

RD AN No. 4341 (1980-D)  
March 14, 2008

TO: State Directors  
Rural Development

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

FROM: Russell T. Davis                      *(Signed by Russell T. Davis)*  
Administrator  
Housing and Community Facilities Programs

SUBJECT: Single Family Housing Guaranteed Loan Program  
Acceptable Liquidation Fees and Costs

**PURPOSE/INTENDED OUTCOME:**

The purpose of this Administrative Notice (AN) is to amend the guidelines regarding reimbursement of attorney and trustee fees incurred for liquidated single family housing loans guaranteed by Single Family Housing Guaranteed Loan Program (SFHGLP).

**COMPARISON WITH PREVIOUS AN:**

This AN replaces AN 4258 (1980-D) dated March 21, 2007. The Schedule of Standard Attorney/Trustee's Fees for the Single Family Housing Guaranteed Loan Program has been updated in order to align with the Schedule of Standard Attorney's Fees established by HUD.

**BACKGROUND:**

SFHGLP regulations authorize the reimbursement of liquidation fees and costs that are actually paid by the lender for liquidated loans that result in a loss to the lender within the limits of the guarantee.

EXPIRATION DATE:  
March 31, 2009

FILING INSTRUCTIONS:  
Preceding RD Instruction 1980-D

RD Instruction 1980-D, section 1980.374(c) states that the Agency will allow “reasonable” liquidation costs similar to those charged for like services in the area. In 1994, FHA began utilizing Fannie Mae’s Schedule of Standard Attorney/Trustee’s Fees until FHA established its own fee schedule in September 1998. The SFHGLP will adhere to the Schedule of Standard Attorney/Trustee’s Fees published by HUD for foreclosure, deed-in lieu of foreclosure and bankruptcy.

### **IMPLEMENTATION RESPONSIBILITIES:**

It is not the Agency’s intent to regulate the amounts that lenders pay for services performed, but to limit the extent to which the SFHGLP reimburses the lender for attorney fees incurred. The SFHGLP will use HUD’s current Schedule of Standard Attorney/Trustee’s Fees as the basis for determining reasonable and customary attorney fees. The Schedule of Standard Attorney/Trustee’s Fees became effective for all SFHGLP loans where the first legal action required initiating foreclosure; the petition for bankruptcy release, or the date the deed-in-lieu of foreclosure is executed is on or after February 1, 2003. Fees higher than the published amounts may be appropriate, in cases such as contested foreclosures, required probate procedures, etc., and are subject to approval by the Agency approval official on a case-by-case basis. Justification for higher fees must be documented in the file.

It is important to make the distinction between attorney/trustee fees and attorney/trustee costs. Typically, the fee for the service performed by the attorney is listed separately on the attorney’s invoice from the actual costs involved in the liquidation proceedings. A complete list of allowable liquidation costs would not be practical since procedural requirements vary by jurisdiction. Generally, the SFHGLP will reimburse a lender for costs, which must be paid to public officials such as sheriffs, clerks of court or recorders of deeds, as well as costs, which are required by law (i.e., private service of process and required publications).

RD Instruction 1980-D, section 1980.374(c) states that in-house expenses of the lender will not be allowed during the liquidation process. Employee salaries, staff attorneys and overhead charges are considered examples of in-house expenses. Overhead expenses include, but are not limited to, items such as telephone calls, photocopying charges, overnight mail fees and postage (not including certified or registered mailings required by law). Typical overhead costs are inherent to the foreclosure process and payment of these expenses is not reimbursable.

Outsourcing of services, such as document preparation services, are customary in the industry and are also considered as attorney overhead. These fees are allowed as a separate expense *only* if the attorney fee is reduced in a proportionate amount to the document preparation fee that is charged.

Example:

- State = Tennessee
- Acceptable Foreclosure Attorney Fee = \$600
  - \$475 Attorney fee invoiced
  - \$125 Outsourced Document Preparation Fee
  - \$600 Total of fees charged

In the above example, the foreclosure attorney has chosen to outsource a portion of his service to a contractor. The total fee charged to the lender is the same as if the attorney firm had performed this function. This is considered an acceptable fee that is eligible for reimbursement.

If a foreclosure proceeding is interrupted due to a bankruptcy filed by the borrower, or if a deed-in-lieu of foreclosure or pre-foreclosure sale is accepted prior to the completion of the foreclosure, a maximum of 75% of the allowable attorney fee and all actual foreclosure costs incurred will be reimbursed. If state statute requires that the foreclosure be restarted from the beginning after a bankruptcy is dismissed or relief from stay is granted, the lender will be reimbursed for 100% of allowable foreclosure attorney fees and costs incurred after the bankruptcy stay is lifted. If state statute does not require that the foreclosure be restarted from the beginning, reimbursement of all foreclosure attorney fees incurred both before and after the bankruptcy is limited to the amount listed on the Schedule of Standard Attorney/Trustee's Fees.

It is important to keep in mind that the maximum allowable bankruptcy fees cover the entry of an appearance, request for service, preparation and filing of the proof of claim, objections to the proof of claim, detailed review and analysis of the plan, objection to confirmation of the plan, reaffirmation of the debt, attendance at any meeting of creditors (when attendance is appropriate), motions for relief and/or motions to dismiss, and any other customary services performed in a bankruptcy matter. In establishing the maximum allowable fees, it was presumed that attendance would be required for up to two court hearings and for all necessary meetings of creditors. The fee will vary depending on the chapter under which the bankruptcy is filed.

Although maximum allowable bankruptcy fees are established, reimbursement of attorney's fees that have been prorated to reasonably relate to the amount of legal work actually performed by the bankruptcy attorney will be allowed. If the attorney has not completed the majority of legal services taken into consideration in the maximum allowable fee, the attorney's fee should be prorated to reflect the amount of work actually performed by the attorney. For example, if a case is referred to the attorney solely for filing a proof of claim or a motion for relief the full maximum allowable bankruptcy fee cannot be reimbursed.

Generally, attorney fees will not be reimbursed that exceed the maximum allowable bankruptcy fees which cover the customary and routine legal services performed in each type of bankruptcy filing. However, when encountering situations whereby expenses for additional legal work beyond those pleadings and hearings that are considered in establishing the maximum allowable fee schedule, as long as the work is necessary to protect the interests of the Agency, additional reimbursement may be justified. Examples of additional reimbursements are:

- Additional attorney's fees of up to \$250 for each additional motion, response, or other pleading (such as a new request or a second request to lift a bankruptcy stay), if attendance at a court hearing is not required.
- Additional attorney's fees of up to \$500 (\$250 for a pleading + \$250 for a hearing), if attendance at a single hearing on an additional pleading is required.
- Additional attorney's fees of up to \$100 for each continued court hearing on a pleading (beyond the two hearings that were taken into consideration in the maximum allowable fee and the first hearing on the pleading).

It is the responsibility of the lender to present sufficient documentation for justification of additional fees exceeding the maximum allowable bankruptcy fees noted in Attachment 1. Fees may be reimbursed for such fees and costs to the extent that services to protect the interests of the Agency were actually rendered and the fees and costs charged for them are reasonable and necessary and comply with the guidelines set forth.

The Agency will not reimburse any attorney fees or costs incurred for a prior liquidation action that has been reinstated by the borrower or for which the foreclosed property is redeemed. Attorney fees and costs should be included in the amount collected from the borrower with the reinstatement or foreclosure redemption.

The foreclosure fees in Attachment 1 list the attorney or trustee fee limits allowed for each SFHGLP recommended method of foreclosure listed in the current RD AN No.4342 (1980-D), "*Single Family Housing Guaranteed Loan Program Acceptable Foreclosure Time Frames.*" In States where more than one foreclosure method is available, the limits listed are based on the method that is most cost effective in reducing legal fees and interest expense. The Agency does not intend to prohibit the payment of attorney fees and costs where the lender obtains title through a method of foreclosure other than what is recommended. However, the Agency approval official must determine whether the foreclosure method chosen by the lender was in the best interest of the government. For example, the recommended foreclosure method in some States is non-judicial. However, judicial foreclosures are required to preserve the rights of a deficiency judgment. If the lender can demonstrate that the recovery of a deficiency judgment is expected, the foreclosure method should be considered acceptable and reasonable attorney fees and costs reimbursed within the limits of the guarantee.

During lender compliance reviews, files should be reviewed in an effort to ensure that lenders are complying with the fee limit requirements. Lenders that are determined to be out of compliance should be counseled on the provisions of the regulations and 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, (202) 720-1452 or by email at [stuart.walden@wdc.usda.gov](mailto:stuart.walden@wdc.usda.gov) or [debra.terrell@wdc.usda.gov](mailto:debra.terrell@wdc.usda.gov). All ANs are available at the Rural Development website <http://www.rurdev.usda.gov/regs>.

Attachment

## Schedule of Standard Attorney/Trustee's Fees

STATE	NON-JUDICIAL FORECLOSURE	JUDICIAL FORECLOSURE	BANKRUPTCY CLEARANCE	POSSESSORY ACTION	DEED-IN-LIEU
AK	\$1,250		Varies <sup>13</sup>	\$375	\$400
AL	\$600 <sup>1</sup>		Varies <sup>13</sup>	\$375	\$400
AR	\$650		Varies <sup>13</sup>	\$275	\$400
AZ	\$675		Varies <sup>13</sup>	\$275	\$400
CA	\$650		Varies <sup>13</sup>	\$525	\$400
CO	\$850		Varies <sup>13</sup>	\$275	\$400
CT		\$1,350 <sup>2</sup>	Varies <sup>13</sup>	\$375	\$400
DC	\$650 <sup>1</sup>		Varies <sup>13</sup>	\$375	\$400
DE		\$1,000	Varies <sup>13</sup>	\$325	\$400
FL		\$1,250	Varies <sup>13</sup>	\$375	\$400
GA	\$650 <sup>1,3</sup>		Varies <sup>13</sup>	\$375	\$400
GU	\$1,250		Varies <sup>13</sup>	\$375	\$400
HI	\$1,250	\$1,900	Varies <sup>13</sup>	\$525	\$400
IA	\$600	\$900	Varies <sup>13</sup>	\$325	\$400
ID	\$650		Varies <sup>13</sup>	\$375	\$400
IL		\$1,150 <sup>5</sup>	Varies <sup>13</sup>	\$325	\$400
IN		\$1,050 <sup>6</sup>	Varies <sup>13</sup>	\$325	\$400
SK		\$900	Varies <sup>13</sup>	\$325	\$400
KY		\$1,150	Varies <sup>13</sup>	\$375	\$400
LA		\$950	Varies <sup>13</sup>	\$325	\$400
MA	\$1,300		Varies <sup>13</sup>	\$625	\$400
MD	\$850 <sup>1,3</sup>	\$850	Varies <sup>13</sup>	\$375	\$400
ME		\$1,300	Varies <sup>13</sup>	\$525	\$400
MI	\$700 <sup>7</sup>		Varies <sup>13</sup>	\$325	\$400
MN	\$700		Varies <sup>13</sup>	\$325	\$400
MO	\$700		Varies <sup>13</sup>	\$325	\$400
MS	\$600 <sup>1</sup>		Varies <sup>13</sup>	\$375	\$400
MT	\$650		Varies <sup>13</sup>	\$375	\$400
NC	\$600 <sup>8</sup>		Varies <sup>13</sup>	\$375	\$400
ND		\$950	Varies <sup>13</sup>	\$325	\$400
NE	\$650 <sup>9</sup>	\$900	Varies <sup>13</sup>	\$325	\$400
NH	\$950		Varies <sup>13</sup>	\$425	\$400
NJ		\$1,350	Varies <sup>13</sup>	\$375	\$400
NM		\$950	Varies <sup>13</sup>	\$275	\$400
NV	\$650		Varies <sup>13</sup>	\$375	\$400
NY		\$1,300 <sup>10</sup>	Varies <sup>13</sup>	\$725	\$400
OH		\$1,150	Varies <sup>13</sup>	\$325	\$400
OK		\$950 <sup>5</sup>	Varies <sup>13</sup>	\$275	\$400
OR	\$725		Varies <sup>13</sup>	\$375	\$400
PA		\$1,300 <sup>11</sup>	Varies <sup>13</sup>	\$425	\$400
PR		\$1,150 <sup>12</sup>	Varies <sup>13</sup>	\$300	\$400
RI	\$950		Varies <sup>13</sup>	\$525	\$400
SC		\$850	Varies <sup>13</sup>	\$375	\$400
SD	\$600	\$900	Varies <sup>13</sup>	\$325	\$400
TN	\$600 <sup>1</sup>		Varies <sup>13</sup>	\$375	\$400
TX	\$600		Varies <sup>13</sup>	\$325	\$400

STATE	NON-JUDICIAL FORECLOSURE	JUDICIAL FORECLOSURE	BANKRUPTCY CLEARANCE	POSSESSORY ACTION	DEED-IN-LIEU
UT	\$650	\$600	Varies <sup>13</sup>	\$275	\$400
VA	\$650 <sup>1,3</sup>		Varies <sup>13</sup>	\$375	\$400
VI		\$1,150	Varies <sup>13</sup>	\$300	\$400
VT		\$1,000	Varies <sup>13</sup>	\$375	\$400
WA	\$725		Varies <sup>13</sup>	\$375	\$400
WI		\$1,150	Varies <sup>13</sup>	\$325	\$400
WV	\$600 <sup>1,3</sup>		Varies <sup>13</sup>	\$375	\$400
WY	\$650		Varies <sup>13</sup>	\$375	\$400

**Footnotes:**

- (1) The fee covers the combined attorney's and notary's fees.
- (2) This fee applies to strict foreclosures. If the foreclosure orders a Foreclosure by Sale, the fee will be \$1,550.
- (3) The fee covers both the attorney's fee and the trustee's commission (or statutory fee).
- (4) The fee includes reimbursement of any fee for the attorney's certificate of title.
- (5) The fee increases by \$100 if foreclosure is achieved by summary judgment.
- (6) In addition to the allowable foreclosure fee, an auctioneer's fee of up to \$250 is allowed for the services of a state licensed auctioneer requested by the lender and approved by the court.
- (7) The fee increases to \$1,100 for a non-judicial foreclosure for a case in which the attorney provides services for "proceedings subsequent" that involve registered land.
- (8) The fee includes the notary's fee. An additional fee of \$250 is allowed for an attorney court appearance for a foreclosure hearing.
- (9) This fee relates to the exercise of the power of sale under a deed of trust.
- (10) This fee applies to foreclosures other than those conducted in New York City and Long Island. A fee of \$1,850 applies to foreclosures conducted in the five boroughs of New York City (Bronx, Brooklyn/Kings, Manhattan, Queens and Staten Island) and in Long Island (Nassau and Suffolk Counties).
- (11) The fee covers certain additional legal actions necessary to complete the foreclosure, including motions to postpone or relist a sale and motions to reassess damages.
- (12) In addition to the allowable foreclosure fee, \$150 is allowed for a notary fee for completed foreclosures. However, if a deed of judicial sale cannot be executed contemporaneously with the foreclosure sale, \$300 is allowed for the notary fee.
- (13) This fee assumes that all required procedural steps have been completed. The maximum attorney's fee varies based on the chapter under which the bankruptcy action is filed.
  - o For Chapter 7 bankruptcies, the maximum allowable fee is \$650.
  - o For Chapter 11, 12, and 13 bankruptcies, the maximum allowable fee is \$1,000