

## **CHAPTER 13: SERVICING AND LIQUIDATION FUNCTIONS**

### **13.1 INTRODUCTION**

This chapter provides guidance about the role of Field Staff in servicing loans that are under the jurisdiction of the Centralized Servicing Center (CSC) and the liquidation process after a loan has been accelerated. Servicing is largely the role of CSC, however, Field Staff participation is important to maintain quality customer service and to protect the Government's interest.

Whenever local assistance is needed to support a CSC servicing action, CSC will request Field Staff support through the MortgageServ work queue or via phone. These requests will provide direction about the work to be accomplished. Appendix 13 contains a Field Office Reference Guide with helpful information on working effectively with CSC.

Several servicing functions have been permanently assigned to Field Staff. These include certain borrower actions requiring approval, assessing the borrower's ability to refinance with private credit, managing Real Estate Owned (REO) and custodial property, the disposition of REO property, and providing satisfactions when loans are paid off. Borrower actions requiring approval and loan satisfactions are discussed in this chapter. The remaining functions are described in detail in the chapters that follow.

Section 1 of this chapter describes servicing actions in which CSC may request assistance from Field Staff. This servicing action is the responsibility at CSC; however, assistance may be needed from the Field so that CSC can adequately service the loan. Section 2 deals with servicing actions which are the responsibility of Field Staff with Field Staff making the final decision. Section 3 deals with liquidation responsibilities after CSC accelerates a loan.

## 13.2 TRANSITION TO CSC

New borrowers know the Agency only through the Field Staff they have dealt with directly during the loan approval process. After loan closing, those borrowers must make the transition to dealing with CSC. Field Staff can help borrowers with this transition by discussing the post-closing role of CSC with the applicant throughout the origination process, and emphasizing, during the applicant orientation, the importance of dealing directly with CSC. Once the loan is closed, CSC will contact the borrower in writing before the first billing statement to explain its role as servicer.



## SECTION 1: WORKING WITH CSC

### 13.3 REGULAR SERVICING

#### A. Newly-Activated Borrower Account

When CSC receives a new borrower's loan docket, it will be reviewed to ensure that the documents are correct, and that the information contained in the legal documents matches the information that has been entered into MortgageServ. This will provide a check on the accuracy of all data entry, as well as offering an opportunity to identify and correct clerical errors that could otherwise result in unauthorized assistance. When CSC encounters apparent discrepancies, Field Staff may be asked to assist in correcting problems.



#### B. Payments

Field Staff should help borrowers understand the importance of dealing directly with CSC, while still providing appropriate levels of assistance. If a borrower brings a payment to the Field Office, Field Staff should remind the borrower that payments must be sent to the lockbox. Field Staff can forward a payment to the lockbox on the borrower's behalf; however, the borrower should be advised that bringing the payment to the Field Office will only delay arrival at the correct destination, and the borrower will be more likely to incur a late fee than if the payment is sent directly. Late fees are set at 4 percent of the borrower's scheduled payment for principal and interest, and are assessed if the scheduled payment is more than 15 days past due.

Fees on payments accepted by the field office will be recorded on *Form RD 1951-49, Register of Collections*, and will be safeguarded in accordance with RD Instruction 1951-B and *Form RD 1951-44, Management Control and Review of Field Office Collection Activities*, and related Forms Manual Insert.

#### C. Approval Actions

CSC must approve a variety of actions borrowers may wish to take during the course of their loans, including leasing mineral rights, obtaining a partial release of security, transferring title to someone who will assume the indebtedness, and obtaining Agency consent to temporarily not occupy the property or subordinate the Agency loan. In some circumstances, these actions may require on-site expertise.

If the borrower requests a partial release of security or authorization to lease mineral rights, Field Staff may be asked to examine the site to determine whether the proposed action will have an adverse effect on the security property. A local perspective may be particularly useful, for example, if Field Staff are familiar with nearby properties that have experienced similar mineral activity.

CSC is responsible for most subordination requests and may request assistance from the Field Office. The Field Office may approve a subordination in the case of a borrower who is obtaining private credit for repairs to the security property, and the lender requires a prior lien.

All servicing actions are subject to the environmental requirements contained in RD Instruction 1940-G. Field Staff are responsible for completing necessary environmental reviews.

#### **D. Appraisals**

Field Staff may be asked to conduct appraisals for CSC. In these cases, Field Staff also are responsible for conducting administrative and technical reviews of these appraisals. Section 5 of Chapter 5 provides detailed guidance on conducting appraisals. All appraisals done as part of a servicing action must include the appropriate level of due diligence, which includes completing the *Transaction Screen Questionnaire, ASTM Standard E-1528 (TSQ)*.

#### **E. Insurance Claims**

Borrowers will generally notify CSC of property insurance losses. When the loss claim check exceeds \$2,500 or the account is past due, the case will be handled by CSC and the claim check will be sent to the Hazard Insurance Claims Department in CSC. Field Staff may be asked to inspect property damage or the progress of repairs and make a final inspection to ensure that the repair work is properly completed. Section 6 of Chapter 5 provides guidance regarding how inspections should be conducted and documented.

In situations where it becomes necessary to issue construction draws, CSC claims processors will work closely with the borrower until the repairs are complete. Field Office staff will be requested to inspect any repairs and obtain *Form RD 1924-10, Release by Claimants*, or similar document from the contractor.

In cases where the amount of the loss claim check is less than \$2,500 and the account is current, Field Offices are authorized to endorse insurance claim checks without recourse provided the borrower provides a copy of the adjuster's worksheet and documentation that repairs will be made, or have been completed. If the borrower does not have this documentation, the Field Office will contact the Hazard Insurance Section in CSC for further guidance.

## Paragraph 13.3 Regular Servicing

When Field Offices have endorsed an insurance check for less than \$2,500, they will cue CSC utilizing Task 285 and provide the claim check amount and date of the loss. If a borrower notifies a Field Office of an uninsured loss, the Field Office will cue CSC utilizing Task 285 and provide the estimated amount of damage to the property and the date of loss. CSC may force place insurance and submit a claim to the carrier. CSC will cue the Field Office if further actions are needed at the Field Office level.

#### **F. Reamortizations and Other Documents Requiring Borrower Signature**

Certain servicing actions may require that a borrower sign a loan document which is imperative to continue servicing the loan. Most times, CSC will mail such documents to the borrower. In some cases, especially when the document will remain in the Field Office, executing the document locally makes better sense. In these cases, CSC will advise the borrower to call and make an appointment with the local Field Office to sign the documents. CSC will also notify the Field Office and will provide specific instructions on what actions must be taken. For example, when a loan is reamortized, the borrower must execute *Form RD 3550-18, Reamortization Agreement*. CSC will prepare the form and contact both the borrower and Field Office with instructions on executing this form. Since the form modifies some terms of the promissory note, upon execution, the Field Office would file *Form RD 3550-18* with the borrower's original promissory note, provide a copy to the borrower, and notify CSC that the borrower has executed the document.

For reamortizations, the Field Office will type the following statement below the signatures on the original note or assumption agreement:

“A Reamortization Agreement dated \_\_\_\_\_ in the principal sum of \$ \_\_\_\_\_ has been given to modify the payment schedule of this note.”

#### **G. Payoffs**

Generally, a request for a loan payoff balance is made directly to CSC. In certain cases, Field or State Offices may need to obtain a payoff statement on a borrower's account. When needed, Field /State Offices should submit Attachment 13-A, Request for Payoff Statement, to the Payoff Unit at CSC. If the payoff statement is to be used for internal purposes only, the documentation for determining market value, capital improvements, and closing costs should be maintained in the Field State Office. If the payoff statement is to be provided to a third party, all documentation should be faxed to CSC along with the attachment.

Attachment 13-A along with supporting documentation must be reviewed by a person other than the Rural Development employee making the request. The reviewer should be the first line supervisor, or designee, of the Rural Development employee making the request. The name and initials of the person making the request and the reviewer must be on the attachment.

## **H. Final Payments and Satisfactions**

When a borrower makes a final payment, CSC will notify the Field Office. Since the methods and forms for releasing security instruments vary by State, the Field Office is responsible for preparing the necessary satisfaction or other release documents. When the account is fully satisfied, including any subsidy recapture, the Field Office will submit these documents to the borrower, along with the satisfied note and mortgage, unless requested to submit them to another lender or closing agent, as appropriate. In States where the security instruments are not released when the borrower refinances their debt, but are assigned to the new lender, Field Staff may execute the necessary documents to authorize the assignment. The borrower's case file must be retained for 1 full fiscal year after the account is satisfied.

In cases where the account is not fully satisfied, such as in the case of a borrower who has elected to defer the repayment of recapture, the security instruments are not released. In these cases, CSC may advise the Field Office to prepare a subordination of the security instruments. Field Offices need to follow CSC instructions carefully to ensure that the correct documents are executed when releasing any security. Satisfaction documents are never sent to a borrower who has deferred payment of recapture until the recapture amount is paid in full.

## **I. Recapture Receivable Accounts**

Delinquent tax notices/pending tax sale notices from taxing authorities on recapture receivable accounts should be forwarded to the Tax Unit at the CSC for handling. The notices can be faxed to (314) 457-4535. Upon receipt of a notice of pending tax sale, the CSC will review the recapture receivable account to determine if it is in the best interest of the Agency to pay the taxes to avoid the tax sale and protect the Government's interest in the property. The CSC may request assistance from the Field Staff when making this decision. A visit to the property may be necessary to determine the condition of the property and an estimated market value. If the taxes are paid the CSC will demand payment from the borrower. If payment is not made a foreclosure action will pursue.

## **13.4 SPECIAL SERVICING ACTIONS**

### **A. Borrower Counseling**

If a borrower notifies Field Staff that there may be a problem with loan repayment, Field Staff must not offer special servicing options or counsel the borrower about specific alternatives. Instead, Field Staff should help the borrower place a call to CSC to obtain this type of assistance.

## Paragraph 13.4 Special Servicing Actions

It is important for Field Staff to understand the servicing tools available to CSC in order to be able to refer borrowers most effectively. However, it is the responsibility of CSC to provide specific information and counseling to borrowers. Field Staff must use extreme caution in providing information to borrowers, since detailed information about changes in servicing procedures will be disseminated primarily at CSC.

The Rural Development portion of a leveraged/participation loan is eligible for the same servicing actions as Section 502 and 504 loans. However, servicing strategies may be different because of the Agency's lien position and the need to coordinate servicing actions with the leveraged/participation lender.

CSC has the primary responsibility of servicing these accounts. On occasion, it may be necessary to request the Field Office to provide information on the leveraged/participation lender that is otherwise not available. Likewise, if the leveraged/participation lender contacts the Field Office regarding a specific account, they may wish to refer the lender to CSC for assistance.

**B. Protective Advances**

When CSC is contemplating a protective advance for physical repairs based on a borrower's report that the property is in need of repairs, Field Staff may be asked to visit the property to determine whether the repair is actually needed, and whether the condition of the property warrants additional investment. CSC also may request that Field Staff conduct inspections of work completed with a protective advance.

Field Staff who notice significant damage or deterioration in a property that secures an Agency loan should report that information to CSC. CSC can then contact the borrower to discuss the condition of the property, and determine whether additional action is warranted. Potential contamination from hazardous substances, hazardous wastes, or petroleum products should be reported promptly to the State Environmental Coordinator for further evaluation and guidance.

**C. Refinancing**

Borrowers who have nonprogram loans, above-moderate loans, or loans originated before August 1968, even if they have been assumed, are not eligible for payment subsidy. If a borrower with one of these types of loans experiences difficulty, is in danger of losing the home, and it appears that the borrower would otherwise qualify for payment subsidy, Field Staff may be asked by CSC to consider refinancing the loan.

#### **D. Subsequent Loans**

Originating subsequent loans is always the responsibility of Field Staff. However, there may be times when CSC becomes aware the borrower may need a subsequent loan and will refer the borrower to the Field Office.

#### **E. Bankruptcies**

If a borrower's bankruptcy petition is received in the Field Office, it should be forwarded immediately to CSC.

#### **F. Missing Borrowers**

When CSC is unable to locate a borrower, Field Staff may be asked to use local connections in an effort to find them. This might include checking with neighbors or friends, contacting local utilities, or checking with area schools. If the borrower cannot be located, Field Staff may be asked to take custody of the property to protect the Government's interest. Procedures for managing custodial property are described in Chapter 15.

#### **G. Payment Subsidy Renewals**

Payment subsidy renewals are the responsibility of CSC. On occasion, it may be necessary to request that the field office make a personal contact with the borrower to assist with the payment subsidy renewal process. Personal contact by the field is necessary when CSC has not received required documentation from the borrower to renew the payment subsidy and CSC has been unable to make a personal contact. A personal contact is made when verbal communication is made with the borrower either by phone or through a face-to-face meeting or through written communication from the borrower.

CSC sends a renewal request to the borrower 90 days prior to the expiration date of the subsidy agreement. When the borrower fails to send the necessary paperwork to renew the subsidy, CSC attempts to contact the borrower by phone and mail. Approximately 45 days prior to the expiration of the current subsidy agreement, if CSC is unsuccessful in obtaining the required documentation, the field office will be requested through Task # 526 to contact the borrower. This task must be completed within 30 days. When this task is received, the field office will make a personal contact with the borrower, or determine that a personal contact is not necessary.



## Paragraph 13.4 Special Servicing Actions

Within 30 days of receipt, the field office will close Task # 526 and clearly document the contact or reason why contact is not necessary through Task # 115 entering the “message” in the task or by using “GLOBAL NOTES.”

If the field office determines the borrower is not eligible for subsidy or no longer desires subsidy, close Task # 526 and clearly document in “GLOBAL NOTES” why the borrower does not want or qualify for payment subsidy. A personal contact is also not required if the property is abandoned. If the property is abandoned, close Task # 526 and respond to CSC with Task # 100.

A monthly report will be provided to State Directors showing the number of tasks not completed. State Directors will be responsible for monitoring incomplete tasks within their state jurisdiction.

## H. Preacceleration Personal Contact

To ensure that a personal contact has been made with a borrower prior to an acceleration, the field office may be requested to personally contact the borrower. Exhibit 13-1 provides an overview of the Personal Service Review process. The field office will be requested to contact the borrower when CSC has been unable to make a personal contact with the borrower within the last 60 days and all required servicing letters have been sent, attempted phone contacts have been made, and monthly billing statements have been mailed to the borrower. A personal contact is made when verbal communication is reached with the borrower either by phone or through a face-to-face meeting or through written communication from the borrower. Field offices may be able to obtain financial information which can be used to recommend actions to CSC such as reamortization, moratorium, debt settlement or acceleration.

In cases where CSC's attempts to make a personal contact have been unsuccessful, the field office will be requested to contact the borrower using Task # 8. Field offices will have 30 days to complete the task. When Task # 8 is received, the field office must review the "DEL/LOAN/HISTORY" and "DIS/HISTORY" screens before contacting the borrower. Once the screen is displayed, tab to the "DSP" field and type the word "ALL." This will provide information on all letters, calls, and notes. Prior to closing the task all contacts and attempts must be documented in "GLOBAL NOTES." If it appears that additional servicing options are needed, the "Account Issue and Suggested Resolution Sheet" shown as Attachment 13-B will be used to notify CSC that servicing assistance is needed.

### Exhibit 13-1

#### Personal Service Review Process

##### Account Review

- Review for correct delinquency status and that all monies have been applied.
- Ensure that payment subsidy has been offered and that there are no outstanding documents.
- Ensure moratorium processing is not outstanding.
- Ensure a reamortization is not in process.
- Ensure CSC has no open research tasks.

##### Contact Review

- Determine if CSC has spoken to the customer since the account was 60 days past due and three attempts have been made within the last 60 days.

##### Resolution

- A task or callback is requested to ensure the servicing needs of the customer have been met. If the CSC cannot contact the customer, a task is opened to the Field to make a personal attempt.
- A Personal Contact will be made by CSC or the Field Office prior to referral for foreclosure.

## Paragraph 13.4 Special Servicing Actions

If the field office has attempted contacts (either by phone or mail) and left a message through a door hangar or a business card, CSC will be notified using Task # 18 which will allow the borrower 15 days to make a call back to the field office or CSC. If after 15 days no attempt is made by the borrower to contact the field office or CSC, and the defaults have not been cured, CSC will direct the account to the acceleration unit.

If after reviewing the account the field office believes that personal contact is not necessary and the account should be accelerated, CSC will be tasked using Task # 17 to indicate the account has been reviewed and “Acceleration is necessary” and document why acceleration of the account is necessary and a personal contact is not necessary by entering the “message” in the task or by using “GLOBAL NOTES.” An example of when personal contact is not necessary is when the security property has been abandoned. In abandonment cases the field will notify CSC using Task # 100.

A monthly report will be provided to State Directors showing the number of tasks not completed. State Directors will be responsible for monitoring incomplete tasks within their state jurisdiction.

### **13.5 VOLUNTARY SALE**

Sale of security property is generally the most desirable option for both the Agency and a borrower who is unable to continue the loan. For the Agency, a sale to another party avoids the potential costs of liquidation, as well as costs related to owning and disposing of a property. For the borrower, it offers the best opportunity for being released from the debt without a major credit history blemish. A borrower may sell a property to a third party even after the account is accelerated. Field Offices may become aware of a borrower who desires to sell their property through notification from CSC or directly from the borrower. If the initial contact was not made through CSC, the Field Office should notify CSC of the proposed sale. If it appears that the sale of the property may not pay the debt in full, the Field Office should provide the borrower with a Debt Settlement Packet.

If a borrower proposes to sell the property for an amount which may be insufficient to pay the Agency debt, prior liens, and authorized selling expenses, the Agency may consent to the sale when it is determined to be in the best interests of the Agency. The Agency may also advance authorized selling expenses to facilitate the sale. To determine if the proposed sale is in the Agency’s best interest, a copy of the sales contract, appraisal, and sales expenses are needed. Another lender’s appraisal may be used if it meets Agency appraisal guidelines.

Whether the short sale request is approved for less than the debt or if the request is denied, a Loan Approval Official should provide their decision in writing to the homeowner. Handbook Letter 20 provides sample language for letters that may be used.

At a minimum, the approval letter should include the approved sale price, amount of net proceeds due to the Agency and a Debt Settlement Package with instructions to return the completed package to the Centralized Servicing Center. The homeowner is to be made fully aware that while the Agency is agreeing to release the lien they are still responsible for any remaining debt, which can be settled through the debt settlement process.

The denial letter should state, at a minimum, that the Agency has reviewed the request for consent to sell the property for the proposed sale price and provide specific reasons why the Agency does not consent to the sale. The Field Office should be listed as the contact.

In cases where a junior lien exists, the State Director may approve settlement of a junior lien to effect sale of the property when it is determined to be in the Agency's best interest. Field Staff will negotiate the lowest cost to have the junior lien released from the security property, bearing in mind the Agency only seeks to have the lien released (and not necessarily satisfied). The junior lien holder may still seek recovery from the debtor, if permitted by State law.

The Agency's objective is to minimize any potential loss to the Government and to the borrower. The Agency may consent to a sale for as low as the market value of the property, minus the prior liens and authorized sales expenses. When the proposed sales price is less than the market value, a net recovery valuation is required. Either action is handled in the Field Office and the final decision to concur with the proposed sale lies with a Loan Approval Official.



#### **Authorized Selling Expenses**

Authorized selling expenses are those which a seller customarily and legally pays to convey title and includes such items as a typical real estate commission, up to three points to enable the buyer to secure credit (but not to reduce the interest rate), real estate taxes, junior liens, deed preparation, abstract and title fees, termite and related inspections, title insurance, surveys, and deed and revenue stamps.



#### **Example - Sale for Less Than Debt**

A borrower's debt is \$30,000, the sales price of the property is \$28,000, authorized sales expenses are \$3,000, and the market value is \$28,000. In this case, the Loan Approval Official may consent to the proposed sale since it will net the Agency \$25,000 (\$28,000 minus \$3,000 in authorized selling expenses). If the proposed sales price was less than the market value (\$28,000), a net recovery valuation would be required.

Paragraph 13.5 Voluntary Sale

When sales proceeds will not fully satisfy the debt, CSC will make the determination of whether the borrower will be released from personal liability. This determination is based upon a Debt Settlement Package completed by the borrower and forwarded to CSC for review and approval. A completed Debt Settlement Package is required to be submitted at or before loan closing for all sales for less than the debt, and sales proceeds must be submitted by certified or cashiers check. In cases where the borrower is not able or willing to complete the Debt Settlement Package, the Field Office may still release the mortgage when it is determined to be in the best interest of the Agency. This generally occurs when the borrower has moved out of the area or failure to close the loan will result in liquidation and the Agency receiving less than the anticipated net recovery value. The Debt Settlement Package, if available, and proceeds from the sale will be transmitted to the Cash Section of the Loan Administration Branch in CSC.


*Form RD 3550-17, Funds Transmittal Report*, with the final payment coded “00” will be used to transmit the loan proceeds.

The Field Office will enter in GLOBAL/NOTES the date of the sale or assumption, purchase price, outstanding vouchers, and the date funds were submitted to CSC. On accounts which were accelerated, the Field Office will also update the FCL/INFO screens with third party information. When proceeds have been posted or the assumption processed, CSC will notify the Field Office of such action through Task #86, “Approved short sale, release mortgage/deed only,” and will provide further guidance on release of the promissory note or debt settlement action, as appropriate.

**13.6 DEBT SETTLEMENT**

Debt settlement procedures are implemented when there are debts owed the Agency, including balances remaining on an account after liquidation, debt remaining after a sale, subsidy recapture receivable or grant repayment amounts due, or unauthorized assistance due. Debt settlement begins when

**Debt Settlement**

 A Debt Settlement Package consists of:

- *Form RD 3550-20, Application for Settlement of Indebtedness*
- *Form RD 3550-21, Payment Subsidy Renewal Certification*
- Copies of last two months bank statements for all accounts
- Verification of Income (last 2 pay stubs, benefit letter, etc.)
- Copy of most recent Federal Income Tax Return
- Copy of Net Recovery Worksheet, if applicable
- Estimated selling expenses
- Any other relevant information

A Debt Settlement Package can be requested from CSC by utilizing Task 569 or assembled in the Field Office. For emergency releases on debt settlement cases, the above information may be faxed to the Special Assistance Section, ATTN: QR Debt Settlement, in CSC at (314) 457-4451 or (314) 457-4551. Please ensure the borrower’s telephone number is provided. Non emergency cases should be sent to the aforementioned section in CSC.

the security has been disposed of. An account may be debt settled through compromise, adjustment, chargeoff, or cancellation.

CSC handles debt settlement, but Field Staff may be asked to assist in efforts such as locating missing borrowers or joint debtors, or checking local records to identify a debtor's assets. CSC will generally send the satisfaction to the Field Office with instructions to return the satisfaction and satisfied note to the debtor.

### 13.7 ADDITIONAL INPUT

Even when CSC has the primary responsibility for servicing, Field Staff have an obligation to report information that comes to their attention indicating risks to the security property or changes in borrower circumstances. Such items might include knowledge of hazardous dwelling conditions, environmental hazards, nonoccupancy, abandonment, or changes in income. Field Staff who learn of borrower difficulties also may recommend that the borrower contact CSC for assistance.



#### Using Personal Knowledge

Field Staff must consistently report information that comes to their attention if it is relevant to Agency loans or security properties to ensure that all borrowers are treated equally.

## **SECTION 2: BORROWER ACTIONS REQUIRING APPROVAL**

*[7 CFR 3550.159]*

### **13.8 OVERVIEW**

A borrower must obtain approval from the Agency before taking actions that may affect the security value of the property. Since these actions involve security property, they are handled in Field Offices. Key actions that require approval from the Agency include subordination, lease of mineral rights, partial release of security, lease of security property, and assumption of indebtedness.

When CSC becomes aware of borrower actions requiring approval, they will cue the local Field Office and provide any necessary information to facilitate processing of the borrower's request. Field Offices will approve or disapprove the actions outlined in this section and will cue CSC with the outcome.

This section first covers general guidelines and procedures for evaluating a borrower's request for approval of an action, with the exception of assumptions of indebtedness. Specific guidelines for each of the actions, including assumptions, follow the discussion of general guidelines.

### **13.9 GENERAL GUIDELINES**

#### **A. Reviewing Requests**

To request approval for subordination, mineral leases, partial release of security, and lease of security property, a borrower must submit *Form RD 465-1, Application for Partial Release, Subordination, or Consent*. If the information provided is not sufficient to allow for a thorough evaluation, the Field Office must request additional information from the borrower.

#### **B. Obtaining an Appraisal and an Environmental Review**

An appraisal is required for the Agency to subordinate its interests or to approve a partial release of security if the amount of consideration exceeds \$5,000. The borrower must pay for the appraisal, although the cost for an appraisal can be charged to the borrower's account.

An existing appraisal may be used if it is less than 1 year old and appears to reflect market value. An Agency appraisal is not required if a lender is involved and can provide an appraisal or broker's price opinion that adequately reflects market value.

Actions requiring Agency approval, including subordination, mineral leases, partial releases of security, lease of security property, and assumption of indebtedness, are subject to the environmental requirements of RD Instruction 1940-G prior to the approval.

### **C. Evaluating and Approving the Request**

Once the information needed to evaluate the request has been submitted, the Field Office must analyze the effect of the proposed action on the security property and document the conclusions on *Form RD 465-1*. Some factors to consider in the analysis include:

- The market value of the property before and after the transaction;
- The physical effects of the action on the security property; and
- The assignment of initial and subsequent payment proceeds.

If the analysis indicates that the Agency's security will not be put at risk by the action, an approval official may sign *Form RD 465-1*. The Office of the General Counsel (OGC) or the State Office may need to provide relevant forms needed to complete the approval. Signed copies of *Form RD 465-1* should be distributed to CSC, the borrower, and the lender, as appropriate. The original should be maintained in the borrower's case file at the Field Office.

### **D. Using Proceeds**

Proceeds that arise from the sale of a portion of the security, granting an easement or right-of-way, damage compensation, and all similar transactions should be used in the following order.

- To pay customary and reasonable costs related to the transaction that must be paid by the borrower, such as:
  - ◇ Real estate taxes that must be paid to conclude the transaction;
  - ◇ Cost of title examination, survey, abstract, and reasonable attorney's fees; and
  - ◇ Costs necessary to determine a reasonable price, such as appraisal of minerals, when the necessary appraisal cannot be obtained without costs.
- To be applied on a prior lien debt, if any.



Paragraph 13.9 General Guidelines

- To be applied to the Agency indebtedness or used for improvements to the security property in keeping with the purposes and limitations applicable for the use of Agency loan funds. Proposed development will be planned and performed in accordance with RD Instruction 1924-A and supervised to ensure that the proceeds are used as planned.



The use of proceeds should be reflected on *Form RD 465-1* and agreed to by the borrower and the Agency. Proceeds from the transaction to be applied to the Agency indebtedness will be remitted to the Cash Management Branch in CSC using *Form RD 3550-17, Funds Transmittal Report*, with Reason Code “00,” together with a brief statement as to the source of the proceeds, a copy of *Form RD 465-1*, and any related documentation. The Field Office will also notify CSC using Task 178, “Legal Description Correction.”


**13.10 SUBORDINATION [7 CFR 3550.159(b)]**

Subordinations are generally handled by CSC. The Field Office may approve a subordination of the Agency’s security interests to allow a borrower to obtain a subsequent loan with private credit to make needed repairs or improvements to the property.

**A. Criteria for Subordination**

Requests for subordination can be approved if:

- The other lender verifies that the funds will be used for Agency-eligible purposes;
- Based on repayment ratios, the prior lien debt will be on terms and conditions that the borrower can reasonably be expected to meet without jeopardizing repayment of the Agency indebtedness;
- Any proposed development will be planned and performed in accordance with Agency construction standards, as described in RD Instruction 1924-A or directed by the other lender in a manner that is consistent with that subpart; and

	<p><b>Nonprogram Borrowers</b></p> <p>Subordination cannot be authorized for nonprogram loans.</p>
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- The prior lien holder agrees in writing to provide at least 30 days prior written notice to the Agency before initiating any foreclosure action on the prior lien.

To document that the subordination conforms to the Agency's requirements, the borrower should ask the other lender to provide the Agency with a memorandum that states the purpose of the loan, along with its terms and conditions.

### **B. Amount of Subordination**

The maximum amount of subordination is the market value of the security property minus the unpaid balance of all Agency loans (exclusive of recapture).

### **13.11 MINERAL LEASES [7 CFR 3550.159(a)]**

Borrowers must obtain Agency authorization before leasing mineral rights on their security property. Such requests are rare, but do occur in situations such as a property in a town located above a coal mine or a property located on a water source. OGC should be involved in mineral lease decisions because State and local laws vary. Subordination of an Agency loan to a mineral lease does not entitle the leaseholder to any proceeds from the sale of the security property. If the lease of mineral rights is approved, rental proceeds not assigned to the Agency are treated as income and any payment subsidy must be adjusted accordingly.



The Agency should consent to the lease of mineral rights and the subordination of its liens to the lessee's rights and interests in the mineral activity if the security property will remain suitable as a residence, and the Government's security interest will not be adversely affected.

To make this determination, the Agency must consider the effects of leasing on the security property including the potential for the lessee's rights of surface entry on the property. The Agency also must ensure that the property remains decent, safe, and sanitary and the value of the security property is not decreased below the amount of the loan.

- **No decrease in value.** If the proposal is not likely to decrease the value of the security property, the lease may be approved if the borrower agrees: (1) to use any damage compensation received from the lessee to repair damage to the site or dwelling; or (2) to assign it to the Agency to be applied to reduce principal.

## Paragraph 13.11 Mineral Leases [7 CFR 3550.159(a)]

- **Likely decrease in value.** If the proposed activity is likely to decrease the value of the security property, the Agency should consent to the lease of mineral rights only if: (1) the borrower assigns 100 percent of the lease income to the Agency to be applied to reduce principal; and (2) the rent to be paid is at least equal to the estimated decrease in market value.

When an assignment of income is required, the borrower must submit an assignment of income in a format that is designed to comply with State law and approved by OGC.

**13.12 PARTIAL RELEASE OF SECURITY [7 CFR 3550.159(c)]**

A borrower may request a partial release of security to accommodate a need to sell or exchange part of the property or grant a right-of-way across the security property. For example, the owner of an adjoining property may want to trade 10 feet of the side yard for 10 feet of the back yard, or the local government may wish to purchase land that borders a highway slated for widening.

The Agency may consent to transactions affecting the security and grant a partial release of security if the following conditions are met.

- The borrower will receive adequate compensation:
  - ◇ The sale of any part of the security property must result in a payment equal to the value of the security being released or rights granted;
  - ◇ The exchange of security property must result in another parcel of property acquired that has value equal to or greater than that being released; or
  - ◇ The granting of an easement or right-of-way must result in benefits that are equal to or greater than the value of the security property being released.
- The security property, after the transaction is completed, must be adequate, decent, safe, and sanitary. For a program loan, the security after the transaction is completed must also remain modest.
- Repayment of the Agency debt must not be jeopardized.

- The environmental requirements of RD Instruction 1940-G must be met, if applicable.



To process a partial release, the Field Office must complete the following actions.



- Complete any required State release forms.
- For an *exchange* of all or a portion of the security property, obtain title clearance for the new security before the release of the existing security. Security instruments must be obtained for the new property.
- For a *sale* of all or a portion of the security property, deliver the release when full payment is received.
- Update the legal descriptions of the property, as necessary.

The Field Office may approve, after notifying CSC of the approval, the following releases:

- **Additional security.** At any time prior to payment of the loan in full, the Agency may authorize a release from the Agency's lien any real estate taken as additional security. This is authorized provided the market value of the remaining security is adequate to secure the loan balance. Additional security does not include any part of the tract purchased with Section 502 loan funds or part of the minimum adequate site on which the dwelling is located.
- **Mutual Mistake.** The Agency may authorize the release of property from the Agency's lien caused through mutual mistake when substantiated by facts and when the Agency can determine, with the advice of OGC, that a mutual error existed at the time the property was included in the security instrument.
- **No evidence of indebtedness.** The Agency's lien may be released in situations where there is no evidence of an existing secured indebtedness in the Field Office or in CSC. Before releasing the lien, the Field Office should consult with the Borrower Assistance Branch in CSC.

Paragraph 13.12 Partial Release of Security [7 CFR 3550.159(c)]

- **Valueless Lien.** In liquidation cases, if a net recovery valuation indicates the Agency's lien is valueless (that is, there is no or a negative potential recovery), the lien may be released. The Field Office should immediately contact the Borrower Assistance Branch in CSC. This is necessary to ensure that taxes and insurance are no longer paid by the Agency, and a debt settlement package is sent to the borrower by CSC.

### **13.13 LEASE OF SECURITY PROPERTY [7 CFR 3550.159(d)]**

Program borrowers must notify the Agency if they lease the property. If the Agency becomes aware of a borrower who is leasing their property, the borrower is not eligible for payment subsidy or special servicing benefits during the period of the lease. Field Offices will notify CSC and provide any applicable documentation. If they become aware that a borrower has leased the security property, the Agency also should assess the borrower's ability to refinance with private credit. If the lease is for a term of more than 3 years or contains an option to purchase, the Agency may liquidate the loan. Nonprogram borrowers are free to lease their properties without restriction.

### **13.14 ASSUMPTION OF INDEBTEDNESS [7 CFR 3550.163]**

#### **A. New Rates and Terms Assumptions**

In most cases, Agency indebtedness is only assumed as part of a sale. In these situations the debt is assumed on new rates and terms as part of loan origination and is addressed in other chapters of this Handbook. Field Offices are authorized to release the former borrower from personal liability for the amount of debt being assumed utilizing *Form RD 3550-16, Release from Personal Liability*. In cases where the debt is not being assumed in full, CSC will handle the settlement of the remaining debt and any release of liability for the portion of debt not being assumed.

#### **B. Same Rates and Terms Assumptions**

In certain limited cases, generally those involving transfers of title between family members, a standard industry assumption is permitted. It is known in the Section 502 program as a *same rates and terms assumption*. Same rates and terms assumptions are handled and approved in the Field Office. Under this type of assumption, the existing note and terms, including the interest rate and the remaining repayment period, do not change. If the account is past due at the time an assumption is executed, the new borrower will be referred to CSC to resolve the delinquency.

Same rates and terms assumptions are permitted for the following types of transfers:

- A transfer from the borrower to a spouse or children not resulting from the death of the borrower;
- A transfer to a relative, joint tenant, or tenant by the entirety resulting from the death of the borrower;
- A transfer to a spouse or ex-spouse resulting from a divorce decree, legal separation agreement, or property settlement agreement;
- A transfer to a person, other than a deceased borrower's spouse, who wishes to assume the loan for the benefit of persons who were dependent on the deceased borrower at the time of death, if the dwelling will be occupied by and or more persons who were dependent on the borrower at the time of death and there is a reasonable prospect of repayment;
- A transfer into an inter vivos trust in which the borrower does not transfer rights of occupancy in the property; and
- Any subsequent transfer of title, except upon death of the inheritor or between inheritors to consolidate title, will be treated as a sale.

### **C. Agency Approval**

The due-on-sale clause contained in all Agency mortgages stipulates that the borrower must obtain approval from the Agency before the title of a security property can be transferred with an assumption of the indebtedness. Prior approval is not required for same rates and terms assumptions.

The Agency will approve a transfer of title and assumption of indebtedness if it is in the best interest of the Government. The new owner will be liable for the loan, and the terms and conditions of the assumption depend upon the eligibility of the new purchaser and the property's characteristics.

Unauthorized assistance will not be pursued when an individual who is eligible for a same rates and terms assumption has been occupying the security property, receiving subsidy based on their household income and executes a same rates and terms assumption. As these cases are identified, the CSC will notify the individuals occupying the security property in writing that unauthorized assistance will be pursued unless an assumption agreement is signed within 90 days.

Paragraph 13.14 Assumption of Indebtedness [7 CFR 3550.163]

A task will be sent to the Field Office informing them of the unauthorized assistance and a request to have the individuals execute a same rates and terms assumption. If the assumption is not executed within 90 days and the Field Office has not requested an extension to complete the processing of the assumption, collection of the unauthorized assistance will be pursued.

The new owner need not have a low or moderate income. However, payment subsidy can be continued for the new owner only if he or she is eligible for assistance and only at the level for which the new household qualifies. If the transferee is a very low- or low-income person, it may be more beneficial for the transferee to assume the loan under new rates and terms. For example, if current interest rates are lower or a longer repayment period is necessary, a new rates and terms assumption may be of benefit to the new owner. In those cases, if the new owner applies and is program-eligible, the loan will be assumed under new rates and terms. In cases where the assuming party has a moderate- or above moderate-income, the party will be informed of the Agency's refinancing requirements, and if applicable, the loan will be reviewed for refinancing.

In most cases, if the borrower sells a security property with a due-on-sale clause without obtaining prior authorization from the Agency, the assumption will not be approved and the loan may be liquidated. If the Agency determines it is in the best interest of the Government to continue the loan, the account will be serviced in the original borrower's name, and the original borrower will remain liable for the loan under the terms of the security instrument.

A new owner who obtains property through a transaction eligible for a same rates and terms assumption is not required to obtain Agency approval or assume the loan. The Agency is not permitted to liquidate the loan if the new owner continues to make scheduled payments and meets all other obligations of the loan. However, a new owner who does not assume the loan is not eligible for payment assistance or a moratorium.

#### **D. Procedural Requirements**

The new owner must sign *Form RD 3550-22, Assumption Agreement - Single Family Housing*. For assumptions, the original note is not returned to the seller. Instead, the note is filed with other original notes, with the original *Form RD 3550-22* attached.

#### **E. Releasing a Departing Borrower from Liability**

Changes in household composition may trigger the need to adjust who is responsible for repayment of the loan. The need for a change most often occurs when one party to the note wishes to be released of liability. For example, after a divorce the departing spouse may wish to be relieved of responsibility for the balance of the mortgage. The Agency will authorize such a release only when:

- The divorce decree or property settlement document did not make the departing borrower responsible for loan payments;
- The departing borrower's interest in the security property is conveyed to the person with whom the loan will be continued; and
- The remaining borrower meets the maximum total debt ratio requirements and credit history requirements.

*Form RD 3550-16* is used to release the departing borrower from liability. CSC generally handles these releases but may cue the Field Office for assistance.

The following items need to be submitted to apply for a release of liability:

1. A written request from the departing borrower to be released of liability;
2. New address and phone number of the departing borrower;
3. Divorce decree and property settlement, as applicable;
4. Prepared and/or filed quit claim deed;
5. Financial statement of remaining borrower;
6. Verification of Employment/Income for remaining borrower; and
7. Copy of latest Federal income tax return, including W2 form, for remaining borrower.

### **13.15 PROTECTIVE ADVANCES [7 CFR 3550.206]**

The Agency may advance funds to pay for fees and services that are needed to protect the Government's interest in either program or nonprogram property. Protective advances are generally only considered when the Agency cannot provide a subsequent loan for such purpose to the borrower. This could occur because the borrower does not meet current eligibility standards, lack of funds, or unwillingness of the borrower to cooperate. The Agency recovers the amounts advanced by charging the borrower's account. Amounts advanced are due with the next scheduled payment. If the borrower is unable to repay the advance in a lump sum, the Field Office may request that CSC schedule repayment consistent with the borrower's ability to pay or reamortize the loan.

#### **A. Advances for Property Repairs**

Protective advances for property repairs are made only to protect the Government's interest in the security property and should be considered only if the repairs cannot be financed through a subsequent loan. Advances will bear interest at the promissory note rate of the loan against which they are charged. Advances for borrowers with multiple loans secured by the same property should be charged against the largest loan.



Paragraph 13.15 Protective Advances [7 CFR 3550.206]

### ***1. Determining the Need for Repairs***

The need for repairs may be identified by the borrower, Field Office, or CSC. Field Offices are responsible for completing an inspection of the property, an environmental review, developing a description of the work required, preparing a cost estimate, and approving the protective advance.

### ***2. Alternative Sources of Funding***

Before processing the advance, the Field Office must first determine whether it appears that the borrower qualifies for a subsequent loan. If a subsequent loan appears feasible, a loan application will be processed immediately. If a subsequent loan does not appear feasible, the borrower is uncooperative, or the repairs need to be quickly performed to protect the security property, the Field Office may promptly proceed with a protective advance.

### **B. Advances for Other Purposes**

In order to protect the Government's interest, protective advances also may be used for other purposes. These types of advances will be processed and approved by Field Offices or CSC, as appropriate. Field Staff will coordinate efforts with CSC for any loan which is still under the jurisdiction of CSC. Protective advances for other purposes include such items as:

- Paying off a senior lien holder who intends to foreclose in cases where the Agency is a junior lien holder;
- Paying taxes or insurance premiums; or
- Paying for local assessments.

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## SECTION 3: LIQUIDATION

### 13.16 OVERVIEW


The decision to liquidate a loan is made at CSC. After acceleration and any ensuing appeals, the case is sent to the State Office for completion of the liquidation. Once legal proceedings have concluded, the property will be sold at a foreclosure sale. To complete the foreclosure process, the State Office must determine how much to bid and enter that bid at the sale. A net recovery valuation is required. *Estimated net recovery value* represents the amount that the Agency could expect to recover from a property if it was liquidated after considering all costs associated with liquidating, holding, and selling the property. Appendix 11 contains a net recovery value worksheet to aid in this calculation. *Actual net recovery value* is the amount the Agency in fact does recover from the sale of a property, after accounting for all costs.

### 13.17 NET RECOVERY VALUE

#### A. Establishing Market Value

The market value of the property is the fundamental basis for establishing the estimated net recovery value. All calculations undertaken on the net recovery value worksheet provide additions or deductions from market value. In no case will a “distressed sale” or similar reduced value be used, resulting in a “double discount” and less recovery for the Government. Costs of liquidation and ownership are considered as deductions from the market value in the net recovery value calculation. Conversely, likely major costs, such as lead-based paint assessment and abatement on an older home or other major repairs, must be included to accurately determine the Government’s costs of ownership.

**Calculation of Net Recovery Value**

	Market value
	(less) Costs
	<u>(plus) Income</u>
	Net recovery value

#### B. Environmental Considerations

The estimate of market value must take into consideration potential environmental hazards that may pose a liability issue for the Agency and the presence of environmental resources for which the Agency will have an affirmative responsibility to take protective measures once it owns the property. Exhibit 13-2 provides a partial list of environmental factors for consideration.

In order to minimize Agency liability, the Agency must ensure, *prior* to acquiring property through foreclosure, that the property has been examined for potential contamination from hazardous substances, hazardous wastes, and petroleum products, including underground

storage tanks. This should be accomplished by requesting that Field Staff complete the *Transaction Screen Questionnaire, ASTM Standard E-1528 (TSQ)*. If the completed questionnaire raises any concerns it should be submitted to the State Environmental Coordinator for further evaluation and guidance.

The Agency also should examine the property prior to acquisition and consider any costs associated with environmental resources the Agency might be required to protect.

For additional information, refer to Chapter 16 and to RD Instruction 1940-G.



### C. Ordering an Appraisal

Information about conducting appraisals is contained in Chapter 5. The point at which a formal appraisal is actually conducted will vary.

- **Valueless Lien** - If the net recovery valuation suggests that the lien may be valueless, an appraisal should be obtained immediately. If the appraisal indicates that the lien is in fact valueless, it should be released without incurring servicing costs.
- **Deed in Lieu of Foreclosure** - If, after acceleration, the borrower offers a deed in lieu of foreclosure, an appraisal should be obtained immediately so the Servicer can determine whether it is in the Government's interest to accept the deed.
- **Foreclosure** - If the property will be going to foreclosure, no appraisal should be obtained until shortly before the sale is scheduled to take place. In areas where the foreclosure process can be lengthy, the value of the property could change before the sale if it is conducted too far in advance.

<p style="text-align: center;"><b>Exhibit 13-2</b></p> <p style="text-align: center;"><b>Environmental Hazards</b></p> <p><b>Environmental Hazards</b></p> <ul style="list-style-type: none"><li>• Traffic or noise</li><li>• Hazardous materials or waste</li><li>• Radon, asbestos, or urea formaldehyde</li><li>• Lead-based paint or other lead contaminants</li></ul> <p><b>Protected Environmental Resources</b></p> <ul style="list-style-type: none"><li>• Aquifer recharge areas</li><li>• Coastal barrier resources</li><li>• Coastal zone management areas</li><li>• Endangered/threatened species or critical habitat</li><li>• Floodplains, wetlands, or flood hazard areas</li><li>• Historical or archeological sites</li><li>• Important farmland, prime forest land, or prime rangeland</li><li>• National landmarks</li><li>• Wild and scenic rivers</li><li>• Wilderness areas</li></ul>
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#### **D. Holding Period**

Nearly all costs and income used in the net recovery value calculation are affected by the holding period. For estimated net recovery value, the length of the holding period is estimated differently, depending on the likely method of disposition. The holding period should be estimated as the time between the date the net recovery worksheet is being filled out and the anticipated date for:

- Filing of the deed and the expiration of redemption rights (foreclosure);
- Filing the warranty deed (deed-in-lieu of foreclosure);
- Filing the release (release of valueless lien); or
- Payoff and release (debt settlement offer subsequent to acceleration).

The time for marketing and disposition, if acquired, should also be considered when estimating the holding period.

#### **E. Deductions from Market Value**

Costs associated with liquidation and ownership of the property must be considered when determining the net recovery value, including the following costs.

- **Prior liens to be paid by the Agency.** In a case where a prior lien is involved, the amount required to repay the prior lien holder must be included in the calculation.
- **Junior liens to be paid by the Agency.** If the Agency pursues foreclosure, junior liens are not paid. However, in the case of a deed in lieu of foreclosure, it may be to the Agency's advantage to pay off a junior lien holder. The Field Office should conduct a title search to identify the position and the amount of each lien against the property.
- **Selling expenses to be paid by the Agency.** All of the transaction costs involved in selling the property including advertising, commissions for selling agents, required seller certifications, surveys, points, and closing costs paid by the Agency, whether on behalf of the borrower in a voluntary liquidation, or as an Agency expense for an Real Estate Owned (REO) sale, must be included in the calculation.

- **Holding costs.** During the time that the Agency owns the property, the monthly interest accrued is multiplied by the number of months in the holding period.
- **Depreciation during the holding period.** The property may depreciate in value while it is being held by the Agency.
- **Administrative costs.** The administrative burden associated with holding a property includes the cost of liquidation, such as attorney, filing, recordation, advertising, and document service fees that are customarily incurred in a foreclosure action.
- **Management costs.** During the period the Agency holds the property it will accrue costs related to cleaning, securing, and maintaining the property such as utilities and real estate taxes. Management costs will also include any major repair costs not considered in the market value, such as lead-based paint (LBP) assessment and abatement, which the Government would be required to incur but not considered as a detriment to value by the typical buyer in establishing the market value. While an LBP assessment is not completed for the NRV calculation, a reasonable cost estimate may be included, based on age and condition of the property and known local costs to abate similar properties.

#### **F. Additions to Market Value**

Although most of the adjustments to market value involve deductions to reduce the recovery amount, there are a few factors that can increase the market value.

- **Appreciation during the holding period.** In markets that are strong, the property may appreciate while it is being held by the Agency.
- **Income during the holding period.** In general, the Agency does not lease properties. However, REO properties may be leased in limited circumstances, such as a property located in an area where keeping the property occupied could greatly reduce vandalism.

**13.18 BASIC SECURITY LOSS**

The basic security loss is the difference between the property’s market value and the outstanding Agency debt on the property, including principal, subsidy subject to recapture, and other recoverable costs. Exhibit 13-3 provides the basic security loss formula.

<b>Exhibit 13-3</b>	
<b>Calculation of Basic Security Loss</b>	
Gross Investment	
A. \$ _____	Principal
B. \$ _____	Subsidy Recapture
C. \$ _____	Recoverable Costs
Market Value (use current appraisal)	
Basic Security Loss	

It is important for the Agency to consider the basic security loss in determining how to work with the borrower. For example, the debt settlement arrangements the Agency agrees to might be more lenient in the case of a borrower with a property that lost value through no fault of the borrower. More important, this information can be used for portfolio analysis to help the Agency originate loans more effectively in the future.

**13.19 DEED IN LIEU OF FORECLOSURE**

A deed in lieu of foreclosure is a method of liquidation by which title to the security property is conveyed to the Agency by the borrower. The Agency must not consider a borrower’s offer to convey the title to the security property until after the account is accelerated, and then only when it is in the best interest of the Government based upon the estimated net recovery value. After an account has been accelerated, a deed in lieu of foreclosure is processed and approved by Field Offices. In exceptional cases where a borrower offers to convey title to the property at a Field Office when the account has not been accelerated, the Field Office will immediately contact CSC to determine an appropriate course of action.

To process a deed in lieu of foreclosure, Field Offices will obtain the following items from the borrower: (1) a warranty deed; (2) *Form RD 1955-1, Offer to Convey Security*; (3) *Form RD 1944-3, Budget and/or Financial Statement*; and (4) copies of any leases or other documents affecting the title to the property. The borrower should be informed that the deed will not be recorded unless the conveyance is accepted.

Generally, borrowers will be required to satisfy liens and real estate taxes or assessments before conveyance is accepted. However, if the borrower is unwilling to do so, the Agency may elect to satisfy or settle these debts if it is in the best interest of the Government.

A deed in lieu of foreclosure does not automatically release the borrower from liability for any outstanding debt. The borrower's account will be credited with the actual net recovery value. If the actual net recovery value does not satisfy the debt, the remaining debt must be debt settled by CSC.

The borrower should be reminded that under a deed in lieu of foreclosure:

- Foreclosure action will not be suspended while the offer for a deed in lieu of foreclosure is considered;
- All costs related to the conveyance paid by the Agency will be added to the debt;
- A credit equal to the actual net recovery value will be applied to the debt;
- If the borrower does not satisfy the debt, the borrower will not automatically be released from liability; and
- The borrower will be required to provide a title insurance policy or a final title opinion from an Agency-approved title company or attorney.

## 13.20 FORECLOSURE

State laws pertaining to acceleration and foreclosure will affect the procedures the Agency is required to follow. CSC will consult with OGC to ensure that appropriate procedures are followed.



### A. Making the Acceleration Decision

CSC must decide whether to accelerate the account and begin the foreclosure process. The decision to accelerate involves numerous considerations, many of which will vary case-by-case. The following issues should always be considered.

#### 1. *OGC Concurrence*

CSC obtains OGC concurrence before beginning the foreclosure process if:

- The foreclosure is based on a nonmonetary default;
- The borrower obtained the loan while a civilian and entered military service after the loan was closed; or



## Paragraph 13.20 Foreclosure

- The property also serves as security for a loan under another United States Department of Agriculture (USDA) Agency program such as the Farm Service Agency (FSA), since this may trigger liquidation of the other loan.

**2. Role of Other Lien Holders**

Depending upon the status of other liens on the security property, the Agency may invite other lien holders to join in the foreclosure action or join in a foreclosure action initiated by another lien holder.

When the Field Office becomes aware of a prior lienholder foreclosure, a determination must be made if it is advantageous to pay the prior lienholder in full before the foreclosure sale. When making this determination the Field Office must consider if the government will obtain a greater recovery on the secured debt than it could by bidding at the foreclosure sale based on the net recovery value and whether the agency wishes to continue with the borrower. If the decision is made to pay off the prior lienholder a title opinion must be obtained. Field Offices will note the account and fax a copy of the foreclosure notice to CSC, Direct Loss Mitigation Section at 314-457-4553. The Field Office will need to track the progress of the prior lienholder's foreclosure manually until the time of the sale. Once the foreclosure template is established, the Field Office is responsible for updating the tasks on the template, using the date provided by the lender. If a third party purchases the property at the sale, the proceeds are shown in the sale amount field. Attachment 13-D provides guidance for obtaining funds to pay off the lienholder.

When CSC becomes aware that a prior lienholder has initiated foreclosure action, the State and Field Office will be notified by fax and telephone call. When the Agency becomes aware of a prior lienholder foreclosure, a determination must be made whether the *Form RD 1927-8, Agreement with Prior Lien holder*, or similar state form was executed in connection with a leveraged loan. When the Prior Lienholder Agreement was executed, and the lender failed to give notice, the Agency will consult with the Office of General Counsel to protect the Government's interest. The Agency will also consult with the Lender about compliance with the Prior Lienholder Agreement and Lenders who fail to comply with the prior notice requirements will be counseled. Lenders who are unable to comply with the prior notice requirements should not be considered for future leveraged packages.

Assignment of promissory notes and security instruments is authorized where a junior lienholder is foreclosing its lien and is paying the Agency in full.

Recapture will be calculated if the junior lienholder provides the necessary information.

## **B. Acceleration**

### **1. The Acceleration Notice**

If CSC determines that the appropriate approach to liquidation is foreclosure, the process begins with an acceleration notice. The acceleration notice demands full payment of the account including unpaid principal and interest, advances, and subsidy subject to recapture. It notifies the borrower of: (1) the reason for the acceleration; (2) the amount due; (3) the method of payment; (4) the opportunity for an informal discussion with the decision maker; and (5) the process for requesting an administrative appeal hearing. The notice gives the borrower 30 days to pay in full or request a hearing.

The notice must be sent to the borrower and any cosigners simultaneously by both regular mail and certified mail. If the property address is different from the address of the borrower, the notice should be sent to the property address as well.

### **2. Treatment of Payment Subsidy**

If a borrower is receiving payment subsidy, the payment subsidy agreement will not be canceled when the debt is accelerated, but the agreement will not be renewed when it expires unless the account is reinstated.

### **3. Special Servicing**

After a borrower's account has been accelerated, the borrower is no longer eligible for any of the special servicing actions described in Chapter 5.

### **4. Assignment of Security Instruments**

Assignment of promissory notes and security instruments is authorized when an account has been accelerated, all appeals have been exhausted, the case has been accepted by OGC for foreclosure, and the Agency is being paid at least the net recovery value of the security property.

### **5. Offers to Pay**

Field Offices will refer offers to cure the default to CSC. The borrower is permitted to cure the default and retain the loan under the following conditions:

## Paragraph 13.20 Foreclosure

- The Agency is required by state law to reinstate the loan; or
- The agency is required by a decision from National Appeals Division (NAD) to reinstate the loan; or
- At the sole discretion of the Agency, when it is in the Government's best financial interest.

For borrowers whose accounts have been accelerated 45 days or less, the cure amount will be quoted by CSC (unless the account is noted as a no cure account). The borrower will be instructed to send certified funds to the retail lockbox or use Western Union Quick Collect or Money Gram 45 days from acceleration.

Borrowers whose accounts have been accelerated more than 45 days will be referred by CSC to the appropriate State/Field Office. If appropriate, the State/Field Office will interact with the Office of the General Counsel/U.S. Attorney's office to determine if a cure can be accepted and document the recommendation in global notes. State/Field Offices may calculate the cure amount or if assistance is needed, contact CSC, Field Assistance Desk. All funds to cure an account must be certified or remitted using electronic funds (Western Union Quick Collect or Money Gram). The use of Customer Initiated Payments (CIP) or "check by phone" will not be used to cure an account, as these funds are not guaranteed.

When an offer is made to pay less than the full amount to cure the default, Attachment 13-C must be completed. The attachment, including concurrence by the State Director will be sent to the Director, CSC, for approval along with any supporting documentation. A request to reamortize the account must also be submitted at this time if the borrower is unable to pay the shortage within 30 days from acceptance of the offer. The request for approval of the offer should be submitted to CSC, Field Assistance Desk. If approved, the State/Field Office will submit the certified funds agreed upon along with a payment assistance package (if payment assistance has expired). If the borrower can pay the shortage within 30 days and a reamortization is not necessary, this should be noted on the funds transmittal. The State/Field Office is responsible for ensuring the borrower pays the approved cure amount as agreed. If the account is reamortized, an escrow will be established, if not already in place.

When the State/Field Office determines it is not in the best interest of the Agency to accept a cure, Task #802 will be sent to CSC to have the account coded to prevent future cures. In mandatory cure states, offers to cure the default and associated charges will not be refused.

- *Submission of Funds* - For accounts accelerated more than 45 days, the State/Field Office will collect and forward the funds to the wholesale lockbox on a *Form RD 3550-17, Funds Transmittal Report*. The lockbox address is USDA/RHS, P.O. Box 790300, St. Louis, MO 63179. If the borrower wishes to cure the account using electronic funds (Western Union Quick Collect or Money Gram), the State/Field Office should make sure the account is thoroughly noted with the control number for tracking purposes.
- *Payment Assistance* - If the payment assistance has expired or the borrower's income has changed, at the time the borrower cures the account, the State/Field Office should assist the borrower in completing a new payment assistance package. The payment assistance certification with the supporting documentation should be forwarded with *Form RD 3550-17* and the cure funds to the wholesale lockbox. If the account was cured via Western Union Quick Collect or Money Gram, the payment assistance information should be sent to the Field Assistance Desk with a cover letter explaining that the account was cured via electronic funds. The payment assistance agreement will be made effective with the first due date following the cure date, if a complete package is received within 30 days from the date of the cure.

Funds submitted by a borrower to a Field Office should be sent to the lockbox on *Form RD 3550-17, Funds Transmittal Report*.

### **C. Review of the Acceleration Decision**

Several remedies are available to borrowers who believe their accounts should not have been accelerated. These include an informal administrative review at CSC, mediation or a formal appeal with the NAD. Paragraph 1.9 describes the appeal and review process in detail.

### **D. Initiating Legal Proceedings**

Field Offices should continue the foreclosure process 30 days after the acceleration notice is sent if the borrower does not request an informal review or appeal the acceleration decision, or as soon as NAD upholds the Agency's decision to foreclose.

The Agency will only seek a deficiency judgment (in those States where available) when foreclosure is initiated and the Agency determines the borrower has or will have assets from which a deficiency judgment could be recovered. Deficiency judgments will never be sought in the following situations: (1) acceleration is due to an unpaid recapture amount; (2) the borrower was granted a moratorium at any time during the course of the loan and faithfully tried to meet the loan obligations; (3) State law does not permit a personal deficiency; (4) in nonjudicial foreclosure States, the United States Attorney will not accept a referral for the deficiency; or (5) the Agency has determined after consultation with OGC that it is not cost effective to seek a deficiency on a particular case.

## Paragraph 13.20 Foreclosure

If the security property is located on tribal allotted or trust land, liquidation may not proceed until after the State Director has offered, in writing, to transfer the account to an eligible tribal member, the tribe, or the Indian Housing Authority servicing the tribe or tribes. This offer is made after the account has been accelerated, the appeals process has been concluded and the case sent to the respective State Office.

### **E. The Foreclosure Sale**

Once legal proceedings have concluded, the property will be sold at a foreclosure sale. To complete the foreclosure process, Field Offices must determine how much to bid and enter that bid at the sale.

#### **1. Establishing a Bid Amount**

The Agency's bid will be the lesser of the Agency's gross investment or the estimated net recovery value of the security property.

Gross investment is the sum of:

- **The unpaid balance**, defined as:
  - ◇ In states with judicial foreclosure, the judgment account established as a result of the foreclosure judgment.
  - ◇ In states with non-judicial foreclosure, the borrower's account balance reflecting secured loans and advances.
- **All outstanding advances and fees charged to the borrower's account.**
- **Total subsidy received.**

#### **2. Bidding at the Foreclosure Sale**

Procedures for bidding at a sale will vary by locality and a local presence may be required. If the Agency is the high bidder, the property will become REO property, which will be managed and disposed of by the Field Office. In order to acquire the property through the MortgageServ System, send Task #229 to CSC noting the Agency was the successful bidder at the sale. CSC will then create the foreclosure template to allow the field to acquire the property. The Field Office will be responsible for updating the tasks on the template.

If the amount received through the foreclosure sale is less than the borrower's outstanding debt, CSC will handle the debt settlement procedures.

**REQUEST FOR PAYOFF STATEMENT**  
(This form to be used for Field/State Office functions only.)

**Type of Payoff Statement**

\_\_\_\_\_ Statement of Loan Balance (includes total subsidy received)  
\_\_\_\_\_ Final Payoff w/recapture  
\_\_\_\_\_ Sale      \_\_\_\_\_ Refinance      \_\_\_\_\_ Other \_\_\_\_\_  
\_\_\_\_\_ Other (explain) \_\_\_\_\_

**Account Information**

Account Number(s): \_\_\_\_\_  
Borrower Name: \_\_\_\_\_  
Property Address: \_\_\_\_\_  
\_\_\_\_\_

**Payoff Information**

\$ \_\_\_\_\_ Market Value/ (sales price, appraised value, or assessment)\*  
\$ \_\_\_\_\_ Value of Capital Improvements\*  
\$ \_\_\_\_\_ Closing Costs\*  
\$ \_\_\_\_\_ Amount of Original Equity  
\_\_\_\_\_ Percent of Original Equity  
\$ \_\_\_\_\_ Effective Date of Payoff

If payoff statement will be used for internal purposes only, documentation should be maintained in the Field/State Office. If payoff statement is to be provided to a third party, include documentation along with this request.

**Foreclosure Accounts:** unapplied/unprocessed vouchers to be added to the payoff quote.

Amount of Charge	Type of Charge
\$ _____	_____
\$ _____	_____
\$ _____	_____

[ ] Check here if additional fees have been confirmed through the State Office. If this box is checked, CSC will not send a Task 94 to the State Office for additional fees.

**Field/State Office Information** (all fields are required)

Person Making Request \_\_\_\_\_  
Phone Number \_\_\_\_\_  
Fax Number \_\_\_\_\_  
Reviewed By \_\_\_\_\_

**CSC Payoff Department FAX # (314) 457-4433**



## Cure and Financial Statement

Name of Borrower:
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Name of Co-Borrower:
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Address of Borrower:
----------------------

Customer Account #:
---------------------

Number of Times Customer Cured account in past 24 months and dates cured:
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### Part 1 Delinquency Information

1. Reason for Delinquency:
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2. Documentation to Support proof of payments being made (home repairs, medical expenses, other obligations):
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3. Recommendation to cure:
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### Part 2 Household Income

Borrower: (Wages, tips, overtime, etc.)	\$
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Co-Borrower: (Wages, tips, overtime, etc)	\$
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Other: (Social Security, retirement, alimony, child support, AFDC, other income, etc.)	\$
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## RUSH FUNDS PROCESSING

**Notice of Foreclosure Sale** – At least two weeks prior to sale, the Field Office must contact Prior Lien Holder to determine the procedure for bidding at sale:

- If the Agency is the successful bidder, how soon must funds be submitted?
- Is a deposit required on day of sale? What is the minimum deposit amount?
- Must the entire bid amount be paid the day of sale?

**Securing of Funds** – The State Office must assure that sufficient funds are available in the State’s R/L funds bucket. If the State exceeds 90% of the entire State’s allocation, authorization of the proposed voucher must be obtained. Procedures for acquiring additional funds can be found in RD Instruction 2024-A, Exhibit D.

**Vouchering for Funds** – When requesting emergency funds, the following information must be faxed to USDA St. Louis, Missouri at **(314) 457-4374, ATTN: Team 3:**

- RD Instruction 2024-A, Exhibit K, “Request for Emergency Payment”
- *Form RD 2024-30, Non-Contractual Program Loan Cost Expense (PLCE) Certification*
- *Form AD-838, Purchase Order*
- *Form AD-838-B, Invoice-Receipt Certification*

**[COPIES OF ABOVE FORMS ATTACHED]**

**Determining Voucher Amount** – Based on information received from Prior Lien Holder, the amount of voucher will be:

<b>If a deposit is required</b>	The voucher amount will be 10% of the Net Recovery Value amount as determined by a current appraisal and the NRV worksheet or the minimum amount required by Lender.
<b>If the full amount is required</b>	If the Agency is the successful bidder, the amount of the voucher will be an amount that exceeds the Prior Lien Holder’s bid but not to exceed the Net Recovery Value.

**Delivery of Funds** – It is imperative that vouchers for emergency funds are submitted to St. Louis, Missouri, as soon as possible. All efforts will be made to have funds available to Field Offices as required for Foreclosure Sale. Funds will primarily be sent via Electronic Funds Transfer (EFT) based on submission time to St. Louis, Missouri.

- If the funding request is made in accordance with RD Instructions 2024-A, Exhibit K, and received in St. Louis, Missouri, before 12:30 p.m. CST, funds will be sent the same day.
- If the funding request is received in St. Louis, Missouri, after 12:30 p.m. CST, funds will be sent the next business day.
- If there are no electronic funds transfer facilities available, funds will be overnight expressed the next day.

Questions pertaining to emergency funds requests should be e-mailed to [dcfo-fcb2@stl.usda.gov](mailto:dcfo-fcb2@stl.usda.gov).

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