

§ 266.620

under which the partial interest is transferred shall provide that:

- (1) The HFA shall remain mortgagee of record under the contract of mortgage insurance;
- (2) The Commissioner shall have no obligation to recognize or deal with anyone other than the HFA with respect to the rights, benefits, and obligations of the mortgagee under the contract of insurance; and
- (3) The mortgagor shall have no obligation to recognize or do business with any one other than the HFA or, if applicable, its servicing agent with respect to rights, benefits, and obligations of the mortgagor or the mortgagee under the mortgage.

TERMINATION

§ 266.620 Termination of Contract of Insurance.

The Contract of Insurance shall terminate if any of the following occurs:

- (a) The mortgage is paid in full;
- (b) The HFA acquires the mortgaged property and notifies the Commissioner that it will not file an insurance claim;
- (c) A party other than HFA acquires the property at a foreclosure sale;
- (d) The HFA notifies the Commissioner of Termination of Insurance (voluntary termination);
- (e) The HFA or its successors commit fraud or make a material misrepresentation to the Commissioner with respect to information culminating in the Contract of Insurance on the mortgage or while the Contract of Insurance is in existence;
- (f) The receipt by the Commissioner of an Application for Final Claims Settlement;
- (g) If the HFA acquires the mortgaged property and fails to make an initial claim.

§ 266.622 Notice and date of termination by the Commissioner.

The Commissioner shall notify the HFA that the Contract of Insurance has been terminated and shall establish the effective date of termination. The termination shall be the last day of the month in which one of the events specified in § 266.620 occurs.

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CLAIM PROCEDURES

§ 266.626 Notice of default and filing an insurance claim.

(a) *Definition of default.* (1) A monetary default exists when the mortgagor fails to make any payment due under the mortgage.

(2) A covenant default exists when the mortgagor fails to perform any other covenant under the provision of the mortgage or the regulatory agreement, which is incorporated by reference in the mortgage. An HFA becomes eligible for insurance benefits on the basis of a covenant default only after the HFA has accelerated the debt and the owner has failed to pay the full amount due, thus converting a covenant default into a monetary default.

(b) *Date of default.* For purposes of this subpart, the date of default is:

- (1) The date of the first uncorrected failure to perform a mortgage covenant or obligation; or
- (2) The date of the first failure to make a monthly payment that is not covered by subsequent payments, when such subsequent payments are applied to the overdue monthly payments in the order in which they were due.

(c) *Notice of default.* If a default (as defined in paragraph (a) of this section) continues for a period of 30 days, the HFA must notify the Commissioner within 10 days thereafter, unless the default is cured within the 30-day period. Unless waived by the Commissioner, the HFA must submit this notice monthly, on a form prescribed by the Commissioner, until the default has been cured or the HFA has filed an application for an initial claim payment. In cases of mortgage acceleration, the mortgagee must first give notice of the default.

(d) *Timing of claim filing.* Unless a written extension is granted by HUD, the HFA must file an application for initial claim payment (or, if appropriate, for partial claim payment) within 75 days from the date of default and may do so as early as the first day of the month following the month for which a payment was missed. Upon request of the HFA, HUD may extend, up to 180 days from the date of default, the deadline for filing a claim. In those cases where the HFA certifies that the

project owner is in the process of transacting a bond refunder, refinancing the mortgage, or changing the ownership for the purpose of curing the default and bringing the mortgage current, HUD may extend the deadline for filing a claim beyond 180 days, not to exceed 360 days from the date of default.

§ 266.628 Initial claim payments.

(a) *Determination of initial claim amount.* (1) The initial claim amount is based on the unpaid principal balance of the mortgage note as of the date of default, plus interest at the mortgage note rate from date of default to date of initial claim payment. The mortgage note interest component of the initial claim amount is subject to curtailment as provided in paragraph (b) of this section.

(2) HUD shall make an initial claim payment to the HFA that is equal to the initial claim amount, less any delinquent mortgage insurance premiums, late charges and interest, assessed under § 266.604(d).

(3) The HFA must use the proceeds of the initial claim payment to retire any bonds or any other financing mechanisms securing the mortgage within 30 days of the initial claim payment. Any excess funds resulting from such retirement or repayment shall be returned to HUD within 30 days of the retirement.

(b) *Curtailment of interest for late filings.* In determining the mortgage note interest component of the initial claim amount, if the HFA fails to meet any of the requirements of this section within the specified time (including any granted extension of time), HUD shall curtail the accrual of mortgage note interest by the number of days by which the required action was late.

(c) *Method of payment.* HUD shall pay the claim in cash.

§ 266.630 Partial payment of claims.

(a) *General.* When the Commissioner receives a claim for a partial payment under § 266.626(d), the Commissioner may make a partial payment of claim in accordance with the requirements of this section. If the HFA has not previously received a partial claim payment, the HFA may file a claim for a partial claim payment under § 266.630.

Otherwise, the HFA must file for an initial claim payment under § 266.628.

(b) *HFA submission.* In addition to any other requirements set forth in administration instructions, the HFA must provide the following information with its application for a partial claim payment:

(1) The amount by which the HFA will reduce the principal on the insured mortgage and the amount of delinquent interest on the insured mortgage that the HFA will defer based on the anticipated closing date; and

(2) A certification that:

(i) The amount of the principal reduction of the insured first mortgage does not exceed 50 percent of the unpaid principal balance;

(ii) The relief resulting from the partial claim payment when considered with other resources available to the project are sufficient to restore the financial viability of the project;

(iii) The project is or can (at reasonable cost) be made structurally sound;

(iv) The management of the project is satisfactory;

(v) The default under the insured mortgage was beyond the control of the mortgagor.

(c) *Claim processing*—(1) *Acceptable application.* If the HFA's application is acceptable, the Commissioner shall notify the HFA to process the partial payment, which will include the modification of the existing mortgage and the execution by the mortgagor of a second mortgage payable to the HFA. When the second mortgage is closed, the HFA shall notify the Commissioner, in a form and manner prescribed in administrative instructions. Upon receipt of notice from the HFA, the Commissioner shall make the partial claim payment.

(2) *Unacceptable application.* If the application is unacceptable, the Commissioner shall either advise the HFA of the information needed to make the application acceptable or return the application for further action. The HFA is granted an extension of 30 days from the date of any notification for further action.

(d) *Requirements*—(1) *One partial claim payment.* Only one partial claim payment may be made under a contract of insurance.