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To: Clients and Friends

From: David F. Dulock

Subject: Rural Housing Service Modifies Loss Claim and Loss Mitigation Processes

In the December 26, 2019, issue of the *Federal Register* (84 FR 70881, [click here](#)) the Rural Housing Service (RHS) published a final rule modifying the loss claim and loss mitigation processes for the single family housing guaranteed loan program (SFHGLP) in 7 CFR part 3555, effective April 24, 2020.

The following edited summary of the final rule is from the preamble published with the final rule.

Loss Claim Process

The RHS is implementing two primary changes to the loss claim process in the areas of timing and valuation of property that has been acquired by a lender through voluntary liquidation or foreclosure (REO property). Regarding the timing of loss claims, the RHS currently affords lenders (defined in 7 CFR 3555.10 as entities making, holding, or servicing SFHGLP loans) the opportunity to submit loss claims on REO property after foreclosure; during a nine-month marketing period; or if the property has not sold during the nine-month marketing period (twelve-month for tribal land), through the submission of an Estimated Net Recovery (ENR) loss claim. To streamline the process, the final rule eliminates the options of the nine-month marketing period and ENR loss claims. Instead, all loss claims will be submitted in a timely manner after lender acquisition of title without waiting for a potential sale to a third party during the marketing period. In addition, the elimination of the ENR loss claim option eliminates the need for lenders to monitor, and the RHS to collect, future recovery payments. Therefore, the final rule removes the future recovery requirements at 7 CFR 3555.356.

Regarding the valuation of REO property, the RHS currently requires lenders to obtain a liquidation value appraisal to determine security property value and calculate the loss claim amount. The final rule replaces the liquidation value appraisal with a market value appraisal in conjunction with a loss claim model algorithm to determine the security property value as the basis to calculate the loss claim amount. The preamble to the final rule provides an overview of the loss claim model algorithm (*see* pages 70882 and 70883 of the *Federal Register*). The RHS presently requires the submission of receipts for actual property preservation and disposal costs. Under the final rule, property preservation and disposal costs will be based on the Veterans Administration Management and Acquisition Factor (VA Net Value Factor) found at https://www.benefits.va.gov/homeloans/servicers_valeri.asp. Lenders will be required to submit the complete loss claim package within 60 days of foreclosure sale date, acquisition date, or possession of the security property. Because of these final rule changes streamlining the loss claim process, the final rule limits the amount of additional interest (accrued between the settlement date and loss claim payment) included in the loss claim

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payment to 60 days of additional interest during the loss claim period. The final rule makes several other changes to improve and clarify the loss claim process. The RHS currently allows lenders to submit a loss claim electronically or in paper format. The final rule will require lenders to utilize a web-based system to submit loss claims. The final rule also adds the following definition for settlement date for deed-in-lieu actions for purposes of calculating loss claims as “[t]he date title is acquired upon recordation of a deed-in-lieu of foreclosure, with prior approval of the lender.” The current definition of “settlement date” does not address this issue.

Loss Mitigation

The final rule changes regarding loss mitigation procedures emphasize payment reduction. The final rule also adds a Mortgage Recovery Advance (MRA) option that will not require a modification to the terms of the promissory note. The final rule also clarifies that in addition to complying with RHS laws and guidance, lenders must comply with other applicable federal, state, and local laws, including those that fall under the purview of the Consumer Financial Protection Bureau (CFPB), such as the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA).

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