

RD AN No. 4428 (1980-D)
April 14, 2009

TO: State Directors
Rural Development

ATTENTION: Rural Housing Program Directors,
Guaranteed Rural Housing Specialists,
Rural Development Managers, and
Area Directors

FROM: James C. Alsop (*Signed by Thomas E. Hannah*)
Acting Administrator
Housing and Community Facilities Programs

SUBJECT: Single Family Housing Guaranteed Loan Program
Foreclosure Sale Bids

PURPOSE/INTENDED OUTCOME:

This Administrative Notice (AN) provides guidance on foreclosure sale bids for security property on which there is a Single Family Housing Guaranteed Loan Program (SFHGLP) loan guarantee.

COMPARISON WITH PREVIOUS AN:

This AN replaces RD AN No. 4350 (1980-D), dated April 11, 2008, which expires on April 30, 2009.

EXPIRATION DATE:
April 30, 2010

FILING INSTRUCTIONS:
Preceding RD Instruction 1980-D

BACKGROUND:

RD Instruction 1980-D, Section 1980.374, covers a lender's responsibilities in pursuing the liquidation of a guaranteed loan account when there is an incurable default. Lenders must exercise due diligence in completing the liquidation process. This due diligence should include an estimate of the total debt, whether the security value is sufficient to cover that debt, and whether there is any recovery potential for any deficiency. The estimate of the total debt includes the unpaid principal, protective advances, interest accrual through the liquidation process, and other potential costs, such as the expense of the liquidation action and, if applicable, the cost of Real Estate Owned (REO) management and disposition.

The determination of the security value should be based on the current market value of the property. The recovery potential should be based on the borrower's assets and/or ability to pay the deficiency, as well as other potential sources of recovery, such as proceeds of insurance claims or pending litigation that might result in collection of the deficiency.

When foreclosure is the proposed method of liquidation, the determination of the amount to bid at the sale will have a significant affect on the net loss to the lender and to the Government. In determining the amount and the strategy of the foreclosure bid, the lender must consider State statutory requirements as well as the following considerations. If the bid at the sale covers the total debt, it is satisfied in the eyes of the law and the lender has no basis for further collection from the borrower. The lender's position of first mortgagee is extinguished and therefore, there is no right to collect any proceeds from insurance or litigation. In addition, when the bid is equivalent to or exceeds the market value of the property, potential buyers are less interested in bidding and it is more likely the lender will acquire the property as well as the costs of managing and disposing of it.

The Agency is frequently asked to provide, or concur, in a lender's bid at a foreclosure sale; however, RD Instruction 1980-D does not specifically address foreclosure sale bidding, therefore, the following guidance is provided.

IMPLEMENTATION RESPONSIBILITIES:

When the total debt, including the cost of acquiring, managing and disposing of REO property, is greater than the gross proceeds expected from a foreclosure sale at the market value of the security property and potential recovery from other sources, it is in the mutual interest of the lender and the Government, as guarantor, to encourage third-party bidding at the sale by entering a foreclosure sale bid less than the value of the property. The intent is to avoid acquiring REO and its associated management and disposition costs.

Without prior concurrence of the Agency, a lender should enter a foreclosure sale bid at 85 percent of the market value of the security. The fair market value upon which the bid is calculated must be based on a current appraisal or broker's price opinion (BPO) of the property, in "as-is" condition, with a 90 to 120-day marketing timeframe. If the interior of the security property is not accessible, the valuation may be based on exterior inspection only. The reduction

is intended to reflect potential REO costs, including accrued interest on the unpaid principal balance, which are typically a minimum of 15 percent of the fair market value of the property.

Lenders are responsible for ensuring that the value determination that forms the basis for the bid, whether derived from an appraisal or a BPO, provides a sound estimate of the market value of the property at the time of the foreclosure sale. The Agency recommends that the lender review the value determination in accordance with established quality controls, particularly when there is a significant (20 percent or more) decline from the value established when the loan was made. Lenders should be prepared to support the validity of their pre-foreclosure valuations if called upon by the Agency to do so.

The National Office will advise nationally-approved lenders, and the State SFHGLP contacts will advise their state-approved lenders of this policy by distribution of this AN.

If you have any questions regarding this AN, please contact the following: your appropriate State SFHGLP staff; Stuart Walden (202-690-4507, email: stuart.walden@wdc.usda.gov); Debbie Terrell at (918-534-3254, email debra.terrell@wdc.usda.gov); or, the Single Family Housing Guaranteed Loan Division at (202) 720-1452.