a trial payment plan.

(6) *Trial payment plan failure.* The borrower fails a trial payment plan when one of the following occurs:

(i) the borrower does not return the executed trial payment plan agreement within the month the first trial payment is due;

(ii) the borrower vacates or abandons the property; or

(iii) the borrower does not make a scheduled trial payment plan payment by the last day of the month it was due.

(7) *Alternatives to foreclosure after trial payment plan failure.* If a borrower fails to successfully complete a trial payment plan under a loan modification, the servicer must:

(i) provide notice of the failure of borrower to comply with the trial payment plan;

(ii) offer borrower the deed-in-lieu or lease-in-lieu as an alternative to foreclosure

(iii) provide borrower with seven days to respond to the offer.

(8) *Funds Remaining at the End of Trial Payment Period.* (i) At the end of a successful trial payment plan, any remaining funds that do not equal a full payment must be applied to any escrow shortage or be used to reduce the amount that would be capitalized onto the principal balance.

(ii) *Trial payment plan failure.* If the borrower does not complete the trial payment plan, the servicer must apply all funds held in suspense to the borrower's account in the established order of priority.

(9) *Trial payment plan during foreclosure.* The servicer must suspend and/or terminate foreclosure action, depending on tribal or state law requirement, during the trial payment plan. In the event a borrower fails to make a payment required under a trial payment plan, the servicer must provide the alternative to foreclosure pursuant to § 1005.737(e).

(10) *Reporting of trial payment plans.* The servicer must report the trial payment plans in servicer's monthly service report in the form prescribed by HUD.

(e) *Loan modification documents.* The servicer must ensure that the loan is not in foreclosure at the time the loan modification documents are executed. The servicer must remove the loan from foreclosure prior to executing the loan modification documents. HUD does not require a specific format for the loan modification documents; however, the servicer must use documents that conform to all applicable tribal, federal and state laws.

(f) *Modification of loan guarantee certificate.* Upon completion of a successful trial payment plan and within 30 days of the execution of the loan modification documents, servicer shall provide copies of the loan modification documents to HUD. HUD shall provide additional processing instructions in administrative guidance. HUD will issue a revised/updated loan guarantee certificate.

#### **§ 1005.749 Pre-foreclosure sales.**

(a) *General.* A pre-foreclosure sale, also known as a short sale, refers to the sale of real estate that generates proceeds that are less than the amount owed on the property and the junior lien holders agree to release their liens and forgive the deficiency balance on the real estate.

(b) *Eligibility.* To be eligible for a pre-foreclosure sale, a borrower must:

- (1) Have a Section 184 loan where at least 12 months elapsed since the closing (or origination) date of the original loan;
- (2) Be in default, where the cause of the default was due to an adverse and unavoidable financial situation impacting the borrower.
- (3) Have a Section 184 mortgaged property with a current fair market value that is less than the outstanding principal balance.

(4) Elect the pre-foreclosure sale option no later than 120 days from default.

(5) Meet all other requirements of the pre-foreclosure sale loss mitigation option under this section.

(c) *Surchargeable Damages.* Surchargeable damage is damage to the property caused by fire, flood, earthquake, tornado, boiler explosion (for condominiums only) or servicer neglect. The servicer is responsible for the cost of surchargeable damage. The servicer must request HUD approval before approving the use of the pre-foreclosure sale loss mitigation option for property with surchargeable damage. If the damage is not surchargeable damage the servicer is not required to obtain HUD approval prior to approving the Approval to Participate Agreement with borrower. Servicer must comply with subsection (1) of this regulation where a hazard insurance claim must be filed.

(d) *Cash reserves.* Before executing a pre-foreclosure sale agreement in paragraph (g), servicer must calculate the borrower's cash reserve contribution.

(1) The cash reserve contribution shall come from non-retirement liquid assets, which may be available for withdrawal or liquidation from borrower's financial institutions. Servicer shall calculate the total cash reserves using the highest ending balance of each cash reserve asset;

(2) *Cash reserves greater than the threshold.* The servicer must require the borrower with cash reserves greater than the contribution threshold to contribute 20 percent of the total amount exceeding the contribution threshold towards the loan debt. The servicer must not require the borrower to contribute more than the difference between the unpaid principal balance and the appraised value of the property. The servicer must disclose to the borrower the amount of the borrower's cash reserve contribution to be applied towards the transaction.

(3) *Cash reserves at or below the threshold amount.* If the cash reserve calculation returns an amount at or below the contribution threshold amount, or a negative amount, the servicer is not required to obtain a contribution from the borrower in connection with the transaction.

(e) *Condition of Title.* The servicer must ensure the Section 184 mortgaged property have marketable title. Before approving a borrower for participation for the pre-foreclosure sale loss mitigation option, the servicer must obtain a title search or preliminary report verifying that the title is not impaired by unresolvable title problems or junior liens that cannot be discharged.

(f) *Discharge of junior liens.* The servicer must notify all junior liens of the potential pre-foreclosure sale of the Section 184 mortgaged property and must ensure the borrower has requested a discharge of the junior liens in the event a sales contract is approved by HUD or the servicer. The discharge of junior liens shall be in accordance with paragraph (o)(5).

(f) *Property List Price and Valuation.* (1) *List Price.* The servicer must ensure that the borrower lists the property for sale at no less than the “As Is” value as determined by an appraisal completed in accordance with the requirements in §1005.461.

(2) *Appraisals.* The servicer must obtain a standard electronically-formatted appraisal performed by an FHA Roster Appraiser pursuant to the following requirements:

(i) The appraisal must contain an “As-Is” fair market value for the subject property.

(ii) A copy of the appraisal must be provided to the borrower, sales agent, or HUD, upon request.

(iii) *Appraisal validity period.* The as-is appraisal used for a pre-foreclosure sale transaction is valid for 120 Days.

(iv) *Conditions for property valuation variance.* A servicer must submit a request for a variance to approve a pre-foreclosure sale transaction if one of the following conditions exists:

(A) The current appraised value of the property is less than the unpaid principal balance by an amount of \$75,000 or greater;

(B) the appraised value is less than 50 percent of the unpaid principal balance; or

(C) the appraisal is deemed unacceptable because the as-is value cannot be affirmed using a Broker's Price Opinion or Automated Valuation Model within 10 percent of the value.

(v) *Variance request.* The servicer must note on the variance request the specific reason for the request and attach any supporting documents needed for HUD review. The servicer must obtain HUD approval before authorizing the marketing of the property.

(vi) *Broker's Price Opinions and Automated Valuation Models.* All pre-foreclosure appraisals must be accompanied by a Broker's Price Opinion or Automated Valuation Model.

(g) After determining that a borrower and property meet the pre-foreclosure sale eligibility requirements, the servicer shall send to the borrower:

(1) *Approval to Participate Agreement (form HUD-90045).* The agreement shall list the pre-foreclosure sale requirements, including the date by which the borrower's sales contract must be executed under pre-foreclosure sale marketing period, applicable cash reserve amount; and

(2) *Pre-foreclosure Addendum.* The addendum shall be in the form prescribed by HUD. The pre-foreclosure sale addendum must be fully executed at closing.

(3) Documents listed under paragraphs (g)(1)-(2) must be sent to the borrower via methods providing delivery confirmation with a date and time stamp of delivery. The servicer



must inform borrower that the documents must be signed and returned to the servicer within 10 days of receipt.

(4) The servicer must send signed copies of the documents in paragraphs (g)(1)-(2) to HUD within 15 days of receipt from the borrower.

(h) *Use of a real estate broker.* The borrower is responsible for retaining the services of a real estate broker/agent within seven days of the signed Approval to Participate.

(1) *Required listing disclosure.* The servicer shall require the Listing Agreement between the seller and the agent/broker includes the following cancellation clause: “Seller may cancel this Agreement prior to the ending date of the listing period without advance notice to the Broker, and without payment of a commission or any other consideration if the property is conveyed to the loan guarantor or the loan holder. The sale completion is subject to approval by the servicer and/or HUD.”

(i) *Pre-foreclosure sale marketing, settlement period, failure to complete pre-foreclosure sale.* The borrower has seven days from the date of the signed Approval to Participate to market the property in the Multiple Listing Service or other marketing resource, if the property is on tribal trust land.

(1) The property must be marketed in the Multiple Listing Service or other marketing resource for a period of 15 days before borrower may consider any offers.

(2) During the marketing period, servicers must conduct a monthly review of the property’s marketing status with the real estate broker/agent or the tribe or TDHE, for a tribal trust property.

(3) The maximum marketing period for the sale of the property is four months from the execution date of the Approval to Participate to property settlement. If there is a signed contract of sale, but property settlement has not occurred by the end of the fourth month, the marketing period may be extended up to two-months to allow for closing to occur.

(4) Within 30 days of the end the marketing period, or within 120 days of default, whichever is later, if no settlement has occurred, the servicer must obtain a deed in lieu or lease-in-lieu of foreclosure, with title being taken in the name of the servicer or proceed with foreclosure. If servicer is unable to obtain a deed-in-lieu or lease-in-lieu servicer must immediately proceed to foreclosure.

(j) *Property inspections and maintenance.* Servicer shall inspect the property in accordance with §§1005.733 and 1005.735, where applicable.

(k) *Disclosure of damage after pre-foreclosure sale approval.* In the event the property becomes damaged borrower must report damage to servicer within 24 hours. When servicer becomes aware that the property has sustained damage after a borrower has received the Approval to Participate, the servicer must evaluate the property to determine if it continues to qualify for the pre-foreclosure sale program or terminate participation if the extent of the damage changes the property's fair market value.

(l) *Hazard Insurance Claim.* Where applicable, the servicer must work with the borrower to file a hazard insurance claim and either: use the proceeds to repair the property; or adjust the Section 184 loan guarantee claim by the amount of the insurance settlement (Non-Surchargeable Damage) or the Government's repair cost estimate.

(m) *Evaluation of Offers.* The servicer must receive from the listing real estate agent/broker an offer that yields the highest net return to HUD and meets HUD's requirements for bids.

(1) The listing agent/broker must ensure that the accepted offer and the pre-foreclosure sale addendum are signed by all applicable parties before submitting to the servicer for approval.

(2) *Back-up Offers.* Once an offer has been submitted to the servicer for approval, the listing agent/broker must retain any offer that the seller elects to hold for "back-up" until a determination has been made on the previously submitted offer.

(3) *Arm's length transaction.* The servicer must comply with § 1005.XXX.

(n) *Contract approval by servicer.* (1) In reviewing the contract of sale, the servicer must: (i) Ensure that the pre-foreclosure sale is an outright sale of the property and not a sale by assumption.

(ii) Review the sales documentation to determine that there are no hidden terms or special agreements existing between any of the parties involved in the pre-foreclosure sale transaction; and no contingencies that might delay or jeopardize a timely settlement.

(iii) Determine that the property was marketed pursuant to HUD requirements.

(iv) Not approve a borrower for a pre-foreclosure sale if the servicer knows or has reason to know of a borrower's fraud or misrepresentation of information.

(2) *Sales Contract Review Period.* After receiving an executed contract of sale and pre-foreclosure sale addendum from the borrower, the servicer must send to the borrower form HUD-90051, Sales Contract Review, no later than five business days from the servicer's receipt of an executed contract for sale.

(3) *Net Sale Proceeds.* (i) Net sale proceeds are the proceeds of a pre-foreclosure sale, calculated by subtracting reasonable and customary closing and settlement costs from the property sales price.

(ii) Regardless of the property's sale price, a servicer may only approve a pre-foreclosure sale contract for sale if the net sale proceeds are at or above HUD's minimum allowable thresholds, as established by HUD. The net sale proceeds must conform to the requirements in form HUD-90045.

(iii) The servicer is liable for any claim overpayment on a pre-foreclosure sale transaction that closes with less than the required net sale proceeds, unless a variance has been granted by HUD.

(4) *Unacceptable Settlement Costs.* The servicer must not include the following costs in the Net Sale Proceeds calculation:

- (i) repair reimbursements or allowances;
- (ii) home warranty fees;
- (iii) discount points or loan fees;
- (iv) servicer's Title Insurance fee; and
- (v) third-party fees incurred by the servicer or borrower to negotiate a pre-foreclosure sale.

(5) *Other third-party Fees.* (i) With the exception of reasonable and customary real estate commissions, the servicer must ensure that third-party fees incurred by the servicer or borrower to negotiate a pre-foreclosure sale are not included on the Closing Disclosure or similar legal documents unless explicitly permitted by tribal or state law.

(ii) The servicer, its agents, or any outsourcing firm it employs must not charge any fee to the borrower for participation in the pre-foreclosure sale.

(o) *Closing and Post-Closing Responsibilities.* (1) Prior to closing, the servicer must provide the Closing Agent with form HUD-90052, Closing Worksheet, listing all amounts payable from net sale proceeds; and a pre-foreclosure sale addendum signed by all parties.

The servicer will receive from the Closing Agent a calculation of the actual net sale proceeds and a copy of the Closing Disclosure or similar legal document.

(2) *Servicer review of final terms of pre-foreclosure sale transaction.* The servicer will receive from the Closing Agent a calculation of the actual net sale proceeds and a copy of the Closing Disclosure or similar legal document. The servicer must ensure that:

(i) the final terms of the pre-foreclosure sale transaction are consistent with the purchase contract;

(ii) only allowable settlement costs have been deducted from the seller's proceeds;

(iii) the net sale proceeds will be equal to or greater than the allowable thresholds;

(iv) form HUD-90052 is included in the Claim Review File; and

(v) they report the pre-foreclosure sale to consumer reporting agencies.

(3) *Closing Agent Responsibilities after Final Approval.* Once the servicer gives final approval for the pre-foreclosure sale and the settlement occurs, the Closing Agent must:

(i) pay the expenses out of the Net Sale Proceeds and forward the Net Sale Proceeds to the servicer;

(ii) forward a copy of the Closing Disclosure or similar legal document to the servicer to be included in the Claim Review File no later than three business days after the pre-foreclosure sale transaction closes; and

(iii) sign the pre-foreclosure sale Addendum on or before the date the pre-foreclosure sale transaction closes, unless explicitly prohibited by tribal or state statute.

(4) *Satisfaction of Loan Debt.* Upon receipt of the portion of the net sale proceeds designated for loan satisfaction, the servicer must satisfy the loan debt, release the lien in the appropriate jurisdiction, and may file a claim for Section 184 loan guarantee benefits.

(5) *Discharge of Junior Liens.* The servicer must provide for the discharge of junior liens as follows: (i) If the borrower has the financial ability, the borrower must be required to satisfy or obtain release of liens.

(ii) If no other sources are available, the borrower may obligate up to a maximum of \$1,500 from sale proceeds towards discharging the liens or encumbrances.

(p) *Early termination of pre-foreclosure participation.* (1) *Borrower-Initiated Termination.* The servicer must permit a borrower to voluntarily terminate participation in the pre-foreclosure sale loss mitigation option at any time.

(2) *Servicer-Initiated Termination.* The servicer shall terminate a borrower's pre-foreclosure sale Program participation for any of the following reasons:

- (i) discovery of unresolvable title problems;
- (ii) determination that the borrower is not acting in good faith to market the property;
- (iii) significant change in property condition or value; or
- (iv) re-evaluation based on new financial information provided by the borrower that indicates that the case does not qualify for the pre-foreclosure sale option.

(v) borrower has failed to complete a pre-foreclosure sale within the time limits prescribed by HUD.

(3) *Notification of pre-foreclosure sale Program Participation Termination.* The servicer must forward to the borrower a date-stamped written explanation for terminating their program participation. This letter is to include the “end-of-participation” date for the borrower.

**§ 1005.751 Deed in lieu/lease in lieu of foreclosure.**

(a) In lieu of instituting or completing a foreclosure, the servicer may acquire property by voluntary conveyance from the borrower. Conveyance of the property by deed in lieu/lease in lieu of foreclosure is approved subject to the following requirements:

- (1) The loan is in default at the time the deed or lease is executed and delivered;
- (2) The credit instrument is cancelled and surrendered to the borrower;
- (3) The loan is satisfied of record as a part of the consideration for such conveyance;
- (4) The deed or lease from the borrower contains a covenant which warrants against the acts of the grantor and all claiming by, through, or under him and conveys good marketable title;
- (5) The servicer transfers to HUD good marketable title accompanied by satisfactory title evidence.

(b) *Required documentation.* A written agreement must be executed by the borrower and servicer which contains all of the conditions under which the deed will be accepted, including but not limited to:

- (1) Specific transfer date;
- (2) Notification that there may be income tax consequences as a result of the deed or lease in lieu;
- (3) A statement describing the general physical condition in which the property will be conveyed;

(4) Agreement that the borrower will convey the property vacant and free of personal property unless an occupied conveyance has been approved by HUD;

(5) Itemization of the keys, built-in fixtures and equipment to be delivered to the servicer on or before the transfer date; and

(6) Borrower's agreement to provide evidence that certain utilities, assessments and homeowner's association dues are paid in full prior to the transfer date.

(7) Servicer is responsible for ensuring that the agreement is in compliance with all applicable laws and regulations.

(c) *Conveyance*. The property must be conveyed in a manner that is consistent with applicable law. The original credit instrument must be canceled and surrendered to the borrower, indicating that the loan has been satisfied. As with all conveyance claims, the servicer must record the deed or title status report and deliver the original recorded deed to HUD within 45 days of the date that good and marketable title was conveyed to HUD.

(d) Servicer must comply with all applicable tribal, federal, state, local reporting requirements, including but not limited to reporting to credit reporting agencies.

#### **ASSIGNMENT TO HUD OR FORECLOSURE**

##### **§ 1005.753 Fee simple properties – foreclosure.**

Unless borrower has completed a pre-foreclosure sale or a deed-in-lieu in accordance with 1005.XXX, lender must initiate foreclosure on fee simple properties insured under the Section 184 program. HUD approval is required for lender to assign the Section 184 loan to HUD.



**§ 1005.755 Tribal trust properties – assignment or foreclosure.**

For tribal trust land, lender may elect to initiate foreclosure or assign the loan to HUD.

**§ 1005.757 Assignment.**

(a) *When to initiate assignment.* After four consecutive full monthly loan payments are due but unpaid, or 120 days after the day of default, whichever is later, a servicer must initiate assignment to HUD when one of the following conditions are met:

(1) The servicer has completed its review of the borrower's loss mitigation request, determined that the borrower does not qualify for a loss mitigation option, properly notified the borrower of this decision, and rejected any available appeal by the borrower.

(2) The borrower has failed to perform under an agreement on a loss mitigation option, and the servicer has determined that the borrower is ineligible for other loss mitigation options or unlikely to complete an additional loss mitigation option within 120 days of default.

(3) The servicer has been unable determine the borrower's eligibility for any loss mitigation option due to the borrower not responding to the servicer's efforts to contact the borrower.

(b) *Deadline.* The assignment must be executed within 15 days of when any of the conditions in § 1005.757(a)(1)-(3) are met.

(c) *Property preservation before assignment.* Lender obligations before assignment.

(1) Lender shall:

(i) conduct an occupancy inspection in accordance with §1005.733.

(ii) if the property is vacant or abandoned, secure the property in accordance with § 1005.735 and remove all personal property and debris in accordance with § 1005.XXX.

**§ 1005.759 Initiation of foreclosure.**

To initiate foreclosure the servicer must ensure that all servicing requirements of this subpart have been met.

(a) *When to initiate foreclosure.* After four consecutive full monthly loan payments are due but unpaid, or 120 days after the date of default, whichever is later, a servicer must initiate a foreclosure for monetary default when one of the following conditions are met:

(1) The servicer has completed its review of the borrower's loss mitigation request, determined that the borrower does not qualify for a loss mitigation option, properly notified the borrower of this decision, and rejected any available appeal by the borrower.

(2) The borrower has failed to perform under an agreement on a loss mitigation option, and the servicer has determined that the borrower is ineligible for other loss mitigation options or unlikely to complete an additional loss mitigation option within 120 days of default.

(3) The servicer has been unable determine the borrower's eligibility for any loss mitigation option due to the borrower not responding to the servicer's efforts to contact the borrower.

(b) *Prohibition of foreclosure within time limits.* If the laws of the tribe or state in which the mortgaged property is located, or Federal bankruptcy law:

(1) Do not permit the commencement of foreclosure within the time limits described in §1005.759(a) the servicer must commence foreclosure within 30 days after the expiration of the time during which foreclosure is prohibited; or

(2) Require the prosecution of a foreclosure to be discontinued, the servicer must recommence the foreclosure within 30 days after the expiration of the time during which foreclosure is prohibited.

(c) *Notice to HUD.* The servicer must give notice to HUD within 15 days after the institution of foreclosure proceedings.

**§ 1005.761 Tribal right of first refusal.**

(a) Prior to any initiation of foreclosure involving a security interest in tribal trust land, the servicer must submit written notice to the tribe and tribally designated housing authority of the option to assume the loan or purchase the property.

(b) The tribe or tribally designated housing authority shall have 30 days to accept or decline the option to assume the loan or purchase the property based on the current appraised value or other purchase price, as determined by HUD.

**§ 1005.763 Inspection and preservation of properties.**

(a) If at any time the servicer knows or should have known the property is vacant or abandoned, the servicer shall comply with the inspection requirements under §1005.735.

(b) The servicer shall take appropriate action to protect and preserve such security property until its conveyance to HUD, if such action does not constitute an illegal trespass.

"Appropriate action" includes the commencement of foreclosure within the time required by § 1005.759.

**§ 1005.765 Occupancy of property.**

The servicer shall certify that the property is vacant and contains no personal property as of the date of filing for record of the deed to HUD or that HUD has consented to accept the property occupied.

**§ 1005.767 Property condition.**

(a) *Condition at time of transfer.* When the property is transferred, or a loan is assigned to HUD, the property shall be undamaged by fire, earthquake, flood, or tornado, except as set forth in this subpart.

(b) *Damage to property by waste.* The servicer shall not be liable for damage to the property by waste committed by the borrower, its heirs, successors or assigns in connection with loan insurance claims.

(c) *Servicer responsibility.* The servicer shall be responsible for:

(1) Damage by fire, flood, earthquake, or tornado;

(2) Damage to or destruction of security properties on which the loans are in default and which properties are vacant or abandoned, when such damage or destruction is due to the servicer's failure to take reasonable action to inspect, protect and preserve such properties as required by §1005.735; and

(3) Any damage of whatsoever nature that the property has sustained while in the possession of the servicer, when the property is conveyed to HUD without notice to and approval by HUD as required by § 1005.773.

(d) *Limitation.* The servicer's responsibility for property damage shall not exceed the amount of its insurance claim as to a particular property.

**§ 1005.769 Reinstatement of a loan.**

(a) The servicer shall permit reinstatement of a loan, even after the institution of foreclosure proceedings, if the borrower tenders in a lump sum all amounts required to bring the account current, including foreclosure costs and reasonable attorney's fees and expenses properly associated with the foreclosure action, unless reinstatement will adversely affect the priority of the loan lien.

(b) Where the loan is reinstated the loan guarantee will continue as if default has not occurred.

**§ 1005.771 Conveyance of property to HUD; time of conveyance.**

(a) Servicer shall convey property to HUD by one of the following:

(1) *Direct conveyance to HUD.* The servicer shall arrange for the deed to be made directly to HUD from the borrower. The servicer must ensure that the property is transferred to HUD within 30 days of the reasonable diligence time frame specified in § 1005.XXX of this part. The servicer shall be responsible for determining that such conveyance will comply with all of the provisions of this part, including conveying good marketable title and satisfactory title evidence to HUD.

(2) *Conveyance by the servicer to HUD.* The servicer shall acquire good marketable title and transfer the property to HUD within 30 days of the later of:

- (i) Filing for record the foreclosure deed;
- (ii) Recording date of deed in lieu of foreclosure;
- (iii) Acquiring possession of the property;
- (iv) Expiration of the redemption period; or
- (v) Within such further time as may be necessary to complete the title examination and perfect the title.

(vi) Such further time as HUD may approve in writing.

(b) On the date the deed is filed for record the servicer shall notify HUD on a form prescribed by HUD advising him of the filing of such conveyance and shall assign all rights without recourse or warranty any or all claims which the servicer has acquired in connection with the loan transaction, and as a result of the foreclosure proceedings or other means by which the servicer acquired or conveyed such property, except such claims as may have been released with the approval of HUD. Upon execution of the deed, servicer must file for record within three days.

**§ 1005.773 Acceptance of property by HUD.**

Upon receipt of notice of property transfer HUD shall accept title to and possession of the property as of the date of the filing for record of the deed to HUD, subject to compliance with the regulations in this part. Acceptance of property by HUD does not mean all servicing and property transfer requirements have been met by servicer.

**§ 1005.775 HUD reconveyance of property to servicer.**

Where HUD acquires a property and thereafter it becomes necessary for HUD to reconvey the property to the servicer due to the servicer's noncompliance with these regulations or servicer withdraws the claim for guaranteed benefits with the consent of HUD, HUD may take appropriate action against servicer, including but not limited to seeking reimbursement of costs incurred by HUD in accordance with § 1005.XXX.

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