(k) Violations of cost or set back restrictions which do not provide a penalty of reversion or forfeiture of title, or a lien for liquidated damages which may be superior to the lien of the insured mortgage. Violations of such restrictions which do provide for such penalties, provided such penalty rights have been duly released or subordinated to the lien of the insured mortgage, or provided a policy of title insurance is furnished expressly insuring the Commissioner against loss by reason of such penalties.

(l) Customary building and use restrictions which:

(1) Are coupled with a reversionary clause, provided there has been no violation prior to the date of the deed to the Commissioner; or

(2) Are not coupled with a reversionary clause and have not been violated to a material extent.

(m) Outstanding oil, water or mineral rights (or damage caused by the exercise of such rights) which are customarily waived by prudent leading institutions and leading attorneys in the community.

(n) The voluntary or involuntary conveyance of a part of the subject property pursuant to condemnation proceedings or in lieu of condemnation proceedings, if:

(1) The part conveyed does not exceed 10 percent by area of the property;

(2) No damage to existing structures, improvements, or unrepaired damage to sewage, water, or paving has been suffered;

(3) All of the payment received as compensation for the taking by condemnation or conveyance in lieu of condemnation has been applied to reduction of the mortgage indebtedness;

(4) The conveyance occurred subsequent to insurance of the mortgage; and

(5) There is included with the documents and information furnished the Commissioner with the application for insurance benefits, a statement by the mortgagee that the requirements of this paragraph have been met.

(o) Federal tax liens and rights of redemption arising therefrom if the following conditions are observed. If the mortgagee acquires the property by foreclosure the mortgagee shall give notice to the Internal Revenue Service (IRS) of the foreclosure action. The Commissioner will not object to an outstanding right of redemption in IRS if: (1) The Federal tax lien was perfected subsequent to the date of the mortgage lien, and (2) The mortgagee has bid an amount sufficient to make the mortgagee whole if the property is in fact redeemed by the IRS.

[36 FR 34508, Dec. 22, 1971, as amended at 41 FR 49736, Nov. 10, 1976; 72 FR 56161, Oct. 2, 2007]

§ 203.390 Waiver of title—mortgages or property formerly held by the Secretary.

(a) *Mortgages sold by the Secretary*. (1) If the Secretary sells a mortgage and such mortgage is later reassigned to him or the property covered by such mortgage is later conveyed to him, he will not object to title by reason of any lien or other adverse interest that was senior to the mortgage on the date of the original sale of such mortgage.

(2) The Secretary will accept an assignment of a mortgage previously sold by him, where the mortgagee is unable to complete foreclosure because of a defect in the mortgage instrument, a defect in the mortgage transaction, or a defect in title which existed at or prior to the time the mortgage assignment was filed for record. In such instances, the Secretary will not object to title by reason of any such defect.

(b) *Property sold by the Secretary*. (1) If a property held by the Secretary is sold by the Secretary who also insures a mortgage financing the sale, and the mortgage is later reassigned to the Secretary or the property covered by the mortgage is later conveyed to the Secretary, the Secretary will not object to title by reason of any lien or other adverse interest that was senior to the mortgage on the date the mortgage was filed for record, except where the lien or other adverse interest arose from a lien or interest that had already been recorded against the mortgagor.

(2) The Secretary will accept an assignment of a mortgage executed in connection with the sale of property by the Secretary, where the mortgagee is unable to complete foreclosure because of a defect in the mortgage instrument, a defect in the mortgage transaction,

or a defect in title which existed at or prior to the time the mortgage was filed for record, except where the defect arose from a lien or interest that had already been recorded against the mortgagor on the date that the mortgage was filed for record. Except for the case of a lien or interest that had already been recorded against the mortgagor, the Secretary will not object to title by reason of any of the above defects.

[36 FR 24508, Dec. 22, 1971, as amended at 58 FR 35370, July 1, 1993; 61 FR 36265, July 9, 1996]

§ 203.391 Title objection waiver with reduced insurance benefits.

Payment of an insurance claim will not automatically be refused solely because the title evidence reveals a condition of title not taken into consideration in the original appraisal and not covered by the provisions of § 203.389 of this part, or not otherwise waived in writing by the Secretary. In such instances, the Secretary may, at his or her option, approve the payment of a claim if the mortgagee agrees to accept a reduction in insurance benefits considered adequate by the Secretary to compensate for any anticipated loss to the Mutual Mortgage Insurance Fund as a result of the existence of the title condition at the time of claim.

[57 FR 47974, Oct. 20, 1992]

PAYMENT OF INSURANCE BENEFITS

§ 203.400 Method of payment.

If the application for insurance benefits is acceptable to the Commissioner payment of the insurance claim shall be made in cash, in debentures or in a combination of both, as determined by the Commissioner at the time of payment except that where the mortgage is insured pursuant to section 223(e) of the Act such claim shall be paid in cash from the Special Risk Insurance Fund, unless the mortgagee files a written request with the application for payment in debentures. If such a request is made, the claim shall be paid by issuing debentures.

[36 FR 24508, Dec. 22, 1971; 43 FR 13511, Mar. 31, 1978]

§ 203.401 Amount of payment—conveyed and non-conveyed properties.

(a) *Conveyed properties.* Where a claim for the insurance benefits is filed in accordance with this subpart, based on the conveyance of title to the mortgaged property to the Commissioner, the amount of the insurance benefits shall be computed by adding to the original principal balance of the mortgage (as increased by the amount of open-end advances made by the mortgagee and approved by the Commissioner) which was unpaid on the date of the institution of foreclosure proceedings, on the date of the acquisition of the property otherwise after default, or on the date the property was acquired by the Commissioner under a direct conveyance by the mortgagor, the amount of all payments made by the mortgagee and allowances for items set forth in § 203.402, less all applicable items set forth in § 203.403.

(b) *Claims without conveyance of title.* (1) If the mortgagee acquires title to the mortgaged property pursuant to a bid amount equal to the Commissioner's adjusted fair market value and the mortgagee elects to retain title as provided in § 203.368(g)(2), or if the mortgagee acquires title pursuant to a bid in excess of the Commissioner's adjusted fair market value (see § 203.368(g)(4)), the amount of the insurance benefits shall be determined by deducting the amount bid at the sale from the original principal balance of the mortgage (as increased by the amount of open-end advances made by the mortgagee and approved by the Commissioner) which was unpaid on the date of institution of the foreclosure proceedings, and adding to the difference, if any, all applicable items set forth in § 203.402 and subtracting therefrom all applicable items set forth in § 203.403; provided however, that appropriate adjustment shall be made for any such items covered by proceeds of the foreclosure sale.

(2) If a party other than the mortgagee acquires title to the mortgaged property pursuant to a bid at foreclosure sale not less in amount than the Commissioner's adjusted fair market value, the amount of the insurance benefits shall be determined by deducting the proceeds of the foreclosure sale