

RD AN No. 4434 (1980-D)
April 30, 2009

TO: State Directors
Rural Development

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

FROM: James C. Alsop (*Signed by James C. Alsop*)
Acting Administrator
Rural Housing Service

SUBJECT: Single Family Guaranteed Rural Housing Loan Program
Acceptable Foreclosure Time Frames

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to clarify and standardize the acceptable foreclosure time frame by State for Single Family Housing Loans Guaranteed by the Single Family Housing Guaranteed Loan Program (SFHGLP).

COMPARISON WITH PREVIOUS AN:

This AN replaces RD AN No. 4342 (1980-D), which expired on March 31, 2009. The acceptable foreclosure timelines in 21 States have been increased.

EXPIRATION DATE:
April 30, 2010

FILING INSTRUCTIONS:
Preceding RD Instruction 1980-D

BACKGROUND:

This AN provides consistency in the treatment of loss claim interest reductions resulting from untimely foreclosure initiation or completion. RD Instruction 1980-D, Section 1980.371(d), states that lenders must make a decision regarding liquidation by the time the loan is three payments past due. RD Instruction 1980-D, section 1980.374 states that foreclosure must be initiated within 90 days of the date the decision to liquidate is made unless the foreclosure has been delayed by law or an alternative to foreclosure is recommended to resolve the delinquency. Initiation of foreclosure begins with the first public action required by law, such as filing a Complaint or Petition, recording a Notice of Default, or publication of a Notice of Sale. RD Instruction 1980-D provides no guidance as to what is considered a reasonable time frame in which to complete a foreclosure in the state where the property is located. Previously, some State Offices had developed and implemented their own foreclosure time frames by which to curtail interest on loss claims. This AN establishes state specific guidance for time frames for completing foreclosure actions initiated after the date of this notice.

The SFHGLP adheres to Freddie Mac's foreclosure time frames. These time frames are measured from the first legal action (which is in accordance with RD Instruction 1980-D) to the foreclosure sale date, which is when the 6-month REO marketing period begins. Basic time frames of foreclosure processes most commonly utilized by private attorneys in state courts compare favorably to the Freddie Mac time frames. Additionally, Freddie Mac measures time frames in days as opposed to months, making compliance determinations and interest reduction calculations easier.

IMPLEMENTATION RESPONSIBILITIES:

The SFHGLP will use the foreclosure time frames as prescribed in Attachment 1, when determining whether a lender has exercised diligence in completing the foreclosure process. Differences in state procedures will affect the length of time required to complete foreclosure, therefore, the time frame will depend on the location of the property.

Attachment 1 also lists the recommended method of foreclosure and the first public action required by law to initiate each foreclosure method. In states where more than one foreclosure method is available but only one option is listed, the Agency chose the method that is most cost effective in reducing legal fees and accrued interest expense. The Agency does not intend to prohibit the payment of claims where the lender obtains title through a method of foreclosure other than what is recommended. However, the Agency office processing the loss claim request must determine whether the foreclosure method chosen by the lender was in the best interest of the Federal Government. For example, if the recommended foreclosure method is non-judicial, but judicial foreclosures are required to preserve the lender's right to a deficiency judgment, the lender may demonstrate that recovery on a deficiency judgment is expected after considering the time and cost of litigation. In such case, the judicial foreclosure method should be considered acceptable.

SFHGLP foreclosure time frames start with the date of the first legal action required by law, end with the foreclosure sale date, and do not include post-sale redemption periods or sale

confirmations. Since redemption periods may be adjusted under some state laws based on the circumstances surrounding a property, such as the amount of unpaid principal still owed or the occupancy status of the property, reasonable time frames for redemption periods and sale confirmations should be established on a case-by case basis in accordance with state law. Reimbursement of accrued interest may be reduced in accordance with RD Instruction 1980-D, Section 1980.376(b), for each day that the foreclosure continues past the prescribed time frame unless the lender presents a valid reason that justifies the delay.

Lenders and the Agency must ensure that staff members are familiar with state guidelines related to foreclosures. Exceptions to the foreclosure time frame, which cause delays beyond the lender’s control must be documented and submitted with the claim package. Examples of such circumstances include bankruptcy petitions filed after foreclosure initiation, contested foreclosures, and court scheduling delays or delays in obtaining service. Supporting documentation includes attorney correspondence or copies of court records. Lenders are responsible for including documentation to support the first public action and the foreclosure sale date in the claim package provided to the Agency office responsible for processing the claim.

The lender may be authorized a 60-day extension to the allowable time frame for compliance with state law when a bankruptcy delays the completion of foreclosure. To determine the impact of a bankruptcy filing on the foreclosure time frame, the total number of days from first action to foreclosure sale will be calculated. The total number of days between the bankruptcy filing date and the date of bankruptcy release or dismissal for each applicable bankruptcy case will then be subtracted from the total number of foreclosure days. The resulting number of days will be compared to the SFHGLP foreclosure time frame plus an automatic 60-day extension to determine if time frame was met.

Example -

Property State - Georgia
 RHS Time Frame – 150 Days

	<u>Date</u>	<u>Number of Days from Foreclosure Initiation</u>
1 st Publication Held	2/6/08	0
Bankruptcy Filed	3/1/08	23
Bankruptcy Released	9/14/08	220
Foreclosure Sale Republished	10/6/08	242
Foreclosure Sale Held	1/15/09	343

The total number of days between first publication and the foreclosure sale date is 343 days. The total number of days between bankruptcy filing and bankruptcy release was 197 days. The number of foreclosure days (343) minus the number of bankruptcy days (197) equals 146. The SFHGLP time frame for Georgia is 150 days. In this example, it is not required to add the 60-day extension to bring the time frame to 210 days. This example demonstrates that the foreclosure was pursued diligently and the delay resulted from the state requirement to republish the foreclosure sale. As a result, the lender is not penalized for not meeting the time frame.

Each Rural Development State Office is responsible for notifying state-approved lenders of the revised foreclosure time frame requirements. The National Office will advise nationally-approved lenders concurrent with the issuance of this AN.

In addition, during lender compliance reviews, files should continue to be reviewed in an effort to ensure that lenders are complying with the foreclosure requirements. Lenders that are determined to be out of compliance or that use Attorneys who are consistently out of compliance should be counseled on the provisions of the regulations and should be monitored closely for future compliance.

Questions about this AN may be directed to Stuart Walden or Debbie Terrell of the Single Family Housing Guaranteed Loan Division, USDA, Rural Housing Service, 1400 Independence Avenue, SW, Washington, DC 20250-0784. The contact telephone number is (202) 720-1452; or, via e-mail: stuart.walden@wdc.usda.gov or debra.terrell@wdc.usda.gov.

Attachment

State	Days¹ from Foreclosure Initiation to Foreclosure Sale	Foreclosure Method	Initiation of Foreclosure Document
Alabama	150	Non-judicial	Publication
Alaska	150	Non-judicial	Recording of Notice of Default
Arizona	150	Non-judicial	Recording of Notice of Sale
Arkansas	150	Non-judicial	Recording of Notice of Default
California	150	Non-judicial	Recording of Notice of Default
Colorado	165	Non-judicial	Filing of Foreclosure Docs with Public Trustee
Connecticut	220	Judicial	Delivery of Complaint to Sheriff
Delaware	250	Judicial	Complaint Filed
Florida	170	Judicial	Complaint Filed
Georgia	150	Non-judicial	Publication
Guam	250	Non-judicial	Recording of Notice of Default
Hawaii	150	Non-judicial	Publication of Notice of Intent to Foreclose
Idaho	190	Non-judicial	Recording of Notice of Default
Illinois	275	Judicial	Complaint Filed
Indiana	265	Judicial	Complaint Filed
Iowa	315	Judicial	Complaint Filed
Kansas	180	Judicial	Petition Filed
Kentucky	265	Judicial	Complaint Filed
Louisiana	220	Judicial	Petition for Executory Process
Maine	355	Judicial	Complaint Filed
Maryland	150	Judicial	Filing an Order to Docket
Massachusetts	195	Non-Judicial	Filing Complaint Relative to Soldier's and Sailor's Relief Act
Michigan	150	Non-judicial	Publication
Minnesota	150	Non-judicial	Publication
Mississippi	150	Non-judicial	Publication
Missouri	150	Non-judicial	Publication
Montana	205	Non-judicial	Recording of Notice of Sale
Nebraska	155	Non-judicial	Filing of Notice of Default
Nevada	155	Non-judicial	Recording of Notice of Default
New Hampshire	150	Non-judicial	Publication
New Jersey	300	Judicial	Complaint Filed
New Mexico	250	Judicial	Complaint Filed
New York	280	Judicial	Complaint Filed
North Carolina	150	Non-judicial	Notice of Hearing
North Dakota	190	Judicial	Complaint Filed
Ohio	265	Judicial	Complaint Filed
Oklahoma	250	Judicial	Petition Filed
Oregon	180	Non-judicial	Recording of Notice of Default
Pennsylvania	300	Judicial	Complaint Filed

State	Days¹ from Foreclosure Initiation to Foreclosure Sale	Foreclosure Method	Initiation of Foreclosure Document
Puerto Rico	375	Judicial	Complaint Filed
Rhode Island	150	Non-judicial	Publication
South Carolina	215	Judicial	Complaint Filed
South Dakota	205	Judicial	Complaint Filed
Tennessee	150	Non-judicial	Publication
Texas	150	Non-judicial	Posting and Filing of Notice of Sale
Utah	165	Non-judicial	Recording of Notice of Sale
Vermont	360	Judicial	Complaint Filed
Virgin Islands	325	Judicial	Complaint Filed
Virginia	150	Non-judicial	Publication
Washington	160	Non-judicial	Recording of Notice of Default
West Virginia	150	Non-judicial	Publication
Wisconsin	310	Judicial	Complaint Filed
Wyoming	150	Non-judicial	Publication

¹ State foreclosure time frames are in calendar days.

² State time frame represents the standard elapsed time for a judicial foreclosure without redemption. A longer time frame may be allowed if a borrower files a written demand to delay the sale.