

(c) *Regulated lender.* Where the failed lending entity is an FDIC regulated lender, the FDIC and the Agency will enter into an Inter-Agency Agreement regarding the FDIC's role as the successor lending entity, and all parties are to abide by this agreement or successor document(s). This agreement sets forth the duties and responsibilities of each Agency when a lender fails. When the FDIC is not the successor to a failed regulated lender, the regulatory agency serving as the successor lending entity and the Agency will abide by terms of the lender's agreement as executed by the originating lender. The Agency reserves the right to request a meeting with the successor lending entity to further define the duties and responsibilities of each agency when a lender fails.

(d) *No successor entity.* In the event no successor lending entity can be determined, the Agency reserves the right to enforce the provisions of the loan documents on behalf of the lender or to purchase the lender's interest in the loan.

§ 5001.515 Default by borrower.

When there is a default by a borrower, the lender must act prudently and expeditiously in working with the borrower to bring the account current or cure the default through restructuring if a realistic plan can be developed, or to accelerate the account and conduct a liquidation in accordance with § 5001.517 and in a manner that will minimize any potential loss.

(a) *Default notification and meetings.* The lender must notify the Agency within the timeframe as provided in § 5001.502(a)(3)(i).

(1) The lender will provide this notification by submitting the guaranteed loan borrower default status report in the Agency's electronic reporting system. The lender must update the loan's status each month until such time as the loan is no longer in default.

(2) If a monetary default exceeds 30 calendar days, the lender must meet with the borrower and, if necessary, the Agency within 45 calendar days of the date of the default to discuss the situation. The lender must provide the Agency with a written summary of the meeting, including any decisions and

actions agreed upon within 10 calendar days of the meeting.

(b) *Curative options.* In considering curative actions, providing a permanent cure without adversely affecting the risk to the Agency and the lender is the paramount objective. The lender may consider temporary curative actions (e.g., payment deferments or collateral subordination) provided they strengthen the loan and are in the best financial interest of the lender and the Agency.

(1) Curative actions (subject to the rights of any holder and Agency concurrence) include, but are not limited to, the following options:

(i) Deferment of principal and/or interest payments;

(ii) An additional unguaranteed temporary loan by the lender to bring the account current;

(iii) Re-amortization of or rescheduling the payments on the loan excluding capitalization of accrued interest;

(iv) Transfer and assumption of the loan in accordance with § 5001.506;

(v) Reorganization;

(vi) Liquidation;

(vii) Changes in interest rates in accordance with § 5001.513. Any interest payments must be adjusted proportionately between the guaranteed and unguaranteed portion of the loan; and

(viii) Troubled debt restructure.

(2) The term of any deferment, re-scheduling, re-amortization, or moratorium cannot exceed the lesser of the remaining useful life of the collateral or remaining term of the loan as set forth in § 5001.402(b) of this part.

(i) During a period of deferment or moratorium on the guaranteed loan, the lender's non-guaranteed loan(s) and any stockholder or affiliate loans must also be under deferment or moratorium.

(ii) Balloon payments are permitted as a loan servicing option as long as there is a reasonable prospect for successful repayment of the guaranteed loan and the remaining life of the collateral supports the action.

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§ 5001.516 Protective advances.

Protective advances are allowed only when they are necessary to preserve

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the value of the collateral. Therefore, a lender must exercise sound judgment in determining that the protective advance preserves collateral and recovery is actually enhanced by making the advance.

(a) Protective advances must be reasonable with respect to the outstanding loan amount and the value of the collateral being preserved.

(b) A lender cannot make protective advances in lieu of additional loans.

(c) A lender must obtain written Agency approval for any protective advance that will cumulatively amount to more than \$200,000, or 10 percent of the aggregate outstanding balance of principal and interest, whichever is less, to the same borrower.

(d) Protective advances constitute an indebtedness of the borrower to the lender and must be secured by collateral to the same extent as the original guaranteed loan.

(e) Notwithstanding § 5001.22(c) of this part, upon Agency approval, protective advances can be used to pay Federal tax liens or other Federal debt.

(f) A Protective advance claim will be paid only at the time of the final payment as indicated in the report of loss. In the event of a final loss, protective advances may accrue interest at the promissory note rate from the date of such advance and will be guaranteed at the same percentage of loss as provided for in the loan note guarantee. The loan note guarantee will not cover interest on the protective advance accruing after the interest termination date.

(g) The maximum loss to be paid by the Agency will never exceed the original loan amount plus accrued interest times the percentage of guarantee regardless of any protective advances made.

(h) Holders do not have an interest in protective advances.

§ 5001.517 Liquidation.

In the event of one or more incidents of default or third-party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, the lender, with Agency consent, must provide for liquidation in accordance with paragraphs (a) through (n) of this section. The lender is responsible

for initiating actions immediately and as necessary to assure a prompt, orderly liquidation that will provide maximum recovery. The Agency reserves the right to unilaterally conclude that liquidation is necessary and require the lender to assign the collateral to the Agency and the Agency will then liquidate the loan per paragraph (o) of this section.

(a) *Decision to liquidate.* A decision to liquidate a loan or proceed otherwise must be made when the lender determines that the default cannot be cured or when the Agency and the lender determine that it is in the best interest of the Agency and the lender to liquidate. The decision to liquidate or proceed otherwise with the borrower must be made as soon as possible when one or more of the following exist:

(1) The loan is 90 calendar days behind on any scheduled payment and the lender and the borrower have not been able to cure the delinquency;

(2) Delaying liquidation will jeopardize full or maximum recovery on the loan; or

(3) The borrower or lender is uncooperative in resolving the problem or the Agency or lender has reason to believe the borrower is not acting in good faith, and immediate liquidation would minimize loss to the Agency.

(b) *Repurchase of loan.* When the decision to liquidate a loan is made, if any portion of the loan has been sold or assigned under § 5001.408 of this part and has not already been repurchased, the lender must make provisions for repurchase in accordance with § 5001.511.

(c) *Lender's liquidation plan.* Within 30 calendar days after the lender decides to liquidate a loan, the lender must submit a written, proposed plan of liquidation to the Agency for approval. The liquidation plan must be detailed and include at least the following information:

(1) Such proof as the Agency requires to establish the lender's ownership of the guaranteed loan promissory note and related security instruments;

(2) A copy of the payment ledger, if available, or other documentation that reflects the current outstanding loan balance, accrued interest to date, and the method of computing the accrued interest;