

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

#### 7 CFR Part 1980

RIN 0575-AC85

#### Guaranteed Single Family Housing Loans

**AGENCY:** Rural Housing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Housing Service (RHS) is amending its regulations to add new servicing options to the Single Family Housing Guaranteed Loan Program (SFHGLP) that lenders may utilize while still maintaining the SFHGLP loan guarantee. The Agency will allow lenders to extend loans for a term of up to 40 years from the date of modification. The Agency also will allow lenders to advance funds on behalf of borrowers in amounts necessary to bring defaulted loans current, up to 30 percent of the unpaid principal balance of the loan. Upon request, RHS will reimburse the lender for eligible advances. The intended effect is to reduce mortgage foreclosures among SFHGLP borrowers and help stabilize the national housing market. This amendment is being issued as a final rule pursuant to section 101(c)(1) of the Helping Families Save Their Homes Act of 2009, which authorizes RHS to promulgate this rule without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking.

**DATES:** *Effective Date:* This rule is effective September 24th, 2010.

**FOR FURTHER INFORMATION CONTACT:** Stuart Walden, Senior Loan Specialist, Section 502 Guaranteed Loan Program—STOP 0784 (Room 2241), U.S.

Department of Agriculture, Rural Housing Service, 1400 Independence Ave., SW., Washington, DC 20250-0784. Telephone: 202-690-4507; 202-720-8795; E-mail: [stuart.walden@wdc.usda.gov](mailto:stuart.walden@wdc.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Classification

This final rule has been determined to be not significant and has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

##### Executive Order 12988, Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with the Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) No retroactive effect will be given to this rule; and (3) Administrative proceedings in accordance with the regulations of the National Appeals Division of USDA at 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

##### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA (2 U.S.C. 1532), RHS generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is

not subject to the requirements of sections 202 and 205 of the UMRA.

##### Environmental Impact Statement

This final rule has been reviewed in accordance with 7 CFR part 1940, subpart G, “Environmental Program.” Rural Development has determined that an environmental Impact Statement is not required because the issuance of regulations and instructions, as well as amendments to them, describing administrative and financial procedures for processing, approving, and implementing the Agency’s financial programs is categorically excluded in the Agency’s National Environmental Policy Act of 1969 (NEPA) regulation found at 7 CFR 1940.310(e)(3). Thus, in accordance with NEPA (42 U.S.C. 4321-4347), Rural Development has determined that this regulation does not constitute a major action significantly affecting the quality of the human environment.

Furthermore, individual awards under this rule are hereby classified as categorical exclusions according to 7 CFR 1940.310(e)(2) (loan-closing and servicing activities, transfers, assumptions, subordinations, construction management activities and amendments and revisions to approved projects, including the provision of additional financial assistance that do not alter the purpose, operation, location, or design of the project as originally approved) and thus do not require any additional documentation.

##### Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose a substantial direct compliance cost on State and local governments. Therefore, consultation with the States is not required.

##### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the undersigned has determined and certified by signature of this document that this rule will not have a significant impact on a substantial number of small entities. Program requirements for the guaranteed single family housing program are the same for all approved

lenders regardless of their size. Borrowers are low to moderate income individual homebuyers, not entities.

#### **Intergovernmental Consultation**

This program/activity is excluded from the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials.

#### **Programs Affected**

The program affected is listed in the Catalog of Federal Domestic Assistance as 10.410, Very Low to Moderate Income Housing Loans.

#### **Paperwork Reduction Act of 1995**

Section 101(c)(1)(C) of the Helping Families Save Their Homes Act of 2009 authorizes RHS to promulgate this rule without regard to the Paperwork Reduction Act.

#### **E-Government Act Compliance**

RHS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

#### **Non-Discrimination Statement**

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410, or call (800) 795-3272 (voice), or (202) 720-6382 (TDD). "USDA is an equal opportunity provider, employer, and lender."

#### **Background Information**

The Helping Families Save Their Homes Act of 2009 was signed into law on May 20, 2009. Section 101 of this law amended section 502(h) of the Housing Act of 1949 (42 U.S.C. 1472(h)), which authorizes the RHS Section 502 Guaranteed Loan Program. The amendments gave RHS the authority to

approve the modification of guaranteed single family housing loans that are in default or facing imminent default with terms extended up to 40 years from the date of modification (section 502(h)(14) of the Housing Act). The amendments also gave RHS the authority to establish a program for the payment of partial claims to mortgagees (approved guaranteed lenders) who agree to apply the claim amount to the payment of a loan in default or facing imminent default (section 502(h)(14) of the Housing Act). This rule adds 7 CFR 1980.373 to allow lenders to modify mortgages by reducing the interest rate to a level at or below a maximum allowable interest rate and extending the term of the loan up to 40 years from the date of loan modification ("extended-term loan modification"). RHS also will reimburse lenders for certain advances made on behalf of borrowers in default or facing imminent default ("mortgage recovery advances") (together with extended-term loan modification, "special loan servicing"). Lenders must receive written approval from RHS prior to servicing a borrower's account with special loan servicing. As with other authorized servicing options, the Lender must submit a servicing plan to RHS pursuant to 7 CFR 1980.374 when a borrower's account is 90 days delinquent and a method other than foreclosure is recommended to resolve the delinquency. Use of special loan servicing does not change the terms of the loan note guarantee. The Agency hopes that the additional servicing authorities will help to stabilize the current housing market. This rule also amends 7 CFR 1980.302, "Definitions and Abbreviations," to include the terms introduced in 7 CFR 1980.373.

Pursuant to section 1980.373(b), special loan servicing shall be used to bring the borrower's mortgage payment to income ratio as close as possible to, but not less than, 31 percent. The mortgage payment to income ratio is defined as the monthly mortgage payment (principal, interest, taxes, and insurance) for the modified mortgage divided by the borrower's gross monthly income. RHS chose to target 31 percent of a borrower's gross monthly income because 31 percent is consistent with the industry standard and is reasonable for determining a monthly mortgage payment that the borrower can afford. The U.S. Treasury Department's Home Affordable Modification Program (HAMP) requires servicers to reduce the borrower's monthly mortgage payment to 31 percent of the borrower's total pre-tax monthly income. The Federal Housing Administration (FHA) and

Department of Veterans Affairs (VA) also use a 31 percent target in their HAMP-related loan modification programs. The following Web sites provide additional information about HAMP: [www.hmpadmin.com](http://www.hmpadmin.com) (for servicers) and <http://makinghomeaffordable.gov/> (for borrowers). Please note that while HAMP is a temporary program (currently set to expire on December 31, 2012), the provisions of this final rule have no expiration date.

Section 1980.373(b) also requires the Lender to verify the borrower's income prior to servicing the borrower's account with special loan servicing. For borrowers who are employed by a private or public organization, the Lender shall examine documents such as the borrower's current pay stub and most recent Internal Revenue Service Form W-2. For borrowers who are self-employed, the Lender shall examine documents such as the borrower's profit and loss statements (for the year to date and the previous year) and the borrower's signed tax return for the previous year. These verification measures are designed to ensure accuracy.

Pursuant to section 1980.373(c), the Lender must consider traditional servicing options before considering special loan servicing. Specifically, the Lender must consider the borrower for a repayment agreement, special forbearance agreement, and loan modification plan with a term not to exceed 30 years from the date of the original loan. These traditional servicing options are detailed in the Loss Mitigation Guide that RHS distributes to all approved lenders servicing SFHGLP loans. If the targeted mortgage payment to income ratio cannot be achieved using traditional servicing options, then the Lender may consider an extended-term loan modification. If the targeted mortgage payment to income ratio cannot be achieved using an extended-term loan modification, then the Lender may consider a mortgage recovery advance in addition to the extended-term loan modification. Before considering a mortgage recovery advance, the Lender must reduce the interest rate to the maximum allowable interest rate and extend the repayment term for 30 years from the date of loan modification. The Lender may reduce the interest rate further and/or extend the term of the loan for up to 40 years from the date of loan modification at the Lender's option, but the Lender shall not be required to do so before utilizing a mortgage recovery advance. This sequence gives lenders some flexibility while encouraging lenders to achieve

the targeted mortgage payment to income ratio using the servicing option(s) that will be least expensive for the government. Use of the mortgage recovery advance is limited because the mortgage recovery advance will be most expensive for the government. By imposing these restrictions, RHS will promote the reduction of mortgage foreclosures in a cost-effective manner.

Section 1980.373(d) describes eligibility requirements that apply to all special loan servicing.

First, in order for a borrower to be eligible, the borrower must be in default or facing imminent default. A borrower is "facing imminent default" if that borrower is current or less than 30 days past due on the mortgage obligation and is experiencing a significant reduction in income or some other hardship that will prevent him or her from making the next required payment on the mortgage during the month in which it is due. Section 502(h)(14) of the Housing Act of 1949 authorizes RHS to allow loan modifications and payment of partial claims with respect to mortgages that are in default or facing imminent default. RHS believes that establishing early contact with borrowers having difficulty making their mortgage payments increases the likelihood that such borrowers will be able to retain homeownership.

Second, in order for a borrower to be eligible, the borrower's total debt to income ratio following special loan servicing must not exceed 55 percent. Total debt to income ratio is defined as the borrower's monthly mortgage payment plus all recurring monthly debt divided by the borrower's gross monthly income. This requirement exists to control costs for the government. Repayment ability is substantially impaired when a borrower's total debt to income ratio exceeds 55 percent. FHA uses the same eligibility standard in its HAMP-related loan modification program. In connection with this requirement, section 1980.373(d) requires the Lender to verify the borrower's income and total debt prior to servicing the borrower's account with special loan servicing. For borrowers who are employed by a private or public organization, the Lender shall verify the borrower's income by examining documents such as the borrower's current pay stub and most recent Internal Revenue Service Form W-2. For borrowers who are self-employed, the Lender shall verify the borrower's income by examining documents such as the borrower's profit and loss statements (for the year to date and the previous year) and the borrower's signed tax return for the previous year.

The Lender shall verify the borrower's total debt by ordering and examining the borrower's credit report. These verification measures are designed to ensure accuracy.

Third, in order for a borrower to be eligible, the borrower must successfully complete a trial payment plan to demonstrate that the borrower will be able to make regularly scheduled payments as modified by the special loan servicing. For borrowers who are in default when special loan servicing is initiated, the trial payment plan shall be three months in length. For borrowers facing imminent default when special loan servicing is initiated, the trial payment plan shall be four months in length. The borrower's monthly payment during the trial payment plan shall equal the monthly payment that would be owed by the borrower following the special loan servicing. A three-month trial period is the industry standard and a key element of HAMP. The trial period allows the government to verify that the proposed servicing plan will succeed in helping the borrower afford their home. Three months is sufficient time for a borrower to demonstrate that the new payment can be maintained. Borrowers facing imminent default must complete a four-month trial period. FHA also requires a four-month trial period for borrowers facing imminent default in its HAMP-related loan modification program. During this trial period, the Lender shall service the mortgage in the same manner as it would service a mortgage under a special forbearance agreement, i.e., the Lender shall review the status of the plan each month and take appropriate action if the borrower is not complying with the terms of the plan. If the borrower does not successfully complete the trial payment plan by making each of the monthly payments on time, the borrower is not eligible for special loan servicing. If the borrower begins but does not successfully complete a trial payment plan, the Lender should consider the borrower for voluntary liquidation and deed in lieu of foreclosure before proceeding to foreclosure. This provision is included to minimize loss to the government.

Finally, in order for a borrower to be eligible for special loan servicing, the borrower must occupy the property as the borrower's primary residence at the time of the special loan servicing and intend to continue occupying the property as such. This requirement is consistent with existing SFHGLP regulations. It is also consistent with the purpose of the program—to assist eligible households in having adequate

but modest, decent, safe, and sanitary dwellings for their own use.

Section 1980.373(e) states that in an extended-term loan modification, the Lender shall reduce the interest rate to a level at or below the maximum allowable interest rate and extend the repayment term up to 40 years from the date of loan modification. Pursuant to section 1980.373(e), the interest rate must be fixed. Using a fixed interest rate makes the loan terms easy for the borrower to understand and reduces the administrative burden on the government. RHS may establish the maximum allowable interest rate by publishing a notice in the **Federal Register** describing how to calculate the rate. This will allow RHS to adapt to industry standards and market conditions. If the maximum allowable interest rate has not been established by notice in the **Federal Register**, the maximum allowable interest rate shall be 50 basis points greater than the most recent Freddie Mac Weekly Primary Mortgage Market Survey (PMMS) rate for 30-year fixed-rate mortgages (U.S. average), rounded to the nearest one-eighth of one percent (0.125%), as of the date the loan modification is executed. Weekly PMMS rates are published on the Freddie Mac Web site, and the Federal Reserve Board includes the average 30-year PMMS rate in the list of Selected Interest Rates that it publishes weekly in its Statistical Release H.15. This default maximum allowable interest rate is determined using the same formula used by FHA in its HAMP-related loan modification program. Section 1980.373(e) also requires that the term of the loan be extended only as long as is necessary to achieve the targeted mortgage payment to income ratio (but no longer than 40 years) after the interest rate has been fixed at a level at or below the maximum allowable rate. This requirement ensures that the program goals are met in a cost-effective manner. As required by section 502(h)(14) of the Housing Act of 1949, expenses related to special loan servicing shall not be charged to the borrower. Such expenses include title search fees and recording fees, but not legal fees and costs related to a cancelled foreclosure initiated prior to special loan servicing. Legal fees and costs related to a cancelled foreclosure may be capitalized into the modified principal balance provided that such foreclosure costs reflect work actually completed prior to the date of the foreclosure cancellation. Late fees should not be capitalized into the modified loan.

Pursuant to section 1980.373(f), the maximum mortgage recovery advance

consists of the sum of arrearages not to exceed 12 months of principal, interest, taxes, and insurance; legal fees and foreclosure costs related to a cancelled foreclosure action; and principal reduction. The maximum mortgage recovery advance is 30 percent of the unpaid principal balance as of the date of default. Section 502(h)(14) of the Housing Act of 1949 limits the amount of the partial claim to no more than 30 percent of the unpaid principal balance of the mortgage plus any costs that are approved by the Secretary. RHS has decided not to take any costs into account in order to streamline the calculation of the maximum mortgage recovery advance. The principal deferment on the modified mortgage is determined by multiplying the unpaid principal balance by 30 percent and then reducing that amount by arrearages advanced to cure the default and any foreclosure costs incurred to that point. The principal deferment amount for a specific case shall be limited to the amount that will bring the borrower's total monthly mortgage payment to 31 percent of gross monthly income. Limiting the amount of deferred principal in this way ensures that the program goals are met in a cost-effective manner. As required by section 502(h)(14) of the Housing Act of 1949, expenses related to special loan servicing shall not be charged to the borrower. Such expenses include title search fees and recording fees, but not legal fees and costs related to a cancelled foreclosure initiated prior to special loan servicing. Legal fees and foreclosure costs related to a cancelled foreclosure action may be included in the mortgage recovery advance provided that such foreclosure costs reflect work actually completed prior to the date of the foreclosure cancellation. Late fees should not be included in a mortgage recovery advance.

Section 1980.373(f) also addresses other issues relating to mortgage recovery advances. Pursuant to section 1980.373(f)(1), the Lender must have the borrower execute a promissory note payable to RHS and a mortgage or deed-of-trust in recordable form perfecting a lien naming RHS as the secured party for the amount of the mortgage recovery advance. The Lender shall properly record the mortgage or deed-of-trust in the appropriate local real estate records and provide the original promissory note to RHS. The Lender may file a claim pursuant to 7 CFR 1980.376 for reimbursement of up to \$250 for a title search and/or recording fees in connection with this promissory note and mortgage or deed-of-trust. RHS used

similar procedures successfully in its Mortgage Recovery Advance Program for SFHGLP borrowers in default on their housing loans due to damage caused by certain hurricanes in 2005. Pursuant to section 1980.373(f)(2), prior to making a mortgage recovery advance, the Lender must perform an escrow analysis to ensure that the payment made on behalf of the borrower accurately reflects the escrow amount required for taxes and insurance.

Section 1980.373(f)(3) discusses repayment of mortgage recovery advances. First, the mortgage recovery advance note and subordinate mortgage or deed-of-trust shall be interest-free. Second, borrowers are not required to make any monthly or periodic payments on the mortgage recovery advance note; however, borrowers may voluntarily submit partial payments without incurring any prepayment penalty. Third, the due date for the mortgage recovery advance note shall be the due date of the guaranteed note held by the Lender, as modified by the special loan servicing. Prior to the due date on the mortgage recovery advance note, payment in full under the note is due at the earlier of the following: When the first lien mortgage and the guaranteed note are paid off, or when the borrower transfers title to the property by voluntary or involuntary means. These provisions reflect industry practice under HAMP, which mandates that interest not accrue on deferred principal and that deferred principal is not due until the borrower pays off the loan, refinances, or sells the house. Fourth, repayment of all or part of the mortgage recovery advance must be remitted directly to RHS by the borrower. Finally, RHS will collect this Federal debt from the borrower by any available means if the mortgage recovery advance is not repaid based on the terms outlined in the promissory note and mortgage or deed-of-trust.

Section 1980.373(f)(4) discusses how a Lender files a claim with RHS for reimbursement of a mortgage recovery advance. First, a claim for reimbursement must be submitted to RHS within 60 days of the advance being executed by the borrower through his or her signature on the promissory note. Second, when filing the claim for reimbursement with RHS, the Lender must: Submit the original promissory note and a copy of the filed mortgage or deed-of-trust; include a summary of the amount of the funds advanced, including the monthly principal, interest, taxes, insurance, and principal deferment (if applicable), and other account information indicating the borrower's arrearage before the advance,

as well as the present status of the account as of the date of the advance; provide the name, address, and tax ID number for the Lender; and provide the name, address, and phone number of a contact person for the Lender who can answer questions about the reimbursement request. These requirements allow RHS to exercise oversight and verify proper use of government funds for this servicing option.

Pursuant to section 1980.373(f)(5), if a borrower defaults on his or her loan after receiving a mortgage recovery advance and a loss claim is filed by the Lender due to the default, any Agency reimbursement issued for the mortgage recovery advance to the Lender on behalf of the borrower will be credited toward the maximum loan guarantee amount payable by the Agency under the guarantee. RHS followed this policy successfully in its mortgage recovery advance Program for SFHGLP borrowers in default on their housing loans due to damage caused by certain hurricanes in 2005. This credit or reduction in the ultimate loss claim payment is necessary since the mortgage recovery advance is a partial claim under the guarantee.

#### List of Subjects in 7 CFR Part 1980

Home improvement, Loan programs—Housing and community development, Mortgage insurance, Mortgages, Rural areas.

■ For the reasons stated in the preamble, chapter XVIII, title 7 of the Code of Federal Regulations, is amended as follows:

#### PART 1980—GENERAL

■ 1. The authority citation for part 1980 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

#### Subpart D—Rural Housing Loans

■ 2. Section 1980.302(a) is amended by adding in alphabetical order the definitions for “Extended-term loan modification,” “Maximum allowable interest rate,” “Mortgage payment to income ratio,” “Mortgage recovery advance,” and “Total debt to income ratio,” to read as follows:

#### § 1980.302 Definitions and abbreviations.

(a) \* \* \*

*Extended-term loan modification.* A loan modification in which the Lender reduces the interest rate to a level at or below the maximum allowable interest rate and then extends the repayment term up to a maximum of 40 years from the date of loan modification, but only

as long as is necessary to achieve the targeted mortgage payment to income ratio.

\* \* \* \* \*

*Maximum allowable interest rate.* RHS may establish the maximum allowable interest rate in an extended-term loan modification by publishing a notice in the **Federal Register** describing how to calculate the maximum allowable interest rate. If the maximum allowable interest rate has not been established by notice in the **Federal Register**, the maximum allowable interest rate shall be 50 basis points greater than the most recent Freddie Mac Weekly Primary Mortgage Market Survey (PMMS) rate for 30-year fixed-rate mortgages (U.S. average), rounded to the nearest one-eighth of one percent (0.125%), as of the date the loan modification is executed. Weekly PMMS rates are published on the Freddie Mac Web site, and the Federal Reserve Board includes the average 30-year PMMS rate in the list of Selected Interest Rates that it publishes weekly in its Statistical Release H.15.

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*Mortgage payment to income ratio.* This ratio is defined as the monthly mortgage payment (principal, interest, taxes, and insurance) divided by the borrower's gross monthly income.

\* \* \* \* \*

*Mortgage recovery advance.* A mortgage recovery advance is funds advanced by the Lender on behalf of a borrower to satisfy the borrower's arrearage, pay legal fees and foreclosure costs related to a cancelled foreclosure action, and reduce principal. Upon request, RHS will reimburse the Lender for eligible mortgage recovery advances. The maximum mortgage recovery advance consists of the sum of:

- (i) Arrearages not to exceed 12 months of principal, interest, taxes, and insurance;
- (ii) legal fees and foreclosure costs related to a cancelled foreclosure action; and
- (iii) principal reduction.

The maximum mortgage recovery advance is 30 percent of the unpaid principal balance as of the date of default.

\* \* \* \* \*

*Total debt to income ratio.* Total debt to income ratio is defined as the borrower's monthly mortgage payment plus all recurring monthly debt divided by the borrower's gross monthly income.

\* \* \* \* \*

■ 3. Section 1980.373 is added to read as follows:

#### § 1980.373 Special loan servicing.

(a) *General.* As specified in this section, the Lender may reduce the interest rate to a level at or below the maximum allowable interest rate and extend the term of the loan up to 40 years from the date of loan modification ("extended-term loan modification") and, if necessary, advance funds on behalf of a borrower to satisfy the borrower's arrearage, pay legal fees and foreclosure costs related to a cancelled foreclosure action, and reduce principal ("mortgage recovery advance") (collectively, "special loan servicing"). Upon request, RHS will reimburse the Lender for eligible mortgage recovery advances under the partial loss claim procedures of this section. Lenders must receive written approval from RHS prior to servicing a borrower's account with special loan servicing. The Lender must submit a servicing plan to RHS pursuant to § 1980.374 when a borrower's account is 90 days delinquent and a method other than foreclosure is recommended to resolve the delinquency. Use of special loan servicing does not change the terms of the loan note guarantee.

(b) *Mortgage payment to income ratio.* This ratio is defined as the monthly mortgage payment (principal, interest, taxes, and insurance (PITI)) for the modified mortgage divided by the borrower's gross monthly income. The servicing options in this section shall be used in the order established in paragraph (c) of this section to bring the borrower's mortgage payment to income ratio as close as possible to, but not less than, 31 percent. Prior to servicing a borrower's account with special loan servicing, the Lender must verify the borrower's income. For borrowers who are employed by a private or public organization, the Lender shall verify the borrower's income by examining documents such as the borrower's current pay stub and most recent Internal Revenue Service Form W-2. For borrowers who are self-employed, the Lender shall verify the borrower's income by examining documents such as the borrower's profit and loss statements (for the year to date and the previous year) and the borrower's signed tax return for the previous year.

(c) *Special loan servicing steps.* The Lender must consider loan servicing options in the order established by this paragraph (c).

(1) The Lender must consider the following traditional servicing options before considering special loan servicing.

(i) *Repayment agreement.* A repayment agreement is an informal forbearance plan lasting three months or

less. An informal forbearance plan is the best means to ensure that a 30-or 60-day delinquency does not escalate beyond the borrower's ability to cure.

(ii) *Special forbearance agreement.* A special forbearance plan is structured so that it leads to a current loan, either by gradually increasing monthly payments in an amount sufficient to repay the arrearage over time, or (if the borrower is at least three months delinquent) through resumption of normal payments for a period (generally three or more months) followed by a loan modification. The maximum arrearage under a special forbearance plan must never exceed the equivalent of 12 months of PITI.

(iii) *Loan modification plan with a term not to exceed 30 years from the date of the original loan.* A loan modification is a permanent change in one or more of the terms of a loan that results in a payment the borrower can afford and allows the loan to be brought current. Loan modifications may include a reduction in the interest rate, even below the market rate if necessary; capitalization of all or a portion of the arrearage (PITI); and/or reamortization of the balance due. The term of the loan modification may not exceed 30 years from the date of the original loan. The terms of the SFHGLP loan note guarantee do not change. The loan note guarantee is in effect only for 30 years from the date of the original loan.

(2) If the targeted mortgage payment to income ratio cannot be achieved using traditional servicing options, then the Lender may consider an extended-term loan modification.

(3) If the targeted mortgage payment to income ratio cannot be achieved using an extended-term loan modification, then the Lender may consider a mortgage recovery advance in addition to the extended-term loan modification. Before considering a mortgage recovery advance, the Lender must reduce the interest rate to the maximum allowable interest rate and extend the repayment term for 30 years from the date of loan modification. The Lender may reduce the interest rate further and/or extend the term of the loan for up to 40 years from the date of loan modification at the Lender's option, but the Lender shall not be required to do so before utilizing a mortgage recovery advance.

(d) *Eligibility.* The following eligibility requirements apply to all special loan servicing.

(1) The borrower must be in default or facing imminent default. A borrower is "facing imminent default" if that borrower is current or less than 30 days past due on the mortgage obligation and

is experiencing a significant reduction in income or some other hardship that will prevent him or her from making the next required payment on the mortgage during the month in which it is due. The borrower must be able to document the cause of the imminent default, which may include, but is not limited to, one or more of the following types of hardship:

(i) A reduction in or loss of income that was supporting the mortgage loan, *e.g.*, unemployment, reduced job hours, reduced pay, or a decline in self-employed business earnings. A scheduled temporary shutdown of the employer (such as for a scheduled vacation) would not in and by itself be adequate to support an imminent default.

(ii) A change in household financial circumstances, *e.g.*, death in family, serious or chronic illness, permanent or short-term disability.

(2) The borrower's total debt to income ratio following the special loan servicing must not exceed 55 percent. Total debt to income ratio is defined as the borrower's monthly mortgage payment plus all recurring monthly debt divided by the borrower's gross monthly income. Prior to servicing a borrower's account with special loan servicing, the Lender must verify the borrower's income and total debt. For borrowers who are employed by a private or public organization, the Lender shall verify the borrower's income by examining documents such as the borrower's current pay stub and most recent Internal Revenue Service Form W-2. For borrowers who are self-employed, the Lender shall verify the borrower's income by examining documents such as the borrower's profit and loss statements (for the year to date and the previous year) and the borrower's signed tax return for the previous year. The Lender shall verify the borrower's total debt by ordering and examining the borrower's credit report.

(3) The borrower must successfully complete a trial payment plan to demonstrate that the borrower will be able to make regularly scheduled payments as modified by the special loan servicing. For borrowers who are in default when special loan servicing is initiated, the trial payment plan shall be three months in length. For borrowers facing imminent default when special loan servicing is initiated, the trial payment plan shall be four months in length. The borrower's monthly payment during the trial payment plan shall equal the monthly payment that would be owed by the borrower following the special loan servicing. During this trial period, the Lender shall

service the mortgage in the same manner as it would service a mortgage under a special forbearance agreement (*i.e.*, the Lender shall review the status of the plan each month and take appropriate action if the borrower is not complying with the terms of the plan). If the borrower does not successfully complete the trial payment plan by making each of the monthly payments on time, the borrower is not eligible for special loan servicing. If the borrower begins but does not successfully complete a trial payment plan, the Lender should consider the borrower for voluntary liquidation and deed in lieu of foreclosure before proceeding to foreclosure.

(4) At the time of the special loan servicing, the borrower must occupy the property as the borrower's primary residence and intend to continue occupying the property as such.

(e) *Extended-term loan modification.* The Lender may modify the loan by reducing the interest rate to a level at or below the maximum allowable interest rate and extending the repayment term up to a maximum of 40 years from the date of loan modification. The interest rate must be fixed. RHS may establish the maximum allowable interest rate by publishing a notice in the **Federal Register** describing how to calculate the rate. If the maximum allowable interest rate has not been established by notice in the **Federal Register**, the maximum allowable interest rate shall be 50 basis points greater than the most recent Freddie Mac Weekly Primary Mortgage Market Survey (PMMS) rate for 30-year fixed-rate mortgages (U.S. average), rounded to the nearest one-eighth of one percent (0.125%), as of the date the loan modification is executed. Weekly PMMS rates are published on the Freddie Mac Web site, and the Federal Reserve Board includes the average 30-year PMMS rate in the list of Selected Interest Rates that it publishes weekly in its Statistical Release H.15. The term shall be extended only as long as is necessary to achieve the targeted mortgage payment to income ratio after the interest rate has been fixed at a level at or below the maximum allowable rate. Expenses related to special loan servicing shall not be charged to the borrower. Such expenses include title search fees and recording fees, but not legal fees and costs related to a cancelled foreclosure initiated prior to special loan servicing. Legal fees and costs related to a cancelled foreclosure may be capitalized into the modified principal balance provided that such foreclosure costs reflect work actually completed prior to the date of the foreclosure cancellation. Late fees

should not be capitalized into the modified loan.

(f) *Mortgage recovery advance.* The maximum mortgage recovery advance consists of the sum of arrearages not to exceed 12 months of PITI; legal fees and foreclosure costs related to a cancelled foreclosure action; and principal reduction. The maximum mortgage recovery advance is 30 percent of the unpaid principal balance as of the date of default. The principal deferment on the modified mortgage is determined by multiplying the unpaid principal balance by 30 percent and then reducing that amount by arrearages advanced to cure the default and any foreclosure costs incurred to that point. The principal deferment amount for a specific case shall be limited to the amount that will bring the borrower's total monthly mortgage payment to 31 percent of gross monthly income. Expenses related to special loan servicing shall not be charged to the borrower. Such expenses include title search fees and recording fees, but not legal fees and costs related to a cancelled foreclosure initiated prior to special loan servicing. Legal fees and foreclosure costs related to a cancelled foreclosure action may be included in the mortgage recovery advance provided that such foreclosure costs reflect work actually completed prior to the date of the foreclosure cancellation. Late fees should not be included in a mortgage recovery advance.

(1) The Lender must have the borrower execute a promissory note payable to RHS and a mortgage or deed-of-trust in recordable form perfecting a lien naming RHS as the secured party for the amount of the mortgage recovery advance. The Lender shall properly record the mortgage or deed-of-trust in the appropriate local real estate records and provide the original promissory note to RHS. The Lender may file a claim pursuant to § 1980.376 of this subpart for reimbursement of up to \$250 for a title search and/or recording fees in connection with this promissory note and mortgage or deed-of-trust.

(2) Prior to making a mortgage recovery advance, the Lender must perform an escrow analysis to ensure that the payment made on behalf of the borrower accurately reflects the escrow amount required for taxes and insurance.

(3) The following terms apply to the repayment of mortgage recovery advances:

(i) The mortgage recovery advance note and subordinate mortgage or deed-of-trust shall be interest-free.

(ii) Borrowers are not required to make any monthly or periodic payments

on the mortgage recovery advance note; however, borrowers may voluntarily submit partial payments without incurring any prepayment penalty.

(iii) The due date for the mortgage recovery advance note shall be the due date of the guaranteed note held by the Lender, as modified by the special loan servicing. Prior to the due date on the mortgage recovery advance note, payment in full under the note is due at the earlier of the following:

(A) When the first lien mortgage and the guaranteed note are paid off; or

(B) When the borrower transfers title to the property by voluntary or involuntary means.

(iv) Repayment of all or part of the mortgage recovery advance must be remitted directly to RHS by the borrower.

(v) RHS will collect this Federal debt from the borrower by any available means if the mortgage recovery advance is not repaid based on the terms outlined in the promissory note and mortgage or deed-of-trust.

(4) The following provisions apply when a Lender files a claim with RHS for reimbursement of a mortgage recovery advance:

(i) A claim for reimbursement in a form acceptable to RHS must be submitted to RHS within 60 days of the advance being executed by the borrower through his or her signature on the promissory note.

(ii) When filing the claim for reimbursement with RHS, the Lender must:

(A) Submit the original promissory note and a copy of the filed mortgage or deed-of-trust;

(B) Include a summary of the amount of the funds advanced, including the monthly PITI and principal deferment (if applicable), and other account information indicating the borrower's arrearage before the advance, as well as the present status of the account as of the date of the advance;

(C) Provide the name, address, and tax ID number for the Lender; and

(D) Provide the name, address, and phone number of a contact person for the Lender who can answer questions about the reimbursement request.

(5) If a borrower defaults on his or her loan after receiving a mortgage recovery advance and a loss claim is filed by the Lender due to the default, any Agency reimbursement issued for the mortgage recovery advance to the Lender on behalf of the borrower will be credited toward the maximum loan guarantee amount payable by the Agency under the guarantee.

Dated: August 18, 2010.

**Tammye Treviño,**

*Administrator Rural Housing Service.*

[FR Doc. 2010-21261 Filed 8-25-10; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

**[Docket No. FAA-2010-0860; Directorate Identifier 2010-NE-28-AD; Amendment 39-16422; AD 2010-18-09]**

**RIN 2120-AA64**

#### **Airworthiness Directives; Pratt & Whitney Canada (P&WC) PW530A, PW545A, and PW545B Turbofan Engines**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

There have been reports of engine surge, lack of response to Power Lever input and crew commanded engine shutdown on PW530A/PW545A/PW545B engines powered aeroplanes. Investigation revealed engine intercompressor bleed valve/servo valve malfunction as the cause of the above problems, and that this problem is limited to engines fitted with low time (new or overhauled) bleed valve servo valves with either SB 30343 or 30404 incorporated.

We are issuing this AD to prevent inflight loss of power of one or both of the engines and possible loss of control of the airplane.

**DATES:** This AD becomes effective September 10, 2010.

We must receive comments on this AD by September 27, 2010. The Director of the Federal Register approved the incorporation by reference of P&WC Alert Service Bulletin PW500-72-A30421, dated June 29, 2010, listed in the AD as of September 10, 2010.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* U.S. Department of Transportation, 1200 New Jersey

Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* (202) 493-2251.

#### **Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

#### **FOR FURTHER INFORMATION CONTACT:**

James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail:* [james.lawrence@faa.gov](mailto:james.lawrence@faa.gov); telephone (781) 238-7176; fax (781) 238-7199.

#### **SUPPLEMENTARY INFORMATION:**

##### **Discussion**

Transport Canada, which is the aviation authority for Canada, has issued Canada Airworthiness Directive CF-2010-19, dated July 7, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

There have been reports of engine surge, lack of response to Power Lever input and crew commanded engine shutdown on PW530A/PW545A/PW545B engines powered aeroplanes. Investigation revealed engine intercompressor bleed valve/servo valve malfunction as the cause of the above problems, and that this problem is limited to engines fitted with low time (new or overhauled) bleed valve servo valves with either SB 30343 or 30404 incorporated.

You may obtain further information by examining the MCAI in the AD docket.

#### **Relevant Service Information**

P&WC has issued Alert Service Bulletin (ASB) PW500-72-A30421, dated June 29, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

#### **FAA's Determination and Requirements of This AD**

This product has been approved by the aviation authority of Canada, and is approved for operation in the United